

September 28, 2026

RE: Please Oppose Anti-ESA Provisions in Permitting Legislation

Dear Senator,

We write to express our strong opposition to including any provisions further weakening the Endangered Species Act in permitting legislation, on behalf of our organizations and our combined millions of members and supporters. The ESA, which is supported by 84% of the public across the political spectrum,¹ and the agencies responsible for recovering endangered and threatened species are being systematically dismantled. We and our members and supporters will vigorously oppose all efforts to undermine the ESA in a permitting deal and urge you to remove ESA provisions from any permitting bill.

Transfer of Federal Responsibilities to State Agencies:

We specifically oppose allowing states to take over the federal role in reviewing the impacts of federal actions on endangered and threatened species. Section 7, called the heart of the Endangered Species Act, requires that when a federal agency authorizes, funds or carries out an action affecting threatened or endangered species, it must consult with the relevant federal wildlife agency about the effects of its actions.

This “consultation” process is quick; the median formal consultation takes about 2 months, while the median informal consultation takes about 2 weeks.² Through this process, the wildlife agency lends expertise to ensure the action isn’t likely to jeopardize the survival and recovery of the species and informs the action agency (and permittee if any) what steps to take to avoid, minimize, and mitigate impacts. The wildlife agency provides a liability shield for any “take” covered by an incidental take statement.

Recent Changes Undercutting Endangered Species Recovery:

The Trump administration has taken extraordinary steps already to erode our wildlife laws and agencies. Staff levels are reportedly down by well over 25% at the US Fish and Wildlife Service alone. The administration is even attacking habitat protections. It recently adopted an extraordinarily narrow interpretation of the ESA’s term “take,” - relying on a decades old dissent from former Justice Scalia in the Supreme Court decision *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*. The Supreme Court rejected Justice Scalia’s interpretation by a 6-3 vote, meaning the administration is ignoring Supreme Court

¹ [Support for the US Endangered Species Act Is High and Steady Over the Past Three Decades](#)

² Malcom & Li [Data contradict common perceptions about a controversial provision of the US Endangered Species Act](#) “The median duration of informal consultations was 13 d[ays], and the median duration of formal consultations was 62 d[ays].”

precedent. The administration has changed the definition of “harm” in the “take” definition, meaning habitat modification that kills or injures endangered (and some threatened) animals no longer counts. Additionally, this administration has issued legal memos that say prohibited take excludes everything except for intentional acts affirmatively directed at particular animal.

Not only is this (wrongly) telling people it is no longer illegal for a company to, for example, destroy the endangered San Joaquin kit fox’s habitat without ESA authorization to build an oil well, but if the drilling crushes a fox in its den, that too is no longer illegal unless the company specifically targeted the fox.

Because of this unlawful redefinition, section 7 consultations will no longer consider the vast majority of incidental take, and the incidental take statement will become almost meaningless. This subverts Congress’ goal in enacting the ESA to ensure listed species fully recover while allowing federally authorized projects to proceed with appropriate mitigation.

This Proposal:

Standing alone, delegating consultation responsibilities to the states would deal a devastating blow to the ESA’s integrity and efficiency. Combined with the Trump administration’s take reinterpretation, this blow would likely be fatal. This threatens to throw away the ESA’s remarkable track record of saving more than 99% of listed species from extinction, without resulting in permitting efficiency gains. The wildlife agencies, the U.S. Fish and Wildlife Service and NOAA Fisheries, have decades of specialized knowledge and experience in listed species that the states simply lack. It would transform a unified and efficient federal consultation process under a single set of federal regulations into a myriad of different state-specific permitting processes. The resulting burdens on federal agencies, state agencies, and listed species would be incalculable.

State wildlife management agencies are often underfunded and understaffed and not equipped to implement the ESA’s processes. They cannot and should not be expected to protect migratory species and species that occur in multiple states. Earlier this month, twenty states³ and the District of Columbia challenged the administration’s new “take” interpretation and its rollback of the “harm” regulations, arguing that the administration’s

³ The following states and the District of Columbia filed suit in federal district court for the Northern District of California on September 9, 2026, to challenge the new “take” interpretation and the rollback of the harm regulations: California, Washington, Massachusetts, Maryland, Arizona, Colorado, Connecticut, Delaware, Hawaii, Illinois, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, Wisconsin, and the District of Columbia.

actions will drastically overburden state agencies and undermine state conservation efforts, harming their citizens, state lands, and their economies.

It also creates unacceptable federalism issues, because Congress deliberately established Section 7 consultation as an exclusively federal process, applicable only to federal actions. An assumption proposal would make states responsible for interpretation and application of federal law and granting federal take permission to federal agencies issuing federal permits.

State assumption of ESA consultation responsibilities will not speed up permitting, including for renewable energy projects. In fact, it will create far more inefficiency and permitting delay at a pivotal moment for transitioning to a clean energy future. Instead of going through one technologically advanced⁴ consultation process with an expert federal agency with fifty years of experience in administering the ESA, devolving consultation to states that lack this advanced process and expertise will force federal agencies to navigate decentralized processes that vary in quality, speed, consistency, and politicization. States with insufficient consultation processes will invite lawsuits. Governors with political motivations to stop or slow down renewable or other energy projects will be able to use the ESA to do that.

We urge you to remove this and any other ESA provisions from permitting legislation.

Sincerely,

Alameda Creek Alliance

Alaska Wilderness League

American Bird Conservancy

Animal Commons

Animal Defenders International

Colorado Public Lands Advocacy & Conservation Expertise (CO-PLACE), LLC

Conservation Law Foundation

Defenders of Wildlife

Earthjustice Action

EDM International, Inc.

Endangered Habitats League

Endangered Species Coalition

⁴ One major reason that most FWS consultations are timely is that the agency uses its online consultation portal, IPaC, to conduct most consultations. IPaC has been over 12 years in the making and consists of not only a complex IT infrastructure but also considerable knowledge about species biology and mitigation measures. It is inconceivable that 50 states could come close to replicating this infrastructure and knowledge within any timeframe that meets the ongoing demands of thousands of consultations annually.

Environmental Center of San Diego
Environmental Protection Information Center (EPIC)
FOUR PAWS USA
Friends of Blackwater, Inc.
Friends of Merrymeeting Bay
Friends of the Earth
Grand Canyon Wolf Recovery Project
GreenLatinos
Greenpeace USA
Guardians of the Wolves
Healthy Gulf
International Fund for Animal Welfare (IFAW)
International Marine Mammal Project of Earth Island Institute
Juniata Valley Audubon Society
Kettle Range Conservation Group
Klamath Forest Alliance
Klamath-Siskiyou Wildlands Center
Living with Wolves
Los Angeles Audubon Society
Los Padres ForestWatch
New Hampshire Audubon
NYC Plover Project
Ocean Defense Initiative
Oceana
Oil Change International
Oregon Wild
Predator Defense
Resource Renewal Institute
Save Our Allegheny Ridges
Save Our Sky Blue Waters
Sawtooth Science Institute
Sea Turtle Conservancy
Sierra Club
Southern Utah Wilderness Alliance
Species Unite
Team Wolf
The Conservation Agency
The Urban Wildlands Group

Watauga Riverkeeper
Western Nebraska Resources Council
Western Watersheds Project
Wild Cumberland
Wild Lessons
WildEarth Guardians
Wilderness Watch
Wildlife for All
Wolf Conservation Center
Wolf Hollow
Wolves of the Rockies
Wyoming Coalition For Animal Protection
Wyoming Untrapped
Wyoming Wildlife Advocates
Xerces Society for Invertebrate Conservation
Orleans Audubon Society
Animal Protection New Mexico
Columbia Riverkeeper
Maine Audubon
Rockbridge Conservation
Conservation Northwest
Cascadia Wildlands
Western Environmental Law Center
National Wolfwatcher Coalition
Public Interest Coalition
Animal Welfare Institute
Idaho Conservation League
Partnership for Policy Integrity
The 06 Legacy