SEC. ___. AUTHORITY TO ASSIST OTHER AGENCIES TO EXPEDITE REVIEW OF PROPOSED DEPARTMENT OF DEFENSE ACTIONS UNDER THE ENDANGERED SPECIES ACT.

(a) ASSISTANCE AUTHORIZED.—For any action by the Department of Defense that requires a section 7 consultation, the Secretary of Defense may transfer funds from accounts available for operation and maintenance and may detail personnel on a nonreimbursable basis to the head of the appropriate service to support such consultation.

(b) CONDITIONS.—The Secretary may provide funds or detail personnel under this section only if—

(1) the Secretary determines that it is in the interest of national defense to complete a section 7 consultation for an action by the Department of Defense within a particular time period;

(2) the head of the appropriate service provides to the Secretary notice that the appropriate service does not have available funds or adequate personnel to complete such section 7 consultation within such time period; and

(3) the Secretary enters into an agreement with the head of the appropriate service that specifies the funds or personnel that the Secretary will provide to such service and requires that such funds or personnel be used only to contribute toward carrying out the section 7 consultation within such time period.

(c) CREDITING OF FUNDS.—Funds received by the head of the appropriate service pursuant to subsection (a) may be credited to appropriations available to such service for salaries and expenses. Subject to subsection (b), funds so credited shall be merged with and

be available for the same purposes and for the same time period as the appropriations account to which such funds are credited.

(d) LIMITATIONS.—

(1) USE OF FUNDS.—Funds or personnel provided to the head of the appropriate service under subsection (a) may be used only to support activities that directly and meaningfully contribute to carrying out the section 7 consultation for which such funds or personnel are provided.

(2) MAXIMUM AMOUNT OF FUNDS AVAILABLE TO TRANSFER IN A FISCAL YEAR.—The Secretary may not provide funds or personnel under this section in excess of an aggregate value of $1,000,000 in any fiscal year.

(e) SUNSET.—

(1) IN GENERAL.—Except as provided in paragraph (2), the authority to transfer funds or detail personnel under this section shall terminate on December 31, 2022.

(2) EXCEPTION.—With respect to any section 7 consultation initiated prior to the date specified in paragraph (1) and for which the Secretary began transferring funds or detailing personnel under this section before such date, the Secretary may continue to transfer funds and detail personnel in accordance with this section.

(f) DEFINITIONS.—In this section:

(1) HEAD OF THE APPROPRIATE SERVICE.—The term “head of the appropriate service” has the meaning given the term “Secretary” in section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532).

(2) SECTION 7 CONSULTATION.—The term "section 7 consultation" means consultation or conference by the Department of Defense with the Secretary (as defined in section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532)) under section 7 of such Act (16 U.S.C. 1536).

Section-by-Section Analysis

The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (hereinafter "Service" individually, and "Services" collectively) are responsible for implementing the Endangered Species Act of 1973. Section 7 of the Endangered Species Act outlines procedures for interagency cooperation to conserve Federally-listed species and designated critical habitats. In order to avoid adverse effects of Federal actions, section 7(a)(2) states that each Federal agency shall, in consultation with the appropriate Secretary, insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. In fulfilling these requirements, each agency must use the best scientific and commercial data available.

The Services have developed a timeline in which consultations are to be completed (135 days from the date the Service accepts the Federal agency's biological assessment); however, this timeline is often exceeded, or consultations are delayed due to limitations on the ability of the Service to devote sufficient resources to the consultations. Additionally, within at least one USFWS region, the Department of the Navy (DON) has been advised that the Service currently lacks the resources to work on more than one Department of Defense (DoD) section 7 consultation at a time, requiring the DoD to prioritize its actions for the Service. Compounding this problem is the fact that the Service must devote its limited time and attention to other non-DoD federal actions also requiring section 7 consultation. While some circumstances may make it easier to prioritize one DoD action ahead of another, the reality is that the critical nature of many of the DoD actions means that implementation of important actions, including those which support military readiness activities, have been or could be delayed. Some of these delays present an unreasonable risk that DoD will be unable to conduct critical testing and training activities. This presents a particular concern for DoD regarding the rebalancing of U.S. forces in the Pacific Area of Responsibility (AOR). Earlier this year, DoD and USFWS leadership met to discuss a solution; unfortunately, the outcome was agreement that legal constraints significantly limit the ability of the DoD to provide support to the USFWS to complete section 7 consultations on DoD actions so as to avoid adverse impacts on military readiness. USFWS advised DoD, however, that authority granted to the Department of Transportation under section 139 of title 23 of the U.S. Code enables that agency to provides funds directly to the Service to expedite section 7 consultations for its actions.

The ability of DoD to make funds or personnel resources directly to a Service to ensure that the Service can meet a DoD requirement to complete section 7 consultation within a specific time limit is limited under the Economy Act of 1932, as amended, (31 U.S.C. 1535). The

Service is subject to significant constraints, including competing section 7 consultations on non-DoD Federal agency actions, which often impact its ability to meet a DoD requirement that a specific section 7 consultation be completed within a certain time limit. These constraints on the Service's ability have placed DoD in the frequent position of having to prioritize its actions for the Service, often with adverse impacts to certain action project schedules.

This proposal would allow for the DoD or a subordinate agency to transfer funds or provide personnel resources to either Service for reasons of national defense to ensure the timely completion of the section 7 consultation process under the Endangered Species Act. The Services will only be able to use the funds to support the section 7 consultation for the DoD action. The total amount of support in a single year is limited to $1 million regardless of the number of section 7 consultations for which the Secretary concerned is providing support. The legislation will allow the DoD to ensure that the Service has the ability to complete section 7 consultation so as to avoid any delay in the overall time limit for the underlying action which could adversely impact national defense. The legislation contains a 5-year sunset provision.

Budget Implications: The resources reflected in the table below are funded within the FY 2017 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Total	1.0	1.0	1.0	1.0	1.0	Operation and Maintenance, Navy	04	4A1M	

Changes to Existing Law: This proposal would not change the text of existing law.