

115TH CONGRESS
2D SESSION

H. R. 6360

To amend the Endangered Species Act of 1973 to provide for greater certainty and improved planning for incidental take permit holders.

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2018

Mr. NORMAN (for himself, Mr. ABRAHAM, Mr. BIGGS, Mr. BISHOP of Utah, Mr. CRAMER, Mr. DUNCAN of South Carolina, Mr. GOSAR, Mr. LUETKEMEYER, Mr. MARSHALL, Mr. TIPTON, Mr. BANKS of Indiana, Mr. STEWART, Mrs. NOEM, Mr. MCCLINTOCK, Mr. ESTES of Kansas, Mr. GOMERT, Mr. NEWHOUSE, and Mr. WALDEN) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Endangered Species Act of 1973 to provide for greater certainty and improved planning for incidental take permit holders.

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.**

4 This Act may be cited as the “Permit Reassurances
5 Enabling Direct Improvements for Conservation, Tenants,
6 and Species Act of 2018” or the “PREDICTS Act of
7 2018”.

1 **SEC. 2. CODIFICATION OF THE “NO SURPRISES” REGULA-**
2 **TIONS.**

3 (a) DEFINITIONS.—Section 3 of the Endangered Spe-
4 cies Act of 1973 (16 U.S.C. 1532) is amended as follows:

5 (1) By inserting after paragraph (1) the fol-
6 lowing:

7 “(____) CHANGED CIRCUMSTANCES.—The term
8 ‘changed circumstances’—

9 “(A) means changes in circumstances af-
10 fecting a species or geographic area covered by
11 a covered plan or agreement that can reason-
12 ably be anticipated by developers of such plan
13 or agreement, respectively, and the Secretary,
14 and that can reasonably be planned for; and

15 “(B) includes—

16 “(i) additions of species to lists pub-
17 lished under section 4(c); and

18 “(ii) a fire or other natural cata-
19 strophic event in an area prone to such an
20 event.”.

21 (2) By inserting after paragraph (3) the fol-
22 lowing:

23 “(____) COVERED PLAN OR AGREEMENT.—The
24 term ‘covered plan or agreement’ means a conserva-
25 tion plan required under section 10(a)(2)(A) or a

1 candidate conservation agreement with assurances
2 under section 10(k), respectively.”.

3 (3) By inserting after paragraph (5) the fol-
4 lowing:

5 “() CONSERVED HABITAT AREAS.—The term
6 ‘conserved habitat areas’ means areas explicitly des-
7 ignated for habitat restoration, acquisition, protec-
8 tion, or other conservation purposes under a covered
9 plan or agreement.”.

10 (4) By inserting after paragraph (13) the fol-
11 lowing:

12 “() OPERATING CONSERVATION PROGRAM.—
13 The term ‘operating conservation program’ means
14 those conservation management activities that are
15 expressly described in a covered plan or agreement
16 and that are to be undertaken for the affected spe-
17 cies when implementing the plan or agreement, re-
18 spectively, including measures to respond to changed
19 circumstances.”.

20 (5) By inserting after paragraph (24) the fol-
21 lowing:

22 “() UNFORESEEN CIRCUMSTANCES.—The
23 term ‘unforeseen circumstances’ means changes in
24 circumstances affecting a species or geographic area
25 covered by a covered plan or agreement that could

1 not reasonably have been anticipated by plan devel-
2 opers and the Secretary at the time of the develop-
3 ment of such plan or agreement, respectively, and
4 that result in a substantial and adverse change in
5 the status of the covered species.”.

6 (6) By redesignating the paragraphs of such
7 section as paragraphs (1) through (25), respectively.

8 (b) CONFORMING AMENDMENT.—Section 7(n) of
9 such Act (16 U.S.C. 1536(n)) is amended by striking
10 “section 3(13)” and inserting “section 3(16)”.

11 (c) ASSURANCES GOVERNING PERMIT, PLAN, CAN-
12 DIDATE CONSERVATION AGREEMENT WITH ASSURANCES,
13 AND SAFE HARBOR AGREEMENT ISSUANCE, MODIFICA-
14 TION, AND REVOCATION.—Section 10 of such Act (16
15 U.S.C. 1539) is amended as follows:

16 (1) Subsection (a)(2)(B) is amended in the
17 matter following clause (v) by adding at the end the
18 following: “In addition, each permit issued under
19 paragraph (1)(B), each candidate conservation
20 agreement with assurances entered into under sub-
21 section (k), and each safe harbor agreement entered
22 into under subsection (l) shall contain the assur-
23 ances governing permit revocation, changed cir-
24 cumstances, and unforeseen circumstances set forth

1 in subparagraph (2)(C) and paragraph (3) of this
2 subsection.”.

3 (2) Subsection (a)(2)(C) is amended by insert-
4 ing “(i)” before the text, and by adding at the end
5 the following:

6 “(ii) The Secretary may not revoke a permit issued
7 under paragraph (1)(B) other than as required in clause
8 (i), and may not terminate any candidate conservation
9 agreement with assurances under subsection (k) or safe
10 harbor agreement entered into under subsection (l), unless
11 the Secretary finds that—

12 “(I) continuation of the permitted activity or
13 activity authorized under such an agreement, respec-
14 tively, would be inconsistent with any of the criteria
15 set forth in subparagraph (B); and

16 “(II) the inconsistency has not been remedied
17 in a timely fashion.”.

18 (3) Subsection (a) is amended by adding at the
19 end the following:

20 “(3) Each permit issued by the Secretary under para-
21 graph (1)(B), each candidate conservation agreement with
22 assurances entered into under subsection (k), and each
23 safe harbor agreement entered into under subsection (l)
24 shall be subject to the following assurances addressing
25 changed circumstances and unforeseen circumstances:

1 “(A) If additional conservation and mitigation
2 measures are deemed necessary to respond to
3 changed circumstances and are specified in the oper-
4 ating conservation program of the conservation plan
5 for the permit or in such agreement, respectively,
6 the permittee shall implement such measures.

7 “(B) If additional conservation and mitigation
8 measures are deemed necessary to respond to
9 changed circumstances and are not specified in the
10 operating conservation program of the conservation
11 plan for the permit or in such agreement, respec-
12 tively, the Secretary may not require any conserva-
13 tion and mitigation measures in addition to those
14 specified in the plan or agreement, respectively,
15 without the consent of the permittee.

16 “(C)(i) In negotiating unforeseen cir-
17 cumstances, the Secretary may not require the com-
18 mitment of additional land, water, or financial com-
19 pensation or additional restrictions on the use of
20 land, water, or other natural resources beyond the
21 level otherwise agreed upon for the species covered
22 by the conservation plan or by such agreement, re-
23 spectively, without the consent of the permittee.

24 “(ii) If additional conservation and mitigation
25 measures are deemed necessary to respond to un-

1 foreseen circumstances, the Secretary may require
2 additional measures of the permittee where the con-
3 servation plan or agreement, respectively, is being
4 properly implemented, but only if such measures—

5 “(I) are limited to modifications within
6 conserved habitat areas, if any, or to the con-
7 servation plan’s or agreement’s operating con-
8 servation program for the affected species;

9 “(II) maintain the original terms and
10 structures of the conservation plan or agree-
11 ment to the maximum extent possible; and

12 “(III) will not involve the commitment of
13 additional land, water, or financial compensa-
14 tion or additional restrictions on the use of
15 land, water, or other natural resources other-
16 wise available for development or use under the
17 original terms of the conservation plan or
18 agreement, without the consent of the per-
19 mittee.

20 “(iii) The Secretary shall have the burden of
21 demonstrating that unforeseen circumstances exist,
22 using the best scientific and commercial data avail-
23 able. The Secretary shall clearly document any find-
24 ing that unforeseen circumstances exist, and shall
25 base such finding on reliable technical information

1 regarding the status and habitat requirements of the
2 affected species. In making such finding, the Sec-
3 retary will consider, among other matters, the fol-
4 lowing factors:

5 “(I) The size of the current range of the
6 affected species.

7 “(II) The percentage of such range ad-
8 versely affected by the conservation plan or
9 agreement.

10 “(III) The percentage of such range con-
11 served by the conservation plan or agreement.

12 “(IV) The ecological significance of that
13 portion of the range affected by the conserva-
14 tion plan or agreement.

15 “(V) The level of knowledge about the af-
16 fected species and the degree of specificity of
17 the species’ conservation program under the
18 conservation plan or agreement.

19 “(VI) Whether failure to adopt additional
20 conservation measures would appreciably reduce
21 the likelihood of survival and recovery of the af-
22 fected species in the wild.

23 “(iv) The Secretary shall—

24 “(I) present a record of the analyses of the
25 status of unforeseen circumstances to the per-

mittee before requiring any additional conservation or mitigation measures of the permittee or agreement party under clause (ii); and

“(II) include in the record a qualitative and quantitative analysis of each of the factors specified in subclauses (I) through (VI) of clause (iii).”.

SEC. 3. CANDIDATE CONSERVATION AGREEMENTS WITH ASSURANCES.

(a) PERMITS.—Section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) is amended—

(1) by striking “or” at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting “; or”; and

(3) by adding at the end the following:

“(C) any taking incidental to, and not the purpose of, the carrying out of an otherwise lawful activity pursuant to a candidate conservation agreement with assurances entered into under subsection (k) or a safe harbor agreement entered into under subsection (l).”.

(b) AGREEMENTS.—Section 10 of such Act (16 U.S.C. 1539) is amended by adding at the end the following:

1 “(k) CANDIDATE CONSERVATION AGREEMENTS.—

2 “(1) IN GENERAL.—At the request of any non-
3 Federal person, the Secretary may enter into a can-
4 didate conservation agreement with assurances with
5 the person for a species that has been proposed for
6 listing under section 4(c)(1), is a candidate species,
7 or is likely to be considered for listing in the near
8 future on areas where the person has a fee simple,
9 leasehold, or other property interest (including water
10 or other natural resources) sufficient to carry out
11 the proposed management activities, including on
12 lands or waters under Federal ownership or control.

13 “(2) REVIEW BY THE SECRETARY.—

14 “(A) SUBMISSION TO THE SECRETARY.—A
15 non-Federal person may submit a candidate
16 conservation agreement with assurances devel-
17 oped under paragraph (1) to the Secretary for
18 review at any time prior to the listing described
19 in section 4(c)(1) of a species that is the sub-
20 ject of the agreement.

21 “(B) CRITERIA FOR APPROVAL.—The Sec-
22 retary may approve an agreement and issue a
23 permit under subsection (a)(1)(C) for the
24 agreement if, after notice and opportunity for
25 public comment, the Secretary finds that—

1 “(i) for species proposed for listing,
2 candidates for listing, or are likely to be
3 considered for listing in the near future,
4 that are included in the agreement, the ac-
5 tions taken under the agreement, would
6 provide a beneficial contribution to the
7 conservation of the species or its habitat
8 during the duration of the agreement;

9 “(ii) the actions taken under the
10 agreement will not appreciably reduce the
11 likelihood of survival and recovery of an
12 endangered species or a threatened species;
13 and

14 “(iii) the agreement includes such
15 monitoring and reporting requirements as
16 reasonably necessary for determining
17 whether the terms and conditions of the
18 agreement are being complied with.

19 “(3) EFFECTIVE DATE OF PERMIT.—A permit
20 issued under subsection (a)(1)(C) shall take effect at
21 the time the species is listed pursuant to section
22 4(c), if the permittee is in full compliance with the
23 terms and conditions of the agreement.

24 “(4) ASSURANCES.—A person who has entered
25 into a candidate conservation agreement under this

1 subsection, and is in compliance with the agreement,
 2 may not be required to undertake any additional
 3 measures for species covered by such agreement if
 4 the measures would require the payment of addi-
 5 tional money, or the adoption of additional use, de-
 6 velopment, or management restrictions on any land,
 7 waters, or water-related rights that would otherwise
 8 be available under the terms of the agreement with-
 9 out the consent of the person entering into the
 10 agreement. The Secretary and the person entering
 11 into a candidate conservation agreement, by the
 12 terms of the agreement, shall identify—

13 “(A) other modifications to the agreement;

14 or

15 “(B) other additional measures;

16 if any, that the Secretary may require under ex-
 17 traordinary circumstances.”.

18 **SEC. 4. SAFE HARBOR AGREEMENTS.**

19 Section 10 of the Endangered Species Act of 1973
 20 (16 U.S.C. 1539) (as amended by section 3) is further
 21 amended by adding at the end the following:

22 “(I) SAFE HARBOR AGREEMENTS.—

23 “(1) AGREEMENTS.—

24 “(A) IN GENERAL.—The Secretary may
 25 enter into agreements with non-Federal persons

1 to benefit the conservation of endangered spe-
2 cies or threatened species by creating, restoring,
3 or improving areas as habitat or by maintaining
4 currently unoccupied habitat for endangered
5 species or threatened species. Under an agree-
6 ment, the Secretary shall permit the person to
7 take endangered species or threatened species
8 included under the agreement on lands or
9 waters that are subject to the agreement if the
10 taking is incidental to, and not the purpose of,
11 carrying out of an otherwise lawful activity, ex-
12 cept that the Secretary may not permit through
13 an agreement any incidental taking below the
14 baseline requirement specified pursuant to sub-
15 paragraph (B).

16 “(B) BASELINE.—For each agreement
17 under this subsection, the Secretary shall estab-
18 lish a baseline requirement that is mutually
19 agreed on by the applicant and the Secretary at
20 the time of the agreement that will, at a min-
21 imum, maintain existing conditions for the spe-
22 cies covered by the agreement on lands and
23 waters that are subject to the agreement. The
24 baseline may be expressed in terms of the abun-
25 dance or distribution of endangered or threat-

1 ened species, quantity or quality of habitat, or
2 such other indicators as appropriate.

3 “(2) CRITERIA FOR APPROVAL.—The Secretary
4 may approve an agreement and issue a permit under
5 subsection (a)(1)(C) for the agreement if, after no-
6 tice and opportunity for public comment, the Sec-
7 retary finds that—

8 “(A) the implementation of the terms of
9 the agreement is reasonably expected to provide
10 a beneficial contribution to the recovery of the
11 species during the duration of the agreement;

12 “(B) the take will be incidental to an oth-
13 erwise lawful activity and will be in accordance
14 with the terms of the agreement;

15 “(C) the actions taken under the agree-
16 ment will not appreciably reduce the likelihood
17 of survival and recovery of an endangered spe-
18 cies or threatened species; and

19 “(D) the agreement includes such moni-
20 toring and reporting requirements as reasonably
21 necessary for determining whether the terms
22 and conditions of the agreement are being com-
23 plied with.

24 “(3) EFFECTIVE DATE OF THE PERMIT.—A
25 permit issued under subsection (a)(1)(C) shall take

1 effect on the day of issuance for species covered by
2 the agreement.”.

3 **SEC. 5. FINANCIAL ASSISTANCE.**

4 Section 10 of the Endangered Species Act of 1973
5 (16 U.S.C. 1539) (as amended by section (4)) is further
6 amended by adding at the end the following:

7 “(m) FINANCIAL ASSISTANCE.—

8 “(1) IN GENERAL.—In cooperation with the
9 States and subject to the availability of appropria-
10 tions, the Secretary may provide a grant of up to
11 \$10,000 to any individual private landowner to as-
12 sist the landowner in carrying out a candidate con-
13 servation agreement with assurances or safe harbor
14 agreement under this subsection.

15 “(2) PROHIBITION ON ASSISTANCE FOR RE-
16 QUIRED ACTIVITIES.—The Secretary may not pro-
17 vide assistance under this paragraph for any action
18 that is required by a permit, candidate conservation
19 agreement with assurances, or safe harbor agree-
20 ment under this Act or that is otherwise required
21 under this Act or other Federal law.

22 “(3) OTHER PAYMENTS.—A grant provided to
23 an individual private landowner under this para-
24 graph shall be in addition to, and not affect, the

- 1 total amount of payments that the landowner is oth-
- 2 erwise eligible to receive under Federal law.”.

