

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2364

To provide incentives for the conservation and recovery of endangered species,  
and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 19, 1995

Mr. SHADEGG (for himself, Mr. DELAY, Mr. MCINTOSH, Mr. LARGENT, Mr. BARTON of Texas, Mrs. CUBIN, Mr. SMITH of Texas, Mr. DOOLITTLE, Mr. STUMP, and Mr. RADANOVICH) introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committees on the Judiciary and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide incentives for the conservation and recovery of  
endangered 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Endangered Species  
5 Recovery and Conservation Incentive Act of 1995”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds and declares  
8 that—

1           (1) the United States has a unique and remark-  
2           able natural heritage rich in fish, wildlife, and plants  
3           that the people of the United States wish to conserve  
4           for the well-being and benefit of future generations;

5           (2) in numerous instances we have successfully  
6           demonstrated the ability to restore, improve, and ef-  
7           fectively manage natural resources including fish,  
8           wildlife, plants, and habitat;

9           (3) the United States has done so because of  
10          the creativity and ingenuity of our single greatest re-  
11          source, our people;

12          (4) successful conservation programs must en-  
13          courage private stewardship through voluntary, in-  
14          centive-based programs to enlist the cooperation of  
15          owners of private property and invigorate their con-  
16          servation ethic;

17          (5) successful conservation efforts encourage  
18          conservation through commerce, including the pri-  
19          vate propagation of animals and plants, to take ad-  
20          vantage of the resourceful, creative and energetic  
21          abilities of the people of the United States;

22          (6) the primary responsibility for conservation  
23          of fish, wildlife, and plants, including those which  
24          are endangered, rests with the States;

1           (7) Federal conservation efforts will only be  
2 successful if the sanctity of property rights and per-  
3 petuation of vigorous human enterprise are ensured;

4           (8) effective Federal conservation efforts shall  
5 ensure the wise use of the vast Federal estate to en-  
6 sure a continuous supply of resources critical to the  
7 people of the United States while ensuring these re-  
8 sources are available for future generations;

9           (9) Federal conservation actions should incur  
10 the lowest cost possible to citizens and taxpayers  
11 and ensure efficient use of scarce conservation re-  
12 sources;

13           (10) the United States should provide incen-  
14 tives for State, local, and private conservation efforts  
15 to enable and assist the State, local governments,  
16 and private sectors to create, maintain, and imple-  
17 ment effective endangered species programs and  
18 should affirmatively intervene in fish, wildlife, and  
19 plant recovery conservation efforts where there is a  
20 direct and substantial effect on interstate commerce  
21 and State, local and private efforts have proven inef-  
22 fective;

23           (11) the constitutionally recognized rights  
24 should be protected and accounted for in carrying  
25 out the purposes and provisions of this Act;

1           (12) the costs of programs which benefit society  
2           as a whole should not be borne by individuals but  
3           should be shared equally by the public which benefits  
4           from those programs; and

5           (13) the provisions of this Act and the actions  
6           authorized herein are consistent with and meet the  
7           obligations imposed by all duly adopted and valid  
8           international treaties and agreements to which the  
9           United States is a party as of the date of enactment  
10          hereof.

11          (b) PURPOSES.—The purposes of this Act are to—

12           (1) provide conservation and recovery, in those  
13           cases where it is feasible to recover endangered spe-  
14           cies, and therefore conserve biodiversity;

15           (2) ensure that the needs and rights of people  
16           are accounted for in decisionmaking pertaining to  
17           endangered species recovery and conservation;

18           (3) ensure that determination of species as en-  
19           dangered, recovery and conservation efforts and de-  
20           cisions are made only upon valid factual and sci-  
21           entific bases; and

22           (4) to provide incentives for the recovery and  
23           conservation of endangered species.

1 **SEC. 3. DEFINITIONS.**

2 For the purposes of this Act, the following definitions  
3 apply:

4 (1) The term “animal” means any wild species,  
5 subspecies, or distinct population of fish or wildlife  
6 or any viable egg thereof or any parts thereof ob-  
7 tained in violation of this Act. The term animal shall  
8 not include any privately owned specimen, eggs, part  
9 or products thereof, nor shall it include any micro-  
10 organism.

11 (2) The term “plant” includes any wild species,  
12 subspecies, or distinct population of plant and any  
13 viable seed, root or part thereof obtained in violation  
14 of this Act. The term plant shall not include any pri-  
15 vately owned specimens, seed, root, part or products  
16 thereof, nor shall it include any microorganism.

17 (3) The term “endangered,” with respect to a  
18 wild animal or a wild plant, means a species has  
19 been determined by the Secretary under section 5 to  
20 be in imminent danger of extinction or likely to be-  
21 come in danger of extinction throughout all or a sig-  
22 nificant portion of its range other than a species de-  
23 termined by the Secretary to constitute a pest whose  
24 protection under the provisions of this Act would  
25 present a substantial risk to man.

1           (4) Except as otherwise provided herein, the  
2 term “injure” means, with respect to a member of  
3 an endangered species, an action which directly re-  
4 sults in physical harm which will significantly reduce  
5 the member’s chance of survival other than an in-  
6 jury brought about as an unintended consequence of  
7 habitat modification or alteration.

8           (5) The terms “conserve,” “conserving,” and  
9 “conservation” mean to take actions to improve a  
10 negative trend in or to stabilize the condition of an  
11 endangered species, including all activities associated  
12 with resources management such as habitat manage-  
13 ment and alteration, habitat acquisition, propaga-  
14 tion, harvest, cultivation, live trapping, transplan-  
15 tation, census, research, and technical assistance  
16 and support.

17           (6) The term “State” means any of the several  
18 States, the District of Columbia, the Commonwealth  
19 of Puerto Rico, American Samoa, the Virgin islands  
20 and the Pacific islands under United States sov-  
21 ereignty.

22           (7) The term “State agency” means any agen-  
23 cy, department, board, commission, or other govern-  
24 mental agency or other entity designated by the leg-  
25 islative body of the State to have responsibility for

1 the management and conservation for fish, wildlife,  
2 or plant resources within the State: *Provided, how-*  
3 *ever,* That the legislative body of the State shall de-  
4 termine which agency shall carry out the responsibil-  
5 ities assigned to State agencies under this Act and  
6 to what extent each such agency shall act pursuant  
7 thereto.

8 (8) The term “Secretary”, except as otherwise  
9 herein provided, means the Secretary of the Interior  
10 or the Secretary of Commerce as program respon-  
11 sibilities are vested pursuant to the provisions of Re-  
12 organization Plan Numbered 4 of 1970; except that  
13 with respect to the enforcement of the provisions of  
14 this Act and the Convention on International Trade  
15 in Endangered Species of Wild Fauna and Flora  
16 signed on March 3, 1973, (including the appendices  
17 thereto) which pertain to the importation or expor-  
18 tation of terrestrial plants, the term also means the  
19 Secretary of Agriculture.

20 (9) The term “Federal agency” means any de-  
21 partment, agency, Government corporation or instru-  
22 mentality of the United States.

23 (10)(A) The term “person” means—

24 (i) an individual, corporation, partnership,  
25 trust, association, or other private entity;

1           (ii) any State, municipality, or political  
2 subdivision of a State;

3           (iii) any officer, employee, agent, agency,  
4 department or instrumentality of the Federal  
5 Government, of any State, municipality, or po-  
6 litical subdivision of a State, or of any foreign  
7 government; and

8           (iv) any other entity subject to the jurisdic-  
9 tion of the United States.

10       (B) The term “non-Federal person” means—

11           (i) a person described in subparagraph (A)  
12 (i), (ii), or (iv); and

13           (ii) any officer, employee, agent, agency,  
14 department or instrumentality of any State,  
15 municipality, political subdivision of a State,  
16 foreign government, or Indian tribe.

17       (11) The term “vertebrate species” means any  
18 member of the sub-phylum vertebrata including any  
19 mammal, bird, reptile, amphibian, or fish.

20       (12) The term “recover” means to improve the  
21 condition of an endangered species to the point at  
22 which it is no longer endangered within the meaning  
23 of this Act.

24       (13) The term “net benefit” means an action  
25 which, on its own or in the context of other actions,

1 contributes to furthering the conservation of an en-  
2 dangered species.

3 (14) The term “feasible” means determined by  
4 the Secretary to be attainable when biological, cli-  
5 matic, technical, economic, budgetary, legal, social,  
6 and other limiting factors have been taken into con-  
7 sideration.

8 (15) The term “trespassing” means entering  
9 into privately owned land without the consent of the  
10 landowner including any person having a possessory  
11 interest in said land except where expressly per-  
12 mitted by State or local law: *Provided*, That said  
13 landowner may consent to said entry after the fact.

14 (16) The term “shall” means mandatory.

15 (17) The term “may” means precatory.

16 (18) The term “habitat” means the geographic  
17 area which contains the factors necessary for an en-  
18 dangered species to carry out its range of life and  
19 reproductive functions and which presently supports  
20 a viable population of the animal or plant.

21 (19) The term “property” means all property  
22 protected under the fifth amendment to the Con-  
23 stitution of the United States, any applicable Fed-  
24 eral or State law and includes without limitation:  
25 real property or any interest therein; the right to use

1 or receive water; rents, issues and profits of land;  
2 contracts; property provided by or memorialized in  
3 contracts; and any interest understood to be prop-  
4 erty based on custom, usage, common law, or mutu-  
5 ally reinforcing understandings sufficiently well-  
6 grounded in law to back a claim of interest.

7 (20) The term “endangered species” means any  
8 animal or plant that has been determined to be en-  
9 dangered by the Secretary in accordance with sec-  
10 tion 5 and any species that on the date of enactment  
11 of this Act is included in a list published under sec-  
12 tion 4(C) of the Endangered Species Act of 1973  
13 (16 U.S.C. 1533(C)).

14 **SEC. 4. RECOVERY.**

15 (a) RECOVERY PLANS AND STATEMENTS.—The Sec-  
16 retary shall within 2 years after the listing of an animal  
17 or plant as endangered under section 5 develop a plan for  
18 the conservation or recovery of the endangered species, un-  
19 less he finds that such a plan will not promote the con-  
20 servation or recovery of the endangered species, in which  
21 case he shall develop a conservation or recovery statement.

22 (1) PLANS.—The Secretary, in developing and  
23 implementing plans, shall, to the maximum extent  
24 practicable give priority to those endangered species  
25 that are most likely to benefit from such plans and

1 give priority to those endangered species that are  
2 more genetically complex, taxonomically unique or  
3 ecologically, medicinally or economically valuable.  
4 The Secretary shall incorporate in the plan for an  
5 endangered species—

6 (A) a description of such site-specific man-  
7 agement actions as may be necessary to achieve  
8 the plan's goal for the conservation or recovery  
9 of the endangered species;

10 (B) objective, measurable, and feasible cri-  
11 teria which, if met, would result in a determina-  
12 tion, in accordance with the provisions of sec-  
13 tion 5, that the endangered species be removed  
14 from the list published under that section in the  
15 instances where this is determined to be feasible  
16 in accord with section 5;

17 (C) estimates of the time required and the  
18 cost to carry out those measures needed to  
19 achieve the plan's goal and to achieve inter-  
20 mediate steps toward that goal;

21 (D) population goals for conservation or  
22 recovery of the endangered species and the  
23 bases for establishing the stated goals;

24 (E) estimates of the endangered species  
25 present population and distribution;

1 (F) identifiable social and economic bene-  
2 fits of conserving the endangered species; and

3 (G) a description of the animals or plants  
4 of the same species or sub-genus and the status  
5 of those animals and plants including distribu-  
6 tion and population and the reliability and va-  
7 lidity of such data.

8 (2) STATEMENTS.—For those endangered spe-  
9 cies for which the Secretary chooses not to develop  
10 and implement a plan, the Secretary shall develop a  
11 conservation or recovery statement. The Secretary,  
12 in developing statements shall give priority to those  
13 endangered species which are more genetically com-  
14 plex, taxonomically unique or ecologically, medici-  
15 nally and economically valuable. The Secretary shall,  
16 to the maximum extent practicable, incorporate in  
17 each statement the matters specified in subpara-  
18 graphs (B) through (G) of paragraph 1.

19 (3) PUBLIC COMMENT.—Within 18 months  
20 after the date of listing an animal or plant as endan-  
21 gered the Secretary shall make available for public  
22 comment for a period of at least 90 days a draft of  
23 a plan or a statement for the endangered species  
24 by—

1 (A) publishing a notice of the draft of a  
2 plan or a statement in a newspaper of general  
3 circulation in each area of the United States in  
4 which the animal or plant is believed to occur,  
5 information on how to obtain a copy and in-  
6 structions for submitting comments or request-  
7 ing a public hearing;

8 (B) providing information on how to obtain  
9 a copy and instructions for submitting com-  
10 ments or for requesting a public hearing to—

11 (i) each State or county or equivalent  
12 jurisdiction in which the endangered spe-  
13 cies is believed to occur;

14 (ii) insofar as practical, and in co-  
15 operation with the Secretary of State, each  
16 foreign nation in which the animal or plant  
17 is believed to occur or whose citizens har-  
18 vest the animal or plant on the high seas;

19 (iii) such professional scientific orga-  
20 nizations or individuals as the Secretary  
21 considers appropriate; and

22 (iv) each owner of property on which  
23 the endangered species is believed to occur,  
24 where reasonably feasible to provide such  
25 individual notice.

1 (C) promptly holding, on request, one or  
2 more public hearings on the draft plan or state-  
3 ment at a location reasonably convenient to the  
4 affected public, if any affected person files a re-  
5 quest for such a hearing within 45 days after  
6 the date of publication of notice of the draft  
7 plan; and

8 (D) in addition the Secretary shall provide  
9 a copy of the draft plan or statement to any  
10 person requesting a copy. The Secretary shall  
11 not charge any person requesting a copy of the  
12 plan or statement for the cost of providing said  
13 copy if the person requesting the copy certifies  
14 that the requester is an owner of property on  
15 which the endangered species may exist, is a  
16 representative of an owner or owners of such  
17 property or is a person who may be directly or  
18 substantially affected by the existence of the en-  
19 dangered species.

20 (4) PLAN AND STATEMENT APPROVAL.—After  
21 taking comments submitted in accordance with this  
22 subsection, the Secretary shall amend the draft plan  
23 or statement if necessary and then approve the plan  
24 or statement.

1 (5) PUBLIC NOTIFICATION.—Upon approval of  
2 the plan the Secretary shall—

3 (A) publish in the Federal Register a sum-  
4 mary of the plan or statement and information  
5 on how to obtain a copy;

6 (B) provide without charge a copy of the  
7 plan or statement, or information on how to ob-  
8 tain a copy to those who submitted comments  
9 or requested a copy or public hearing under  
10 paragraph (3); and

11 (C) publish a notice of the approved plan  
12 or statement in a newspaper of general circula-  
13 tion in each area of the United States in which  
14 the animal or plant is believed to occur and in-  
15 formation on how to obtain a copy.

16 (6) AMENDMENT.—The Secretary may amend  
17 an approved plan through the rulemaking process.

18 (7) OUTSIDE ASSISTANCE.—The Secretary, in  
19 developing plans or statements, may procure the  
20 services, through the use of a competitive bidding  
21 process or other means, of appropriate public and  
22 private agencies and institutions, and other persons.

23 (8) FEDERAL ADVISORY COMMITTEE ACT.—Re-  
24 covery teams appointed pursuant to this subsection

1 shall be subject to the Federal Advisory Committee  
2 Act (5 U.S.C. App.).

3 (b) RECOVERY MANAGEMENT.—

4 (1) TECHNICAL ASSISTANCE, VOLUNTARY  
5 AGREEMENTS, CONSERVATION THROUGH COMMERCE  
6 AND OTHER MEASURES.—If the Secretary deter-  
7 mines that it will contribute to the conservation or  
8 recovery of an endangered species, the Secretary  
9 may provide scientific, technical, administrative or  
10 financial assistance to private, State or lesser gov-  
11 ernment entities to—

12 (A) establish voluntary agreements with  
13 land owners who are non-Federal persons, of up  
14 to 25 years in duration, to improve, maintain or  
15 create habitat for endangered species;

16 (B) promote conservation through com-  
17 merce, including the private propagation of en-  
18 dangered species and the private use of endan-  
19 gered species when such use results in a net  
20 benefit to said species, by providing assistance  
21 to, entering into agreements with or otherwise  
22 encouraging for-profit and not-for-profit compa-  
23 nies, organizations, and individuals involved in  
24 such activities;

1 (C) subject to the availability of appropria-  
2 tions, acquire property from willing sellers; and

3 (D) take other nonregulatory conservation  
4 or recovery measures.

5 (2) MONITORING.—The Secretary may monitor  
6 the success of voluntary agreements and other vol-  
7 untary efforts under this section in conserving and  
8 recovering endangered species.

9 (3) OTHER REQUIRED ACTIONS.—The Sec-  
10 retary shall—

11 (A) establish a system of awards and re-  
12 wards for participation in voluntary, cooperative  
13 programs that further the conservation or re-  
14 covery of endangered species; and

15 (B) maintain a database of information  
16 valuable to the conservation of endangered spe-  
17 cies which shall be accessible to the public.

18 (4) STATE COOPERATION.—The Secretary, sub-  
19 ject to the availability of appropriations, may, with  
20 any State or States, enter into a cooperative agree-  
21 ment that is designed to directly further the man-  
22 agement of endangered species or their habitat and  
23 thereby promote the conservation or recovery of such  
24 endangered species through the provision of sci-  
25 entific, technical or managerial assistance or through

1 the provision of contracts. Any contract which the  
2 Secretary awards under this paragraph shall stipu-  
3 late that the recipient State shall provide the Sec-  
4 retary with the information relevant to the State for  
5 purposes of section 5.

6 (c) FEDERAL COOPERATION.—The Secretary may  
7 provide scientific, technical or administrative assistance to  
8 other Federal agencies for the purpose of directly further-  
9 ing the conservation or recovery of endangered species in-  
10 cluding—

11 (1) the adoption of memoranda of understand-  
12 ing or memoranda of agreement;

13 (2) the establishment of formal or informal  
14 working groups, task forces or other such entities  
15 which—

16 (A) may include representatives of State,  
17 local, or other government entities or other non-  
18 Federal persons; and

19 (B) which shall be advisory committees  
20 within the meaning of the Federal Advisory  
21 Committee Act (5 U.S.C. app.); and

22 (3) other non-regulatory conservation or recov-  
23 ery management activities.

24 (d) SECRETARIAL ASSESSMENT OF MAJOR FEDERAL  
25 PROJECTS.—

1 (1) IN GENERAL.—The Secretary shall—

2 (A) assess whether any major Federal  
3 project will directly and significantly reduce the  
4 likelihood that an endangered species may be  
5 conserved or recovered; and

6 (B) transmit the findings of that assess-  
7 ment to the head of the Federal agency con-  
8 ducting the major Federal project and the Con-  
9 gress.

10 (2) MAJOR FEDERAL PROJECT DEFINED.—For  
11 the purposes of this subsection, the term “major  
12 Federal project” means any individual Federal un-  
13 dertaking, permit, or license directly resulting in a  
14 Federal expenditure of more than \$2,000,000.

15 (e) EMERGENCY MEASURES.—

16 (1) INITIAL INJUNCTION.—The Secretary may  
17 bring an action to enjoin, for up to 45 days, any ac-  
18 tivity which the Secretary can reasonably dem-  
19 onstrate to destroy an endangered species or its  
20 habitat. During the period of such an injunction, the  
21 Secretary may negotiate a conservation management  
22 or other agreement beneficial to the endangered spe-  
23 cies with the owner of the property on which the ac-  
24 tivity will be conducted.

1           (2) ADDITIONAL INJUNCTION.—If during the  
2 period of an injunction under paragraph (1) at-  
3 tempts to negotiate a voluntary conservation agree-  
4 ment with the property owner are unsuccessful, the  
5 Secretary may bring no more than one additional ac-  
6 tion to enjoin the activity for up to an additional 45  
7 days. During the period of such an injunction, the  
8 Secretary may—

9           (A) continue negotiations;

10           (B) collect or capture the endangered spe-  
11 cies on the property and translocate them to  
12 another site within 90 days after filing of the  
13 action for the first injunction if the Secretary—

14           (i) makes a reasonable effort to gain  
15 the property owner’s written, informed  
16 consent to enter the property and gives the  
17 property owner at least 48 hours notice of  
18 intent to enter the property; and

19           (ii) inflicts the minimal damage, dis-  
20 turbance, annoyance, or nuisance nec-  
21 essary; or

22           (C) seek to purchase the property under  
23 subsection (f).

1           (3) LIMITATION ON INJUNCTIONS.—Except by  
2 consent of the property owner the Secretary may  
3 not—

4           (A) subject a property to an injunction  
5 under paragraph (1) more than one time in any  
6 10-year period or extend any injunction beyond  
7 the originally specified period herein.

8           (4) ORDERS TO COLLECT AND REMOVE.—The  
9 Secretary may seek an order for express and sole  
10 purpose of expeditiously and with minimal intrusion  
11 and interruption entering a property to capture or  
12 collect and remove endangered species based upon  
13 reasonable belief that said endangered species, un-  
14 less removed from the property, face imminent dam-  
15 age or destruction.

16           (5) COMPENSATION FOR DAMAGE OR LOSS DUE  
17 TO ENTRY.—The United States Government shall be  
18 liable to a property owner for all damages and losses  
19 incurred by the property owner as a result of any  
20 entry of the property under paragraph (2)(B) or (4).

21           (f) ACQUISITION OF PROPERTY.—

22           (1) Prior to any purchase or other acquisition  
23 of property or property interest pursuant to this Act,  
24 the Secretary shall make reasonable efforts to reach  
25 an agreement with the property owner for an ex-

1 change of said property for property owned by the  
2 United States of like value. If such agreement is ob-  
3 tained, the Secretary shall present the agreement to  
4 Congress for approval as required by law.

5 (2) Property acquired pursuant to this Act shall  
6 be appraised for the purposes of that acquisition  
7 without regard to the presence of endangered spe-  
8 cies.

9 (g) MONITORING.—The Secretary may monitor the  
10 success of voluntary agreements and other voluntary ef-  
11 forts under this section in conserving and recovering en-  
12 dangered species.

13 **SEC. 5. DETERMINATION OF ENDANGERED ANIMALS AND**  
14 **PLANTS, LISTING AND REPORTING.**

15 (a) DETERMINATION.—

16 (1) IN GENERAL.—The Secretary, at such times  
17 the Secretary considers appropriate and by regula-  
18 tion promulgated in accordance with subsection (b),  
19 may determine whether any animal or plant is en-  
20 dangered based on any of the following factors:

21 (A) The present or imminent destruction,  
22 adverse modification, or curtailment of a sig-  
23 nificant portion of its habitat or range.

24 (B) Disease or predation.

1 (C) An extremely limited range or popu-  
2 lation.

3 (D) Other adequate and verifiable scientif-  
4 ically valid data indicating natural or manmade  
5 factors adversely affecting the species' contin-  
6 ued existence.

7 (2) DETERMINATION BY THE SECRETARY OF  
8 COMMERCE.—With respect to any animal or plant  
9 over which program responsibilities have been vested  
10 in the Secretary of Commerce pursuant to Reorga-  
11 nization Plan Numbered 4 of 1970 (5 U.S.C.  
12 App.)—

13 (A) in any case in which the Secretary of  
14 Commerce determines that such animal or plant  
15 should be determined to be endangered, the  
16 Secretary of Commerce shall so inform the Sec-  
17 retary of the Interior, who shall list such animal  
18 or plant in a list published under section (d);

19 (B) in any case in which the Secretary of  
20 Commerce determines that such animal or plant  
21 should be removed from the list published pur-  
22 suant to subsection (d) the Secretary of Com-  
23 merce shall recommend such action to the Sec-  
24 retary of the Interior, and the Secretary of the

1 Interior, if he concurs in the recommendation,  
2 shall implement such action; and

3 (C) the Secretary of the Interior may not  
4 include any such animal or plant in such list or  
5 remove from the list any such animal or plant  
6 without a prior favorable determination made  
7 pursuant to this section by the Secretary of  
8 Commerce.

9 (b) PROCEDURES AND REQUIREMENTS FOR DETER-  
10 MINATION.—

11 (1) BASIS.—The Secretary shall make a deter-  
12 mination under subsection (a)(1) regarding an ani-  
13 mal or plant—

14 (A) solely on the basis of the independently  
15 verifiable data sufficient to reach a scientific  
16 conclusion, having that data verified by field  
17 testing to the extent practical;

18 (B) after conducting a review and consid-  
19 ering all information available pursuant to such  
20 a review of the status of the animal or plant;  
21 and

22 (C) after taking into account those efforts,  
23 if any, being made by any person, State or for-  
24 eign nation, or any political subdivision of a  
25 State or foreign nation, to conserve or protect

1           such animals or plants by any means, within  
2           any area under its jurisdiction, or on the high  
3           seas.

4           (2) PROCEDURE.—To make a determination  
5           under this subsection of whether an animal or plant  
6           is endangered, the Secretary shall—

7                   (A) promptly publish in the Federal Reg-  
8                   ister a general notice that a review of the status  
9                   of the animal or plant will be undertaken which  
10                  includes—

11                           (i) the scientific and common name of  
12                           the animal or plant;

13                           (ii) the historical and known range of  
14                           the animal or plant;

15                           (iii) the basis for undertaking the re-  
16                           view;

17                           (iv) the means and time period for in-  
18                           terested parties to submit information for  
19                           the review; and

20                           (v) the persons which the Secretary  
21                           has or will notify regarding the commence-  
22                           ment of a review;

23                   (B) give actual notice of the review to and  
24                  invite the comment from—

1 (i) the relevant State agency in each  
2 State in which the animal or plant is be-  
3 lieved to occur, and to each county or  
4 equivalent jurisdiction in which the animal  
5 or plant is believed to occur;

6 (ii) insofar as practical, and in co-  
7 operation with the Secretary of State, to  
8 each foreign nation in which the animal or  
9 plant is believed to occur or whose citizens  
10 harvest the animal or plant on the high  
11 seas;

12 (iii) to such professional scientific or-  
13 ganizations or individuals as the Secretary  
14 deems appropriate; and

15 (iv) each owner of property on which  
16 the endangered species is believed to occur,  
17 where reasonably feasible to provide such  
18 individual notice;

19 (C) publish a notice of the review in a  
20 newspaper of general circulation in each area of  
21 the United States in which the animal or plant  
22 is believed to occur; and

23 (D) promptly hold, on request one or more  
24 public hearings on the review at a location rea-  
25 sonably convenient to the affected public, if any

1 person who is a member of the affected public  
2 files a request for such a hearing within 90  
3 days after the date of publication of general no-  
4 tice under subsection.

5 (3) DETERMINATION REQUIRED.—Within the  
6 2-year period beginning on the date on which gen-  
7 eral notice is published in accordance with para-  
8 graph (2)(A) for an animal or plant, the Secretary  
9 shall make one of the following determinations—

10 (A) a determination that the animal or  
11 plant is not endangered,

12 (B) a determination that the animal or  
13 plant is endangered,

14 (C) a determination that although a deter-  
15 mination under subparagraph (B) is warranted,  
16 such a determination is precluded because—

17 (i) sufficient conservation efforts are  
18 currently underway and additional protec-  
19 tions and resources under this Act are not  
20 necessary or may interfere with the success  
21 of such efforts;

22 (ii) other laws or regulations provide  
23 adequate protection; or

24 (iii) a determination under subpara-  
25 graph (B) would interfere with the success

1 of more important conservation or recovery  
2 measures which are or will be taken under  
3 this Act.

4 (4) ACTION AFTER DETERMINATION.—Upon  
5 making a determination under paragraph (3) for an  
6 animal or plant, the Secretary shall promptly—

7 (A) publish in the Federal Register final  
8 regulation to implement such determination;

9 (B) give actual notice of the determination  
10 (including the complete text of the regulations  
11 required by subparagraph (A)) to—

12 (i) the relevant State agency in each  
13 State in which the animal or plant is be-  
14 lieved to occur, and to each county or  
15 equivalent jurisdiction in which the animal  
16 or plant is believed to occur;

17 (ii) insofar as practical, and in co-  
18 operation with the Secretary of State, to  
19 each foreign nation in which the animal or  
20 plant is believed to occur or whose citizens  
21 harvest the animal or plant on the high  
22 seas;

23 (iii) to such professional scientific or-  
24 ganizations or individuals as he deems ap-  
25 propriate;

1 (iv) to any person who submitted com-  
2 ments or requested a public hearing for the  
3 review; and

4 (v) each owner of property on which  
5 the endangered species is believed to occur,  
6 where reasonably feasible to provide such  
7 individual notice; and

8 (C) publish a summary of the determina-  
9 tion (including the complete text of the regula-  
10 tion) in a newspaper of general circulation in  
11 each area of the United States in which the ani-  
12 mal or plant is believed to occur.

13 (c) EMERGENCY LISTING.—

14 (1) IN GENERAL.—The Secretary may deter-  
15 mine that an animal or plant is in danger of immi-  
16 nent extinction unless immediately included on the  
17 list published pursuant to subsection (e) and may,  
18 without regard to the requirements of subsection (b),  
19 publish notice of such determination in the Federal  
20 Register.

21 (2) EFFECTIVENESS OF DETERMINATION, GEN-  
22 ERALLY.—A determination under paragraph (1)  
23 shall be effective for a period specified by the Sec-  
24 retary, which may not exceed 1 year.

1           (3) LIMITATION ON SUBSEQUENT DETERMINA-  
2           TION.—The Secretary may not renew an emergency  
3           listing more than once.

4           (4) TERMINATION OF EFFECTIVENESS.—A de-  
5           termination under paragraph (1) shall not be effec-  
6           tive after the date the Secretary publishes notice  
7           thereof in the Federal Register.

8           (5) ESTABLISHING AN EMERGENCY LISTING  
9           BASIS.—Promptly after making an emergency list-  
10          ing, the Secretary shall conduct a review to deter-  
11          mine whether the animal or plant is endangered in  
12          accordance with the procedures and standards estab-  
13          lished in subsections (a) and (b).

14          (d) RECOVERY FEASIBILITY.—Within 1 year of de-  
15          termining under section 5 that an animal or plant is en-  
16          dangered, the Secretary shall determine whether recovery  
17          is a feasible goal for the endangered species and shall pub-  
18          lish in the Federal Register such determination and the  
19          basis for it. The Secretary may subsequently change this  
20          finding if necessary because of new information, and shall  
21          promptly publish each such determination in the Federal  
22          Register and include the basis for the determination.

23          (e) LISTS.—

24                  (1) IN GENERAL.—The Secretary of the Inte-  
25          rior shall publish in the Federal Register and make

1 available to the public through electronic means a  
2 list of every animal and plant for which there is in  
3 effect a determination under this section by the Sec-  
4 retary or the Secretary of Commerce that the animal  
5 or plant is endangered.

6 (2) INFORMATION INCLUDED.—The list pub-  
7 lished under this subsection shall—

8 (A) refer to the animals and plants con-  
9 tained therein by scientific and common name  
10 or names, if any, and

11 (B) specify with respect to such animal or  
12 plant—

13 (i) over what portion of its range it is  
14 endangered, and

15 (ii) whether the Secretary has found  
16 recovery to be a feasible goal for the en-  
17 dangered species.

18 (3) REVISIONS.—The Secretary shall, at least  
19 annually, revise the list published under his sub-  
20 section to reflect recent determinations made in ac-  
21 cordance with this section.

22 (f) JUDICIAL REVIEW.—

23 (1) TIME TO PETITION FOR REVIEW.—Any per-  
24 son who may be directly and substantially affected  
25 by any action taken, or determination or finding

1 made, pursuant to this section may petition for judi-  
2 cial review of said determination or finding within  
3 180 days of the publication or giving of any notice  
4 that the action was taken or the determination or  
5 finding required by this section was made, or within  
6 1 year of the date at which such publication should  
7 have been made or notice given if notice has not  
8 been made or given.

9 (2) STANDARDS OF REVIEW.—

10 (A) the court reviewing a petition pursuant  
11 to this subsection shall invalidate the action of  
12 the Secretary and remand the matter to the  
13 agency for proper proceedings if the Secretary  
14 failed to follow the procedures provided herein.

15 (B) Upon prima facie showing by the per-  
16 son or persons petitioning for review of the ac-  
17 tion, decision, determination, or finding at issue  
18 that the finding, determination, or other action  
19 does not meet the requirements of, or criteria  
20 established by, this section, the burden shall  
21 shift to the Secretary to establish that the find-  
22 ing, determination, or action at issue was prop-  
23 er and meets the criteria and requirements set  
24 forth in this section.

1           (3) The term “substantial evidence,” when ap-  
2           plied to any act or determination under this Act  
3           which is reviewable under the Administrative Proce-  
4           dure Act, means evidence on which a reasonable  
5           member of the profession whose discipline such evi-  
6           dence is offered would rely in making a scientific or  
7           technical determination.

8           (g) MONITORING.—The Secretary shall implement a  
9           system in cooperation with the States to monitor effec-  
10          tively for not less than 5 years the status of all animals  
11          and plants which—

12           (1) have recovered to the point at which the  
13          measures provided pursuant to this Act are no  
14          longer necessary; and

15           (2) which, in accordance with the provisions of  
16          this section, have been removed from the list pub-  
17          lished under subsection (e).

18          (h) REPORTING.—The Secretary shall report every 2  
19          years to the President and Congress on efforts to conserve  
20          and recover endangered species including—

21           (1) the status of efforts to develop and imple-  
22          ment recovery plans, including descriptions of the  
23          voluntary and cooperative measures implemented for  
24          all endangered species included in the list published  
25          under subsection (e);

1           (2) the status, including population trend data  
2 if available and some measure of the reliability of  
3 such data, of all endangered species;

4           (3) the animals or plants which have been re-  
5 moved from the list maintained under subsection (e),  
6 the date of each removal, the reason for removal and  
7 the current condition of the animal or plant if it was  
8 listed within the last 5 years;

9           (4) a list of States which maintain programs to  
10 conserve endangered species (including programs to  
11 conserve animals or plants considered by a state as  
12 in danger of or threatened with extinction but which  
13 have not been determined under this Act to be en-  
14 dangered), the annual expenditures by each State  
15 for those programs and the annual funds and cumu-  
16 lative funds received by the State under section 4 for  
17 expenditure for endangered species included on the  
18 list published under subsections (e) and those state  
19 funds expended on animals and plants which are  
20 considered in danger of or threatened with extinction  
21 by the respective State but not in accordance with  
22 a determination under this Act;

23           (5) an accounting on an animal by animal or a  
24 plant by plant basis of all reasonably identifiable

1 Federal expenditures on endangered species by year  
2 and as a running total;

3 (6) an accounting on an animal by animal and  
4 plant by plant basis of each State's reasonably iden-  
5 tifiable expenditures on endangered species by year  
6 and as a running total, including expenditures by  
7 agencies other than those with primary responsibility  
8 for endangered species;

9 (7) to the extent practicable, an accounting on  
10 an animal by animal or a plant by plant basis of all  
11 reasonably identifiable private expenditures on en-  
12 dangered species by year and as a running total; and

13 (8) an accounting of other expenditures by Fed-  
14 eral, State, or private persons that resulted from  
15 this Act and that are not attributable to a specific  
16 endangered species.

17 **SEC. 6. PROHIBITIONS, PENALTIES, AND EXCEPTIONS.**

18 (a) INTENTIONAL KILLING OR INJURING VIOLA-  
19 TION.—It is unlawful for any person to directly and inten-  
20 tionally kill or directly and intentionally physically injure  
21 a member of any vertebrate species and which is properly  
22 included in the list published under section 5(e), except  
23 that uses of endangered species, including but not limited  
24 to hunting, fishing, captive propagation, and harvesting

1 that contribute to the endangered animal's survival or con-  
2 servation shall be allowed.

3 (b) INTENTIONAL KILLING OR INJURING PEN-  
4 ALTY.—Any person who violates subsection (a) of this Act  
5 may be—

6 (1) assessed a civil penalty of not more than  
7 \$25,000; or

8 (2) fined not more than \$25,000 and be impris-  
9 oned for not more than 6 months.

10 (c) INJUNCTION VIOLATION.—It is unlawful for any  
11 person against whom an injunction or order has been is-  
12 sued pursuant to section 4(e) of this Act to intentionally  
13 and knowingly violate said order.

14 (d) INJUNCTION VIOLATION PENALTY.—Any person  
15 who violates subsection (c) of this Act may be—

16 (1) assessed a civil penalty of not more than  
17 \$25,000; or

18 (2) fined not more than \$25,000 and be impris-  
19 oned for not more than 6 months.

20 2 (e) POACHING AND MALICIOUS KILLING OR INJUR-  
21 ING VIOLATION.—It is unlawful for any person to—

22 (1) in knowing violation of this Act, maliciously  
23 and in the pursuit of personal gain as a direct result  
24 thereof, intentionally kill or directly and intentionally  
25 physically injure a member of a vertebrate species

1 which is properly included in the list published under  
2 section 5(e); or

3 (2) Maliciously or in the pursuit of personal  
4 gain as a direct result thereof, intentionally and di-  
5 rectly kill or to intentionally and directly physically  
6 injure a member of an endangered species while  
7 trespassing on private property or while in a Na-  
8 tional Park or National Wildlife Refuge.

9 (f) POACHING AND MALICIOUS KILLING OR INJUR-  
10 ING PENALTY.—Any person who violates subsection (e) of  
11 this Act may, upon conviction, be fined not more than  
12 \$50,000 and be imprisoned for not more than 1 year.

13 (g) OTHER VIOLATIONS.—It is unlawful for any per-  
14 son to—

15 (1) intentionally capture, collect, or trap or at-  
16 tempt to capture, collect, or trap any listed verte-  
17 brate animal on any property subject to the jurisdic-  
18 tion of the United States and not described in (2);

19 (2) capture, collect, or trap or attempt to cap-  
20 ture, collect, or trap any listed vertebrate animal  
21 while trespassing on private property or while on  
22 federally owned lands within a National Park or Na-  
23 tional Wildlife Refuge;

24 (3) directly and intentionally kill or directly and  
25 intentionally physically injure a member of; inten-

1 tionally capture, collect, or trap; or attempt to cap-  
2 ture, collect, or trap a member of any listed inverte-  
3 brate animal or plant on any property subject to the  
4 jurisdiction of the United States and not described  
5 in (4); and

6 (4) directly and intentionally kill or directly and  
7 intentionally physically injure a member of; capture,  
8 collect, or trap; or attempt to capture, collect, or  
9 trap a member of any listed invertebrate animal or  
10 plant while trespassing on private property or while  
11 on federally owned lands within a National Park or  
12 National Wildlife Refuge.

13 (h) PENALTY FOR OTHER VIOLATIONS.—Any person  
14 who violates—

15 (1) subsection (g)(1) of this Act may be as-  
16 sessed a civil penalty of not more than \$2,500;

17 (2) subsection (g)(2) of this Act may be as-  
18 sessed a civil penalty of not more than \$10,000;

19 (3) subsection (g)(3) of this Act may be as-  
20 sessed a civil penalty of not more than \$250; and

21 (4) subsection (g)(4) of this Act may be as-  
22 sessed a civil penalty of not more than \$1,000.

23 (i) PROTECTION OF PERSON OR PROPERTY.—Not-  
24 withstanding any other provision of this Act, no penalty  
25 shall be imposed if it can be shown by a preponderance

1 of the evidence that the defendant committed an act based  
2 on a good faith belief that the defendant was acting to  
3 protect himself or herself or any other individual from  
4 bodily harm or to protect private property from significant  
5 damage.

6 (j) PRIOR OWNERSHIP EXEMPTION.—It shall be a  
7 defense against any charge brought under this section ex-  
8 cept (c) that—

9 (1) the person committing the act did so with  
10 the consent of the owner; and

11 (2) that the animal or plant was owned prior to  
12 the date of inclusion of its taxonomic unit on the list  
13 published pursuant to section 5(e) of this Act or  
14 that the animal or plant is the progeny of an animal  
15 or plant owned prior to the date of inclusion of its  
16 taxonomic unit on the list published pursuant to sec-  
17 tion 5(e) of this Act or was otherwise lawfully ac-  
18 quired.

19 (k) SECRETARIAL WAIVER.—The Secretary may  
20 waive application of (a), (c), (e), and (g) to protect public  
21 health and safety or for national security or a national,  
22 regional, or local emergency.

23 (l) PERMITTING ACTIONS.—Notwithstanding any  
24 other provision of this Act, the Secretary shall permit any  
25 person or State to commit actions that, when considered

1 individually or in the context of other actions that, when  
2 considered individually or in the context of other actions,  
3 contribute to furthering the conservation of an endangered  
4 species. Such actions may include collection, trapping, and  
5 capturing of an endangered species that further the en-  
6 dangered species' recovery or conservation.

7 **SEC. 7. OTHER PROVISIONS.**

8 (a) USE OF FEDERAL AUTHORITIES.—Federal de-  
9 partment and agencies shall on Federal lands, in a manner  
10 consistent with the mission of the managing departments  
11 and agencies, and, with the permission of the land owner,  
12 may on State and private lands, seek to conserve or re-  
13 cover endangered species and shall utilize their authorities  
14 in furtherance of the purposes of this Act.

15 (b) WATER USE.—

16 (1) COOPERATION WITH STATE AND LOCAL  
17 GOVERNMENTS.—The head of each Federal agency  
18 shall cooperate with State and local agencies to re-  
19 solve water resource issues in concert with conserva-  
20 tion or recovery of endangered animals and plants in  
21 a manner consistent with and governed by State  
22 water law.

23 (2) COMPENSATION FOR WATER RIGHTS.—  
24 Water rights protected under State law should not

1 be injured or adversely affected in carrying out any  
2 section of this Act without just compensation.

3 (3) CONTINUITY OF ALLOCATION.—This Act  
4 shall not be considered, construed, or interpreted so  
5 as to alter, change, modify, or abrogate in any way  
6 whatsoever the allocation of water among or between  
7 States pursuant to either interstate compacts or de-  
8 cisions of the United States Supreme Court.

9 (c) ELECTRONIC INFORMATION DISTRIBUTION.—  
10 The Secretary shall—

11 (1) make available by electronic means, such as  
12 the Internet—

13 (A) all notices issued by the Secretary  
14 under this Act that would appear in the Federal  
15 Register or other forums of public notice;

16 (B) all recovery or conservation plans and  
17 statements;

18 (C) the list published under section 5(e);

19 (D) the report required by section 5(h);  
20 and

21 (E) to the extent practicable, other mate-  
22 rials received regarding or produced in imple-  
23 menting this Act; and

1           (2) shall seek to make access to information in  
2           paragraph (1) available at minimal cost and incon-  
3           venience to those seeking the information.

4 **SEC. 8. ENDANGERED SPECIES RECOVERY FUND.**

5           (a) ENDANGERED SPECIES RECOVERY FUND GEN-  
6           ERAL.—

7           (1) ESTABLISHMENT OF FUND.—There is es-  
8           tablished in the Treasury a separate account, which  
9           shall be known as the Endangered Species Recovery  
10          Fund (in this section referred to as the “Fund”).

11          (2) CONTENTS.—The Fund shall consist of all  
12          amounts received by the United States in the form  
13          of—

14                 (A) a portion of fees for admission to Na-  
15                 tional Wildlife Refuges, National Parks, Na-  
16                 tional Recreation Areas, National Seashores,  
17                 National Monuments, or National Forest Areas  
18                 where there currently are admission fees;

19                 (B) fees for Lifetime User Passes issued  
20                 under subsection (b);

21                 (C) donations under subsection (b);

22                 (D) 10 percent of the amounts received by  
23                 the United States each year under leases au-  
24                 thorizing oil or gas activities in the Arctic Na-  
25                 tional Wildlife Refuge; and

1 (E) funds derived from an increased tax on  
2 the unrelated business income of 501(c)(3) or-  
3 ganizations which are primarily devoted to mat-  
4 ters pertaining to the environment which are  
5 hereby increased by 5 percent to provide reve-  
6 nue for this Fund.

7 (3) USE.—

8 (A) IN GENERAL.—Amounts in the Fund  
9 shall be available to the Secretary, subject to  
10 the availability of appropriations, only to carry  
11 out this Act.

12 (b) FUNDING.—

13 (1) LIMITATION ON FEES.—Nothing in this Act  
14 authorizes the Secretary to—

15 (A) establish or impose any user or admis-  
16 sion fees for lands for which such a fee is not  
17 in effect on the date of enactment of this Act,  
18 except for federally designated wilderness areas;

19 (B) increase that portion of any user or  
20 admission fee which shall be directed to the  
21 Fund by more than \$1, except for federally des-  
22 ignated wilderness areas; or

23 (C) direct any more than \$1 from any user  
24 or admission fee to the Fund, except for feder-  
25 ally designated wilderness areas.

1 (2) LIFETIME USER PASS.—

2 (A) IN GENERAL.—The Secretary shall es-  
3 tablish and issue to individuals a Lifetime User  
4 Pass, which shall permit an individual to whom  
5 the pass is issued to enter without payment of  
6 any fee any National Park, National Wildlife  
7 Refuge, National Recreation Area, National  
8 Seashore, National Lakeshore, or National  
9 Monument.

10 (B) FEE.—The Secretary shall impose a  
11 fee for a Lifetime User Pass under this sub-  
12 section in an amount established by the Sec-  
13 retary, not to exceed \$500.

14 (3) DONATIONS.—The Secretary may accept  
15 donations from the public to carry out this Act, ex-  
16 cept that no donation may be accepted under this  
17 subsection from any person having business with or  
18 matters pending before the department of the Sec-  
19 retary.

20 **SEC. 9. ADDITIONAL CONSERVATION INCENTIVES.**

21 (a) PROPERTY TAX CREDIT.—The Secretary of the  
22 Treasury shall allow a credit of 100 percent of the State,  
23 county and local property taxes assessed and paid for pri-  
24 vate property or portion thereof which is managed to pro-  
25 mote the conservation or recovery of an endangered spe-

1 cies and which directly contributes to the conservation or  
2 recovery of an endangered species by providing habitat  
3 which is used or occupied by an endangered species. Such  
4 credit shall be applied against the Federal individual or  
5 corporate tax of the owners of the property.

6 (b) CREDIT FOR OTHER EXPENSES.—Upon rec-  
7 ommendation by the Secretary of the Interior, the Sec-  
8 retary of the Treasury shall allow a credit of up to 100  
9 percent for expenditures for furthering the conservation  
10 or recovery of an endangered species pursuant to an agree-  
11 ment entered into with the Secretary under this Act. Such  
12 credit shall be applied against the Federal individual or  
13 corporate tax of the person making said expenditures.

14 (c) ESTATE TAX DEFERRAL.—The Secretary of the  
15 Treasury shall defer collection of any estate taxes owed  
16 and levied against real property for any portion of the  
17 property that directly contributes to the conservation or  
18 recovery of an endangered species for so long as said prop-  
19 erty is used or occupied by an endangered species.

20 **SEC. 10. BIODIVERSITY CONSERVATION TECHNOLOGY.**

21 (a) The Secretary may directly or by contract under-  
22 take activities to further the conservation or recovery of  
23 endangered species by the collection, storing and use of—

24 (1) genetic materials, eggs, sperm, or tissue of  
25 endangered animals; and

1           (2) genetic material, seeds, or tissue of endan-  
2           gered plants.

3 **SEC. 11. CONFORMING AMENDMENTS.**

4           (a) DEFINITION OF HARM.—Section 3 of the Endan-  
5           gered Species Act (16 U.S.C. 1532) is amended by adding  
6           at the end the following new paragraph:

7           “‘The term harm means an intentional and direct ac-  
8           tion by a person against any member of an endangered  
9           or threatened species of fish or wildlife that injures or kills  
10          the member other than as an unintended consequence of  
11          otherwise lawful activity.’”.

12          (b) LIMITATION ON ISSUANCE OF JEOPARDY OPIN-  
13          IONS.—Section 7 of the Endangered Species Act of 1973  
14          (16 U.S.C. 1536) is amended by adding at the end the  
15          following new subsection:

16          “(q) LIMITATION OF ISSUANCE OF JEOPARDY OPIN-  
17          IONS.—Notwithstanding any other provision of this Act,  
18          an action permitting activity on private property shall not  
19          be subject to the requirements or procedures outlined in  
20          this section.

21          (c) TERMINATION OF AUTHORITIES TO DETERMINE  
22          ENDANGERED AND THREATENED SPECIES AND DES-  
23          IGNATE CRITICAL HABITAT.—Section 4 of the Endan-  
24          gered Species Act of 1973 (16 U.S.C. 1533) is amended  
25          by adding at the end the following new subsection:

1           “(j) TERMINATION OF AUTHORITIES TO DETERMINE  
2 ENDANGERED AND THREATENED SPECIES AND DES-  
3 IGNATE CRITICAL HABITAT.—After the date of enactment  
4 of this Act, the Secretary may not any action under En-  
5 dangered Species Act of 1973 to—

6                   “(1) determine that a species is a threatened  
7 species or an endangered species; or

8                   “(2) designate critical habitat of a species.”.

9           (d) TREATMENT OF SPECIES LISTED UNDER THE  
10 ENDANGERED SPECIES ACT OF 1973.—

11                   (1) All species determined to be endangered  
12 species or threatened species pursuant to section 4  
13 of the Endangered Species Act of 1973 shall be in-  
14 cluded on the list published pursuant to section 5 of  
15 this Act, except that the Secretary shall—

16                           (A) within 4 years after the enactment of  
17 this Act—

18                                   (i) determine whether each species in-  
19 cluded on the list published under section  
20 4(C) of the Endangered Species Act of  
21 1973 on the date of enactment of this Act  
22 meets the criteria for listing provided in  
23 section 5;

24                                   (ii) remove from the list published  
25 pursuant to section 5 of this Act those spe-

1           cies determined not to meet the criteria of  
2           section 5; and

3           (B) within 2 years of determining that a  
4           species shall remain on the list pursuant to sub-  
5           paragraph (A), the Secretary shall—

6                   (i) develop a plan for the recovery or  
7                   conservation of the species, unless the Sec-  
8                   retary finds that such a plan will not pro-  
9                   mote the conservation or recovery of the  
10                  species; or

11                   (ii) develop a conservation or recovery  
12                   statement, if the Secretary finds under  
13                   subparagraph (A) that a plan will not pro-  
14                   mote the conservation or recovery of the  
15                  species.

16           (e) COMPENSATION FOR TAKINGS UNDER THE EN-  
17           DANGERED SPECIES ACT OF 1973.—The Secretary shall  
18           compensate an owner of property whose use of any portion  
19           of that property has been limited by an action taken after  
20           the enactment of this Act pursuant to the Endangered  
21           Species Act of 1973 as amended that diminishes the fair  
22           market value of that portion by 20 percent or more. The  
23           amount of compensation shall equal the diminution in  
24           value that resulted from the agency action. If the diminu-  
25           tion in value of a portion of that property is greater than

1 50 percent, at the option of the owner, the Secretary shall  
2 buy that portion of the property for its fair market value.  
3 Any compensation awarded pursuant to this provision  
4 shall be paid from moneys appropriated to the Secretary  
5 for the activities of the United States Fish and Wildlife  
6 Service or to the Secretary of Commerce for the activities  
7 of the National Marine Fisheries Service as appropriate.

8 **SEC. 12. INTERPRETATION.**

9 The provisions of this Act shall be strictly construed  
10 so as to effectuate all of the purposes stated in section  
11 2 of the Act of the greatest extent possible.

12 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

13 (a) There are authorized to be appropriated not to  
14 exceed \$250,000,000 for fiscal years 1996, 1997, 1998,  
15 1999, and 2000 per year to enable the Secretary to carry  
16 out such functions and responsibilities as he may have  
17 been given under this Act.

18 (b) There are authorized to be appropriated not to  
19 exceed \$100,000,000 for fiscal year 1996 to enable the  
20 Secretary to carry out such functions and responsibilities  
21 as he may have been given under the Endangered Species  
22 Act of 1973 as amended.

23 **SEC. 14. EFFECTIVE DATE.**

24 This Act shall be effective upon the date of enact-  
25 ment.

1 HR 2364 IH—2

2 HR 2364 IH—3