

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

# H. R. 2374

To amend the Endangered Species Act of 1973 to encourage the continued conservation of America's natural legacy for future generations; provide incentives for States, local governments, and private landowners to conserve species; and otherwise improve the Act through increased flexibility and broader cooperation.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 1995

Mr. GILCHREST (for himself, Mrs. MORELLA, Mr. SHAYS, Mr. BOEHLERT, Mr. CASTLE, Mr. GREENWOOD, and Mr. WELDON of Pennsylvania) introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To amend the Endangered Species Act of 1973 to encourage the continued conservation of America's natural legacy for future generations; provide incentives for States, local governments, and private landowners to conserve species; and otherwise improve the Act through increased flexibility and broader cooperation.

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 Natural  
5 Legacy Protection Act of 1995".

1 **SEC. 2. FINDINGS.**

2 The Congress finds and declares the following:

3 (1) For more than 25 years, the American peo-  
4 ple have recognized the importance of protecting the  
5 natural environmental legacy of this Nation.

6 (2) That natural legacy consists of fish, wildlife,  
7 and plant species and the ecosystems which are cru-  
8 cial to their survival.

9 (3) Conservation of these species holds both  
10 economic, medicinal, and aesthetic value for the  
11 United States.

12 (4) The Endangered Species Act of 1973 has  
13 proven successful in helping to protect this Nation's  
14 natural legacy of fish, wildlife, and plant species.

15 (5) As more species have been threatened by  
16 natural and human factors, conservation of those  
17 species has increasingly relied on habitat protection  
18 efforts on both public and private land.

19 (6) States, local governments, and private land-  
20 owners require assistance from the Federal Govern-  
21 ment in conserving endangered species and their  
22 habitats.

23 (7) If this precious natural environmental leg-  
24 acy is to be protected, the provisions of the Endan-  
25 gered Species Act of 1973 must be adapted to the  
26 changing needs of this Nation and its people.

1 **SEC. 3. AMENDMENT OF ENDANGERED SPECIES ACT OF**  
2 **1973.**

3 Except as otherwise expressly provided, whenever in  
4 this Act an amendment is expressed in terms of an amend-  
5 ment to a section or other provision, the reference shall  
6 be considered to be made to a section or other provision  
7 of the Endangered Species Act of 1973 (16 U.S.C. 1531  
8 et seq.).

9 **SEC. 4. DEFINITIONS.**

10 Section 3 (16 U.S.C. 1532) is amended—

11 (1) in paragraph (5) by amending so much as  
12 precedes subparagraph (B) to read as follows:

13 “(5)(A) The term ‘critical habitat’ for a threat-  
14 ened or endangered species means the specific areas  
15 within the geographical area designated in a recov-  
16 ery plan on which are found those physical or bio-  
17 logical features essential to the conservation of the  
18 species and which may require special management  
19 considerations or protection.”;

20 (2) in paragraph (5) by striking subparagraph  
21 (C); and

22 (3) by adding at the end the following new  
23 paragraphs:

24 “(22) The term ‘biological diversity’ means the  
25 variety of life forms, the ecological roles they per-  
26 form, and the genetic diversity they contain.

1           “(23) The term ‘ecosystem’ means an inter-  
2           active system of organisms, both plants and animals,  
3           dependent on a particular habitat, such as a lake,  
4           stream, or forest, and the physical conditions under  
5           which they live.

6           “(24) The term ‘cooperation with the States,  
7           Indian tribes, and local governments’ means a col-  
8           laborative process established by the Secretary in  
9           which the States, Indian tribes, and local govern-  
10          ments, as administrative and regulatory partners,  
11          participate in a meaningful and timely manner in  
12          the development of standards, guidelines, and regu-  
13          lations that implement the provisions of this Act and  
14          that integrate their recommendations, field practices,  
15          and programs consistent with the goals of this Act.”.

16 **SEC. 5. PREVENTING ENDANGERMENT.**

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

18                 (1) by redesignating subsections (c), (d), (e),  
19                 (h), and (i) in order as subsections (h), (i), (j), (k),  
20                 (l), (m), and (n); and

21                 (2) by inserting after subsection (b) the follow-  
22                 ing new subsections:

23                 “(c) VOLUNTARY CONSERVATION AGREEMENTS.—

24                 (1) The Secretary may enter into a voluntary conservation  
25                 agreement for up to 5 years with any State, Indian tribe,

1 or local government, if requested by the State, Indian  
2 tribe, or local government to do so. The goal of the con-  
3 servation agreement shall be to prevent endangerment.

4 The conservation agreement shall—

5 “(A) promote the conservation of a species for  
6 which a finding has been made under subsection  
7 (b)(3)(B)(iii) (hereafter in this Act referred to as a  
8 ‘candidate species’);

9 “(B) promote the conservation of other declin-  
10 ing species which are dependent on the same eco-  
11 system or located within the same habitat as a can-  
12 didate species; or

13 “(C) promote the conservation of other species,  
14 rare habitats, or regional biological diversity, as ap-  
15 propriate.

16 “(2) Consideration of a conservation agreement  
17 under this section may be initiated by the Secretary or  
18 a State, Indian tribe, or local government.

19 “(3) Any State, Indian tribe, or local government or  
20 coalition of States, Indian tribes, or local governments  
21 may submit a proposed conservation agreement to the Sec-  
22 retary for consideration. The Secretary may provide tech-  
23 nical assistance or other assistance as appropriate for the  
24 development of such an agreement.

1       “(4) Conservation agreements shall contain the fol-  
2       lowing information:

3               “(A) Objective, measurable scientific criteria  
4       which, if met, would prevent endangerment.

5               “(B) A description of site-specific management  
6       actions to achieve the criteria required under sub-  
7       paragraph (A) and a timetable for completing those  
8       actions.

9               “(C) A description of actions that will be taken  
10      to minimize adverse social or economic impacts (if  
11      any) resulting from implementation of the agree-  
12      ment.

13              “(D) Strategies that use existing Federal,  
14      State, or other public lands to promote the conserva-  
15      tion of the species or habitats that are the subject  
16      of the agreement.

17              “(E) An identification of the specific areas or  
18      circumstances in which the implementation of the  
19      agreement would help to reduce conflicts (if any) be-  
20      tween conservation of species and economic activity.

21              “(F) An identification of the opportunities for  
22      cooperation among States, Indian tribes, local gov-  
23      ernments, public utilities, and other interested per-  
24      sons to undertake actions which would contribute to  
25      the conservation of species or habitat.

1           “(G) A method of monitoring the success of the  
2           conservation agreement in preventing endangerment  
3           and compliance with its terms.

4           “(H) Any other information that the State, In-  
5           dian tribe, local government, or the Secretary con-  
6           siders appropriate.

7           “(5)(A) The Secretary shall, within 90 days after the  
8           date of submission of any conservation agreement under  
9           this subsection, determine whether the agreement will  
10          achieve the goals required under paragraph (1).

11          “(B) If the conservation agreement is not approved  
12          by the Secretary, the Secretary shall return the proposed  
13          conservation agreement to the State, Indian tribe, or local  
14          government (hereinafter referred to as an ‘agreement  
15          party’) with suggestions for modification that would result  
16          in approval of the conservation agreement.

17          “(6)(A) If a species covered by an approved conserva-  
18          tion agreement continues to decline and, as a result of the  
19          factors under section 4(a), becomes an endangered species  
20          or threatened species, the agreement party may request  
21          the Secretary to transfer management authority for that  
22          species over to the agreement party through a written  
23          amendment to the conservation agreement.

24          “(B) Such management authority shall consist of the  
25          authority to grant permits under section 10, and to en-

1 force the provisions of section 9, consistent with the goals  
2 and purposes of the Act.

3 “(C) The Secretary shall comply with a request under  
4 this paragraph within 60 days if the Secretary finds—

5 “(i) the agreement party is able to conduct in-  
6 vestigations to determine the status and require-  
7 ments for survival and recovery of the species;

8 “(ii) the agreement party is able to establish  
9 and enforce programs for the conservation of the  
10 species consistent with the goals and purposes of the  
11 Act; and

12 “(iii) the agreement party has committed to im-  
13 plement and enforce sections 9 and 10 in a manner  
14 consistent with the goals and purposes of the Act.

15 “(D) The Secretary may provide technical and other  
16 assistance as appropriate to the agreement party to carry  
17 out the provisions of this paragraph.

18 “(7) The agreement party shall submit an annual re-  
19 port to the Secretary on the status of the species covered  
20 by the conservation agreement. The Secretary shall review  
21 the annual reports to determine whether the agreement  
22 party is in compliance with the terms of the conservation  
23 agreement. If the Secretary determines that the agree-  
24 ment party is not in compliance, the Secretary shall imme-  
25 diately notify the agreement party of that determination.

1 If the agreement party is unable to come into compliance  
2 within 6 months after the date of such notification, the  
3 conservation agreement shall be void.

4 “(8) During the time period specified in a conserva-  
5 tion agreement, the Secretary may not specify additional  
6 terms to the agreement unless the Secretary and the  
7 agreement party determine that the species is likely to be-  
8 come an endangered species or threatened species within  
9 the area covered by the conservation agreement during  
10 that time period and additional terms are necessary to  
11 prevent endangerment.

12 “(9)(A) At the conclusion of the time period specified  
13 under paragraph (6)(A) in a conservation agreement, the  
14 Secretary and the agreement party shall review the terms  
15 of the conservation agreement to determine whether the  
16 conservation agreement is achieving the goal of preventing  
17 endangerment. If the conservation agreement is achieving  
18 that goal, the Secretary and the agreement party may ex-  
19 tend the existing terms of the conservation agreement for  
20 a period not to exceed 5 years, at which time the review  
21 process shall be repeated. If the conservation agreement  
22 is failing to achieve that goal, the Secretary and the agree-  
23 ment party may—

24 “(i) revise or renew the terms of the agreement;

25 or

1           “(ii) choose not to renew the agreement, at  
2           which time the authority for sections 9 and 10 shall  
3           transfer back to the Secretary.

4           “(B) If a species is determined to be an endangered  
5           species or threatened species within an area covered by  
6           a conservation agreement during the time period specified  
7           in the agreement, the terms of the conservation agreement  
8           shall not remain in effect for that species unless the agree-  
9           ment is amended pursuant to section 6(d)(6).

10          “(10) To assist the States in carrying out the pro-  
11          gram under this subsection, the Secretary may utilize the  
12          land acquisition and other authority under this Act.

13          “(d) CONSISTENCY.—

14                 “(1) Each Federal agency conducting, support-  
15                 ing, or permitting activities in the area covered by  
16                 an approved conservation agreement shall do so in  
17                 a manner which is, to the maximum extent prac-  
18                 ticable, consistent with the conservation agreement  
19                 and the goals of this Act.

20                 “(2)(A) After final approval by the Secretary of  
21                 a conservation agreement, any applicant for a re-  
22                 quired Federal license, permit, or support to conduct  
23                 an activity affecting species within the area covered  
24                 by the conservation agreement shall provide certifi-  
25                 cation to the agency and the agreement party that

1 such activity will be conducted in a manner consist-  
2 ent with the conservation agreement.

3 “(B) Within 90 days after receipt of certifi-  
4 cation, the agreement party shall notify the Federal  
5 agency that it concurs with or objects to the appli-  
6 cant’s certification. If the agreement party fails to  
7 furnish the required notification within 90 days, the  
8 agreement party’s concurrence with the certification  
9 shall be conclusively presumed. No license, permit,  
10 or other support shall be granted by the Federal  
11 agency until the agreement party has concurred or  
12 until, by the agreement party’s failure to act, the  
13 concurrence is conclusively presumed, unless the  
14 Secretary finds, after providing a reasonable oppor-  
15 tunity for comments from the Federal agency and  
16 from the agreement party, that the activity is con-  
17 sistent with the conservation agreement or is other-  
18 wise necessary in the interest of national security.

19 “(e) CONSERVATION PLANNING FUND.—

20 “(1) The Secretary shall establish a Conserva-  
21 tion Planning Fund (hereafter referred to in this  
22 subsection as the ‘Fund’), which shall consist of all  
23 sums appropriated pursuant to section 15(b), and  
24 shall be administered by the Secretary as a revolving  
25 fund.

1           “(2) The Secretary may make an interest-free  
2           advance from the Fund to any State, Indian tribe,  
3           or local government to assist in the development of  
4           a plan under this section or section 10.

5           “(3) In making grants and advances under  
6           paragraph (2) with respect to a plan, the Secretary  
7           shall consider—

8                   “(A) the number of species covered by the  
9                   plan;

10                   “(B) the commitment to participate in the  
11                   planning process from a diversity of interests,  
12                   including local governmental, business, environ-  
13                   mental, and landowner interests;

14                   “(C) the likelihood of success of the plan-  
15                   ning effort;

16                   “(D) the availability of matching funds  
17                   from the State or local government or other  
18                   sources; and

19                   “(E) other factors the Secretary considers  
20                   appropriate.

21           “(4) Sums advanced from the Fund shall be re-  
22           paid by the earlier of—

23                   “(A) 10 years after the date of the ad-  
24                   vance; or



1 paragraphs (3) and (4), respectively, and by inserting  
2 after paragraph (1) the following new paragraph:

3 “(2) The Secretary shall, upon receipt of a petition  
4 under section 4(b) or of information under this paragraph,  
5 and by regulation promulgated in accordance with sub-  
6 section (b), promptly determine whether any species is no  
7 longer an endangered species or threatened species due  
8 to—

9 “(A) a significant change in the factor or fac-  
10 tors under this subsection upon which the original  
11 determination was based;

12 “(B) the identification of new scientific infor-  
13 mation regarding population size or other relevant  
14 data;

15 “(C) the achievement of certain criteria as iden-  
16 tified in the recovery plan under section 5 for that  
17 species; or

18 “(D) a change in the appendix of the Conven-  
19 tion under which that species is listed.”.

20 (b) CRITICAL HABITAT; REGULATORY ASSUR-  
21 ANCES.—Section 4(a)(4) (as redesignated by subsection  
22 (a) of this section) is amended to read as follows:

23 “(4)(A) The Secretary, by regulation promulgated in  
24 accordance with subsection (b) and to the maximum ex-  
25 tent determinable, shall—

1           “(i) concurrently with making a determination  
2           under paragraph (1) that a species is an endangered  
3           species or threatened species, publish in the Federal  
4           Register and local newspapers a list of those specific  
5           acts which are prohibited under section 9, and hold  
6           at least one public hearing in each State affected by  
7           the prohibitions under section 9 within 30 days after  
8           the date of publication of general notice; and

9           “(ii) as part of the recovery plan for a threat-  
10          ened species or endangered species, designate critical  
11          habitat for that species, if appropriate.

12          “(B) The Secretary may make available any addi-  
13          tional information through the Community Assistance  
14          Program under section 14.”.

15          (c) STATE, TRIBAL, AND FOREIGN GOVERNMENT  
16          PARTICIPATION.—Section 4(b)(1)(A) (16 U.S.C.  
17          1533(b)(1)(A)) is amended in the first sentence by strik-  
18          ing “and after” and inserting “, after soliciting and fully  
19          considering, in consultation with each affected State, In-  
20          dian tribe, or foreign nation in which the species occurs,  
21          scientific and commercial data concerning the status of  
22          the species”.

23          (d) PEER REVIEW.—Section 4(b) (16 U.S.C.  
24          1533(b)) is amended—

1 (1) in the heading, by inserting “; PEER RE-  
2 VIEW REQUIREMENT” after “DETERMINATIONS”;  
3 and

4 (2) in paragraph (1) by redesignating subpara-  
5 graph (B) as subparagraph (D) and inserting after  
6 subparagraph (A) the following new subparagraphs:

7 “(B)(i) If any interested person, in the public com-  
8 ment period prior to the making of a determination under  
9 subsection (a) for a species, submits reasonable evidence  
10 that a legitimate scientific dispute exists regarding the  
11 data used to make the determination for that species, the  
12 Secretary shall request a peer review from 3 independent  
13 referees who—

14 “(I) through publication of peer-reviewed sci-  
15 entific literature or other means, have demonstrated  
16 relevant scientific expertise on that species or similar  
17 species;

18 “(II) are selected by the Secretary in consulta-  
19 tion with the National Academy of Sciences; and

20 “(III) do not have, nor represent anyone with,  
21 a significant economic interest in the determination.

22 “(ii) To the maximum extent practicable, peer re-  
23 views under this subsection shall be conducted within 30  
24 days after the Secretary’s request. A summary of the peer  
25 review shall be made available to each affected State and

1 to any interested person upon request. Names of the ref-  
2 erees shall not be made available to the public.

3 “(iii) Referees under this paragraph shall be exempt  
4 from the Federal Advisory Committee Act, for purposes  
5 of holding meetings as a panel for purposes of this para-  
6 graph.

7 “(iv) The Secretary may provide reasonable com-  
8 pensation to referees for services under this section.

9 “(C) The Secretary shall base any determination  
10 under subsection (a) on the peer review and the prepon-  
11 derance of the scientific data.”.

12 (e) LISTING PRIORITIES.—Section 4(b)(1)(C) (as re-  
13 designated by subsection (d)(2) of this section) is amended  
14 by striking “consideration to species which have  
15 been—” and inserting “priority consideration to species  
16 the conservation of which is most likely to reduce the need  
17 to list other species dependent upon the same habitat or  
18 ecosystem, or to preserve the biodiversity of that eco-  
19 system. In addition, the Secretary shall give priority con-  
20 sideration to species which have been—”.

21 (f) PETITIONS TO LIST, DELIST, OR DOWNLIST.—  
22 Section 4(b)(3)(A) (16 U.S.C. 1533(b)(3)(A)) is amend-  
23 ed—

24 (1) by inserting “(i)” after “(3)(A)”;

1           (2) in the first sentence, by striking “90” and  
2           inserting “180”; and

3           (3) by striking all after the first sentence and  
4           inserting the following:

5           “(ii) A petition referred to in clause (i) for a species  
6 shall contain the following information, based on the sci-  
7 entific and commercial information reasonably available to  
8 the petitioner:

9           “(I) The current known range of the species.

10           “(II) The most recent population estimates and  
11 trends.

12           “(III) The reason that the petitioned action is  
13 warranted, based on the factors established under  
14 subsection (a).

15           “(IV) A bibliography of recent peer-reviewed  
16 scientific literature on the species, if any.

17           “(V) Any other information that the petitioner  
18 considers appropriate.

19           “(iii) If the Secretary finds that such a petition con-  
20 tains such information, the Secretary shall—

21           “(I) provide the petition to each affected State  
22 and request comments on whether the petitioned ac-  
23 tion is warranted;

24           “(II) promptly commence a review of any new  
25 information presented by the petition; and

1 “(III) promptly publish each finding made  
2 under this subparagraph in the Federal Register.”.

3 **SEC. 7. RECOVERY PLANNING IMPROVEMENTS.**

4 (a) DEVELOPMENT AND IMPLEMENTATION OF RE-  
5 COVERY PLANS.—Section 5 (16 U.S.C. 1534) is amend-  
6 ed—

7 (1) by redesignating subsections (a) and (b) as  
8 subsections (c) and (d), respectively;

9 (2) by striking so much as precedes subsection  
10 (c) (as redesignated by paragraph (1) of this sub-  
11 section) and inserting the following:

12 “RECOVERY OF ENDANGERED SPECIES AND  
13 THREATENED SPECIES

14 “SEC. 5. (a) RECOVERY PLANS.—

15 “(1) IN GENERAL.—(A) The Secretary shall, on  
16 the basis of the best scientific and commercial data  
17 available, develop and implement recovery plans for  
18 the timely conservation of endangered species and  
19 threatened species. The goal of a recovery plan shall  
20 be to eliminate or reduce the factors that resulted in  
21 a determination under section 4(a)(1) that the spe-  
22 cies is a threatened species or endangered species,  
23 and to achieve recovery for that species.

24 “(B) The Secretary and each affected State  
25 shall jointly appoint a Recovery Team to develop the  
26 recovery plan. Recovery Teams shall not be subject

1 to the Federal Advisory Committee Act (5 U.S.C.  
2 App.). Recovery Teams shall include representatives  
3 of—

4 “(i) the Secretary and other relevant Fed-  
5 eral agencies;

6 “(ii) each affected State;

7 “(iii) Indian tribes and local governments  
8 significantly affected by the determination;

9 “(iv) private landowners;

10 “(v) individuals with recognized scientific  
11 expertise in the species; and

12 “(vi) other interested persons, including  
13 local conservation organizations, industry rep-  
14 resentatives, and others as appropriate.

15 “(C) The head of each Federal agency shall en-  
16 sure that any action funded, authorized, or carried  
17 out by such agency is not likely to have an adverse  
18 impact on the objectives of any recovery plan devel-  
19 oped under this subsection.

20 “(D) The Secretary shall, consistent with this  
21 section, seek to minimize adverse social and eco-  
22 nomic consequences that may result from implemen-  
23 tation of recovery plans.

24 “(E) Development and implementation of recov-  
25 ery plans shall begin—

1           “(i) to the extent practicable and subject  
2 to paragraph (2), not later than 18 months  
3 after the date of the enactment of the Endan-  
4 gered Natural Legacy Protection Act of 1995,  
5 in the case of any species determined by the  
6 Secretary under section 4(a)(1) to be an endan-  
7 gered species or threatened species on or before  
8 that date of enactment, and for which no recov-  
9 ery plan was developed under this Act before  
10 that date of enactment; and

11           “(ii) by not later than 12 months after the  
12 date on which the species is determined to be  
13 a threatened species or endangered species, in  
14 the case of any species for which that deter-  
15 mination is made after that date of enactment.

16           “(2) PRIORITIES.—The Secretary shall, to the  
17 maximum extent practicable, give priority to the de-  
18 velopment and implementation of recovery plans—

19           “(A) which are integrated, multispecies re-  
20 covery plans;

21           “(B) which would preserve regional or local  
22 biodiversity; or

23           “(C) for those species that are most likely  
24 to benefit from recovery plans.

1           “(3) CONTENTS.—Each recovery plan for a spe-  
2           cies shall, to the maximum extent practicable, in-  
3           clude the following:

4                   “(A) Objective, measurable biological cri-  
5                   teria which, if met, would result in a determina-  
6                   tion under this Act that the species is no longer  
7                   a threatened species or endangered species. Cri-  
8                   teria under this paragraph—

9                           “(i) shall include target population  
10                           sizes, habitat needs, and other biological  
11                           criteria relevant to recovery, as appro-  
12                           priate; and

13                           “(ii) shall be determined by independ-  
14                           ent scientists who—

15                                   “(I) through publication of peer-  
16                                   reviewed scientific literature, have  
17                                   demonstrated relevant scientific exper-  
18                                   tise on that species or similar species;

19                                   “(II) are selected by the Sec-  
20                                   retary in consultation with the Na-  
21                                   tional Academy of Sciences; and

22                                   “(III) do not have, nor represent  
23                                   anyone with, a significant economic  
24                                   interest in the recovery plan.

1           “(B) A description of site-specific manage-  
2           ment actions to achieve the criteria included in  
3           the plan under subparagraph (A).

4           “(C) Designation of critical habitat, if ap-  
5           propriate.

6           “(D) Estimates of the time required and  
7           the cost—

8                   “(i) to carry out those measures need-  
9                   ed to achieve those criteria; and

10                   “(ii) to achieve defined intermediate  
11                   steps toward those criteria.

12           “(E) A description of actions that will be  
13           taken to minimize adverse social or economic  
14           impacts resulting from implementation of the  
15           recovery plan.

16           “(F) Strategies that utilize existing Fed-  
17           eral lands to promote the recovery of the spe-  
18           cies.

19           “(G) An identification of measures which,  
20           if taken by Federal agencies, would contribute  
21           to the recovery of the species.

22           “(H) An identification of the specific areas  
23           or circumstances in which the implementation  
24           of the plan would help to reduce conflicts be-

1           tween recovery of the species and economic ac-  
2           tivity.

3           “(I) An identification of the specific areas  
4           and circumstances in which implementation of  
5           the plan would enhance commercial and rec-  
6           reational fishing, sustainable natural resource  
7           development, general recreational and sporting  
8           activities, ecotourism, and other economic devel-  
9           opment.

10          “(J) An identification of the specific areas  
11          or circumstances in which entering into agree-  
12          ments with private landowners under section 14  
13          would promote the recovery of the species.

14          “(K) An identification of the opportunities  
15          to cooperate with State and local governments  
16          and other persons in actions which would con-  
17          tribute to the recovery of the species.

18          “(L) If applicable, an analysis of the ex-  
19          tent to which the plan will affect the use of pri-  
20          vate property. An analysis under this subpara-  
21          graph shall be made available, on request, to  
22          any owner of property within the recovery plan-  
23          ning area.

24          “(4) RECOVERY PLAN CONSISTENCY.—To the  
25          maximum extent practicable and consistent with the

1 goals of the Act, a recovery plan for a species pre-  
2 viously included in a voluntary conservation agree-  
3 ment under section 5 which is still in effect, shall be  
4 consistent with the conservation agreement.

5 “(5) PUBLIC REVIEW AND COMMENT.—The  
6 Secretary shall, before giving final approval to a re-  
7 covery plan, provide public notice and an oppor-  
8 tunity for public review and comment on the plan,  
9 and consider all information presented during the  
10 public comment period.

11 “(6) REPORTS.—The Secretary shall report  
12 every 2 years to the Committee on Environment and  
13 Public Works of the Senate and the Committee on  
14 Resources of the House of Representatives on the  
15 status of efforts to develop and implement recovery  
16 plans for all threatened species and endangered spe-  
17 cies.

18 “(b) MONITORING.—The Secretary, in cooperation  
19 with the States, shall implement a system to monitor effec-  
20 tively for not less than 5 years the status of each species  
21 which has recovered to the point at which the measures  
22 provided pursuant to this Act are no longer necessary and  
23 which, pursuant to section 4, has been determined to no  
24 longer be a threatened species or endangered species.  
25 Nothing in this subsection shall prevent the Secretary

1 from designating an appropriate agency to a State to con-  
2 duct such monitoring, if so requested by the State.”; and

3 (3) in subsection (d) (as redesignated by para-  
4 graph (1) of this subsection), by striking “subsection  
5 (a)” and inserting “subsection (c)”.

6 (b) EXISTING RECOVERY PLANS.—Each recovery  
7 plan developed under the Endangered Species Act of 1973  
8 before the date of the enactment of this Act shall continue  
9 in effect until revised by the Secretary in accordance with  
10 the amendments made by this Act.

11 (c) TECHNICAL AND CONFORMING AMENDMENTS.—  
12 Section 4 is amended—

13 (1) by striking subsections (f) and (g) and re-  
14 designating subsections (h) and (i) as subsections (f)  
15 and (g), respectively; and

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

18 (A) in the first sentence by striking “sec-  
19 tion” and inserting “Act”;

20 (B) in paragraph (3), by striking “of the  
21 section” and inserting “of this section”;

22 (C) in paragraph (4), by striking “sub-  
23 section (f) of this section” and inserting “sec-  
24 tion 5”; and

1 (D) by moving the last sentence 2 ems to  
2 the left, and in such sentence by striking “this  
3 subsection” and inserting “this section”.

4 **SEC. 8. INCENTIVES FOR ENDANGERED SPECIES CON-**  
5 **SERVATION ON PRIVATE PROPERTY.**

6 Section 14 of the Endangered Species Act of 1973  
7 (16 U.S.C. 1531 et seq.) is amended to read as follows:

8 “COOPERATION WITH PRIVATE LANDOWNERS

9 “SEC. 14. (a) IN GENERAL.—The Secretary shall  
10 seek to work cooperatively with private landowners in the  
11 conservation of threatened species and endangered species,  
12 and shall seek to minimize adverse social and economic  
13 consequences that may result from efforts to conserve  
14 such species.

15 “(b) PRIORITIES.—In developing any recovery plan  
16 under section 5 for the conservation of a threatened spe-  
17 cies or endangered species, the Secretary shall, to the max-  
18 imum extent practicable, give priority to actions in the fol-  
19 lowing order:

20 “(1) Actions to conserve species on Federal  
21 lands.

22 “(2) In cooperation with the appropriate State,  
23 actions to conserve species on State lands.

24 “(3) In cooperation with the appropriate local  
25 government, actions to conserve species on public

1 lands within the jurisdiction of that local govern-  
2 ment.

3 “(4) Ensuring that federally subsidized activi-  
4 ties on private lands are consistent with the objec-  
5 tives of the recovery plan.

6 “(5) Ensuring that incentives to conserve spe-  
7 cies on private lands under subsection (e) are used  
8 to the maximum extent practicable.

9 “(6) Regulating activities on private lands in a  
10 manner that will minimize adverse economic impacts  
11 through the use of habitat conservation plans under  
12 section 10 and other mechanisms as appropriate.

13 “(c) PUBLIC OUTREACH AND COMMUNITY ASSIST-  
14 ANCE PROGRAMS.—(1) The Secretary shall establish a  
15 Community Assistance Program to provide timely and ac-  
16 curate information to local governments or property own-  
17 ers.

18 “(2) Community Assistance Program employees shall  
19 be located within each field office of the United States  
20 Fish and Wildlife Service. Their duties shall include, but  
21 not be limited to—

22 “(A) providing accurate, timely information on  
23 local impacts of listings, recovery planning efforts,  
24 and other actions under this Act;

1           “(B) providing assistance on obtaining permits  
2           under section 10 and other provisions of this Act;

3           “(C) serving as a focal point for questions, re-  
4           quests, complaints, and suggestions from property  
5           owners and local governments concerning the poli-  
6           cies and activities of the United States Fish and  
7           Wildlife Service or other Federal agencies in the im-  
8           plementation of this Act; and

9           “(D) training Federal personnel on public out-  
10          reach efforts.

11          “(d) PRIVATE LANDOWNER COOPERATIVE AGREE-  
12          MENT PROGRAM.—(1) The Secretary shall establish a pri-  
13          vate landowner cooperative agreement program for the  
14          purpose of encouraging the management, restoration, or  
15          enhancement of habitats for endangered species or threat-  
16          ened species on private lands in furtherance of the pur-  
17          poses of this Act.

18          “(2) The Secretary may enter into written coopera-  
19          tive agreements with participating private landowners pur-  
20          suant to the program established by this subsection.

21          “(3) A cooperative agreement with a landowner under  
22          this subsection shall—

23                  “(A) describe the private lands which are sub-  
24                  ject to the agreement, and any technical or other as-

1       sistance which may be provided to the landowner by  
2       the Secretary under the agreement, as appropriate;

3           “(B) describe, for the lands covered by the  
4       agreement, as of the date the agreement is entered  
5       into, the baseline population size and habitat, of en-  
6       dangered species and threatened species that are  
7       covered by the agreement;

8           “(C) provide the participating landowner with  
9       volunteer status under the Fish and Wildlife Im-  
10      provement Act of 1956 (16 U.S.C. 742f(c));

11          “(D) be effective for a period agreed to by the  
12      parties to the agreement which is of sufficient dura-  
13      tion to enhance the conservation of the species cov-  
14      ered by the agreement, and be effective after that  
15      period until revoked by the landowner by submission  
16      of written notice to the Secretary;

17          “(E) describe those measures necessary to fur-  
18      ther the recovery of each species covered by the  
19      agreement through the management, restoration, or  
20      creation of habitat upon which the species is depend-  
21      ent; and

22          “(F) authorize, during or after, the period the  
23      cooperative agreement is in effect, any taking that—

24              “(i) is otherwise incidental to, and not the  
25              purpose of, the carrying out of any otherwise

1 lawful activity on the lands covered by the  
2 agreement;

3 “(ii) does not reduce for the lands covered  
4 by the agreement the baseline population size or  
5 habitat of the species covered by the agreement  
6 below that described in the statement of the  
7 Secretary under subparagraph (B); and

8 “(iii) does not have the effect of reducing  
9 the total amount of habitat available to the  
10 overall population to levels below those available  
11 to the population prior to the effective date of  
12 the agreement.

13 “(4) For purposes of this subsection, the term ‘base-  
14 line population and habitat’ means the population size and  
15 habitat of the species at the time the agreement is entered  
16 into.

17 “(e) VOLUNTARY INCENTIVES FOR CONSERVING  
18 SPECIES ON PRIVATE LANDS.—

19 “(1) IN GENERAL.—The Secretary may estab-  
20 lish voluntary incentive programs in accordance with  
21 this subsection, under those programs, enter into  
22 written agreements with private landowners to con-  
23 serve endangered species or threatened species on  
24 private lands consistent with the goals and purposes  
25 of this Act.

1           “(2) SPECIES RESERVE PROGRAM.—(A) Subject  
2 to appropriations, the Secretary may establish under  
3 this subsection a species reserve program through  
4 contracts to assist owners of important habitats for  
5 endangered species or threatened species in conserv-  
6 ing those habitats.

7           “(B) A contract under this paragraph shall set  
8 forth—

9                   “(i) the conservation measures and prac-  
10 tices to be carried out by the landowner during  
11 the term of the contract; and

12                   “(ii) the commercial use, if any, to be per-  
13 mitted on the land during such term.

14           “(C) A contract under this paragraph may in-  
15 clude terms under which the Secretary shall—

16                   “(i) share the cost of carrying out the con-  
17 servation measures and practices set forth in  
18 the contract for which the Secretary determines  
19 that cost-sharing is appropriate and in the pub-  
20 lic interest; and

21                   “(ii) provide technical assistance to the  
22 landowner.

23           “(3) AWARDS FOR ENDANGERED SPECIES CON-  
24 SERVATION.—The Secretary may establish under  
25 this subsection a program to recognize excellence in

1 non-Federal conservation of endangered species and  
2 threatened species. Such program shall include, sub-  
3 ject to the availability of appropriations, the annual  
4 presentation of 3 Conservation Excellence Awards in  
5 the amount of \$5,000 each to private landowners for  
6 voluntary efforts to conserve species.

7 “(4) LAND EXCHANGES.—Consistent with exist-  
8 ing law, the Secretary and the Secretary of Agri-  
9 culture are encouraged to undertake exchanges of  
10 land within the jurisdiction of each Secretary (other  
11 than units of the National Park System, the Na-  
12 tional Wildlife Refuge System, National Wild and  
13 Scenic Rivers, or the National Wilderness System)  
14 for private lands for purposes of furthering the goals  
15 of this Act.”.

16 **SEC. 9. STREAMLINING INTERAGENCY COOPERATION.**

17 (a) IN GENERAL.—Within 1 year after the date of  
18 the enactment of this Act, the Secretary shall, in coopera-  
19 tion with the States, develop and propose regulations that  
20 will ensure timely conclusion of consultations under sec-  
21 tion 7 of the Endangered Species Act of 1973 (16 U.S.C.  
22 1536).

23 (b) CONSOLIDATION; STATE COOPERATION.—Section  
24 7 (16 U.S.C. 1536) is amended—

1 (1) in subsection (a)(2), in the last sentence, by  
2 inserting before the period the following: “, after so-  
3 liciting and fully considering scientific and commer-  
4 cial data concerning the agency action from the ap-  
5 propriate State agency in each affected State”;

6 (2) by adding at the end of subsection (a) the  
7 following new paragraph:

8 “(5)(A) Consultations and conferences under this  
9 section between the Secretary and a Federal agency may,  
10 if approved by the Secretary, encompass a number of simi-  
11 lar or related agency actions to be undertaken within a  
12 particular geographical area or ecosystem.

13 “(B) The Secretary may consolidate requests for con-  
14 sultations or conferences from various Federal agencies  
15 whose proposed actions may affect endangered species,  
16 threatened species, or candidate species that are depend-  
17 ent on the same ecosystem.”; and

18 (3) in subsection (b)(3)(A) by inserting after  
19 “habitat.” the following new sentence: “The Sec-  
20 retary shall provide an opportunity for States, local  
21 governments, and other interested persons to com-  
22 ment on the Secretary’s opinion.”.

23 **SEC. 10. IMPROVING HABITAT CONSERVATION PLANNING.**

24 Section 10(a) is amended by adding at the end the  
25 following new paragraphs:

1       “(3)(A) Habitat conservation plans developed pursu-  
2 ant to this subsection may cover multiple species or habi-  
3 tats. Any State, Indian tribe, local government, or other  
4 person may develop and submit to the Secretary a habitat  
5 conservation plan to conserve and manage multiple species  
6 or habitats, including but not limited to the following:

7           “(i) species listed as endangered or threatened  
8 under section 4(b) of this Act or under State endan-  
9 gered or threatened species conservation programs;

10          “(ii) species that are candidates for such listing;

11          or

12          “(iii) other rare or declining species whose habi-  
13 tat is located within the same ecosystem as is habi-  
14 tat of species under clause (i) or (ii).

15       “(B) The Secretary, in cooperation with the affected  
16 State agencies and Indian tribes, shall issue standards and  
17 guidelines for the development and approval of habitat  
18 conservation plans under this subsection. Such standards  
19 and guidelines shall include the development of a short,  
20 simple, standardized form for private landowners whose  
21 permit under this section applies to land in residential,  
22 noncommercial use.

23       “(C) The Secretary shall approve a permit applica-  
24 tion for a multiple species conservation plan within 180  
25 days of receipt of the application if the Secretary finds,

1 in addition to the criteria under paragraph (2)(B) of this  
2 subsection, that such a plan—

3 “(i) is consistent with the conservation of the  
4 various species or habitats covered by the plan, or,  
5 in the case of endangered or threatened species, is  
6 consistent with the goals of a recovery plan under  
7 section 5; and

8 “(ii) is consistent with any voluntary conserva-  
9 tion agreements approved under section 6.

10 “(D) Upon approval of a multiple species habitat con-  
11 servation plan, otherwise lawful activities undertaken in  
12 accordance with the approved plan shall be deemed to be  
13 in compliance with the requirements of section 9.

14 “(E) Other Federal agencies shall manage lands  
15 under their jurisdiction in a manner which is consistent  
16 with the conservation goals of the habitat conservation  
17 plan.

18 “(F) The Secretary may provide grants or interest-  
19 free loans or other assistance to States, Indian tribes, local  
20 governments, or other persons in support of the develop-  
21 ment and implementation of habitat conservation plans  
22 under this subsection.

23 “(G) If the Secretary, in cooperation with the permit-  
24 tee under this subsection, decides that additional mitiga-  
25 tion measures are required to prevent the extinction or

1 further decline of a species covered under the terms of  
2 a habitat conservation plan, a plan permittee who is in  
3 compliance with such a plan shall not be required to bear  
4 the cost of such measures.

5 “(4)(A) If the Secretary receives a permit application  
6 under this subsection for an activity on private property  
7 which the Secretary, after consultation with the property  
8 owner, finds does not meet the requirements established  
9 under paragraph (2), the Secretary shall, at the request  
10 of the applicant, prepare an analysis of the effect of such  
11 finding on the use of private property in question. Such  
12 analysis shall not be made available to the public without  
13 the consent of the owner of the property.

14 “(B) For purposes of this paragraph, the term ‘pri-  
15 vate property’ means real property.”

16 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

17 Section 15 (16 U.S.C. 1542) is amended to read as  
18 follows:

19 “AUTHORIZATION OF APPROPRIATIONS

20 “SEC. 15. (a) IN GENERAL.—In addition to amounts  
21 authorized under subsections (b), (c), and (d), there are  
22 authorized to be appropriated—

23 “(1) \$102,000,000 for each of fiscal years 1997  
24 and 1998, and \$112,000,000 for each of fiscal years  
25 1999 and 2000, to enable the Department of the In-  
26 terior to carry out its responsibilities under this Act;

1           “(2) \$20,000,000 for each of fiscal years 1997  
2           and 1998, and \$22,000,000 for each of fiscal years  
3           1999 and 2000, to enable the Department of the In-  
4           terior to carry out its responsibilities under section  
5           6;

6           “(3) \$21,000,000 for each of fiscal years 1997  
7           and 1998, and \$23,000,000 for each of fiscal years  
8           1999 and 2000, to enable the Department of Com-  
9           merce to carry out its responsibilities under this Act;

10           “(4) \$2,000,000 for each of fiscal years 1997  
11           and 1998, and \$2,200,000 for each of fiscal years  
12           1999 and 2000, to enable the Department of Com-  
13           merce to carry out its responsibilities under section  
14           6; and

15           “(5) \$31,000,000 for each of fiscal years 1997  
16           and 1998, and \$34,000,000 for each of fiscal years  
17           1999 and 2000, to enable the Department of Agri-  
18           culture to carry out its responsibilities with respect  
19           to the enforcement of this Act and the Convention  
20           which pertain to the importation or exportation of  
21           plants.

22           “(b) CONSERVATION PLANNING FUND.—To assist in  
23           the development of plans under section 6 and section 10,  
24           there are authorized to be appropriated to the Secretary

1 \$20,000,000, which shall be deposited into the Conserva-  
2 tion Planning Fund established under section 6.

3 “(c) PRIVATE LANDOWNER INCENTIVES.—There are  
4 authorized to be appropriated to the Secretary  
5 \$10,000,000 for each of fiscal years 1997 through 2000  
6 for implementing section 14.

7 “(d) EXEMPTIONS FROM ACT.—There are authorized  
8 to be appropriated to the Secretary to assist the Secretary  
9 and the Endangered Species Committee in carrying out  
10 their responsibilities under section 7, \$600,000 for each  
11 of fiscal years 1997 through 2000.”.

○

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