SEC.___. EXPEDITING FEDERAL AGENCY ENVIRONMENTAL REVIEWS.

(a) DEFINITION OF SERVICE.—In this section the term "Service" means the National Marine Fisheries Service or the United States Fish and Wildlife Service, as appropriate.

(b) AGREEMENTS AUTHORIZED.—

(1) IN GENERAL.—The Secretary of a military department is authorized to enter into an agreement with a Service to expedite an environmental review, planning, consultation, permitting, or approval process under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) or the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) for a project or program undertaken by the military department.

(2) AGREEMENT CONTENTS.—Each such agreement shall—

(A) provide for a payment to a Service for the estimated or actual expenses of undertaking an expedited environmental review, planning, consultation, permitting, or approval process for a project or program undertaken by the military, including payment for—

(i) support of or participation in military planning activities that precede the initiation of the environmental review process;

(ii) activities directly related to the environmental review process, including any associated permitting, authorization, consultation or approval process;

(iii) dedicated staffing of agency personnel;

(iv) information gathering or mapping; or

(v) development of programmatic agreements;

(B) specify the amount of and basis for the payment the Secretary will provide to the Service pursuant to the agreement; and

(C) require the Director of the Service to use the payment received pursuant to the agreement only to contribute toward undertaking the environmental review, planning, consultation, permitting, or approval process within the time period described in subsection (c)(1).

(c) PAYMENT CONDITIONS.—The Secretary of a military department may provide a payment pursuant to an agreement under this section only if—

(1) the Secretary determines that it is in the interest of national defense to complete an environmental review, planning, consultation, permitting, or approval process by a Service under an Act described in subsection (b) for a project or program undertaken by the military department within a particular time period; and

(2) the Director of a Service provides to the Secretary notice that the Service does not have sufficient funds or adequate personnel to complete such environmental review, planning, consultation, permitting, or approval process within such time period.

(d) PAYMENT FUNDING.—The Secretary of a military department may use funds available for operations and maintenance to make payments pursuant to an agreement under this section.

(e) CREDITING OF PAYMENTS.—Payments to a Service under this section, including any payments provided in advance, may be credited to the appropriations of such agency for salaries and expenses. Subject to satisfaction of the requirements of subparagraphs (B) and (C) of subsection (b)(2), on use of payments by the Director of a Service, amounts so paid

1 shall be merged with and shall be available for the same purposes and for the same time

2 period as the appropriations so credited.

3 (f) GUIDANCE.—Not later than 180 days after the date of enactment of this section,

4 the Secretary of Defense shall issue guidance to implement this section.

Section-by-Section Analysis

The National Marine Fisheries Service (NMFS) and the United States Fish and Wildlife Service (USFWS) are charged with implementing the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). Delays associated with the completion of various environmental review, planning, consultation, permitting, and approval processes under these laws present an increasing unreasonable risk that the military departments will be unable to conduct critical testing and training activities or military construction projects. This presents a particular concern for the Department of Defense (DoD) regarding the rebalancing of United States forces in the Pacific area of responsibility. For example, the DoD, the Department of the Navy (DON), and the USFWS leadership met in 2015 to discuss a solution regarding delays associated with consultation under section 7 of the Endangered Species Act of 1973. Unfortunately, the outcome was agreement that legal constraints significantly limit the ability of a military department to provide support to the USFWS to complete section 7 consultations under the Endangered Species Act of 1973 on DoD actions so as to avoid adverse impacts to military readiness. However, the USFWS advised the DoD that authority granted to the Department of Transportation under the Fixing America's Surface Transportation Act (FAST Act; Public Law 114-94) enabled the Secretary of Transportation to enter into agreements with Federal or State agencies or Indian Tribes to expedite environmental reviews, planning, permitting, consultation, or approval.

The military departments do not currently have the authority to enter to agreements with either the NMFS or the USFWS to ensure that the NMFS or the USFWS can meet a military department's requirement to complete an environmental review, planning, consultation, permitting, and approval process under either or both Acts within a specific time limit. The NMFS and the USFWS are subject to significant constraints, including the review of competing non-DoD Federal agency actions, which often impact their ability to meet a military department's requirement that a specific environmental process be completed within a certain time limit. These constraints have placed the military departments in the frequent position of having to prioritize their actions for the NMFS or the USFWS, often with adverse impacts to certain project or program schedules.

This proposal, which mirrors the authority provided to the Secretary of Transportation under section 1312 of the FAST Act, would authorize a military department to enter into an agreement with a Service to expedite an environmental review, planning, consultation, permitting, or approval process under the Marine Mammal Protection Act or the Endangered Species Act for a project or program undertaken by the military department using funds available for operations and maintenance. The Agreement must specify the amounts of or basis for the

payment that the military department will provide to the Service and requires that the Service use the payment only to contribute toward undertaking the environmental review, planning, consultation, permitting, or approval process for the military department project or program within an expedited time period. The total amount to be paid is limited to the amount determined by the head of the military department concerned to expedite the environmental review or other process. The proposal requires the Secretary of Defense to establish guidelines to implement this new authority. This proposal will allow the military departments to ensure that the NMFS and the USFWS have the ability to complete environmental reviews or other processes for projects or programs undertaken by the military departments so as to avoid any delay in the overall time limit for the underlying action which could adversely impact national defense.

NMFS receives authority each year with its annual appropriations that allows the agency to receive payments from Federal agencies (and other entities) to assist the agency in carrying out its permitting and regulatory responsibilities. The DOD, however, does not have concurrent authority to make such payments, and is requesting specific legislative authority to allow DOD to provide, and NMFS to receive, funds for the specified activities.

Budget Implications: The table below details resource requirements associated with this proposal. The resources reflected in the table below are funded within the Fiscal Year (FY) 2019 President's Budget. As a practical matter, consistent with DoD's budget implications assessment for the FY 2017 National Defense Authorization Act (NDAA) proposal discussed below, funds would likely come from funds programmed for completing the environmental review, planning, consultation, permitting, or approval process associated with a particular project or program.

RESOURCE REQUIREMENTS ($M)									
	FY 2019	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Navy	$1.0	$1.0	$1.0	$1.0	$1.0	Operation and Maintenance, Navy	--	--	--
Air Force	$0.5	$0.5	$0.5	$0.5	$0.5	Operation and Maintenance, Air Force	--	--	--
Army does not intend to use this authority, which would have been funded in Operation and Maintenance, Army.									
Total	$1.5	$1.5	$1.5	$1.5	$1.5	--	--	--	--

Changes to Existing Law: N/A