

October 6, 2026

The Honorable Sheldon Whitehouse
Ranking Member
Committee on Environment & Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Martin Heinrich
Ranking Member
Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Schumer
Minority Leader
United States Senate
Room S-221, The Capitol
Washington, D.C. 20510

Dear Ranking Members Whitehouse and Heinrich, Minority Leader Schumer, and Senators,

We are extremely alarmed that the Bipartisan American Affordability and Jobs Act of 2026, which was negotiated behind closed doors with Senate Republicans, includes sweeping attacks on the Endangered Species Act, including provisions that would weaken the Act's best available science standard, cede authority to states to conduct Section 7 consultations, and make meaningful judicial review of Section 7 challenges much more difficult. If enacted, this would be one of the most astonishing failures of leadership in recent history and would leave a stain on your conservation legacy for decades to come. Thus, on behalf of our 215 organizations and our millions of members and supporters, we strongly oppose these provisions and the profound damage they would inflict on endangered species across the country.

Defining Best Available Science Under the Endangered Species Act

The legislation would define "best scientific and commercial data available" in a way that fundamentally alters how the Endangered Species Act requires agencies to evaluate science and make decisions in the face of scientific uncertainty. The Act's gold-standard "best available science" mandate is the foundation of the law and underpins the Act's core functions — from determining which species warrant protection under Section 4 to evaluating the impacts of federal actions and developing measures to conserve and recover species under Section 7. The new definition would significantly raise the evidentiary burden for protecting imperiled animals and plants by limiting the Services' ability to account for uncertainty and reasonably foreseeable risks when making decisions. The reality is that the Services often must evaluate incomplete scientific information, assess future threats and extinction risk, and make judgments about what the available evidence means in the face of uncertainty. The new definition would make it substantially harder to protect species and the places they live before the scientific evidence becomes incontrovertible.

Ceding Authority to States Over Section 7 Consultations

Section 7 requires all federal agencies to consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service to ensure their actions do not cause undue harm to federally

protected animals and plants. Often called the “heart of the Endangered Species Act,” consultations are one of the few mechanisms that require agencies to take reasonable steps to avoid or minimize impacts to endangered species before causing irreversible harm.

Handing over consultation responsibilities to states that have actively sought to dismantle federal endangered species protections would be a staggering betrayal of the Endangered Species Act and the more than 1,700 animals and plants it protects. The vast majority of states simply do not have the resources, expertise or institutional structure necessary to replace the role of the Services.¹ For example, not a single state has protections as strong as the federal Endangered Species Act, and only seven states require state agencies to consult with their wildlife agencies before taking actions that could harm imperiled species. More than half of the states — including Texas, Utah, and Idaho — lack the statutory authority to protect the full range of plants and animals covered by the federal Endangered Species Act.

What happens when Utah, which does not protect insects under state law, must complete a consultation on the Silverspot butterfly? And further, who exactly will be conducting these consultations? Turning over this responsibility without ensuring qualified biologists are actually making these decisions replaces the Act’s rigorous best available science standard with a haphazard, state-by-state free-for-all.

Perhaps even more troubling, the states that have been among the most hostile to the Endangered Species Act are among the least prepared to assume greater responsibility for endangered species. Wyoming, West Virginia, and Alabama do not even have state endangered species laws. It is unconscionable that this Senate would condemn endangered species to extinction by handing over authority to states that have fought federal protections and lack even the most basic legal and institutional safeguards.

The absurdity of this approach becomes even more pronounced when considering species whose ranges cross numerous states. Monarch butterflies, whooping cranes, migratory birds, salmon, and countless other species do not recognize state boundaries. A state-delegated system could produce inconsistent treatment of the same species, different outcomes for similar federal actions in neighboring states, and substantial uncertainty for everyone involved.

Similarly, Section 7 is directly connected to species recovery. A consultation does not simply produce a binary yes or no determination about whether a project can proceed. During consultation, the Services are required by law to develop conservation measures not only to reduce a project’s impacts but also to help agencies meet their affirmative duty under Section 7(a)(1) to “utilize” and “carry out” programs for the conservation of endangered species. Thus, Section 7 provides one of the principal mechanisms for ensuring federal actions do not simply avoid extinction in the short term, but are also compatible with the long-term recovery of listed species.

What happens to those conservation responsibilities when a state takes over consultations? Does the state become responsible for not only evaluating the impacts of an individual project but also

¹ See Appendix A, *Unready and Ill-Equipped: How State Laws and State Funding Are Inadequate to Recover America’s Endangered Species* (February 2019).

for carrying out the broader affirmative conservation duties contemplated by Section 7(a)(1)? These careless oversights are hugely consequential because recovery depends on more than avoiding harm from individual projects — it requires a coordinated conservation effort across a species' entire range. What happens when a state approves an action that undermines recovery elsewhere? If the Services cannot ensure that actions within a state are consistent with the recovery of a species across its range, it will make species recovery effectively impossible.

State delegation also raises a basic procedural question about how the Endangered Species Act's existing 60-day notice requirement would operate. Under the Act, parties seeking to bring most citizen suits must provide the Services and alleged violator with 60 days' advance notice. If a state assumes consultation responsibilities, would that notice need to be provided to the state, the federal wildlife agency, or both? This creates yet another layer of uncertainty that has apparently been left unresolved by the legislation.

It is difficult to overstate the recklessness of handing states one of the Act's most important safeguards in exchange for a permitting deal that will, at best, have meager benefits for renewable energy while further entrenching the fossil fuel industry. Rather than making permitting faster, it will create a fragmented and confusing system, produce less consistent conservation outcomes, make species recovery harder and potentially create more burdens and uncertainty for regulated parties.

Redirect Judicial Review of All Section 7 Challenges to D.C. Circuit

Perhaps most insidious, however, are the judicial review provisions that would make meaningful review of Section 7 challenges much more difficult. Each year, the Services complete thousands of consultations that may be challenged in court. The legislation would redirect all of these challenges from district court to the D.C. Circuit Court of Appeals. Unlike appellate courts, district courts are far more accessible — there are currently more than 670 federal district court judges and another 590 magistrate judges across the country. By contrast, there are only 11 active judges on the D.C. Circuit, which already has one of the largest and most important dockets in the nation. While Congress has historically directed a small subset of truly national environmental issues to go right to the circuit courts, they are often nationwide in scope and include highly developed records. The legislation would direct *every* Section 7 challenge to the D.C. Circuit, forcing judges to absorb and prioritize a massive influx of fact-intensive cases while pushing other matters further back in the queue. This is not only wholly inequitable, it will also result in significantly more backlog, strained judicial capacity, and make meaningful review far more difficult. To make matters worse, the legislation imposes a punitive 150-day deadline to bring such challenges in court, effectively shutting the courthouse doors to anyone who does not already have the legal resources and expertise standing by to mount a complex federal lawsuit on an accelerated timeline.

Lastly, it is particularly disturbing that these negotiations happened behind closed doors without meaningful participation from many of the organizations that have spent decades working on the Endangered Species Act. It is incredibly bad faith for the public to learn what has agreed to only after the deal has been negotiated. Whatever rationale exists for negotiating this deal, it is

difficult to understand why you would surrender such a consequential protection now, when the political and legislative landscape could look very different in a matter of months.

Real environmental champions do not trade away the world's strongest conservation law in pursuit of a legislative mirage that does nothing more than grease the wheels for pipelines, data centers, petrochemical buildouts, and the next generation of energy-guzzling tech infrastructure. Despite claims of proponents of this bill, the only winners of this permitting deal will be the fossil fuel executives, tech billionaires, and special interests and the clear losers will be this nation's most endangered wildlife and natural heritage.

We urge you to abandon this deal and the profound extinction-driving consequences it will have,

Sincerely,

Center for Biological Diversity
7th Generation Advisors
Advocates for Snake Preservation
Aiken Audubon
Alabama Rivers Alliance
Alameda Creek Alliance
Alaska Community Action on Toxics
All Life Institute
Allegheny-Blue Ridge Alliance
Animal Commons
Animal Legal Defense Fund
Animal Protection New Mexico
Animal Wellness Action
Animal Wellness Foundation
Animals Are Sentient Beings, Inc
Animas Valley Institute
Antelope Valley Conservancy
Apalache Audubon
Archaeology Southwest
Arizona Grazing Clearinghouse
Arizona Mining Reform Coalition
Arkansas Valley Audubon Society
Athens County's Future Action Network (OH)
Audubon Colorado Council
Battle Creek Alliance & Defiance Canyon Raptor Rescue
Berkeley Partners for Parks
Bird Alliance of Oregon
Bold Visions Conservation
Born Free USA
Boulder County Audubon Society
Burne Conservation Network
California Wildlife Foundation

Californians for Western Wilderness
Calusa Waterkeeper
Cape Coral Friends of Wildlife
Carolina Biodiesel, llc
Cascade Forest Conservancy
Cascadia Wildlands
Center for a Sustainable Coast
Center for Food Safety
Central Oregon LandWatch
Christians Caring for Creation
Citizens Campaign for the Environment
Citizens Coal Council
Citizens Committee to Complete the Refuge
Ciudadanos del Karso
Climate Communications Coalition
Coast Range Association
Conservation Committee of the Colorado Native Plant Society (CoNPS)
Conservation Congress
Conservation Council for Hawai'i
Cook Inletkeeper
CORALations, Inc.
Cottonwood Environmental Law Center
Creation Justice Ministries
CURE
Down to Earth Apiaries
Earth Ethics, Inc.
Earth Path Sanctuary
Eastern Coyote/Coywolf Research
Eco-Justice Collaborative
Endangered Habitats League
Environmental Integrity Project
Environmental Investigation Agency
Environmental Protection Information Center (EPIC)
Foundation Earth
FOUR PAWS USA
Friends of Bell Smith Springs
Friends of Blackwater, Inc.
Friends of Merrymeeting Bay
Friends of Nevada Wilderness
Friends of the Bitterroot
Friends of the Clearwater
Friends of the Columbia Gorge
Friends of the Earth
Friends of the Earth Action
Friends of the Everglades
Friends of the San Juans

Friends of the Shasta River
Friends of the Wild Swan
Gallatin Wildlife Association
Gila Resources Information Project
Grand Canyon Wolf Recovery Project
Great Lakes Wildlife Alliance
Greenaction for Health and Environmental Justice
Hands Across the Sand
Healthy Gulf
Heartwood
Hilton Pond Center for Piedmont Natural History
Humane Action Pennsylvania
Indian Cultural Organization
Indian Riverkeeper
International Fund for Animal Welfare (IFAW)
International Marine Mammal Project of Earth Island Institute
International Wildlife Coexistence Network
Intheshadowofthewolf
Izaak Walton League Rapid City SD Chapter
John Muir Project
Juniata Valley Audubon Society
Justice for Wolves
Kachemak Bay Watershed Council
Kentucky Heartwood
Klamath Forest Alliance
Klamath-Siskiyou Wildlands Center
La Purisima Audubon Society
Large Carnivore Fund
Living Rivers & Colorado Riverkeeper
Los Angeles Audubon Society
Los Padres ForestWatch
Louisiana Audubon Council
Manasota-88, Inc.
Maryland Legislative Coalition
Matanzas Riverkeeper
Miami Waterkeeper
Minorities in Shark Sciences
Missouri Coalition for the Environment
Mount Shasta Bioregional Ecology Center
Native Fish Society
NC WARN
NETWORK Lobby for Catholic Social Justice
New Energy Economy
New Mexico Climate Justice
New York State Wildlife Rehabilitation Council
Northern Virginia Bird Alliance

Northwest Environmental Advocates
Norton Bay Watershed Council
NYC Plover Project
NYS Ornithological Society
Oasis Earth
Occidental Arts and Ecology Center
Ohio Valley Allies
Orange County Coastkeeper
Oregon Natural Desert Association
Orleans Audubon Society
Pacific Rivers
Partnership for Policy Integrity
Peace River Audubon Society
People for Protecting Peace River
Portneuf Resource Council
Predator Defense
Project Coyote
Protect the Kobuk
Public Lands Project
Puget Soundkeeper
Quiet Use Coalition
Raptors Are The Solution
Reintegrating Wildness
Religious Campaign for Forest Conservation
Resource Renewal Institute
RESTORE: The North Woods
Rock Creek Alliance
Rockbridge Conservation
Rocky Mountain Wild
Sage Steppe Wild
San Juan Citizens Alliance
San Pedro 100
Save Lake Superior Association
Save Ohio Parks
Save Our Allegheny Ridges
Save Our Cabinets
Save Our Sky Blue Waters
Save Our wild Salmon Coalition
SAVE THE FROGS!
Save the Scenic Santa Ritas Association
Save The World's Rivers
Sawtooth Science Institute
Sea Turtle Conservancy
Sequoia ForestKeeper
Shark Stewards- The Earth Island Institute
Sierra Forest Legacy

Sky Island Alliance
Soda Mountain Wilderness Council
South Florida Wildlands Association
Southern Utah Wilderness Alliance
Species Unite
St. Johns Riverkeeper
Susitna River Coalition
Swan View Coalition, Inc.
The Center for a Humane Economy
The Cougar Fund
The Desert Tortoise Council
The Interfaith Council for the Protection of Animals and Nature
The Norbeck Society
The University of Queensland
The Urban Wildlands Group
Turtle Island Restoration Network
United We Eat
Upper Gila Watershed Alliance
Voters For Animal Rights
Watauga Riverkeeper
Watershed Alliance of Marin
Western Environmental Law Center
Western Nebraska Resources Council
Western Watersheds Project
Western Wildlife Conservancy
White Mountain Conservation League (WMCL)
Wild Fish Conservancy
Wild Hope
Wild Lessons
Wild Nature Institute
WildEarth Guardians
Wilderness Watch
Wilderness Workshop
Wildlife for All
Willamette Riverkeeper
Winnemem Wintu Tribe
Wishtoyo Foundation
Wolf Conservation Center
www.SafeEnergyAnalyst.org
Wyoming Untrapped
Wyoming Wildlife Advocates
Yosemite Rivers Alliance