COLT

COALITION OF LARGE TRIBES

Blackfeet Nation • Cheyenne River Sioux Tribe • Confederated Tribes of the Colville Reservation
Confederated Tribes of the Warm Springs Indian Reservation of Oregon • Crow Creek Sioux Tribe • Crow Nation
Eastern Shoshone Tribe • Fort Belknap Indian Community • Hopi Tribe • Mandan, Hidatsa & Arikara Nation • Mescalero Apache Tribe
Muscogee (Creek) Nation • Navajo Nation • Northern Arapaho Tribe • Northern Cheyenne Tribe • Rosebud Sioux Tribe
San Carlos Apache Tribe • Shoshone-Bannock Tribes • Shoshone-Paiute Tribes of the Duck Valley Indian Reservation
Sisseton Wahpeton Sioux Tribe • Spirit Lake Nation • Spokane Tribe • Standing Rock Sioux Tribe • Ute Indian Tribe
Ute Mountain Ute Tribe • Walker River Paiute Tribe

Permitting Reform Discussion Paper – October 2026

The Coalition of Large Tribes recognizes the Senate Energy and Natural Resources Committee's stated objectives of codifying tribal consultation procedures, protecting consultation concerning landscape-scale traditional cultural properties, and increasing the Historic Preservation Fund authorization. COLT's proposals accept the bill's expedited framework and seek limited changes necessary to protect tribal sovereignty and make the new procedures administrable.

COLT's four core priorities are: (1) Tribal eligibility to assume Endangered Species Act Section 7 consultation responsibilities on terms equivalent to States; (2) removal of biennial THPO evaluations, funding penalties, and federal takeover of THPO functions; (3) a targeted escalation process when a tribe identifies a historic property or landscape of substantial religious, cultural, or historic importance; and (4) a Treasury-administered THPO Capacity Fund supported by voluntary project-proponent contributions and a federal match. More on these below.

A second tier of safeguards conforms the operative text to the Committee's explanation and incorporates additional targeted proposals: mandatory tribal consultation before threshold NHPA findings; retained federal duties during State ESA assumption; State-agency responsibility and no county substitution for State NEPA review; removal of the report-stage "sole discretion" override; ACHP review of an unresolved consultation; a corrected traditional-property definition; database confidentiality and supplement-not-supplant protection; preservation of the Historic Preservation Fund revenue connection; and a narrow tribal-rights savings clause.

These amendments do not attempt to resolve every concern with the bill or convey a COLT position on final passage. They are organized as a limited package for a bipartisan managers' amendment.

In terms of the COLT priorities, first, if states may assume federal consultation responsibilities under section 7 of the Endangered Species Act, federally recognized Indian tribes must be eligible on equivalent terms. Tribal governments possess sovereign authority, place-based expertise, and governmental capacity that should be treated at least equal to that of states.

Second, Congress should remove the biennial evaluation regime and any authority for the Department of the Interior to suspend funding or to assume Tribal Historic Preservation Officer functions. THPOs exercise governmental functions rooted in tribal sovereignty and specialized cultural and land-based knowledge. Federal takeover of inherent tribal functions would be unprecedented, contrary to the Constitution, inconsistent with self-determination and, without a

funded and qualified federal workforce, would be administratively unworkable and would slow, rather than accelerate, permitting.

Third, the bill should establish a tribal escalation process for culturally significant resources. When a tribe timely identifies a property or landscape of substantial religious, cultural, or historic importance, the ordinary response period and limitations period should each be doubled, with early notice, confidential treatment of sensitive information, and senior-level consultation before an agency issues a permit or otherwise authorizes the undertaking to proceed. Although the bill provides a longer process after an agency has identified an adverse effect and received a timely substantive objection, several critical tribal participation rights remain governed by 30-day response periods. Missing one of those threshold periods can allow the agency to proceed without reconsidering a prior report or finding and can materially narrow the tribe's later participation. COLT's proposed 60-day period for a tribally-identified significant resource is therefore targeted to the points at which tribal cultural expertise must enter the process, rather than an attempt to make every consultation open-ended.

Fourth, Congress should provide mandatory, dependable THPO funding rather than an authorization dependent on future annual appropriations. Project proponents should additionally be authorized to contribute to a Treasury-administered THPO Capacity Fund. Contributions should supplement, not supplant, the bill's $200 million annual Historic Preservation Fund authorization; receive a federal match of not less than 10 percent; and be distributed to THPOs principally according to the land base for which each THPO carries consultation responsibilities.

These revisions would improve project certainty by moving tribal expertise to the front of project planning, by strengthening THPO capacity, and by reducing disputes caused by incomplete identification of sacred and historic resources. COLT respectfully requests that the committees incorporate the attached language and engage tribal nations directly before finalizing the bill.

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PROPOSED LEGISLATIVE REDLINES

1. Tribal Parity Under ESA Section 7A

Senate draft reference: section 1304 begins at p. 137, lines 4–8; proposed ESA § 7A definitions and program provisions appear at p. 137, lines 9–25 through p. 140, line 18; State participation appears at p. 140, lines 19–25 through p. 144, line 22; the written agreement appears at p. 144, line 23 through p. 146, line 25; jurisdiction and effect of assumption appear at p. 147, lines 4–25 through p. 148, line 12.

Amend section 1304 and proposed ESA section 7A as follows:

A. SECTION HEADING AND SECTION 7A HEADING

Senate draft: p. 137, lines 4–9.

SEC. 1304. ~~STATE~~STATE AND TRIBAL ASSUMPTION OF CONSULTATION RESPONSIBILITIES.
"SEC. 7A. ~~STATE~~STATE AND TRIBAL ASSUMPTION OF CONSULTATION RESPONSIBILITIES.

B. DEFINITIONS

Amend proposed ESA § 7A(a)(3), Senate draft p. 137, lines 15–20, and add paragraph (4):

"(3) ~~STATE AGENCY~~ELIGIBLE GOVERNMENTAL AGENCY.—The term '~~State agency~~eligible governmental agency' means ~~any~~—

"(A) any agency, department, board, commission, or other governmental entity in a State with primary jurisdiction over environmental or wildlife management matters in the State, as determined by the Governor of the State; or

"(B) any agency, department, board, commission, or other governmental entity of a federally recognized Indian Tribe with primary jurisdiction over environmental, natural-resource, or wildlife management matters, as determined by the governing body of the Indian Tribe.

"(4) PARTICIPATING GOVERNMENT.—The term 'participating government' means a State or a federally recognized Indian Tribe participating in the program under this section.

C. PROGRAM

Amend proposed ESA § 7A(b)(1), Senate draft p. 137, lines 22–25 through p. 138, lines 1–2:

"(1) IN GENERAL.—Except as provided in this subsection, the Secretary shall carry out a program under which the Secretary may assign the consultation responsibilities of the Secretary described in paragraph (4)(A) to ~~States~~participating governments.

D. GEOGRAPHIC LIMITATIONS AND COORDINATION

Amend proposed ESA § 7A(b)(2)(A)–(B), Senate draft p. 138, lines 2–23:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may not assign the consultation responsibilities of the Secretary described in paragraph (4)(A) to any ~~State~~participating government for a project or agency action (as referred to in section 7) that exceeds the ~~boundaries of the State~~applicable jurisdiction of the participating government.

"(B) LIMITATION.—For any project or agency action (as referred to in section 7) that is solely within the ~~boundaries of 1 State~~applicable jurisdiction of 1 participating government, but that is within an area affected that exceeds ~~the boundaries of the State~~that jurisdiction, a ~~State~~participating government that assumes responsibility under paragraph (4) for the project or agency action shall consult with—

"(i) if any other ~~State~~participating government has assumed responsibility under that paragraph, ~~the jurisdiction of which is~~and has jurisdiction or treaty-reserved or other federally protected rights within that area affected, such ~~State~~participating government; or

"(ii) if there is no ~~State~~participating government described in clause (i), the Secretary.

E. ASSUMPTION OF RESPONSIBILITY

Amend proposed ESA § 7A(b)(4)(A), Senate draft p. 139, lines 20–25 through p. 140, lines 1–4:

"(A) IN GENERAL.—Subject to the requirements of this section and the implementing regulation, with the written agreement of the Secretary and a ~~State~~participating government, which may be in the form of a memorandum of understanding, the Secretary may assign, and the ~~State~~participating government may assume, the consultation responsibilities of the Secretary within the ~~boundary of the State~~applicable jurisdiction of the participating government under subsections (a), (b), and (c) of section 7.

"For an Indian Tribe, the applicable jurisdiction includes the Tribe's reservation, trust lands, restricted fee lands, dependent Indian communities, treaty-protected areas, and other areas over which the Tribe exercises governmental authority or possesses treaty-reserved or other federally protected rights.

Amend proposed ESA § 7A(b)(4)(C), Senate draft p. 140, lines 14–18:

"(C) FEDERAL RESPONSIBILITY.—Any responsibility of the Secretary not explicitly assumed by the ~~State~~participating government by written agreement under the program shall remain the responsibility of the Secretary.

F. STATE AND TRIBAL PARTICIPATION

Amend proposed ESA § 7A(c)(1), Senate draft p. 140, lines 19–24:

"(c) ~~STATE~~STATE AND TRIBAL PARTICIPATION.—

"(1) REQUIREMENTS FOR PARTICIPATING ~~STATES~~GOVERNMENTS.—Each ~~State~~State or federally recognized Indian Tribe is eligible to participate in the program if the ~~State~~State or Indian Tribe meets each requirement described in this section and the implementing regulation.
"The Secretary shall apply equivalent substantive capability standards to States and Indian Tribes, with procedures adapted as necessary to respect Tribal sovereignty and Federal trust and treaty obligations.

G. APPLICATION AND LIMITED TRIBAL WAIVER

Amend proposed ESA § 7A(c)(2)(A), Senate draft p. 141, lines 1–6:

"(A) IN GENERAL.—A ~~State~~participating government seeking to participate in the program shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, in accordance with subparagraph (B).

Next, Replace proposed ESA § 7A(c)(2)(B)(iii), Senate draft p. 141, lines 23–25 through p. 142, lines 1–2:

"(iii) ~~verification that the State will waive sovereign immunity for the responsibilities assumed by the State under the program~~in the case of a State, verification that the State will waive sovereign immunity for responsibilities assumed under the program, and, in the case of an Indian Tribe, agreement to a limited waiver of sovereign immunity solely for judicial review of the compliance, discharge, and enforcement of responsibilities expressly assumed by the Indian Tribe under the written agreement and for no other purpose; and"

H. SELECTION CRITERIA

Amend proposed ESA § 7A(c)(4)(C), Senate draft p. 144, lines 12–14:

"(C) the head of the ~~State agency~~eligible governmental agency or, in the case of an Indian Tribe, the governing body of the Indian Tribe or its authorized designee enters into a written agreement with the Secretary described in subsection (d)(1).

I. WRITTEN AGREEMENT

Amend proposed ESA § 7A(d)(1)(A), Senate draft p. 145, lines 1–4:

"(A) be executed by the Governor or the head of the ~~State agency~~eligible governmental agency, or, in the case of an Indian Tribe, by the governing body of the Indian Tribe or its authorized designee that would assume responsibility under the program;

Next, amend proposed ESA § 7A(d)(1)(C), Senate draft p. 145, lines 7–16:

"(C) provide that the ~~State~~participating government—

"(i) agrees to assume all responsibilities of the Secretary described in subsection (b)(4);
"(ii) expressly consents, on behalf of the ~~State~~participating government, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the ~~State~~participating government;
"(iii) in the case of an Indian Tribe, provides that the consent under clause (ii) constitutes a limited waiver of sovereign immunity solely for an action concerning responsibilities expressly assumed under the written agreement and does not constitute a waiver for any other purpose;
"(~~iii~~iv) certifies that ~~State laws (including regulations)~~applicable laws, ordinances, resolutions, regulations, or formally adopted policies of the participating government are in effect that—
"(~~iv~~v) agrees to maintain the legal resources, financial resources, and personnel capacity and expertise necessary to carry out the responsibilities being assumed; and
"(~~v~~vi) agrees to meet the same deadlines for consultations that the Secretary would be required to meet under section 7 and section 107 of the National Environmental Policy Act of 1969.

J. CONFORMING AMENDMENTS

Add the following legislative-counsel instruction after the substantive amendments above:

"CONFORMING AMENDMENTS.—Throughout proposed section 7A of the Endangered Species Act of 1973, replace references to 'State,' 'State agency,' 'participating States,' and 'Governor,' as appropriate, with 'participating government,' 'eligible governmental agency,' 'participating governments,' and 'Governor or governing body of the Indian Tribe,' respectively, except where a provision by its nature applies only to a State. Conform subsections (e) through (m) to provide equivalent treatment for a participating Indian Tribe, subject to the limitations on Tribal sovereign immunity expressly provided in subsection (d)."

Conforming amendments: replace "State" with "participating government," "State agency" with "eligible governmental agency," and "Governor" with "Governor or Tribal governing body," as context requires.

2. Remove Biennial THPO Evaluation, Funding Penalties, and Federal Takeover

Senate draft reference: the Tribal-program amendment begins at p. 375, line 8; proposed 54 U.S.C. § 302707 begins at p. 375, line 12 and continues through p. 378, line 20; conforming and clerical amendments appear at p. 378, lines 21–24 through p. 379, line 6.

Strike proposed 54 U.S.C. § 302707 and substitute:

"§ 302707. Tribal program support and coordination
"(a) SELF-DETERMINATION.—A tribal historic preservation program approved under section 302702 is an exercise of the inherent governmental authority of the Indian Tribe. Nothing in this section authorizes the Secretary to assume, reassign, or perform THPO functions without the express written consent of the Tribal governing body.

"(b) TECHNICAL ASSISTANCE.—At the request of an Indian Tribe, the Secretary, in consultation with the THPO, shall provide technical assistance, training, and capacity support.
"(c) EXISTING AUDITS.—An audit satisfying section 5 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5305) shall satisfy any fiscal-audit requirement applicable to funds provided for a tribal historic preservation program. No additional recurring program evaluation or fiscal audit may be required solely by reason of approval under section 302702.
"(d) DUE PROCESS; NO TAKEOVER.—Before withholding funds for a material misuse of federal funds, the Secretary shall provide written notice, identify the specific deficiency, offer technical assistance, and allow not less than 180 days to cure or submit a corrective-action plan. Any remedy shall be narrowly tailored to affected funds and shall not include federal assumption of THPO functions."

3. Tribal Identification and Escalation for Significant NHPA Resources

Senate draft reference: proposed 54 U.S.C. § 306108(c) begins at p. 386, line 1 and continues through p. 413, line 16; APE establishment, identification, and information requests appear at p. 386, lines 7–24 through p. 388, line 8; the adverse-effect report appears at p. 388, line 21 through p. 392, line 1; determination and formal consultation appear at p. 392, line 2 through p. 395, line 20; 30-day participation, objection, and agency-response periods appear at p. 400, line 8 through p. 403, line 4; judicial-review limitations appear at p. 406, line 5 through p. 412, line 20, including the 150-day period at p. 408, lines 16–24 through p. 409, line 7.

Insert at the end of proposed § 306108(c), and make conforming table-of-contents and cross-reference amendments:

"(11) TRIBALLY IDENTIFIED SIGNIFICANT HISTORIC PROPERTY.—
"(A) NOTICE.—At any time before final agency action, an Indian Tribe or THPO may provide written notice that an undertaking may affect a property, landscape, district, site, object, access route, cultural-use location, or other resource of substantial religious, cultural, or historic importance to the Tribe.
"(B) ADDITIONAL REVIEW PERIOD.—For the notifying Tribe or THPO, each otherwise applicable 30-day period under paragraphs (2)(B), (2)(D), and (5)(C)(i), (iii), and (iv) for submission, review, response, objection, or consideration of information shall be 60 days. The corresponding agency-response period under paragraph (5)(C)(iv) shall also be 60 days.
"(C) INFORMATION AND CONSULTATION.—The Federal official shall promptly provide the notifying Tribe or THPO with the undertaking description, maps, area of potential effects, identification materials, effect findings, and proposed avoidance, minimization, or mitigation measures. Before final determination, the agency shall conduct government-to-government consultation between an Assistant Secretary-level designee or higher official and the elected Tribal leadership or the leadership's designee.
"(D) NEW INFORMATION; CONFIDENTIALITY.—Material information submitted by the Tribe before final agency action shall be considered notwithstanding that the information was not identified when review began. Information identified by the Tribe as sensitive shall be protected to the fullest extent permitted by sections 304 and 307103 and other applicable law.

"(E) JUDICIAL REVIEW.—For a claim brought by an Indian Tribe or THPO concerning a resource identified under this paragraph, the limitations period under paragraph (9)(D)(i)(I) shall be 300 days after the later of final agency action or notice to the applicable THPO or SHPO.
"(F) NO IMPLIED CONSENT.—Expiration of a response period or failure to respond does not constitute Tribal consent, concurrence, or waiver, but does not prevent an agency from proceeding after satisfying this section."

Conforming change to proposed § 306108(c)(5)(C)(i):
"...fails to respond within 30 days, or within 60 days if paragraph (11) applies..."

4. Treasury-Administered THPO Capacity Fund
Senate draft reference: section 2302 begins at p. 414, lines 1–4; the $200 million Historic Preservation Fund authorization appears at p. 414, lines 5–10; use and availability appear at p. 414, lines 11–20; the THPO database-grant amendment begins at p. 414, lines 21–25 and continues through p. 417, line 1.

Insert after section 2302(c):

"(d) TRIBAL HISTORIC PRESERVATION CAPACITY FUND.—
"(1) ESTABLISHMENT.—There is established in the Treasury a Tribal Historic Preservation Capacity Fund. The Secretary of the Treasury may accept and deposit voluntary contributions from project sponsors into the Fund.
"(2) AVAILABILITY.—Amounts deposited in the Fund shall be available to the Secretary of the Interior, without further appropriation and without fiscal-year limitation, solely for distributions to THPOs under this subsection.
"(3) NO PREFERENTIAL TREATMENT.—A contribution shall not confer preferential treatment, affect an agency decision, or create a right to direct use of the contribution.
"(4) FEDERAL MATCH.—For each dollar contributed, the Secretary of the Treasury shall transfer to the Fund an additional amount equal to not less than 10 percent of the contribution from amounts appropriated for that purpose.
"(5) DISTRIBUTION.—The Secretary of the Interior, in consultation with Indian Tribes and the Secretary of the Treasury, shall distribute amounts exclusively to THPOs. The principal allocation factor shall be the reservation, trust, restricted-fee, treaty, ceded, and other documented geographic area for which each THPO bears consultation responsibilities. Additional factors may include annual consultation workload, project complexity, remoteness, staffing, and information-security needs.
"(6) USES.—Amounts may support personnel, secure records and geospatial systems, field review, travel, consultation, training, and technical expertise.
"(7) SUPPLEMENT, NOT SUPPLANT.—Amounts shall supplement and not supplant Historic Preservation Fund amounts or other federal THPO support.

"(8) ADMINISTRATION.—Treasury may retain not more than 1 percent of annual deposits for administration. The Secretaries shall publish annual aggregate reports without disclosing culturally sensitive information."

SUPPORTING SAFEGUARDS AND NEGOTIATING ALTERNATIVES

A. Preserve Federal and Tribal Roles When States Assume Federal Responsibilities

Senate draft reference: ESA State-assumption agreements appear at p. 137, line 4 through p. 154, line 2, including the written agreement at p. 144, line 23 through p. 146, line 25 and the State's sole responsibility at p. 147, lines 19–25 through p. 148, line 3. NEPA § 106(a)(5) appears at p. 28, lines 22–25 through p. 29, line 3. Adoption of State or Tribal analysis under NEPA § 107(f)(2) appears at p. 45, lines 18–25 through p. 46, line 5.

Amend section 1105, in proposed NEPA § 106(a), by adding after paragraph (5) a proviso applicable to reliance on State environmental review under paragraph (5):

"For purposes of paragraph (5), a review pursuant to a State environmental review statute may be relied upon only if an agency of the State government conducts the review, retains responsibility for its scope, completeness, accuracy, and adequacy, independently evaluates supporting information, and issues the final findings and determinations. For purposes of this paragraph, an agency of State government does not include a county, municipality, special-purpose district, other political subdivision of a State, or an agency or instrumentality of such an entity. Before relying on such review where the proposed agency action may affect Tribal lands, waters, cultural resources, or treaty-reserved or other federally protected rights, the lead agency shall consult with the affected Indian Tribe and respond in writing to material concerns raised by the Tribe."

Then add a conforming sentence to§ 107(f)(2):

"Analysis and documentation developed pursuant to State law may be adopted or incorporated under this paragraph only if the State review satisfies the requirements applicable to State environmental review under section 106(a)(5)."

Finally, preserve the Tribal pathway expressly:

"Nothing in this paragraph or section 106(a)(5) limits reliance on analysis or documentation developed pursuant to the environmental laws, ordinances, resolutions, regulations, or formally adopted policies of an Indian Tribe."

B. Conform NHPA Consultation and Decision Points to the Committee's Explanation

Senate draft reference: the traditional-property definition appears at p. 372, lines 3–24, with the operative definition at lines 11–20; "may consult" appears in proposed § 306108(c)(2)(B)(iii) at p. 387, lines 5–15; the information-incorporation provision appears at p. 387, lines 16–24 through p. 388, line 8; the report-stage "sole discretion" override appears at p. 391, lines 7–18; the 90-day determination and second override appear at p. 392, lines 2–24 through p. 393, line 11; the 60-day consultation, 45-day ACHP comment, and 30-day final determination appear at p. 393, lines 20–25 through p. 395, line 15.

1. Mandatory Tribal consultation before threshold findings.

In proposed § 306108(c)(2)(B)(iii), replace "may consult" with: "shall consult with each Indian Tribe, THPO, or Native Hawaiian organization that may attach religious or cultural significance to a property within the area of potential effects, and may consult with any applicable SHPO, local government, or applicant."

After proposed § 306108(c)(2)(D)(ii)(III), insert:

"(iv) TRIBAL CONSULTATION BEFORE DETERMINATION OF NO ADVERSE EFFECT.—Before making a final determination under clause (ii), the applicable Federal official shall consult with each Indian Tribe or Tribal Historic Preservation Officer that may attach religious or cultural significance to a historic property within the area of potential effects, consider material information timely provided by the Indian Tribe or Tribal Historic Preservation Officer, and provide a written response to any material information or objection so provided."

2. Remove report-stage sole-discretion override.

Strike proposed § 306108(c)(2)(D)(iii)(II)(ff) in full and redesignate item (gg) as item (ff).

COLT also recommends removing the provision that permits a federal official, in the official's sole discretion, to decline prudent and feasible measures to avoid, minimize, or mitigate adverse effects because undefined "other considerations" outweigh historic preservation. An agency may ultimately authorize an undertaking after consultation, but it should not be permitted to disregard measures the agency itself has identified as prudent and feasible through an unreviewable statutory override.

3. Route unresolved consultation through ACHP.

Amend proposed 54 U.S.C. § 306108(c)(3)(A)(i)(II), Senate draft p. 393, lines 3–11, by striking subclause (II) and inserting:

"(II) determine that further consultation is unlikely to result in agreement, in which case the applicable Federal official shall issue a written determination identifying the consultation undertaken and the issues remaining in dispute, provide the determination to all consulting parties and the Council, and proceed in accordance with subparagraph (B)."

Amend the heading of proposed § 306108(c)(3)(B), Senate draft p. 393, line 20, to read:

"(B) NO AGREEMENT OR DETERMINATION THAT FURTHER CONSULTATION IS UNLIKELY TO RESULT IN AGREEMENT.—"

There should also be a conforming amendment to § 306108(c)(3)(B)(i), because as presently drafted the 60-day process is triggered only "[i]f an agreement is not reached under clause (ii) of subparagraph (A)" within 90 days.

"(i) CONSULTATION PERIOD.—If an agreement is not reached under subparagraph (A)(ii), or the applicable Federal official makes a determination under subparagraph (A)(i)(II), during the 60-day period beginning immediately after the end of the 90-day period described in subparagraph (A), there shall be a period of consultation among..."

4. Correct traditional-property definition.

Replace proposed § 302706(a)(1) with: "The term 'property of traditional religious or cultural importance' means an identifiable geographic location or feature of continuing religious or cultural significance to a living community, including any prehistoric or historic district, site, building, structure, place, or object, and any existing artifacts or material remains at that district, site, building, structure, place, or object."

C. Protect THPO Funding, Cultural Information, and Tribal Rights

Senate draft reference: section 2302 appears at p. 414, line 1 through p. 417, line 1; the database-grant program begins at p. 415, line 2 and continues through p. 417, line 1, including access requirements at p. 415, lines 19–25 through p. 416, line 1 and disclosure limitations at p. 416, lines 2–12. The Act-wide Tribal-rights savings clause is new language and therefore has no existing Senate-draft page reference.

Amend proposed 54 U.S.C. § 303102, Senate draft p. 414, after line 11, by adding:

"Nothing in this section shall be construed to repeal, reduce, or otherwise affect amounts credited or transferred to the Historic Preservation Fund from Outer Continental Shelf receipts under other provisions of law."

In section 2302(c)(2), in proposed 54 U.S.C. § 302703(b), page 416, after line 13, insert the following new paragraph (4), and redesignate existing paragraphs (4) and (5) as paragraphs (5) and (6), respectively:

"DATABASE GRANTS.—A database grant shall supplement and not supplant THPO operational funding. The Tribe shall determine database content and access. A grant may not be conditioned on disclosure of sensitive information, identification of every property, or general access by a Federal or State official. Information provided for a particular consultation shall not be disclosed or used for an unrelated purpose without written Tribal consent. Omission from a database, or a Tribe's decision not to disclose information, creates no presumption concerning significance, National Register eligibility, or federal identification and consultation duties."

Insert a new section 2 after the short title, or at another Act-wide location:

"SEC. 2. TRIBAL RIGHTS AND FEDERAL OBLIGATIONS.—Except to the extent expressly provided in this Act with specific reference to an Indian Tribe, nothing in this Act or an amendment made by this Act shall be construed to abrogate, diminish, or impair Tribal sovereignty, sovereign immunity, jurisdiction, treaty-reserved rights, or other federally protected rights, or to enlarge State or local jurisdiction over an Indian Tribe or Indian lands."

D. Negotiating Alternatives if THPO Program Review Remains

Preferred position: adopt Core Priority 2. First fallback: change mandatory disapproval to discretionary disapproval; require specific findings, technical assistance, and at least 180 days to cure; prohibit funding reductions and takeover.

Second fallback: if penalties or takeover remain, failure to meet a deadline or metric alone may not trigger those remedies where the THPO is making reasonable and continuing efforts to complete consultation.