

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

# H. R. 3824

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

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 19, 2005

Mr. POMBO (for himself, Mr. CARDOZA, Mr. WALDEN of Oregon, Mr. BERRY, Mr. RADANOVICH, Mr. ROSS, Mrs. CUBIN, Miss McMORRIS, Mr. THOMPSON of Mississippi, Mr. BROWN of South Carolina, Mr. BACA, Mr. GRAVES, Mr. COSTA, and Mr. GIBBONS) introduced the following bill; which was referred to the Committee on Resources

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## A BILL

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

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

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Threatened and Endangered Species Recovery Act of  
6       2005”.

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

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

**1 SEC. 2. AMENDMENT REFERENCES.**

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

**8 SEC. 3. DEFINITIONS.**

9       (a) **BEST AVAILABLE SCIENTIFIC DATA.**—Section 3  
 10 (16 U.S.C. 1532) is amended by redesignating paragraphs  
 11 (2) through (21) in order as paragraphs (3), (4), (5), (6),  
 12 (7), (8), (9), (10), (11), (13), (14), (15), (16), (17), (18),  
 13 (19), (20), (21), and (22), respectively, and by inserting  
 14 before paragraph (3), as so redesignated, the following:

15               “(2)(A) The term ‘best available scientific data’  
 16               means scientific data, regardless of source, that are

1 available to the Secretary at the time of a decision  
2 or action for which such data are required by this  
3 Act and that the Secretary determines are the most  
4 accurate, reliable, and relevant for use in that deci-  
5 sion or action.

6 “(B) Not later than one year after the date of  
7 the enactment of the Threatened and Endangered  
8 Species Recovery Act of 2005, the Secretary shall  
9 issue regulations that establish criteria that must be  
10 met to determine which data constitute the best  
11 available scientific data for purposes of subpara-  
12 graph (A).

13 “(C) If the Secretary determines that data for  
14 a decision or action do not comply with the criteria  
15 established by the regulations issued under subpara-  
16 graph (B), do not comply with guidance issued  
17 under section 515 of the Treasury and General Gov-  
18 ernment Appropriations Act, 2001 (Public Law  
19 106–554; 114 Stat. 2763A–171) by the Director of  
20 the Office of Management and Budget and the Sec-  
21 retary, do not consist of any empirical data, or are  
22 found in sources that have not been subject to peer  
23 review in a generally acceptable manner—

1           “(i) the Secretary shall undertake the nec-  
2           essary measures to assure compliance with such  
3           criteria or guidance; and

4           “(ii) the Secretary may—

5                   “(I) secure such empirical data;

6                   “(II) seek appropriate peer review;

7                   and

8                   “(III) reconsider the decision or ac-  
9                   tion based on any supplemental or dif-  
10                  ferent data provided or any peer review  
11                  conducted pursuant to this subpara-  
12                  graph.”.

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

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

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

1           “(12) JEOPARDIZE THE CONTINUED EXIST-  
2           ENCE.—The term ‘jeopardize the continued exist-  
3           ence’ means, with respect to an agency action (as  
4           that term is defined in section 7(a)(2)), that the ac-  
5           tion reasonably would be expected to significantly  
6           impede, directly or indirectly, the conservation in the  
7           long-term of the species in the wild.”.

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

11       **SEC. 4. DETERMINATIONS OF ENDANGERED SPECIES AND**  
12                               **THREATENED SPECIES.**

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

17               “DETERMINATION OF ENDANGERED SPECIES AND  
18                               THREATENED SPECIES

19               “SEC. 4. (a) IN GENERAL.—(1)(A) The Secretary  
20          shall by regulation promulgated in accordance with sub-  
21          section (b) determine whether any species is an endan-  
22          gered species or a threatened species because of any of  
23          the following factors:

24                       “(i) The present or threatened destruction,  
25          modification, or curtailment of its habitat or range

1 by human activities, competition from other species,  
2 drought, fire, or other catastrophic natural causes.

3 “(ii) Overutilization for commercial, rec-  
4 reational, scientific, or educational purposes.

5 “(iii) Disease or predation.

6 “(iv) The inadequacy of existing regulatory  
7 mechanisms, including any efforts identified pursu-  
8 ant to subsection (b)(1).

9 “(v) Other natural or manmade factors affect-  
10 ing its continued existence.

11 “(B) The Secretary shall use the authority provided  
12 by subparagraph (A) to determine any distinct population  
13 of any species of vertebrate fish or wildlife to be an endan-  
14 gered species or a threatened species only sparingly.”

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

17 (1) by striking “best scientific and commercial  
18 data available to him” and inserting “best available  
19 scientific data”; and

20 (2) by inserting “Federal agency, any” after  
21 “being made by any”.

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

24 “(2)(A) The Secretary shall—

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

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

12                   “(I) be removed from such list;

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

15                   or

16                   “(III) be changed in status from a  
17                   threatened species to an endangered spe-  
18                   cies.

19           “(B) Each determination under subparagraph  
20          (A)(ii) shall be made in accordance with subsections  
21          (a) and (b).”.

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

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

25          (b) CONFORMING AMENDMENTS.—

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

6           (2) Section 4(b) (16 U.S.C. 1533(b)), as other-  
7 wise amended by this Act, is further amended by  
8 striking paragraph (2), and by redesignating para-  
9 graphs (3) through (9) in order as paragraphs (2)  
10 through (8), respectively.

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

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

21           (5) Section 4(b) (16 U.S.C. 1533(b)) is further  
22 amended in paragraph (6), as redesignated by para-  
23 graph (2) of this subsection, by striking “, designa-  
24 tion,”.

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

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

8           (A) in the second sentence—

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

10          and

11          (ii) by striking “and specify any” and

12          all that follows through the end of the sen-  
13          tence and inserting a period; and

14          (B) in the third sentence by striking “,  
15          designations,”.

16          (8) Section 5 (16 U.S.C. 1534), as amended by  
17          section 10(a)(3) of this Act, is further amended in  
18          subsection (i)(2) by striking “section 4(b)(7)” and  
19          inserting “section 4(b)(6)”.

20          (9) Section 6(e) (16 U.S.C. 1535(e)), as  
21          amended by section 11(1) of this Act, is further  
22          amended in paragraph (3) by striking “section  
23          4(b)(3)(B)(iii)” each place it appears and inserting  
24          “section 4(b)(2)(B)(iii)”.

25          (10) Section 7 (16 U.S.C. 1536) is amended—

1 (A) in subsection (a)(2) in the second sen-  
2 tence by striking “or result in the destruction  
3 or modification of any habitat of such species”  
4 and all that follows through the end of the sen-  
5 tence and inserting a period;

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

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

12 (11) Section 10(j)(2)(C) (16 U.S.C.  
13 1539(j)(2)(C)), as amended by section 13(c) of this  
14 Act, is further amended—

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

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

21 **SEC. 6. PETITIONS AND PROCEDURES FOR DETERMINA-**  
22 **TIONS AND REVISIONS.**

23 (a) TREATMENT OF PETITIONS.—Section 4(b)(3) (16  
24 U.S.C. 1533(b)(3)) is amended by adding at the end of  
25 subparagraph (A) the following: “The Secretary shall not

1 make a finding that the petition presents substantial sci-  
2 entific or commercial information indicating that the peti-  
3 tioned action may be warranted unless the petitioner pro-  
4 vides to the Secretary a copy of all information cited in  
5 the petition.”.

6 (b) IMPLEMENTING REGULATIONS.—

7 (1) PROPOSED REGULATIONS.—Section 4(b)  
8 (16 U.S.C. 1533(b)) is amended—

9 (A) in paragraph (5)(A)—

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

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

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

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

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

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

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

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

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

13 (2) FINAL REGULATIONS.—Section 4(b)(6) (16  
14 U.S.C. 1533(b)(6)) is amended—

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

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

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

22 “(iii) notice that the proposed regulation is  
23 being withdrawn under subparagraph (B)(ii), to-  
24 gether with the finding on which such withdrawal is  
25 based.”;

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

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

7 (D) by striking subparagraph (C).

8 (3) EMERGENCY DETERMINATIONS.—Section  
9 4(b)(7) (16 U.S.C. 1533(b)(7)) is amended—

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

15 (B) in subparagraph (B), by striking “the  
16 State agency in” and inserting “the Governor  
17 of, and State agency in,”.

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

19 Section 4(c) (16 U.S.C. 1533(c)) is amended in para-  
20 graph (2)—

21 (1) in subparagraph (B)—

22 (A) in the matter preceding clause (i), by  
23 striking “any such species should”; and

1 (B) in each of clause (i), (ii), and (iii), by  
2 inserting “any such species should” before  
3 “be”; and

4 (2) by striking the last sentence and inserting  
5 the following:

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

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

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

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

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

1 **SEC. 8. PROTECTIVE REGULATIONS.**

2 Section 4(d) (16 U.S.C. 1533(d)) is amended by  
3 striking so much as precedes “respect” and inserting the  
4 following:

5 “(d) PROTECTIVE REGULATIONS.—(1) Whenever any  
6 species is determined to be a threatened species pursuant  
7 to subsection (a)(1), the Secretary may, by regulation pub-  
8 lished on or after the date of publication of the rule imple-  
9 menting the determination, prohibit with respect to the  
10 threatened species any act prohibited under section  
11 9(a)(1) in the case of fish or wildlife, or section 9(a)(2)  
12 in the case of plants, with respect to endangered species.

13 “(2) Each regulation published under this subsection  
14 shall be accompanied with a statement by the Secretary  
15 of the reason or reasons for applying any particular prohi-  
16 bition to the threatened species.

17 “(3) A regulation issued under this subsection may  
18 apply to more than one threatened species only if the spe-  
19 cific threats to, and specific biological conditions and  
20 needs of, the species are identical, or sufficiently similar,  
21 to warrant the application of identical prohibitions.

22 “(4) With”.

23 **SEC. 9. SECRETARIAL GUIDELINES; STATE COMMENTS.**

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

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

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

6           (A) in the heading by striking “AGENCY”  
7     and inserting “SECRETARIAL”;

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

12          (C) by redesignating paragraph (4) as  
13    paragraph (5);

14          (D) by inserting after paragraph (3) the  
15    following:

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

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

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

24          (A) by inserting “STATE COMMENTS.—”  
25    before the first sentence;

1 (B) by striking “a State agency” the first  
 2 place it appears and inserting “a Governor or  
 3 a State agency”;

4 (C) by striking “a State agency” the sec-  
 5 ond place it appears and inserting “a Governor  
 6 or a State agency”;

7 (D) by striking “the State agency” and in-  
 8 serting “the Governor or the State agency”;  
 9 and

10 (E) by striking “the agency’s” and insert-  
 11 ing “the Governor’s or the State agency’s”.

12 **SEC. 10. RECOVERY PLANS AND LAND ACQUISITIONS.**

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

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

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

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

23 “RECOVERY PLANS AND LAND ACQUISITION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(ii) A description of such site-specific or other  
18 measures that would achieve the criteria established  
19 under clause (i), including such intermediate meas-  
20 ures as are warranted to effect progress toward  
21 achievement of the criteria.

22 “(iii) Estimates of the time required and the  
23 costs to carry out those measures described under  
24 clause (ii), including, to the extent practicable, esti-  
25 mated costs for any recommendations, by the recov-

1       ery team, or by the Secretary if no recovery team is  
2       selected, that any of the areas identified under  
3       clause (iv) be acquired on a willing seller basis.

4             “(iv) An identification of those specific areas  
5       that are of special value to the conservation of the  
6       species.

7             “(B) Those members of any recovery team appointed  
8       pursuant to subsection (d) with relevant scientific exper-  
9       tise, or the Secretary if no recovery team is appointed,  
10      shall, based solely on the best available scientific data, es-  
11      tablish the objective, measurable criteria required under  
12      subparagraph (A)(i).

13            “(C)(i) If the recovery team, or the Secretary if no  
14      recovery team is appointed, determines in the recovery  
15      plan that insufficient best available scientific data exist  
16      to determine criteria or measures under subparagraph (A)  
17      that could achieve a determination to remove the species  
18      from the lists published under section 4(c), the recovery  
19      plan shall contain interim criteria and measures that are  
20      likely to improve the status of the species.

21            “(ii) If a recovery plan does not contain the criteria  
22      and measures provided for by clause (i) of subparagraph  
23      (A), the recovery team for the plan, or by the Secretary  
24      if no recovery team is appointed, shall review the plan at  
25      intervals of no greater than 5 years and determine if the

1 plan can be revised to contain the criteria and measures  
2 required under subparagraph (A).

3 “(iii) If the recovery team or the Secretary, respec-  
4 tively, determines under clause (ii) that a recovery plan  
5 can be revised to add the criteria and measures provided  
6 for under subparagraph (A), the recovery team or the Sec-  
7 retary, as applicable, shall revise the recovery plan to add  
8 such criteria and measures within 2 years after the date  
9 of the determination.

10 “(D) In specifying measures in a recovery plan under  
11 subparagraph (A), a recovery team or the Secretary, as  
12 applicable, shall—

13 “(i) whenever possible include alternative meas-  
14 ures; and

15 “(ii) in developing such alternative measures,  
16 the Secretary shall seek to identify, among such al-  
17 ternative measures of comparable expected efficacy,  
18 the alternative measures that are least costly.

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

23 “(2) Any area that, immediately before the enactment  
24 of the Threatened and Endangered Species Recovery Act  
25 of 2005, is designated as critical habitat of an endangered

1 species or threatened species shall be treated as an area  
2 described in subparagraph (A)(iv) until a recovery plan  
3 for the species is developed or the existing recovery plan  
4 for the species is revised pursuant to subsection (b)(3).

5 “(d) RECOVERY TEAMS.—(1) The Secretary shall  
6 promulgate regulations that provide for the establishment  
7 of recovery teams for development of recovery plans under  
8 this section.

9 “(2) Such regulations shall—

10 “(A) establish criteria and the process for se-  
11 lecting the members of recovery teams, and the proc-  
12 ess for preparing recovery plans, that ensure that  
13 each team—

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

16 “(ii) includes sufficient representation  
17 from constituencies with a demonstrated direct  
18 interest in the species and its conservation or in  
19 the economic and social impacts of its conserva-  
20 tion to ensure that the views of such constitu-  
21 encies will be considered in the development of  
22 the plan;

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

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

5           “(D) provide guidelines for circumstances in  
6 which the Secretary may determine that appoint-  
7 ment of a recovery team is not necessary or advis-  
8 able to develop a recovery plan for a specific species,  
9 including procedures to solicit public comment on  
10 any such determination.

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

15          “(e) REPORTS TO CONGRESS.—(1) The Secretary  
16 shall report every two years to the Committee on Re-  
17 sources of the House of Representatives and the Com-  
18 mittee on Environment and Public Works of the Senate  
19 on the status of all domestic endangered species and  
20 threatened species and the status of efforts to develop and  
21 implement recovery plans for all domestic endangered spe-  
22 cies and threatened species.

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

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

3                   “(i) changes in population, range, or  
4                   threats; and

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

6           “(B) for each species, a measurement of the de-  
7           gree of confidence in the reported status of such spe-  
8           cies, based upon a quantifiable parameter developed  
9           for such purposes.

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

16          “(g) STATE COMMENT.—The Secretary shall, prior  
17       to final approval of a new or revised recovery plan, provide  
18       a draft of such plan and an opportunity to comment on  
19       such draft to the Governor of, and State agency in, any  
20       State to which such draft would apply. The Secretary shall  
21       include in the final recovery plan the Secretary’s response  
22       to the comments of the Governor and the State agency.

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

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

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

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

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

12 “(B) Nothing in a recovery plan shall be construed  
13 to establish regulatory requirements or otherwise to have  
14 an effect other than as nonbinding guidance, except with  
15 respect to any program or project covered by an implemen-  
16 tation agreement under this paragraph.

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

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

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

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

16 (c) SPECIES RECOVERY AGREEMENTS AND SPECIES  
17 CONSERVATION CONTRACT AGREEMENTS.—

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

21 “(l) SPECIES RECOVERY AGREEMENTS AND SPECIES  
22 CONSERVATION CONTRACT AGREEMENTS.—(1) The Sec-  
23 retary may enter into species recovery agreements pursu-  
24 ant to paragraph (2) and species conservation contract  
25 agreements pursuant to paragraph (3) with persons, other

1 than agencies or departments of the Federal Government  
2 or State governments, under which the Secretary is obli-  
3 gated, subject to the availability of appropriations, to  
4 make annual payments or provide other compensation to  
5 the persons to implement the agreements.

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

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

14 “(i) shall require that the person shall carry  
15 out, on the land owned or controlled by the person,  
16 activities that—

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

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

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

1           “(ii) shall specify such a management plan that  
2 includes—

3                   “(I) identification of the covered species;

4                   “(II) a description of the land to which the  
5 agreement applies; and

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

8           “(iii) shall provide sufficient documentation to  
9 establish ownership or control by the person of the  
10 land to which the agreement applies;

11           “(iv) shall include the amounts of the annual  
12 payments or other compensation to be provided by  
13 the Secretary to the person under the agreement,  
14 and the terms under which such payments or com-  
15 pensation shall be provided; and

16           “(v) shall include—

17                   “(I) the duties of the person;

18                   “(II) the duties of the Secretary;

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

23                   “(IV) acts or omissions by the person or  
24 the Secretary that shall be considered violations  
25 of the agreement, and procedures under which

1 notice of and an opportunity to remedy any vio-  
2 lation by the person or the Secretary shall be  
3 given.

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

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

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

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

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

1           suant to section 4(b)(3)(B)(iii), or species sub-  
2           ject to comparable designations under State  
3           law; and

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

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

8           “**(I)** identification of the covered species;

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

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

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

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

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

25          and

1 “(iv) shall include—

2 “(I) the duties of the person;

3 “(II) the duties of the Secretary;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 “(4)(A) Upon request of a person seeking to enter  
10 into an agreement pursuant to this subsection, the Sec-  
11 retary may provide to such person technical assistance in  
12 the preparation, and management training for the imple-  
13 mentation, of the management plan for the agreement.

14 “(B) Any State agency, local government, nonprofit  
15 organization, or federally recognized Indian tribe may pro-  
16 vide assistance to a person in the preparation of a man-  
17 agement plan, or participate in the implementation of a  
18 management plan, including identifying and making avail-  
19 able certified fisheries or wildlife biologists with expertise  
20 in the conservation of species for purposes of the prepara-  
21 tion or review and approval of management plans for spe-  
22 cies conservation contract agreements under paragraph  
23 (3)(D)(iii).

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

4               “(A) the agreement shall terminate if the agree-  
5 ment does not continue in effect under subparagraph  
6 (B);

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

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

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

23       “(7) The Secretary shall make annual payments  
24 under this subsection as soon as possible after December  
25 31 of each calendar year.

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

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

13           (2) Subsection (e)(2) of section 7 (16 U.S.C.  
14 1536) (as redesignated by section 12(d)(2) of this  
15 Act) is amended by inserting “or in an agreement  
16 under section 5(l)” after “section”.

17       (d) CONFORMING AMENDMENTS.—

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

21           (2) The Marine Mammal Protection Act of  
22 1972 is amended—

23           (A) in section 104(c)(4)(ii) (16 U.S.C.  
24 1374(c)(4)(A)(ii)) by striking “section 4(f)”  
25 and inserting “section 5”; and

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

6 **SEC. 11. COOPERATION WITH STATES.**

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

8 (1) in subsection (c), by adding at the end the  
9 following:

10 “(3)(A) Any cooperative agreement entered into by  
11 the Secretary under this subsection may also provide for  
12 development of a program for conservation of species de-  
13 termined to be candidate species pursuant to section  
14 4(b)(3)(B)(iii) or any other species that the State and the  
15 Secretary agree is at risk of being determined to be an  
16 endangered species or threatened species under section  
17 4(a)(1) in that State. Upon completion of consultation on  
18 the agreement pursuant to subsection (e)(2), any inci-  
19 dental take statement issued on the agreement shall apply  
20 to any such species, and to the State and any landowners  
21 enrolled in any program under the agreement, without fur-  
22 ther consultation (except any additional consultation pur-  
23 suant to subsection (e)(2)) if the species is subsequently  
24 determined to be an endangered species or a threatened  
25 species and the agreement remains an adequate and active

1 program for the conservation of endangered species and  
2 threatened species.

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

8 “(C) The Secretary shall periodically review each co-  
9 operative agreement under this subsection and seek to  
10 make changes the Secretary considers necessary for the  
11 conservation of endangered species and threatened species  
12 to which the agreement applies.

13 “(4) Any cooperative agreement entered into by the  
14 Secretary under this subsection that provides for the en-  
15 rollment of private lands or water rights in any program  
16 established by the agreement shall ensure that the decision  
17 to enroll is voluntary for each owner of such lands or water  
18 rights.”;

19 (2) in subsection (d)(1)—

20 (A) by striking “pursuant to subsection (c)  
21 of this section”;

22 (B) by striking “or to assist” and all that  
23 follows through “section 4(g)” and inserting  
24 “pursuant to subsection (c)(1) and (2) or to ad-  
25 dress candidate species or other species at risk

1 and recovered species pursuant to subsection  
2 (c)(3)”; and

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

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

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

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

17 “(2) Any cooperative agreement entered into by the  
18 Secretary under subsection (c) shall be subject to section  
19 7(a)(2) through (d) and regulations implementing such  
20 provisions only before—

21 “(A) the Secretary enters into the agreement;

22 and

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

1           “(i) addresses species that are determined  
2           to be endangered species or threatened species,  
3           are not addressed in the agreement, and may be  
4           affected by the agreement; or

5           “(ii) new information about any species ad-  
6           dressed in the agreement that the Secretary de-  
7           termines—

8                   “(I) constitutes the best available sci-  
9                   entific data; and

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

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

23           “(4) The Secretary may terminate any cooperative  
24           agreement entered into by the Secretary under subsection

1 (c), after consultation with the Governor of the affected  
2 State, if—

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

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

20 **SEC. 12. INTERAGENCY COOPERATION AND CONSULTA-**  
21 **TION.**

22 (a) **CONSULTATION REQUIREMENT.**—Section 7(a)  
23 (16 U.S.C. 1536(a)) is amended—

24 (1) in paragraph (1) in the second sentence, by  
25 striking “endangered species” and all that follows

1 through the end of the sentence and inserting “spe-  
2 cies determined to be endangered species and threat-  
3 ened species under section 4.”;

4 (2) in paragraph (2)—

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

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

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

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

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

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

9 (3) in paragraph (4)—

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

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

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

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

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

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

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

3           (3) in paragraph (3)(A)—

4                 (A) in the first sentence—

5                     (i) by striking “Promptly after” and  
6                     inserting “Before”;

7                     (ii) by inserting “permit or license”  
8                     before “applicant”; and

9                     (iii) by inserting “proposed” before  
10                    “written statement”; and

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

1 late subsection (a)(2) and can be taken by the  
2 Federal agency or applicant in implementing  
3 the agency action. The Secretary shall cooper-  
4 ate with the Federal agency and any permit or  
5 license applicant in the preparation of any sug-  
6 gested reasonable and prudent alternatives.”;

7 (4) in paragraph (4)—

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

11 (B) by inserting “(A)” after “(4)”;

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

19 “(B) A statement described in this subparagraph—  
20 ”; and

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

22 “(5)(A) Any terms and conditions set forth pursuant  
23 to paragraph (4)(B)(iv) shall be roughly proportional to  
24 the impact of the incidental taking identified pursuant to

1 paragraph (4) in the written statement prepared under  
2 paragraph (3).

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

6 “(i) must be capable of successful implementa-  
7 tion; and

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

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

13 (1) by striking “(1)”;

14 (2) by striking paragraph (2);

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

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

1 (d) ELIMINATION OF ENDANGERED SPECIES COM-  
2 MITTEE PROCESS.—Section 7 (16 U.S.C. 1536) is amend-  
3 ed—

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

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

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

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

12 (B) by striking “such section” and all that  
13 follows through “(2)” and inserting “such sec-  
14 tion,”; and

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

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

24 (B) by striking the second sentence.

1 **SEC. 13. EXCEPTIONS TO PROHIBITIONS.**

2 (a) INCIDENTAL TAKE PERMITS.—Section 10(a)(2)  
3 (16 U.S.C. 1539(a)(2)) is amended—

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

8 “(iv) objective, measurable biological goals  
9 to be achieved for species covered by the plan  
10 and specific measures for achieving such goals;

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

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

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

24 “(v) the term of the permit is reasonable,  
25 taking into consideration—

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

4                   “(II) the extent to which the plan will  
5                   enhance the conservation of covered spe-  
6                   cies;

7                   “(III) the adequacy of information  
8                   underlying the plan;

9                   “(IV) the length of time necessary to  
10                  implement and achieve the benefits of the  
11                  plan; and

12                  “(V) the scope of the plan’s adaptive  
13                  management strategy; and”;

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

16                  “(3) Any terms and conditions offered by the Sec-  
17                  retary pursuant to paragraph (2)(B) to reduce or offset  
18                  the impacts of incidental taking shall be roughly propor-  
19                  tional to the impact of the incidental taking specified in  
20                  the conservation plan pursuant to in paragraph (2)(A)(i).  
21                  In any case in which various terms and conditions are  
22                  available, the terms and conditions shall be capable of suc-  
23                  cessful implementation and shall be consistent with the ob-  
24                  jective of the applicant to the greatest extent possible.

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

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

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

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

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

8 “(E) Any permit described in subparagraph (A)  
9 issued before the date of the enactment of the Threatened  
10 and Endangered Species Recovery Act of 2005 that (or  
11 of which the incorporated agreement) contains provisions  
12 that do not materially differ in effect from the terms of  
13 this paragraph shall be governed by this paragraph. Any  
14 regulations promulgated prior to such date that do not  
15 materially differ in effect from the terms of this paragraph  
16 shall remain in effect unless and until they are amended.

17 “(5)(A) The Secretary shall revoke a permit issued  
18 under paragraph (2) if the Secretary finds that the per-  
19 mittee is not complying with the terms and conditions of  
20 the permit.

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

23 “(i) the Secretary determines that continuation  
24 of the activities to which the permit applies would be

1 inconsistent with the criteria in paragraph  
2 (2)(B)(iv);

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

5 “(iii) the Secretary is unable to, and the per-  
6 mittee chooses not to, remedy the condition causing  
7 such inconsistency.”.

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

12 (c) EXPERIMENTAL POPULATIONS.—Section 10(j)  
13 (16 U.S.C. 1539(j)) is amended—

14 (1) in paragraph (2)(B), by striking “informa-  
15 tion” and inserting “scientific data”; and

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

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

22 “(k) WRITTEN DETERMINATION OF COMPLIANCE.—  
23 (1) A property owner (in this subsection referred to as  
24 a ‘requester’) may request the Secretary to make a written  
25 determination that a proposed use of the owner’s property

1 will comply with section 9(a), by submitting a written de-  
2 scription of the proposed action to the Secretary.

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

6 “(A) the nature, the specific location, and the  
7 anticipated schedule and duration of the proposed  
8 use; and

9 “(B) any incidental take of a species that is in-  
10 cluded on a list published under 4(c)(1) that the re-  
11 questor reasonably expects to occur as a result of  
12 the proposed use.

13 “(3) The requestor may supply any other information  
14 the requestor believes will assist the Secretary to make  
15 a determination under paragraph (1).

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

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

1 of the 90-day period beginning on the date of the submis-  
2 sion of the request.

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

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

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

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

19 **SEC. 14. PRIVATE PROPERTY CONSERVATION.**

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

22 “PRIVATE PROPERTY CONSERVATION

23 “SEC. 13. (a) IN GENERAL.—The Secretary may pro-  
24 vide conservation grants (in this section referred to as  
25 ‘grants’) to promote the voluntary conservation of endan-  
26 gered species and threatened species by owners of private

1 property and shall provide financial conservation assist-  
2 ance (in this section referred to as ‘aid’) to alleviate the  
3 burden of conservation measures imposed upon private  
4 property owners. The Secretary may provide technical as-  
5 sistance when requested to enhance the conservation ef-  
6 fects of grants or aid.

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

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

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

15 “(3) must be designed to directly contribute to  
16 the conservation of an endangered species or threat-  
17 ened species by increasing the species’ numbers or  
18 distribution; and

19 “(4) must be supported by any private property  
20 owners on whose property any grant funded activi-  
21 ties are carried out.

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

24 “(1) Grants that promote conservation of en-  
25 dangered species or threatened species on private

1 property while making economically beneficial and  
2 productive use of the private property on which the  
3 conservation activities are conducted.

4 “(2) Grants that develop, promote, or use tech-  
5 niques to increase the distribution or population of  
6 an endangered species or threatened species on pri-  
7 vate property.

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

11 “(d) ELIGIBILITY FOR AID.—The Secretary shall  
12 award aid to private property owners who received a writ-  
13 ten determination under section 10(k) finding the pro-  
14 posed use of the private property would not comply with  
15 section 9(a), in an amount no less than the fair market  
16 value of the use that was proposed by the property owner  
17 if—

18 “(1) the owner has foregone the proposed use;

19 “(2) the owner has requested financial aid with-  
20 in 180 days of receiving a written determination  
21 that the proposed use would not comply with section  
22 (9)(a); and

23 “(3) the foregone proposed use was not, as  
24 demonstrated by the Secretary, considered a nui-  
25 sance based upon long-standing background prin-

1       ciples of nuisance and property law as understood  
2       within the State in which the property is situated.

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

5               “(A) within 180 days after receipt of a re-  
6               quest for aid unless there are unresolved ques-  
7               tions regarding fair market value; or

8               “(B) at the resolution of any questions  
9               concerning fair market value of the forgone pro-  
10              posed use of the private property.

11       “(2) If the Secretary and the property owner are un-  
12 able to reach agreement as to fair market value within  
13 270 days from the initial date of the request, the Secretary  
14 shall make a best and final offer.

15       “(3) All grants shall be paid on the last day of the  
16 fiscal year. Aid shall be paid based on the date of the ini-  
17 tial request. If sufficient funds are unavailable to pay all  
18 aid and grants, aid shall be awarded first. If sufficient  
19 funds are not available to pay all aid, aid requests shall  
20 remain an obligation and be paid in the future without  
21 further action on the part of the property owner. If suffi-  
22 cient funds are not available to pay an aid award in full,  
23 the Secretary shall pay any remaining balance when funds  
24 next become available.

1       “(f) FAIR MARKET VALUE.—For purposes of this  
2 section the term ‘fair market value’ means an amount  
3 equal to the fair market value of the forgone use of the  
4 affected portion of the private property including business  
5 losses when use is forgone following a written determina-  
6 tion by the Secretary under section 10(k) that the pro-  
7 posed use would violate section 9(a). The property owner  
8 shall establish the fair market value and such a fair mar-  
9 ket value shall be considered a rebuttable presumption.  
10 Ambiguities regarding fair market value shall be resolved  
11 in favor of the property owner.

12       “(g) INSUFFICIENT FUNDS.—The Secretary shall  
13 pay the aid required by this section from any funds avail-  
14 able to the Secretary that are not mandated by law to  
15 be spent for other activities or obligations. If sufficient  
16 funds are not available the Secretary shall promptly seek  
17 additional funds for such purpose.

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

1 **SEC. 15. PUBLIC ACCESSIBILITY AND ACCOUNTABILITY.**

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

4 “PUBLIC ACCESSIBILITY AND ACCOUNTABILITY

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

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

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

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

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

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

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

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

3 **SEC. 16. ANNUAL COST ANALYSES.**

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **SEC. 17. AUTHORIZATION OF APPROPRIATIONS.**

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

22 (1) by striking sections 15 and 16;

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

1           (3) by adding after section 16, as so redesign-  
2 nated, the following:

3           “AUTHORIZATION OF APPROPRIATIONS

4           “SEC. 17. (a) IN GENERAL.—There are authorized  
5 to be appropriated to carry out this Act, other than section  
6 8A(e)—

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

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

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

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

22           The table of contents in the first section is amend-  
23 ed—

24           (1) by striking the item relating to section 5  
25 and inserting the following:

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

1 ; and

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

“Sec. 13. Private property conservation.

“Sec. 14. Public accessibility and accountability.

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

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

“Sec. 17. Authorization of appropriations.”.

4 **SEC. 19. MISCELLANEOUS TECHNICAL CORRECTIONS.**

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

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

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

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

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

21 (2) in subsection (d), by striking “Merchant  
22 Marine and Fisheries” and inserting “Resources”;  
23 and

1 (3) in subsection (d)—

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

5 (B) by striking paragraph (3) and redesignig-  
6 nating paragraph (4) as paragraph (3).

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

9 (1) in subsection (a)—

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

17 (B) in paragraph (1)(G), by striking  
18 “threatened species of fish or wildlife listed pur-  
19 suant to section 4 of this Act” and inserting  
20 “species of fish or wildlife determined to be a  
21 threatened species under section 4”;

22 (C) in paragraph (2), in the matter pre-  
23 ceeding subparagraph (A) by striking “of this  
24 Act, with respect to any endangered species of  
25 plants listed pursuant to section 4 of this Act”

1 and inserting “, with respect to any species of  
2 plants determined to be an endangered species  
3 under section 4”; and

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

8 (2) in subsection (b)—

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

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

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

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

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

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

9           (6) in subsection (f)—

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

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

17           (d) **HARDSHIP EXEMPTIONS.**—Section 10(b) (16  
18 U.S.C. 1539(b)) is amended—

19           (1) in paragraph (1)—

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

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

3 (C) by striking “fish or wildlife listed by  
4 the Secretary as endangered” and inserting  
5 “fish or wildlife determined to be an endan-  
6 gered species or threatened species by the Sec-  
7 retary”; and

8 (2) in paragraph (2)—

9 (A) by inserting “or a threatened species”  
10 after “endangered species” each place it ap-  
11 pears; and

12 (B) in subparagraph (B), by striking “list-  
13 ed species” and inserting “endangered species  
14 or threatened species”.

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

17 (1) by inserting “or threatened species” after  
18 “endangered species”; and

19 (2) by striking “of this Act”.

20 (f) PRE-ACT PARTS AND SCRIMSHAW.—Section 10(f)  
21 (16 U.S.C. 1539(f)) is amended—

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

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

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

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

10 (i) PENALTIES AND ENFORCEMENT.—Section 11 (16  
11 U.S.C. 1540) is amended—

12 (1) in subsection (d), by striking “his” and in-  
13 serting “the officer’s or employee’s”; and

14 (2) in subsection (e)(3), in the second sentence  
15 by striking “Such persons” and inserting “Such a  
16 person”.

17 (j) SUBSTITUTION OF GENDER-NEUTRAL REF-  
18 ERENCES.—

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

22 (A) Section 4(b)(5)(C) (16 U.S.C.  
23 1533(b)(5)(C)).

24 (B) Section 4(b)(6)(B)(ii) (16 U.S.C.  
25 1533(b)(6)(B)(ii)).

1 (C) Section 4(b)(7)(B) (16 U.S.C.  
2 1533(b)(7)(B)).

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

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

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

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

7 (H) Section 10(b)(3) (16 U.S.C.  
8 1539(b)(3)).

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

10 (J) Section 10(e)(4) (16 U.S.C.  
11 1539(e)(4)).

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

14 (L) Section 11(e)(5) (16 U.S.C.  
15 1540(e)(5)).

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

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

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

1           (A)    Section    10(f)(3)    (16    U.S.C.  
2           1539(f)(3)).

3           (B)    Section    11(e)(3)    (16    U.S.C.  
4           1540(e)(3)).

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

8           (A)    Section    11(a)(3)    (16    U.S.C.  
9           1540(a)(3)).

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

12          (6) REFERENCES TO “HIM”.—

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

17               (B)    Section    4(b)(7)    (16    U.S.C.  
18               1533(b)(7)) is amended in the matter following  
19               subparagraph (B) by striking “him” and insert-  
20               ing “the Secretary”.

21               (C) Section 5(j)(2), as redesignated by sec-  
22               tion 10(a)(1) of this Act, is amended by strik-  
23               ing “him” and inserting “the Secretary”.

1           (D) Section 7(a)(1) (16 U.S.C.  
2           1536(a)(1)) is amended in the first sentence by  
3           striking “him” and inserting “the Secretary”.

4           (E) Section 8A(c)(2) (16 U.S.C.  
5           1537a(c)(2)) is amended by striking “him” and  
6           inserting “the Secretary”.

7           (F) Section 9(d)(2)(A) (16 U.S.C.  
8           1538(d)(2)(A)) is amended by striking “him”  
9           each place it appears and inserting “such per-  
10          son”.

11          (G) Section 10(b)(1) (16 U.S.C.  
12          1539(b)(1)) is amended by striking “him” and  
13          inserting “the Secretary”.

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

19          (8) REFERENCES TO “HIS”.—

20               (A) Section 4(g)(1), as redesignated by  
21               section 9(1) of this Act, is amended by striking  
22               “his” and inserting “the”.

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

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

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

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

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

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

18 (F) Section 10(b)(3) (16 U.S.C.  
19 1539(b)(3)) is amended by striking “his” and  
20 inserting “the Secretary’s”.

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

23 (H) Section 11 (16 U.S.C. 1540) is  
24 amended—

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

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

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

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

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

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