

115TH CONGRESS  
2D SESSION

# H. R. 6364

To amend the Endangered Species Act of 1973 to increase State and local involvement in management plans.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2018

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

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## A BILL

To amend the Endangered Species Act of 1973 to increase State and local involvement in management plans.

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 “Localizing Authority  
5 of Management Plans Act of 2018” or the “LAMP Act  
6 of 2018”.

1 **SEC. 2. REFERENCES.**

2 Except as otherwise specifically provided, whenever in  
3 this Act an amendment or repeal is expressed in terms  
4 of an amendment to, or repeal of, a provision, the ref-  
5 erence shall be considered to be made to a provision of  
6 the Endangered Species Act of 1973 (16 U.S.C. 1531 et  
7 seq.).

8 **SEC. 3. VOLUNTARY COOPERATIVE MANAGEMENT AGREE-**  
9 **MENTS.**

10 Section 6 (16 U.S.C. 1535) is amended by striking  
11 so much as precedes subsection (c) and inserting the fol-  
12 lowing:

13 **“SEC. 6. COOPERATION WITH NON-FEDERAL PERSONS.**

14 “(a) GENERALLY.—In carrying out the program au-  
15 thorized by this Act, the Secretary shall cooperate to the  
16 maximum extent practicable with the States and other  
17 non-Federal persons. Such cooperation shall include con-  
18 sultation with the States and non-Federal persons con-  
19 cerned before acquiring any land or water, or interest  
20 therein, for the purpose of conserving any endangered spe-  
21 cies or threatened species.

22 “(b) COOPERATIVE MANAGEMENT AGREEMENTS.—

23 “(1) IN GENERAL.—The Secretary may enter  
24 into a cooperative management agreement with any  
25 State or group of States, political subdivision of a

1 State, Indian Tribe, local government, or non-Fed-  
2 eral person—

3 “(A) for the management of a species or  
4 group of species listed as endangered species or  
5 threatened species under section 4, a species or  
6 group of species proposed to be listed under  
7 section 4, or species or group of species that  
8 are candidates for listing; or

9 “(B) for the management or acquisition of  
10 an area that provides habitat for a species.

11 “(2) SCOPE OF COOPERATIVE MANAGEMENT  
12 AGREEMENTS.—(A) A cooperative management  
13 agreement entered into under this subsection—

14 “(i) may provide for the management of a  
15 species or group of species on both public and  
16 private lands and waters that are under the au-  
17 thority, control, or ownership of a State or  
18 group of States, political subdivision of a State,  
19 Indian Tribe, local government, or non-Federal  
20 person and that are affected by a listing deter-  
21 mination, proposed determination, or proposed  
22 candidacy for determination; and

23 “(ii) may include the acquisition or man-  
24 agement of land as habitat for species.

1           “(B) A cooperative management agreement  
2           may not restrict private or non-Federal property un-  
3           less written consent to such restrictions by the non-  
4           Federal owner is given either to the Secretary or the  
5           State, political subdivision, local government, or non-  
6           Federal person who is a party to the agreement.

7           “(C) The Secretary may grant to a party to an  
8           agreement the authority to undertake programs to  
9           enhance the population or habitat of a species on  
10          federally owned lands, except that such authority  
11          shall not otherwise conflict with other uses of such  
12          land that are approved by the Secretary or author-  
13          ized by the Congress.

14          “(D) The Secretary is authorized, in conjunc-  
15          tion with entering into and as a part of any agree-  
16          ment under this section, to provide funds to carry  
17          out the agreement to a non-Federal person, as pro-  
18          vided in paragraph (11).

19          “(3) NOTIFICATION.—Not later than 30 days  
20          after submission of a request to enter into a cooper-  
21          ative management agreement, the party submitting  
22          the request shall provide notice of the request to any  
23          non-Federal person or Federal power marketing ad-  
24          ministration that would be subject to the proposed  
25          cooperative management agreement.

1           “(4) DEVELOPMENT OF PROPOSED AGREE-  
2           MENT.—(A) The requesting party shall develop and  
3           submit to the Secretary a proposed cooperative man-  
4           agement agreement.

5           “(B) The Secretary shall—

6                   “(i) publish in the Federal Register—

7                           “(I) a notice of availability of any pro-  
8                           posed cooperative management agreement;  
9                           and

10                          “(II) a request for submission within  
11                          30 days after the date of publication of the  
12                          notice, of public comment on such pro-  
13                          posed agreement; and

14                          “(ii) shall hold a public hearing on such a  
15                          proposed agreement in the county in which the  
16                          proposed agreement would be in effect, if re-  
17                          quested by a non-Federal person that would be  
18                          subject to the proposed agreement and that re-  
19                          sides in such county.

20           “(5) APPROVAL OF AGREEMENT.—(A) Not  
21           later than 120 days after the submission of a pro-  
22           posed cooperative management agreement under  
23           paragraph (4), the Secretary shall determine wheth-  
24           er the proposed agreement is in accordance with this

1 subsection and will promote the conservation of the  
2 species to which the proposed agreement applies.

3 “(B) The Secretary shall approve and enter  
4 into a proposed cooperative management agreement,  
5 if the Secretary finds that—

6 “(i) the requesting party has sufficient au-  
7 thority under law to implement and carry out  
8 the terms of the agreement;

9 “(ii) the agreement defines an area that  
10 serves as habitat for the species or group of  
11 species to which the agreement applies;

12 “(iii) the agreement adequately provides  
13 for the administration and management of the  
14 identified management area;

15 “(iv) the agreement promotes the conserva-  
16 tion of the species to which the agreement ap-  
17 plies by committing Federal or non-Federal ef-  
18 forts to the conservation;

19 “(v) the term of the agreement is of suffi-  
20 cient duration to accomplish the provisions of  
21 the agreement; and

22 “(vi) the agreement is adequately funded  
23 to carry out the agreement.

24 “(C) No later than 30 days after entering into  
25 a cooperative management agreement, the Secretary

1 shall publish in the Federal Register a notice of  
2 availability of the terms of such agreement and the  
3 response of the Secretary to all information received  
4 or presented with respect to the agreement pursuant  
5 to paragraph (4)(B).

6 “(6) ENVIRONMENTAL ASSESSMENTS.—Prepa-  
7 ration, approval, and entering into a cooperative  
8 management agreement under this subsection shall  
9 not be subject to section 102(2) of the National En-  
10 vironmental Policy Act of 1969 (42 U.S.C. 4332(2)).

11 “(7) NO SURPRISES.—For any species or area  
12 that is the subject of a cooperative management  
13 agreement under this subsection, a party to the  
14 agreement shall not be required—

15 “(A) to make any additional payment for  
16 any purpose, or to accept any additional restric-  
17 tion on any parcel of land available for develop-  
18 ment or land management under the agree-  
19 ment, without consent of the party; or

20 “(B) to undertake any other measure to  
21 minimize or mitigate impacts on the species in  
22 addition to measures required by the agreement  
23 as established.

24 “(8) EFFECT OF LISTING OF SPECIES.—A co-  
25 operative management agreement entered into under

1       this subsection shall remain in effect and shall not  
2       be required to be amended if a species to which the  
3       agreement does not apply is determined to be an en-  
4       dangered species or threatened species under section  
5       4.

6               “(9) APPLICABILITY OF CERTAIN PROVI-  
7       SIONS.—Sections 5, 7, and 9 shall not apply to those  
8       activities of a party to a cooperative management  
9       agreement that are conducted in accordance with  
10      such agreement.

11             “(10) VIOLATIONS OF AGREEMENTS.—(A) If  
12      the Secretary determines that a party to a coopera-  
13      tive management agreement is not administering or  
14      acting in accordance with the agreement, the Sec-  
15      retary shall notify the party.

16             “(B) If a party that is notified under subpara-  
17      graph (A) fails to take appropriate corrective action  
18      within a period of time determined by the Secretary  
19      to be reasonable (not to exceed 90 days after the  
20      date of the notification)—

21               “(i) the Secretary shall rescind the entire  
22              cooperative management agreement or the ap-  
23              plicability of the agreement to the party that is  
24              the subject of the notification; and

1 “(ii) beginning on the date of the rescis-  
 2 sion—

3 “(I) the entire agreement shall not be  
 4 effective, or the agreement shall not be ef-  
 5 fective with respect to the party, whichever  
 6 is appropriate; and

7 “(II) sections 5, 7, and 9 shall apply  
 8 to activities of the party.

9 “(11) FACA.—Consultation with States pursu-  
 10 ant to this section shall not be subject to the Fed-  
 11 eral Advisory Committee Act (5 U.S.C. App.).”.

12 **SEC. 4. DELEGATION OF AUTHORITY TO STATES.**

13 (a) IN GENERAL.—Section 6 (16 U.S.C. 1535) as  
 14 amended by section 3 of this Act, is further amended by  
 15 striking subsection (c) and all that follows through sub-  
 16 section (f) and inserting the following:

17 “(c) STATE AUTHORITY TO PROTECT ENDANGERED  
 18 SPECIES AND THREATENED SPECIES.—

19 “(1) DELEGATION OF AUTHORITY.—In further-  
 20 ance of the purposes of this Act, the Secretary may  
 21 delegate to a State that establishes and maintains  
 22 an adequate program for the conservation of endan-  
 23 gered species and threatened species the authority  
 24 under this Act with respect to species that are resi-  
 25 dents in the State. Within 120 days after the Sec-

1       retary receives a certified copy of such a proposed  
2       State program, the Secretary shall make a deter-  
3       mination whether such program will be adequate to  
4       provide protections to endangered species and  
5       threatened species in such State. In order for a  
6       State program to be determined to be an adequate  
7       program for the conservation of endangered species  
8       and threatened species, the Secretary must find that  
9       under the State program—

10               “(A)(i) State agency has authority to con-  
11               serve resident species that are determined by  
12               the State agency or the Secretary to be endan-  
13               gered species or threatened species;

14               “(ii) the State agency has established ac-  
15               ceptable conservation programs, consistent with  
16               the purposes and policies of this Act, for all  
17               resident species in the State that are deter-  
18               mined by the Secretary to be endangered spe-  
19               cies or threatened species or for those species or  
20               taxonomic groups of species that the State pro-  
21               poses to cover under its program, and has fur-  
22               nished to the Secretary a copy of such plan and  
23               program together with all pertinent details and  
24               information requested by the Secretary;

1 “(iii) the State agency is authorized to  
2 conduct investigations to determine the status  
3 and requirements for survival of resident en-  
4 dangered species and threatened species;

5 “(iv) provision is made for public partici-  
6 pation in designating resident species as endan-  
7 gered species or threatened species; and

8 “(v) the State agency has initiated or en-  
9 couraged voluntary or incentive based programs  
10 to further the conservation objectives for the  
11 species; or

12 “(B)(i) the requirements set forth in  
13 clauses (iii) and (iv) of subparagraph (A) are  
14 complied with; and

15 “(ii) plans are included under which imme-  
16 diate attention will be given to those resident  
17 species that are determined by the Secretary or  
18 the State agency to be endangered species or  
19 threatened species and that the Secretary and  
20 the State agency agree are most urgently in  
21 need of conservation programs.

22 “(2) CONTENTS OF DELEGATION AGREE-  
23 MENT.—(A) Such delegation shall provide for—

24 “(i) the actions to be taken by the Sec-  
25 retary and the States;

1           “(ii) the benefits that are expected to be  
2           derived in connection with the conservation of  
3           endangered species or threatened species;

4           “(iii) the estimated cost of such actions;  
5           and

6           “(iv) the share of such costs to be borne by  
7           the Federal Government and by the States; ex-  
8           cept that—

9                   “(I) the Federal share of such costs  
10                  shall not exceed 75 percent of the esti-  
11                  mated program cost stated in the agree-  
12                  ment; and

13                   “(II) the Federal share may be in-  
14                  creased to 90 percent if two or more States  
15                  having a common interest in one or more  
16                  endangered species or threatened species,  
17                  the conservation of which may be enhanced  
18                  by cooperation of such States, enter jointly  
19                  into an agreement with the Secretary.

20           “(3) COMPLIANCE WITH PROCEDURES.—In im-  
21           plementing this Act under authority delegated to a  
22           State by the Secretary, the State shall comply with  
23           all requirements, prohibitions, and procedures set  
24           forth by this Act.

1           “(4) PROHIBITIONS NOT AFFECTED.—A delega-  
2           tion to a State whose program is determined ade-  
3           quate under paragraph (1) shall not affect the appli-  
4           cability of prohibitions set forth in or authorized  
5           pursuant to section 4(d) or paragraph (1) or (2) of  
6           section 9(a) with respect to the taking of any resi-  
7           dent endangered species or threatened species in the  
8           State.

9           “(d) FINANCIAL ASSISTANCE.—

10           “(1) IN GENERAL.—The Secretary may provide  
11           financial assistance to any State, through its respec-  
12           tive State agency, that has entered into a coopera-  
13           tive management agreement under subsection (b) or  
14           received authority under a delegation under sub-  
15           section (c) of this section to assist in development of  
16           programs for the conservation of endangered species  
17           and threatened species or to assist in monitoring the  
18           status of candidate species pursuant to subpara-  
19           graph (C) of section 4(b)(3) and recovered species  
20           pursuant to section 4(f). The Secretary shall allocate  
21           among such States each annual appropriation under  
22           subsection (i) based on consideration of—

23                   “(A) the international commitments  
24                   of the United States to protect endangered  
25                   species or threatened species;

1 “(B) the readiness of a State to pro-  
2 ceed with a conservation program con-  
3 sistent with the objectives and purposes of  
4 this Act;

5 “(C) the number of endangered spe-  
6 cies and threatened species within a State;

7 “(D) the potential for restoring en-  
8 dangered species and threatened species  
9 within a State;

10 “(E) the relative urgency to initiate a  
11 program to restore and protect an endan-  
12 gered species or threatened species, in  
13 terms of survival of the species;

14 “(F) the importance of monitoring the  
15 status of candidate species within a State  
16 to prevent a significant risk to the well-  
17 being of any such species; and

18 “(G) the importance of monitoring the  
19 status of recovered species within a State  
20 to assure that such species do not return  
21 to the point at which the measures pro-  
22 vided pursuant to this Act are again nec-  
23 essary.

24 “(2) UNOBLIGATED AMOUNTS.—So much  
25 of the annual appropriation made under sub-

1 section (i) allocated for obligation to any State  
2 for any fiscal year as remains unobligated at  
3 the end thereof may be made available to that  
4 State until the end of the succeeding fiscal  
5 year. Any amount allocated to any State that is  
6 unobligated at the end of the period during  
7 which it is available for expenditure may be  
8 made available for expenditure by the Secretary  
9 in conducting programs under this section.

10 “(3) ADVANCE OF FUNDS.—The Secretary  
11 may, in the Secretary’s discretion, and under  
12 such rules and regulations as the Secretary may  
13 prescribe, advance funds to the State for fi-  
14 nancing the United States pro rata share  
15 agreed upon in the cooperative agreement. For  
16 the purposes of this section, the non-Federal  
17 share may, in the discretion of the Secretary, be  
18 in the form of money or real property, the value  
19 of which shall be determined by the Secretary,  
20 whose decision shall be final.

21 “(e) REVIEW OF STATE PROGRAMS.—Any action  
22 taken by the Secretary under this section shall be subject  
23 to his periodic review at intervals of no greater intervals  
24 5 years.

1       “(f) CONFLICTS BETWEEN FEDERAL AND STATE  
2 LAWS.—Any State law or regulation that applies with re-  
3 spect to the importation or exportation of, or interstate  
4 or foreign commerce in, endangered species or threatened  
5 species is void to the extent that it may effectively—

6               “(1) permit what is prohibited by this Act or by  
7 any regulation that implements this Act; or

8               “(2) prohibit what is authorized pursuant to an  
9 exemption or permit provided for in this Act or in  
10 any regulation that implements this Act. This Act  
11 shall not otherwise be construed to void any State  
12 law or regulation that is intended to conserve migra-  
13 tory, resident, or introduced fish or wildlife, or to  
14 permit or prohibit sale of such fish or wildlife. Any  
15 State law or regulation respecting the taking of an  
16 endangered species or threatened species may be  
17 more restrictive than the exemptions or permits pro-  
18 vided for in this Act or in any regulation that imple-  
19 ments this Act.”.

20       (b) CONFORMING AMENDMENT.—Section 6(g)(2)(A)  
21 (16 U.S.C. 1535(g)(2)(A)) is amended to read as follows:

22               “(A) to which the Secretary has delegated  
23 authority under subsection (c); or”.

1   **SEC. 5. FACA.**

2           Section 6 (16 U.S.C. 1535), as amended by sections  
3   3 and 4 of this Act, is further amended by adding at the  
4   end the following:

5           “(j) FACA.—Consultation with States regarding this  
6   section shall not be subject to the Federal Advisory Com-  
7   mittee Act (5 U.S.C. App.).”.

○