

109TH CONGRESS
1ST SESSION

H. R. 3824

AN ACT

To amend and reauthorize the Endangered Species Act of 1973 to provide greater results conserving and recovering listed species, and for other purposes.

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To amend and reauthorize the Endangered Species Act of 1973 to provide greater results conserving and recovering listed species, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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.
- Sec. 21. Consolidation of programs.
- Sec. 22. Review of protective regulations.
- Sec. 23. Provision of information regarding compliance costs of Federal power administrations.
- Sec. 24. Survey of BLM lands and Forest Service lands for management for recovery of listed species.
- Sec. 25. Relationship between section 7 consultation and incident take authorization under Marine Mammal Protection Act of 1972.

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

8 Except as otherwise expressly provided, whenever in
 9 this Act an amendment or repeal is expressed in terms
 10 of an amendment to, or repeal of, a section or other provi-
 11 sion, the reference shall be considered to be made to such

1 section or other provision of the Endangered Species Act
2 of 1973 (16 U.S.C. 1531 et seq.).

3 **SEC. 3. DEFINITIONS.**

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

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

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

22 “(C) In carrying out subparagraph (B), the Secretary
23 shall undertake necessary measures to assure—

24 “(i) compliance with guidance issued under sec-
25 tion 515 of the Treasury and General Government

1 Appropriations Act of 2001 (Public Law 106–554;
2 114 Stat. 2763A–171) by the Director of the Office
3 of Management and Budget and the Secretary;

4 “(ii) data consists of empirical data; or

5 “(iii) data is found in sources that have been
6 subject to peer review by qualified individuals rec-
7 ommended by the National Academy of Sciences to
8 serve as independent reviewers for a covered action
9 in a generally acceptable manner.”.

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

13 “(13) The term ‘permit or license applicant’ means,
14 when used with respect to an action of a Federal agency
15 that is subject to section 7(a) or (b), any person that has
16 applied to such agency for a permit or license or for formal
17 legal approval to perform an act.”.

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

21 (d) CONFORMING AMENDMENT.—Section 3 (16
22 U.S.C. 1532) is further amended in paragraph (18), as
23 redesignated by subsection (a) of this section, by striking
24 “Trust Territory of the Pacific Islands” and inserting
25 “Commonwealth of the Northern Mariana Islands”.

1 **SEC. 4. DETERMINATIONS OF ENDANGERED SPECIES AND**
2 **THREATENED SPECIES.**

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

7 “DETERMINATION OF ENDANGERED SPECIES AND
8 THREATENED SPECIES

9 “SEC. 4. (a) IN GENERAL.—(1) The Secretary shall
10 by regulation promulgated in accordance with subsection
11 (b) determine whether any species is an endangered spe-
12 cies or a threatened species because of any of the following
13 factors:

14 “(A) The present or threatened destruction,
15 modification, or curtailment of its habitat or range
16 by human activities, competition from other species,
17 drought, fire, or other catastrophic natural causes.

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

20 “(C) Disease or predation.

21 “(D) The inadequacy of existing regulatory
22 mechanisms, including any efforts identified pursu-
23 ant to subsection (b)(1).

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

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

5 (b) BASIS FOR DETERMINATION.—Section
6 4(b)(1)(A) (16 U.S.C. 1533(b)(1)(A)) is amended—

7 (1) by striking “best scientific and commercial
8 data available to him” and inserting “best available
9 scientific data”; and

10 (2) by inserting “Federal agency, any” after
11 “being made by any”.

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

14 “(2)(A) The Secretary shall—

15 “(i) conduct, at least once every 5 years,
16 based on the information collected for the bien-
17 nial reports to the Congress required by para-
18 graph (3) of subsection (f), a review of all spe-
19 cies included in a list that is published pursuant
20 to paragraph (1) and that is in effect at the
21 time of such review; and

22 “(ii) determine on the basis of such review
23 and any other information the Secretary con-
24 siders relevant whether any such species
25 should—

1 “(I) be removed from such list;

2 “(II) be changed in status from an
3 endangered species to a threatened species;

4 or

5 “(III) be changed in status from a
6 threatened species to an endangered spe-
7 cies.

8 “(B) Each determination under subparagraph
9 (A)(ii) shall be made in accordance with subsections
10 (a) and (b).”.

11 (d) ANALYSIS OF IMPACTS AND BENEFITS.—Section
12 4(a) (16 U.S.C. 1533(a)), as amended by section 4(a) of
13 this Act, is further amended by striking paragraph (3) and
14 inserting the following:

15 “(4)(A) The Secretary shall, concurrently with mak-
16 ing a determination under paragraph (1) that a species
17 is an endangered species or a threatened species, prepare
18 an analysis of—

19 “(i) the economic impact and benefit of that de-
20 termination;

21 “(ii) the impact and benefit on national security
22 of that determination; and

23 “(iii) any other relevant impact and benefit of
24 that determination.

1 “(B) Nothing in this paragraph shall delay the Sec-
2 retary’s decision or change the criteria used in making de-
3 terminations under paragraph (1).”.

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

5 (a) REPEAL OF REQUIREMENT.—Section 4(a) (16
6 U.S.C. 1533(a)) is amended by striking paragraph (3),
7 and redesignating paragraph (4) (as added by section 4(d)
8 of this Act) as paragraph (3).

9 (b) CONFORMING AMENDMENTS.—

10 (1) Section 3 (16 U.S.C. 1532), as amended by
11 section 3 of this Act, is further amended by striking
12 paragraph (6) and by redesignating paragraphs (7)
13 through (22) in order as paragraphs (6) through
14 (21).

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

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

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

1 graph (2) of this subsection, by striking “determina-
2 tion, designation, or revision referred to in sub-
3 section (a)(1) or (3)” and inserting “determination
4 referred to in subsection (a)(1)”.

5 (5) Section 4(b) (16 U.S.C. 1533(b)) is further
6 amended in paragraph (7), as redesignated by para-
7 graph (2) of this subsection, by striking “; and if
8 such regulation” and all that follows through the
9 end of the sentence and inserting a period.

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

12 (A) in the second sentence—

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

14 and

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

16 and all that follows through the end of the
17 sentence and inserting a period; and

18 (B) in the third sentence by striking “,
19 designations,”.

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

24 (8) Section 6(c) (16 U.S.C. 1535(c)), as
25 amended by section 10(1) of this Act, is further

1 amended in paragraph (3) by striking “section
2 4(b)(3)(B)(iii)” each place it appears and inserting
3 “section 4(b)(2)(B)(iii)”.

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

5 (A) in subsection (a)(2) in the first sen-
6 tence by striking “or result in the destruction
7 or adverse modification of any habitat of such
8 species” and all that follows through the end of
9 the sentence and inserting a period;

10 (B) in subsection (a)(4) in the first sen-
11 tence by striking “or result” and all that fol-
12 lows through the end of the sentence and in-
13 sserting a period; and

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

16 (10) Section 10(j)(2)(C) (16 U.S.C.
17 1539(j)(2)(C)), as amended by section 12(c) of this
18 Act, is further amended—

19 (A) by striking “that—” and all that fol-
20 lows through “(i) solely” and inserting “that
21 solely”; and

22 (B) by striking “; and” and all that follows
23 through the end of the sentence and inserting
24 a period.

1 **SEC. 6. PETITIONS AND PROCEDURES FOR DETERMINA-**
2 **TIONS AND REVISIONS.**

3 (a) TREATMENT OF PETITIONS.—Section 4(b) (16
4 U.S.C. 1533(b)) is amended in paragraph (2), as redesign-
5 nated by section 5(b)(2) of this Act, by adding at the end
6 of subparagraph (A) the following: “The Secretary shall
7 not make a finding that the petition presents substantial
8 scientific or commercial information indicating that the
9 petitioned action may be warranted unless the petitioner
10 provides to the Secretary a copy of all information cited
11 in the petition.”.

12 (b) IMPLEMENTING REGULATIONS.—

13 (1) PROPOSED REGULATIONS.—Section 4(b)
14 (16 U.S.C. 1533(b)) is amended—

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

17 (i) in clause (i) by striking “, and”
18 and inserting a semicolon;

19 (ii) in clause (ii) by striking “to the
20 State agency in” and inserting “to the
21 Governor of, and the State agency in,”;

22 (iii) in clause (ii) by striking “such
23 agency” and inserting “such Governor or
24 agency”;

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

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

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

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

8 “(8)(A) Information maintained and made
9 available under paragraph (5)(A)(iii) shall include
10 any status review, all information cited in such a
11 status review, all information referred to in the pro-
12 posed regulation and the preamble to the proposed
13 regulation, and all information submitted to the Sec-
14 retary by third parties.

15 “(B) The Secretary shall withhold from public
16 review under paragraph (5)(A)(iii) any information
17 that may be withheld under 552 of title 5, United
18 States Code.”.

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

22 (A) in subparagraph (A) by striking
23 clauses (i) and (ii) and inserting the following:

1 “(i) a final regulation to implement such a de-
2 termination of whether a species is an endangered
3 species or a threatened species;

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

6 “(iii) notice that the proposed regulation is
7 being withdrawn under subparagraph (B)(ii), to-
8 gether with the finding on which such withdrawal is
9 based.”;

10 (B) in subparagraph (B)(i) by striking
11 “subparagraph (A)(i)” and inserting “subpara-
12 graph (A)”;

13 (C) in subparagraph (B)(ii) by striking
14 “subparagraph (A)(i)” and inserting “subpara-
15 graph (A)”;

16 (D) by striking subparagraph (C).

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

21 (A) in the matter preceding subparagraph
22 (A), by inserting “with respect to a determina-
23 tion of a species to be an endangered species or
24 a threatened species” after “any regulation”;
25 and

1 (B) in subparagraph (B), by striking “the
2 State agency in” and inserting “the Governor
3 of, and State agency in,”.

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

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

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

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

12 “(B) If the recovery plan is issued before the
13 criteria required under section 5(c)(1)(A) and (B)
14 are established or if no recovery plan exists for the
15 species, the factors for determination that a species
16 is an endangered species or a threatened species set
17 forth in subsections (a)(1) and (b)(1).

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

21 “(D) A determination that the species is no
22 longer an endangered species or threatened species
23 or in danger of extinction, based on an analysis of
24 the factors that are the basis for listing under sec-
25 tion 4(a)(1).”.

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

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

3 (1) by striking subsections (f) and (g) and re-
4 designating subsections (h) and (i) as subsections (f)
5 and (g), respectively;

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

8 (A) in the heading by striking “AGENCY”
9 and inserting “SECRETARIAL”;

10 (B) in the matter preceding paragraph (1),
11 by striking “the purposes of this section are
12 achieved” and inserting “this section is imple-
13 mented”;

14 (C) by redesignating paragraph (4) as
15 paragraph (5);

16 (D) in paragraph (3) by striking “and”
17 after the semicolon at the end, and by inserting
18 after paragraph (3) the following:

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

21 (E) in paragraph (5), as redesignated by
22 subparagraph (C) of this paragraph, by striking
23 “subsection (f) of this section” and inserting
24 “section 5”;

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

1 (A) by inserting “COMMENTS.—” before
2 the first sentence;

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

7 (C) by striking “a State agency” the sec-
8 ond place it appears and inserting “a Governor,
9 State agency, county (or equivalent jurisdic-
10 tion), or unit of local government”;

11 (D) by striking “the State agency” and in-
12 serting “the Governor, State agency, county (or
13 equivalent jurisdiction), or unit of local govern-
14 ment, respectively”; and

15 (E) by striking “agency’s”.

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

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

19 (1) by redesignating subsections (a) and (b) as
20 subsections (k) and (l), respectively;

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

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

4 “RECOVERY PLANS AND LAND ACQUISITION

5 “SEC. 5. (a) RECOVERY PLANS.—The Secretary
6 shall, in accordance with this section, develop and imple-
7 ment a plan (in this subsection referred to as a ‘recovery
8 plan’) for the species determined under section 4(a)(1) to
9 be an endangered species or a threatened species, unless
10 the Secretary finds that such a plan will not promote the
11 conservation and survival of the species.

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

21 “(2)(A) In the case of any species determined to be
22 an endangered species or threatened species after the date
23 of the enactment of the Threatened and Endangered Spe-
24 cies Recovery Act of 2005, the Secretary shall publish a
25 final recovery plan for a species within 2 years after the
26 date the species is listed under section 4(c).

1 “(B) Nothing in this paragraph shall be construed
2 to affect the authority of the Secretary to issue any emer-
3 gency regulation pursuant to section 4(b)(6).

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

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

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

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

23 “(i) a recovery plan for the species is not pub-
24 lished under this Act before the date of enactment
25 of the Threatened and Endangered Species Recovery

1 Act of 2005 and the Secretary finds such a plan
2 would promote the conservation and survival of the
3 species; or

4 “(ii) a recovery plan for the species is published
5 under this Act before such date of enactment and
6 the Secretary finds revision of such plan is war-
7 ranted.

8 “(C)(i) The Secretary shall, to the maximum extent
9 practicable, adhere to the list and tentative schedule pub-
10 lished under subparagraph (A)(ii) in developing or revising
11 recovery plans pursuant to this paragraph.

12 “(ii) The Secretary shall provide the reasons for any
13 deviation from the list and tentative schedule published
14 under subparagraph (A)(ii), in each report to the Congress
15 under subsection (e).

16 “(4) The Secretary, using the priority ranking system
17 required under paragraph (3), shall prepare or revise such
18 plans within 10 years after the date of the enactment of
19 the Threatened and Endangered Species Recovery Act of
20 2005.

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

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

7 “(ii) A description of such site-specific or other
8 measures that would achieve the criteria established
9 under clause (i), including such intermediate meas-
10 ures as are warranted to effect progress toward
11 achievement of the criteria.

12 “(iii) Estimates of the time required and the
13 costs, including direct, indirect and cumulative costs,
14 to carry out those measures described under clause
15 (ii), including, to the extent practicable, estimated
16 costs for any recommendations, by the recovery
17 team, or by the Secretary if no recovery team is se-
18 lected, that any of the areas identified under clause
19 (iv) be acquired on a willing seller basis.

20 “(iv) An identification of those specific areas
21 that are of special value to the conservation of the
22 species.

23 “(B) Those members of any recovery team appointed
24 pursuant to subsection (d) with relevant scientific exper-
25 tise, or the Secretary if no recovery team is appointed,

1 shall, based solely on the best available scientific data, es-
2 tablish the objective, measurable criteria required under
3 subparagraph (A)(i).

4 “(C)(i) If the recovery team, or the Secretary if no
5 recovery team is appointed, determines in the recovery
6 plan that insufficient best available scientific data exist
7 to determine criteria or measures under subparagraph (A)
8 that could achieve a determination to remove the species
9 from the lists published under section 4(c), the recovery
10 plan shall contain interim criteria and measures that are
11 likely to improve the status of the species.

12 “(ii) If a recovery plan does not contain the criteria
13 and measures provided for by clause (i) of subparagraph
14 (A), the recovery team for the plan, or the Secretary if
15 no recovery team is appointed, shall review the plan at
16 intervals of no greater than 5 years and determine if the
17 plan can be revised to contain the criteria and measures
18 required under subparagraph (A).

19 “(iii) If the recovery team or the Secretary, respec-
20 tively, determines under clause (ii) that a recovery plan
21 can be revised to add the criteria and measures provided
22 for under subparagraph (A), the recovery team or the Sec-
23 retary, as applicable, shall revise the recovery plan to add
24 such criteria and measures within 2 years after the date
25 of the determination.

1 “(D) In specifying measures in a recovery plan under
2 subparagraph (A), a recovery team or the Secretary, as
3 applicable, shall—

4 “(i) whenever possible include alternative meas-
5 ures; and

6 “(ii) in developing such alternative measures,
7 the Secretary shall seek to identify, among such al-
8 ternative measures of comparable expected efficacy,
9 the alternative measures that are least costly.

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

14 “(2) Any area that, immediately before the enactment
15 of the Threatened and Endangered Species Recovery Act
16 of 2005, is designated as critical habitat of an endangered
17 species or threatened species shall be treated as an area
18 described in subparagraph (A)(iv) until a recovery plan
19 for the species is developed or the existing recovery plan
20 for the species is revised pursuant to subsection (b)(3).

21 “(d) RECOVERY TEAMS.—(1) The Secretary shall
22 promulgate regulations that provide for the establishment
23 of recovery teams for development of recovery plans under
24 this section.

25 “(2) Such regulations shall—

1 “(A) establish criteria and the process for se-
2 lecting the members of recovery teams, and the pro-
3 cess for preparing recovery plans, that ensure that
4 each team—

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

7 “(ii) includes sufficient representation
8 from constituencies with a demonstrated direct
9 interest in the species and its conservation or in
10 the economic and social impacts of its conserva-
11 tion to ensure that the views of such constitu-
12 encies will be considered in the development of
13 the plan;

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

16 “(C) ensure that recovery plans are scientif-
17 ically rigorous and that the evaluation of costs re-
18 quired by paragraphs (1)(A)(iii) and (1)(D) of sub-
19 section (c) are economically rigorous; and

20 “(D) provide guidelines for circumstances in
21 which the Secretary may determine that appoint-
22 ment of a recovery team is not necessary or advis-
23 able to develop a recovery plan for a specific species,
24 including procedures to solicit public comment on
25 any such determination.

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

5 “(e) REPORTS TO CONGRESS.—(1) The Secretary
6 shall report every two years to the Committee on Re-
7 sources of the House of Representatives and the Com-
8 mittee on Environment and Public Works of the Senate
9 on the status of all domestic endangered species and
10 threatened species and the status of efforts to develop and
11 implement recovery plans for all domestic endangered spe-
12 cies and threatened species.

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

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

17 “(i) changes in population, range, or
18 threats; and

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

20 “(B) for each species, a measurement of the de-
21 gree of confidence in the reported status of such spe-
22 cies, based upon a quantifiable parameter developed
23 for such purposes.

24 “(f) PUBLIC NOTICE AND COMMENT.—The Secretary
25 shall, prior to final approval of a new or revised recovery

1 plan, provide public notice and an opportunity for public
2 review and comment on such plan. The Secretary shall
3 consider all information presented during the public com-
4 ment period prior to approval of the plan.

5 “(g) STATE COMMENT.—The Secretary shall, prior
6 to final approval of a new or revised recovery plan, provide
7 a draft of such plan and an opportunity to comment on
8 such draft to the Governor of, and State agency in, any
9 State to which such draft would apply. The Secretary shall
10 include in the final recovery plan the Secretary’s response
11 to the comments of the Governor and the State agency.

12 “(h) CONSULTATION.—(1) The Secretary shall, prior
13 to final approval of a new or revised recovery plan, consult
14 with any pertinent State, Indian tribe, or regional or local
15 land use agency or its designee.

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

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

21 “(B) with respect to Alaska, the Metlakatla Indian
22 Community.

23 “(i) USE OF PLANS.—(1) Each Federal agency shall
24 consider any relevant best available scientific data con-
25 tained in a recovery plan in any analysis conducted under

1 section 102 of the National Environmental Policy Act of
2 1969 (42 U.S.C. 4332).

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

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

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

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

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

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

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

4 “(j) RECOVERY PLANS FOR SPECIES OCCUPYING
5 MORE THAN ONE STATE.—Any recovery plan under sec-
6 tion 5 for an endangered species or a threatened species
7 that occupies more than one State shall identify criteria
8 and actions pursuant to subsection (c)(1) of section 5 for
9 each State that are necessary so that the State may pur-
10 sue a determination that the portion of the species found
11 in that State may be removed from lists published under
12 section 4(c).”.

13 (c) THREATENED AND ENDANGERED SPECIES IN-
14 CENTIVES PROGRAM.—

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

18 “(m) THREATENED AND ENDANGERED SPECIES IN-
19 CENTIVES PROGRAM.—(1) The Secretary may enter into
20 species recovery agreements pursuant to paragraph (2)
21 and species conservation contract agreements pursuant to
22 paragraph (3) with persons, other than agencies or depart-
23 ments of the Federal Government or State governments,
24 under which the Secretary is obligated, subject to the
25 availability of appropriations, to make annual payments

1 or provide other compensation to the persons to implement
2 the agreements.

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

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

11 “(i) shall require that the person shall carry
12 out, on the land owned or controlled by the person,
13 activities that—

14 “(I) protect and restore habitat for covered
15 species that are species determined to be endan-
16 gered species or threatened species pursuant to
17 section 4(a)(1);

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

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

22 “(ii) shall specify such a management plan that
23 includes—

24 “(I) identification of the covered species;

1 “(II) a description of the land to which the
2 agreement applies; and

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

5 “(iii) shall provide sufficient documentation to
6 establish ownership or control by the person of the
7 land to which the agreement applies;

8 “(iv) shall include the amounts of the annual
9 payments or other compensation to be provided by
10 the Secretary to the person under the agreement
11 from funds appropriated under section 18(a)(1), and
12 the terms under which such payments or compensa-
13 tion shall be provided; and

14 “(v) shall include—

15 “(I) the duties of the person;

16 “(II) the duties of the Secretary;

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

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

1 lation by the person or the Secretary shall be
2 given.

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

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

13 “(B) A species conservation contract agreement en-
14 tered into under this paragraph by the Secretary with a
15 person—

16 “(i) shall provide that the person shall, on the
17 land owned by the person—

18 “(I) carry out conservation practices to
19 meet one or more of the goals set forth in
20 clauses (i) through (iii) of subparagraph (C) for
21 one or more covered species, that are species
22 that are determined to be endangered species or
23 threatened species pursuant to section 4(a)(1),
24 species determined to be candidate species pur-
25 suant to section 4(b)(3)(B)(iii), or species sub-

1 ject to comparable designations under State
2 law; and

3 “(II) specify and implement a management
4 plan for the covered species;

5 “(ii) shall specify such a management plan that
6 includes—

7 “(I) identification of the covered species;

8 “(II) a description in detail of the con-
9 servation practices for the covered species that
10 the person shall undertake;

11 “(III) a description of the land to which
12 the agreement applies; and

13 “(IV) a schedule of approximate deadlines,
14 whether one-time or periodic, for undertaking
15 the conservation practices described pursuant to
16 subclause (II);

17 “(V) a description of existing or future
18 economic activities on the land to which the
19 agreement applies that are compatible with the
20 conservation practices described pursuant to
21 subclause (II) and generally with conservation
22 of the covered species;

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

24 and

25 “(iv) shall include—

1 “(I) the duties of the person;

2 “(II) the duties of the Secretary;

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

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

13 “(V) terms and conditions for early termi-
14 nation of the agreement by the person before
15 the management plan is fully implemented or
16 termination of the agreement by the Secretary
17 in the case of a violation by the person that is
18 not remedied under subclause (IV), including
19 any requirement for the person to refund all or
20 part of any payments received under subpara-
21 graph (E) and any interest thereon.

22 “(C) The Secretary shall establish priorities for the
23 selection of species conservation contract agreements, or
24 groups of such agreements for adjacent or proximate

1 lands, to be entered into under this paragraph that ad-
2 dress the following factors:

3 “(i) The potential of the land to which the
4 agreement or agreements apply to contribute signifi-
5 cantly to the conservation of an endangered species
6 or threatened species or a species with a comparable
7 designation under State law.

8 “(ii) The potential of such land to contribute
9 significantly to the improvement of the status of a
10 candidate species or a species with a comparable
11 designation under State law.

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

13 “(iv) The number of covered species in the
14 agreement or agreements.

15 “(v) The degree of urgency for the covered spe-
16 cies to implement the conservation practices in the
17 management plan or plans under the agreement or
18 agreements.

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

22 “(D) The Secretary shall enter into a species con-
23 servation contract agreement submitted by a person, if the
24 Secretary finds that the person owns such land or has suf-

1 ficient control over the use of such land to ensure imple-
2 mentation of the management plan under the agreement.

3 “(E)(i) Upon entering into a species conservation
4 contract agreement with the Secretary pursuant to this
5 paragraph, a person shall receive the financial assistance
6 provided for in this subparagraph.

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

9 “(I) in the case of a 30-year agreement, an an-
10 nual contract payment in an amount equal to 100
11 percent of the person’s actual costs to implement the
12 conservation practices described in the management
13 plan under the terms of the agreement;

14 “(II) in the case of a 20-year agreement, an an-
15 nual contract payment in an amount equal to 80
16 percent of the person’s actual costs to implement the
17 conservation practices described in the management
18 plan under the terms of the agreement; and

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

24 “(iii)(I) If the person receiving contract payments
25 pursuant to clause (ii) receives any other State or Federal

1 funds to defray the cost of any conservation practice, the
2 cost of such practice shall not be eligible for such contract
3 payments.

4 “(II) Contributions of agencies or organizations to
5 any conservation practice other than the funds described
6 in subclause (I) shall not be considered as costs of the
7 person for purposes of the contract payments pursuant to
8 clause (iii).

9 “(F) A species conservation contract agreement may
10 list other Federal program payments that incidentally con-
11 tribute to conservation of a listed species. The head of a
12 Federal agency shall not use the payments for the pur-
13 poses of implementing the species conservation contract
14 agreement.

15 “(4)(A) Upon request of a person seeking to enter
16 into an agreement pursuant to this subsection, the Sec-
17 retary may provide to such person technical assistance in
18 the preparation, and management training for the imple-
19 mentation, of the management plan for the agreement.

20 “(B) Any State agency, local government, nonprofit
21 organization, or federally recognized Indian tribe may pro-
22 vide assistance to a person in the preparation of a man-
23 agement plan, or participate in the implementation of a
24 management plan, including identifying and making avail-
25 able certified fisheries or wildlife biologists with expertise

1 in the conservation of species for purposes of the prepara-
2 tion or review and approval of management plans for spe-
3 cies conservation contract agreements under paragraph
4 (3)(D)(iii).

5 “(5) Upon any conveyance or other transfer of inter-
6 est in land that is subject to an agreement under this sub-
7 section—

8 “(A) the agreement shall terminate if the agree-
9 ment does not continue in effect under subparagraph
10 (B);

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

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

23 “(6) An agreement under this subsection may be re-
24 newed with the mutual consent of the Secretary and the

1 person who entered into the agreement or to whom the
2 agreement has been transferred under paragraph (5).

3 “(7) The Secretary shall make annual payments
4 under this subsection as soon as possible after December
5 31 of each calendar year.

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

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

18 (2) Subsection (e)(2) of section 7 (16 U.S.C.
19 1536) (as redesignated by section 11(d)(2) of this
20 Act) is amended by inserting “or in an agreement
21 under section 5(m)” after “section”.

22 (d) CONFORMING AMENDMENTS.—

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

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

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

6 (B) in section 115(b)(2) (16 U.S.C.
7 1383b(b)(2)) by striking “section 4(f) of the
8 Endangered Species Act of 1973 (16 U.S.C.
9 1533(f))” and inserting “section 5 of the En-
10 dangered Species Act of 1973”.

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

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

13 (1) in subsection (c), by adding at the end the
14 following:

15 “(3)(A) Any cooperative agreement entered into by
16 the Secretary under this subsection may also provide for
17 development of a program for conservation of species de-
18 termined to be candidate species pursuant to section
19 4(b)(3)(B)(iii) or any other species that the State and the
20 Secretary agree is at risk of being determined to be an
21 endangered species or threatened species under section
22 4(a)(1) in that State. Upon completion of consultation on
23 the agreement pursuant to subsection (e)(2), any inci-
24 dental take statement issued on the agreement shall apply
25 to any such species, and to the State and any landowners

1 enrolled in any program under the agreement, without fur-
2 ther consultation (except any additional consultation pur-
3 suant to subsection (e)(2)) if the species is subsequently
4 determined to be an endangered species or a threatened
5 species and the agreement remains an adequate and active
6 program for the conservation of endangered species and
7 threatened species.

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

13 “(C) The Secretary shall periodically review each co-
14 operative agreement under this subsection and seek to
15 make changes the Secretary considers necessary for the
16 conservation of endangered species and threatened species
17 to which the agreement applies.

18 “(4) Any cooperative agreement entered into by the
19 Secretary under this subsection that provides for the en-
20 rollment of private lands or water rights in any program
21 established by the agreement shall ensure that the decision
22 to enroll is voluntary for each owner of such lands or water
23 rights.

24 “(5)(A) The Secretary may enter into a cooperative
25 agreement under this subsection with an Indian tribe in

1 substantially the same manner in which the Secretary may
2 enter into a cooperative agreement with a State.

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

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

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

10 (2) in subsection (d)(1)—

11 (A) by striking “pursuant to subsection (c)
12 of this section”;

13 (B) by striking “or to assist” and all that
14 follows through “section 5(j)” and inserting
15 “pursuant to subsection (c)(1) and (2) or to ad-
16 dress candidate species or other species at risk
17 and recovered species pursuant to subsection
18 (c)(3)”;

19 (C) in subparagraph (F), by striking
20 “monitoring the status of candidate species”
21 and inserting “developing a conservation pro-
22 gram for, or monitoring the status of, candidate
23 species or other species determined to be at risk
24 pursuant to subsection (c)(3)”;

25 (3) in subsection (e)—

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

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

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

8 “(2) Any cooperative agreement entered into by the
9 Secretary under subsection (c) shall be subject to section
10 7(a)(2) through (d) and regulations implementing such
11 provisions only before—

12 “(A) the Secretary enters into the agreement;
13 and

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

16 “(i) addresses or affects species that are
17 determined to be endangered species or threat-
18 ened species and the species were not addressed
19 or the effects were not considered previously in
20 the agreement; or

21 “(ii) new information about any species ad-
22 dressed in the agreement that the Secretary de-
23 termines—

24 “(I) constitutes the best available sci-
25 entific data; and

1 “(II) indicates that the agreement
2 may have adverse effects on the species
3 that had not been considered previously
4 when the agreement was entered into or
5 during any revision thereof or amendment
6 thereto.

7 “(3) The Secretary may suspend any cooperative
8 agreement established pursuant to subsection (c), after
9 consultation with the Governor of the affected State, if
10 the Secretary finds during the periodic review required by
11 paragraph (1) of this subsection that the agreement no
12 longer constitutes an adequate and active program for the
13 conservation of endangered species and threatened species.

14 “(4) The Secretary may terminate any cooperative
15 agreement entered into by the Secretary under subsection
16 (c), after consultation with the Governor of the affected
17 State, if—

18 “(A) as result of the procedures of section
19 7(a)(2) through (d) undertaken pursuant to para-
20 graph (2) of this subsection, the Secretary deter-
21 mines that continued implementation of the coopera-
22 tive agreement is likely to jeopardize the continued
23 existence of endangered species or threatened spe-
24 cies, and the cooperative agreement is not amended
25 or revised to incorporate a reasonable and prudent

1 alternative offered by the Secretary pursuant to sec-
2 tion 7(b)(3); or

3 “(B) the cooperative agreement has been sus-
4 pended under paragraph (3) of this subsection and
5 has not been amended or revised and found by the
6 Secretary to constitute an adequate and active pro-
7 gram for the conservation of endangered species and
8 threatened species within 180 days after the date of
9 the suspension.”.

10 **SEC. 11. INTERAGENCY COOPERATION AND CONSULTA-**
11 **TION.**

12 (a) CONSULTATION REQUIREMENT.—Section 7(a)
13 (16 U.S.C. 1536(a)) is amended—

14 (1) in paragraph (1) in the second sentence, by
15 striking “endangered species” and all that follows
16 through the end of the sentence and inserting “spe-
17 cies determined to be endangered species and threat-
18 ened species under section 4.”;

19 (2) in paragraph (2)—

20 (A) in the first sentence by striking “ac-
21 tion” the first place it appears and all that fol-
22 lows through “is not” and inserting “agency ac-
23 tion authorized, funded, or carried out by such
24 agency is not”;

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

4 (C) in the second sentence, by striking
5 “best scientific and commercial data available”
6 and inserting “best available scientific data”;
7 and

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

10 “(B) The Secretary may identify specific agency ac-
11 tions or categories of agency actions that may be deter-
12 mined to meet the standards of this paragraph by alter-
13 native procedures to the procedures set forth in this sub-
14 section and subsections (b) through (d), except that sub-
15 sections (b)(4) and (e) may apply only to an action that
16 the Secretary finds, or concurs, does meet such standards,
17 and the Secretary shall suggest, or concur in any sug-
18 gested, reasonable and prudent alternatives described in
19 subsection (b)(3) for any action determined not to meet
20 such standards. Any such agency action or category of
21 agency actions shall be identified, and any such alternative
22 procedures shall be established, by regulation promulgated
23 prior or subsequent to the date of the enactment of this
24 Act.”;

25 (3) in paragraph (4)—

1 (A) by striking “listed under section 4”
2 and inserting “an endangered species or a
3 threatened species”; and

4 (B) by inserting “determined” after “such
5 species”; and

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

7 “(5) Any Federal agency or the Secretary, in con-
8 ducting any analysis pursuant to paragraph (2), shall con-
9 sider only the effects of any agency action that are distinct
10 from a baseline of all effects upon the relevant species that
11 have occurred or are occurring prior to the action.

12 “(6) This subsection shall not apply to any agency
13 action that may affect any species for which a permit is
14 issued under section 10 for other than scientific purposes,
15 if the action implements or is consistent with any con-
16 servation plan or agreement incorporated by reference in
17 the permit.”.

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

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

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

24 (3) in paragraph (3)(A)—

25 (A) in the first sentence—

1 (i) by striking “Promptly after” and
2 inserting “Before”;

3 (ii) by inserting “permit or license”
4 before “applicant”; and

5 (iii) by inserting “proposed” before
6 “written statement”; and

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

1 license applicant in the preparation of any sug-
2 gested reasonable and prudent alternatives.”;

3 (4) in paragraph (4)—

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

7 (B) by inserting “(A)” after “(4)”;

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

15 “(B) A statement described in this subparagraph—
16 ”; and

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

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

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

1 “(i) must be capable of successful implementa-
2 tion; and

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

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

8 (1) by striking “(1)”;

9 (2) by striking paragraph (2);

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

17 (4) in the second sentence, by striking “best
18 scientific and commercial data available” and insert-
19 ing “best available scientific data”.

20 (d) ELIMINATION OF ENDANGERED SPECIES COM-
21 MITTEE PROCESS.—Section 7 (16 U.S.C. 1536) is amend-
22 ed—

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

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

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

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

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

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

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

19 (B) by striking the second sentence.

20 **SEC. 12. EXCEPTIONS TO PROHIBITIONS.**

21 (a) **INCIDENTAL TAKE PERMITS.**—Section 10(a)(2)
22 (16 U.S.C. 1539(a)(2)) is amended—

23 (1) in subparagraph (A) by striking “and” after
24 the semicolon at the end of clause (iii), by redesignig-

1 nating clause (iv) as clause (vii), and by inserting
2 after clause (iii) the following:

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

7 “(v) measures the applicant will take to monitor
8 impacts of the plan on covered species and the effec-
9 tiveness of the plan’s measures in achieving the
10 plan’s biological goals;

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

16 (2) in subparagraph (B) by striking “and”
17 after the semicolon at the end of clause (iv), by re-
18 designating clause (v) as clause (vi), and by insert-
19 ing after clause (iv) the following:

20 “(v) the term of the permit is reasonable, tak-
21 ing into consideration—

22 “(I) the period in which the applicant can
23 be expected to diligently complete the principal
24 actions covered by the plan;

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

3 “(III) the adequacy of information under-
4 lying the plan;

5 “(IV) the length of time necessary to im-
6 plement and achieve the benefits of the plan;
7 and

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

10 (3) by striking subparagraph (C) and inserting
11 the following:

12 “(3) Any terms and conditions required to reduce or
13 offset the impacts of incidental taking or otherwise comply
14 with the requirements of paragraph (2)(B) shall be rough-
15 ly proportional in extent to the impact of the incidental
16 taking specified in the conservation plan pursuant to in-
17 paragraph (2)(A)(i). This paragraph shall not be con-
18 strued to limit the authority of the Secretary to require
19 greater than acre-for-acre mitigation where necessary to
20 address the extent of such impacts. In any case in which
21 various terms and conditions are available, the terms and
22 conditions shall be capable of successful implementation
23 and shall be consistent with the objective of the applicant
24 to the greatest extent possible.

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

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

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

1 land, water or other natural resources otherwise available
2 for development or use, under the original terms and con-
3 ditions of the permit or incorporated document.

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

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

22 “(5)(A) The Secretary shall revoke a permit issued
23 under paragraph (2) if the Secretary finds that the per-
24 mittee is not complying with the terms and conditions of
25 the permit.

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

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

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

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

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

16 (c) EXPERIMENTAL POPULATIONS.—Section 10(j)
17 (16 U.S.C. 1539(j)) is amended—

18 (1) in paragraph (1), by striking “For pur-
19 poses” and all that follows through the end of the
20 paragraph and inserting the following: “For pur-
21 poses of this subsection, the term ‘experimental pop-
22 ulation’ means any population (including any off-
23 spring arising therefrom) authorized by the Sec-
24 retary for release under paragraph (2), but only
25 when such population is in the area designated for

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

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

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

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

18 “(k) WRITTEN DETERMINATION OF COMPLIANCE.—

19 (1) A property owner (in this subsection referred to as
20 a ‘requestor’) may request the Secretary to make a written
21 determination that a proposed use of the owner’s property
22 that is lawful under State and local law will comply with
23 section 9(a), by submitting a written description of the
24 proposed action to the Secretary by certified mail.

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

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

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

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

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

22 “(5)(A) Subject to subparagraph (B), the Secretary
23 shall provide to the requestor a written determination of
24 whether the proposed use, as proposed by the requestor,
25 will comply with section 9(a), by not later than expiration

1 of the 180-day period beginning on the date of the submis-
2 sion of the request.

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

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

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

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

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

21 “(A) in the case of a written determination pro-
22 vided under paragraph (5)(A), for the 10-year period
23 beginning on the date the written determination is
24 provided; or

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

6 “(10) The Secretary may withdraw a determination
7 of compliance under this section only if the Secretary de-
8 termines that, because of unforeseen changed cir-
9 cumstances, the continuation of the use to which the de-
10 termination applies would preclude conservation measures
11 essential to the survival of any endangered species or
12 threatened species. Such a withdrawal shall take effect 5
13 days after the date the requestor receives from the Sec-
14 retary, by certified mail, notice of the withdrawal.

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

19 (e) NATIONAL SECURITY EXEMPTION.—Section 10
20 (16 U.S.C. 1539) is further amended by adding at the
21 end the following:

22 “(l) NATIONAL SECURITY.—The President, after
23 consultation with the appropriate Federal agency, may ex-
24 empt any act or omission from the provisions of this Act
25 if such exemption is necessary for national security.”.

1 (f) DISASTER DECLARATION AND PROTECTION.—
2 Section 10 (16 U.S.C. 1539) is further amended by adding
3 at the end the following:

4 “(m) DISASTER DECLARATION AND PROTECTION.—
5 (1) The President may suspend the application of any pro-
6 vision of this Act in any area for which a major disaster
7 is declared under the Robert T. Stafford Disaster Relief
8 and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

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

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

19 “(B) to address imminent threats through expe-
20 dited consideration under or waiver of any provision
21 of this Act.”.

22 (g) EXEMPTION FROM LIABILITY FOR TAKE OF
23 LISTED AQUATIC SPECIES.—Section 10 (16 U.S.C. 1539)
24 is amended by adding at the end the following:

1 “(n) EXEMPTION FROM LIABILITY FOR TAKE OF
2 LISTED AQUATIC SPECIES.—The operator of a water stor-
3 age reservoir, water diversion structure, canal, or other ar-
4 tificial water delivery facility shall not be in violation of
5 section 9(a) by reason of any take of any aquatic species
6 listed under section 4(c) that results from predation, com-
7 petition, or other adverse effects attributable to rec-
8 reational fishing programs managed by a State Agency in
9 a river basin in which the water storage reservoir, water
10 diversion structure, canal, or other artificial water delivery
11 facility is located.”.

12 **SEC. 13. PRIVATE PROPERTY CONSERVATION.**

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

15 “PRIVATE PROPERTY CONSERVATION

16 “SEC. 13. (a) IN GENERAL.—The Secretary may pro-
17 vide conservation grants (in this section referred to as
18 ‘grants’) to promote the voluntary conservation of endan-
19 gered species and threatened species by owners of private
20 property and shall provide financial conservation aid (in
21 this section referred to as ‘aid’) to alleviate the burden
22 of conservation measures imposed upon private property
23 owners by this Act. The Secretary may provide technical
24 assistance when requested to enhance the conservation ef-
25 fects of grants or aid.

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

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

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

9 “(3) must be designed to directly contribute to
10 the conservation of an endangered species or threat-
11 ened species by increasing the species’ numbers or
12 distribution; and

13 “(4) must be supported by any private property
14 owners on whose property any grant funded activi-
15 ties are carried out.

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

18 “(1) Grants that promote conservation of en-
19 dangered species or threatened species on private
20 property while making economically beneficial and
21 productive use of the private property on which the
22 conservation activities are conducted.

23 “(2) Grants that develop, promote, or use tech-
24 niques to increase the distribution or population of

1 an endangered species or threatened species on pri-
2 vate property.

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

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

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

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

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

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

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

18 “(i) within 180 days of the Secretary’s
19 issuance of a written determination that the
20 proposed use would not comply with section
21 9(a); or

22 “(ii) within 180 days after the property
23 owner is notified of a withdrawal under section
24 10(k)(10); and

1 “(C) the foregone use would be lawful under
2 State and local law and the property owner has dem-
3 onstrated that the property owner has the means to
4 undertake the proposed use.

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

7 “(A) within 270 days after receipt of a request
8 for aid unless there are unresolved questions regard-
9 ing the fair market value; or

10 “(B) at the resolution of any questions con-
11 cerning the fair market value established under sub-
12 section (g).

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

16 “(f) DOCUMENTATION OF THE FOREGONE USE.—
17 Within 30 days of the request for aid, the Secretary shall
18 enter into negotiations with the property owner regarding
19 the documentation of the foregone proposed use through
20 such mechanisms that would benefit the species such as
21 contract terms, lease terms, deed restrictions, easement
22 terms, or transfer of title. If the Secretary and the prop-
23 erty owner are unable to reach an agreement, then, within
24 60 days of the request for aid, the Secretary shall deter-
25 mine how the property owner’s foregone use shall be docu-

1 mented to benefit the species with the least impact on the
2 ownership interests of the property owner necessary to
3 document the foregone use, which shall not include trans-
4 fer of title.

5 “(g) FAIR MARKET VALUE.—For purposes of this
6 section, the fair market value of the foregone use of the
7 affected portion of the private property, including business
8 losses, is what a willing buyer would pay to a willing seller
9 in an open market. Fair market value shall take into ac-
10 count the likelihood that the foregone use would be ap-
11 proved under State and local law. The fair market value
12 shall be determined within 180 days of the documentation
13 of the foregone use. The fair market value shall be deter-
14 mined jointly by 2 licensed independent appraisers, one
15 selected by the Secretary and one selected by the property
16 owner. If the 2 appraisers fail to agree on fair market
17 value, the Secretary and the property owner shall jointly
18 select a third licensed appraiser whose appraisal within an
19 additional 90 days shall be the best and final offer by the
20 Secretary. Within one year after the date of enactment
21 of the Threatened and Endangered Species Recovery Act
22 of 2005, the Secretary shall promulgate regulations re-
23 garding selection of the jointly selected appraisers under
24 this subsection.

1 “(h) LIMITATION ON AID AVAILABILITY.—Any per-
2 son receiving aid under this section may not receive addi-
3 tional aid under this section for essentially the same fore-
4 gone use of the same property and for the same period
5 of time.

6 “(i) ANNUAL REPORTING.—The Secretary shall by
7 January 15 of each year provide a report of all aid and
8 grants awarded under this section to the Committee on
9 Resources of the House of Representatives and the Envi-
10 ronment and Public Works Committee of the Senate and
11 make such report electronically available to the general
12 public on the website required under section 14.”.

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

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

16 “PUBLIC ACCESSIBILITY AND ACCOUNTABILITY

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

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

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

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

24 “(4) all draft and final recovery plans issued
25 under section 5(a), and all final recovery plans
26 issued and in effect under section 4(f)(1) of this Act

1 as in effect immediately before the enactment of the
2 Threatened and Endangered Species Recovery Act of
3 2005;

4 “(5) all reports required under sections 5(e)
5 and 16, and all reports required under sections
6 4(f)(3) and 18 of this Act as in effect immediately
7 before the enactment of the Threatened and Endan-
8 gered Species Recovery Act of 2005; and

9 “(6) data contained in the reports referred to in
10 paragraph (5) of this section, and that were pro-
11 duced after the date of enactment of the Threatened
12 and Endangered Species Recovery Act of 2005, in
13 the form of databases that may be searched by the
14 variables included in the reports.”.

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

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

18 “ANNUAL COST ANALYSIS BY UNITED STATES FISH AND
19 WILDLIFE SERVICE

20 “SEC. 18. (a) IN GENERAL.—On or before January
21 15 of each year, the Secretary shall submit to the Con-
22 gress an annual report covering the preceding fiscal year
23 that contains an accounting of all reasonably identifiable
24 expenditures made primarily for the conservation of spe-
25 cies included on lists published and in effect under section
26 4(c).

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

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

6 “(2) expenditures by States for the fiscal year
7 covered by the report on a species-by-species basis,
8 and expenditures by States that are not attributable
9 to a specific species; and

10 “(3) based on data submitted pursuant to sub-
11 section (c), expenditures voluntarily reported by local
12 governmental entities on a species-by-species basis,
13 and such expenditures that are not attributable to a
14 specific species.

15 “(c) ENCOURAGEMENT OF VOLUNTARY SUBMISSION
16 OF DATA BY LOCAL GOVERNMENTS.—The Secretary shall
17 provide a means by which local governmental entities
18 may—

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

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

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

1 not be conditioned on the presentation of the body of any
2 animal for which reimbursement is sought.

3 “(c) **LIMITATION ON REQUIREMENT TO PRESENT**
4 **BODY.**—The Secretary may not require the owner of live-
5 stock to present the body of individual livestock as a condi-
6 tion of payment of reimbursement under this section.

7 “(d) **AUTHORIZATION OF APPROPRIATIONS.**—Pay-
8 ments under this section are subject to appropriations.”.

9 **SEC. 17. AUTHORIZATION OF APPROPRIATIONS.**

10 (a) **AUTHORIZATION.**—The Endangered Species Act
11 of 1973 is further amended by adding at the end the fol-
12 lowing:

13 “**AUTHORIZATION OF APPROPRIATIONS**

14 “**SEC. 18. (a) IN GENERAL.**—There are authorized
15 to be appropriated to carry out this Act, other than section
16 8A(e)—

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

21 “(2) to the Secretary of Agriculture to carry
22 out functions and responsibilities of the Department
23 of the Interior with respect to the enforcement of
24 this Act and the convention which pertain the impor-
25 tation of plants, such sums as are necessary for fis-
26 cal year 2006 through 2010.

1 “(b) CONVENTION IMPLEMENTATION.—There is au-
2 thORIZED to be appropriated to the Secretary of the Interior
3 to carry out section 8A(e) such sums as are necessary for
4 fiscal years 2006 through 2010.”.

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

8 **SEC. 18. MISCELLANEOUS TECHNICAL CORRECTIONS.**

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

11 (1) in subsection (a) in the first sentence by
12 striking “any endangered species or threatened spe-
13 cies listed” and inserting “any species determined to
14 be an endangered species or a threatened species”;
15 and

16 (2) in subsection (b) in paragraph (1), by strik-
17 ing “endangered species and threatened species list-
18 ed” and inserting “species determined to be endan-
19 gered species and threatened species”.

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

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

1 (2) in subsection (d), by striking “Merchant
2 Marine and Fisheries” and inserting “Resources”;
3 and

4 (3) in subsection (e)—

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

8 (B) by striking paragraph (3) and redesignating
9 paragraph (4) as paragraph (3).

10 (c) PROHIBITED ACTS.—Section 9 (16 U.S.C. 1538)
11 is amended—

12 (1) in subsection (a)—

13 (A) in paragraph (1), in the matter preceding
14 subparagraph (A), by striking “of this
15 Act, with respect to any endangered species of
16 fish or wildlife listed pursuant to section 4 of
17 this Act” and inserting “, with respect to any
18 species of fish or wildlife determined to be an
19 endangered species under section 4”;

20 (B) in paragraph (1)(G), by striking
21 “threatened species of fish or wildlife listed pursuant
22 to section 4 of this Act” and inserting
23 “species of fish or wildlife determined to be a
24 threatened species under section 4”;

1 (C) in paragraph (2), in the matter pre-
2 ceding subparagraph (A) by striking “of this
3 Act, with respect to any endangered species of
4 plants listed pursuant to section 4 of this Act”
5 and inserting “, with respect to any species of
6 plants determined to be an endangered species
7 under section 4”; and

8 (D) in paragraph (2)(E), by striking “list-
9 ed pursuant to section 4 of this Act” and in-
10 serting “determined to be a threatened species
11 under section 4”;

12 (2) in subsection (b)—

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

15 (B) in paragraph (1), in the first sentence,
16 by striking “adding such” and all that follows
17 through “: *Provided*, That” and inserting “de-
18 termining such fish or wildlife species to be an
19 endangered species or a threatened species
20 under section 4, if”; and

21 (C) in paragraph (1), in the second sen-
22 tence, by striking “adding such” and all that
23 follows through “this Act” and inserting “deter-
24 mining such fish or wildlife species to be an en-

1 dangered species or a threatened species under
2 section 4”;

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

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

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

14 (6) in subsection (f)—

15 (A) in paragraph (1), in the first sentence,
16 by striking clause (A) and inserting the fol-
17 lowing: “(A) are not determined to be endan-
18 gered species or threatened species under sec-
19 tion 4, and”; and

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

22 (d) HARSHIP EXEMPTIONS.—Section 10(b) (16
23 U.S.C. 1539(b)) is amended—

24 (1) in paragraph (1)—

1 (A) by striking “an endangered species”
2 and all that follows through “section 4 of this
3 Act” and inserting “an endangered species or a
4 threatened species and the subsequent deter-
5 mination that the species is an endangered spe-
6 cies or a threatened species under section 4”;

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

9 (C) by striking “fish or wildlife listed by
10 the Secretary as endangered” and inserting
11 “fish or wildlife determined to be an endan-
12 gered species or threatened species by the Sec-
13 retary”; and

14 (2) in paragraph (2)—

15 (A) by inserting “or a threatened species”
16 after “endangered species” each place it ap-
17 pears; and

18 (B) in subparagraph (B), by striking “list-
19 ed species” and inserting “endangered species
20 or threatened species”.

21 (e) PERMIT AND EXEMPTION POLICY.—Section
22 10(d) (16 U.S.C. 1539(d)) is amended—

23 (1) by inserting “or threatened species” after
24 “endangered species”; and

25 (2) by striking “of this Act”.

1 (f) PRE-ACT PARTS AND SCRIMSHAW.—Section 10(f)
2 (16 U.S.C. 1539(f)) is amended—

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

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

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

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

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

20 (j) SUBSTITUTION OF GENDER-NEUTRAL REF-
21 ERENCES.—

22 (1) “SECRETARY” for “he”.—The following
23 provisions are amended by striking “he” each place
24 it appears and inserting “the Secretary”:

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

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

5 (C) Section 4(b)(7) (16 U.S.C.
6 1533(b)(7)), in the matter following subpara-
7 graph (B).

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

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

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

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

12 (H) Section 10(b)(3) (16 U.S.C.
13 1539(b)(3)).

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

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

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

19 (L) Section 11(e)(5) (16 U.S.C.
20 1540(e)(5)).

21 (2) “PRESIDENT” for “he”.—Section 8(a) (16
22 U.S.C. 1537(a)) is amended in the second sentence
23 by striking “he” and inserting “the President”.

24 (3) “SECRETARY OF THE INTERIOR” for
25 “he”.—Section 8(b)(3) (16 U.S.C. 1537(b)(3)) is

1 amended by striking “he” and inserting “the Sec-
2 retary of the Interior”.

3 (4) “PERSON” for “he”.—The following provi-
4 sions are amended by striking “he” each place it ap-
5 pears and inserting “the person”:

6 (A) Section 10(f)(3) (16 U.S.C.
7 1539(f)(3)).

8 (B) Section 11(e)(3) (16 U.S.C.
9 1540(e)(3)).

10 (5) “DEFENDANT” for “he”.—The following
11 provisions are amended by striking “he” each place
12 it appears and inserting “the defendant”.

13 (A) Section 11(a)(3) (16 U.S.C.
14 1540(a)(3)).

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

17 (6) REFERENCES TO “HIM”.—

18 (A) Section 4(c)(1) (16 U.S.C. 1533(c)(1))
19 is amended by striking “him or the Secretary of
20 Commerce” each place it appears and inserting
21 “the Secretary”.

22 (B) Paragraph (6) of section 4(b) (16
23 U.S.C. 1533(b)), as redesignated by section
24 5(b)(2) of this Act, is further amended in the

1 matter following subparagraph (B) by striking
2 “him” and inserting “the Secretary”.

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

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

9 (E) Section 8A(c)(2) (16 U.S.C.
10 1537a(c)(2)) is amended by striking “him” and
11 inserting “the Secretary”.

12 (F) Section 9(d)(2)(A) (16 U.S.C.
13 1538(d)(2)(A)) is amended by striking “him”
14 each place it appears and inserting “such per-
15 son”.

16 (G) Section 10(b)(1) (16 U.S.C.
17 1539(b)(1)) is amended by striking “him” and
18 inserting “the Secretary”.

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

24 (8) REFERENCES TO “HIS”.—

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

4 (B) Section 6 (16 U.S.C. 1535) is amend-
5 ed—

6 (i) in subsection (d)(2) in the matter
7 following clause (ii) by striking “his” and
8 inserting “the Secretary’s”; and

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

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

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

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

23 (F) Section 10(b)(3) (16 U.S.C.
24 1539(b)(3)) is amended by striking “his” and
25 inserting “the Secretary’s”.

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

3 (H) Section 11 (16 U.S.C. 1540) is
4 amended—

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

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

10 (iii) in subsection (d) by striking
11 “his” and inserting “the officer’s or em-
12 ployee’s”;

13 (iv) in subsection (e)(3) in the second
14 sentence by striking “his” and inserting
15 “the person’s”; and

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

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

19 The table of contents in the first section is amend-
20 ed—

21 (1) by striking the item relating to section 5
22 and inserting the following:

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

23 and

24 (2) by striking the items relating to sections 13
25 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,

1 Code of Federal Regulations, that is required by any court
2 order issued before the date of the enactment of this Act.

3 **SEC. 21. CONSOLIDATION OF PROGRAMS.**

4 (a) TRANSFER.—The President shall, by not later
5 than one year after the date of enactment of this Act,
6 transfer to the Secretary of the Interior all duties, re-
7 sources, and responsibilities of the Secretary of Commerce
8 under the Endangered Species Act of 1973 existing imme-
9 diately before the enactment of this Act.

10 (b) CONFORMING AMENDMENT.—

11 (1) AMENDMENT.—Section 3 (16 U.S.C. 1532)
12 is further amended in paragraph (15) (relating to
13 the definition of “Secretary”) by striking “or the
14 Secretary of Commerce as program responsibilities
15 are vested pursuant to the provisions of Reorganiza-
16 tion Plan Numbered 4 of 1970”.

17 (2) EFFECTIVE DATE.—The amendment made
18 by paragraph (1) shall take effect one year after the
19 date of the enactment of this Act.

20 (c) REPORT.—No later than 180 days after the date
21 of enactment of this Act, the Secretary of the Interior and
22 the Secretary of Commerce shall jointly submit to the
23 Committee on Resources and the Committee on Appro-
24 priations of the House of Representatives, and the Com-
25 mittee on Environment and Public Works and the Com-

1 mittee on Appropriations of the Senate, a detailed descrip-
2 tion of the process by which the transfer of functions
3 under the amendment made by subsection (a) shall be im-
4 plemented.

5 (d) PRIOR DETERMINATIONS AND ACTIONS NOT AF-
6 FECTED.—This section shall not affect any determination
7 or action by the Secretary of Commerce made or taken,
8 respectively, under the Endangered Species Act of 1973
9 before the date of the enactment of this Act, except that
10 such determinations and actions shall be treated as deter-
11 minations and actions, respectively, of the Secretary of the
12 Interior.

13 **SEC. 22. REVIEW OF PROTECTIVE REGULATIONS.**

14 The Secretary of the Interior shall—

15 (1) review regulations issued before the date of
16 the enactment of this Act pursuant to section 4(d)
17 of the Endangered Species Act of 1973, in order to
18 determine whether revision of such regulations would
19 be desirable in order to facilitate and improve co-
20 operation with the States pursuant to section 6 of
21 such Act; and

22 (2) report to the Committee on Resources of
23 the House of Representatives and the Committee on
24 Environment and Public Works of the Senate re-
25 garding the findings of such review.

1 **SEC. 23. PROVISION OF INFORMATION REGARDING COM-**
2 **PLIANCE COSTS OF FEDERAL POWER ADMIN-**
3 **ISTRATIONS.**

4 (a) **CUSTOMER BILLINGS.**—The Administrator of the
5 Bonneville Power Administration, the Western Area
6 Power Administration, the Southwestern Power Adminis-
7 tration, and the Southeastern Power Administration shall
8 each include in monthly firm power customer billings sent
9 to each customer information identifying and reporting
10 such customer's share of the Federal power marketing and
11 generating agencies' direct and indirect costs incurred by
12 such administration related to compliance with the Endan-
13 gered Species Act of 1973 (16 U.S.C. 1531 et seq.) and
14 activities related to such Act.

15 (b) **DIRECT COSTS.**—In identifying and reporting di-
16 rect costs, each Administrator shall include Federal agen-
17 cy obligations related to study-related costs, capital, oper-
18 ation, maintenance, and replacement costs, and staffing
19 costs.

20 (c) **INDIRECT COSTS.**—In identifying and reporting
21 indirect costs, each Administrator shall include foregone
22 generation and replacement power costs.

23 (d) **COORDINATION.**—Each Administrator shall co-
24 ordinate identification of costs under this subsection with
25 the appropriate Federal power generating agencies.

1 **SEC. 24. SURVEY OF BLM LANDS AND FOREST SERVICE**
2 **LANDS FOR MANAGEMENT FOR RECOVERY**
3 **OF LISTED SPECIES.**

4 (a) IN GENERAL.—Not later than 2 years after the
5 date of the enactment of this Act, the Secretary of the
6 Interior shall—

7 (1) survey all lands under the administrative ju-
8 risdiction of the Bureau of Land Management and
9 all lands under the administrative jurisdiction Forest
10 Service immediately before the enactment of this
11 Act, for the purpose of assessing the value of such
12 lands for management for the recovery of any spe-
13 cies included in a list published under section 4(c)
14 of the Endangered Species Act of 1973 and for addi-
15 tion to the National Wildlife Refuge System; and

16 (2) make recommendations to the Congress for
17 managing any such lands as are appropriate as part
18 of the National Wildlife Refuge System.

19 (b) LIMITATION ON TRANSFERS.—The Secretary of
20 the Interior may not transfer administrative jurisdiction
21 pursuant to any recommendation under subsection (a)(2)
22 except as authorized by a statute enacted after the date
23 of the enactment of this Act.

1 **SEC. 25. RELATIONSHIP BETWEEN SECTION 7 CONSULTA-**
2 **TION AND INCIDENT TAKE AUTHORIZATION**
3 **UNDER MARINE MAMMAL PROTECTION ACT**
4 **OF 1972.**

5 Consultation under section 7 of the Endangered Spe-
6 cies Act of 1973 (16 U.S.C. 1536) is equivalent to a sec-
7 tion 101 incidental take authorization required under the
8 Marine Mammal Protection Act of 1972 (16 U.S.C. 1631
9 et seq.) for receiving dock building permits.

Passed the House of Representatives September 29,
2005.

Attest:

Clerk.