

**COMMITTEE PRINT**  
**(SHOWING H.R. 3824 AS ORDERED REPORTED BY**  
**THE COMMITTEE ON RESOURCES ON SEP-**  
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**1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Threatened and Endangered Species Recovery Act of  
4 2005”.

5 (b) TABLE OF CONTENTS.—The table of contents for  
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendment references.
- Sec. 3. Definitions.
- Sec. 4. Determinations of endangered species and threatened species.
- Sec. 5. Repeal of critical habitat requirements.
- Sec. 6. Petitions and procedures for determinations and revisions.
- Sec. 7. Reviews of listings and determinations.
- Sec. 8. Secretarial guidelines; State comments.
- Sec. 9. Recovery plans and land acquisitions.
- Sec. 10. Cooperation with States and Indian tribes.
- Sec. 11. Interagency cooperation and consultation.
- Sec. 12. Exceptions to prohibitions.
- Sec. 13. Private property conservation.
- Sec. 14. Public accessibility and accountability.
- Sec. 15. Annual cost analyses.
- Sec. 16. Reimbursement for depredation of livestock by reintroduced species.
- Sec. 17. Authorization of appropriations.
- Sec. 18. Miscellaneous technical corrections.
- Sec. 19. Clerical amendment to table of contents.
- Sec. 20. Certain actions deemed in compliance.

**7 SEC. 2. AMENDMENT REFERENCES.**

8 Except as otherwise expressly provided, whenever in  
9 this Act an amendment or repeal is expressed in terms



1 of an amendment to, or repeal of, a section or other provi-  
2 sion, the reference shall be considered to be made to such  
3 section or other provision of the Endangered Species Act  
4 of 1973 (16 U.S.C. 1531 et seq.).

5 **SEC. 3. DEFINITIONS.**

6 (a) **BEST AVAILABLE SCIENTIFIC DATA.**—Section 3  
7 (16 U.S.C. 1532) is amended by redesignating paragraphs  
8 (2) through (21) in order as paragraphs (3), (4), (5), (6),  
9 (7), (8), (9), (10), (11), (13), (14), (15), (16), (17), (18),  
10 (19), (20), (21), and (22), respectively, and by inserting

11 before paragraph (3), as so redesignated, the following:

12 “(2)(A) The term ‘best available scientific data’  
13 means scientific data, regardless of source, that are avail-  
14 able to the Secretary at the time of a decision or action  
15 for which such data are required by this Act and that the  
16 Secretary determines are the most accurate, reliable, and  
17 relevant for use in that decision or action.

18 “(B) Not later than one year after the date of the  
19 enactment of the Threatened and Endangered Species Re-  
20 covery Act of 2005, the Secretary shall issue regulations  
21 that establish criteria that must be met to determine  
22 which data constitute the best available scientific data for  
23 purposes of subparagraph (A).

24 “(C) If the Secretary determines that data for a deci-  
25 sion or action do not comply with the criteria established



1 by the regulations issued under subparagraph (B), do not  
2 comply with guidance issued under section 515 of the  
3 Treasury and General Government Appropriations Act,  
4 2001 (Public Law 106–554; 114 Stat. 2763A–171) by the  
5 Director of the Office of Management and Budget and the  
6 Secretary, do not consist of any empirical data, or are  
7 found in sources that have not been subject to peer review  
8 in a generally acceptable manner—

9           “(i) the Secretary shall undertake the necessary  
10       measures to assure compliance with such criteria or  
11       guidance; and

12           “(ii) the Secretary may—

13               “(I) secure such empirical data;

14               “(II) seek appropriate peer review; and

15               “(III) reconsider the decision or action  
16       based on any supplemental or different data  
17       provided or any peer review conducted pursuant  
18       to this subparagraph.”.

19       (b) PERMIT OR LICENSE APPLICANT.—Section 3 (16  
20 U.S.C. 1532) is further amended by amending paragraph  
21 (13), as so redesignated, to read as follows:

22           “(13) The term ‘permit or license applicant’ means,  
23       when used with respect to an action of a Federal agency  
24       that is subject to section 7(a) or (b), any person that has



1 applied to such agency for a permit or license or for formal  
2 legal approval to perform an act.”.

3 (c) JEOPARDIZE THE CONTINUED EXISTENCE.—Sec-  
4 tion 3 (16 U.S.C. 1532) is further amended by inserting  
5 after paragraph (11) the following:

6 “(12) The term ‘jeopardize the continued existence’  
7 means, with respect to an agency action (as that term is  
8 defined in section 7(a)(2)), that the action reasonably  
9 would be expected to significantly impede, directly or indi-  
10 rectly, the conservation in the long-term of the species in  
11 the wild.”.

12 (d) CONFORMING AMENDMENT.—Section 7(n) (16  
13 U.S.C. 1536(n)) is amended by striking “section 3(13)”  
14 and inserting “section 3(14)”.

15 **SEC. 4. DETERMINATIONS OF ENDANGERED SPECIES AND**  
16 **THREATENED SPECIES.**

17 (a) REQUIREMENT TO MAKE DETERMINATIONS.—  
18 Section 4 (16 U.S.C. 1533) is amended by striking so  
19 much as precedes subsection (a)(3) and inserting the fol-  
20 lowing:

21 “DETERMINATION OF ENDANGERED SPECIES AND  
22 THREATENED SPECIES

23 “SEC. 4. (a) IN GENERAL.—(1) The Secretary shall  
24 by regulation promulgated in accordance with subsection  
25 (b) determine whether any species is an endangered spe-



1 cies or a threatened species because of any of the following  
2 factors:

3 “(A) The present or threatened destruction,  
4 modification, or curtailment of its habitat or range  
5 by human activities, competition from other species,  
6 drought, fire, or other catastrophic natural causes.

7 “(B) Overutilization for commercial, rec-  
8 reational, scientific, or educational purposes.

9 “(C) Disease or predation.

10 “(D) The inadequacy of existing regulatory  
11 mechanisms, including any efforts identified pursu-  
12 ant to subsection (b)(1).

13 “(E) Other natural or manmade factors affect-  
14 ing its continued existence.

15 “(2) The Secretary shall use the authority provided  
16 by paragraph (1) to determine any distinct population of  
17 any species of vertebrate fish or wildlife to be an endan-  
18 gered species or a threatened species only sparingly.”.

19 (b) BASIS FOR DETERMINATION.—Section  
20 4(b)(1)(A) (16 U.S.C. 1533(b)(1)(A)) is amended—

21 (1) by striking “best scientific and commercial  
22 data available to him” and inserting “best available  
23 scientific data”; and

24 (2) by inserting “Federal agency, any” after  
25 “being made by any”.



1 (c) LISTS.—Section 4(c)(2) (16 U.S.C. 1533(c)(2))  
2 is amended to read as follows:

3 “(2)(A) The Secretary shall—

4 “(i) conduct, at least once every 5 years,  
5 based on the information collected for the bien-  
6 nial reports to the Congress required by para-  
7 graph (3) of subsection (f), a review of all spe-  
8 cies included in a list that is published pursuant  
9 to paragraph (1) and that is in effect at the  
10 time of such review; and

11 “(ii) determine on the basis of such review  
12 and any other information the Secretary con-  
13 siders relevant whether any such species  
14 should—

15 “(I) be removed from such list;

16 “(II) be changed in status from an  
17 endangered species to a threatened species;  
18 or

19 “(III) be changed in status from a  
20 threatened species to an endangered spe-  
21 cies.

22 “(B) Each determination under subparagraph  
23 (A)(ii) shall be made in accordance with subsections  
24 (a) and (b).”.



1 **SEC. 5. REPEAL OF CRITICAL HABITAT REQUIREMENTS.**

2 (a) REPEAL OF REQUIREMENT.—Section 4(a) (16  
3 U.S.C. 1533(a)) is amended by striking paragraph (3).

4 (b) CONFORMING AMENDMENTS.—

5 (1) Section 3 (16 U.S.C. 1532), as amended by  
6 section 3 of this Act, is further amended by striking  
7 paragraph (6) and by redesignating paragraphs (7)  
8 through (22) in order as paragraphs (6) through  
9 (21).

10 (2) Section 4(b) (16 U.S.C. 1533(b)), as other-  
11 wise amended by this Act, is further amended by  
12 striking paragraph (2), and by redesignating para-  
13 graphs (3) through (8) in order as paragraphs (2)  
14 through (7), respectively.

15 (3) Section 4(b) (16 U.S.C. 1533(b)) is further  
16 amended in paragraph (2), as redesignated by para-  
17 graph (2) of this subsection, by striking subpara-  
18 graph (D).

19 (4) Section 4(b) (16 U.S.C. 1533(b)) is further  
20 amended in paragraph (4), as redesignated by para-  
21 graph (2) of this subsection, by striking “determina-  
22 tion, designation, or revision referred to in sub-  
23 section (a)(1) or (3)” and inserting “determination  
24 referred to in subsection (a)(1)”.

25 (5) Section 4(b) (16 U.S.C. 1533(b)) is further  
26 amended in paragraph (7), as redesignated by para-



1 graph (2) of this subsection, by striking “; and if  
2 such regulation” and all that follows through the  
3 end of the sentence and inserting a period.

4 (6) Section 4(c)(1) (16 U.S.C. 1533(c)(1)) is  
5 amended—

6 (A) in the second sentence—

7 (i) by inserting “and” after “if any”;

8 and

9 (ii) by striking “, and specify any”

10 and all that follows through the end of the

11 sentence and inserting a period; and

12 (B) in the third sentence by striking “,  
13 designations,”.

14 (7) Section 5 (16 U.S.C. 1534), as amended by  
15 section 9(a)(3) of this Act, is further amended in  
16 subsection (j)(2) by striking “section 4(b)(7)” and  
17 inserting “section 4(b)(6)”.

18 (8) Section 6(c) (16 U.S.C. 1535(c)), as  
19 amended by section 10(1) of this Act, is further  
20 amended in paragraph (3) by striking “section  
21 4(b)(3)(B)(iii)” each place it appears and inserting  
22 “section 4(b)(2)(B)(iii)”.

23 (9) Section 7 (16 U.S.C. 1536) is amended—

24 (A) in subsection (a)(2) in the first sen-  
25 tence by striking “or result in the destruction



1 or adverse modification of any habitat of such  
2 species” and all that follows through the end of  
3 the sentence and inserting a period;

4 (B) in subsection (a)(4) in the first sen-  
5 tence by striking “or result” and all that fol-  
6 lows through the end of the sentence and in-  
7 serting a period; and

8 (C) in subsection (b)(3)(A) by striking “or  
9 its critical habitat”.

10 (10) Section 10(j)(2)(C) (16 U.S.C.  
11 1539(j)(2)(C)), as amended by section 12(c) of this  
12 Act, is further amended—

13 (A) by striking “that—” and all that fol-  
14 lows through “(i) solely” and inserting “that  
15 solely”; and

16 (B) by striking “; and” and all that follows  
17 through the end of the sentence and inserting  
18 a period.

19 **SEC. 6. PETITIONS AND PROCEDURES FOR DETERMINA-**  
20 **TIONS AND REVISIONS.**

21 (a) TREATMENT OF PETITIONS.—Section 4(b) (16  
22 U.S.C. 1533(b)) is amended in paragraph (2), as redesign-  
23 nated by section 5(b)(2) of this Act, by adding at the end  
24 of subparagraph (A) the following: “The Secretary shall  
25 not make a finding that the petition presents substantial



1 scientific or commercial information indicating that the  
2 petitioned action may be warranted unless the petitioner  
3 provides to the Secretary a copy of all information cited  
4 in the petition.”.

5 (b) IMPLEMENTING REGULATIONS.—

6 (1) PROPOSED REGULATIONS.—Section 4(b)  
7 (16 U.S.C. 1533(b)) is amended—

8 (A) in paragraph (4)(A), as redesignated  
9 by section 5(b)(2) of this Act—

10 (i) in clause (i) by striking “, and”  
11 and inserting a semicolon;

12 (ii) in clause (ii) by striking “to the  
13 State agency in” and inserting “to the  
14 Governor of, and the State agency in,”;

15 (iii) in clause (ii) by striking “such  
16 agency” and inserting “such Governor or  
17 agency”;

18 (iv) in clause (ii) by inserting “and”  
19 after the semicolon at the end; and

20 (v) by adding at the end the following:

21 “(iii) maintain, and shall make available, a  
22 complete record of all information concerning the de-  
23 termination or revision in the possession of the Sec-  
24 retary, on a publicly accessible website on the Inter-  
25 net, including an index to such information.”; and



1 (B) by adding at the end the following:

2 “(8)(A) Information maintained and made  
3 available under paragraph (5)(A)(iii) shall include  
4 any status review, all information cited in such a  
5 status review, all information referred to in the pro-  
6 posed regulation and the preamble to the proposed  
7 regulation, and all information submitted to the Sec-  
8 retary by third parties.

9 “(B) The Secretary shall withhold from public  
10 review under paragraph (5)(A)(iii) any information  
11 that may be withheld under 552 of title 5, United  
12 States Code.”.

13 (2) FINAL REGULATIONS.—Paragraph (5) of  
14 section 4(b) (16 U.S.C. 1533(b)), as amended by  
15 section 5(b)(2) of this Act, is further amended—

16 (A) in subparagraph (A) by striking  
17 clauses (i) and (ii) and inserting the following:

18 “(i) a final regulation to implement such a de-  
19 termination of whether a species is an endangered  
20 species or a threatened species;

21 “(ii) notice that such one-year period is being  
22 extended under subparagraph (B)(i); or

23 “(iii) notice that the proposed regulation is  
24 being withdrawn under subparagraph (B)(ii), to-



1           gether with the finding on which such withdrawal is  
2           based.”;

3                   (B) in subparagraph (B)(i) by striking  
4                   “subparagraph (A)(i)” and inserting “subpara-  
5                   graph (A)”;

6                   (C) in subparagraph (B)(ii) by striking  
7                   “subparagraph (A)(i)” and inserting “subpara-  
8                   graph (A)”;

9                   (D) by striking subparagraph (C).

10           (3)   EMERGENCY   DETERMINATIONS.—Para-  
11           graph (6) of section 4(b) (16 U.S.C. 1533(b)), as re-  
12           designated by section 5(b)(2) of this Act, is further  
13           amended—

14                   (A) in the matter preceding subparagraph  
15                   (A), by inserting “with respect to a determina-  
16                   tion of a species to be an endangered species or  
17                   a threatened species” after “any regulation”;  
18                   and

19                   (B) in subparagraph (B), by striking “the  
20                   State agency in” and inserting “the Governor  
21                   of, and State agency in,”.

22   **SEC. 7. REVIEWS OF LISTINGS AND DETERMINATIONS.**

23           Section 4(c) (16 U.S.C. 1533(c)) is amended by in-  
24           serting at the end the following:



1 “(3) Each determination under paragraph (2)(B)  
2 shall consider one of the following:

3 “(A) Except as provided in subparagraph (B)  
4 of this paragraph, the criteria in the recovery plan  
5 for the species required by section 5(c)(1)(A) or (B).

6 “(B) If the recovery plan is issued before the  
7 criteria required under section 5(c)(1)(A) and (B)  
8 are established or if no recovery plan exists for the  
9 species, the factors for determination that a species  
10 is an endangered species or a threatened species set  
11 forth in subsections (a)(1) and (b)(1).

12 “(C) A finding of fundamental error in the de-  
13 termination that the species is an endangered spe-  
14 cies, a threatened species, or extinct.

15 “(D) A determination that the species is no  
16 longer an endangered species or threatened species  
17 or in danger of extinction, based on an analysis of  
18 the factors that are the basis for listing under sec-  
19 tion 4(a)(1).”.

20 **SEC. 8. SECRETARIAL GUIDELINES; STATE COMMENTS.**

21 Section 4 (16 U.S.C. 1533) is amended—

22 (1) by striking subsections (f) and (g) and re-  
23 designating subsections (h) and (i) as subsections (f)  
24 and (g), respectively;



1 (2) in subsection (f), as redesignated by para-  
2 graph (1) of this subsection—

3 (A) in the heading by striking “AGENCY”  
4 and inserting “SECRETARIAL”;

5 (B) in the matter preceding paragraph (1),  
6 by striking “the purposes of this section are  
7 achieved” and inserting “this section is imple-  
8 mented”;

9 (C) by redesignating paragraph (4) as  
10 paragraph (5);

11 (D) in paragraph (3) by striking “and”  
12 after the semicolon at the end, and by inserting  
13 after paragraph (3) the following:

14 “(4) the criteria for determining best available  
15 scientific data pursuant to section 3(2); and”;

16 (E) in paragraph (5), as redesignated by  
17 subparagraph (C) of this paragraph, by striking  
18 “subsection (f) of this section” and inserting  
19 “section 5”;

20 (3) in subsection (g), as redesignated by para-  
21 graph (1) of this section—

22 (A) by inserting “COMMENTS.—” before  
23 the first sentence;

24 (B) by striking “a State agency” the first  
25 place it appears and inserting “a Governor,



1 State agency, county (or equivalent jurisdic-  
2 tion), or unit of local government”;

3 (C) by striking “a State agency” the sec-  
4 ond place it appears and inserting “a Governor,  
5 State agency, county (or equivalent jurisdic-  
6 tion), or unit of local government”;

7 (D) by striking “the State agency” and in-  
8 serting “the Governor, State agency, county (or  
9 equivalent jurisdiction), or unit of local govern-  
10 ment, respectively”; and

11 (E) by striking “agency’s”.

12 **SEC. 9. RECOVERY PLANS AND LAND ACQUISITIONS.**

13 (a) IN GENERAL.—Section 5 (16 U.S.C. 1534) is  
14 amended—

15 (1) by redesignating subsections (a) and (b) as  
16 subsections (k) and (l), respectively;

17 (2) in subsection (l), as redesignated by para-  
18 graph (1) of this section, by striking “subsection (a)  
19 of this section” and inserting “subsection (k)”; and

20 (3) by striking so much as precedes subsection  
21 (k), as redesignated by paragraph (1) of this section,  
22 and inserting the following:

23 “RECOVERY PLANS AND LAND ACQUISITION

24 “SEC. 5. (a) RECOVERY PLANS.—The Secretary  
25 shall, in accordance with this section, develop and imple-  
26 ment a plan (in this subsection referred to as a ‘recovery



1 plan') for the species determined under section 4(a)(1) to  
2 be an endangered species or a threatened species, unless  
3 the Secretary finds that such a plan will not promote the  
4 conservation and survival of the species.

5 “(b) DEVELOPMENT OF RECOVERY PLANS.—(1)  
6 Subject to paragraphs (2) and (3), the Secretary, in devel-  
7 oping recovery plans, shall, to the maximum extent prac-  
8 ticable, give priority to those endangered species or threat-  
9 ened species, without regard to taxonomic classification,  
10 that are most likely to benefit from such plans, particu-  
11 larly those species that are, or may be, in conflict with  
12 construction or other development projects or other forms  
13 of economic activity.

14 “(2) In the case of any species determined to be an  
15 endangered species or threatened species after the date of  
16 the enactment of the Threatened and Endangered Species  
17 Recovery Act of 2005, the Secretary shall publish a final  
18 recovery plan for a species within 2 years after the date  
19 the species is listed under section 4(c).

20 “(3)(A) For those species that are listed under sec-  
21 tion 4(c) on the date of enactment of the Threatened and  
22 Endangered Species Recovery Act of 2005 and are de-  
23 scribed in subparagraph (B) of this paragraph, the Sec-  
24 retary, after providing for public notice and comment,  
25 shall—



1           “(i) not later than 1 year after such date, pub-  
2           lish in the Federal Register a priority ranking sys-  
3           tem for preparing or revising such recovery plans  
4           that is consistent with paragraph (1) and takes into  
5           consideration the scientifically based needs of the  
6           species; and

7           “(ii) not later than 18 months after such date,  
8           publish in the Federal Register a list of such species  
9           ranked in accordance with the priority ranking sys-  
10          tem published under clause (i) for which such recov-  
11          ery plans will be developed or revised, and a ten-  
12          tative schedule for such development or revision.

13          “(B) A species is described in this subparagraph if—

14                 “(i) a recovery plan for the species is not pub-  
15                 lished under this Act before the date of enactment  
16                 of the Threatened and Endangered Species Recovery  
17                 Act of 2005 and the Secretary finds such a plan  
18                 would promote the conservation and survival of the  
19                 species; or

20                 “(ii) a recovery plan for the species is published  
21                 under this Act before such date of enactment and  
22                 the Secretary finds revision of such plan is war-  
23                 ranted.

24          “(C)(i) The Secretary shall, to the maximum extent  
25          practicable, adhere to the list and tentative schedule pub-



1 lished under subparagraph (A)(ii) in developing or revising  
2 recovery plans pursuant to this paragraph.

3 “(ii) The Secretary shall provide the reasons for any  
4 deviation from the list and tentative schedule published  
5 under subparagraph (A)(ii), in each report to the Congress  
6 under subsection (e).

7 “(4) The Secretary, using the priority ranking system  
8 required under paragraph (3), shall prepare or revise such  
9 plans within 10 years after the date of the enactment of  
10 the Threatened and Endangered Species Recovery Act of  
11 2005.

12 “(c) PLAN CONTENTS.—(1)(A) Except as provided in  
13 subparagraph (E), a recovery plan shall be based on the  
14 best available scientific data and shall include the fol-  
15 lowing:

16 “(i) Objective, measurable criteria that, when  
17 met, would result in a determination, in accordance  
18 with this section, that the species to which the recov-  
19 ery plan applies be removed from the lists published  
20 under section 4(c) or be reclassified from an endan-  
21 gered species to a threatened species.

22 “(ii) A description of such site-specific or other  
23 measures that would achieve the criteria established  
24 under clause (i), including such intermediate meas-



1       ures as are warranted to effect progress toward  
2       achievement of the criteria.

3               “(iii) Estimates of the time required and the  
4       costs to carry out those measures described under  
5       clause (ii), including, to the extent practicable, esti-  
6       mated costs for any recommendations, by the recov-  
7       ery team, or by the Secretary if no recovery team is  
8       selected, that any of the areas identified under  
9       clause (iv) be acquired on a willing seller basis.

10              “(iv) An identification of those specific areas  
11       that are of special value to the conservation of the  
12       species.

13              “(B) Those members of any recovery team appointed  
14       pursuant to subsection (d) with relevant scientific exper-  
15       tise, or the Secretary if no recovery team is appointed,  
16       shall, based solely on the best available scientific data, es-  
17       tablish the objective, measurable criteria required under  
18       subparagraph (A)(i).

19              “(C)(i) If the recovery team, or the Secretary if no  
20       recovery team is appointed, determines in the recovery  
21       plan that insufficient best available scientific data exist  
22       to determine criteria or measures under subparagraph (A)  
23       that could achieve a determination to remove the species  
24       from the lists published under section 4(c), the recovery



1 plan shall contain interim criteria and measures that are  
2 likely to improve the status of the species.

3 “(ii) If a recovery plan does not contain the criteria  
4 and measures provided for by clause (i) of subparagraph  
5 (A), the recovery team for the plan, or by the Secretary  
6 if no recovery team is appointed, shall review the plan at  
7 intervals of no greater than 5 years and determine if the  
8 plan can be revised to contain the criteria and measures  
9 required under subparagraph (A).

10 “(iii) If the recovery team or the Secretary, respec-  
11 tively, determines under clause (ii) that a recovery plan  
12 can be revised to add the criteria and measures provided  
13 for under subparagraph (A), the recovery team or the Sec-  
14 retary, as applicable, shall revise the recovery plan to add  
15 such criteria and measures within 2 years after the date  
16 of the determination.

17 “(D) In specifying measures in a recovery plan under  
18 subparagraph (A), a recovery team or the Secretary, as  
19 applicable, shall—

20 “(i) whenever possible include alternative meas-  
21 ures; and

22 “(ii) in developing such alternative measures,  
23 the Secretary shall seek to identify, among such al-  
24 ternative measures of comparable expected efficacy,  
25 the alternative measures that are least costly.



1           “(E) Estimates of time and costs pursuant to sub-  
2 paragraph (A)(iii), and identification of the least costly al-  
3 ternatives pursuant to subparagraph (D)(ii), are not re-  
4 quired to be based on the best available scientific data.

5           “(2) Any area that, immediately before the enactment  
6 of the Threatened and Endangered Species Recovery Act  
7 of 2005, is designated as critical habitat of an endangered  
8 species or threatened species shall be treated as an area  
9 described in subparagraph (A)(iv) until a recovery plan  
10 for the species is developed or the existing recovery plan  
11 for the species is revised pursuant to subsection (b)(3).

12           “(d) RECOVERY TEAMS.—(1) The Secretary shall  
13 promulgate regulations that provide for the establishment  
14 of recovery teams for development of recovery plans under  
15 this section.

16           “(2) Such regulations shall—

17                   “(A) establish criteria and the process for se-  
18 lecting the members of recovery teams, and the proc-  
19 ess for preparing recovery plans, that ensure that  
20 each team—

21                           “(i) is of a size and composition to enable  
22 timely completion of the recovery plan; and

23                           “(ii) includes sufficient representation  
24 from constituencies with a demonstrated direct  
25 interest in the species and its conservation or in



1 the economic and social impacts of its conserva-  
2 tion to ensure that the views of such constitu-  
3 encies will be considered in the development of  
4 the plan;

5 “(B) include provisions regarding operating  
6 procedures of and recordkeeping by recovery teams;

7 “(C) ensure that recovery plans are scientif-  
8 ically rigorous and that the evaluation of costs re-  
9 quired by paragraphs (1)(A)(iii) and (1)(D) of sub-  
10 section (c) are economically rigorous; and

11 “(D) provide guidelines for circumstances in  
12 which the Secretary may determine that appoint-  
13 ment of a recovery team is not necessary or advis-  
14 able to develop a recovery plan for a specific species,  
15 including procedures to solicit public comment on  
16 any such determination.

17 “(3) The Federal Advisory Committee Act (5 App.  
18 U.S.C.) shall not apply to recovery teams appointed in ac-  
19 cordance with regulations issued by the Secretary under  
20 this subsection.

21 “(e) REPORTS TO CONGRESS.—(1) The Secretary  
22 shall report every two years to the Committee on Re-  
23 sources of the House of Representatives and the Com-  
24 mittee on Environment and Public Works of the Senate  
25 on the status of all domestic endangered species and



1 threatened species and the status of efforts to develop and  
2 implement recovery plans for all domestic endangered spe-  
3 cies and threatened species.

4 “(2) In reporting on the status of such species since  
5 the time of its listing, the Secretary shall include—

6 “(A) an assessment of any significant change in  
7 the well-being of each such species, including—

8 “(i) changes in population, range, or  
9 threats; and

10 “(ii) the basis for that assessment; and

11 “(B) for each species, a measurement of the de-  
12 gree of confidence in the reported status of such spe-  
13 cies, based upon a quantifiable parameter developed  
14 for such purposes.

15 “(f) PUBLIC NOTICE AND COMMENT.—The Secretary  
16 shall, prior to final approval of a new or revised recovery  
17 plan, provide public notice and an opportunity for public  
18 review and comment on such plan. The Secretary shall  
19 consider all information presented during the public com-  
20 ment period prior to approval of the plan.

21 “(g) STATE COMMENT.—The Secretary shall, prior  
22 to final approval of a new or revised recovery plan, provide  
23 a draft of such plan and an opportunity to comment on  
24 such draft to the Governor of, and State agency in, any  
25 State to which such draft would apply. The Secretary shall



1 include in the final recovery plan the Secretary's response  
2 to the comments of the Governor and the State agency.

3 “(h) CONSULTATION TO ENSURE CONSISTENCY  
4 WITH DEVELOPMENT PLAN.—(1) The Secretary shall,  
5 prior to final approval of a new or revised recovery plan,  
6 consult with any pertinent State, Indian tribe, or regional  
7 or local land use agency or its designee.

8 “(2) For purposes of this Act, the term ‘Indian tribe’  
9 means—

10 “(A) with respect to the 48 contiguous States, any  
11 federally recognized Indian tribe, organized band, pueblo,  
12 or community; and

13 “(B) with respect to Alaska, the Metlakatla Indian  
14 Community.

15 “(i) USE OF PLANS.—(1) Each Federal agency shall  
16 consider any relevant best available scientific data con-  
17 tained in a recovery plan in any analysis conducted under  
18 section 102 of the National Environmental Policy Act of  
19 1969 (42 U.S.C. 4332).

20 “(2)(A)(i) The head of any Federal agency may enter  
21 into an agreement with the Secretary specifying the meas-  
22 ures the agency will carry out to implement a recovery  
23 plan.

24 “(ii) Each such agreement shall be published in draft  
25 form with notice and an opportunity for public comment.



1       “(iii) Each such final agreement shall be published,  
2 with responses by the head of the Federal agency to any  
3 public comments submitted on the draft agreement.

4       “(B) Nothing in a recovery plan shall be construed  
5 to establish regulatory requirements.

6       “(j) MONITORING.—(1) The Secretary shall imple-  
7 ment a system in cooperation with the States to monitor  
8 effectively for not less than five years the status of all spe-  
9 cies that have recovered to the point at which the meas-  
10 ures provided pursuant to this Act are no longer necessary  
11 and that, in accordance with this section, have been re-  
12 moved from the lists published under section 4(c).

13       “(2) The Secretary shall make prompt use of the au-  
14 thority under section 4(b)(7) to prevent a significant risk  
15 to the well-being of any such recovered species.”.

16       (b) RECOVERY PLANS FOR SPECIES OCCUPYING  
17 MORE THAN ONE STATE.—Section 6 (16 U.S.C. 1535)  
18 is amended by adding at the end the following:

19       “(j) RECOVERY PLANS FOR SPECIES OCCUPYING  
20 MORE THAN ONE STATE.—Any recovery plan under sec-  
21 tion 5 for an endangered species or a threatened species  
22 that occupies more than one State shall identify criteria  
23 and actions pursuant to subsection (c)(1) of section 5 for  
24 each State that are necessary so that the State may pur-  
25 sue a determination that the portion of the species found



1 in that State may be removed from lists published under  
2 section 4(c).”.

3 (c) THREATENED AND ENDANGERED SPECIES IN-  
4 CENTIVES PROGRAM.—

5 (1) AGREEMENTS AUTHORIZED.—Section 5 (16  
6 U.S.C. 1534) is further amended by adding at the  
7 end the following:

8 “(m) THREATENED AND ENDANGERED SPECIES IN-  
9 CENTIVES PROGRAM.—(1) The Secretary may enter into  
10 species recovery agreements pursuant to paragraph (2)  
11 and species conservation contract agreements pursuant to  
12 paragraph (3) with persons, other than agencies or depart-  
13 ments of the Federal Government or State governments,  
14 under which the Secretary is obligated, subject to the  
15 availability of appropriations, to make annual payments  
16 or provide other compensation to the persons to implement  
17 the agreements.

18 “(2)(A) The Secretary and persons who own or con-  
19 trol the use of private land may enter into species recovery  
20 agreements with a term of not less than 5 years that meet  
21 the criteria set forth in subparagraph (B) and are in ac-  
22 cordance with the priority established in subparagraph  
23 (C).

24 “(B) A species recovery agreement entered into under  
25 this paragraph by the Secretary with a person—



1           “(i) shall require that the person shall carry  
2 out, on the land owned or controlled by the person,  
3 activities that—

4                   “(I) protect and restore habitat for covered  
5 species that are species determined to be endan-  
6 gered species or threatened species pursuant to  
7 section 4(a)(1);

8                   “(II) contribute to the conservation of one  
9 or more covered species; and

10                   “(III) specify and implement a manage-  
11 ment plan for the covered species;

12           “(ii) shall specify such a management plan that  
13 includes—

14                   “(I) identification of the covered species;

15                   “(II) a description of the land to which the  
16 agreement applies; and

17                   “(III) a description of, and a schedule to  
18 carry out, the activities under clause (i);

19           “(iii) shall provide sufficient documentation to  
20 establish ownership or control by the person of the  
21 land to which the agreement applies;

22           “(iv) shall include the amounts of the annual  
23 payments or other compensation to be provided by  
24 the Secretary to the person under the agreement,



1 and the terms under which such payments or com-  
2 pensation shall be provided; and

3 “(v) shall include—

4 “(I) the duties of the person;

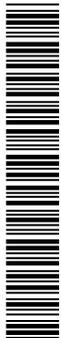
5 “(II) the duties of the Secretary;

6 “(III) the terms and conditions under  
7 which the person and the Secretary mutually  
8 agree the agreement may be modified or termi-  
9 nated; and

10 “(IV) acts or omissions by the person or  
11 the Secretary that shall be considered violations  
12 of the agreement, and procedures under which  
13 notice of and an opportunity to remedy any vio-  
14 lation by the person or the Secretary shall be  
15 given.

16 “(C) In entering into species recovery agreements  
17 under this paragraph, the Secretary shall accord priority  
18 to agreements that apply to any areas that are identified  
19 in recovery plans pursuant to subsection (c)(1)(A)(iv).

20 “(3)(A) The Secretary and persons who own private  
21 land may enter into species conservation contract agree-  
22 ments with terms of 30 years, 20 years, or 10 years that  
23 meet the criteria set forth in subparagraph (B) and stand-  
24 ards set forth in subparagraph (D) and are in accordance  
25 with the priorities established in subparagraph (C).



1       “(B) A species conservation contract agreement en-  
2       tered into under this paragraph by the Secretary with a  
3       person—

4               “(i) shall provide that the person shall, on the  
5       land owned by the person—

6               “(I) carry out conservation practices to  
7       meet one or more of the goals set forth in  
8       clauses (i) through (iii) of subparagraph (C) for  
9       one or more covered species, that are species  
10      that are determined to be endangered species or  
11      threatened species pursuant to section 4(a)(1),  
12      species determined to be candidate species pur-  
13      suant to section 4(b)(3)(B)(iii), or species sub-  
14      ject to comparable designations under State  
15      law; and

16              “(II) specify and implement a management  
17      plan for the covered species;

18              “(ii) shall specify such a management plan that  
19      includes—

20              “(I) identification of the covered species;

21              “(II) a description in detail of the con-  
22      servation practices for the covered species that  
23      the person shall undertake;

24              “(III) a description of the land to which  
25      the agreement applies; and



1           “(IV) a schedule of approximate deadlines,  
2           whether one-time or periodic, for undertaking  
3           the conservation practices described pursuant to  
4           subclause (II);

5           “(V) a description of existing or future  
6           economic activities on the land to which the  
7           agreement applies that are compatible with the  
8           conservation practices described pursuant to  
9           subclause (II) and generally with conservation  
10          of the covered species;

11          “(iii) shall specify the term of the agreement;

12          and

13          “(iv) shall include—

14                  “(I) the duties of the person;

15                  “(II) the duties of the Secretary;

16                  “(III) the terms and conditions under  
17                  which the person and the Secretary mutually  
18                  agree the agreement may be modified or termi-  
19                  nated;

20                  “(IV) acts or omissions by the person or  
21                  the Secretary that shall be considered violations  
22                  of the agreement, and procedures under which  
23                  notice of and an opportunity to remedy any vio-  
24                  lation by the person or the Secretary shall be  
25                  given; and



1           “(V) terms and conditions for early termi-  
2           nation of the agreement by the person before  
3           the management plan is fully implemented or  
4           termination of the agreement by the Secretary  
5           in the case of a violation by the person that is  
6           not remedied under subclause (IV), including  
7           any requirement for the person to refund all or  
8           part of any payments received under subpara-  
9           graph (E) and any interest thereon.

10          “(C) The Secretary shall establish priorities for the  
11         selection of species conservation contract agreements, or  
12         groups of such agreements for adjacent or proximate  
13         lands, to be entered into under this paragraph that ad-  
14         dress the following factors:

15                 “(i) The potential of the land to which the  
16                 agreement or agreements apply to contribute signifi-  
17                 cantly to the conservation of an endangered species  
18                 or threatened species or a species with a comparable  
19                 designation under State law.

20                 “(ii) The potential of such land to contribute  
21                 significantly to the improvement of the status of a  
22                 candidate species or a species with a comparable  
23                 designation under State law.

24                 “(iii) The amount of acreage of such land.



1           “(iv) The number of covered species in the  
2 agreement or agreements.

3           “(v) The degree of urgency for the covered spe-  
4 cies to implement the conservation practices in the  
5 management plan or plans under the agreement or  
6 agreements.

7           “(vi) Land in close proximity to military test  
8 and training ranges, installations, and associated  
9 airspace that is affected by a covered species.

10          “(D) The Secretary shall enter into a species con-  
11 servation contract agreement submitted by a person, if the  
12 Secretary finds that the person owns such land or has suf-  
13 ficient control over the use of such land to ensure imple-  
14 mentation of the management plan under the agreement.

15          “(E)(i) Upon entering into a species conservation  
16 contract agreement with the Secretary pursuant to this  
17 paragraph, a person shall receive the financial assistance  
18 provided for in this subparagraph.

19          “(ii) If the person is implementing fully the agree-  
20 ment, the person shall receive from the Secretary—

21               “(I) in the case of a 30-year agreement, an an-  
22 nual contract payment in an amount equal to 100  
23 percent of the person’s actual costs to implement the  
24 conservation practices described in the management  
25 plan under the terms of the agreement;



1           “(II) in the case of a 20-year agreement, an an-  
2           nual contract payment in an amount equal to 80  
3           percent of the person’s actual costs to implement the  
4           conservation practices described in the management  
5           plan under the terms of the agreement; and

6           “(III) in the case of a 10-year agreement, an  
7           annual contract payment in an amount equal to 60  
8           percent of the person’s actual costs to implement the  
9           conservation practices described in the management  
10          plan under the terms of the agreement.

11          “(iii)(I) If the person receiving contract payments  
12          pursuant to clause (ii) receives any other State or Federal  
13          funds to defray the cost of any conservation practice, the  
14          cost of such practice shall not be eligible for such contract  
15          payments.

16          “(II) Contributions of agencies or organizations to  
17          any conservation practice other than the funds described  
18          in subclause (I) shall not be considered as costs of the  
19          person for purposes of the contract payments pursuant to  
20          clause (iii).

21          “(4)(A) Upon request of a person seeking to enter  
22          into an agreement pursuant to this subsection, the Sec-  
23          retary may provide to such person technical assistance in  
24          the preparation, and management training for the imple-  
25          mentation, of the management plan for the agreement.



1           “(B) Any State agency, local government, nonprofit  
2 organization, or federally recognized Indian tribe may pro-  
3 vide assistance to a person in the preparation of a man-  
4 agement plan, or participate in the implementation of a  
5 management plan, including identifying and making avail-  
6 able certified fisheries or wildlife biologists with expertise  
7 in the conservation of species for purposes of the prepara-  
8 tion or review and approval of management plans for spe-  
9 cies conservation contract agreements under paragraph  
10 (3)(D)(iii).

11           “(5) Upon any conveyance or other transfer of inter-  
12 est in land that is subject to an agreement under this  
13 subsection—

14                   “(A) the agreement shall terminate if the agree-  
15 ment does not continue in effect under subparagraph  
16 (B);

17                   “(B) the agreement shall continue in effect with  
18 respect to such land, with the same terms and condi-  
19 tions, if the person to whom the land or interest is  
20 conveyed or otherwise transferred notifies the Sec-  
21 retary of the person’s election to continue the agree-  
22 ment by no later than 30 days after the date of the  
23 conveyance or other transfer and the person is deter-  
24 mined by the Secretary to qualify to enter into an  
25 agreement under this subsection; or



1           “(C) the person to whom the land or interest is  
2           conveyed or otherwise transferred may seek a new  
3           agreement under this subsection.

4           “(6) An agreement under this subsection may be re-  
5           newed with the mutual consent of the Secretary and the  
6           person who entered into the agreement or to whom the  
7           agreement has been transferred under paragraph (5).

8           “(7) The Secretary shall make annual payments  
9           under this subsection as soon as possible after December  
10          31 of each calendar year.

11          “(8) An agreement under this subsection that applies  
12          to an endangered species or threatened species shall, for  
13          the purpose of section 10(a)(4), be deemed to be a permit  
14          to enhance the propagation or survival of such species  
15          under section 10(a)(1), and a person in full compliance  
16          with the agreement shall be afforded the protection of sec-  
17          tion 10(a)(4).

18          “(9) The Secretary, or any other Federal official,  
19          may not require a person to enter into an agreement under  
20          this subsection as a term or condition of any right, privi-  
21          lege, or benefit, or of any action or refraining from any  
22          action, under this Act.”.

23                  (2) Subsection (e)(2) of section 7 (16 U.S.C.  
24          1536) (as redesignated by section 11(d)(2) of this



1 Act) is amended by inserting “or in an agreement  
2 under section 5(m)” after “section”.

3 (d) CONFORMING AMENDMENTS.—

4 (1) Section 6(d)(1) (16 U.S.C. 1535(d)(1)) is  
5 amended by striking “section 4(g)” and inserting  
6 “section 5(j)”.

7 (2) The Marine Mammal Protection Act of  
8 1972 is amended—

9 (A) in section 104(c)(4)(A)(ii) (16 U.S.C.  
10 1374(c)(4)(A)(ii)) by striking “section 4(f)”  
11 and inserting “section 5”; and

12 (B) in section 115(b)(2) (16 U.S.C.  
13 1383b(b)(2)) by striking “section 4(f) of the  
14 Endangered Species Act of 1973 (16 U.S.C.  
15 1533(f))” and inserting “section 5 of the En-  
16 dangered Species Act of 1973”.

17 **SEC. 10. COOPERATION WITH STATES AND INDIAN TRIBES.**

18 Section 6 (16 U.S.C. 1535) is further amended—

19 (1) in subsection (c), by adding at the end the  
20 following:

21 “(3)(A) Any cooperative agreement entered into by  
22 the Secretary under this subsection may also provide for  
23 development of a program for conservation of species de-  
24 termined to be candidate species pursuant to section  
25 4(b)(3)(B)(iii) or any other species that the State and the



1 Secretary agree is at risk of being determined to be an  
2 endangered species or threatened species under section  
3 4(a)(1) in that State. Upon completion of consultation on  
4 the agreement pursuant to subsection (e)(2), any inci-  
5 dental take statement issued on the agreement shall apply  
6 to any such species, and to the State and any landowners  
7 enrolled in any program under the agreement, without fur-  
8 ther consultation (except any additional consultation pur-  
9 suant to subsection (e)(2)) if the species is subsequently  
10 determined to be an endangered species or a threatened  
11 species and the agreement remains an adequate and active  
12 program for the conservation of endangered species and  
13 threatened species.

14 “(B) Any cooperative agreement entered into by the  
15 Secretary under this subsection may also provide for moni-  
16 toring or assistance in monitoring the status of candidate  
17 species pursuant to section 4(b)(3)(C)(iii) or recovered  
18 species pursuant to section 5(j).

19 “(C) The Secretary shall periodically review each co-  
20 operative agreement under this subsection and seek to  
21 make changes the Secretary considers necessary for the  
22 conservation of endangered species and threatened species  
23 to which the agreement applies.

24 “(4) Any cooperative agreement entered into by the  
25 Secretary under this subsection that provides for the en-



1 rollment of private lands or water rights in any program  
2 established by the agreement shall ensure that the decision  
3 to enroll is voluntary for each owner of such lands or water  
4 rights.

5 “(5)(A) The Secretary may enter into a cooperative  
6 agreement under this subsection with an Indian tribe in  
7 substantially the same manner in which the Secretary may  
8 enter into a cooperative agreement with a State.

9 “(B) For the purposes of this paragraph, the term  
10 ‘Indian tribe’ means—

11 “(i) with respect to the 48 contiguous States,  
12 any federally recognized Indian tribe, organized  
13 band, pueblo, or community; and

14 “(ii) with respect to Alaska, the Metlakatla In-  
15 dian Community.”;

16 (2) in subsection (d)(1)—

17 (A) by striking “pursuant to subsection (c)  
18 of this section”;

19 (B) by striking “or to assist” and all that  
20 follows through “section 5(j)” and inserting  
21 “pursuant to subsection (c)(1) and (2) or to ad-  
22 dress candidate species or other species at risk  
23 and recovered species pursuant to subsection  
24 (c)(3)”;



1 (C) in subparagraph (F), by striking  
2 “monitoring the status of candidate species”  
3 and inserting “developing a conservation pro-  
4 gram for, or monitoring the status of, candidate  
5 species or other species determined to be at risk  
6 pursuant to subsection (c)(3)”; and  
7 (3) in subsection (e)—

8 (A) by inserting “(1)” before the first sen-  
9 tence;

10 (B) in paragraph (1), as designated by  
11 subparagraph (A) of this paragraph, by striking  
12 “at no greater than annual intervals” and in-  
13 serting “every 3 years”; and

14 (C) by adding at the end the following:

15 “(2) Any cooperative agreement entered into by the  
16 Secretary under subsection (c) shall be subject to section  
17 7(a)(2) through (d) and regulations implementing such  
18 provisions only before—

19 “(A) the Secretary enters into the agreement;  
20 and

21 “(B) the Secretary approves any renewal of, or  
22 amendment to, the agreement that—

23 “(i) addresses species that are determined  
24 to be endangered species or threatened species,



1 are not addressed in the agreement, and may be  
2 affected by the agreement; or

3 “(ii) new information about any species ad-  
4 dressed in the agreement that the Secretary  
5 determines—

6 “(I) constitutes the best available sci-  
7 entific data; and

8 “(II) indicates that the agreement  
9 may have adverse effects on the species  
10 that had not been considered previously  
11 when the agreement was entered into or  
12 during any revision thereof or amendment  
13 thereto.

14 “(3) The Secretary may suspend any cooperative  
15 agreement established pursuant to subsection (c), after  
16 consultation with the Governor of the affected State, if  
17 the Secretary finds during the periodic review required by  
18 paragraph (1) of this subsection that the agreement no  
19 longer constitutes an adequate and active program for the  
20 conservation of endangered species and threatened species.

21 “(4) The Secretary may terminate any cooperative  
22 agreement entered into by the Secretary under subsection  
23 (c), after consultation with the Governor of the affected  
24 State, if—



1           “(A) as result of the procedures of section  
2           7(a)(2) through (d) undertaken pursuant to para-  
3           graph (2) of this subsection, the Secretary deter-  
4           mines that continued implementation of the coopera-  
5           tive agreement is likely to jeopardize the continued  
6           existence of endangered species or threatened spe-  
7           cies, and the cooperative agreement is not amended  
8           or revised to incorporate a reasonable and prudent  
9           alternative offered by the Secretary pursuant to sec-  
10          tion 7(b)(3); or

11           “(B) the cooperative agreement has been sus-  
12          pended under paragraph (3) of this subsection and  
13          has not been amended or revised and found by the  
14          Secretary to constitute an adequate and active pro-  
15          gram for the conservation of endangered species and  
16          threatened species within 180 days after the date of  
17          the suspension.”.

18 **SEC. 11. INTERAGENCY COOPERATION AND CONSULTA-**  
19 **TION.**

20          (a) **CONSULTATION REQUIREMENT.**—Section 7(a)  
21 (16 U.S.C. 1536(a)) is amended—

22           (1) in paragraph (1) in the second sentence, by  
23           striking “endangered species” and all that follows  
24           through the end of the sentence and inserting “spe-



1           cies determined to be endangered species and threat-  
2           ened species under section 4.”;

3           (2) in paragraph (2)—

4           (A) in the first sentence by striking “ac-  
5           tion” the first place it appears and all that fol-  
6           lows through “is not” and inserting “agency ac-  
7           tion authorized, funded, or carried out by such  
8           agency is not”;

9           (B) in the first sentence by striking “, un-  
10          less” and all that follows through the end of the  
11          sentence and inserting a period;

12          (C) in the second sentence, by striking  
13          “best scientific and commercial data available”  
14          and inserting “best available scientific data”;  
15          and

16          (D) by inserting “(A)” before the first sen-  
17          tence, and by adding at the end the following:

18          “(B) The Secretary may identify specific agency ac-  
19          tions or categories of agency actions that may be deter-  
20          mined to meet the standards of this paragraph by alter-  
21          native procedures to the procedures set forth in this sub-  
22          section and subsections (b) through (d), except that sub-  
23          sections (b)(4) and (e) may apply only to an action that  
24          the Secretary finds, or concurs, does meet such standards,  
25          and the Secretary shall suggest, or concur in any sug-



1 gested, reasonable and prudent alternatives described in  
2 subsection (b)(3) for any action determined not to meet  
3 such standards. Any such agency action or category of  
4 agency actions shall be identified, and any such alternative  
5 procedures shall be established, by regulation promulgated  
6 prior or subsequent to the date of the enactment of this  
7 Act.”;

8 (3) in paragraph (4)—

9 (A) by striking “listed under section 4”  
10 and inserting “an endangered species or a  
11 threatened species”; and

12 (B) by inserting “, under section 4” after  
13 “such species”; and

14 (4) by adding at the end the following:

15 “(5) Any Federal agency or the Secretary, in con-  
16 ducting any analysis pursuant to paragraph (2), shall con-  
17 sider only the effects of any agency action that are distinct  
18 from a baseline of all effects upon the relevant species that  
19 have occurred or are occurring prior to the action.”.

20 (b) OPINION OF SECRETARY.—Section 7(b) (16  
21 U.S.C. 1536(b)) is amended—

22 (1) in paragraph (1)(B)(i) by inserting “permit  
23 or license” before “applicant”;

24 (2) in paragraph (2) by inserting “permit or li-  
25 cense” before “applicant”;



1 (3) in paragraph (3)(A)—  
2 (A) in the first sentence—  
3 (i) by striking “Promptly after” and  
4 inserting “Before”;  
5 (ii) by inserting “permit or license”  
6 before “applicant”; and  
7 (iii) by inserting “proposed” before  
8 “written statement”; and  
9 (B) by striking all after the first sentence  
10 and inserting the following: “The Secretary  
11 shall consider any comment from the Federal  
12 agency and the permit or license applicant, if  
13 any, prior to issuance of the final written state-  
14 ment of the Secretary’s opinion. The Secretary  
15 shall issue the final written statement of the  
16 Secretary’s opinion by providing the written  
17 statement to the Federal agency and the permit  
18 or license applicant, if any, and publishing no-  
19 tice of the written statement in the Federal  
20 Register. If jeopardy is found, the Secretary  
21 shall suggest in the final written statement  
22 those reasonable and prudent alternatives, if  
23 any, that the Secretary believes would not vio-  
24 late subsection (a)(2) and can be taken by the  
25 Federal agency or applicant in implementing



1 the agency action. The Secretary shall cooper-  
2 ate with the Federal agency and any permit or  
3 license applicant in the preparation of any sug-  
4 gested reasonable and prudent alternatives.”;

5 (4) in paragraph (4)—

6 (A) by redesignating subparagraphs (A),  
7 (B), and (C) as clauses (i), (ii), and (iii), re-  
8 spectively;

9 (B) by inserting “(A)” after “(4)”;

10 (C) by striking “the Secretary shall pro-  
11 vide” and all that follows through “with a writ-  
12 ten statement that—” and inserting the fol-  
13 lowing: “the Secretary shall include in the writ-  
14 ten statement under paragraph (3), a statement  
15 described in subparagraph (B) of this para-  
16 graph.

17 “(B) A statement described in this subparagraph—  
18 ”; and

19 (5) by adding at the end the following:

20 “(5)(A) Any terms and conditions set forth pursuant  
21 to paragraph (4)(B)(iv) shall be roughly proportional to  
22 the impact of the incidental taking identified pursuant to  
23 paragraph (4) in the written statement prepared under  
24 paragraph (3).



1 “(B) If various terms and conditions are available to  
2 comply with paragraph (4)(B)(iv), the terms and condi-  
3 tions set forth pursuant to that paragraph—

4 “(i) must be capable of successful implementa-  
5 tion; and

6 “(ii) must be consistent with the objectives of  
7 the Federal agency and the permit or license appli-  
8 cant, if any, to the greatest extent possible.”.

9 (c) BIOLOGICAL ASSESSMENTS.—Section 7(c) (16  
10 U.S.C. 1536(c)) is amended—

11 (1) by striking “(1)”;  
12

13 (2) by striking paragraph (2);  
14

15 (3) in the first sentence, by striking “which is  
16 listed” and all that follows through the end of the  
17 sentence and inserting “that is determined to be an  
18 endangered species or a threatened species, or for  
19 which such a determination is proposed pursuant to  
20 section 4, may be present in the area of such pro-  
21 posed action.”; and

22 (4) in the second sentence, by striking “best  
23 scientific and commercial data available” and insert-  
24 ing “best available scientific data”.

25 (d) ELIMINATION OF ENDANGERED SPECIES COM-  
MITTEE PROCESS.—Section 7 (16 U.S.C. 1536) is  
amended—



1 (1) by repealing subsections (e), (f), (g), (h),  
2 (i), (j), (k), (l), (m), and (n);

3 (2) by redesignating subsections (o) and (p) as  
4 subsections (e) and (f), respectively;

5 (3) in subsection (e), as redesignated by para-  
6 graph (2) of this subsection—

7 (A) in the heading, by striking “EXEMP-  
8 TION AS PROVIDING”; and

9 (B) by striking “such section” and all that  
10 follows through “(2)” and inserting “such sec-  
11 tion,”; and

12 (4) in subsection (f), as redesignated by para-  
13 graph (2) of this subsection—

14 (A) in the first sentence, by striking “is  
15 authorized” and all that follows through “of  
16 this section” and inserting “may exempt an  
17 agency action from compliance with the require-  
18 ments of subsections (a) through (d) of this  
19 section before the initiation of such agency ac-  
20 tion,”; and

21 (B) by striking the second sentence.

22 **SEC. 12. EXCEPTIONS TO PROHIBITIONS.**

23 (a) **INCIDENTAL TAKE PERMITS.**—Section 10(a)(2)  
24 (16 U.S.C. 1539(a)(2)) is amended—



1           (1) in subparagraph (A) by striking “and” after  
2           the semicolon at the end of clause (iii), by redesignating  
3           clause (iv) as clause (vii), and by inserting  
4           after clause (iii) the following:

5           “(iv) objective, measurable biological goals to be  
6           achieved for species covered by the plan and specific  
7           measures for achieving such goals consistent with  
8           the requirements of subparagraph (B);

9           “(v) measures the applicant will take to monitor  
10          impacts of the plan on covered species and the effectiveness  
11          of the plan’s measures in achieving the  
12          plan’s biological goals;

13          “(vi) adaptive management provisions necessary  
14          to respond to all reasonably foreseeable changes in  
15          circumstances that could appreciably reduce the likelihood  
16          of the survival and recovery of any species  
17          covered by the plan; and”;

18          (2) in subparagraph (B) by striking “and”  
19          after the semicolon at the end of clause (iv), by redesignating  
20          clause (v) as clause (vi), and by inserting  
21          after clause (iv) the following:

22          “(v) the term of the permit is reasonable, taking  
23          into consideration—



1           “(I) the period in which the applicant can  
2           be expected to diligently complete the principal  
3           actions covered by the plan;

4           “(II) the extent to which the plan will en-  
5           hance the conservation of covered species;

6           “(III) the adequacy of information under-  
7           lying the plan;

8           “(IV) the length of time necessary to im-  
9           plement and achieve the benefits of the plan;  
10          and

11          “(V) the scope of the plan’s adaptive man-  
12          agement strategy; and”;

13          (3) by striking subparagraph (C) and inserting  
14          the following:

15          “(3) Any terms and conditions offered by the Sec-  
16          retary pursuant to paragraph (2)(B) to reduce or offset  
17          the impacts of incidental taking shall be roughly propor-  
18          tional to the impact of the incidental taking specified in  
19          the conservation plan pursuant to in paragraph (2)(A)(i).  
20          This paragraph shall not be construed to limit the author-  
21          ity of the Secretary to require greater than acre-for-acre  
22          mitigation where necessary to address the extent of such  
23          impacts. In any case in which various terms and condi-  
24          tions are available, the terms and conditions shall be capa-  
25          ble of successful implementation and shall be consistent



1 with the objective of the applicant to the greatest extent  
2 possible.

3       “(4)(A) If the holder of a permit issued under this  
4 subsection for other than scientific purposes is in compli-  
5 ance with the terms and conditions of the permit, and any  
6 conservation plan or agreement incorporated by reference  
7 therein, the Secretary may not require the holder, without  
8 the consent of the holder, to adopt any new minimization,  
9 mitigation, or other measure with respect to any species  
10 adequately covered by the permit during the term of the  
11 permit, except as provided in subparagraphs (B) and (C)  
12 to meet circumstances that have changed subsequent to  
13 the issuance of the permit.

14       “(B) For any circumstance identified in the permit  
15 or incorporated document that has changed, the Secretary  
16 may, in the absence of consent of the permit holder, re-  
17 quire only such additional minimization, mitigation, or  
18 other measures as are already provided in the permit or  
19 incorporated document for such changed circumstance.

20       “(C) For any changed circumstance not identified in  
21 the permit or incorporated document, the Secretary may,  
22 in the absence of consent of the permit holder, require only  
23 such additional minimization, mitigation, or other meas-  
24 ures to address such changed circumstance that do not  
25 involve the commitment of any additional land, water, or



1 financial compensation not otherwise committed, or the  
2 imposition of additional restrictions on the use of any  
3 land, water or other natural resources otherwise available  
4 for development or use, under the original terms and con-  
5 ditions of the permit or incorporated document.

6 “(D) The Secretary shall have the burden of proof  
7 in demonstrating and documenting, with the best available  
8 scientific data, the occurrence of any changed cir-  
9 cumstances for purposes of this paragraph.

10 “(E) All permits issued under this subsection on or  
11 after the date of the enactment of the Threatened and  
12 Endangered Species Recovery Act of 2005, other than per-  
13 mits for scientific purposes, shall contain the assurances  
14 contained in subparagraphs (B) through (D) of this para-  
15 graph and paragraph (5)(A) and (B). Permits issued  
16 under this subsection on or after March 25, 1998, and  
17 before the date of the enactment of the Threatened and  
18 Endangered Species Recovery Act of 2005, other than per-  
19 mits for scientific purposes, shall be governed by the appli-  
20 cable sections of parts 17.22(b), (c), and (d), and  
21 17.32(b), (c), and (d) of title 50, Code of Federal Regula-  
22 tions, as the same exist on the date of the enactment of  
23 the Threatened and Endangered Species Act of 2005.

24 “(5)(A) The Secretary shall revoke a permit issued  
25 under paragraph (2) if the Secretary finds that the per-



1 mittee is not complying with the terms and conditions of  
2 the permit.

3 “(B) Any permit subject to paragraph (4)(A) may be  
4 revoked due to changed circumstances only if—

5 “(i) the Secretary determines that continuation  
6 of the activities to which the permit applies would be  
7 inconsistent with the criteria in paragraph  
8 (2)(B)(iv);

9 “(ii) the Secretary provides 60 days notice of  
10 revocation to the permittee; and

11 “(iii) the Secretary is unable to, and the per-  
12 mittee chooses not to, remedy the condition causing  
13 such inconsistency.”.

14 (b) EXTENSION OF PERIOD FOR PUBLIC REVIEW  
15 AND COMMENT ON APPLICATIONS.—Section 10(c) (16  
16 U.S.C. 1539(c)) is amended in the second sentence by  
17 striking “thirty” each place it appears and inserting “45”.

18 (c) EXPERIMENTAL POPULATIONS.—Section 10(j)  
19 (16 U.S.C. 1539(j)) is amended—

20 (1) in paragraph (1), by striking “For pur-  
21 poses” and all that follows through the end of the  
22 paragraph and inserting the following: “For pur-  
23 poses of this subsection, the term ‘experimental pop-  
24 ulation’ means any population (including any off-  
25 spring arising therefrom) authorized by the Sec-



1       retary for release under paragraph (2), but only  
2       when such population is in the area designated for  
3       it by the Secretary, and such area is, at the time of  
4       release, wholly separate geographically from areas  
5       occupied by nonexperimental populations of the  
6       same species. For purposes of this subsection, the  
7       term ‘areas occupied by nonexperimental popu-  
8       lations’ means areas characterized by the sustained  
9       and predictable presence of more than negligible  
10      numbers of successfully reproducing individuals over  
11      a period of many years.”;

12           (2) in paragraph (2)(B), by striking “informa-  
13      tion” and inserting “scientific data”; and

14           (3) in paragraph (2)(C)(i), by striking “listed”  
15      and inserting “determined to be an endangered spe-  
16      cies or a threatened species”.

17      (d) WRITTEN DETERMINATION OF COMPLIANCE.—  
18      Section 10 (16 U.S.C. 1539) is amended by adding at the  
19      end the following:

20           “(k) WRITTEN DETERMINATION OF COMPLIANCE.—

21      (1) A property owner (in this subsection referred to as  
22      a ‘requester’) may request the Secretary to make a written  
23      determination that a proposed use of the owner’s property  
24      that is lawful under State and local law will comply with



1 section 9(a), by submitting a written description of the  
2 proposed action to the Secretary by certified mail.

3 “(2) A written description of a proposed use is  
4 deemed to be sufficient for consideration by the Secretary  
5 under paragraph (1) if the description includes—

6 “(A) the nature, the specific location, the law-  
7 fulness under State and local law, and the antici-  
8 pated schedule and duration of the proposed use,  
9 and a demonstration that the property owner has  
10 the means to undertake the proposed use; and

11 “(B) any anticipated adverse impact to a spe-  
12 cies that is included on a list published under  
13 4(c)(1) that the requestor reasonably expects to  
14 occur as a result of the proposed use.

15 “(3) The Secretary may request and the requestor  
16 may supply any other information that either believes will  
17 assist the Secretary to make a determination under para-  
18 graph (1).

19 “(4) If the Secretary does not make a determination  
20 pursuant to a request under this subsection because of the  
21 omission from the request of any information described  
22 in paragraph (2), the requestor may submit a subsequent  
23 request under this subsection for the same proposed use.

24 “(5)(A) Subject to subparagraph (B), the Secretary  
25 shall provide to the requestor a written determination of



1 whether the proposed use, as proposed by the requestor,  
2 will comply with section 9(a), by not later than expiration  
3 of the 180-day period beginning on the date of the submis-  
4 sion of the request.

5 “(B) The Secretary may request, and the requestor  
6 may grant, a written extension of the period under sub-  
7 paragraph (A).

8 “(6) If the Secretary fails to provide a written deter-  
9 mination before the expiration of the period under para-  
10 graph (5)(A) (or any extension thereof under paragraph  
11 (5)(B)), the Secretary is deemed to have determined that  
12 the proposed use complies with section 9(a).

13 “(7) This subsection shall not apply with respect to  
14 agency actions that are subject to consultation under sec-  
15 tion 7.

16 “(8) Any use or action taken by the property owner  
17 in reasonable reliance on a written determination of com-  
18 pliance under paragraph (5) or on the application of para-  
19 graph (6) shall not be treated as a violation of section  
20 9(a).

21 “(9) Any determination of compliance under this sub-  
22 section shall remain effective—

23 “(A) in the case of a written determination pro-  
24 vided under paragraph (5)(A), for the 10-year period



1 beginning on the date the written determination is  
2 provided; or

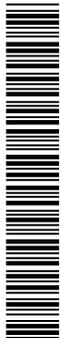
3 “(B) in the case of a determination that under  
4 paragraph (6) the Secretary is deemed to have  
5 made, the 5-year period beginning on the first date  
6 the Secretary is deemed to have made the deter-  
7 mination.

8 “(10) The Secretary may withdraw a determination  
9 of compliance under this section only if the Secretary de-  
10 termines that, because of unforeseen changed cir-  
11 cumstances, the continuation of the use to which the de-  
12 termination applies would preclude conservation measures  
13 essential to the survival of any endangered species or  
14 threatened species. Such a withdrawal shall take effect 10  
15 days after the date the Secretary provides notice of the  
16 withdrawal to the requester.

17 “(11) The Secretary may extend the period that ap-  
18 plies under paragraph (5) by up to 180 days if seasonal  
19 considerations make a determination impossible within the  
20 period that would otherwise apply.”

21 (e) NATIONAL SECURITY EXEMPTION.—Section 10  
22 (16 U.S.C. 1539) is further amended by adding at the  
23 end the following:

24 “(l) NATIONAL SECURITY.—The President, after  
25 consultation with the appropriate Federal agency, may ex-



1   empt any act or omission from the provisions of this Act  
2   if such exemption is necessary for national security.”.

3           (f) DISASTER DECLARATION AND PROTECTION.—

4   Section 10 (16 U.S.C. 1539) is further amended by adding  
5   at the end the following:

6           “(m) DISASTER DECLARATION AND PROTECTION.—

7   (1) The President may suspend the application of any pro-  
8   vision of this Act in any area for which a major disaster  
9   is declared under the Robert T. Stafford Disaster Relief  
10  and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

11          “(2) The Secretary shall, within one year after the  
12  date of the enactment of the Threatened and Endangered  
13  Species Recovery Act of 2005, promulgate regulations re-  
14  garding application of this Act in the event of an emer-  
15  gency (including circumstances other than a major dis-  
16  aster referred to in paragraph (1)) involving a threat to  
17  human health or safety or to property, including  
18  regulations—

19                  “(A) determining what constitutes an emer-  
20                  gency for purposes of this paragraph; and

21                  “(B) to address immediate threats through ex-  
22                  pedited consideration under or waiver of any provi-  
23                  sion of this Act.”.



1 **SEC. 13. PRIVATE PROPERTY CONSERVATION.**

2 Section 13 (consisting of amendments to other laws,  
3 which have executed) is amended to read as follows:

4 “PRIVATE PROPERTY CONSERVATION

5 “SEC. 13. (a) IN GENERAL.—The Secretary may pro-  
6 vide conservation grants (in this section referred to as  
7 ‘grants’) to promote the voluntary conservation of endan-  
8 gered species and threatened species by owners of private  
9 property and shall provide financial conservation aid (in  
10 this section referred to as ‘aid’) to alleviate the burden  
11 of conservation measures imposed upon private property  
12 owners by this Act. The Secretary may provide technical  
13 assistance when requested to enhance the conservation ef-  
14 fects of grants or aid.

15 “(b) AWARDING OF GRANTS AND AID.—Grants to  
16 promote conservation of endangered species and threat-  
17 ened species on private property—

18 “(1) may not be used to fund litigation, general  
19 education, general outreach, lobbying, or solicitation;

20 “(2) may not be used to acquire leases or ease-  
21 ments of more than 50 years duration or fee title to  
22 private property;

23 “(3) must be designed to directly contribute to  
24 the conservation of an endangered species or threat-  
25 ened species by increasing the species’ numbers or  
26 distribution; and



1           “(4) must be supported by any private property  
2 owners on whose property any grant funded activi-  
3 ties are carried out.

4           “(c) PRIORITY.—Priority shall be accorded among  
5 grant requests in the following order:

6           “(1) Grants that promote conservation of en-  
7 dangered species or threatened species on private  
8 property while making economically beneficial and  
9 productive use of the private property on which the  
10 conservation activities are conducted.

11           “(2) Grants that develop, promote, or use tech-  
12 niques to increase the distribution or population of  
13 an endangered species or threatened species on pri-  
14 vate property.

15           “(3) Other grants that promote voluntary con-  
16 servation of endangered species or threatened species  
17 on private property.

18           “(d) ELIGIBILITY FOR AID.—(1) The Secretary shall  
19 award aid to private property owners who—

20           “(A) received a written determination under  
21 section 10(k) finding that the proposed use of pri-  
22 vate property would not comply with section 9(a); or

23           “(B) receive notice under section 10(k)(10) that  
24 a written determination has been withdrawn.



1           “(2) Aid shall be in an amount no less than the fair  
2 market value of the use that was proposed by the property  
3 owner if—

4           “(A) the owner has foregone the proposed use;

5           “(B) the owner has requested financial aid—

6                   “(i) within 180 days of the Secretary’s  
7 issuance of a written determination that the  
8 proposed use would not comply with section  
9 9(a); or

10                   “(ii) within 180 days after the property  
11 owner is notified of a withdrawal under section  
12 10(k)(10); and

13           “(C) the foregone use would be lawful under  
14 State and local law and the property owner has dem-  
15 onstrated that the property owner has the means to  
16 undertake the proposed use.

17           “(e) DISTRIBUTION OF GRANTS AND AID.—(1) The  
18 Secretary shall pay eligible aid—

19           “(A) within 180 days after receipt of a request  
20 for aid unless there are unresolved questions regard-  
21 ing the documentation of the foregone proposed use  
22 or unresolved questions regarding the fair market  
23 value; or

24           “(B) at the resolution of any questions con-  
25 cerning the documentation of the foregone use estab-



1 lished under subsection (f) or the fair market value  
2 established under subsection (g).

3 “(2) All grants provided under this section shall be  
4 paid on the last day of the fiscal year. Aid shall be paid  
5 based on the date of the initial request.

6 “(f) DOCUMENTATION OF THE FOREGONE USE.—  
7 Within 30 days of the request for aid, the Secretary shall  
8 enter into negotiations with the property owner regarding  
9 the documentation of the foregone proposed use through  
10 such mechanisms such as contract terms, lease terms,  
11 deed restrictions, easement terms, or transfer of title. If  
12 the Secretary and the property owner are unable to reach  
13 an agreement, then, within 60 days of the request for aid,  
14 the Secretary shall determine how the property owner’s  
15 foregone use shall be documented with the least impact  
16 on the ownership interests of the property owner necessary  
17 to document the foregone use.

18 “(g) FAIR MARKET VALUE.—For purposes of this  
19 section, the fair market value of the foregone use of the  
20 affected portion of the private property, including business  
21 losses, is what a willing buyer would pay to a willing seller  
22 in an open market. Fair market value shall take into ac-  
23 count the likelihood that the foregone use would be ap-  
24 proved under State and local law. The fair market value  
25 shall be determined within 180 days of the documentation



1 of the foregone use. The fair market value shall be deter-  
2 mined jointly by 2 licensed independent appraisers, one  
3 selected by the Secretary and one selected by the property  
4 owner. If the 2 appraisers fail to agree on fair market  
5 value, the Secretary and the property owner shall jointly  
6 select a third licensed appraiser whose appraisal within an  
7 additional 90 days shall be binding on the Secretary and  
8 the private property owner. Within one year after the date  
9 of enactment of the Threatened and Endangered Species  
10 Recovery Act of 2005, the Secretary shall promulgate reg-  
11 ulations regarding selection of the jointly selected apprais-  
12 ers under this subsection.

13       “(h) LIMITATION ON AID AVAILABILITY.—Any per-  
14 son receiving aid under this section may not receive addi-  
15 tional aid under this section for the same foregone use  
16 of the same property and for the same period of time.

17       “(i) ANNUAL REPORTING.—The Secretary shall by  
18 January 15 of each year provide a report of all aid and  
19 grants awarded under this section to the Committee on  
20 Resources of the House of Representatives and the Envi-  
21 ronment and Public Works Committee of the Senate and  
22 make such report electronically available to the general  
23 public on the website required under section 14.”.



1 **SEC. 14. PUBLIC ACCESSIBILITY AND ACCOUNTABILITY.**

2 Section 14 (relating to repeals of other laws, which  
3 have executed) is amended to read as follows:

4 “PUBLIC ACCESSIBILITY AND ACCOUNTABILITY

5 “SEC. 14. The Secretary shall make available on a  
6 publicly accessible website on the Internet—

7 “(1) each list published under section 4(c)(1);

8 “(2) all final and proposed regulations and de-  
9 terminations under section 4;

10 “(3) the results of all 5-year reviews conducted  
11 under section 4(e)(2)(A);

12 “(4) all draft and final recovery plans issued  
13 under section 5(a), and all final recovery plans  
14 issued and in effect under section 4(f)(1) of this Act  
15 as in effect immediately before the enactment of the  
16 Threatened and Endangered Species Recovery Act of  
17 2005;

18 “(5) all reports required under sections 5(e)  
19 and 16, and all reports required under sections  
20 4(f)(3) and 18 of this Act as in effect immediately  
21 before the enactment of the Threatened and Endan-  
22 gered Species Recovery Act of 2005; and

23 “(6) data contained in the reports referred to in  
24 paragraph (5) of this section, and that were pro-  
25 duced after the date of enactment of the Threatened  
26 and Endangered Species Recovery Act of 2005, in



1 the form of databases that may be searched by the  
2 variables included in the reports.”.

3 **SEC. 15. ANNUAL COST ANALYSES.**

4 (a) ANNUAL COST ANALYSES.—Section 18 (16  
5 U.S.C. 1544) is amended to read as follows:

6 “ANNUAL COST ANALYSIS BY UNITED STATES FISH AND  
7 WILDLIFE SERVICE

8 “SEC. 18. (a) IN GENERAL.—On or before January  
9 15 of each year, the Secretary shall submit to the Con-  
10 gress an annual report covering the preceding fiscal year  
11 that contains an accounting of all reasonably identifiable  
12 expenditures made primarily for the conservation of spe-  
13 cies included on lists published and in effect under section  
14 4(c).

15 “(b) SPECIFICATION OF EXPENDITURES.—Each re-  
16 port under this section shall specify—

17 “(1) expenditures of Federal funds on a spe-  
18 cies-by-species basis, and expenditures of Federal  
19 funds that are not attributable to a specific species;

20 “(2) expenditures by States for the fiscal year  
21 covered by the report on a species-by-species basis,  
22 and expenditures by States that are not attributable  
23 to a specific species; and

24 “(3) based on data submitted pursuant to sub-  
25 section (c), expenditures voluntarily reported by local  
26 governmental entities on a species-by-species basis,



1 and such expenditures that are not attributable to a  
2 specific species.

3 “(c) ENCOURAGEMENT OF VOLUNTARY SUBMISSION  
4 OF DATA BY LOCAL GOVERNMENTS.—The Secretary shall  
5 provide a means by which local governmental entities  
6 may—

7 “(1) voluntarily submit electronic data regard-  
8 ing their expenditures for conservation of species  
9 listed under section 4(c); and

10 “(2) attest to the accuracy of such data.”.

11 (b) ELIGIBILITY OF STATES FOR FINANCIAL ASSIST-  
12 ANCE.—Section 6(d) (16 U.S.C. 1535(d)) is amended by  
13 adding at the end the following:

14 “(3) A State shall not be eligible for financial assist-  
15 ance under this section for a fiscal year unless the State  
16 has provided to the Secretary for the preceding fiscal year  
17 information regarding the expenditures referred to in sec-  
18 tion 16(b)(2).”.

19 **SEC. 16. REIMBURSEMENT FOR DEPREDAATION OF LIVE-**  
20 **STOCK BY REINTRODUCED SPECIES.**

21 The Endangered Species Act of 1973 is further  
22 amended—

23 (1) by striking sections 15 and 16;

24 (2) by redesignating sections 17 and 18 as sec-  
25 tions 15 and 16, respectively; and





1 **SEC. 17. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) AUTHORIZATION.—The Endangered Species Act  
3 of 1973 is further amended by adding at the end the fol-  
4 lowing:

5 “AUTHORIZATION OF APPROPRIATIONS

6 “SEC. 18. (a) IN GENERAL.—There are authorized  
7 to be appropriated to carry out this Act, other than section  
8 8A(e)—

9 “(1) to the Secretary of the Interior to carry  
10 out functions and responsibilities of the Department  
11 of the Interior under this Act, such sums as are nec-  
12 essary for fiscal years 2006 through 2010; and

13 “(2) to the Secretary of Agriculture to carry  
14 out functions and responsibilities of the Department  
15 of the Interior with respect to the enforcement of  
16 this Act and the convention which pertain the impor-  
17 tation of plants, such sums as are necessary for fis-  
18 cal year 2006 through 2010.

19 “(b) CONVENTION IMPLEMENTATION.—There is au-  
20 thorized to be appropriated to the Secretary of the Interior  
21 to carry out section 8A(e) such sums as are necessary for  
22 fiscal years 2006 through 2010.”.

23 (b) CONFORMING AMENDMENT.—Section 8(a) (16  
24 U.S.C. 1537(a)) is amended by striking “section 15” and  
25 inserting “section 18”.



1 **SEC. 18. MISCELLANEOUS TECHNICAL CORRECTIONS.**

2 (a) INTERNATIONAL COOPERATION.—Section 8 (16  
3 U.S.C. 1537) is amended—

4 (1) in subsection (a) in the first sentence by  
5 striking “any endangered species or threatened spe-  
6 cies listed” and inserting “any species determined to  
7 be an endangered species or a threatened species”;  
8 and

9 (2) in subsection (b) in paragraph (1), by strik-  
10 ing “endangered species and threatened species list-  
11 ed” and inserting “species determined to be endan-  
12 gered species and threatened species”.

13 (b) MANAGEMENT AUTHORITY AND SCIENTIFIC AU-  
14 THORITY.—Section 8A (16 U.S.C. 1537a)) is amended—

15 (1) in subsection (a), by striking “of the Inte-  
16 rior (hereinafter in this section referred to as the  
17 ‘Secretary’)”;

18 (2) in subsection (d), by striking “Merchant  
19 Marine and Fisheries” and inserting “Resources”;  
20 and

21 (3) in subsection (e)—

22 (A) in paragraph (1), by striking “of the  
23 Interior (hereinafter in this subsection referred  
24 to as the ‘Secretary’)”; and

25 (B) by striking paragraph (3) and redesign-  
26 ating paragraph (4) as paragraph (3).



1 (c) PROHIBITED ACTS.—Section 9 (16 U.S.C. 1538)

2 is amended—

3 (1) in subsection (a)—

4 (A) in paragraph (1), in the matter pre-  
5 ceding subparagraph (A), by striking “of this  
6 Act, with respect to any endangered species of  
7 fish or wildlife listed pursuant to section 4 of  
8 this Act” and inserting “, with respect to any  
9 species of fish or wildlife determined to be an  
10 endangered species under section 4”;

11 (B) in paragraph (1)(G), by striking  
12 “threatened species of fish or wildlife listed pur-  
13 suant to section 4 of this Act” and inserting  
14 “species of fish or wildlife determined to be a  
15 threatened species under section 4”;

16 (C) in paragraph (2), in the matter pre-  
17 ceding subparagraph (A) by striking “of this  
18 Act, with respect to any endangered species of  
19 plants listed pursuant to section 4 of this Act”  
20 and inserting “, with respect to any species of  
21 plants determined to be an endangered species  
22 under section 4”; and

23 (D) in paragraph (2)(E), by striking “list-  
24 ed pursuant to section 4 of this Act” and in-



1           serting “determined to be a threatened species  
2           under section 4”;

3           (2) in subsection (b)—

4                 (A) by striking “(1)” before “SPECIES”  
5                 and inserting “(1)” before the first sentence;

6                 (B) in paragraph (1), in the first sentence,  
7                 by striking “adding such” and all that follows  
8                 through “: *Provided, That*” and inserting “de-  
9                 termining such fish or wildlife species to be an  
10                endangered species or a threatened species  
11                under section 4, if”; and

12                (C) in paragraph (1), in the second sen-  
13                tence, by striking “adding such” and all that  
14                follows through “this Act” and inserting “deter-  
15                mining such fish or wildlife species to be an en-  
16                dangered species or a threatened species under  
17                section 4”;

18           (3) in subsection (c)(2)(A), by striking “an en-  
19           dangered species listed” and inserting “a species de-  
20           termined to be an endangered species”;

21           (4) in subsection (d)(1)(A), by striking clause  
22           (i) and inserting the following: “(i) are not deter-  
23           mined to be endangered species or threatened spe-  
24           cies under section 4, and”;



1           (5) in subsection (e), by striking clause (1) and  
2           inserting the following: “(1) are not determined to  
3           be endangered species or threatened species under  
4           section 4, and”; and

5           (6) in subsection (f)—

6           (A) in paragraph (1), in the first sentence,  
7           by striking clause (A) and inserting the fol-  
8           lowing: “(A) are not determined to be endan-  
9           gered species or threatened species under sec-  
10          tion 4, and”; and

11          (B) by striking “Secretary of the Interior”  
12          each place it appears and inserting “Secretary”.

13          (d) HARDSHIP EXEMPTIONS.—Section 10(b) (16  
14          U.S.C. 1539(b)) is amended—

15          (1) in paragraph (1)—

16          (A) by striking “an endangered species”  
17          and all that follows through “section 4 of this  
18          Act” and inserting “an endangered species or a  
19          threatened species and the subsequent deter-  
20          mination that the species is an endangered spe-  
21          cies or a threatened species under section 4”;

22          (B) by striking “section 9(a) of this Act”  
23          and inserting “section 9(a)”; and

24          (C) by striking “fish or wildlife listed by  
25          the Secretary as endangered” and inserting



1 “fish or wildlife determined to be an endan-  
2 gered species or threatened species by the Sec-  
3 retary”; and

4 (2) in paragraph (2)—

5 (A) by inserting “or a threatened species”  
6 after “endangered species” each place it ap-  
7 pears; and

8 (B) in subparagraph (B), by striking “list-  
9 ed species” and inserting “endangered species  
10 or threatened species”.

11 (e) PERMIT AND EXEMPTION POLICY.—Section  
12 10(d) (16 U.S.C. 1539(d)) is amended—

13 (1) by inserting “or threatened species” after  
14 “endangered species”; and

15 (2) by striking “of this Act”.

16 (f) PRE-ACT PARTS AND SCRIMSHAW.—Section 10(f)  
17 (16 U.S.C. 1539(f)) is amended—

18 (1) by inserting after “(f)” the following: “PRE-  
19 ACT PARTS AND SCRIMSHAW.—”; and

20 (2) in paragraph (2), by striking “of this Act”  
21 each place it appears.

22 (g) BURDEN OF PROOF IN SEEKING EXEMPTION OR  
23 PERMIT.—Section 10(g) (16 U.S.C. 1539(g)) is amended  
24 by inserting after “(g)” the following: “BURDEN OF  
25 PROOF IN SEEKING EXEMPTION OR PERMIT.—”.



1 (h) ANTIQUE ARTICLES.—Section 10(h)(1)(B) (16  
2 U.S.C. 1539(h)(1)(B)) is amended by striking “endan-  
3 gered species or threatened species listed” and inserting  
4 “species determined to be an endangered species or a  
5 threatened species”.

6 (i) PENALTIES AND ENFORCEMENT.—Section 11 (16  
7 U.S.C. 1540) is amended in subsection (e)(3), in the sec-  
8 ond sentence, by striking “Such persons” and inserting  
9 “Such a person”.

10 (j) SUBSTITUTION OF GENDER-NEUTRAL REF-  
11 ERENCES.—

12 (1) “SECRETARY” FOR “HE”.—The following  
13 provisions are amended by striking “he” each place  
14 it appears and inserting “the Secretary”:

15 (A) Paragraph (4)(C) of section 4(b), as  
16 redesignated by section 5(b)(2) of this Act.

17 (B) Paragraph (5)(B)(ii) of section 4(b),  
18 as redesignated by section 5(b)(2) of this Act.

19 (C) Section 4(b)(7) (16 U.S.C.  
20 1533(b)(7)), in the matter following subpara-  
21 graph (B).

22 (D) Section 6 (16 U.S.C. 1535).

23 (E) Section 8(d) (16 U.S.C. 1537(d)).

24 (F) Section 9(f) (16 U.S.C. 1538(f)).

25 (G) Section 10(a) (16 U.S.C. 1539(a)).



1 (H) Section 10(b)(3) (16 U.S.C.  
2 1539(b)(3)).

3 (I) Section 10(d) (16 U.S.C. 1539(d)).

4 (J) Section 10(e)(4) (16 U.S.C.  
5 1539(e)(4)).

6 (K) Section 10(f)(4), (5), and (8)(B) (16  
7 U.S.C. 1599(f)(4), (5), (8)(B)).

8 (L) Section 11(e)(5) (16 U.S.C.  
9 1540(e)(5)).

10 (2) “PRESIDENT” FOR “HE”.—Section 8(a) (16  
11 U.S.C. 1537(a)) is amended in the second sentence  
12 by striking “he” and inserting “the President”.

13 (3) “SECRETARY OF THE INTERIOR” FOR  
14 “HE”.—Section 8(b)(3) (16 U.S.C. 1537(b)(3)) is  
15 amended by striking “he” and inserting “the Sec-  
16 retary of the Interior”.

17 (4) “PERSON” FOR “HE”.—The following provi-  
18 sions are amended by striking “he” each place it ap-  
19 pears and inserting “the person”:

20 (A) Section 10(f)(3) (16 U.S.C.  
21 1539(f)(3)).

22 (B) Section 11(e)(3) (16 U.S.C.  
23 1540(e)(3)).



1           (5) “DEFENDANT” FOR “HE”.—The following  
2 provisions are amended by striking “he” each place  
3 it appears and inserting “the defendant”.

4           (A) Section 11(a)(3) (16 U.S.C.  
5 1540(a)(3)).

6           (B) Section 11(b)(3) (16 U.S.C.  
7 1540(b)(3)).

8           (6) REFERENCES TO “HIM”.—

9           (A) Section 4(c)(1) (16 U.S.C. 1533(c)(1))  
10 is amended by striking “him or the Secretary of  
11 Commerce” each place it appears and inserting  
12 “the Secretary”.

13           (B) Paragraph (6) of section 4(b) (16  
14 U.S.C. 1533(b)), as redesignated by section  
15 5(b)(2) of this Act, is further amended in the  
16 matter following subparagraph (B) by striking  
17 “him” and inserting “the Secretary”.

18           (C) Section 5(k)(2), as redesignated by  
19 section 9(a)(1) of this Act, is amended by strik-  
20 ing “him” and inserting “the Secretary”.

21           (D) Section 7(a)(1) (16 U.S.C.  
22 1536(a)(1)) is amended in the first sentence by  
23 striking “him” and inserting “the Secretary”.



1 (E) Section 8A(c)(2) (16 U.S.C.  
2 1537a(c)(2)) is amended by striking “him” and  
3 inserting “the Secretary”.

4 (F) Section 9(d)(2)(A) (16 U.S.C.  
5 1538(d)(2)(A)) is amended by striking “him”  
6 each place it appears and inserting “such per-  
7 son”.

8 (G) Section 10(b)(1) (16 U.S.C.  
9 1539(b)(1)) is amended by striking “him” and  
10 inserting “the Secretary”.

11 (7) REFERENCES TO “HIMSELF OR HER-  
12 SELF”.—Section 11 (16 U.S.C. 1540) is amended in  
13 subsections (a)(3) and (b)(3) by striking “himself or  
14 herself” each place it appears and inserting “the de-  
15 fendant”.

16 (8) REFERENCES TO “HIS”.—

17 (A) Section 4(g)(1), as redesignated by  
18 section 8(1) of this Act, is amended by striking  
19 “his” and inserting “the”.

20 (B) Section 6 (16 U.S.C. 1535) is  
21 amended—

22 (i) in subsection (d)(2) in the matter  
23 following clause (ii) by striking “his” and  
24 inserting “the Secretary’s”; and



1 (ii) in subsection (e)(1), as designated  
2 by section 10(3)(A) of this Act, by striking  
3 “his periodic review” and inserting “peri-  
4 odic review by the Secretary”.

5 (C) Section 7(a)(3) (16 U.S.C. 1536(a)(3))  
6 is amended by striking “his” and inserting “the  
7 applicant’s”.

8 (D) Section 8(c)(1) (16 U.S.C. 1537(c)(1))  
9 is amended by striking “his” and inserting “the  
10 Secretary’s”.

11 (E) Section 9 (16 U.S.C. 1538) is amend-  
12 ed in subsection (d)(2)(B) and subsection (f) by  
13 striking “his” each place it appears and insert-  
14 ing “such person’s”.

15 (F) Section 10(b)(3) (16 U.S.C.  
16 1539(b)(3)) is amended by striking “his” and  
17 inserting “the Secretary’s”.

18 (G) Section 10(d) (16 U.S.C. 1539(d)) is  
19 amended by striking “his” and inserting “the”.

20 (H) Section 11 (16 U.S.C. 1540) is  
21 amended—

22 (i) in subsection (a)(1) by striking  
23 “his” and inserting “the Secretary’s”;



1 (ii) in subsections (a)(3) and (b)(3) by  
2 striking “his or her” each place it appears  
3 and inserting “the defendant’s”;

4 (iii) in subsection (d) by striking  
5 “his” and inserting “the officer’s or em-  
6 ployee’s”;

7 (iv) in subsection (e)(3) in the second  
8 sentence by striking “his” and inserting  
9 “the person’s”; and

10 (v) in subsection (g)(1) by striking  
11 “his” and inserting “the person’s”.

12 **SEC. 19. CLERICAL AMENDMENT TO TABLE OF CONTENTS.**

13 The table of contents in the first section is  
14 amended—

15 (1) by striking the item relating to section 5  
16 and inserting the following:

“Sec. 5. Recovery plans and land acquisition.”

17 ; and

18 (2) by striking the items relating to sections 13  
19 through 17 and inserting the following:

“Sec. 13. Private property conservation.

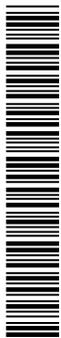
“Sec. 14. Public accessibility and accountability.

“Sec. 15. Marine Mammal Protection Act of 1972.

“Sec. 16. Annual cost analysis by United States Fish and Wildlife Service.

“Sec. 17. Reimbursement for depredation of livestock by reintroduced species.

“Sec. 18. Authorization of appropriations.”.



1 **SEC. 20. CERTAIN ACTIONS DEEMED IN COMPLIANCE.**

2 (a) ACTIONS DEEMED IN COMPLIANCE.—During the  
3 period beginning on the date of the enactment of this Act  
4 and ending on the date described in subsection (b), any  
5 action that is taken by a Federal agency, State agency,  
6 or other person and that complies with the Federal Insec-  
7 ticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et  
8 seq.) is deemed to comply with sections 7(a)(2) and  
9 9(a)(1)(B) of the Endangered Species Act of 1973 (16  
10 U.S.C. 1536(a)(2), 1538(a)(1)(B)) (as amended by this  
11 Act) and regulations issued under section 4(d) of such Act  
12 (16 U.S.C. 1533(d)).

13 (b) TERMINATION DATE.—The date referred to in  
14 subsection (a) is the earlier of—

15 (1) the date that is 5 years after the date of the  
16 enactment of this Act; and

17 (2) the date of the completion of any procedure  
18 required under subpart D of part 402 of title 50,  
19 Code of Federal Regulations, with respect to the ac-  
20 tion referred to in subsection (a).

21 (c) LIMITATION ON APPLICATION.—This section shall  
22 not affect any procedure pursuant to part 402 of title 50,  
23 Code of Federal Regulations, that is required by any court  
24 order issued before the date of the enactment of this Act.

