MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Sherman Williams, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting.

THREATENED AND ENDANGERED SPECIES RECOVERY ACT OF 2005

The Committee resumed its sitting.

Mr. POMBO. Mr. Chairman, I yield 2 minutes to the gentlewoman from Wyoming (Mrs. CUBIN).

Mrs. CUBIN. Mr. Chairman, would the chairman of the Committee on Resources agree to enter into a colloquy?

Mr. POMBO. Yes, Mr. Chairman.

Mrs. CUBIN. Mr. Chairman, it has come to my attention that certain Federal agencies with permitting, licensing, and leasing authority are requiring some of my constituents to agree to stipulations in their coal leases that go beyond protecting threatened or endangered species. For example, before the Bureau of Land Management will issue a lease, they require the lessee to agree to potential modifications in the lease. These modifications can be based not only on species that are threatened or endangered, but also on species that are proposed to be listed, candidate species, and distinct population segments.

Section 10 of the bill authorizes cooperative agreements between Federal agencies and States that cover candidate species and any other species that the State and the Secretary agree is at risk of being listed as an endangered or threatened species. Is the intent of the legislation to broaden the scope of the ESA by allowing the government to regulate species that are not yet threatened or endangered by imposing new potential regulatory requirements, withholding of permits and licenses, or requiring special stipulations on Federal leases?

Mr. POMBO. Mr. Chairman, will the gentlewoman yield?

Mrs. CUBIN. I yield to the gentleman from California.

Mr. POMBO. No, Mr. Chairman. It is not in there.

Mrs. CUBIN. Mr. Chairman, reclaiming my time, I thank the chairman for his answer. That was the way that I read the bill too, and I wanted the congressional intent to be on the record.

Mr. RAHALL. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, Psalms 104, verses 25, 30: ''In wisdom You made them all, the earth is full of Your creatures. There is the sea, vast and spacious, teeming with creatures beyond number, living things both large and small . . . When You send Your spirit, they are created and You renew the earth.''

Such is the appropriate Biblical quote, I say to my colleagues, that should guide our deliberations today on this particular legislation.

Species keep people alive. In the earlier comment, I stated that there are numerous Members of this body, perhaps to the person, who could tell of horror stories involved with the administration of the current Endangered Species Act. And while some of those stories are probably valid and have their good points, the current regime, as I also previously stated, has not been working. It has not been working because it has not been adequately funded nor administered by the current administration. Funding is a problem. Funding perhaps would have solved many of these horror stories to which Members of this body refer.

But this particular legislation, as we have heard throughout the debate on this general debate and we will hear more during the amendment process, is an expensive proposition. If we could not fund the regime that exists today that implements the ESA, how, I ask, are we going to fund an even more expensive regime that is set up by the pending legislation? A compensation program to property owners that truly is going to cause us to go further into deficit spending. The legislation would increase direct spending by requiring the Secretary of the Interior to pay aid to private landowners who are prohibited from using their property under certain circumstances. That means money, I say to my colleagues. That means appropriations from this body's Committee on Appropriations, at a time when we are finding tremendous costs being imposed upon the taxpayers that was unexpected 2 or 3 months ago.

At a time when we are already cutting Bureau of Reclamation projects, western water projects, Indian programs, our national parks. Indeed, there are some in this administration that would sell our national parks and other public lands in order to address our ever-mounting deficit. This legislation will only exacerbate our deficit problems.

And as I have said and referred to in earlier responses, why should we care about critters? Those who criticize this Act refer to the supporters of the Act as being more concerned about critters than human beings. I will tell them why we should be concerned about critters, why we should care about the Endangered Species Act.

Nowhere should that care be more evident than in the world of medicine. Anytime we allow a species to go extinct, we lose enormous potential to understand and improve our world. Nearly 50 percent of all our medical prescriptions, for example, dispensed annually in our country, are derived from nature or modified to mimic natural substances. Yet we have only investigated about 2 percent of the more than 250,000 known plant species for their possible medical breakthroughs. The extinction of a single species may mean the loss of the next effective treatment for cancer, for AIDS, or for heart disease. Mold fungus led to the development of Penicillin over 50 years ago. Mold fungus, it has saved countless lives in recent generations, and it continues to do so every day. Morphine and codeine, both made from poppy plants, are among the most widely used medications in the world today. Venoms from snakes have led to important medications, including an important drug to control blood pressure.

Even insects have their value in medicine. We now know that the genes that turn out to form a heart in a fruit fly are actually the same genes that form hearts in higher animals and people.

Again, quoting from the Bible, from Ecclesiastes: ''Man's fate is like that of the animals; the same fate awaits them both: As one dies, so dies the other. All have the same breath.''

Mr. Chairman, at the appropriate time, I will be speaking on the manager's amendment and I will also be speaking in support of the substitute amendment that will be offered. As I said in my opening comments, I introduced these negotiations in good faith with the gentleman from California (Mr. POMBO), my chairman, because I thought there was not adequate funding to enforce the current endangered species law, and those negotiations were conducted in good faith, and we came quite close, and he will say probably that 90 percent of the current bill is a bill upon which I agree.

But at the same time, in the manager's amendment that will be coming up, there were changes made in literally the last minute that came very close to violating the good-faith negotiations that were ongoing on this legislation. I will speak to that at the proper time.

But I will say at this point that this legislation needs to be defeated, the substitute that will be offered needs to be supported, and we need to look very seriously at how we can enforce better the endangered species laws on the books today rather than the overhaul that exists in the pending legislation, and I urge defeat of the legislation.

Mr. Chairman, I yield back the balance of my time.

Mr. POMBO. Mr. Chairman, I yield 2 minutes to the gentleman from Missouri (Mr. GRAVES).

Mr. GRAVES. Mr. Chairman, I thank the chairman for yielding me this time to speak on an issue that is very important to me and my constituents.

The Endangered Species Act plays a prominent role in my State of Missouri with over 25 endangered and threatened species located within the borders and nine in my district.

Mr. Chairman, the ESA is broken and needs to be fixed. Over the last 30 years, less than 1 percent of all listed species have been removed, and most of them have been removed because of poor data. I thought the intent of the ESA was to recover species and not leave them on the list indefinitely. Also, landowners seem to be getting cheated when species are identified on their property resulting in lower property values, less production and limited use. These unintended adverse impacts have resulted in a law that is

hurting landowners while not recovering any species.

This is why I introduced H.R. 3300, the Endangered Species Recovery Act. I want to thank the chairman and staff for working with me to develop and incorporate this bill into the overall ESA bill. The language in section 10 of the bill creates ''species recovery agreements.'' Basically, it is an all-inclusive incentive program that will compensate landowners for their conservation efforts. It is my hope that this provision will foster a better working relationship with landowners and the Federal Government resulting in recovery of more species. My underlying goal is to protect landowners while keeping intact the spirit of the ESA.

As part of the farming community, I have heard stories of farmers afraid to report an endangered species on their land because of the implication it would have on their property and their farming operation. ''Shoot, shovel, and shut up'' was often the case when a species was identified on their property. My point is that the ESA was more of a burden on landowners, and without the cooperation of landowners, species recovery, I do not think, will ever be successful.

Another reason why I chose to get involved in this debate is because of the implication this Act has on the management of the Missouri River. The Missouri River is a vital waterway for Midwest farmers, providing cheaper and more efficient transportation for their grain. The Flood Control Act of 1944 authorized the Army Corps of Engineers to maintain flood control and navigation along the river. Then came the Endangered Species Act and this all changed. The ESA seems to supersede the Flood Control Act, and now transportation along the river is unreliable. Ultimately, I would like to see the provisions in this bill fix the situation so navigation becomes more reliable.

Again, I commend the chairman on his efforts and look forward to working with him on this bill and getting it passed this afternoon.

Mr. CARDOZA. Mr. Chairman, I yield myself the balance of my time.

I want to conclude by saying I thank the gentleman from West Virginia (Mr. RAHALL) for his offering of working on this piece of legislation, and we do so in the spirit of cooperation.

I also have to say, though, that in this Chamber where we have seen lofty rhetoric for a number of years, I personally having witnessed it for 26 since I was first an intern here, I have frankly never seen the rhetoric not coincide with the reality more than in this case oftentimes.

This bill does not eviscerate the Endangered Species Act. This bill does several positive things. It establishes recovery plans based on biology. It establishes recovery habitat based on those recovery plans. It encourages landowners to cooperate with biologists in the Fish and Wildlife Service. It lets landowners get answers to their biological questions, and it compensates landowners whose land is confiscated under the original Endangered Species Act.

I ask Members for their ''aye'' vote.

Mr. POMBO. Mr. Chairman, I yield the balance of my time to the gentleman from Oregon (Mr. WALDEN).

Mr. WALDEN of Oregon. Mr. Chairman, we heard about Theodore Roosevelt. Indeed, 100 years ago this year, Theodore Roosevelt created the Great Forest Reserves. He also created the Klamath Wildlife Refuge. He created the forest reserves for both the future home building needs of the country and for water, if we read his statements, and, of course, for nature as well.

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He created the wildlife refuge in the Klamath Basin to ensure that we would have healthy wildlife populations for generations to come; and, indeed, the wildlife refuge is home to the greatest concentration of bald eagles in the United States, in the lower 48.

Ninety-six years after he created that refuge, this Federal Government made a decision to shut the water off to 1,200 farm families in that basin based on the Endangered Species Act and interpreted by the government scientists without peer review, without peer review. When the National Academy of Sciences reviewed the decisions, they said the agency made mistakes in the outcome under the Endangered Species Act; and further they went on to say that those decisions put in jeopardy potentially those very species, the sucker fish in the Upper Klamath Lake and the Coho Salmon in the Klamath River. It potentially could have damaged both of those.

This act changes that. This act changes that, because we put into law for the first time really clear criteria and guidance about science. And unlike the substitute that will be offered soon, we allow a full public process, a 1-year timeline for the Secretary to further define the criteria of the science. We do not define it in the statute; we give guidance and then there will be a full public process. We require empirical data and peer review and the Secretary to have that opportunity, and peer review is certainly important. The other alternative does not do that. It sets it in standard. It is politicians writing it. Science is critical.

Let me talk about the private property rights. I believe in them. When the government says it is going to build a highway across your property, the Constitution says the government has to pay you for it. The ESA is the environmental highway across your property.

But it does not open the door as a blank check to developers to go out and pick the most sensitive wildlife habitat area in the country and say, I am going to build a $50 million hotel and casino here. Not at all.

Let us go to the law that we are proposing. Page 15, open your manuals, sub (C): ''The foregone use would be lawful under State and local law and the property owner has demonstrated the property owner has the means to undertake the proposed use.''

It eliminates the speculative things that people were concerned about. We heard that. This is an improvement. This clearly says that.

And there is no double-dipping. This section says you cannot come back and get a second bite at the same apple, so you have to follow State and local zoning ordinances and laws, you have to prove you are financially capable of undertaking the activity, and the government has to give you an answer when you propose to do something on your private, private, property here.

That is one of the great things about this country. We can talk about the bald eagle, and I am a big fan of them, but one of the underpinnings of our great democracy is our private property rights. In the case of the Klamath Basin, in many respects they were taken away when their water was cut off and 1,200 farm families were left destitute.

I believe in recovery, I believe in species, and I think what we are changing in this bill will build new partnerships that will bring landowners and the government together like never before, that respects the rights of private owners of property, and will actually result in increased recovery of species and habitat.

Mr. Chairman, I urge approval of the underlying bill.

Mr. ADERHOLT. Mr. Chairman, I ask unanimous consent to revise and extend my remarks.

Mr. Chairman, the Endangered Species Act is a well-intentioned law that has failed in its implementation. Originally billed as a way to recover and rehabilitate endangered species, it has failed at that goal.

As it has been pointed out, less than 1 percent of species listed have recovered in the entire history of the act. Almost 3 times that many still listed are believed to already be extinct. Many species that were listed in error, yet because of flaws in the act, they are still listed. This bill today will greatly improve the recovery process so that species may be restored and removed from the list.

Mr. Chairman, one of those species is the Alabama sturgeon. It was listed years ago even though it was never proven to be genetically distinct from any other sturgeon.

It's simply a regular sturgeon living in Alabama. The economic cost of its listing has been estimated at $1.5 billion.

Mr. Chairman, I and the rest of the Alabama delegation worked directly with the gentleman from California to ensure that the bill is helpful to landowners in Alabama and Southeast. The Endangered Species Act today creates an adversarial relationship between landowners and the government.

Landowners have little incentive to conserve species on their property. However, this bill will create cooperative conservation agreements between landowners and the government. It will also provide long overdue compensation to landowners whose property has been ''taken'' by the Endangered Species Act.

I encourage all of my colleagues to support this bill.

Mr. MENENDEZ. Mr. Chairman, I rise today in strong opposition to this bill, H.R. 3824, which would substantially weaken the essential protections we have in place for endangered plants and animals. Since being signed into law over 30 years ago, the Endangered Species Act has protected over twelve hundred species from extinction. Only nine species listed under the act have gone extinct, and five of them were later determined to be extinct by the time they were listed. Meanwhile, thanks largely to the act's protections, we have fully recovered such species as the American alligator, grey whale, and peregrine falcon, and stabilized the populations of bald eagles, sea turtles, manatees, and hundreds more. And some species, such as the California condor and red wolf, would probably be extinct without the protections of the act.

From looking at the record of the Endangered Species Act, I would say that it has been a success. A study by the Congressional Research Service has shown that 41 percent of listed species have improved their status after being listed. The act certainly has not brought every endangered or threatened species to full recovery, but many of these have only been listed a few years. Rebuilding a species takes time. The U.S. Fish and Wildlife Service reported that only 4 percent of species listed for less than 5 years have recovered by any appreciable amount. But that number jumps to 36 percent for species listed for over 10 years. The fact that so many species have yet to be fully recovered is a call for more endangered species protections, not less.

And yet less protection is exactly what this bill is giving us. It eliminates the designation of critical habitat, which is one of the most important provisions in the Endangered Species Act. A recent study showed that species with defined critical habitat are far more likely to be recovering than species without such habitat. The bill includes a number of other unfortunate provisions, but perhaps none are more unfortunate, or more mind-boggling, than the proposal to pay off developers for what they should be doing anyway—obeying the law. This bill says that if a developer wants to build something but can't do it because of the Endangered Species Act, the government must pay them for the loss of the income they would have received from the development, even when the development is economically unfeasible.

Think about this for a second. First of all, we are saying that the government will pay you for obeying the law. A power plant that doesn't install pollution control devices will be more profitable than one that does, but we don't pay off the cleaner power plant for obeying the Clean Air Act. And we certainly don't pay someone for not robbing a bank, even though it would be very profitable for them to do so. This has nothing to do with the government providing compensation for taking private land. This is about developers being encouraged to come up with incredible schemes, and then getting paid by the American taxpayer to not build them, because doing so would drive an endangered species to extinction. This is insane, and would ensure that all the money in the endangered species program would go to developer payoffs, and not species protection.

There are a number of reasons why we need to focus our resources on protecting endangered species. Wildlife means millions of dollars to local economies, both through tourism and outdoor recreation. Just in two counties in southern New Jersey alone, red knot watchers spend over $4 million a year. Nationally, sportsmen and wildlife enthusiasts spend an estimated $100 billion each year on outdoor activities. But preserving species is about more than just economic value and being good stewards of the Earth. It is also about our health. A recent study by the National Cancer Institute showed that in the past 20 years, 78 percent of new antibiotics and 74 percent of new anticancer drugs were linked to natural products. Every species that goes extinct decreases our chances of finding the next miracle drug to fight infection, Alzheimer's, cancer, or AIDS.

The substitute amendment being offered by Mr. MILLER, Mr. BOEHLERT, and others is a considerable improvement on the underlying bill. It eliminates payoffs to developers, puts more teeth into recovery plans, and ensures that scientific standards don't get watered down. It is not an ideal substitute, but it will certainly do much more for truly protecting endangered species than H.R. 3824.

The Endangered Species Act is something we should be proud of, and something we should look to tweak to improve species recovery, not gut to give egregious and unwarranted payouts to developers. I urge my colleagues to join me in defeating H.R. 3824.

Mr. ENGEL. Mr. Chairman, there is an old saying ''The South will rise again!'' Well, the bill before us today is proof the ''Era of Big Government has come again!'' Let no mistake be made, those who support this bill cannot claim to be dedicated to fiscal responsibility and smaller government. This bill blows another hole in the Federal deficit.

I oppose this sham overhaul of the Endangered Species Act. Enacted in 1973, this landmark legislation has been hugely successful in saving many species from becoming extinct and has been an important conservation tool. The Endangered Species Act must be strengthened not decimated.

Of the more than 1,800 plants and animals protected by the act, only 9 percent have been declared extinct. Those species that have survived continue to grow and flourish. Newly named, the Threatened and Endangered Species Recovery Act ignores this success and carves out loopholes in the Act that will allow developers and others to avoid the law's protections. This legislation eliminates extremely critical habitat designations, giving many species no opportunity to survive.

It is a travesty that the leadership in this House, is yet again giving business the upper hand over sensible and effective environmental protection law. Private landowners will now have no incentive to protect their land. In fact, the Federal Government will now pay landowners for merely abiding the law!

Mr. Chairman, this Act does not ''modernize'' or ''reform'' the Endangered Species Act, it guts it and should be called the landowner and developer welfare act.

Mr. THOMPSON of California. Mr. Chairman, I agree with Chairman POMBO that the Endangered Species Act is in need of reform, and the way in which critical habitat is currently administered is one of the glaring problems with the act today.

For instance, in my district the Fish and Wildlife Service recently issued a critical habitat map for an endangered species which encompasses 74,000 acres including downtowns, streets and existing apartment complexes.

However, there are aspects with this bill in its current form that concern me and unfortunately, I cannot support it at this time.

I am very concerned with section 3 of H.R. 3824 which transfers all the responsibilities for implementation of the Endangered Species Act to the Secretary of Interior. I question the agency's existing level of expertise on fishery issues and its fiscal and technical capacity to take on such a task.

I raise this as a concern also because their past actions have proven to me that they don't have the capability or understanding needed to protect listed salmon.

In 2002, the Department did not listen to warnings from NOAA Fisheries—the agency that currently manages and protects threatened and endangered salmon—and State biologists who warned months ahead of time that due to a drought and the existing management practices by the Department of Interior, there could be a fish kill on the Klamath River. Unfortunately, the Department did not listen to these warnings, and that September some 80,000 adult fish died. This fish kill had, and continues to have a catastrophic impact on my district and the fishing related communities from the Washington/Oregon border—to south of San Francisco. The immediate result was obvious, but commercial fishing season was cut in half this year due to poor salmon returns caused by the fish kill, and fishery biologists expect the fishing season throughout this region to be cut like this for years to come.

Finally, I am concerned with how quickly this bill has moved through the House. I believe the process to make these important decisions regarding the existence of a species and our livelihood needs to be open, transparent and inclusive. In 1994, Representative CARDOZA and I helped pass revisions to the California Environmental Quality Act. As you can imagine, Mr. Chairman, this process was long and difficult. However, we formed a working group which included mainstream environmental, sportsmen, agriculture and industry organizations. In the end, all parties supported this bill. Unfortunately, the reforms we are voting on today do not have that same level of endorsement. However, I strongly believe that if the process was more transparent and inclusive, we could find a balance that would be more agreeable to all parties.

In closing, I believe that the Endangered Species Act must be reformed and hope to work with you in reforming it to make it work better. However, for the reasons stated, I unfortunately cannot support this bill in its current form.

Mr. EVERETT. Mr. Chairman, I rise today as a cosponsor of H.R. 3824, the Threatened and Endangered Species Recovery Act. Alabama ranks in the top five States in the number of listed species, and passage of this legislation will move us closer to achieving the goal of protecting and recovering the Nation's threatened and endangered species by adding a layer of common sense.

The Endangered Species Act, ESA, although enacted with honorable intentions, has strayed from its original purpose of conserving plants and wildlife. Currently, there are nearly 1,300 domestic species listed as threatened or

endangered. Since the enactment of the ESA, only 10 species, less than 1 percent of those listed as endangered, have been recovered. This is just one of the numerous reasons why this legislation needs updating.

Most importantly, the manager's amendment includes a significant provision that requires the Fish and Wildlife Service to consider the economic and national security impact of listing a species. This impact analysis is an important tool that provides vital information to Congress, federal agencies, states, and landowners about the potential effects of the ESA within those geographic areas deemed to be essential for the species' survival and recovery. Private property owners ought to have this information at the time a species is proposed for listing. Such timely notice serves to let everyone know whether they should be interested in the listing process and, ideally, brings them to the table to participate. I would like to thank Chairman POMBO for all his hard work on crafting this important piece of legislation, and I am very appreciative of his efforts to include this provision in his manager's amendment.

By enhancing the rights of private property owners and improving the impact analysis of the listing process, the ESA will actually work to protect endangered species. I urge all of my colleagues to support this measure.

Mr. UDALL of Colorado. Mr. Chairman, I cannot vote for this bill as it stands.

I support much of the thrust of the original bill. I support putting more emphasis on recovery plans and on steps to provide incentives for landowners and other private parties to help with recovering species. And the Resources Committee did make improvements in the original bill.

Unfortunately, though, other needed amendments were not approved—and as a result I concluded that the bill's defects were still so numerous and so serious that it should not be approved without further changes.

That was why I supported the bipartisan substitute. Had it been adopted, we would have kept the best parts of the bill as reported—including the authorization for reimbursement for livestock losses that I supported in the Resources Committee—and made the further improvements that were needed for it to deserve approval by the full House of Representatives.

Unfortunately, that did not occur, so we are left with a bill that does not include those improvements.

Proponents of the reported bill say the Endangered Species Act has led to too many lawsuits. But according to the Bush Administration's analysis of the bill as reported, ''the new definition of jeopardy in the bill, as well as various statutory deadlines, may generate new litigation and further divert agency resources from conservation purposes.'' The substitute did not have the same problems.

Similarly, the substitute did not include the reported bill's vague provisions that would set up a new entitlement program—a program without clear boundaries that would increase federal spending to an extent that cannot be easily calculated.

Those provisions worry the Bush Administration, which has told us that they ''provide little discretion to Federal agencies and could result in a significant budgetary impact.''

And after reviewing the bill as reported, the nonpartisan budget watchdog group, Taxpayers for Common Sense, concluded that ''This legislation is rife with loopholes and vague wording that have the potential to cost taxpayers billions of dollars, and must be revised.''

I supported the bipartisan substitute because it would have made the revisions necessary to close those loopholes.

Nonetheless, while I cannot support the bill today, I am hopeful that it will be further improved as the legislative process continues and that the result will be legislation to revise the Endangered Species Act that I can support and that will deserve the support of every Member of Congress.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I rise today to request that my name be removed as a cosponsor of H.R. 3824, the Threatened and Endangered Species Recovery Act of 2005 (TESRA).

Species conservation is an essential tenet in the effort to promote and maintain a healthy environment. Although I agree with Congressman POMBO's initiative in principle, after reviewing the legislation closely I came to the conclusion that this bill would jeopardize critical habitat protections that endangered plants and animals need to survive and recover their populations, and it would do little to protect the planet's most threatened wildlife.

As a Senior Member of the House Science Committee, I also have serious reservations that in its current form, H.R. 3824 attempts to substitute politics for sound science in decisions involving endangered species, letting expediency and profit motives influence what should be scientific decisions.

Mr. HEFLEY. Mr. Chairman, I rise in support of the legislation offered by the gentleman from California (Mr. POMBO) and would like to give you an example of why this bill is needed.

Seven years ago, the Fish and Wildlife Service contacted my office to state they were going to list the Preble's meadow jumping mouse as a threatened species.

It wasn't even a surprise. State and local authorities had known the mouse might be listed for years. And, at first, it didn't even seem like it would be that much of a problem. The mouse was a nocturnal animal that dwelt within a hundred feet of either side of streambeds.

The Front Range of the Rockies could also claim at least three government reservations—the U.S. Air Force Academy, Rocky Flats and Warren AFB in Wyoming—which offered the mouse almost untrammeled range in which to roam.

But over the course of the next seven years, the lines moved. Now the mouse's range extended beyond the stream beds, sometimes by miles. Habitat had to be protected, not only where the mouse had been found but also where it might be found if indeed a three-inch-long rodent could travel several miles to get there.

Over the past seven years, the State of Colorado spent approximately $8 million to preserve the mouse. Counties up and down the Front Range spent even more money to acquire open space and to develop habitat conservation plans, few of which, to my knowledge, were ever completed or even begun. This is not even counting the impact to private property owners, not knowing whether they could use or develop their property.

And after all this, all the money spent, all the needless planning and contention, it turned out the Fish and Wildlife Service was wrong. The Preble's meadow jumping mouse was not threatened. It wasn't even a separate subspecies. A scientist at the Denver Museum of Nature and Science stated this and the scientist whose 1954 work led to the original listing, agreed with the new data.

And so the delisting process started. Hopefully, we'll see it completed sometime in the near future though there is some evidence that Fish and Wildlife is taking its time in doing so. But meanwhile, the states of Wyoming and Colorado and its Front Range counties and cities and residents are out at least $8 million and probably more for no good reason.

After all this time and expense, nothing has been produced. That is why this bill is needed. If we are going to undertake these massive land-planning schemes, then the Feds ought to be sure of their facts. If they are going to mandate conservation planning and land set-asides, then maybe they ought to send the money along to do that. The states, counties and cities have other things they could spend their tax dollars on.

The ESA, as it currently stands, does nothing but keep attorneys and interest groups busy and needs reformed. So I say, let's try this approach. I urge your support of H.R. 3824.

Mr. ETHERIDGE. Mr. Chairman, today I rise in opposition to H.R 3824, the Threatened and Endangered Species Recovery Act. Under the Constitution, we are charged with securing this country's blessings not only for ourselves, but for our posterity. This bill turns its back on our posterity.

The Endangered Species Act has been a model for the protection and preservation of endangered species since 1973. When this legislation was first passed, many species in this country were on the brink of extinction, and many more were in severe decline. ESA is essential to safeguard our natural resources and ensure the biodiversity that is critical to a healthy environment for all species, including human beings. ESA is a great American success story that should only be altered with the greatest of care.

In the thirty years since the passage of the Endangered Species Act, we have seen an amazing turnaround in both the population numbers of species that were in decline, as well as in the significant environmental improvements that have fostered their recovery.

I acknowledge the concerns of landowners and farmers about the current law, and I agree that the current law needs to be reformed. This is why I support the Miller-Boehlert substitute bill. The substitute helps small landowners by dedicating funding for technical assistance for private property owners, and it provides conservation grants for landowners who help conserve endangered species on their property. Finally, it provides assurances that private citizens will get timely answers from the Fish & Wildlife Service regarding the status of endangered species requirements on their land. The Miller-Boehlert Substitute provides positive changes to the current ESA without reversing the progress that has been made over the past thirty years. The bipartisan substitute is not perfect legislation, but it is far superior to H.R. 3824.

H.R. 3824 was introduced just last week and was marked up without any public hearings, yet this legislation would most certainly rank as the most sweeping and significant

change of environmental law in the past three decades.

I have grave concerns about provisions in the bill that give political appointees the power to remove species from the endangered list based on political decisions rather than on sound science. Habitat degradation is the leading cause of species decline, and this bill proposes to eliminate critical habitat designations. I do not understand how eliminating protected areas can result in greater protection of endangered species.

The Endangered Species Act needs an update, but we must not reverse course on significant progress and results for endangered species. We have a solemn obligation to maintain responsible stewardship of America's bounty, and this legislation would abandon that responsibility. I urge my colleagues to vote against H.R. 3824, and to vote in favor of the balanced, bipartisan substitute legislation for ESA reform.

Mr. STARK. Mr. Chairman, I rise today in opposition to H.R. 3824, the Threatened and Endangered Species Recovery Act.

The Republican majority has already dismantled nearly every Government program for people, and now it appears they're moving on to other species. They constantly preach that God's creations are precious, yet once again they are showing their hypocrisy that they would be so careless with the lives of God's creatures. Perhaps if some of these endangered species were in a persistent vegetative state, Republicans would come rushing to their aid. Perhaps if scientists would concede these same plants and animals were fashioned during the week of God's creating the world, the right wing would be willing to help.

The Republicans want us to believe that this bill represents a fair and balanced way to protect endangered species without infringing on property rights. Not true. This bill grants unprecedented and immeasurable subsidies to land owners rather than ensuring their fair costs are covered; so much so in fact, that the nonpartisan Congressional Budget Office cannot estimate the potential impact to the Federal budget.

This bill is nothing more than an assault on our environment. I urge my colleagues to join me, and every environmental organization on God's green Earth, in opposing this bill.

Mr. PAYNE. Mr. Chairman, I rise today to oppose the unwise, unsound, and unsubstantiated policy changes contained in H.R. 3824—misleadingly named the Threatened and Endangered Species Recovery Act of 2005.

I am deeply concerned about the elimination of all critical habitat provisions of the Endangered Species Act without any mechanism to protect habitat needed for species recovery. I am troubled by the removal of protections for ''threatened'' species and the weakening of endangered species recovery teams.

Moreover, I believe that sound science produces accurate data from which sound policy decisions can be made. When we choose not to respect the role of science in our regulatory decisions, we are cheating ourselves out of valuable information and we run the risk of making poor or erroneous judgments about crucial conservation decisions. By allowing a political appointee to develop a definition of ''best available science'' and increasing barriers to access to scientific data, I believe that this bill needlessly politicizes scientific decision-making, and I fear that we are setting ourselves up for many unsound policy choices as a result.

I am not only motivated by the harms this bill will have on the plant and animal species, but by the threat to the health and well-being of the human species as well. The pesticide provisions of this bill seem to indicate a willingness to endanger the lives of migrant and seasonal farmworkers, their families, and their children. This weakening of pesticide standards poses a serious threat to public health, and I cannot support any bill that does not take seriously the health and safety of the American public.

We also do a disservice to the American people when we are not wise stewards of their taxpayer dollars. Using those dollars to pay developers for complying with the ESA's regulations is a clear violation of the fiduciary duty with which we are all endowed.

Mr. Chairman, I would like to again voice my opposition to H.R. 3824, and I encourage all of my colleagues who care about conservation to do so as well.

Ms. DELAURO. Mr. Chairman, I rise in strong opposition to this bill. The legislation before us today turns back the clock on 35 years of progress in responsible environmental stewardship by gutting the current Endangered Species Act and replacing it with little to preserve endangered wildlife for future generations.

Over 99 percent of the species that have been listed as threatened or endangered under current law have been saved from extinction. But had this bill been the law of the land over the last 30 years, the Fish and Wildlife Service points out that the Bald Eagle—an icon of American freedom—would exist only in our memones.

Any law that is 35 years old should be looked at with a fresh eye, and so I am supportive of attempts to update and improve the Endangered Species Act. Indeed, in my home state of Connecticut, we are concerned that oysters, a key aquaculture product, may be unnecessarily characterized as an endangered species. And so we should be willing to consider smart changes to the law.

But that is not the intent of the underlying bill. Rather, the purpose of this legislation is to remove obstacles inconvenient to special interests with whom the Republican leadership is in partnership. For this majority and their supporters—developers, the oil and gas industry—laws protecting the air and water are not a priority—they are a nuisance. As such, this legislation would eliminate conservation measures on tens of millions of acres of land around the country, the ''critical habitat'' of endangered species, and prevent such conservation activities in the future.

It also reveals the majority's clear disdain for sound science. Current law requires a review of all scientific and commercial data by a panel of outside scientists. This, Mr. Chairman, ensures that the peer-review process—a central tenet of sound scientific research—guides the process, not ideology and politics. Instead, this bill would allow the Secretary of the Interior to make a determination about whether a species is endangered based on ''all available information''—that is to say, information that opens the door for phony science supporting special interests.

Finally, Mr. Chairman, the bill fails the fiscal responsibility test. By allowing for payments to land owners who do not develop land that is home to protected species, it actually creates a system where people and businesses—mostly big oil and gas companies—are paid for following the law. If only we were all so fortunate.

This bill is nothing more than yet another entitlement program for special interests—as always, with this majority, at the expense of the taxpayer. Little wonder that even conservative groups like Taxpayers For Common Sense have expressed their grave concerns regarding this legislation.

Mr. Chairman, the Endangered Species Act is a statement of our priorities as Americans. It is an affirmation of our belief that, just as we desire better economic opportunity for our children and future generations, so too do we hope to leave them a healthier environment. Unfortunately, the underlying bill will accomplish neither. This is simply the continuation of a decade-long assault by the majority on our clean air, our clean water and our environment. And it should be rejected.

Mr. BISHOP of New York. Mr. Chairman, I rise in support of this bipartisan substitute and in unwavering opposition to the underlying Threatened and Endangered Species Act of 2005, which does not defend endangered species as it purports, but rather protects the special interests of private industry and landowners.

I am concerned about the environmental and fiscal health of our great nation and the path chosen by many of America's leaders whose policies are painfully lacking in promoting conservation. Although Americans may debate the need to update the Endangered Species Act of 1973, TESRA is absolutely not the answer. In fact, TESRA is a step back, furthering the degradation of species and compounding man's conflict with the environment.

What exactly is the urgency by which the majority has brought this issue at this time? America is still in mourning as we enter the early stages of rebuilding the Gulf Coast and fighting a war in Iraq and Afghanistan costing our nation hundreds upon hundreds of billions of taxpayer dollars.

Particularly egregious is that TESRA will cost nearly $3 billion in new spending in just the next 4 years, which will be used not to protect threatened and endangered species, but rather the interests of private landowners.

Taxpayers should be outraged by the fiscal irresponsibility of this Congress. If we have $3 billion to give away, let's give it to families in need by renewing TANF or to expand rather than cut Pell grants so that students who wish to attend college can meet the financial demands.

In my district, hardworking families are struggling to absorb the high costs of fuel into their budget while putting food on their tables and sending their children to college.

Mr. Chairman, the narrow-vision and short-term policy decisions made by this Congress do not reflect middle-class values. At what point will a clean environment and healthy future for our children and grandchildren become a priority?

The American public deserves a future that includes true protection of our endangered species and the development of fuel sources that are clean, renewable and promote conservation and energy independence.

Mr. Chairman, I urge my colleagues to reject the underlying legislation to reform the ESA and support the bipartisan substitute.

Mr. HOLT. Mr. Chairman, I rise today to express my strong opposition to the Threatened and Endangered Species Recovery Act of 2005. Despite the deceptive title of this bill, it is a measure designed to weaken the protections secured under the landmark Endangered Species Act (ESA).

While scientists are uncertain about the exact rate of extinction, they estimate that it is probably thousands of times greater than the rate prior to human civilization. In 1973 Congress enacted the ESA to address this problem of species extinction. The ESA is a comprehensive legal measure that is used to identify and protect species that are determined to be the most at risk. Under this law, once a species is designated as either ''endangered'' or ''threatened,'' powerful legal tools are available to aid in the recovery of the species and to protect its habitat. Without these strong federal protections hundreds of species including the bald eagle, grizzly bear, Florida panther, and the manatee would all be extinct.

The bill we are debating today is flawed in many ways, but I am particularly concerned with its removal of habitat protection from the Endangered Species Act. Habitat destruction, degradation, and fragmentation is the most significant cause of species extinction. This legislation blatantly ignores the integral role habitat plays in the survival of a species by eliminating the designation of ''critical habitat.'' Without this special designation, our government's ability to recover species will be severely undermined.

It is disconcerting that some of my colleagues do not value saving our unique natural treasures, but it is appalling that they refuse to acknowledge that the Endangered Species Act is about much more than saving a unique species. It is undeniable that the world in which we live is an intricately connected environment that is suffering from human abuse and neglect. The loss of a species interrupts the life cycle of the ecosystem it was part of and alters our environment in ways far beyond this isolated event. The Endangered Species Act is a vital tool in preventing and reversing these life cycle disruptions before they ripple out and cause further damage to our natural communities.

We all agree that this law should be revisited and improvements to the law should be implemented. I understand the concerns of my colleagues that this law has been abused at the detriment of their constituents' rights. However, I believe there are ways to balance the needs of development and property rights with the need to protect the health of the environment which we all share. Instead of working towards a true compromise, we are considering legislation that is based on the fallacious premise that environmental protection requires a trade-off with private interests. It takes a very short-sighted, short term view of our world and our economy. It ignores the long term damage catering to these private interests will have on our future.

The Threatened and Endangered Species Recovery Act of 2005 severely hampers the effectiveness of the Endangered Species Act. I urge my colleagues to oppose this legislation that will result in far reaching and detrimental impacts.

Mr. HONDA. Mr. Speaker, the Endangered Species Act is a safety net for wildlife, plants and fish that are on the brink of extinction. Over its 32-year history, the Endangered Species Act has been 99 percent successful in saving species from extinction, with only 7 out of over 1,200 species having gone extinct after being listed under the Act. The number of species that have fully recovered is not as high, however, and at this point there is a recognition that the current critical habitat arrangement doesn't work, for a whole host of reasons.

I believe that any legislation amending the Endangered Species Act should include a number of critical principles. It should not weaken existing law, nor should changes be adopted that would alter the original intent of the Endangered Species Act. The Act was written to protect all plants and animals in the United States from extinction and to restore them to stable populations. Limiting protections for imperiled species now would serve only to make protection and recovery much more difficult and expensive in the future.

I also believe that habitat protections for threatened and endangered species should not be weakened. The loss of habitat is widely considered by scientists to be the primary cause of species extinction and endangerment. Preservation of habitat is an essential element to any and all efforts to protect and recover endangered species. Additionally, any amendments should maintain the mandate for the Endangered Species Act to work towards recovery. The Endangered Species Act requires not only that we protect species from extinction but also that we recover species to the point where protection is no longer needed. Merely maintaining the survival of a species contradicts the spirit and letter of the law, which is why we need to hold federal actions to the standard of recovering species.

Citizen input and oversight are vital to good Endangered Species Act decisions and management, so any changes to the Act should avoid unnecessary hurdles to public participation. It is also important to uphold the scientific process behind Endangered Species Act decisions. The scientific review of matters relating to the Endangered Species Act is already sufficiently rigorous. Adding another layer of bureaucracy would serve only to slow the process, to the detriment of both the species in question and affected citizens. Finally, I believe that while vigilant Congressional oversight is critical to the success of any law, putting an arbitrary expiration date on the Endangered Species Act would place the protection of species at the mercy of the legislative calendar.

Mr. Chairman, white I realize that the Endangered Species Act is not perfect, I believe that the version of the bill that is before us today will eliminate critical habitat without including other mechanisms to protect species' homes. Unless substantial amendments to address this and other shortcomings are passed on the floor today, I will not support H.R. 3824. I applaud the efforts of a bipartisan group of my colleagues, including Mr. MILLER, Mr. BOEHLERT, and the original author of ESA, Representative DINGELL, who have worked hard to develop an alternative bill that I am happy to support.

Mr. SMITH of Texas. Mr. Chairman, I rise in support of H.R. 3824. Reform of the Endangered Species Act is much needed. The law has adversely affected thousands of farmers, ranchers and homeowners whose private property has been taken without compensation.

Over 90 percent of endangered plant and animal species are found on private property. There should be a balance between the rights of property owners and conservation.

H.R. 3824 will allow the Secretary of Interior to compensate private property owners for the fair market value of the loss of use of their property when the Secretary concludes that the use of the property would be a taking. The compensation will be made available as aid and through a grant program. This is a fair and long-overdue process that will actually promote preservation and conservation of endangered species and at the same time protect private property rights.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise today in opposition to H.R. 3824. I strongly believe that this is a very sensitive issue and should be looked at very carefully. While it is important to protect and save the many precious animals of this earth, it is also important not to take the property of the many Americans who have worked hard to obtain their homes and land. This issue needs to be looked at from a bipartisan perspective and because of this I am in support of the substitute amendment offered by Mr. MILLER of California.

The Miller substitute is a responsible alternative to the Pombo bill. The amendment not only addresses the current problems in the Pombo bill, but also improves the current law. Congressmen MILLER and BOEHLERT have presented Congress with a creative, workable solution that promises better results for recovering endangered species and reducing burdens for landowners. Among other things, the substitute protects habitat for species recovery by maintaining habitat protections and puts the primary obligation for recovery on federal agencies by clearly defining ''jeopardy.'' It also makes clear that any federal agency action that impairs species recovery will jeopardize the continued existence of the species and, therefore, is prohibited.

Furthermore, the substitute guarantees that federal agencies consult with the Fish and Wildlife Service to ensure that their actions do not jeopardize threatened and endangered wildlife. Additionally, it ensures that all newly listed species have recovery plans within 3 years and species already on the list have recovery plans within 10 years. Recovery plans will identify all areas necessary for the conservation of listed species. Prior to the development of recovery plans, the Miller substitute encourages the development of guidance that identifies particular types of activities that could negatively impact recovery. One of the most important aspects of the Miller substitute is that it provides real landowner incentives for conservation through cost sharing and technical assistance. Finally, it enhances the role of the states in helping conserve endangered species through improved cooperative agreements and greater federal-state consultation. Because of these factors, I support the Miller substitute.

The CHAIRMAN. All time for general debate has expired.

In lieu of the amendment printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the 5-minute rule an amendment in the nature of a substitute consisting of the text of the Resources Committee Print dated September 26, 2005. The amendment in the

nature of a substitute shall be considered read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 3824

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Threatened and Endangered Species Recovery Act of 2005''.

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

SEC. 2. AMENDMENT REFERENCES.

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

SEC. 3. DEFINITIONS.

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

''(2)(A) The term 'best available scientific data' means scientific data, regardless of source, that are available to the Secretary at the time of a decision or action for which such data are required by this Act and that the Secretary determines are the most accurate, reliable, and relevant for use in that decision or action.

''(B) Not later than one year after the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005, the Secretary shall issue regulations that establish criteria that must be met to determine which data constitute the best available scientific data for purposes of subparagraph (A).

''(C) If the Secretary determines that data for a decision or action do not comply with the criteria established by the regulations issued under subparagraph (B), do not comply with guidance issued under section 515 of the Treasury and General Government Appropriations Act, 2001 (Public Law 106–554; 114 Stat. 2763A–171) by the Director of the Office of Management and Budget and the Secretary, do not consist of any empirical data, or are found in sources that have not been subject to peer review in a generally acceptable manner—

''(i) the Secretary shall undertake the necessary measures to assure compliance with such criteria or guidance; and

''(ii) the Secretary may—

''(I) secure such empirical data;

''(II) seek appropriate peer review; and

''(III) reconsider the decision or action based on any supplemental or different data provided or any peer review conducted pursuant to this subparagraph.''.

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

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

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

''(12) The term 'jeopardize the continued existence' means, with respect to an agency action (as that term is defined in section 7(a)(2)), that the action reasonably would be expected to significantly impede, directly or indirectly, the conservation in the long-term of the species in the wild.''.

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

SEC. 4. DETERMINATIONS OF ENDANGERED SPECIES AND THREATENED SPECIES.

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

''DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

''SEC. 4. (a) IN GENERAL.—(1) The Secretary shall by regulation promulgated in accordance with subsection (b) determine whether any species is an endangered species or a threatened species because of any of the following factors:

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

''(B) Overutilization for commercial, recreational, scientific, or educational purposes.

''(C) Disease or predation.

''(D) The inadequacy of existing regulatory mechanisms, including any efforts identified pursuant to subsection (b)(1).

''(E) Other natural or manmade factors affecting its continued existence.

''(2) The Secretary shall use the authority provided by paragraph (1) to determine any distinct population of any species of vertebrate fish or wildlife to be an endangered species or a threatened species only sparingly.''.

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

(1) by striking ''best scientific and commercial data available to him'' and inserting ''best available scientific data''; and

(2) by inserting ''Federal agency, any'' after ''being made by any''.

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

''(2)(A) The Secretary shall—

''(i) conduct, at least once every 5 years, based on the information collected for the biennial reports to the Congress required by paragraph (3) of subsection (f), a review of all species included in a list that is published pursuant to paragraph (1) and that is in effect at the time of such review; and

''(ii) determine on the basis of such review and any other information the Secretary considers relevant whether any such species should—

''(I) be removed from such list;

''(II) be changed in status from an endangered species to a threatened species; or

''(III) be changed in status from a threatened species to an endangered species.

''(B) Each determination under subparagraph (A)(ii) shall be made in accordance with subsections (a) and (b).''.

SEC. 5. REPEAL OF CRITICAL HABITAT REQUIREMENTS.

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

(b) CONFORMING AMENDMENTS.—

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

(2) Section 4(b) (16 U.S.C. 1533(b)), as otherwise amended by this Act, is further amended by striking paragraph (2), and by redesignating paragraphs (3) through (8) in order as paragraphs (2) through (7), respectively.

(3) Section 4(b) (16 U.S.C. 1533(b)) is further amended in paragraph (2), as redesignated by paragraph (2) of this subsection, by striking subparagraph (D).

(4) Section 4(b) (16 U.S.C. 1533(b)) is further amended in paragraph (4), as redesignated by paragraph (2) of this subsection, by striking ''determination, designation, or revision referred to in subsection (a)(1) or (3)'' and inserting ''determination referred to in subsection (a)(1)''.

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

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

(A) in the second sentence—

(i) by inserting ''and'' after ''if any''; and

(ii) by striking '', and specify any'' and all that follows through the end of the sentence and inserting a period; and

(B) in the third sentence by striking '', designations,''.

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

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

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

(A) in subsection (a)(2) in the first sentence by striking ''or result in the destruction or adverse modification of any habitat of such species'' and all that follows through the end of the sentence and inserting a period;

(B) in subsection (a)(4) in the first sentence by striking ''or result'' and all that follows through the end of the sentence and inserting a period; and

(C) in subsection (b)(3)(A) by striking ''or its critical habitat''.

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

(A) by striking ''that—'' and all that follows through ''(i) solely'' and inserting ''that solely''; and

(B) by striking ''; and'' and all that follows through the end of the sentence and inserting a period.

SEC. 6. PETITIONS AND PROCEDURES FOR DETERMINATIONS AND REVISIONS.

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

(b) IMPLEMENTING REGULATIONS.—

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

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

(i) in clause (i) by striking '', and'' and inserting a semicolon;

(ii) in clause (ii) by striking ''to the State agency in'' and inserting ''to the Governor of, and the State agency in,'';

(iii) in clause (ii) by striking ''such agency'' and inserting ''such Governor or agency'';

(iv) in clause (ii) by inserting ''and'' after the semicolon at the end; and

(v) by adding at the end the following:

''(iii) maintain, and shall make available, a complete record of all information concerning the determination or revision in the possession of the Secretary, on a publicly accessible website on the Internet, including an index to such information.''; and

(B) by adding at the end the following:

''(8)(A) Information maintained and made available under paragraph (5)(A)(iii) shall include any status review, all information cited in such a status review, all information referred to in the proposed regulation and the preamble to the proposed regulation, and all information submitted to the Secretary by third parties.

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

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

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

''(i) a final regulation to implement such a determination of whether a species is an endangered species or a threatened species;

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

''(iii) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based.'';

(B) in subparagraph (B)(i) by striking ''subparagraph (A)(i)'' and inserting ''subparagraph (A)'';

(C) in subparagraph (B)(ii) by striking ''subparagraph (A)(i)'' and inserting ''subparagraph (A)''; and

(D) by striking subparagraph (C).

(3) EMERGENCY DETERMINATIONS.—Paragraph (6) of section 4(b) (16 U.S.C. 1533(b)), as redesignated by section 5(b)(2) of this Act, is further amended—

(A) in the matter preceding subparagraph (A), by inserting ''with respect to a determination of a species to be an endangered species or a threatened species'' after ''any regulation''; and

(B) in subparagraph (B), by striking ''the State agency in'' and inserting ''the Governor of, and State agency in,''.

SEC. 7. REVIEWS OF LISTINGS AND DETERMINATIONS.

Section 4(c) (16 U.S.C. 1533(c)) is amended by inserting at the end the following:

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

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

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

''(C) A finding of fundamental error in the determination that the species is an endangered species, a threatened species, or extinct.

''(D) A determination that the species is no longer an endangered species or threatened species or in danger of extinction, based on an analysis of the factors that are the basis for listing under section 4(a)(1).''.

SEC. 8. SECRETARIAL GUIDELINES; STATE COMMENTS.

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

(1) by striking subsections (f) and (g) and redesignating subsections (h) and (i) as subsections (f) and (g), respectively;

(2) in subsection (f), as redesignated by paragraph (1) of this subsection—

(A) in the heading by striking ''AGENCY'' and inserting ''SECRETARIAL'';

(B) in the matter preceding paragraph (1), by striking ''the purposes of this section are achieved'' and inserting ''this section is implemented'';

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

(D) in paragraph (3) by striking ''and'' after the semicolon at the end, and by inserting after paragraph (3) the following:

''(4) the criteria for determining best available scientific data pursuant to section 3(2); and''; and

(E) in paragraph (5), as redesignated by subparagraph (C) of this paragraph, by striking ''subsection (f) of this section'' and inserting ''section 5''; and

(3) in subsection (g), as redesignated by paragraph (1) of this section—

(A) by inserting ''COMMENTS.—'' before the first sentence;

(B) by striking ''a State agency'' the first place it appears and inserting ''a Governor, State agency, county (or equivalent jurisdiction), or unit of local government'';

(C) by striking ''a State agency'' the second place it appears and inserting ''a Governor, State agency, county (or equivalent jurisdiction), or unit of local government'';

(D) by striking ''the State agency'' and inserting ''the Governor, State agency, county (or equivalent jurisdiction), or unit of local government, respectively''; and

(E) by striking ''agency's''.

SEC. 9. RECOVERY PLANS AND LAND ACQUISITIONS.

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

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

(2) in subsection (l), as redesignated by paragraph (1) of this section, by striking ''subsection (a) of this section'' and inserting ''subsection (k)''; and

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

''RECOVERY PLANS AND LAND ACQUISITION

''SEC. 5. (a) RECOVERY PLANS.—The Secretary shall, in accordance with this section, develop and implement a plan (in this subsection referred to as a 'recovery plan') for the species determined under section 4(a)(1) to be an endangered species or a threatened species, unless the Secretary finds that such a plan will not promote the conservation and survival of the species.

''(b) DEVELOPMENT OF RECOVERY PLANS.—(1) Subject to paragraphs (2) and (3), the Secretary, in developing recovery plans, shall, to the maximum extent practicable, give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity.

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

''(3)(A) For those species that are listed under section 4(c) on the date of enactment of the Threatened and Endangered Species Recovery Act of 2005 and are described in subparagraph (B) of this paragraph, the Secretary, after providing for public notice and comment, shall—

''(i) not later than 1 year after such date, publish in the Federal Register a priority ranking system for preparing or revising such recovery plans that is consistent with paragraph (1) and takes into consideration the scientifically based needs of the species; and

''(ii) not later than 18 months after such date, publish in the Federal Register a list of such species ranked in accordance with the priority ranking system published under clause (i) for which such recovery plans will be developed or revised, and a tentative schedule for such development or revision.

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

''(i) a recovery plan for the species is not published under this Act before the date of enactment of the Threatened and Endangered Species Recovery Act of 2005 and the Secretary finds such a plan would promote the conservation and survival of the species; or

''(ii) a recovery plan for the species is published under this Act before such date of enactment and the Secretary finds revision of such plan is warranted.

''(C)(i) The Secretary shall, to the maximum extent practicable, adhere to the list and tentative schedule published under subparagraph (A)(ii) in developing or revising recovery plans pursuant to this paragraph.

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

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

''(c) PLAN CONTENTS.—(1)(A) Except as provided in subparagraph (E), a recovery plan shall be based on the best available scientific data and shall include the following:

''(i) Objective, measurable criteria that, when met, would result in a determination, in accordance with this section, that the species to which the recovery plan applies be removed from the lists published under section 4(c) or be reclassified from an endangered species to a threatened species.

''(ii) A description of such site-specific or other measures that would achieve the criteria established under clause (i), including

such intermediate measures as are warranted to effect progress toward achievement of the criteria.

''(iii) Estimates of the time required and the costs to carry out those measures described under clause (ii), including, to the extent practicable, estimated costs for any recommendations, by the recovery team, or by the Secretary if no recovery team is selected, that any of the areas identified under clause (iv) be acquired on a willing seller basis.

''(iv) An identification of those specific areas that are of special value to the conservation of the species.

''(B) Those members of any recovery team appointed pursuant to subsection (d) with relevant scientific expertise, or the Secretary if no recovery team is appointed, shall, based solely on the best available scientific data, establish the objective, measurable criteria required under subparagraph (A)(i).

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

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

''(iii) If the recovery team or the Secretary, respectively, determines under clause (ii) that a recovery plan can be revised to add the criteria and measures provided for under subparagraph (A), the recovery team or the Secretary, as applicable, shall revise the recovery plan to add such criteria and measures within 2 years after the date of the determination.

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

''(i) whenever possible include alternative measures; and

''(ii) in developing such alternative measures, the Secretary shall seek to identify, among such alternative measures of comparable expected efficacy, the alternative measures that are least costly.

''(E) Estimates of time and costs pursuant to subparagraph (A)(iii), and identification of the least costly alternatives pursuant to subparagraph (D)(ii), are not required to be based on the best available scientific data.

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

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

''(2) Such regulations shall—

''(A) establish criteria and the process for selecting the members of recovery teams, and the process for preparing recovery plans, that ensure that each team—

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

''(ii) includes sufficient representation from constituencies with a demonstrated direct interest in the species and its conservation or in the economic and social impacts of its conservation to ensure that the views of such constituencies will be considered in the development of the plan;

''(B) include provisions regarding operating procedures of and recordkeeping by recovery teams;

''(C) ensure that recovery plans are scientifically rigorous and that the evaluation of costs required by paragraphs (1)(A)(iii) and (1)(D) of subsection (c) are economically rigorous; and

''(D) provide guidelines for circumstances in which the Secretary may determine that appointment of a recovery team is not necessary or advisable to develop a recovery plan for a specific species, including procedures to solicit public comment on any such determination.

''(3) The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to recovery teams appointed in accordance with regulations issued by the Secretary under this subsection.

''(e) REPORTS TO CONGRESS.—(1) The Secretary shall report every two years to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate on the status of all domestic endangered species and threatened species and the status of efforts to develop and implement recovery plans for all domestic endangered species and threatened species.

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

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

''(i) changes in population, range, or threats; and

''(ii) the basis for that assessment; and

''(B) for each species, a measurement of the degree of confidence in the reported status of such species, based upon a quantifiable parameter developed for such purposes.

''(f) PUBLIC NOTICE AND COMMENT.—The Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information presented during the public comment period prior to approval of the plan.

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

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

''(2) For purposes of this Act, the term 'Indian tribe' means—

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

''(B) with respect to Alaska, the Metlakatla Indian Community.

''(i) USE OF PLANS.—(1) Each Federal agency shall consider any relevant best available scientific data contained in a recovery plan in any analysis conducted under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

''(2)(A)(i) The head of any Federal agency may enter into an agreement with the Secretary specifying the measures the agency will carry out to implement a recovery plan.

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

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

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

''(j) MONITORING.—(1) The Secretary shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species that have recovered to the point at which the measures provided pursuant to this Act are no longer necessary and that, in accordance with this section, have been removed from the lists published under section 4(c).

''(2) The Secretary shall make prompt use of the authority under section 4(b)(7) to prevent a significant risk to the well-being of any such recovered species.''.

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

''(j) RECOVERY PLANS FOR SPECIES OCCUPYING MORE THAN ONE STATE.—Any recovery plan under section 5 for an endangered species or a threatened species that occupies more than one State shall identify criteria and actions pursuant to subsection (c)(1) of section 5 for each State that are necessary so that the State may pursue a determination that the portion of the species found in that State may be removed from lists published under section 4(c).''.

(c) THREATENED AND ENDANGERED SPECIES INCENTIVES PROGRAM.—

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

''(m) THREATENED AND ENDANGERED SPECIES INCENTIVES PROGRAM.—(1) The Secretary may enter into species recovery agreements pursuant to paragraph (2) and species conservation contract agreements pursuant to paragraph (3) with persons, other than agencies or departments of the Federal Government or State governments, under which the Secretary is obligated, subject to the availability of appropriations, to make annual payments or provide other compensation to the persons to implement the agreements.

''(2)(A) The Secretary and persons who own or control the use of private land may enter into species recovery agreements with a term of not less than 5 years that meet the criteria set forth in subparagraph (B) and are in accordance with the priority established in subparagraph (C).

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

''(i) shall require that the person shall carry out, on the land owned or controlled by the person, activities that—

''(I) protect and restore habitat for covered species that are species determined to be endangered species or threatened species pursuant to section 4(a)(1);

''(II) contribute to the conservation of one or more covered species; and

''(III) specify and implement a management plan for the covered species;

''(ii) shall specify such a management plan that includes—

''(I) identification of the covered species;

''(II) a description of the land to which the agreement applies; and

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

''(iii) shall provide sufficient documentation to establish ownership or control by the

person of the land to which the agreement applies;

''(iv) shall include the amounts of the annual payments or other compensation to be provided by the Secretary to the person under the agreement, and the terms under which such payments or compensation shall be provided; and

''(v) shall include—

''(I) the duties of the person;

''(II) the duties of the Secretary;

''(III) the terms and conditions under which the person and the Secretary mutually agree the agreement may be modified or terminated; and

''(IV) acts or omissions by the person or the Secretary that shall be considered violations of the agreement, and procedures under which notice of and an opportunity to remedy any violation by the person or the Secretary shall be given.

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

''(3)(A) The Secretary and persons who own private land may enter into species conservation contract agreements with terms of 30 years, 20 years, or 10 years that meet the criteria set forth in subparagraph (B) and standards set forth in subparagraph (D) and are in accordance with the priorities established in subparagraph (C).

''(B) A species conservation contract agreement entered into under this paragraph by the Secretary with a person—

''(i) shall provide that the person shall, on the land owned by the person—

''(I) carry out conservation practices to meet one or more of the goals set forth in clauses (i) through (iii) of subparagraph (C) for one or more covered species, that are species that are determined to be endangered species or threatened species pursuant to section 4(a)(1), species determined to be candidate species pursuant to section 4(b)(3)(B)(iii), or species subject to comparable designations under State law; and

''(II) specify and implement a management plan for the covered species;

''(ii) shall specify such a management plan that includes—

''(I) identification of the covered species;

''(II) a description in detail of the conservation practices for the covered species that the person shall undertake;

''(III) a description of the land to which the agreement applies; and

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

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

''(iii) shall specify the term of the agreement; and

''(iv) shall include—

''(I) the duties of the person;

''(II) the duties of the Secretary;

''(III) the terms and conditions under which the person and the Secretary mutually agree the agreement may be modified or terminated;

''(IV) acts or omissions by the person or the Secretary that shall be considered violations of the agreement, and procedures under which notice of and an opportunity to remedy any violation by the person or the Secretary shall be given; and

''(V) terms and conditions for early termination of the agreement by the person before the management plan is fully implemented or termination of the agreement by the Secretary in the case of a violation by the person that is not remedied under subclause (IV), including any requirement for the person to refund all or part of any payments received under subparagraph (E) and any interest thereon.

''(C) The Secretary shall establish priorities for the selection of species conservation contract agreements, or groups of such agreements for adjacent or proximate lands, to be entered into under this paragraph that address the following factors:

''(i) The potential of the land to which the agreement or agreements apply to contribute significantly to the conservation of an endangered species or threatened species or a species with a comparable designation under State law.

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

''(iii) The amount of acreage of such land.

''(iv) The number of covered species in the agreement or agreements.

''(v) The degree of urgency for the covered species to implement the conservation practices in the management plan or plans under the agreement or agreements.

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

''(D) The Secretary shall enter into a species conservation contract agreement submitted by a person, if the Secretary finds that the person owns such land or has sufficient control over the use of such land to ensure implementation of the management plan under the agreement.

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

''(ii) If the person is implementing fully the agreement, the person shall receive from the Secretary—

''(I) in the case of a 30-year agreement, an annual contract payment in an amount equal to 100 percent of the person's actual costs to implement the conservation practices described in the management plan under the terms of the agreement;

''(II) in the case of a 20-year agreement, an annual contract payment in an amount equal to 80 percent of the person's actual costs to implement the conservation practices described in the management plan under the terms of the agreement; and

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

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

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

''(4)(A) Upon request of a person seeking to enter into an agreement pursuant to this subsection, the Secretary may provide to such person technical assistance in the preparation, and management training for the implementation, of the management plan for the agreement.

''(B) Any State agency, local government, nonprofit organization, or federally recognized Indian tribe may provide assistance to a person in the preparation of a management plan, or participate in the implementation of a management plan, including identifying and making available certified fisheries or wildlife biologists with expertise in the conservation of species for purposes of the preparation or review and approval of management plans for species conservation contract agreements under paragraph (3)(D)(iii).

''(5) Upon any conveyance or other transfer of interest in land that is subject to an agreement under this subsection—

''(A) the agreement shall terminate if the agreement does not continue in effect under subparagraph (B);

''(B) the agreement shall continue in effect with respect to such land, with the same terms and conditions, if the person to whom the land or interest is conveyed or otherwise transferred notifies the Secretary of the person's election to continue the agreement by no later than 30 days after the date of the conveyance or other transfer and the person is determined by the Secretary to qualify to enter into an agreement under this subsection; or

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

''(6) An agreement under this subsection may be renewed with the mutual consent of the Secretary and the person who entered into the agreement or to whom the agreement has been transferred under paragraph (5).

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

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

''(9) The Secretary, or any other Federal official, may not require a person to enter into an agreement under this subsection as a term or condition of any right, privilege, or benefit, or of any action or refraining from any action, under this Act.''.

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

(d) CONFORMING AMENDMENTS.—

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

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

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

(B) in section 115(b)(2) (16 U.S.C. 1383b(b)(2)) by striking ''section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f))'' and inserting ''section 5 of the Endangered Species Act of 1973''.

SEC. 10. COOPERATION WITH STATES AND INDIAN TRIBES.

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

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

''(3)(A) Any cooperative agreement entered into by the Secretary under this subsection may also provide for development of a program for conservation of species determined to be candidate species pursuant to section 4(b)(3)(B)(iii) or any other species that the State and the Secretary agree is at risk of being determined to be an endangered species or threatened species under section

4(a)(1) in that State. Upon completion of consultation on the agreement pursuant to subsection (e)(2), any incidental take statement issued on the agreement shall apply to any such species, and to the State and any landowners enrolled in any program under the agreement, without further consultation (except any additional consultation pursuant to subsection (e)(2)) if the species is subsequently determined to be an endangered species or a threatened species and the agreement remains an adequate and active program for the conservation of endangered species and threatened species.

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

''(C) The Secretary shall periodically review each cooperative agreement under this subsection and seek to make changes the Secretary considers necessary for the conservation of endangered species and threatened species to which the agreement applies.

''(4) Any cooperative agreement entered into by the Secretary under this subsection that provides for the enrollment of private lands or water rights in any program established by the agreement shall ensure that the decision to enroll is voluntary for each owner of such lands or water rights.

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

''(B) For the purposes of this paragraph, the term 'Indian tribe' means—

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

''(ii) with respect to Alaska, the Metlakatla Indian Community.'';

(2) in subsection (d)(1)—

(A) by striking ''pursuant to subsection (c) of this section'';

(B) by striking ''or to assist'' and all that follows through ''section 5(j)'' and inserting ''pursuant to subsection (c)(1) and (2) or to address candidate species or other species at risk and recovered species pursuant to subsection (c)(3)''; and

(C) in subparagraph (F), by striking ''monitoring the status of candidate species'' and inserting ''developing a conservation program for, or monitoring the status of, candidate species or other species determined to be at risk pursuant to subsection (c)(3)''; and

(3) in subsection (e)—

(A) by inserting ''(1)'' before the first sentence;

(B) in paragraph (1), as designated by subparagraph (A) of this paragraph, by striking ''at no greater than annual intervals'' and inserting ''every 3 years''; and

(C) by adding at the end the following:

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

''(A) the Secretary enters into the agreement; and

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

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

''(ii) new information about any species addressed in the agreement that the Secretary determines—

''(I) constitutes the best available scientific data; and

''(II) indicates that the agreement may have adverse effects on the species that had not been considered previously when the agreement was entered into or during any revision thereof or amendment thereto.

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

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

''(A) as result of the procedures of section 7(a)(2) through (d) undertaken pursuant to paragraph (2) of this subsection, the Secretary determines that continued implementation of the cooperative agreement is likely to jeopardize the continued existence of endangered species or threatened species, and the cooperative agreement is not amended or revised to incorporate a reasonable and prudent alternative offered by the Secretary pursuant to section 7(b)(3); or

''(B) the cooperative agreement has been suspended under paragraph (3) of this subsection and has not been amended or revised and found by the Secretary to constitute an adequate and active program for the conservation of endangered species and threatened species within 180 days after the date of the suspension.''.

SEC. 11. INTERAGENCY COOPERATION AND CONSULTATION.

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

(1) in paragraph (1) in the second sentence, by striking ''endangered species'' and all that follows through the end of the sentence and inserting ''species determined to be endangered species and threatened species under section 4.'';

(2) in paragraph (2)—

(A) in the first sentence by striking ''action'' the first place it appears and all that follows through ''is not'' and inserting ''agency action authorized, funded, or carried out by such agency is not'';

(B) in the first sentence by striking '', unless'' and all that follows through the end of the sentence and inserting a period;

(C) in the second sentence, by striking ''best scientific and commercial data available'' and inserting ''best available scientific data''; and

(D) by inserting ''(A)'' before the first sentence, and by adding at the end the following:

''(B) The Secretary may identify specific agency actions or categories of agency actions that may be determined to meet the standards of this paragraph by alternative procedures to the procedures set forth in this subsection and subsections (b) through (d), except that subsections (b)(4) and (e) may apply only to an action that the Secretary finds, or concurs, does meet such standards, and the Secretary shall suggest, or concur in any suggested, reasonable and prudent alternatives described in subsection (b)(3) for any action determined not to meet such standards. Any such agency action or category of agency actions shall be identified, and any such alternative procedures shall be established, by regulation promulgated prior or subsequent to the date of the enactment of this Act.'';

(3) in paragraph (4)—

(A) by striking ''listed under section 4'' and inserting ''an endangered species or a threatened species''; and

(B) by inserting '', under section 4'' after ''such species''; and

(4) by adding at the end the following:

''(5) Any Federal agency or the Secretary, in conducting any analysis pursuant to paragraph (2), shall consider only the effects of any agency action that are distinct from a baseline of all effects upon the relevant species that have occurred or are occurring prior to the action.''.

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

(1) in paragraph (1)(B)(i) by inserting ''permit or license'' before ''applicant'';

(2) in paragraph (2) by inserting ''permit or license'' before ''applicant'';

(3) in paragraph (3)(A)—

(A) in the first sentence—

(i) by striking ''Promptly after'' and inserting ''Before'';

(ii) by inserting ''permit or license'' before ''applicant''; and

(iii) by inserting ''proposed'' before ''written statement''; and

(B) by striking all after the first sentence and inserting the following: ''The Secretary shall consider any comment from the Federal agency and the permit or license applicant, if any, prior to issuance of the final written statement of the Secretary's opinion. The Secretary shall issue the final written statement of the Secretary's opinion by providing the written statement to the Federal agency and the permit or license applicant, if any, and publishing notice of the written statement in the Federal Register. If jeopardy is found, the Secretary shall suggest in the final written statement those reasonable and prudent alternatives, if any, that the Secretary believes would not violate subsection (a)(2) and can be taken by the Federal agency or applicant in implementing the agency action. The Secretary shall cooperate with the Federal agency and any permit or license applicant in the preparation of any suggested reasonable and prudent alternatives.'';

(4) in paragraph (4)—

(A) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively;

(B) by inserting ''(A)'' after ''(4)'';

(C) by striking ''the Secretary shall provide'' and all that follows through ''with a written statement that—'' and inserting the following: ''the Secretary shall include in the written statement under paragraph (3), a statement described in subparagraph (B) of this paragraph.

''(B) A statement described in this subparagraph—''; and

(5) by adding at the end the following:

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

''(B) If various terms and conditions are available to comply with paragraph (4)(B)(iv), the terms and conditions set forth pursuant to that paragraph—

''(i) must be capable of successful implementation; and

''(ii) must be consistent with the objectives of the Federal agency and the permit or license applicant, if any, to the greatest extent possible.''.

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

(1) by striking ''(1)'';

(2) by striking paragraph (2);

(3) in the first sentence, by striking ''which is listed'' and all that follows through the end of the sentence and inserting ''that is determined to be an endangered species or a threatened species, or for which such a determination is proposed pursuant to section 4, may be present in the area of such proposed action.''; and

(4) in the second sentence, by striking ''best scientific and commercial data available'' and inserting ''best available scientific data''.

(d) ELIMINATION OF ENDANGERED SPECIES COMMITTEE PROCESS.—Section 7 (16 U.S.C. 1536) is amended—

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

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

(3) in subsection (e), as redesignated by paragraph (2) of this subsection—

(A) in the heading, by striking ''EXEMPTION AS PROVIDING''; and

(B) by striking ''such section'' and all that follows through ''(2)'' and inserting ''such section,''; and

(4) in subsection (f), as redesignated by paragraph (2) of this subsection—

(A) in the first sentence, by striking ''is authorized'' and all that follows through ''of this section'' and inserting ''may exempt an agency action from compliance with the requirements of subsections (a) through (d) of this section before the initiation of such agency action,''; and

(B) by striking the second sentence.

SEC. 12. EXCEPTIONS TO PROHIBITIONS.

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

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

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

''(v) measures the applicant will take to monitor impacts of the plan on covered species and the effectiveness of the plan's measures in achieving the plan's biological goals;

''(vi) adaptive management provisions necessary to respond to all reasonably foreseeable changes in circumstances that could appreciably reduce the likelihood of the survival and recovery of any species covered by the plan; and'';

(2) in subparagraph (B) by striking ''and'' after the semicolon at the end of clause (iv), by redesignating clause (v) as clause (vi), and by inserting after clause (iv) the following:

''(v) the term of the permit is reasonable, taking into consideration—

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

''(II) the extent to which the plan will enhance the conservation of covered species;

''(III) the adequacy of information underlying the plan;

''(IV) the length of time necessary to implement and achieve the benefits of the plan; and

''(V) the scope of the plan's adaptive management strategy; and''; and

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

''(3) Any terms and conditions offered by the Secretary pursuant to paragraph (2)(B) to reduce or offset the impacts of incidental taking shall be roughly proportional to the impact of the incidental taking specified in the conservation plan pursuant to in paragraph (2)(A)(i). This paragraph shall not be construed to limit the authority of the Secretary to require greater than acre-for-acre mitigation where necessary to address the extent of such impacts. In any case in which various terms and conditions are available, the terms and conditions shall be capable of successful implementation and shall be consistent with the objective of the applicant to the greatest extent possible.

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

''(B) For any circumstance identified in the permit or incorporated document that has changed, the Secretary may, in the absence of consent of the permit holder, require only such additional minimization, mitigation, or other measures as are already provided in the permit or incorporated document for such changed circumstance.

''(C) For any changed circumstance not identified in the permit or incorporated document, the Secretary may, in the absence of consent of the permit holder, require only such additional minimization, mitigation, or other measures to address such changed circumstance that do not involve the commitment of any additional land, water, or financial compensation not otherwise committed, or the imposition of additional restrictions on the use of any land, water or other natural resources otherwise available for development or use, under the original terms and conditions of the permit or incorporated document.

''(D) The Secretary shall have the burden of proof in demonstrating and documenting, with the best available scientific data, the occurrence of any changed circumstances for purposes of this paragraph.

''(E) All permits issued under this subsection on or after the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005, other than permits for scientific purposes, shall contain the assurances contained in subparagraphs (B) through (D) of this paragraph and paragraph (5)(A) and (B). Permits issued under this subsection on or after March 25, 1998, and before the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005, other than permits for scientific purposes, shall be governed by the applicable sections of parts 17.22(b), (c), and (d), and 17.32(b), (c), and (d) of title 50, Code of Federal Regulations, as the same exist on the date of the enactment of the Threatened and Endangered Species Act of 2005.

''(5)(A) The Secretary shall revoke a permit issued under paragraph (2) if the Secretary finds that the permittee is not complying with the terms and conditions of the permit.

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

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

''(ii) the Secretary provides 60 days notice of revocation to the permittee; and

''(iii) the Secretary is unable to, and the permittee chooses not to, remedy the condition causing such inconsistency.''.

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

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

(1) in paragraph (1), by striking ''For purposes'' and all that follows through the end of the paragraph and inserting the following: ''For purposes of this subsection, the term 'experimental population' means any population (including any offspring arising therefrom) authorized by the Secretary for release under paragraph (2), but only when such population is in the area designated for it by the Secretary, and such area is, at the time of release, wholly separate geographically from areas occupied by nonexperimental populations of the same species. For purposes of this subsection, the term 'areas occupied by nonexperimental populations' means areas characterized by the sustained and predictable presence of more than negligible numbers of successfully reproducing individuals over a period of many years.'';

(2) in paragraph (2)(B), by striking ''information'' and inserting ''scientific data''; and

(3) in paragraph (2)(C)(i), by striking ''listed'' and inserting ''determined to be an endangered species or a threatened species''.

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

''(k) WRITTEN DETERMINATION OF COMPLIANCE.—(1) A property owner (in this subsection referred to as a 'requester') may request the Secretary to make a written determination that a proposed use of the owner's property that is lawful under State and local law will comply with section 9(a), by submitting a written description of the proposed action to the Secretary by certified mail.

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

''(A) the nature, the specific location, the lawfulness under State and local law, and the anticipated schedule and duration of the proposed use, and a demonstration that the property owner has the means to undertake the proposed use; and

''(B) any anticipated adverse impact to a species that is included on a list published under 4(c)(1) that the requestor reasonably expects to occur as a result of the proposed use.

''(3) The Secretary may request and the requestor may supply any other information that either believes will assist the Secretary to make a determination under paragraph (1).

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

''(5)(A) Subject to subparagraph (B), the Secretary shall provide to the requestor a written determination of whether the proposed use, as proposed by the requestor, will comply with section 9(a), by not later than expiration of the 180-day period beginning on the date of the submission of the request.

''(B) The Secretary may request, and the requestor may grant, a written extension of the period under subparagraph (A).

''(6) If the Secretary fails to provide a written determination before the expiration of the period under paragraph (5)(A) (or any extension thereof under paragraph (5)(B)), the Secretary is deemed to have determined that the proposed use complies with section 9(a).

''(7) This subsection shall not apply with respect to agency actions that are subject to consultation under section 7.

''(8) Any use or action taken by the property owner in reasonable reliance on a written determination of compliance under paragraph (5) or on the application of paragraph (6) shall not be treated as a violation of section 9(a).

''(9) Any determination of compliance under this subsection shall remain effective—

''(A) in the case of a written determination provided under paragraph (5)(A), for the 10-

year period beginning on the date the written determination is provided; or

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

''(10) The Secretary may withdraw a determination of compliance under this section only if the Secretary determines that, because of unforeseen changed circumstances, the continuation of the use to which the determination applies would preclude conservation measures essential to the survival of any endangered species or threatened species. Such a withdrawal shall take effect 10 days after the date the Secretary provides notice of the withdrawal to the requester.

''(11) The Secretary may extend the period that applies under paragraph (5) by up to 180 days if seasonal considerations make a determination impossible within the period that would otherwise apply.''.

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

''(l) NATIONAL SECURITY.—The President, after consultation with the appropriate Federal agency, may exempt any act or omission from the provisions of this Act if such exemption is necessary for national security.''.

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

''(m) DISASTER DECLARATION AND PROTECTION.—(1) The President may suspend the application of any provision of this Act in any area for which a major disaster is declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

''(2) The Secretary shall, within one year after the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005, promulgate regulations regarding application of this Act in the event of an emergency (including circumstances other than a major disaster referred to in paragraph (1)) involving a threat to human health or safety or to property, including regulations—

''(A) determining what constitutes an emergency for purposes of this paragraph; and

''(B) to address immediate threats through expedited consideration under or waiver of any provision of this Act.''.

SEC. 13. PRIVATE PROPERTY CONSERVATION.

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

''PRIVATE PROPERTY CONSERVATION

''SEC. 13. (a) IN GENERAL.—The Secretary may provide conservation grants (in this section referred to as 'grants') to promote the voluntary conservation of endangered species and threatened species by owners of private property and shall provide financial conservation aid (in this section referred to as 'aid') to alleviate the burden of conservation measures imposed upon private property owners by this Act. The Secretary may provide technical assistance when requested to enhance the conservation effects of grants or aid.

''(b) AWARDING OF GRANTS AND AID.—Grants to promote conservation of endangered species and threatened species on private property—

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

''(2) may not be used to acquire leases or easements of more than 50 years duration or fee title to private property;

''(3) must be designed to directly contribute to the conservation of an endangered species or threatened species by increasing the species' numbers or distribution; and

''(4) must be supported by any private property owners on whose property any grant funded activities are carried out.

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

''(1) Grants that promote conservation of endangered species or threatened species on private property while making economically beneficial and productive use of the private property on which the conservation activities are conducted.

''(2) Grants that develop, promote, or use techniques to increase the distribution or population of an endangered species or threatened species on private property.

''(3) Other grants that promote voluntary conservation of endangered species or threatened species on private property.

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

''(A) received a written determination under section 10(k) finding that the proposed use of private property would not comply with section 9(a); or

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

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

''(A) the owner has foregone the proposed use;

''(B) the owner has requested financial aid—

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

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

''(C) the foregone use would be lawful under State and local law and the property owner has demonstrated that the property owner has the means to undertake the proposed use.

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

''(A) within 180 days after receipt of a request for aid unless there are unresolved questions regarding the documentation of the foregone proposed use or unresolved questions regarding the fair market value; or

''(B) at the resolution of any questions concerning the documentation of the foregone use established under subsection (f) or the fair market value established under subsection (g).

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

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

''(g) FAIR MARKET VALUE.—For purposes of this section, the fair market value of the foregone use of the affected portion of the private property, including business losses, is what a willing buyer would pay to a willing seller in an open market. Fair market value shall take into account the likelihood that the foregone use would be approved under State and local law. The fair market value shall be determined within 180 days of the documentation of the foregone use. The fair market value shall be determined jointly by 2 licensed independent appraisers, one selected by the Secretary and one selected by the property owner. If the 2 appraisers fail to agree on fair market value, the Secretary and the property owner shall jointly select a third licensed appraiser whose appraisal within an additional 90 days shall be binding on the Secretary and the private property owner. Within one year after the date of enactment of the Threatened and Endangered Species Recovery Act of 2005, the Secretary shall promulgate regulations regarding selection of the jointly selected appraisers under this subsection.

''(h) LIMITATION ON AID AVAILABILITY.—Any person receiving aid under this section may not receive additional aid under this section for the same foregone use of the same property and for the same period of time.

''(i) ANNUAL REPORTING.—The Secretary shall by January 15 of each year provide a report of all aid and grants awarded under this section to the Committee on Resources of the House of Representatives and the Environment and Public Works Committee of the Senate and make such report electronically available to the general public on the website required under section 14.''.

SEC. 14. PUBLIC ACCESSIBILITY AND ACCOUNTABILITY.

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

''PUBLIC ACCESSIBILITY AND ACCOUNTABILITY

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

''(1) each list published under section 4(c)(1);

''(2) all final and proposed regulations and determinations under section 4;

''(3) the results of all 5-year reviews conducted under section 4(c)(2)(A);

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

''(5) all reports required under sections 5(e) and 16, and all reports required under sections 4(f)(3) and 18 of this Act as in effect immediately before the enactment of the Threatened and Endangered Species Recovery Act of 2005; and

''(6) data contained in the reports referred to in paragraph (5) of this section, and that were produced after the date of enactment of the Threatened and Endangered Species Recovery Act of 2005, in the form of databases that may be searched by the variables included in the reports.''.

SEC. 15. ANNUAL COST ANALYSES.

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

''ANNUAL COST ANALYSIS BY UNITED STATES FISH AND WILDLIFE SERVICE

''SEC. 18. (a) IN GENERAL.—On or before January 15 of each year, the Secretary shall submit to the Congress an annual report covering the preceding fiscal year that contains an accounting of all reasonably identifiable expenditures made primarily for the conservation of species included on lists published and in effect under section 4(c).

''(b) SPECIFICATION OF EXPENDITURES.—Each report under this section shall specify—

''(1) expenditures of Federal funds on a species-by-species basis, and expenditures of

Federal funds that are not attributable to a specific species;

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

''(3) based on data submitted pursuant to subsection (c), expenditures voluntarily reported by local governmental entities on a species-by-species basis, and such expenditures that are not attributable to a specific species.

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

''(1) voluntarily submit electronic data regarding their expenditures for conservation of species listed under section 4(c); and

''(2) attest to the accuracy of such data.''.

(b) ELIGIBILITY OF STATES FOR FINANCIAL ASSISTANCE.—Section 6(d) (16 U.S.C. 1535(d)) is amended by adding at the end the following:

''(3) A State shall not be eligible for financial assistance under this section for a fiscal year unless the State has provided to the Secretary for the preceding fiscal year information regarding the expenditures referred to in section 16(b)(2).''.

SEC. 16. REIMBURSEMENT FOR DEPREDATION OF LIVESTOCK BY REINTRODUCED SPECIES.

The Endangered Species Act of 1973 is further amended—

(1) by striking sections 15 and 16;

(2) by redesignating sections 17 and 18 as sections 15 and 16, respectively; and

(3) by adding after section 16, as so redesignated, the following:

''REIMBURSEMENT FOR DEPREDATION OF LIVESTOCK BY REINTRODUCED SPECIES

''SEC. 17. (a) IN GENERAL.—The Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, may reimburse the owner of livestock for any loss of livestock resulting from depredation by any population of a species if the population is listed under section 4(c) and includes or derives from members of the species that were reintroduced into the wild.

''(b) ELIGIBILITY FOR AND AMOUNT.—Eligibility for, and the amount of, reimbursement under this section shall not be conditioned on the presentation of the body of any animal for which reimbursement is sought.

''(c) LIMITATION ON REQUIREMENT TO PRESENT BODY.—The Secretary may not require the owner of livestock to present the body of individual livestock as a condition of payment of reimbursement under this section.

''(d) USE OF DONATIONS.—The Secretary may accept and use donations of funds to pay reimbursement under this section.

''(e) AVAILABILITY OF APPROPRIATIONS.—The requirement to pay reimbursement under this section is subject to the availability of funds for such payments.''.

SEC. 17. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—The Endangered Species Act of 1973 is further amended by adding at the end the following:

''AUTHORIZATION OF APPROPRIATIONS

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

''(1) to the Secretary of the Interior to carry out functions and responsibilities of the Department of the Interior under this Act, such sums as are necessary for fiscal years 2006 through 2010; and

''(2) to the Secretary of Agriculture to carry out functions and responsibilities of the Department of the Interior with respect to the enforcement of this Act and the convention which pertain the importation of plants, such sums as are necessary for fiscal year 2006 through 2010.

''(b) CONVENTION IMPLEMENTATION.—There is authorized to be appropriated to the Secretary of the Interior to carry out section 8A(e) such sums as are necessary for fiscal years 2006 through 2010.''.

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

SEC. 18. MISCELLANEOUS TECHNICAL CORRECTIONS.

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

(1) in subsection (a) in the first sentence by striking ''any endangered species or threatened species listed'' and inserting ''any species determined to be an endangered species or a threatened species''; and

(2) in subsection (b) in paragraph (1), by striking ''endangered species and threatened species listed'' and inserting ''species determined to be endangered species and threatened species''.

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

(1) in subsection (a), by striking ''of the Interior (hereinafter in this section referred to as the 'Secretary')'';

(2) in subsection (d), by striking ''Merchant Marine and Fisheries'' and inserting ''Resources''; and

(3) in subsection (e)—

(A) in paragraph (1), by striking ''of the Interior (hereinafter in this subsection referred to as the 'Secretary')''; and

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

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

(1) in subsection (a)—

(A) in paragraph (1), in the matter preceding subparagraph (A), by striking ''of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act'' and inserting '', with respect to any species of fish or wildlife determined to be an endangered species under section 4'';

(B) in paragraph (1)(G), by striking ''threatened species of fish or wildlife listed pursuant to section 4 of this Act'' and inserting ''species of fish or wildlife determined to be a threatened species under section 4'';

(C) in paragraph (2), in the matter preceding subparagraph (A) by striking ''of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act'' and inserting '', with respect to any species of plants determined to be an endangered species under section 4''; and

(D) in paragraph (2)(E), by striking ''listed pursuant to section 4 of this Act'' and inserting ''determined to be a threatened species under section 4'';

(2) in subsection (b)—

(A) by striking ''(1)'' before ''SPECIES'' and inserting ''(1)'' before the first sentence;

(B) in paragraph (1), in the first sentence, by striking ''adding such'' and all that follows through '': *Provided*, That'' and inserting ''determining such fish or wildlife species to be an endangered species or a threatened species under section 4, if''; and

(C) in paragraph (1), in the second sentence, by striking ''adding such'' and all that follows through ''this Act'' and inserting ''determining such fish or wildlife species to be an endangered species or a threatened species under section 4'';

(3) in subsection (c)(2)(A), by striking ''an endangered species listed'' and inserting ''a species determined to be an endangered species'';

(4) in subsection (d)(1)(A), by striking clause (i) and inserting the following: ''(i) are not determined to be endangered species or threatened species under section 4, and'';

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

(6) in subsection (f)—

(A) in paragraph (1), in the first sentence, by striking clause (A) and inserting the following: ''(A) are not determined to be endangered species or threatened species under section 4, and''; and

(B) by striking ''Secretary of the Interior'' each place it appears and inserting ''Secretary''.

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

(1) in paragraph (1)—

(A) by striking ''an endangered species'' and all that follows through ''section 4 of this Act'' and inserting ''an endangered species or a threatened species and the subsequent determination that the species is an endangered species or a threatened species under section 4'';

(B) by striking ''section 9(a) of this Act'' and inserting ''section 9(a)''; and

(C) by striking ''fish or wildlife listed by the Secretary as endangered'' and inserting ''fish or wildlife determined to be an endangered species or threatened species by the Secretary''; and

(2) in paragraph (2)—

(A) by inserting ''or a threatened species'' after ''endangered species'' each place it appears; and

(B) in subparagraph (B), by striking ''listed species'' and inserting ''endangered species or threatened species''.

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

(1) by inserting ''or threatened species'' after ''endangered species''; and

(2) by striking ''of this Act''.

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

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

(2) in paragraph (2), by striking ''of this Act'' each place it appears.

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

(h) ANTIQUE ARTICLES.—Section 10(h)(1)(B) (16 U.S.C. 1539(h)(1)(B)) is amended by striking ''endangered species or threatened species listed'' and inserting ''species determined to be an endangered species or a threatened species''.

(i) PENALTIES AND ENFORCEMENT.—Section 11 (16 U.S.C. 1540) is amended in subsection (e)(3), in the second sentence, by striking ''Such persons'' and inserting ''Such a person''.

(j) SUBSTITUTION OF GENDER-NEUTRAL REFERENCES.—

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

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

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

(C) Section 4(b)(7) (16 U.S.C. 1533(b)(7)), in the matter following subparagraph (B).

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

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

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

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

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

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

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

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

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

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

(3) ''SECRETARY OF THE INTERIOR'' FOR ''HE''.—Section 8(b)(3) (16 U.S.C. 1537(b)(3)) is amended by striking ''he'' and inserting ''the Secretary of the Interior''.

(4) ''PERSON'' FOR ''HE''.—The following provisions are amended by striking ''he'' each place it appears and inserting ''the person'':

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

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

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

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

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

(6) REFERENCES TO ''HIM''.—

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

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

(C) Section 5(k)(2), as redesignated by section 9(a)(1) of this Act, is amended by striking ''him'' and inserting ''the Secretary''.

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

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

(F) Section 9(d)(2)(A) (16 U.S.C. 1538(d)(2)(A)) is amended by striking ''him'' each place it appears and inserting ''such person''.

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

(7) REFERENCES TO ''HIMSELF OR HERSELF''.—Section 11 (16 U.S.C. 1540) is amended in subsections (a)(3) and (b)(3) by striking ''himself or herself'' each place it appears and inserting ''the defendant''.

(8) REFERENCES TO ''HIS''.—

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

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

(i) in subsection (d)(2) in the matter following clause (ii) by striking ''his'' and inserting ''the Secretary's''; and

(ii) in subsection (e)(1), as designated by section 10(3)(A) of this Act, by striking ''his periodic review'' and inserting ''periodic review by the Secretary''.

(C) Section 7(a)(3) (16 U.S.C. 1536(a)(3)) is amended by striking ''his'' and inserting ''the applicant's''.

(D) Section 8(c)(1) (16 U.S.C. 1537(c)(1)) is amended by striking ''his'' and inserting ''the Secretary's''.

(E) Section 9 (16 U.S.C. 1538) is amended in subsection (d)(2)(B) and subsection (f) by striking ''his'' each place it appears and inserting ''such person's''.

(F) Section 10(b)(3) (16 U.S.C. 1539(b)(3)) is amended by striking ''his'' and inserting ''the Secretary's''.

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

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

(i) in subsection (a)(1) by striking ''his'' and inserting ''the Secretary's'';

(ii) in subsections (a)(3) and (b)(3) by striking ''his or her'' each place it appears and inserting ''the defendant's'';

(iii) in subsection (d) by striking ''his'' and inserting ''the officer's or employee's'';

(iv) in subsection (e)(3) in the second sentence by striking ''his'' and inserting ''the person's''; and

(v) in subsection (g)(1) by striking ''his'' and inserting ''the person's''.

SEC. 19. CLERICAL AMENDMENT TO TABLE OF CONTENTS.

The table of contents in the first section is amended—

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

''Sec. 5. Recovery plans and land acquisition.''

; and

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

''Sec. 13. Private property conservation.
''Sec. 14. Public accessibility and accountability.
''Sec. 15. Marine Mammal Protection Act of 1972.
''Sec. 16. Annual cost analysis by United States Fish and Wildlife Service.
''Sec. 17. Reimbursement for depredation of livestock by reintroduced species.
''Sec. 18. Authorization of appropriations.''.

SEC. 20. CERTAIN ACTIONS DEEMED IN COMPLIANCE.

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

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

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

(2) the date of the completion of any procedure required under subpart D of part 402 of title 50, Code of Federal Regulations, with respect to the action referred to in subsection (a).

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

The CHAIRMAN. No amendment to that amendment is in order except those printed in House Report 109–240. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

It is now in order to consider amendment No. 1 printed in House Report 109–240.

AMENDMENT NO. 1 OFFERED BY MR. POMBO

Mr. POMBO. Mr. Chairman, I offer an amendment made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. POMBO:

Page 2, strike line 24, and all that follows through page 3, line 18, and insert the following:

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

''(i) compliance with guidance issued under section 515 of the Treasury and General Government Appropriations Act of 2001 (Public Law 106–554; 114 Stat. 2763A–171) by the Director of the Office of Management and Budget and the Secretary;

''(ii) data consists of empirical data; or

''(iii) data is found in sources that have been subject to peer review by qualified individuals recommended by the National Academy of Sciences to serve as independent reviewers for a covered action in a generally acceptable manner.''.

Page 4, strike lines 3 through 11, and redesignate the subsequent subsection accordingly.

Page 4, after line 14, insert the following:

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

Page 6, after line 24, insert the following:

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

''(4)(A) The Secretary shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, prepare an analysis of—

''(i) the economic impact and benefit of that determination;

''(ii) the impact and benefit on national security of that determination; and

''(iii) any other relevant impact and benefit of that determination.

''(B) Nothing in this paragraph shall delay the Secretary's decision or change the criteria used in making determinations under paragraph (1).''.

Page 7, line 3, before the period insert '', and redesignate paragraph (4) (as added by section 4(d) of this Act) as paragraph (3)''.

Page 16, line 14, insert ''(A)'' after ''(2)''.

Page 16, after line 19, insert the following:

''(B) Nothing in this paragraph shall be construed to affect the authority of the Secretary to issue any emergency regulation pursuant to section 4(b)(6).

Page 19, line 4, after ''costs'' insert '', including direct, indirect and cumulative costs,''.

Page 20, line 5, strike ''by''.

Page 24, beginning at line 3, strike ''TO ENSURE CONSISTENCY WITH DEVELOPMENT PLAN''.

Page 27, line 24, after ''agreement'' insert ''from funds appropriated under section 18(a)(1)''.

Page 33, after line 20, insert the following:

''(F) A species conservation contract agreement may list other Federal program payments that incidentally contribute to conservation of a listed species. The head of a Federal agency shall not use the payments for the purposes of implementing the species conservation contract agreement.

Page 39, strike line 23 and all that follows through page 40, line 2, and insert the following:

''(i) addresses or affects species that are determined to be endangered species or threatened species and the species were not addressed or the effects were not considered previously in the agreement; or

Page 43, line 12, strike '', under section 4'' and insert ''determined''.

Page 43, line 19, strike the close quotation mark and the following period, and after line 19, insert the following:

''(6) This subsection shall not apply to any agency action that may affect any species for which a permit is issued under section 10 for other than scientific purposes, if the action implements or is consistent with any conservation plan or agreement incorporated by reference in the permit.''.

Page 49, beginning at line 15, strike ''offered by the Secretary pursuant to paragraph (2)(B)'' and insert ''required''.

Page 49, line 17, after ''taking'' insert ''or otherwise comply with the requirements of paragraph (2)(B)''.

Page 49, line 18, after ''proportional'' insert ''in extent''.

Page 53, line 22, strike ''requester'' and insert ''requestor''.

Page 56, line 14, strike ''10'' and insert ''5''.

Page 56, beginning at line 15, strike ''date the Secretary provides notice of the withdrawal to the requestor'' and insert ''date the requestor receives from the Secretary, by certified mail, notice of the withdrawal''.

Page 56, line 19, insert ''or biological'' before ''considerations''.

Page 57, line 21, strike ''immediate'' and insert ''imminent''.

Page 57, after line 23, insert the following:

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

''(n) EXEMPTION FROM LIABILITY FOR TAKE OF LISTED AQUATIC SPECIES.—The operator of a water storage reservoir, water diversion structure, canal, or other artificial water delivery facility shall not be in violation of section 9(a) by reason of any take of any aquatic species listed under section 4(c) that results from predation, competition, or other adverse effects attributable to recreational fishing programs managed by a State Agency in a river basin in which the water storage reservoir, water diversion structure, canal, or other artificial water delivery facility is located.''.

Page 60, line 19, strike ''180'' and insert ''270''.

Page 60, beginning at line 20, strike ''unresolved questions regarding the documentation of the foregone proposed use or''.

Page 60, beginning at line 25, strike ''the documentation of the foregone use established under subsection (f) or''.

Page 61, line 10, after ''mechanisms'' insert ''that would benefit the species''.

Page 61, line 15, after ''documented'' insert ''to benefit the species''.

Page 61, line 17, after ''use'' insert '', which shall not include transfer of title''.

Page 62, beginning at line 7, strike ''binding on the Secretary and the private property owner'' and insert ''the best and final offer by the Secretary''.

Page 62, line 15, after ''for'' insert ''essentially''.

Page 66, strike lines 21 through 26 and insert the following:

''(d) AUTHORIZATION OF APPROPRIATIONS.—Payments under this section are subject to appropriations.''.

At the end of the bill add the following:

SEC. 21. CONSOLIDATION OF PROGRAMS.

(a) TRANSFER.—The President shall, by not later than one year after the date of enactment of this Act, transfer to the Secretary of the Interior all duties, resources, and responsibilities of the Secretary of Commerce under the Endangered Species Act of 1973 existing immediately before the enactment of this Act.

(b) CONFORMING AMENDMENT.—

(1) AMENDMENT.—Section 3 (16 U.S.C. 1532) is further amended in paragraph (15) (relating to the definition of ''Secretary'') by striking ''or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970''.

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

(c) REPORT.—No later than 180 days after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Commerce shall jointly submit to the Committee on Resources and the Committee on Appropriations of the House of Representatives, and the Committee on Environment and Public Works and the Committee on Appropriations of the Senate, a detailed description of the process by which the transfer of functions under the amendment made by subsection (a) shall be implemented.

(d) PRIOR DETERMINATIONS AND ACTIONS NOT AFFECTED.—This section shall not affect any determination or action by the Secretary of Commerce made or taken, respectively, under the Endangered Species Act of 1973 before the date of the enactment of this Act, except that such determinations and actions shall be treated as determinations and actions, respectively, of the Secretary of the Interior.

SEC. 22. REVIEW OF PROTECTIVE REGULATIONS.

The Secretary of the Interior shall—

(1) review regulations issued before the date of the enactment of this Act pursuant to section 4(d) of the Endangered Species Act of 1973, in order to determine whether revision of such regulations would be desirable in order to facilitate and improve cooperation with the States pursuant to section 6 of such Act; and

(2) report to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate regarding the findings of such review.

SEC. 23. PROVISION OF INFORMATION REGARDING COMPLIANCE COSTS OF FEDERAL POWER ADMINISTRATIONS.

(a) CUSTOMER BILLINGS.—The Administrator of the Bonneville Power Administration, the Western Area Power Administration, the Southwestern Power Administration, and the Southeastern Power Administration shall each include in monthly firm power customer billings sent to each customer information identifying and reporting such customer's share of the Federal power marketing and generating agencies' direct and indirect costs incurred by such administration related to compliance with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and activities related to such Act.

(b) DIRECT COSTS.—In identifying and reporting direct costs, each Administrator shall include Federal agency obligations related to study-related costs, capital, operation, maintenance, and replacement costs, and staffing costs.

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

(d) COORDINATION.—Each Administrator shall coordinate identification of costs under this subsection with the appropriate Federal power generating agencies.

SEC. 24. SURVEY OF BLM LANDS AND FOREST SERVICE LANDS FOR MANAGEMENT FOR RECOVERY OF LISTED SPECIES.

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

(1) survey all lands under the administrative jurisdiction of the Bureau of Land Management and all lands under the administrative jurisdiction Forest Service immediately before the enactment of this Act, for the purpose of assessing the value of such lands for management for the recovery of any species included in a list published under section 4(c) of the Endangered Species Act of 1973 and for addition to the National Wildlife Refuge System; and

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

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

SEC. 25. RELATIONSHIP BETWEEN SECTION 7 CONSULTATION AND INCIDENT TAKE AUTHORIZATION UNDER MARINE MAMMAL PROTECTION ACT OF 1972.

Consultation under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is equivalent to a section 101 incidental take authorization required under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1631 et seq.) for receiving dock building permits.

The CHAIRMAN. Pursuant to House Resolution 470, the gentleman from California (Mr. POMBO) and the gentleman from West Virginia (Mr. RAHALL) each will control 10 minutes.

The Chair recognizes the gentleman from California (Mr. POMBO).

Mr. POMBO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the manager's amendment makes a number of technical changes to clarify certain provisions and address issues concerning science, the definition of ''jeopardy,'' consolidation of ESA-related programs, and review of protective regulations. It allows actions authorized under an approved section 10 permit to be carried out without duplicative consultation. It prevents water stakeholders from being held accountable for impacts due to State actions. It requires the four Power Marketing Administrations to include ESA costs in their monthly billing statements. It directs the Secretary of the Interior to survey certain Federal lands to assess their value for a report back to Congress. It clarifies conflicting statutes to make ESA the governing statutory authority when receiving a dock-building permit.

That is the short version of what is included in the manager's amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. RAHALL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the manager's amendment makes significant changes in the bill as it was reported from the Committee on Resources. These changes are likely to result in more species extinctions at greater loss of taxpayer dollars.

The pending legislation will increase direct spending in the discretionary funding law, which we will get into in general debate, and it could rise to more than $600 million a year, $235 million more per year than we are spending today for species conservation, according to the Congressional Budget Office.

Let me make one point perfectly clear here: the manager's amendment is not something I agreed to in my discussions with the gentleman from California (Chairman POMBO). To say that I agree with 90 percent of this bill is not an accurate description, or is an unfair way to paint the matter.

One of the points that we had reached agreement on was that there was to be a recovery-based standard of determining when Federal agency actions jeopardize the continued existence of a species. The manager's amendment drops this crucial provision. It cripples it.

While I was willing to eliminate critical habitat, it was only on the condition that we ensure that there were adequate provisions in place to encourage recovery. Without this definition, the bill will not promote recovery. We will likely see more endangered and threatened species. It is upon that ground that I oppose this manager's amendment, as well as the loosened compensation standards put in order by the manager's amendment.

It eliminates the bill's requirement that appraisals determining the market value of foregone use of property are binding on both the Secretary and the property owner. Instead, the appraisal is binding only on the Secretary, and the property owner may then go to court to seek additional compensation. That makes the current pending legislation worse, and it will increase the cost of this entitlement program to property owners and it will increase that cost to the American taxpayer.

Mr. Chairman, I yield 3 minutes to the gentleman from Maine (Mr. ALLEN).

Mr. ALLEN. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise to deal with the section of the manager's amendment that covers the manatees. Buried in this manager's amendment in dry language is a contest between Florida developers on the one hand and Florida manatees on the other. In this Republican Congress, guess who wins, the developers or the manatees? It is not even close.

This is an unprecedented move to exempt a single type of activity, dockbuilding, from a key provision of the Marine Mammal Protection Act. After losing in court, some boaters and marine contractors have come to Congress asking for special favors so they can continue their development without addressing the impacts on the endangered manatee. It is not only bad policy, but it also undermines recovery efforts by the State of Florida and the Fish and Wildlife Service.

By way of background, this section would allow those applying for dock permits to simply prove that their activities would not, quote-unquote, jeopardize, would not jeopardize the continued existence of endangered and threatened marine mammal species as mandated by the Endangered Species Act, section 7. Today, under existing law they must prove that their activities would have only a negligible impact on these species as mandated by the Marine Mammal Protection Act, section 101. This simple change in wording lowers our national standard for protection of this well-loved species. Why? Because no single dock is likely to jeopardize manatees, but a whole succession of docks is likely to do exactly that. This amendment clearly targets manatees in Florida, but we really have no idea what kind of precedent or implications this would have for other critically endangered marine mammals.

Now, it did not take long for the developers to get here. They lost a lawsuit on July 13, 2005, against the Fish and Wildlife Service in which the court found that the Marine Mammal Protection Act does in fact apply to dockbuilding activities that would lead to incidental take of marine mammals, and specifically manatees in Florida's inland waters. This amendment, therefore, is rushed into this particular bill, just part of the manager's amendment; it would undermine the process that has gone on for several years that the State of Florida and the Fish and Wildlife Service have engaged in to recover manatees in Florida. It would completely short-circuit the progress made by the State and those Federal agencies.

Finally, the minority and majority have already reached agreements and passed a version of the Marine Mammal Protection Act out of the Committee on Resources, and this amendment flies directly in the face of that process.

So here is the situation: Florida developers are not pleased by a court case in July. They rush in here, they get a provision in this bill to make sure that they win and the Florida manatees lose. Bad policy, bad politics.

Mr. RAHALL. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. HINCHEY).

Mr. HINCHEY. Mr. Chairman, I thank the gentleman for yielding me this time. The interesting thing about the manager's amendment is that it takes a very bad bill and makes it even worse.

I just want to focus on one aspect of this legislation which I think would be amusing in some sense if it were not for the fact that it is an example of a kind of cynical hypocrisy in those people who call themselves fiscally conservative. The bill guts the Endangered Species Act, there is no question about that, and all the protections that are involved there; but then it creates a whole new government giveaway program for some of the Nation's richest landowners and property owners. What this bill does is add insult to injury.

If you think that you are a responsible fiscal conservative, if you do not want to create a big new government giveaway program, then you should be adamantly opposed to this legislation. You might want to even cast aside the environmental aspects of it, because if you look at the monetary implications of this and the budgetary implications of this bill, it is going to create an even bigger budget deficit in the context of this huge giveaway program.

People are using here more and more frequently the devastating impact of the two hurricanes. They want to sell off the national parks, they want to remove the safety net for millions of Americans who rely upon government services, and now they are going to make it even more difficult for this Congress to provide the kind of programs and assistance that are needed in terms of health care, education, a variety of things by passing a piece of legislation that builds an even bigger budget deficit by creating a whole new giveaway program, a new entitlement program for some of the wealthiest people in the country, some of the biggest landowners in the country.

All they have to do is come here under this legislation, just to ask for it, and it will be given to them. If you really want to conserve the fiscal integrity of this process, please vote against this bill.

Mr. POMBO. Mr. Chairman, I yield myself such time as I may consume.

I look forward to the gentleman's opposition to the highway bill and any new purchases of land, to the wildlife refuge system, to the park system, or any other thing that we spend money on, because he sees it as a big giveaway, a big government giveaway system.

Again, what the underlying bill does is if you step in and take habitat from a private property owner and you tell them that you restrict them and you tell them they cannot use part of their property, then we set up a system of incentives and grants.

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But, if in the end, the Secretary says your property is necessary for the recovery of an endangered species, therefore you cannot use it, we compensate them for that and we pay them for it. If we build a highway across somebody's property, even though that may increase the value of the rest of the property, we pay them for it. If we take part of their property for a wildlife refuge, even though that may increase the value of the rest of their property, we pay them for it. But, if we take their property for endangered species habitat, we tell them, you are out of luck.

Now I have guys coming down here saying, this is a big, new giveaway system, that we are going to give away things to people. No. This is a big takeaway. You are taking away from them. You have been doing it for 30 years. Now it is time to pay for it. You are taking land away from people. Every little small farmer, rancher across the country, every homeowner across the country who has had their property taken away from them should

be compensated for it. You are taking away their land. There is nothing wrong with that.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. POMBO. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, when the Contract With America was written, this provision was scored by CBO at $3.2 billion; $3.2 billion.

Mr. POMBO. Mr. Chairman, reclaiming my time, this provision was not in the Contract With America. Nobody seems to be constrained by the truth here. This is a brand-new way of dealing with compensating property owners whose land is taken. CBO scored this at $10 million. This is a brand-new way of dealing with a very real problem and assuring some kind of protection to my property owners and your property owners.

Mr. Chairman, it was just a couple of weeks ago that the Supreme Court came out with a decision where this Congress stood up and said, you cannot use eminent domain to take away private property, to take someone's house away from them and give it to another individual. And all of you ran down on the floor and said you were all in support of that.

We are going to stop the government from being able to use eminent to take away somebody's house and give it to somebody else. But, under that provision, you have to pay them for their house. Under current law, you do not have to pay when you steal somebody's property for declared habitat at this time. You guys are all fine with that. Is that because we are talking about farmers and ranchers? Is that why you do not want to pay them? But when we are talking about somebody's house, all of a sudden you want to pay them? I mean, you guys have no consistency in this whatsoever.

I believe if you take away somebody's private property, you should have to pay them for it, and that is what we are trying to do in this underlying bill. I know that some of my colleagues are just philosophically opposed to that, and God love you. But the fact of the matter is, if you take away somebody's private property, you ought to have to pay for it.

Mr. FARR. Mr. Chairman, will the gentleman yield?

Mr. POMBO. I yield to the gentleman from California.

Mr. FARR. Mr. Chairman, when you do take, meaning you have no value left, then you have just compensation, was the Supreme Court decision.

Mr. POMBO. Mr. Chairman, reclaiming my time, that is not what the Constitution says. The Constitution says, nor shall private property be taken for a public use without just compensation. That is what it says. It does not say the government can step in and take 90 percent of your value and then it is okay; it does not say they can take away 30 percent of your value and that is okay.

Is the gentleman going to oppose the highway bill because we compensate people when we take their land away for a highway, even though we do not take 100 percent of the use? Why is it okay in that instance, but it is not okay when it comes to protecting habitat?

You guys talk big about wanting to protect habitat and protect species, but 90 percent of the habitat for endangered species is on private property. The only way you are going to recover species is if you bring in the property owners and have them be part of the solution. You are stopping that from happening right now under current law and in the substitute. You are wrong on this one.

We have to pay when you take away somebody's private property. That is what we have to do. That is what is in the underlying bill. I am sorry if you have a philosophical problem with paying for what you are taking.

Mr. Chairman, I reserve the balance of my time.

Mr. RAHALL. Mr. Chairman, I yield 30 seconds to the gentleman from Washington (Mr. DICKS).

Mr. DICKS. Mr. Chairman, the part that I have trouble with is that we did not authorize any new money to fund this. You just said, take it out of the Interior Appropriations bill. Well, I want to tell you, we have not funded the Endangered Species Act properly under this administration, and if there is not any money, it is going to have to come out of somebody else's hide. It is going to be the Fish and Wildlife Service, it is going to be the Park Service; somebody is going to have to fund this, and it is going to cost a lot more than $10 million a year. That is laughable.

Mr. POMBO. Mr. Chairman how much time remains?

The CHAIRMAN. The gentleman from California (Mr. POMBO) has 3½ minutes remaining; the gentleman from West Virginia (Mr. RAHALL) has 2 minutes remaining.

Mr. POMBO. Mr. Chairman, I yield myself 30 seconds to say, this is another area where you guys are just not consistent. One of you comes down and beats us up because we are spending too much money about this massive increase in spending under this bill. Somebody else comes down and says, you do not fully fund endangered species under this bill. Either we spend too much or we do not spend enough. You cannot have it both ways. Either we spend too much or we do not spend enough, but you cannot keep coming down here and trying to make both arguments.

Mr. RAHALL. Mr. Chairman, who has the right to close?

The CHAIRMAN. The gentleman from West Virginia (Mr. RAHALL) has the right to close.

Mr. RAHALL. Mr. Chairman, I reserve the balance of my time.

Mr. POMBO. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, I say to my friend from West Virginia, I appreciate all the work that he and his staff put into this bill. This was an important thing for us to go through, and I think that we produced a good bill at the end of that.

I know that there are issues in the underlying bill that we disagree on, and we probably always will. I will tell the gentleman, as we continue to work forward, I will continue to work with the gentleman as this bill moves through the process, continue to work with the gentleman and try to work out whatever differences that still exist under the bill.

The gentleman from West Virginia operated under good faith with me, I believe I did the same thing with the gentleman throughout this entire process, and I pledge to the gentleman that we will continue to work together to produce the best possible bipartisan bill we can to deliver to the President's desk.

Mr. Chairman, I yield back the balance of my time.

Mr. RAHALL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I say to my chairman, I appreciate his concluding comments there and, as I have said all along, we have negotiated in good faith, and I do want to continue that relationship that we have. Maybe we can still work on this bill together; I hope we can. But we will see as the process goes forward.

Mr. Chairman, how much time do I have left?

The CHAIRMAN. The gentleman has 1½ minutes remaining.

Mr. RAHALL. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mr. BOEHLERT).

(Mr. BOEHLERT asked and was given permission to revise and extend his remarks.)

Mr. BOEHLERT. Mr. Chairman, I would just like to correct a couple of things. First of all, this is mandatory spending we are talking about. Secondly, we do not allow the taxpayer protection in this bill that is allowed in highway cases. That is important to distinguish between the two.

Mr. Chairman, we are all in agreement. There is broad and justifiable consensus that the act is overdue for reform, but reforming the law should not be a euphemism for gutting the law, and that is exactly what the bill would do.

The list of areas of disagreement are very strong, but I would also point out that we in the substitute bill embrace many of the provisions in the base bill because they need to be addressed in a responsible way and, in many cases, we take the exact language. But section 13 is totally unacceptable. That is the big controversy; opening up an open-ended entitlement, putting the taxpayers at great risk.

I urge opposition to the base bill.

Mr. Chairman, I rise in opposition to the bill. I have no quarrel with the stated purpose of the bill—to reform the Endangered Species Act. Chairman POMBO is correct, there is broad and justifiable consensus that the Act is overdue for reform.

But "reforming" the law should not be a euphemism for "gutting" the law, and that's what this bill would do. I urge my colleagues to look beyond the descriptions of the bill and to examine the bill itself.

The most advertised feature of the bill is that it gets rid of the current "critical habitat" provisions of the law and replaces the habitat requirements with flexible, comprehensive, science-based "recovery plans." Sounds pretty good. And it would be pretty good if that were a full description of what the bill did. But what the sponsors have obscured is that, under the bill, the recovery plans are utterly unenforceable. No one ever has to abide by them. Not only that, the plans will be written through a process that guarantees delay, but does not guarantee that the best science will be used.

So is there a way to get rid of the current "critical habitat" burdens and to use recovery plans without weakening the law? Of course there is. And our Bipartisan Substitute shows how. We eliminate all the provisions of current law that require critical habitat designations just as in H.R. 3824, but we make recovery plans enforceable and we ensure that they have strong scientific basis. That's how you get real reform while still protecting real species.

It's not impossible to balance the need for reform with the need to protect species. But instead, we have a bill before us that is balanced in its rhetoric, but not in its effect.

The bill weakens just about every feature of law designed to protect species—for example, the review of federal actions to make sure they do not unduly harm species.

Now I am not trying to suggest that H.R. 3824 is all bad news. In fact, many of its provisions—the incentives for landowners to protect species, the public information requirements, the requirements to better involve the states—are largely improvements to the law. That's why our Substitute includes all those provisions, often in language identical to that in H.R. 3824. So we commend the Resources Committee for so many of the bill's provisions and we embrace them.

But there is one provision of H.R. 3824 that our Substitute does not include at all. And that's Section 13, which creates an open-ended entitlement that will open the federal treasury to provide mandatory payments to developers. This is a bad idea on philosophical and legal grounds, but this is an especially bad time to expose taxpayers to such a burden.

We don't have to endanger taxpayers in order to reform the Endangered Species Act. We don't have to make it easier for species to become extinct to reform the Endangered Species Act. All we need to do to reform the Act is to make sure that common sense isn't trumped by ideology.

I urge my colleagues of defeat H.R. 3824, which just waves the banner of reform to distract attention from its actual content. Vote instead for real reform. Vote for the Bipartisan Substitute.

Mr. RAHALL. Mr. Chairman, I yield the balance of my time to the gentleman from California (Mr. GEORGE MILLER).

Mr. GEORGE MILLER of California. Mr. Chairman, I thank the gentleman for yielding me this time.

I just want to say that when the gentleman talks about a taking, that is not what his legislation does. All that has to happen is that a landowner proposes a use for his property, and if that use is ruled as a taking, the landowner gets compensated. The landowner does not show that they could do that, that they could go through the city zoning, they could go through the county zoning, that they would get those permits to build those houses or whatever else he wants to do, or he could build that commercial establishment, no showing of that. Yet, under this legislation, he is entitled to compensation. Nothing has been taken, only the suggestion in the proposal on a plan.

The Acting CHAIRMAN (Mr. SIMPSON). The question is on the amendment offered by the gentleman from California (Mr. POMBO).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 2 printed in House Report 109–240.

AMENDMENT NO. 2 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. GEORGE MILLER OF CALIFORNIA

Mr. GEORGE MILLER of California. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Acting CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment No. 2 in the nature of a substitute offered by Mr. GEORGE MILLER of California:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) SHORT TITLE.—This Act may be cited as the "Threatened and Endangered Species Recovery Act of 2005".

SEC. 2. AMENDMENT REFERENCES.

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

SEC. 3. DEFINITIONS.

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

"(2) The term 'best available scientific data' means data and analyses, regardless of source, produced by scientifically accepted methods and procedures that are available to the Secretary at the time of a decision or action for which such data are required by this Act, and that meet scientifically accepted standards of objectivity, accuracy, reliability, and relevance. For the purpose of this paragraph, the term 'scientifically accepted' means those methods, procedures, and standards that are widely used within the relevant fields of science, including wildlife biology and management.".

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

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

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

"(12) The term 'jeopardize the continued existence' means to engage in an action that, directly or indirectly, makes it less likely that a threatened species or an endangered species will be brought to the point at which measures provided pursuant to this Act are no longer necessary, is likely to significantly delay doing so, or is likely to significantly increase the cost of doing so.".

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

SEC. 4. DETERMINATIONS OF ENDANGERED SPECIES AND THREATENED SPECIES.

(a) REQUIREMENT TO MAKE DETERMINATIONS.—Section 4 (16 U.S.C. 1533) is amended by striking so much as precedes subsection (a)(2) and inserting the following:

"DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

"SEC. 4. (a) IN GENERAL.—(1) The Secretary shall by regulation promulgated in accordance with subsection (b) determine whether any species is an endangered species or a threatened species because of any of the following factors:

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

"(B) Overutilization for commercial, recreational, scientific, or educational purposes.

"(C) Disease or predation.

"(D) The inadequacy of existing regulatory mechanisms, including any efforts identified pursuant to subsection (b)(1).

"(E) Other natural or manmade factors affecting its continued existence.".

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

(1) by striking ''best scientific and commercial data available to him'' and inserting ''best available scientific data''; and

(2) by inserting ''Federal agency, any'' after ''being made by any''.

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

''(2)(A) The Secretary shall—

''(i) conduct, at least once every 5 years, based on the information collected for the biennial reports to the Congress required by paragraph (3) of subsection (f), a review of all species included in a list that is published pursuant to paragraph (1) and that is in effect at the time of such review; and

''(ii) determine on the basis of such review and any other information the Secretary considers relevant whether any such species should be proposed for—

''(I) removal from such list;

''(II) change in status from an endangered species to a threatened species; or

''(III) change in status from a threatened species to an endangered species.

''(B) Each determination under subparagraph (A)(ii) shall be made in accordance with subsections (a) and (b).''.

SEC. 5. REPEAL OF CRITICAL HABITAT REQUIREMENTS.

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

(b) CONFORMING AMENDMENTS.—

(1) Section 4(b) (16 U.S.C. 1533(b)), as otherwise amended by this Act, is further amended by striking paragraph (2), and by redesignating paragraphs (3) through (8) in order as paragraphs (2) through (7), respectively.

(2) Section 4(b) (16 U.S.C. 1533(b)) is further amended in paragraph (2), as redesignated by paragraph (1) of this subsection, by striking subparagraph (D).

(3) Section 4(b) (16 U.S.C. 1533(b)) is further amended in paragraph (4), as redesignated by paragraph (1) of this subsection, by striking ''determination, designation, or revision referred to in subsection (a)(1) or (3)'' and inserting ''determination referred to in subsection (a)(1)''.

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

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

(A) in the second sentence—

(i) by inserting ''and'' after ''if any''; and

(ii) by striking '', and specify any'' and all that follows through the end of the sentence and inserting a period; and

(B) in the third sentence by striking '', designations,''.

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

(7) Section 6(c) (16 U.S.C. 1535(c)), as amended by section 10(1) of this Act, is further amended in paragraph (3) by striking ''section 4(b)(3)(B)(iii)'' each place it appears and inserting ''section 4(b)(2)(B)(iii)''.

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

(A) in subsection (a)(2) in the first sentence by striking ''or result in the destruction or adverse modification of any habitat of such species'' and all that follows through the end of the sentence and inserting a period;

(B) in subsection (a)(4) in the first sentence by striking ''or result'' and all that follows through the end of the sentence and inserting a period; and

(C) in subsection (b)(3)(A) by striking ''or its critical habitat''.

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

(A) by striking ''that—'' and all that follows through ''(i) solely'' and inserting ''that solely''; and

(B) by striking ''; and'' and all that follows through the end of the sentence and inserting a period.

SEC. 6. PETITIONS AND PROCEDURES FOR DETERMINATIONS AND REVISIONS.

(a) TREATMENT OF PETITIONS.—

(1) IN GENERAL.—Section 4(b) (16 U.S.C. 1533(b)) is amended in paragraph (2), as redesignated by section 5(b)(1) of this Act, by adding at the end of subparagraph (A) the following: ''The Secretary shall not make a finding that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted unless the petitioner provides to the Secretary a copy of all information cited in the petition.''

(2) ADDITIONAL DATA.—Section 4(b) is further amended in paragraph (2), as redesignated by section 5(b)(1) of this Act, in subparagraph (A) by adding at the end the following: ''If the Secretary finds with respect to a petition under this subparagraph, that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the petitioned action, the Secretary, in consultation with the States, may for the purpose of seeking additional data postpone making a finding under this subsection by no more than 18 months.''.

(3) PRIORITIZATION ALLOWED.—Section 4(b) is further amended in paragraph (2), as redesignated by section 5(b)(1) of this Act, in subparagraph (B)(iii) by amending subclause (I) to read as follows:

''(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded within current fiscal year funding by higher priority pending proposals determined by the Secretary to involve species at greater risk of extinction, and''.

(b) IMPLEMENTING REGULATIONS.—

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

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

(i) in clause (i) by striking '', and'' and inserting a semicolon;

(ii) in clause (ii) by striking ''to the State agency in'' and inserting ''to the Governor of, and the State agency in,'';

(iii) in clause (ii) by striking ''such agency'' and inserting ''such Governor or agency'';

(iv) in clause (ii) by inserting ''and'' after the semicolon at the end; and

(v) by adding at the end the following:

''(iii) maintain, and shall make available, a complete record of all information not protected by copyright concerning the determination or revision in the possession of the Secretary, on a publicly accessible website on the Internet, including an index to such information.''; and

(B) by adding at the end the following:

''(8)(A) Information maintained and made available under paragraph (5)(A)(iii) shall include any status review, all information not protected by copyright cited in such a status review, all information referred to in the proposed regulation and the preamble to the proposed regulation, and all information submitted to the Secretary by third parties.

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

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

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

''(i) a final regulation to implement such a determination of whether a species is an endangered species or a threatened species;

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

''(iii) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based.'';

(B) in subparagraph (B)(i) by striking ''subparagraph (A)(i)'' and inserting ''subparagraph (A)'';

(C) in subparagraph (B)(ii) by striking ''subparagraph (A)(i)'' and inserting ''subparagraph (A)''; and

(D) by striking subparagraph (C).

(3) EMERGENCY DETERMINATIONS.—Paragraph (6) of section 4(b) (16 U.S.C. 1533(b)), as redesignated by section 5(b)(2) of this Act, is further amended—

(A) in the matter preceding subparagraph (A), by inserting ''with respect to a determination of a species to be an endangered species'' after ''any regulation''; and

(B) in subparagraph (B), by striking ''the State agency in'' and inserting ''the Governor of, and State agency in,''.

SEC. 7. REVIEWS OF LISTINGS AND DETERMINATIONS.

Section 4(c) (16 U.S.C. 1533(c)) is amended by inserting at the end the following:

''(3) Each determination under paragraph (2)(B) shall consider the following as applicable:

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

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

''(C) A finding of fundamental error in the determination that the species is an endangered species, a threatened species, or extinct.

''(D) A determination that the species is no longer an endangered species or threatened species or in danger of extinction, based on an analysis of the factors that are the basis for listing under section 4(a)(1).''.

SEC. 8. PROTECTIVE REGULATIONS.

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

(1) inserting ''(1)'' before ''Whenever'';

(2) inserting ''in consultation with the States'' after ''the Secretary shall''; and

(3) adding at the end the following new paragraphs:

''(2) Each regulation published under this subsection after the enactment of the Threatened and Endangered Species Recovery Act of 2005 shall be accompanied with a statement by the Secretary of the reason or reasons for applying any particular prohibition to the threatened species.

''(3) A regulation issued under this subsection after the enactment of the Threatened and Endangered Species Recovery Act of 2005 may apply to more than one threatened species only if the specific threats to, and specific biological conditions and needs of, the species are identical, or sufficiently similar, to warrant the application of identical prohibitions.

''(4) The Secretary may review regulations issued under this subsection prior to the enactment of the Threatened and Endangered Species Recovery Act of 2005. A species afforded protections by any such regulation shall continue to be afforded those protections until such time as the Secretary shall review the regulations issued prior to the enactment of the Threatened and Endangered

Species Recovery Act of 2005 as they pertain to that species.''.

SEC. 9. SECRETARIAL GUIDELINES; STATE COMMENTS.

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

(1) by striking subsections (f) and (g) and redesignating subsections (h) and (i) as subsections (f) and (g), respectively;

(2) in subsection (f), as redesignated by paragraph (1) of this subsection—

(A) in the heading by striking ''AGENCY'' and inserting ''SECRETARIAL'';

(B) in the matter preceding paragraph (1), by striking ''the purposes of this section are achieved'' and inserting ''this section is implemented'';

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

(D) in paragraph (3) by striking ''and'' after the semicolon at the end, and by inserting after paragraph (3) the following:

''(4) the criteria for determining best available scientific data pursuant to section 3(2); and''; and

(E) in paragraph (5), as redesignated by subparagraph (C) of this paragraph, by striking ''subsection (f) of this section'' and inserting ''section 5'';

(3) in subsection (g), as redesignated by paragraph (1) of this section—

(A) by inserting ''COMMENTS.—'' before the first sentence;

(B) by striking ''a State agency'' the first place it appears and inserting ''a Governor, State agency, county (or equivalent jurisdiction), or unit of local government'';

(C) by striking ''a State agency'' the second place it appears and inserting ''a Governor, State agency, county (or equivalent jurisdiction), or unit of local government'';

(D) by striking ''the State agency'' and inserting ''the Governor, State agency, county (or equivalent jurisdiction), or unit of local government, respectively''; and

(E) by striking ''agency's''.

SEC. 10. RECOVERY PLANS AND LAND ACQUISITIONS.

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

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

(2) in subsection (l), as redesignated by paragraph (1) of this section, by striking ''subsection (a) of this section'' and inserting ''subsection (k)''; and

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

''RECOVERY PLANS AND LAND ACQUISITION

''SEC. 5. (a) RECOVERY PLANS.—The Secretary shall, in accordance with this section, develop and implement a plan (in this subsection referred to as a 'recovery plan') for the conservation of the species determined under section 4(a)(1) to be an endangered species or a threatened species, unless the Secretary finds that such a plan will not promote the conservation and survival of the species.

''(b) DEVELOPMENT OF RECOVERY PLANS.—(1) Subject to paragraphs (2) and (3), the Secretary, in developing recovery plans, shall, to the maximum extent practicable, give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity.

''(2) In the case of any species determined to be an endangered species or threatened species after the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005, the Secretary shall publish a final recovery plan for a species within 3 years after the date the species is listed under section 4(c).

''(3)(A) For those species that are listed under section 4(c) on the date of enactment of the Threatened and Endangered Species Recovery Act of 2005 and are described in subparagraph (B) of this paragraph, the Secretary, after providing for public notice and comment, shall—

''(i) not later than 1 year after such date, publish in the Federal Register a priority ranking system for preparing or revising such recovery plans that is consistent with paragraph (1) and takes into consideration the scientifically based needs of the species; and

''(ii) not later than 18 months after such date, publish in the Federal Register a list of such species ranked in accordance with the priority ranking system published under clause (i) for which such recovery plans will be developed or revised, and a schedule for such development or revision.

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

''(i) a recovery plan for the species is not published under this Act before the date of enactment of the Threatened and Endangered Species Recovery Act of 2005 and the Secretary finds such a plan would promote the conservation and survival of the species; or

''(ii) a recovery plan for the species is published under this Act before such date of enactment and the Secretary finds revision of such plan is warranted.

''(C)(i) The Secretary shall, to the maximum extent practicable, adhere to the list and schedule published under subparagraph (A)(ii) in developing or revising recovery plans pursuant to this paragraph.

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

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

''(5) The Secretary, using the priority ranking system required under paragraph (3), shall revise such plans within 10 years after the date of enactment of the Threatened and Endangered Species Recovery Act of 2005.

''(6) In development of recovery plans, the Secretary shall use comparative risk assessments, if appropriate, to consider and analyze the short-term and long-term consequences of alternative recovery strategies.

''(c) PLAN CONTENTS.—(1)(A) Except as provided in subparagraph (E), a recovery plan shall be based on the best available scientific data and shall include the following:

''(i) Objective, measurable criteria that, when met, would result in a determination, in accordance with this section, that the species to which the recovery plan applies be removed from the lists published under section 4(c) or be reclassified from an endangered species to a threatened species.

''(ii) A description of such site-specific or other measures that would achieve the criteria established under clause (i), including such intermediate measures as are warranted to effect progress toward achievement of the criteria.

''(iii) Estimates of the time required and the costs to carry out those measures described under clause (ii), including, to the extent practicable, estimated costs for any recommendations, by the recovery team, or by the Secretary if no recovery team is selected, that any of the areas identified under clause (iv) be acquired on a willing seller basis.

''(iv) An identification of those publicly owned areas of land or water that are necessary to achieve the purpose of the recovery plan under subsection (a), and, if such species is unlikely to be conserved on such areas, such other areas as are necessary to achieve the purpose of the recovery plan.

''(B) The Secretary may at the time of listing or at any time prior to the approval of a recovery plan for a species issue such guidance as the Secretary considers appropriate to assist Federal agencies, State agencies, and other persons in complying with the requirements of this Act by identifying either particular types of activities or particular areas of land or water within which those or other activities may impede the conservation of the species.

''(C) In specifying measures in a recovery plan under subparagraph (A), the Secretary shall—

''(i) whenever possible include alternative measures; and

''(ii) in developing such alternative measures, seek to identify, among such alternative measures of comparable expected efficacy and timeliness, the alternative measures that are least costly.

''(2) In the case of any species for which critical habitat has been designated prior to the enactment of the Threatened and Endangered Species Recovery Act of 2005, and for which no recovery plan has been developed or revised after the enactment of such Act, the Secretary shall treat the critical habitat of the species as an area described in subparagraph (A)(iv) until a recovery plan for the species is developed or the existing recovery plan for the species is revised pursuant to subsection (b)(4). In determining, pursuant to section 7(a)(2), whether an agency action is likely to jeopardize the continued existence of an endangered species or threatened species, the Secretary shall consider the effects of the action on any areas identified pursuant to subsection (b)(4).

''(d) RECOVERY TEAMS.—(1) The Secretary shall promulgate regulations that provide for the establishment of recovery teams that may advise the Secretary in the development of recovery plans under this section. The recovery teams may help the Secretary ensure that recovery plans are scientifically rigorous and that the evaluation of costs required by paragraph (1)(A)(iii) of subsection (c) are economically rigorous.

''(2) Such regulations shall—

''(A) establish criteria and the process for selecting the members of recovery teams that ensure that each team—

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

''(ii) includes sufficient representation from scientists with relevant expertise and constituencies with a demonstrated direct interest in the species and its conservation or in the economic and social impacts of its conservation to ensure that the views of such constituencies will be considered in the development of the plan; and

''(B) include provisions regarding operating procedures of and recordkeeping by recovery teams.

''(3) The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to recovery teams appointed in accordance with regulations issued by the Secretary under this subsection.

''(e) REPORTS TO CONGRESS.—(1) The Secretary shall report every two years to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate on the status of all domestic endangered species and threatened species and the status of efforts to develop and implement recovery plans for all domestic endangered species and threatened species.

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

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

''(i) changes in population, range, or threats; and

''(ii) the basis for that assessment; and

''(B) for each species, a measurement of the degree of confidence in the reported status of such species, based upon a quantifiable parameter developed for such purposes.

''(f) PUBLIC NOTICE AND COMMENT.—The Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information presented during the public comment period prior to approval of the plan.

''(g) STATE COMMENT.—The Secretary shall, prior to final approval of a new or revised recovery plan, provide a draft of such plan and an opportunity to comment on such draft to the Governor of, and State agency in, any State and any Indian tribe to which such draft would apply. The Secretary shall include in the final recovery plan the Secretary's response to the comments of the Governor and the State agency and to any comments submitted by the Governor on behalf of a regional or local land use agency in the Governor's State.

''(h) INDIAN TRIBE DEFINED.—For purposes of this Act, the term 'Indian tribe' means—

''(1) with respect to the 48 contiguous States, any federally recognized Indian tribe, organized band, pueblo, or community; and

''(2) with respect to Alaska, the Metlakatla Indian Community.

''(i) USE OF PLANS.—(1) Each Federal agency shall consider any relevant best available scientific data contained in a recovery plan in any analysis conducted under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

''(2)(A) The head of any Federal agency may enter into an agreement with the Secretary specifying the measures the agency will carry out to implement a recovery plan.

''(B) Each such agreement shall be published in draft form with notice and an opportunity for public comment.

''(C) Each such final agreement shall be published, with responses by the head of the Federal agency to any public comments submitted on the draft agreement.

''(j) MONITORING.—(1) The Secretary shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species that have recovered to the point at which the measures provided pursuant to this Act are no longer necessary and that, in accordance with this section, have been removed from the lists published under section 4(c).

''(2) The Secretary shall make prompt use of the authority under section 4(b)(7) to prevent a significant risk to the well-being of any such recovered species.''.

(b) CONFORMING AMENDMENTS.—

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

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

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

(B) in section 115(b)(2) (16 U.S.C. 1383b(b)(2)) by striking ''section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f))'' and inserting ''section 5 of the Endangered Species Act of 1973''.

SEC. 11. COOPERATION WITH STATES AND INDIAN TRIBES.

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

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

''(3)(A) Any cooperative agreement entered into by the Secretary under this subsection may also provide for development of a program for conservation of species determined to be candidate species pursuant to section 4(b)(3)(B)(iii) or any other species that the State and the Secretary agree is at risk of being determined to be an endangered species or threatened species under section 4(a)(1) in that State.

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

''(C) The Secretary shall periodically review each cooperative agreement under this subsection and seek to make changes the Secretary considers necessary for the conservation of endangered species and threatened species to which the agreement applies.

''(4) Any cooperative agreement entered into by the Secretary under this subsection that provides for the enrollment of private lands or water rights in any program established by the agreement shall ensure that the decision to enroll is voluntary for each owner of such lands or water rights.

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

''(B) For the purposes of this paragraph, the term 'Indian tribe' means—

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

''(ii) with respect to Alaska, the Metlakatla Indian Community.'';

(2) in subsection (d)(1)—

(A) by striking ''pursuant to subsection (c) of this section'';

(B) by striking ''or to assist'' and all that follows through ''section 5(j)'' and inserting ''pursuant to subsection (c)(1) and (2) or to address candidate species or other species at risk and recovered species pursuant to subsection (c)(3)''; and

(C) in subparagraph (F), by striking ''monitoring the status of candidate species'' and inserting ''developing a conservation program for, or monitoring the status of, candidate species or other species determined to be at risk pursuant to subsection (c)(3)''; and

(3) in subsection (e)—

(A) by inserting ''(1)'' before the first sentence;

(B) in paragraph (1), as designated by subparagraph (A) of this paragraph, by striking ''at no greater than annual intervals'' and inserting ''every 3 years''; and

(C) by adding at the end the following:

''(2) Any cooperative agreement entered into by the Secretary under subsection (c) shall be subject to section 7(a)(2) through (d) and regulations implementing such provisions.

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

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

''(A) as result of the procedures of section 7(a)(2) through (d) undertaken pursuant to paragraph (2) of this subsection, the Secretary determines that continued implementation of the cooperative agreement is likely to jeopardize the continued existence of endangered species or threatened species, and the cooperative agreement is not amended or revised to incorporate a reasonable and prudent alternative offered by the Secretary pursuant to section 7(b)(3); or

''(B) the cooperative agreement has been suspended under paragraph (3) of this subsection and has not been amended or revised and found by the Secretary to constitute an adequate and active program for the conservation of endangered species and threatened species within 180 days after the date of the suspension.''.

SEC. 12. INTERAGENCY COOPERATION AND CONSULTATION.

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

(1) in paragraph (1) in the second sentence, by striking ''endangered species'' and all that follows through the end of the sentence and inserting ''species determined to be endangered species and threatened species under section 4.'';

(2) in paragraph (2)—

(A) in the first sentence by striking ''action'' the first place it appears and all that follows through ''is not'' and inserting ''agency action authorized, funded, or carried out by such agency is not'';

(B) in the second sentence, by striking ''best scientific and commercial data available'' and inserting ''best available scientific data''; and

(C) by adding at the end the following: ''In fulfilling the requirements of this paragraph, the Secretary shall take into account whether the adverse impacts to individuals of a species are outweighed by any conservation benefits to the species as a whole.''.

(3) in paragraph (4)—

(A) by striking ''listed under section 4'' and inserting ''an endangered species or a threatened species''; and

(B) by inserting '', under section 4'' after ''such species''.

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

(1) in paragraph (1)(B)(i) by inserting ''permit or license'' before ''applicant'';

(2) in paragraph (2) by inserting ''permit or license'' before ''applicant'';

(3) in paragraph (3)(A)—

(A) in the first sentence—

(i) by striking ''Promptly after'' and inserting ''Before'';

(ii) by inserting ''permit or license'' before ''applicant''; and

(iii) by inserting ''proposed'' before ''written statement''; and

(B) by striking all after the first sentence and inserting the following: ''The Secretary shall consider any comment from the Federal agency and the permit or license applicant, if any, prior to issuance of the final written statement of the Secretary's opinion. The Secretary shall issue the final written statement of the Secretary's opinion by providing the written statement to the Federal agency and the permit or license applicant, if any, and publishing notice of the written statement in the Federal Register. If jeopardy is found, the Secretary shall suggest in the final written statement those reasonable and prudent alternatives, if any, that the Secretary believes would not violate subsection (a)(2) and can be taken by the Federal agency or applicant in implementing the agency action. The Secretary shall cooperate with the Federal agency and any permit or license applicant in the preparation of any suggested reasonable and prudent alternatives.'';

(4) in paragraph (4)—

(A) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively;

(B) by inserting ''(A)'' after ''(4)'';

(C) by striking ''the Secretary shall provide'' and all that follows through ''with a written statement that—'' and inserting the following: ''the Secretary shall include in the written statement under paragraph (3), a statement described in subparagraph (B) of this paragraph.

''(B) A statement described in this subparagraph—''; and

(5) by adding at the end the following:

''(5)(A) Any terms and conditions set forth pursuant to paragraph (4)(B)(iv) shall be no more than necessary to offset the impact of the incidental taking identified pursuant to paragraph (4) in the written statement prepared under paragraph (3).

''(B) If various terms and conditions are available to comply with paragraph (4)(B)(iv), the terms and conditions set forth pursuant to that paragraph—

''(i) must be capable of successful implementation; and

''(ii) must be consistent with the objectives of the Federal agency and the permit or license applicant, if any, to the greatest extent possible.''.

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

(1) in the first sentence, by striking ''which is listed'' and all that follows through the end of the sentence and inserting ''that is determined to be an endangered species or a threatened species, or for which such a determination is proposed pursuant to section 4, may be present in the area of such proposed action.''; and

(2) in the second sentence, by striking ''best scientific and commercial data available'' and inserting ''best available scientific data''.

(d) MODIFICATION OF AN ENDANGERED SPECIES COMMITTEE PROCESS.—Section 7 (16 U.S.C. 1536) is amended—

(1) by repealing subsection (j);

(2) by redesignating the remaining subsections accordingly; and

(3) in subsection (o), as redesignated by paragraph (2) of this subsection—

(A) in the first sentence, by striking ''is authorized'' and all that follows through ''of this section'' and inserting ''may exempt an agency action from compliance with the requirements of subsections (a) through (d) of this section before the initiation of such agency action,''; and

(B) by striking the second sentence.

SEC. 13. EXCEPTIONS TO PROHIBITIONS.

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

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

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

''(v) measures the applicant will take to monitor impacts of the plan on covered species and the effectiveness of the plan's measures in achieving the plan's biological goals;

''(vi) adaptive management provisions necessary to respond to all reasonably foreseeable changes in circumstances that could appreciably reduce the likelihood of the survival and recovery of any species covered by the plan; and'';

(2) in subparagraph (B) by striking ''and'' after the semicolon at the end of clause (iv), by redesignating clause (v) as clause (vi), and by inserting after clause (iv) the following:

''(v) the term of the permit is reasonable, taking into consideration—

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

''(II) the extent to which the plan will enhance the conservation of covered species;

''(III) the adequacy of information underlying the plan;

''(IV) the length of time necessary to implement and achieve the benefits of the plan; and

''(V) the scope of the plan's adaptive management strategy; and''; and

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

''(3) Any terms and conditions offered by the Secretary pursuant to paragraph (2)(B) to reduce or offset the impacts of incidental taking shall be no more than necessary to offset the impact of the incidental taking specified in the conservation plan pursuant to in paragraph (2)(A)(i).

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

''(B) For any circumstance identified in the permit or incorporated document that has changed, the Secretary may, in the absence of consent of the permit holder, require only such additional minimization, mitigation, or other measures as are already provided in the permit or incorporated document for such changed circumstance.

''(C) For any changed circumstance not identified in the permit or incorporated document, the Secretary may, in the absence of consent of the permit holder, require only such additional minimization, mitigation, or other measures to address such changed circumstance that do not involve the commitment of any additional land, water, or financial compensation not otherwise committed, or the imposition of additional restrictions on the use of any land, water or other natural resources otherwise available for development or use, under the original terms and conditions of the permit or incorporated document.

''(D) The Secretary shall have the burden of proof in demonstrating and documenting, with the best available scientific data, the occurrence of any changed circumstances for purposes of this paragraph.

''(E) All permits issued under this subsection on or after the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005, other than permits for scientific purposes, shall contain the assurances contained in subparagraphs (B) through (D) of this paragraph and paragraph (5)(A) and (B). Permits issued under this subsection on or after March 25, 1998, and before the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005, other than permits for scientific purposes, shall be governed by the applicable sections of parts 17.22(b), (c), and (d), and 17.32(b), (c), and (d) of title 50, Code of Federal Regulations, as the same exist on the date of the enactment of the Threatened and Endangered Species Act of 2005.

''(F) If the Secretary determines that a conservation plan under this subsection reasonably can be expected to fail to achieve the goals specified under paragraph (2)(A)(iv), the Secretary shall, at the Secretary's expense, implement remedial conservation measures. Nothing in the preceding sentence shall be construed to allow the Secretary to require the holder of a permit issued under this subsection to undertake any additional measures without the consent of the holder.

''(5)(A) The Secretary shall revoke a permit issued under paragraph (2) if the Secretary finds that the permittee is not complying with the terms and conditions of the permit.

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

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

''(ii) the Secretary provides 60 days notice of revocation to the permittee; and

''(iii) the Secretary is unable to, and the permittee chooses not to, remedy the condition causing such inconsistency.''.

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

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

(1) in paragraph (1), by striking ''For purposes'' and all that follows through the end of the paragraph and inserting the following: ''For purposes of this subsection, the term 'experimental population' means any population (including any offspring arising therefrom) authorized by the Secretary for release under paragraph (2), but only when such population is in the area designated for it by the Secretary, and such area is, at the time of release, wholly separate geographically from areas occupied by nonexperimental populations of the same species. For purposes of this subsection, the term 'areas occupied by nonexperimental populations' means areas characterized by the sustained and predictable presence of more than negligible numbers of successfully reproducing individuals over a period of many years.'';

(2) in paragraph (2)(B), by striking ''information'' and inserting ''scientific data''; and

(3) in paragraph (2)(C)(i), by striking ''listed'' and inserting ''determined to be an endangered species or a threatened species''.

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

''(k) WRITTEN DETERMINATION OF COMPLIANCE.—(1) A property owner (in this subsection referred to as a 'requester') may request the Secretary to make a written determination as to whether a proposed use of the owner's property that is lawful under State and local law will require a permit under section 10(a), by submitting a written description of the proposed action to the Secretary by certified mail.

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

''(A) the nature, the specific location, the lawfulness under State and local law, and the anticipated schedule and duration of the proposed use, and a demonstration that the property owner has the means to undertake the proposed use; and

''(B) any anticipated adverse impact to a species that is included on a list published under 4(c)(1) that the requestor reasonably expects to occur as a result of the proposed use.

''(3) The Secretary may request and the requestor may supply any other information that either believes will assist the Secretary to make a determination under paragraph (1).

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

''(5)(A) Subject to subparagraph (B), the Secretary shall provide to the requestor a written determination of whether the proposed use, as proposed by the requestor, will require a permit under section 10(a), by not later than expiration of the 180-day period beginning on the date of the submission of the request.

''(B) The Secretary may request, and the requestor may grant, a written extension of the period under subparagraph (A).

''(6) At the end of each fiscal year, the Secretary shall transmit a report to the Congress listing the requests to which the Secretary did not provide a requestor a timely response under paragraph (5)(A) or (B), the status of those requests at the time of transmittal of the report, and an explanation for the circumstances that prevented the Secretary from providing any such requestor with a timely response.

''(7) This subsection shall not apply with respect to agency actions that are subject to consultation under section 7.''.

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

''(l) NATIONAL SECURITY.—The President, after consultation with the appropriate Federal agency, may exempt any act or omission from the provisions of this Act if the President finds that such exemption is necessary for national security.''.

SEC. 14. PRIVATE PROPERTY CONSERVATION.

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

''PRIVATE PROPERTY CONSERVATION PROGRAM

''SEC. 13. (a) ESTABLISHMENT OF PROGRAM.—

''(1) REQUIREMENT.—The Secretary shall establish a Private Property Conservation Program to improve the habitat and promote the conservation, on private lands, of endangered species, threatened species, and species that are candidates to be determined to be endangered species or threatened species.

''(2) AGREEMENTS AUTHORIZED.—The Secretary may enter into an agreement with a private property owner under which the Secretary shall, subject to appropriations, make annual or other payments to the person to implement the agreement.

''(3) CONTENTS.—Any agreement the Secretary enters into under this section shall—

''(A) specify a management plan that the private property owner shall commit to implement on the property of the private property owner, including—

''(i) an identification of the species and habitat covered by the plan;

''(ii) a finding by the Secretary that the land to which the agreement applies is appropriate for the species and habitat covered by the agreement;

''(iii) a description of the activities the private property owner shall undertake to conserve the species and to create, restore, enhance, or protect habitat; and

''(iv) a description of the existing or future economic activities on the land to which the agreement applies that are compatible with the goals of the program.

''(B) specify the terms of the agreement, including—

''(i) the terms of payment to be provided by the Secretary to the private property owner;

''(ii) a description of any technical assistance the Secretary will provide to the private property owner to implement the management plan;

''(iii) the terms and conditions under which the Secretary and the private property owner mutually agree that the agreement may be modified or terminated;

''(iv) acts or omissions by the Secretary or the private property owner that shall be considered violations of the agreement, and procedures under which notice and an opportunity to remedy any violation by the private property owner shall be given;

''(v) a finding by the Secretary that the private property owner owns the land to which the agreement applies or has sufficient control over the use of such land to ensure implementation of agreement; and

''(vi) such other duties of the Secretary and of the private property owner as are appropriate.

''(4) COST SHARE.—The Secretary may provide up to 70 percent of the cost to implement the management plan under the terms of the agreement.

''(5) PRIORITY.—In entering into agreements under this section, the Secretary shall give priority to those agreements—

''(A) that apply to areas identified under section 5(c)(1)(A)(iv); and

''(B) reasonably can be expected to achieve the greatest benefit for the conservation of the species covered by the agreement relative to the total amount of funds to be expended to implement the agreement.

''(6) TECHNICAL ASSISTANCE.—Any State agency, local government, nonprofit organization, or federally recognized Indian tribe may provide technical assistance to a private property owner in the preparation of a management plan, or participate in the implementation of a management plan, including identifying and making available certified fisheries or wildlife biologists with expertise in the conservation of species.

''(7) TRANSFER OF PROPERTY.—Upon any conveyance or other transfer of interest in land that is subject to an agreement under this section

''(A) the agreement shall continue in effect with respect to such land, with the same terms and conditions, if the person to whom the land or interest is conveyed or otherwise transferred notifies the Secretary of the person's election to continue the agreement by not later than 30 days after the date of the conveyance or other transfer;

''(B) the agreement shall terminate if the agreement does not continue in effect under subparagraph (A); and

''(C) the person to whom the land or interest is conveyed or otherwise transferred may seek a new agreement under this section.

''(8) MODEL FORM OF AGREEMENT.—Not later than 1 year after the date of the enactment of the Threatened and Endangered Species Act of 2005, the Secretary shall establish a model form of agreement that a person may enter into with the Secretary under this section.

''(9) VOLUNTARY PROGRAM.—

''(A) AGREEMENTS MAY NOT BE REQUIRED.—The Secretary, or any other Federal official, may not require a person to enter into an agreement under this section as a term or condition of any right, privilege, or benefit, or of any action or refraining from any action, under this or any other law.

''(B) REQUIREMENTS UNDER LAWS AND PERMITS.—None of the activities otherwise required by law or by the terms of any permit may be included in any agreement under this section.

''(10) RELATIONSHIP TO HABITAT CONSERVATION PLANS.—The Secretary may consider an agreement under this subsection that applies to an endangered species or threatened species in determining the adequacy of a conservation plan for the purpose of section 10(a)(2).

''(b) TECHNICAL ASSISTANCE PROGRAM FOR SMALL LANDOWNERS.—

''(1) IN GENERAL.—The Secretary shall establish a program to offer technical assistance to owners of private property seeking guidance on the conservation of endangered species or threatened species, or species that are candidates for being determined to be endangered species or threatened species.

''(2) ALLOWABLE ACTIVITIES.—Upon request, the Secretary may provide technical assistance to an owner of private property for the purpose of—

''(A) helping to prepare and implement a conservation agreement under subsection (a);

''(B) training the managers of private property in best practices to conserve species and create, restore, enhance, and protect habitat for species;

''(C) helping to prepare an application for a permit and a conservation plan under section 10(a); and

''(D) any other purpose the Secretary determines is appropriate to meet the goals of the program under subsection (a).

''(3) PRIORITY.—The Secretary shall give priority in offers of technical assistance to owners of private property that the Secretary determines cannot reasonably be expected to afford adequate technical assistance.

''(4) FUNDING FOR PROGRAM.—For any year for which funds are appropriated to carry out this Act, 10 percent shall be for carrying out this subsection, unless the Secretary determines for any fiscal year that a smaller percentage is sufficient and submits a report to the Congress containing the percentage and an explanation of the basis for the determination.''.

SEC. 15. PUBLIC ACCESSIBILITY AND ACCOUNTABILITY.

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

''PUBLIC ACCESSIBILITY AND ACCOUNTABILITY

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

''(1) each list published under section 4(c)(1);

''(2) all final and proposed regulations and determinations under section 4;

''(3) the results of all 5-year reviews conducted under section 4(c)(2)(A);

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

''(5) all reports required under sections 5(e) and 16, and all reports required under sections 4(f)(3) and 18 of this Act as in effect immediately before the enactment of the Threatened and Endangered Species Recovery Act of 2005; and

''(6) to the extent practicable, data contained in the reports referred to in paragraph (5) of this section, and that were produced after the date of enactment of the Threatened and Endangered Species Recovery Act of 2005, in the form of databases that may be searched by the variables included in the reports.''.

SEC. 16. ANNUAL COST ANALYSES.

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

''ANNUAL COST ANALYSIS BY UNITED STATES FISH AND WILDLIFE SERVICE

''SEC. 18. (a) IN GENERAL.—On or before January 15 of each year, the Secretary shall submit to the Congress an annual report covering the preceding fiscal year that contains

an accounting of all reasonably identifiable expenditures made primarily for the conservation of species included on lists published and in effect under section 4(c).

''(b) SPECIFICATION OF EXPENDITURES.—Each report under this section shall specify—

''(1) expenditures of Federal funds on a species-by-species basis, and expenditures of Federal funds that are not attributable to a specific species;

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

''(3) based on data submitted pursuant to subsection (c), expenditures voluntarily reported by local governmental entities on a species-by-species basis, and such expenditures that are not attributable to a specific species.

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

''(1) voluntarily submit electronic data regarding their expenditures for conservation of species listed under section 4(c); and

''(2) attest to the accuracy of such data.''.

(b) ELIGIBILITY OF STATES FOR FINANCIAL ASSISTANCE.—Section 6(d) (16 U.S.C. 1535(d)) is amended by adding at the end the following:

''(3) A State shall not be eligible for financial assistance under this section for a fiscal year unless the State has provided to the Secretary for the preceding fiscal year information regarding the expenditures referred to in section 16(b)(2).''.

SEC. 17. REIMBURSEMENT FOR DEPREDATION OF LIVESTOCK BY REINTRODUCED SPECIES.

The Endangered Species Act of 1973 is further amended—

(1) by striking sections 15 and 16;

(2) by redesignating sections 17 and 18 as sections 15 and 16, respectively; and

(3) by adding after section 16, as so redesignated, the following:

''REIMBURSEMENT FOR DEPREDATION OF LIVESTOCK BY REINTRODUCED SPECIES

''SEC. 17. (a) IN GENERAL.—The Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, may reimburse the owner of livestock for any loss of livestock resulting from depredation by any population of a species if the population is listed under section 4(c) and includes or derives from members of the species that were reintroduced into the wild.

''(b) USE OF DONATIONS.—The Secretary may accept and use donations of funds to pay reimbursement under this section.

''(c) AVAILABILITY OF APPROPRIATIONS.—The requirement to pay reimbursement under this section is subject to the availability of funds for such payments.''.

SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—The Endangered Species Act of 1973 is further amended by adding at the end the following:

''AUTHORIZATION OF APPROPRIATIONS

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

''(1) to the Secretary of the Interior to carry out functions and responsibilities of the Department of the Interior under this Act, such sums as are necessary for fiscal years 2006 through 2010; and

''(2) to the Secretary of Agriculture to carry out functions and responsibilities of the Department of the Interior with respect to the enforcement of this Act and the convention which pertain the importation of plants, such sums as are necessary for fiscal year 2006 through 2010.

''(b) CONVENTION IMPLEMENTATION.—There is authorized to be appropriated to the Secretary of the Interior to carry out section 8A(e) such sums as are necessary for fiscal years 2006 through 2010.''.

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

SEC. 19. MISCELLANEOUS TECHNICAL CORRECTIONS.

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

(1) in subsection (a) in the first sentence by striking ''any endangered species or threatened species listed'' and inserting ''any species determined to be an endangered species or a threatened species''; and

(2) in subsection (b) in paragraph (1), by striking ''endangered species and threatened species listed'' and inserting ''species determined to be endangered species and threatened species''.

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

(1) in subsection (a), by striking ''of the Interior (hereinafter in this section referred to as the 'Secretary')'';

(2) in subsection (d), by striking ''Merchant Marine and Fisheries'' and inserting ''Resources''; and

(3) in subsection (e)—

(A) in paragraph (1), by striking ''of the Interior (hereinafter in this subsection referred to as the 'Secretary')''; and

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

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

(1) in subsection (a)—

(A) in paragraph (1), in the matter preceding subparagraph (A), by striking ''of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act'' and inserting '', with respect to any species of fish or wildlife determined to be an endangered species under section 4'';

(B) in paragraph (1)(G), by striking ''threatened species of fish or wildlife listed pursuant to section 4 of this Act'' and inserting ''species of fish or wildlife determined to be a threatened species under section 4'';

(C) in paragraph (2), in the matter preceding subparagraph (A) by striking ''of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act'' and inserting '', with respect to any species of plants determined to be an endangered species under section 4''; and

(D) in paragraph (2)(E), by striking ''listed pursuant to section 4 of this Act'' and inserting ''determined to be a threatened species under section 4'';

(2) in subsection (b)—

(A) by striking ''(1)'' before ''SPECIES'' and inserting ''(1)'' before the first sentence;

(B) in paragraph (1), in the first sentence, by striking ''adding such'' and all that follows through '': *Provided*, That'' and inserting ''determining such fish or wildlife species to be an endangered species or a threatened species under section 4, if''; and

(C) in paragraph (1), in the second sentence, by striking ''adding such'' and all that follows through ''this Act'' and inserting ''determining such fish or wildlife species to be an endangered species or a threatened species under section 4'';

(3) in subsection (c)(2)(A), by striking ''an endangered species listed'' and inserting ''a species determined to be an endangered species'';

(4) in subsection (d)(1)(A), by striking clause (i) and inserting the following: ''(i) are not determined to be endangered species or threatened species under section 4, and'';

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

(6) in subsection (f)—

(A) in paragraph (1), in the first sentence, by striking clause (A) and inserting the following: ''(A) are not determined to be endangered species or threatened species under section 4, and''; and

(B) by striking ''Secretary of the Interior'' each place it appears and inserting ''Secretary''.

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

(1) in paragraph (1)—

(A) by striking ''an endangered species'' and all that follows through ''section 4 of this Act'' and inserting ''an endangered species or a threatened species and the subsequent determination that the species is an endangered species or a threatened species under section 4'';

(B) by striking ''section 9(a) of this Act'' and inserting ''section 9(a)''; and

(C) by striking ''fish or wildlife listed by the Secretary as endangered'' and inserting ''fish or wildlife determined to be an endangered species or threatened species by the Secretary''; and

(2) in paragraph (2)—

(A) by inserting ''or a threatened species'' after ''endangered species'' each place it appears; and

(B) in subparagraph (B), by striking ''listed species'' and inserting ''endangered species or threatened species''.

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

(1) by inserting ''or threatened species'' after ''endangered species''; and

(2) by striking ''of this Act''.

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

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

(2) in paragraph (2), by striking ''of this Act'' each place it appears.

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

(h) ANTIQUE ARTICLES.—Section 10(h)(1)(B) (16 U.S.C. 1539(h)(1)(B)) is amended by striking ''endangered species or threatened species listed'' and inserting ''species determined to be an endangered species or a threatened species''.

(i) PENALTIES AND ENFORCEMENT.—Section 11 (16 U.S.C. 1540) is amended in subsection (e)(3), in the second sentence, by striking ''Such persons'' and inserting ''Such a person''.

(j) SUBSTITUTION OF GENDER-NEUTRAL REFERENCES.—

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

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

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

(C) Section 4(b)(7) (16 U.S.C. 1533(b)(7)), in the matter following subparagraph (B).

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

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

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

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

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

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

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

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

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

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

(3) ''SECRETARY OF THE INTERIOR'' FOR ''HE''.—Section 8(b)(3) (16 U.S.C. 1537(b)(3)) is amended by striking ''he'' and inserting ''the Secretary of the Interior''.

(4) ''PERSON'' FOR ''HE''.—The following provisions are amended by striking ''he'' each place it appears and inserting ''the person'':

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

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

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

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

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

(6) REFERENCES TO ''HIM''.—

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

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

(C) Section 5(k)(2), as redesignated by section 9(a)(1) of this Act, is amended by striking ''him'' and inserting ''the Secretary''.

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

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

(F) Section 9(d)(2)(A) (16 U.S.C. 1538(d)(2)(A)) is amended by striking ''him'' each place it appears and inserting ''such person''.

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

(7) REFERENCES TO ''HIMSELF OR HERSELF''.—Section 11 (16 U.S.C. 1540) is amended in subsections (a)(3) and (b)(3) by striking ''himself or herself'' each place it appears and inserting ''the defendant''.

(8) REFERENCES TO ''HIS''.—

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

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

(i) in subsection (d)(2) in the matter following clause (ii) by striking ''his'' and inserting ''the Secretary's''; and

(ii) in subsection (e)(1), as designated by section 10(3)(A) of this Act, by striking ''his periodic review'' and inserting ''periodic review by the Secretary''.

(C) Section 7(a)(3) (16 U.S.C. 1536(a)(3)) is amended by striking ''his'' and inserting ''the applicant's''.

(D) Section 8(c)(1) (16 U.S.C. 1537(c)(1)) is amended by striking ''his'' and inserting ''the Secretary's''.

(E) Section 9 (16 U.S.C. 1538) is amended in subsection (d)(2)(B) and subsection (f) by striking ''his'' each place it appears and inserting ''such person's''.

(F) Section 10(b)(3) (16 U.S.C. 1539(b)(3)) is amended by striking ''his'' and inserting ''the Secretary's''.

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

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

(i) in subsection (a)(1) by striking ''his'' and inserting ''the Secretary's'';

(ii) in subsections (a)(3) and (b)(3) by striking ''his or her'' each place it appears and inserting ''the defendant's'';

(iii) in subsection (d) by striking ''his'' and inserting ''the officer's or employee's'';

(iv) in subsection (e)(3) in the second sentence by striking ''his'' and inserting ''the person's''; and

(v) in subsection (g)(1) by striking ''his'' and inserting ''the person's''.

SEC. 20. ESTABLISHMENT OF SCIENCE ADVISORY BOARD.

The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) is further amended by adding at the end the following:

''SCIENCE ADVISORY BOARD

''SEC. 19.

''(a) IN GENERAL.—Within 12 months after the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005, the Secretary of Interior, through the Director of the United States Fish and Wildlife Service, shall establish a Science Advisory Board (in this section referred to as the 'Board') to provide such scientific advice as may be requested by the Secretary to assist in the evaluation of the use of science in implementing this Act, including in the development of policies and procedures pertaining to the use of scientific information.

''(b) COMPOSITION.—The Board shall each consist of 9 members appointed by the Secretary of the Interior from a list of nominees recommended by the National Academy of Sciences, utilizing a system of staggered 3-year terms of appointment. One member shall be elected by the members of the Board as its Chairman. Members of the Board shall be selected on the basis of their professional qualifications in the areas of ecology, fish and wildlife management, plant ecology, or natural resource conservation. Members of the Board shall not hold another office or position in the Federal Government. If a vacancy occurs on the Board due to expiration of a term, resignation, or any other reason, each replacement shall be selected by the Secretary from a group of at least 4 nominees recommended by the National Academy of Sciences. The Secretary may extend the term of a Board member until the new member is appointed to fill the vacancy. If a vacancy occurs due to resignation, or reason other than expiration of a term, the Secretary shall appoint a member to serve during the unexpired term utilizing the nomination process set forth in this subsection. The Secretary shall publish in the Federal Register the name, business address, and professional affiliations of each appointee.

''(c) COMPENSATION.—Each member of the Board shall receive per diem compensation at a rate not in excess of that fixed for GS–15 of the General Schedule as may be determined by the Secretary of the Interior.

''(d) STAFF.—Upon the recommendation of the Board, the Secretary of the Interior shall make available employees as necessary to exercise and fulfill the Board's responsibilities. ''.

SEC. 21. CLERICAL AMENDMENT TO TABLE OF CONTENTS.

The table of contents in the first section is amended—

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

''Sec. 5. Recovery plans and land acquisition.''

; and

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

''Sec. 13. Private property conservation program.

''Sec. 14. Public accessibility and accountability.

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

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

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

''Sec. 18. Authorization of appropriations.

''Sec. 19. Science Advisory Board.''.

The Acting CHAIRMAN. Pursuant to House Resolution 470, the gentleman from California (Mr. GEORGE MILLER) and the gentleman from California (Mr. POMBO) each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. GEORGE MILLER).

Mr. GEORGE MILLER of California. Mr. Chairman, I yield myself such time as I may consume.

The bipartisan substitute that we have introduced here in fact goes to fundamental and basic changes in the Endangered Species Act to both provide for the better protection of the species, but also to make this Act far more workable, far more definite in terms of the interests of landowners, the impacts and the timelines and the guidelines that will be offered to them to make this Act work. That is the spirit of the reform of the Endangered Species Act. That is not what is taking place in this underlying bill.

In the manager's amendment that was just introduced, it has been suggested now for the last several days that there is a recovery plan in the underlying bill. The manager's amendment, in fact, strikes that recovery plan in terms of its basic, fundamental necessity for the recovery of those species. So the difference between the substitute and the underlying bill is in the substitute, you will, in fact, have enforceable recovery plans where other actions have to be measured against the impacts on those recovery plans, the habitat that is developed under those recovery plans to make sure that the recovery of the species continues. That is no longer a requirement. That is no longer a requirement in the substitute bill.

That is why I would hope that people would understand that if you really want to provide for the reform, if you really want to provide for the reform of the Endangered Species Act, if you really want to make this Act more user-friendly, if you really want to have it based upon science, if you want to have the recovery based upon science, you want those determinations made with the best science, then that is what the substitute does.

There has been a bait and switch here. Up until just recently, with the adoption of the manager's amendment, you could argue that that is what the underlying bill does. But, with the new language that is introduced in the manager's amendment, that is no longer the case, and I would hope that people would understand you will not be able to provide for the kind of recovery that this Nation expects, that our constituents expect, and most Members of Congress expect with that legislation now with the manager's amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. POMBO. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. CARDOZA).

Mr. CARDOZA. Mr. Chairman, I rise today in opposition to the substitute being offered for a number of reasons.

The substitute basically takes the Pombo bill and cuts out everything that is important to my constituents, the small farmers and ranchers of the Central Valley who are being driven out of our valley through arbitrary and capricious regulatory burdens. It is my constituents who are the ones that are begging me to help them reform the Endangered Species Act, and I think this substitute leaves them behind and brings our efforts back to square one.

What I cannot support is the removal of 2 provisions that I find absolutely critical to any reforms to the ESA: mandatory landowner notification, and the conservation compensation plans for effective landowners.

□ 1515

The first issue, the landowner notification is just a no-brainer issue. Landowners deserve to know what they can and cannot do with their property and the service should be responsible for telling them.

Many of the opponents of this provision claim that landowners can simply go to court and get a decision but in reality, they cannot because the court has ruled in previous cases that unless the service tells them no directly they have no standing in court. This provision is crucial, especially to the little guy who does not have millions and millions of dollars to higher lawyers, biologists and surveyors needed to take on the service.

Mr. Chairman, these little guys deserve an answer just like the big guys do. I understand that there is a provision in the substitute that attempts to address this issue with a similar 180 day timeline. Unfortunately, there is no enforcement behind the language other than a report to Congress, and we all know what we do with reports to Congress.

The service is under a number of other time lines under ESA such as a time line for completing political opinions which they also choose to ignore. The substitute provisions would do exactly the same thing and bring us back to square one. The second is the strong private property rights section that are good in H.R. 3824. They did not seem to make the cut in the substitute. It is not a sweeping entitlement program as some would have you believe. It is a program that will fairly compensate landowners and will provide species with conservation mitigation measures that would otherwise go unprotected.

I do have to say that I am pleased that my colleagues chose to include a number of provisions from the underlying bill in the substitute. The fact that the substitute includes the same repeal of critical habit speaks volumes for the overall consensus that this Act needs to be changed and updated to reflect the evolving circumstances on the ground that have impeded the accurate critical habit designations.

But the deleted provisions from H.R. 3824 and the new definition of jeopardy, under which, frankly, I am not sure if I could mow my own lawn, will do nothing to relieve the conflict that currently exists under that ESA.

It will do nothing more than the underlying bill to recovery species, and this will simply put us back to square one.

Mr. Chairman, I have one final comment. I must correct the record. I would ask that the gentleman from Oregon (Mr. WALDEN) place back up the slide that he had from the bill which outlines that under the Pombo bill, actually, it is here, under the Pombo bill you can only become compensated for what is an allowable use for what is the current State or local regulation, under the current zoning use.

So a farmer who is plowing his field and trying to grow a crop every day, if he is denied the use of that property, he can only be compensated for the loss of his farming income and he can not claim that it could be a high rise hotel in its place. He only gets compensated for what he was currently doing on the property, and that is just simply an erroneous statement to say anything else.

Mr. Chairman, we need to defeat this substitute. We need to pass the underlying measure.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 15 minutes to the gentleman from New York (Mr. BOEHLERT) and ask unanimous consent that he be permitted to control that time.

The Acting CHAIRMAN (Mr. SIMPSON). Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BOEHLERT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong support of the substitute. I want to thank all of our co-sponsors for their support, the gentleman from Michigan (Mr. DINGELL), the gentleman from Washington (Mr. DICKS), the gentleman from New Jersey (Mr. SAXTON), the gentlewoman from California (Mrs. TAUSCHER), the gentleman from Illinois (Mr. KIRK), the gentlewoman from California (Ms. MATSUI), the gentleman from Illinois (Mr. JOHNSON), and the gentleman from New Hampshire (Mr. BASS).

That is a pretty good sampling of Congressional centrists because there is a moderate, targeted solution. Our substitute truly reforms the Endangered Species Act without endangering any species or the American taxpayer. And that is where it differs from H.R. 3824.

But before I describe the differences, I want to emphasize the similarities. Both the bill and the substitute eliminate the current requirements for setting aside critical habitat and rely instead on recovery plans to save endangered and threatened species. They are identical. Both the bill and the substitute offer new financial incentives and legal protections to landowners to save species. Both the bill and the substitute require greater involvement of States in decisionmaking involving species. Both the bill and the substitute ensure that the public will have greater information about and a greater role in the decisionmaking.

In fact, while it is hard to quantify, I would guess about 80 to 90 percent of the language in the substitute is identical to the base bill. That is because we developed the substitute by reading through the base bill, once we could seize a copy, and by incorporating into our substitute every word of H.R. 3824 that we possibly could.

What we could not accept was language weakening the Act by, for example, making recovery plans unenforceable, sit on a shelf, gather dust or making it too easy for the Federal Government to take actions that would harm species. And most of all what we could not accept was the new mandatory spending required by this bill which would open the federal purse to developers while eliminating basic taxpayer protections.

I laid out my specific concerns for that provision during the general debate. I urge support for the substitute and opposition to H.R. 3824 as presented.

Mr. Chairman, I reserve the balance of my time.

Mr. POMBO. Mr. Chairman, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan (Mr. DINGELL).

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Chairman, I rise in strong support of the substitute. It is bipartisan. It is supported by Members of Congress from every part of the country. It is not only a unique and valuable bipartisan piece of legislation, but it is one that will work.

Like the underlying bill, the substitute would repeal the current requirement that the Secretary designate critical habitat for endangered fish, wildlife and plants, before formulating a plan for species recovery. In order, however, to maintain a strong ESA, the substitute gives a strong definition of what is meant to jeopardize continued existence of the species.

Science is the core principle of ESA and we direct the Secretary to issue, and regularly revise, guidance on the acceptable scientific measures. The substitute also creates a Science Advisory Board to peer-review controversial decisions and offer other assistance when necessary.

The substitute is going to provide a helping hand to landowners; dedicated funding for technical assistance to private property owners; a conservation grants program for landowners who help conserve the species on or near

their property; assurances that private citizens can get timely answers from the Fish and Wildlife Service; and reporting requirements so that we know how many applications are really going unanswered, and most importantly, why.

The substitute directs the Federal Government to work with the States on a far broader and more cooperative manner than either current law or the Committee on Resources bill.

The substitute directs the Secretary to first determine whether public lands are sufficient to protect and save the species; if we could protect the species, and save the species in our public lands, in our national forests, our national BLM lands, and in our parks and wildlife refuges, we should do so without placing the burden on private landowners.

Mr. Chairman, this amendment represents a broad bipartisan and fiscally responsible effort to move this process forward in a manner that can not only get an overwhelming vote of support in the House, but which can move on to the President's desk for signature in the same manner as the original Act.

I urge my colleagues to support the substitute, and I say that it will be not only a successful undertaking, but one which will be much more in the interests of the landowners and of the species that we are trying to protect and preserve.

Mr. POMBO. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. Mr. Chairman, I appreciate the chairman not only yielding me time but, more especially, I appreciate all the work that he has done in this. We heard over and over in the hearings that Democrats really appreciated the way in which the gentleman reached out and started from scratch and negotiated with them. Everything was honest, open, above board and that the gentleman's example was one to be emulated by people that wanted bipartisanship.

Of course, we get to the floor and I am hearing some different things now. But nonetheless I also want to thank those Democrats who, with an open mind and with a regard for fairness, have assisted the chairman in trying to put together a good bill.

Now, it seems to me what this comes down to is a couple of differing philosophies here. On the one hand, you have a philosophy that says private property ownership rights are important and on the other says King George, before we had the revolution, did not have such a bad system. If you were a suck-up to the king, if you paid homage, kind of like the Kelo decision, you were the better friend of the government, then the government was going to treat you good. Never mind your private property rights. We will tell you how you can use your property. We will tell you what you can be compensated for and how and when.

Now, under the substitute amendment, it is pretty clear you do not get an honest answer from the government. Do my private property rights violate or infringe upon some endangered species? Will it amount to an inappropriate use?

Well, maybe it will and maybe it will not. We do not have to give you an answer, but you will have to buy a permit and then under the bill, the chairman has come up with you get a straight answer and you get it quickly. And if you do not get it within 180 days, then you have got your answer as a matter of law.

Under this substitute, all property owners can find out is if they need to be having a habitat conservation plan and if they do, well, gee, the government will help you fill out the application in begging to see what you can do with your own property. We give you a straight answer yes or no under the original bill, and that is how it should be.

The substitute amendment is going to stick the private property owners with the fees. And, boy, I tell you what, when I hear this word ''entitlement'' as if it is going to somebody that is not entitled to something. I tell you, entitlement has a different connotation here. But under this bill, under the original bill it is not an entitlement the way most people see it. If you own property and it is taken away from you, you cannot use it the way you want to because some Federal entity says you cannot. By golly, under our system of law, the way our Constitution is written, you ought to be compensated for it. That is America.

Mr. BOEHLERT. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Maryland (Mr. GILCHREST), a valued member from the Committee on Resources.

Mr. GILCHREST. Mr. Chairman, I think we are here in some sense, past all the clutter of people articulating their most emotional feelings, is a bill set aside some 30 years ago to have an understanding about how we as Members of Congress, the government, can restore the prodigious bounty of God's creation. How do we understand nature's design? How do we use our intelligence to understand the facts behind how nature sustains itself?

Well, in the real world, well, actually, in the real world which is nature, but in the reality of the human condition, we have a lot of other little things that we have to take into consideration. How do you afford an Endangered Species Act? What do you do about private property rights? Do you get enough science? Is the recovery plan appropriate? Do you deal with farmers that have a problem with reintroduced species on the property eating their sheep or their cows?

All these things have to be taken into consideration so that we create a policy that protects private property rights, that brings individuals on those farms and that landscape into the process and helps pay for their contribution to the process, that brings Federal agencies in so they can view the landscape, not from just one small little fly or tiger beetle or some other particular species, but upon which the landscape that supports that species, supports clean water, supports clean air, supports the whole ecosystem including human beings, including us as a species.

□ 1530

We are not separate from clean water. We are not separate from clean air. We are part of nature's design. We are part of this bounty of God's creation. So how do we clarify all these different perspectives and views based on different things that happen in our districts?

Well, we come up with the best available science. We come up with the best available recovery plan. We come up with the best policy for not only the species but for private property, and we come up with the funds that are appropriate to deal with all these issues.

I would tell my colleagues that I feel strongly this is the best policy change, the best reauthorization plan that we can use to deal with the Endangered Species Act that will deal with nature's design and man's impact on nature's design, which includes private property rights, which includes reimbursements for helping to preserve endangered species, and by the way, in this substitute is a provision to pay those private property individuals.

I urge an ''aye'' vote on the substitute.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Mrs. TAUSCHER).

Mrs. TAUSCHER. Mr. Chairman, I thank my good friend from California (Mr. GEORGE MILLER) for yielding me the time, and I join him in offering this substitute, because the bill we are considering today, H.R. 3824, will make it less likely that threatened and endangered species will recover; but today we can support this bipartisan substitute which will update and improve the Endangered Species Act.

I reject the notion, Mr. Chairman, that we cannot preserve both our natural environment for future generations while supporting strong economic growth.

Our substitute gives private property owners the opportunity to protect species on our own land while ensuring they will not face additional regulatory burden. Importantly, this substitute actually discourages the use of private land for public purposes. The substitute says if we can protect a species on public land, we should.

In some cases, private property owners will be asked to mitigate for the effects of preserving threatened and endangered species. However, we can and should provide incentives for private property owners who are complying with the law, and the substitute does just that.

The substitute strikes a careful balance between the rights of private

property owners and the preservation of our natural resources.

I encourage my colleagues to join me and a bipartisan group of Members in supporting this reasonable, better substitute and opposing H.R. 3824.

Mr. POMBO. Mr. Chairman, I yield 2½ minutes to the gentleman from South Carolina (Mr. BROWN).

(Mr. BROWN of South Carolina asked and was given permission to revise and extend his remarks.)

Mr. BROWN of South Carolina. Mr. Chairman, in the 32 years that the Endangered Species Act has been in effect, we have learned a lot of lessons over time and seen the areas where it needs some improvement.

I believe that the gentleman from California (Chairman POMBO) and other members of the House Committee on Resources have worked very hard to come up with a piece of legislation that protects property owners' rights and improves the way that we protect and rehabilitate endangered species, and I am proud to be an original cosponsor of this legislation.

Mr. Chairman, one of the most important aspects of H.R. 3824 deals with private property owners' participation in species recovery. I believe in America it is a fundamental right to be able to own property and to be able to enjoy that property.

I visited a country back during the spring that no citizen in that country could own property or they could lease it for 25 years or 99 years; and, Mr. Chairman, I do not believe America wants to return to that fundamental time where we could not own property, we could just live on property owned by somebody else.

I believe taking property that allows somebody an option not to be able to use their property how they intended, property they used their hard-earned money to purchase is fundamentally wrong.

Specifically, H.R. 3824 will provide certainty for private property owners by allowing landowners to request a written determination as to whether their land use activities will violate the take prohibitions of section 9.

It will also compensate private property owners for the fair market value for foregone use of their property where the Secretary has determined that the use of that property would constitute a take under section 9.

I believe we should protect our endangered species but not at the expense of our private landowners.

Mr. Chairman, there is a better way to protect endangered species; and I believe it is H.R. 3824, the Threatened and Endangered Species Recovery Act of 2005.

I encourage my colleagues to vote ''no'' on the Miller substitute amendment and ''yes'' on the final passage of H.R. 3824.

Mr. BOEHLERT. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from New Jersey (Mr. SAXTON), an informed and valued member of the Committee on Resources.

Mr. SAXTON. Mr. Chairman, I rise in strong support of the bipartisan substitute.

Mr. Chairman, the Endangered Species Act is one of our most farsighted and important conservation laws. For more than 30 years, the Endangered Species Act has sounded the alarm and saved wildlife that we humans have driven toward extinction. Today, we have wolves in Yellowstone, manatees in Florida, and sea otters in California, largely because of the act.

In the southern part of New Jersey, we have bald eagles, timber rattlesnakes, and barred owls because of the protections provided by the Endangered Species Act; and by protecting their habitat, we have protected our own habitat.

I am concerned that the provisions contained in H.R. 3824 would profoundly alter the act and the process. It contains costly, highly problematic, vague new procedures and ill-conceived tradeoffs that will undermine our ability to conserve fish and wildlife for future generations.

Consequently, I join with my colleagues to offer the responsible, bipartisan Miller-Boehlert substitute that reforms the law, answers the concerns of landowners, States, and sportsmen while improving the ability to achieve timely recovery of threatened and endangered fish, wildlife, and plants.

Our amendment provides a creative, workable solution that promises better results for recovering endangered species and reducing burdens on landowners.

The most important tool needed to halt the decline and recover threatened and endangered species is effective habitat protection. H.R. 3824 fails to protect habitat. The bipartisan amendment has strong provisions to do that.

By contrast, our substitute provides a better way of protecting habitat necessary for recovery, with a true focus on recovering species.

There is broad consensus in Congress to reform the Endangered Species Act, Mr. Chairman; but it is vital that in doing so we maintain the integrity of the act and our ability to conserve these species for future generations. The Miller-Boehlert amendment will do just that, and I urge my colleagues to support the substitute.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield 1 minute to the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Mr. Chairman, the substitute would be a great improvement for the current Endangered Species Act. It would treat landowners much as we do under the Conservation Reserve Program; but the underlying bill would be a disaster for taxpayers, a new entitlement.

The Secretary shall pay no less than fair market value. I guess the Secretary, if they are feeling good that day, could pay more than fair market value with taxpayers' money, borrowed money; and it does not require the historic, usual, or custom use.

Take a piece of remote farm land, propose a huge development on it; it does not have to be proven to be economically viable. You proposed it; you were going to build 5,000 houses; you were going to make $1,000, $2,000, $5,000 on each house. You would have to be compensated for that. You do not have to prove that this is economically viable, and sequential owners would get that right. You then sell it to your next door neighbor; they can make the same claim. They sell it to the guy down the street, they can make the same claim, on and on and on.

What an incredible new, speculative market, helping the housing bubble, I guess; but this is going to kill the taxpayers and the Federal Treasury. You should vote for the substitute. It will improve the Endangered Species Act.

Mr. POMBO. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. COSTA).

Mr. COSTA. Mr. Chairman, I very much wanted to support the substitute amendment that we are debating this afternoon.

I have the utmost respect for the gentleman from California (Mr. GEORGE MILLER). Both he and I have been afforded the opportunity to spend some time together in the wonderful Sierra Nevada mountains, and I know how much respect and pride he has for America's natural resources. I share it as well.

But there are three areas as it relates to the proposed substitute amendment that I find to be very problematic and important to the constituents that I represent that have had difficulty with this act over the years.

First of all, the definition as it relates to property rights I think is lacking and needs to be worked on in an important way.

Second, as it relates to the discussion of jeopardy to species, it is so vague. How it would be applied to section 7 and other aspects of the measure, I do not believe it is clear and could indicate further need for litigation, which is the current problem and part that we are trying to solve. I just do not believe that the jeopardy definitions under the current proposed substitute amendment could work as they currently are drafted.

Finally, this is very important and I mentioned it in my comments in supporting the bill: there are no clear definitions as it relates to takings for farmers and ranchers, not just in California but throughout the country. Farmers and ranchers, I would maintain, are, in many cases, one of the last bastions of protection for habitat. I mean, think about it. They really want to farm, and they want to be able to maintain their ranches. When we have growth areas throughout the country, like in California, those farms and those ranches are one of the last hedges to urban sprawl and uncontrolled growth. Therefore, having no clear definitions for takings, I think, is critical.

Mr. BOEHLERT. Mr. Chairman, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield 1 minute to the gentleman from Maryland (Mr. HOYER), the minority whip.

(Mr. HOYER asked and was given permission to revise and extend his remarks.)

Mr. HOYER. Mr. Chairman, I thank the gentleman for yielding me time. The time is insufficient, not only to explain my position, but also the time for consideration of this bill has been insufficient.

Thirty-two years ago, we passed a bill that a Republican President, Richard Nixon, signed to protect and conserve species in danger of extinction. Unfortunately, though, the underlying bill, which has been fast-tracked since its introduction, would substantially undermine the Endangered Species Act. That is what this is about.

For example, this bill would undermine the ability of the responsible Federal agencies to ably perform their oversight roles, and it fails to recognize the importance of sound science to species recovery and restoration.

The bill also creates a fiscally irresponsible, open-ended entitlement program that effectively pays landowners to comply with the law.

In contrast, the bipartisan substitute offered by the gentleman from California (Mr. GEORGE MILLER) has a far more reasoned approach.

It ensures consultation between the Secretary and other Federal agencies with proposed actions that may jeopardize species. It strengthens the definition of what constitutes jeopardy and requires the Secretary to ensure that proposed recovery plans identify and include areas necessary for species survival.

I urge support of the substitute and opposition to the underlying bill.

Mr. Chairman. Thirty-two years ago, Congress passed and a Republican President—Richard Nixon—signed the Endangered Species Act to protect and conserve species in danger of extinction.

Today, there are 1,268 species listed as endangered or threatened in the United States, including 26 in the State of Maryland.

This law is not perfect, but it has been very successful. Roughly 40 percent of listed species have witnessed the stabilization or growth of their populations.

And, less than one percent have been declared extinct since the law's enactment.

The fact is, this law has enabled the very survival of some of our most vulnerable species—including the bald eagle, the gray wolf, the California condor, and the whooping crane.

Unfortunately, though, the underlying bill—which has been fast-tracked since its introduction last week—would substantially undermine the Endangered Species Act.

For example, this bill would undermine the ability of the responsible Federal agencies—the Departments of Commerce and Interior—to ably perform their oversight roles, and it fails to recognize the importance of sound science to species recovery and restoration.

The bill also creates a fiscally irresponsible, open-ended entitlement program that effectively pays landowners to comply with the law.

In contrast, the bipartisan substitute offers a far more reasoned approach.

It ensures consultation between the Secretary and other Federal agencies with proposed actions that may jeopardize species. It strengthens the definition of what constitutes jeopardy and requires the Secretary to ensure that proposed recovery plans identify and include areas necessary for species survival.

The substitute also creates conservation programs that would provide technical and financial assistance to landowners committed to efforts that protect species.

Mr. Chairman, we have a responsibility to protect our environment—as well as the diverse forms of life that share it.

The bipartisan substitute will help us achieve the goal. I urge my colleagues to support it.

Mr. POMBO. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. DOOLITTLE).

□ 1545

Mr. DOOLITTLE. Mr. Chairman, I rise to oppose the substitute and to support the underlying bill.

Mr. Chairman, it has been represented that this legislation is going to cost billions of dollars potentially, and for that reason we should reject it in the fiscal crisis in which we currently live. I just say to you that the CBO, which makes the estimates on everything we do around here, the official word for the Congress to act, projects that the cost would be small over the 5 years. Indeed, and I quote, ''would likely total less than $10 million.'' That was the CBO cost estimate to H.R. 3824.

Fiscal conservatives like myself and Grover Norquist of Americans For Tax Reform support this important legislation. Nothing could be more conservative or more right than a vote for private property. So please vote ''no'' to Miller-Boehlert and ''yes'' to final passage.

I might also note, as a representative of one of the districts that has vast amounts of property in the mountains and so forth, that a lot of small property owners, people who want to use their property, have that ability compromised by the cloud that is placed over their property once they get word of a threatened or endangered species. The bill of the gentleman from California (Mr. POMBO) makes it certain and provides a process for compensation. Otherwise, a small property owner is faced with a big question mark, I call it a cloud. It is like a cloud on your title and it is not easily resolved. It can cost you many, many thousands of dollars and a great deal of worry.

The Pombo legislation eliminates this terrible burden we place on small property owners. Please vote ''no'' on the Miller-Boehlert amendment and ''yes'' for final passage on the Pombo legislation.

Mr. BOEHLERT. Mr. Chairman, I yield 1½ minutes to the distinguished gentleman from Delaware (Mr. CASTLE).

Mr. CASTLE. Mr. Chairman, I thank the gentleman for yielding me this time and for his tremendous work on this legislation.

I applaud my colleagues here today for offering this amendment in the nature of a substitute. It goes a long way in making meaningful reforms to the Endangered Species Act without hollowing the fundamental goals of America's flagship wildlife conservation efforts. While there have been successes in species recovery since enactment of the 32-year-old Endangered Species Act, most would agree that it is in need of real reform to make it more effective in species recovery, less demanding on some landowners, and less prone to lawsuits and bureaucracy.

However, pushing the problematic and prohibitively expensive H.R. 3824, the Threatened and Endangered Species Recovery Act through the legislative process has left a sour taste in many of our mouths because it removes the enforceable protections for species recovery and creates the entitlement program for private landowners.

At a time when our country is still coping with the cost of the wars in Iraq and Afghanistan, and most recently with Hurricanes Katrina and Rita, one has to wonder why a rewrite of the Endangered Species Act that includes an entitlement program is even a consideration. This substitute will improve the recovery of more species, put back into place needed enforcement of species recovery plans, and it will do all of this and much more without creating an entitlement program.

This bipartisan substitute is a more pragmatic solution, and I urge my colleagues on both sides of the aisle to support it.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield for the purpose of a unanimous consent request to the gentleman from California (Mr. FARR).

(Mr. FARR asked and was given permission to revise and extend his remarks.)

Mr. FARR. Mr. Chairman, I rise in support of the underlying amendment, because in the middle of the night, the manager's amendment removed the NOAA fisheries provision in the Interior.

Mr. Chairman, I rise in opposition to H.R. 3824, the Threatened and Endangered Species Recovery Act, as it is currently drafted.

Mr. Chairman, once again California leads the Nation: This time it is for the number of listings for threatened and endangered species. California has more than twice the species listed as any other State.

My home on the Central Coast in the 17th district has more habitat where both endangered plants and animals have lived with commercial farming and ranching. The same climate that produces over three billion dollars annually in agriculture farm gate also is home to the tar plant in Santa Cruz and the California condor in Big Sur.

Another example is the Big Sur area of California where you can find redwoods from

northern California growing next to the yucca of southern California.

I recognize the need for some ''tune-ups'' in the ESA, unfortunately, H.R. 3824 takes a meat axe approach when what we need is a scalpel.

The Endangered Species Act is one of America's most important and successful environmental laws. As one of the pillars of environmental law, it has brought public attention to the impact of human activities on our Nation's wildlife that contributes so much beauty and delight to life as well as growing economic development in environmental tourism.

But it also goes beyond that to declare the preservation of such species as the American bald eagle and the California condor, that glide on the thermals along the Big Sur coastline, a national priority.

While opponents of the law complain that it has restored healthy populations of only 16 of the more than 1,800 species on its endangered list, dozens of other species have dramatically increased their populations because of the law's protection.

Without the ESA these species could easily have succumbed to extinction as corporations and developers decided the fate of their habitats.

That's no small accomplishment. What's more, only nine endangered plants and animals have been lost. We cannot forget that robust biodiversity is absolutely necessary to a healthy human environment.

Ninety-eight percent of the species protected under the Endangered Species Act are still alive today, and many are stable or improving. Without the Endangered Species Act, wildlife such as the bald eagle, American alligator, California condor, Florida panther and many other animals that are part of America's natural heritage could have disappeared from the planet years ago. The Endangered Species Act works because it safeguards the places where endangered animals and plants live.

With the recent discovery of the once thought to be extinct Ivory-billed woodpecker in Arkansas and the Mount Diablo Buckwheat in California, I think this is an opportune moment to highlight the success of many of our conservation efforts. For example, in my home State of California, I am especially proud of the conservation and management efforts that have helped significantly restore populations of California condor, the Southern sea otter, the winter run Chinook salmon, the Least Bell's Vireo songbird, the California Brown Pelican, and the California gray whale.

Mr. Chairman, it is fitting that Congress is moving to reauthorize ESA on Sea Otter Awareness Week since the sea otters are a success story in my district. While the Southern Sea Otter still has a long way to go before being delisted, the increased numbers of sea otters along my district shoreline have greatly contributed to our tourism economy. Studies show sea otters draw tourists to my district where they spend money on lodging, restaurants and other merchandise.

The dramatic turnaround realized by the once thought extinct Southern sea otter is a result of two critical protection laws—the ESA and the Marine Mammal Protection Act, the Southern sea otter population grew from less than 100 otters in the 1930's to the present total of 2,800. Scientists maintain that it will take 3,100 otters to make a population stable enough to even consider removing them from the Endangered Species list and many threats remain. As reauthorization of the ESA moves forward this week in the House, I will fight to keep it strong enough to successfully overcome these threats to the Southern sea otter.

Despite success stories, like this we need to be aware that more needs to be done. At this time, more than 1,000 species in the U.S. and abroad, are designated as ''at risk'' for extinction. One small step is to increase awareness about the seriousness of the circumstances facing many of these endangered species and educating the public about these species.

I know the ESA has it's problems and the proponents of this legislation have brought many of those cases to light today.

Any law that has been on the books for as long as the Endangered Species Act will have issues—Some of these issues deal with inadequate funding, and some with the law itself.

I agree we need to tweak and update the current law, to make changes, but we do not need to completely rewrite this critical protection legislation.

Mr. Chairman, I want to use the rest of my time to discuss a specific provision to move the National Oceanic and Atmospheric Administration's ESA responsibilities to the Department of Interior.

This is an awful idea, and it should have been vetted within the Resources committee before being brought to the floor.

As you know, many of our constituents across the country care deeply about, whales, salmon, and sea turtles. Taking ESA responsibilities away from the experts at NOAA, will put these animals at further risk.

Giving jurisdiction of the ocean animals, whose survival is most at risk, to an agency without ocean expertise is ludicrous. Taking ESA responsibilities from NOAA will split jurisdiction on marine animals, creating a management nightmare and further fracturing our marine management.

For example, Pacific salmon will be a management nightmare. Fish in one river that arrive in spring will be managed by the Department of Commerce, while fish that arrive in that same river during fall will be managed by the Department of Interior. To make things more complicated, who will manage these fish when they are all mixed together in the ocean? Will the fishermen have to choose from two sets of fishing regulations, one from the Department of Commerce and the other from the Department of Interior?

As the Pew and US Commissions on Ocean Policy recommended, we need to consolidate our ocean management under one roof, Specifically the National Oceanic and Atmospheric Administration in the Department of Commerce, to be effective. Further splitting our ocean management is only going to create more problems.

Mr. Chairman, let's not send the message that this Congress is more interested in private property development than in the common good of America the beautiful, from sea to shining sea.

The action this House takes today is a step in the long process to reauthorizing the Endangered Species Act. I urge my colleagues not to take the meat axe approach but to support the bipartisan Miller/Boehlert substitute.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield 1 minute to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Chairman, I will support the bipartisan substitute amendment by my colleagues, the gentleman from California (Mr. GEORGE MILLER) and the gentleman from New York (Mr. BOEHLERT) because it is an honest effort to make it a better alternative that does not include the most egregious parts of the underlying bill.

I would, however, just make one point. I take modest exception to the implication that was made from the other side of the aisle that somehow the Endangered Species Act and environmental legislation had something to do with the tragedy we witnessed unfurl in the Katrina-affected region. The GAO presented a report yesterday saying that the delays in the project, that none of the changes are believed to have had any role in the levee breaches. And, in fact, Corps officials believe that the flooding would have been worse if the original proposed design had been built. That was presented to Congress yesterday by the GAO.

This is contentious enough, Mr. Chairman, so it would be nice if we could stick to the facts and not make implications that somehow the environmental legislation had anything to do with that tragedy. Knowledgeable people understand that in the long run environmental legislation, had it been enforced and applied uniformly, would have made things better.

Mr. Chairman, I submit for the RECORD the GAO report I just referred to.

LAKE PONTCHARTRAIN AND VICINITY HURRICANE PROTECTION PROJECT

WHAT GAO FOUND

Congress first authorized the Lake Pontchartrain and Vicinity, Louisiana Hurricane Protection Project in the Flood Control Act of 1965. The project was to construct a series of control structures, concrete floodwalls, and levees to provide hurricane protection to areas around Lake Pontchartrain. The project, when designed, was expected to take about 13 years to complete and cost about $85 million. Although federally authorized, it was a joint federal, state, and local effort.

The original project designs were developed based on the equivalent of what is now called a fast-moving Category 3 hurricane that might strike the coastal Louisiana region once in 200–300 years. As GAO reported in 1976 and 1982, since the beginning of the project, the Corps has encountered project delays and cost increases due to design changes caused by technical issues, environmental concerns, legal challenges, and local opposition to portions of the project. As a result, in 1982, project costs had grown to $757 million and the expected completion date had slipped to 2008. None of the changes made to the project, however, are believed to have had any role in the levee breaches recently experienced as the alternative design selected was expected to provide the same level of protection. In fact, Corps officials believe that flooding would have been worse if the original proposed design had been built. When Katrina struck, the project, including about 125 miles of levees, was estimated to be from 60–90 percent complete in different areas with an estimated completion date for the whole project of 2015. The floodwalls along the drainage canals that were breached were complete when the hurricane hit.

The current estimated cost of construction for the completed project is $738 million with the federal share being $528 million and the local share $210 million. Federal allocations for the project were $458 million as of the enactment of the fiscal year 2005 federal appropriation. This represents 87 percent of the federal government's responsibility of $528 million with about $70 million remaining to complete the project. Over the last 10 fiscal years (1996–2005), federal appropriations have totaled about $128.6 million and Corps reprogramming actions resulted in another $13 million being made available to the project. During that time, appropriations have generally declined from about $15–20 million annually in the earlier years to about $5–7 million in the last three fiscal years. While this may not be unusual given the state of completion of the project, the Corps' project fact sheet from May 2005 noted that the President's budget request for fiscal years 2005 and 2006, and the appropriated amount for fiscal year 2005 were insufficient to fund new construction contracts. The Corps had also stated that it could spend $20 million in fiscal year 2006 on the project if the funds were available. The Corps noted that several levees had settled and needed to be raised to provide the level of protection intended by the design.

Mr. POMBO. Mr. Chairman, I yield 2 minutes to the gentleman from Utah (Mr. BISHOP).

Mr. BISHOP of Utah. Mr. Chairman, I appreciate the opportunity to stand here and speak about this particular substitute. As it was brought to the Committee on Rules last night, I noticed that it has been consistently called the ''bipartisan substitute.'' It does have eight cosponsors that are bipartisan. But I would note that the actual bill itself has 95 co-sponsors and it has four times as many Democrats on the bill itself as the so-called ''bipartisan substitute.'' So I would like to speak a bit about the bipartisan bill that is actually before us as well.

I have one of my good constituents, Mr. Child, who bought 500 acres of land and found an endangered species on it. The snail. The problem is not that the snail was on it. The problem is he also had 11 geese, and the Federal Government threatened to sue him at the rate of $50,000 for every snail the geese happened to consume. This meant that the Federal Government went in there and captured all 11 geese, forced them to vomit to find out how many snails were actually consumed by the geese.

This gives us some idea why a small private property owner, as soon as he finds an endangered species, the goal is to get rid of the endangered species. And the problem is not the big guys. The problem is that 90 percent of the habitat for endangered species is on private property. Our goal, if we are really serious about trying to preserve endangered species of all kinds, is to get control and cooperation with small private property owners.

The main bill does that by providing a grant program for the cooperation, whereas the substitute eliminates that provision. It puts us backwards to the same old process of trying to threaten and intimidate, which does not work. That is why the recovery rate is so abysmally low with the Endangered Species Act. In fact, it moves us somewhat backwards by weakening scientific standards and creating potential for more litigation.

We have agencies like the U.S. Fish and Wildlife Service which year after year is bankrupt by rampant litigation. This means they have little money and little funds left for actual recovery of species. What we need to do is to make sure that we are engaging the private property owners so that they assist and work in cooperation with the Federal Government. You cannot do that by supporting both the substitute and the main bill.

Mr. POMBO. Mr. Chairman, I yield for the purpose of a unanimous consent request to the gentleman from California (Mr. GALLEGLY), a member of the Committee on Resources.

(Mr. GALLEGLY asked and was given permission to revise and extend his remarks.)

Mr. GALLEGLY. Mr. Chairman, I appreciate the opportunity to stand in strong opposition to the substitute and in strong support of the underlying bill. Unfortunately, I may not be able to stay for the vote because there are fires in my district and my neighborhood is being evacuated.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. PELOSI), the minority leader.

Ms. PELOSI. Mr. Chairman, I thank the gentleman for yielding me this time, and I thank him for his extraordinary leadership on behalf of the American people in terms of the air they breathe, the water they drink, in protecting God's beautiful gift to us, this beautiful legacy that we have in our environment, and I commend the ranking member, the gentleman from West Virginia (Mr. RAHALL), for his leadership as well. He has been a champion as well in this area.

Mr. Chairman, I rise in opposition to this legislation which would critically undermine protections for our Nation's endangered species. I support the bipartisan substitute that the gentleman from New York (Mr. BOEHLERT) is putting forth with the gentleman from California (Mr. GEORGE MILLER), and commend them for this good proposal because it provides common sense proposals to strengthen the Endangered Species Act, and yet give a common sense enforcement to it.

I rise as House Democratic leader, of course, in support of the substitute, but I also rise as a mother and as a grandmother; mother of five and grandmother of five. My husband always says I just like to know how long into a speech it is before you start talking about your grandchildren. But we teach our grandchildren, and I did teach my children when they were little, that everything in nature is connected and that there is a reason, a balance to it all, this beautiful web of life that is nature. Today's bill of course in this debate points out what value we place on that.

With the passage of the first Endangered Species law in 1966 and the modern Endangered Species Act in 1973, Congress made a commitment to future generations of Americans, at that time that would be our children, my grandchildren. We made a commitment to maintain the web of life and preserve the myriad species that form an essential part of our natural heritage. We must keep that commitment for the sake of our children and our grandchildren.

The Endangered Species Act is a safety net for wildlife, fish and plants that are on the brink of extinction. When other environmental laws have not provided enough protection, the Endangered Species Act is there to give endangered species one last chance to survive. Of the 1,800 species protected by the law, only nine species have been declared extinct. An impressive achievement.

Earlier in the debate, I heard the gentleman from Washington (Mr. DICKS) speaking, and I see he is still in the Chamber, and I thank him for his very enlightening presentation about how many species have been saved during the life of this law. That was very inspiring and encouraging. The safety net saved our majestic national symbol, the bald eagle, and the peregrine falcon. It saved the Florida manatee, the grizzly bear, the southern sea otter, sea turtles, and many other animals and plants, all important in the balance of nature.

On the floor of the House, week after week, month after month, the Republican leadership pushes through legislation shredding the safety net for children, for veterans, for the elderly, for the poor, for the sick and the disabled, so it comes as no surprise today that they bring a bill that will shred the safety net for the endangered plants and animals. This is really unfortunate, because, again, it all relates to the balance of nature.

We find these words from the psalms: ''How many are your works, O Lord! In wisdom you made them all; the earth is full of your creatures. There is the sea, vast and spacious, teeming with creatures beyond number, living things both large and small.'' In wisdom God has made them all ''living both things both large and small,'' and in wisdom we should preserve and protect them.

We have yet to learn the roles that many creatures play in the web of life, and we are yet to discover the practical effects many species may bring to humankind. One example in California is the Pacific forest yew. Once considered virtually useless, a trash tree, became extremely valuable as the source for the anti-cancer drug Taxol. Many of us have dear friends or family members whose chances of survival have been increased by the use of Taxol.

The bill we consider today is loaded with provisions that will make it harder to preserve endangered species. It undermines sound science by directing the Secretary of the Interior, a political appointee, to issue regulations

locking in a static definition of specific acceptable scientific data. It repeals all protections from pesticides, it drops the requirement for other Federal agencies to consult with wildlife experts at the Fish and Wildlife Service or the fisheries experts at the National Marine Fisheries Service. It establishes an extraordinarily new entitlement program for developers and speculators that requires taxpayers to pay them unlimited amounts of money, and the list goes on and on.

Reasonable people agree that there are ways to improve the Endangered Species Act. Many people who care very, very much about the environment, about the balance of nature, about the web of life have concerns about the enforcement. I think that is why it is important for Congress to be very clear what our intent is, so that intention of Congress and that clarity of our voices here will give guidance to those who enforce the law so that is the implementation and the execution of it is not in a way that is so risk averse as to be counterproductive.

We can do better than the current law, but it is hard to do worse than the legislation being proposed by the gentleman from California (Mr. POMBO). That is why my colleague, the gentleman from California (Mr. GEORGE MILLER), joined by a group of Members and also the gentleman from New York (Mr. BOEHLERT), taking the lead on the Republican side, have developed a substitute to this bill that gives landowners assistance and incentives to protect endangered species, strengthens the science behind the Endangered Species Act, and requires improved coordination with the States.

□ 1600

I urge my colleagues to strengthen the Endangered Species Act by voting for a bipartisan substitute and opposing the underlying bill, and in doing so, to truly, as Members of Congress, show our children that we mean it when we say that we all know that everything in nature is connected and it is important to maintain the balance, the web of life.

In Isaiah in the Old Testament, we are told that to minister to the needs of God's creation, and that includes our beautiful environment, is an act of worship. To ignore those needs is to dishonor the God who made us.

Let us minister to the needs of God's creation. Let us support the substitute and oppose the underlying bill.

Mr. BOEHLERT. Mr. Chairman, I yield 1½ minutes to the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, I rise in support of the Miller-Boehlert substitute amendment because I believe we will not have a world to live in if we continue our neglectful ways.

The Endangered Species Act has been a guiding force for the preservation of species threatened with extinction for over 30 years. It is vitally important that we not alter it in any way that could result in the protection it provides from being compromised.

The Endangered Species Act is working. According to the U.S. Fish and Wildlife Service, 99 percent of the species ever listed under the ESA have been prevented from going extinct, and 68 percent are stable or improving; but the recovery plans in place may need 50 years to restore these to relative abundance.

The amendment would prevent the creation of a mandatory entitlement program for private property owners which is likely to be hugely expensive.

The substitute also restores the role of science in the Endangered Species Act. The underlying bill appears to give the opinions of individuals without any scientific expertise equal standing with those of scientists and repeals protections against hazardous pesticides.

I oppose H.R. 3824 and any efforts to weaken the Endangered Species Act. I support the Miller-Boehlert substitute.

Mr. POMBO. Mr. Chairman, I yield 2 minutes to the gentleman from Utah (Mr. CANNON).

Mr. CANNON. Mr. Chairman, I would like to thank the chairman of the full committee, the gentleman from California (Mr. POMBO). I rise in opposition to the substitute amendment and in support of the underlying bill. I would like to congratulate the gentleman from California (Mr. POMBO) on many, many years of hard work on this issue.

I have to say, I am astonished to be here today. By my count, the number of Democrats who voted for the underlying bill in committee was greater than the number of Democrats who voted against it. The minority leader just told us that reasonable people can agree that the Endangered Species Act can be improved. I think that is the fundamental starting place, and it is nice to be debating the substitute, because we are talking about a fundamentally defective process.

On the other hand, the underlying bill is a good bill. The substitute has some great defects. In the first place, it raises the regulatory bar. It makes it more difficult. In the second place, the substitute does nothing to provide straightforward answers to property owners. In other words, the fundamental problems, which have caused such division in America, are not dealt with in the substitute bill. They do not provide compensation to a landowner.

If you are a landowner and the town or the State or country builds a highway, the land gets condemned and you get paid for the land. We need to have some kind of a compensatory process, and we do not have that in the substitute bill.

The substitute bill replaces the dysfunctional critical habitat concept with something far worse. They talk about lands necessary for recovery. What that is, I do not know that we can figure that out until we have done a lot of litigation and have been through a great deal of pain in America.

The substitute removes the incentives and creates a voluntary program. And a landowner, after he volunteers, could get 70 percent of his costs back for participating in the program. It does not give him any grants or any contractual rights. It does not pay him for the cost. I urge support of the underlying bill and opposition to the substitute amendment.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield 1 minute to the gentleman from West Virginia (Mr. RAHALL).

Mr. RAHALL. Mr. Chairman, I rise in support of the substitute amendment. It will significantly improve the species recovery which is an important part of our negotiating process that led us up to this bill on the floor today.

It will assist landowners in their efforts to conserve species. The substitute will also include a statutory definition of jeopardy that will ensure that Federal agency actions do not diminish recovery. That is a very important part of giving up the critical habitat designation, that we have an improved consultation process and an improved definition of what constitutes jeopardy.

Mr. Chairman, I urge strong support of this bipartisan substitute and, again, opposition to the underlying bill.

Mr. BOEHLERT. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. KIRK).

Mr. KIRK. Mr. Chairman, I would respectfully disagree with the minority leader that this bill is not Republicans versus Democrats. This is largely east versus west with western Democrats supporting the underlying bill and eastern Republicans opposing.

For me, I would quote from the House Republican majority Committee on the Budget that warned that the underlying legislation ''creates a new entitlement program.''

This spring, moderates of the Republican Tuesday Group and conservatives of the Republican Study Committee worked together to put forward budget reforms to end deficit spending. The heart of our reform was a prohibition against new entitlement spending. Entitlement spending already makes up two-thirds of all Federal spending. Our deficit, because of Hurricane Katrina and related costs, will top over $500 billion this year; and I do not believe that we can afford a new entitlement program.

I would urge our chairman to reform the provisions in the bill, to keep the spending within the budget, and make it subject to appropriations. The grant portion of this bill that compensates landowners is responsible. The mandated spending portion of the bill is not responsible.

CBO warns that in their score of this bill both costs and litigation will go up under the bill. Following CBO's fiscal advice, I would urge adoption of the more fiscally responsible substitute.

Mr. POMBO. Mr. Chairman, I yield 3 minutes to the gentleman from Louisiana (Mr. JINDAL).

Mr. JINDAL. Mr. Chairman, I rise in opposition to the substitute and in favor of the underlying bill.

An amendment offered by the gentleman from California (Mr. RADANOVICH) in committee, which was accepted without objection, will allow local officials to perform vital work needed to prevent the potential threat of catastrophic flooding. I rise in opposition because this needed amendment is stripped out of the substitute.

We know how complex Federal bureaucracy can be, but in times of emergency nothing is more important than human health and safety. My disaster declaration and protection provision in this bill must be preserved.

When critical levee repairs are needed to protect human life, time is of the essence. Appropriate action to repair levees must be done quickly and cannot be delayed by cumbersome paperwork and bureaucracy. The ESA must be made flexible enough to allow timely repair and maintenance of levees before disaster strikes. Any efforts to improve ESA must include this provision which recognizes protecting the public from impending danger must take priority.

The amendment that I offered recognizes that when critical repair, reconstruction, or improvements to levee systems are needed, the Federal Government should not be an impediment to targeted, urgent public safety work that must happen.

The amendment that we offered frees local agencies from lengthy processes only for those projects where critical repairs are needed to avoid the loss of human life due to natural disaster. Current agency regulations only allow for an expedited consultation in a Presidentially declared disaster area for levee repair, but they only allow that after flood waters have topped or broken through levees and devastated the communities that they are designed to protect.

The amendment that we offered in committee is narrowly tailored to give local flood protection officials the same flexibility to make needed repairs; but importantly, it does so before the onset of deadly flooding.

It is ironic that the Fish and Wildlife Service and NOAA Fisheries have recently implemented emergency procedures enabling them to expedite the otherwise lengthy consultation process that has to occur before the reconstruction of levees and other flood protection infrastructure ravaged by Hurricane Katrina. Thank God they did implement these procedures, because time is of the essence.

Remarkably, however, these emergency guidelines are only invoked after disaster strikes. There is no provision under existing law that allows for emergency measures to be taken prior to the onset of danger. The Federal Government will only expedite vital repair work that will protect people from deadly floodwaters if they first suffer the calamity that we are trying to avoid.

My colleague advised in California back in 1990 and 1991, the Corps of Engineers warned the community that their levees needed repair work. It took 6 years. Tragically, right as they got approval, a flood occurred and three people lost their lives. We must not allow this kind of avoidable tragedy to happen again.

The amendment that we offered reflects the commonsense notion that local flood protection districts should not have to haggle with Federal agencies for more than 6 years to repair a levee, particularly when that levee has been designated as posing a potential threat to human life. For that reason, I stand opposed to the substitute.

Mr. POMBO. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. CALVERT).

Mr. CALVERT. Mr. Chairman, reforming the Endangered Species Act is long overdue. Today the House has an opportunity to enact significant improvements to ESA that restore balance and protections to species as well as landowners.

One of the most effective ways to protect species habitat is through development of habitat conservation plans. The bill improves and encourages habitat conservation plans by codifying the no-surprise policy and eliminating unnecessary red tape that required multiple consultations regarding already approved actions.

These important provisions will free up limited government and landowner resources and ultimately improve conservation of species habitat by encouraging more habitat conservation plans.

My district in California is home to a large comprehensive habitat conservation plan both in Riverside and Orange counties. In fact, the West Riverside County Multi-Species Conservation Plan is the largest in the Nation covering over 1 million acres of land. The plan cost tens of millions of dollars to develop, years to put into effect, and will cost upward of $1 billion to implement. Once fully implemented, 500,000 acres in western Riverside County will be set aside for species habitat.

It is our responsibility to ensure when landowners and local authorities undertake an extensive planning like that back in my district, the Federal Government lives up to its part of the agreement. This bill does just that and removes unnecessary regulatory burdens that do nothing to benefit the species.

I just discovered in the Miller-Boehlert substitute that the habitat conservation plans that we put a lot of time in to work out in Southern California may be put at risk. That would be very, very difficult for areas that spent large amounts of money to put this into effect, not to mention time. I want to make sure that we defeat the substitute, and I thank the gentleman from California (Mr. POMBO) for working with me to include language that improves habitat conservation plans.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield to the gentleman from Massachusetts (Mr. MARKEY) for the purpose of a unanimous consent request.

(Mr. MARKEY asked and was given permission to revise and extend his remarks.)

Mr. MARKEY. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in support of the Boehlert-Miller substitute and against the underlying bill.

A major factor forcing threatened and endangered species towards extinction is the loss and deterioration of habitat necessary for survival. We cannot expect a species to recover without first ensuring that it has the habitat in which to do so.

The Majority has just presented us with this manager's amendment to the underlying bill that would delete not only the protections and enforceability afforded under the designation of critical habitat but also the broader habitat protection provided by the jeopardy definition.

We have arrived at a situation where the underlying bill will offer no enforceable protection for the habitat that endangered species need to survive, but will only create a blizzard of unenforceable bureaucratic paperwork which, in the words of Shakespeare, would be "full of sound and fury but signifying nothing."

The Boehlert-Miller substitute would retain the enforceable protections for habitat provided under a strong jeopardy definition and I urge its adoption.

Mr. GEORGE MILLER of California. Mr. Chairman, I yield 30 seconds to the gentleman from Washington (Mr. INSLEE).

Mr. INSLEE. Mr. Chairman, what possible reason is there for taxpayers to have to pay three, four times for the same protection of endangered species?

Under the bill as written, the taxpayer would have to pay a landowner once for the privileges of not building the casino. That landowner could then sell it to his brother. The taxpayer has to pay his brother a second time for the same project. His brother could sell it to his cousin, and the taxpayer would have to pay a third time for the same casino. This is a failure in drafting. Reject this bill.

□ 1615

Mr. POMBO. Mr. Chairman, I yield 2 minutes to the gentleman from Oregon (Mr. WALDEN).

Mr. WALDEN of Oregon. Mr. Chairman, first of all, to respond to my colleague from Washington, a simple deed restriction takes care of that. They do not go through this and pay and pay and pay and pay. They put it in the deed when they cut the deal, and they pay fair and just compensation for taking somebody's property. That would be stupid to do that over and over. They do that in the deed, and that is a restriction that carries with the property.

Let me talk about a couple of the differences between these two plans and why I support the underlying Pombo bill. Among other things, section 10, page 18, they give 3 years, the government, to come up with a recovery plan.

Our plan says 2 years. So if they want to recover species, we say get it done in 2 years with the recovery plan; they say 3.

If my colleagues want to talk about spending, they create a new science board. GS15s, section 20 in the bill, $1 million a year. CBO says we will compensate private property owners to the tune of maybe $6 million in the first 5 years. That is all they score out. This, $1 million a year for bureaucrats, and private property owners are left carrying their own costs. That is not fair and right in America.

So if the Members want bigger bureaucracy, pay GS15s here in Washington, a total of $1 million combined over the year, and they get just as much as we are talking about trying to help out the private property owners.

And if they ask the government for some sort of safe harbor for entering into a habitat conservation program, basically they get back a written determination under our provision that prevents them from being prosecuted, from the government's coming back and double-timing them, saying, yes, go ahead and we will not prosecute if you do everything you said you were going to do. Under the alternative, as I read it, whatever they do, they would have to get an incidental take permit and then they still do not have any kind of protection from the government's coming back again after them.

So what we are trying to do is create cooperative partnerships with private landowners through new conservation programs and give certainty over 10-, 20-, and 30-year periods to recover species and set up recovery programs that would come together in 2 years, not 3, and provide for compensation when somebody loses their farm or a portion thereof just as if a highway ran through it.

Mr. POMBO. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. CARDOZA), co-author of the underlying bill.

Mr. CARDOZA. Mr. Chairman, I rise at this point to make a clarification and to, again, speak to my opposition to the substitute.

The first clarification is that when the Fish and Wildlife Service compensates an owner for a restriction on his property, it is done through a deed restriction or a fee title. So this claim that subsequent owners can make the same claims against the Fish and Wildlife Service is simply inaccurate. When they buy an easement, they buy a perpetual easement unless the Secretary were to make a mistake, and, simply, that is just not the way we do it in law currently.

The second point, and the main objection that I have to the substitute goes to the fundamental fifth amendment protection under the Constitution that says that when we take someone's property, we compensate them for it. And that is what the Pombo bill does, and that is what the substitute does not do.

I would ask my colleagues to cast an ''aye'' vote on the underlying bill and oppose the substitute.

The Acting CHAIRMAN (Mr. SIMPSON). The Chair advises Members that the gentleman from California (Mr. GEORGE MILLER) has 3½ minutes remaining, the gentleman from New York (Mr. BOEHLERT) has 3 minutes remaining, and the gentleman from California (Mr. POMBO) has 4 minutes remaining.

The Chair would further advise that the order of closing is the gentleman from New York (Mr. BOEHLERT), the gentleman from California (Mr. GEORGE MILLER), and the gentleman from California (Mr. POMBO).

Mr. BOEHLERT. Mr. Chairman, I yield myself such time as I may consume.

This all boils down to a principal difference. There are a number of differences, but a principal difference. The substitute does not have the controversial section 13 in it; the base bill does.

Here is something that could actually happen under section 13. A developer could buy a parcel of land knowing that part of it could not be used because of the presence of endangered species. The developer then could request permission to build, say, a hotel on the property without doing much more than outlining the proposal on the back of an envelope. The developer would not even have to try to get necessary State permits or local zoning variances before submitting a claim.

When the Federal Government says that the hotel could not be built, that developer could get a payment from the government based upon what his appraiser said it was worth without providing much evidence that the project was realistic or serious. Then the developer could propose to build a landfill on the same site and go through the same process again and get money from the government again. Then the developer could propose to build a store on the same site and get money from the government again because the store could not be built.

In the meantime, the developer could proceed with the same project on other portions of the property, make substantial profits on his property, and never have that affect the steady stream of payments coming from the government from what was always known to be a problematic site.

This is no exaggeration, and it shows how right the provision is for abuse. The bill puts the taxpayers at risk. That is why the same concerns that we have expressed to our colleagues on the floor today have been expressed by the administration in the Statement of Administration Policy, which is otherwise supportive of the bill, in part because of the provisions that we also have in our substitute. The Statement of Administration Policy warns: ''The new conservation aid program for private property owners provides little discretion to Federal agencies and could result in a significant budgetary impact . . . The bill would affect direct spending. To sustain the economy's expansion, it is critical to exercise responsible restraint over Federal spending.'' We want to help exercise responsible restraint by eliminating section 13.

Mr. Chairman, there is no doubt about it. The Endangered Species Act has to be revisited. That is the responsible thing to do. The Committee on Resources has put a lot of hard work into and has come up with a product that, in many respects, is just wonderful, necessary. That is why we embrace the product. But section 13 is absolutely, totally unacceptable for a whole lot of very good reasons, and it is unacceptable to the taxpayers of America because, boy, does this impose a burden on them.

I urge support for the substitute. It is responsible. It is bipartisan. It is thoughtful. It eliminates section 13. It provides more opportunity for good science. It emphasizes the need of small property owners, and we want to help them.

Mr. Chairman, I yield back the balance of my time.

Mr. GEORGE MILLER of Florida. Mr. Chairman, I yield myself the balance of my time.

I thank the gentleman from New York (Mr. BOEHLERT), the cosponsor of this legislation, and all the rest of the cosponsors for their support of this amendment. I want to thank all of my colleagues who joined in this debate today, and I think that it is important that we adopt this substitute.

Earlier the gentleman from California (Mr. CARDOZA) got up on the floor, and he was upset that somebody had said that the underlying bill would eviscerate the Endangered Species Act. Yesterday, that statement would have been true. He had a right to be upset. But today when the manager's amendment was offered and was accepted, the Endangered Species Act was eviscerated and let me tell you why: Because the bill, prior to that amendment, contained this language: The term to jeopardize the continued existence means, with respect to any agency action, that action reasonably that would be expected to significantly impede directly or indirectly the conservation long-term of the species in the wild. That language was struck in the manager's amendment when you struck on page 4, strike lines 3 through 11 and redesignate.

The point is this, there is now no statutory protection in law if this bill is passed for the protection of this species because there is no standard of jeopardy. That was not true last night, it was not true this morning, but it is true this afternoon. You can shake your head until the cows come home. The fact of the matter is, that is what took place in this amendment. So the evisceration is now complete because there is no standard in the bill for jeopardy.

Ladies and gentlemen, it is important that we accept this amendment,

this bipartisan substitute, because this is our last best chance to hold on to what this Nation holds dear, and that is the protection and the diversity of the species that inhabit this Nation, and the effort that we have made as a Nation to make sure that our actions and governmental actions, and the actions of others, do not destroy and bring to extinction these species.

Those protections that we have provided since the inception of this act when the gentleman from Michigan (Mr. DINGELL) and the gentleman from Wisconsin (Mr. OBEY) and others were here to support it, those protections have served this Nation well. We have a chance today to have a commonsense reform of that effort. Yes, this act should be changed; it is 30 years old, and we are about to do that with this substitute, because we provide the balance for the protection of these species and the protection of the landowners. What we do not do is what they do in the underlying bill; that, if a landowner has a proposal and a notion of how he might want to use his or her land, the Secretary then has to make a determination of whether or not a take might be possible.

No take is required. The Secretary makes no scientific study, makes no scientific investigation, just makes a determination. Does the landowner sue on that? Does the government sue to protect themselves? Then, if the Secretary says so, the landowner is compensated no longer by fair appraisals, because appraisals only bind the Secretary, they do not bind the landowner. Pretty soon, the U.S. Attorney is going to have to go in to protect the treasury of the United States because, as the gentleman from Illinois (Mr. KIRK) pointed out, this is a new entitlement with direct spending. That is why the Bush administration says that it will generate new litigation, further divert agency resources, and have significant budgetary impact, because that is what they have done.

That is why the substitute provides you the means by which to reform, streamline, and make more efficient the Endangered Species Act at the same time, while protecting not only the landowners, but also protecting the taxpayers of this Nation from a raid on their Treasury when, in fact, no take has taken place.

We all share the gentleman from California's concerns and beliefs that, when your land is taken, you should be reimbursed; when your land is not taken, you should not be reimbursed.

I ask support of the Boehlert/Miller substitute.

Mr. POMBO. Mr. Chairman, I yield myself the balance of my time.

Well, GEORGE, we have come a long ways. We have come a long ways, because, as you know, I have been working on this since I got here, and when I first started, all I heard was there is nothing wrong with the act that a little bit more money would not solve. Here we are today, everybody saying that there is problems with the law and we have to fix it. So we have come a long ways, and I am being attacked for spending more money under the act on the reauthorization.

First of all, I wanted to respond to your comments on jeopardy. We stay with current law. That is what is in the bill, is current law. We stay with current law. We had a different definition in the bill originally, and that caused the administration to say that it would result in new litigation, so we said we will stay with current law; and that eviscerates the act, staying with current law that they have so dutifully defended.

I have heard here today that the underlying bill guts, eviscerates, euthanizes, is unreasonable, and then I get a handout that talks about how much the substitute is like the base bill. When it comes to critical habitat, both bills use identical language. When it comes to providing certainty for landowners, both bills contain identical language. When it comes to providing incentives for landowners, both bills contain identical language, and on and on and on, about how much alike the bills are; and yet they gut, eviscerate, euthanize, and they are unreasonable.

The gentleman from New York (Mr. BOEHLERT) I think is right about this: The real difference between the two bills is how private property rights is protected.

The gentleman from West Virginia (Mr. RAHALL) and I spent months debating the meaning of a word, and we finally came pretty close to getting a bill put together. The substitute represents, I think, a step back in the negotiations in that everything that you wanted that you did not get, you put in the substitute; change the words a little bit so that they really do not mean anything. There is no protection for private property owners. I remember 10 years ago, I introduced a bill on endangered species, and one of the major provisions in that bill was to utilize public lands, and I got ripped over it because 90 percent of the species have their habitat on private land. You cannot just put the focus on public lands. You cannot. But if it is going to work, if we are truly going to put the focus on recovery, if we are truly going to try to bring these species back from the brink and do the responsible thing, private property owners have to be part of the solution.

We hear a lot of horror stories about things that have happened in my district and Mr. CARDOZA's district and Mr. COSTA's district and Mr. BACA's district, in your district, Mr. MILLER.

□ 1630

If you do not do something to protect the property owners, those stories are never going to stop. The act has been a failure in recovering species. Now we can all agree.

When it comes to protecting private property owners, regardless of what all the hot rhetoric is, what the underlying law says is that if you meet State and local zoning laws, if you go through the process of getting that approval, then you have something. If you are a farmer farming your land and they tell you that you cannot farm your land anymore, you can get compensated for agriculture land.

If you are a developer who has gone through the process, gotten your land zoned and they tell you you cannot use it, then that is what you get compensated for. But once land has that restriction on it, whoever buys it cannot come back again and say they want something else, because they know it is restricted.

So this argument is totally out of line and off base. We protect private property owners. That is what leads to recovery. The substitute just does not.

Vote against the substitute, support the base bill, and let us move on with some decent legislation.

ANNOUNCEMENT BY THE ACTING CHAIRMAN

The Acting CHAIRMAN (Mr. SIMPSON). The Chair would advise all Members that it is improper to walk in front of a Member in the well who has the floor.

Mr. LARSON of Connecticut. Mr. Chairman, I rise today in opposition to the Threatened Endangered Species Act, the so-called "reform" that will dismantle our Nation's most fundamental wildlife protection law and in support of the bipartisan Miller, Boehlert, Dingell, Gilchrest, Dicks, Saxton, Tauscher, Kirk Substitute. I am disappointed at the missed opportunity for the House to strike a real balance in the protection of rare species facing extinction and landowners from future government constraints.

While I agree that the current Endangered Species Act, ESA, needs improvements and updating, the controversial bill before us today does little to improve the current ESA. Among other things, the Threatened and Endangered Species Act would remove the federal protection of critical habitats that are necessary for the recovery of a species. I also find it extremely disturbing that my colleagues are so intent on establishing an entirely new entitlement program to pay landowners for compliance at the taxpayers' expense at the same time they are working so hard to privatize entitlement programs like Medicare and Social Security.

I believe there is more we can do to support the goals of the ESA. That is why I support the bipartisan substitute amendment offered by Representative GEORGE MILLER and Representative SHERWOOD BOEHLERT. This compromise amendment would proactively conserve species using both real science standards and conservation incentives for landowners. This amendment maintains several provisions in the underlying bill, but would, among other things, take a more comprehensive approach to recovery plans and create an advisory board to provide scientific advice to the Interior Department about applying the best science when enforcing endangered species law.

It took decades for many of our Nation's species to reach the point of extinction. It is unrealistic to propose that there will be a quick fix to the recovery of animals and plants facing

decline. For over 30 years, the ESA has been a work in progress. Now is not the time to turn back the clock on wildlife protection.

Environmental preservation is about self-preservation and about the land we are leaving our children. As Members of Congress, as responsible citizens, I urge my colleagues to join me in supporting real reforms to the ESA by supporting the bipartisan substitute amendment and rejecting the underlying bill.

Mr. KIND. Mr. Chairman, the Endangered Species Act remains an enduring testament to the importance the American people place on preserving plant and animal species for future generations. That sentiment was reflected in President Richard Nixon's words during his signing of the Act on December 28, 1973 when he said, ''Nothing is more priceless and more worthy of preservation than the rich array of animal life with which our country has been blessed. It is a many-faceted treasure, of value to scholars, scientists, and nature lovers alike, and it forms a vital part of the heritage we all share as Americans.''

I am also reminded of the wisdom of my recently passed friend and hero, Senator Gaylord Nelson, who said, ''We must recognize that we're all part of a web of life around the world. Anytime you extinguish a species, the consequences are serious.'' Thankfully today, citizens can see firsthand in every State the progress being made in bringing wildlife back from the brink of extinction.

For example, In Wisconsin, for the first time since its 1991 listing as an endangered species, the winged mapleleaf mussel, a species found only in a small area of the St. Croix River, have been found to be slowly rebuilding their numbers. Another success of the ESA is the Karner blue butterfly. Although 99 percent or more of the Karner blue butterfly's range has been destroyed, Wisconsin helped bring the species back using a conservation plan that takes into account the butterfly's entire life cycle. The State's project, which involves 38 public and private partners, began after the butterfly was listed as endangered in 1992. Lastly, perhaps best known, is that bald eagles are increasing in Wisconsin, where 645 pairs occupied territories in 1997, up from 358 in 1990. In fact, since eagles are relatively numerous in Wisconsin, the State has donated them to other areas from which they have vanished, including to the Nation's Capital—Washington, DC.

I mention these successes because many of the comments made on the floor today cast ESA as an unmitigated failure. I don't believe that is the case at all; and the scientific journal, Ecology Letters, recently published a study of the status of threatened and endangered species that showed more than half on the list for 5 years or more have either stabilized or are improving.

That said, I agree with my friend and colleague, Congressman JOHN DINGELL, author of the original ESA in 1973, that this landmark bill could use an update—that it could be and should be strengthened in ways that cuts bureaucratic red tape, broadens stakeholder participation, and most importantly better facilitates the revival of more threatened and endangered species.

Mr. Chairman, the bipartisan substitute does a substantially better job in these areas. For instance, it is widely agreed the ESA has done a good job in preventing the extinction of many species but it has been less successful in bringing about ''the recovery of listed species to levels where protection under the Act is no longer necessary.'' I believe it is crucial the legislation provides for the development of strong, comprehensive recovery plans within a short period of time after a species is listed as threatened or endangered.

The Boehlert substitute, like the base bill, would repeal the current requirement that the Secretary designate ''critical habitat'' for endangered fish, wildlife, and plants before formulating a plan for species recovery. But it adds crucial language requiring the Secretary to identify—during a 3-year recovery planning process—lands that are necessary for the conservation of the species—first on public lands and then, if necessary, on private lands.

I also agree that private landowners have been required by ESA to individually shoulder too much of the burden. More than two-thirds of threatened and endangered species reside on private lands where the Endangered Species Act is least effective. It is imperative landowners be regarded as part of the solution and given the tools and incentives necessary to engender their help and support. I believe we should have at least considered expanding the Habitat Conservation Plan Land Acquisition Program in H.R. 3824 which has proven itself effective in reducing conflicts between the conservation of threatened and endangered species and land development and use. That, unfortunately, is not in the base bill.

Instead, H.R. 3824 provides a new, uncapped entitlement program in Section 13 that will only plunge our Nation's finances deeper in the red, and then prohibits common-sense steps that could at least provide some protection to the taxpayer. For example, under H.R. 3824 the government can be forced to pay out repeated claims for different proposals to use the exact same piece of property. These claims don't even need to be backed up by proof of compliance with State or local land use laws. And instead of lessening the number of ESA related lawsuits, even CBO has stated this provision is likely to increase the amount of litigation.

In contrast, the Boehlert substitute would establish a land owner incentive program that would operate much like a Farm Bill conservation program, with 70 percent cost sharing. From EQIP it adds language that would require the Secretary to maximize the conservation benefit for every dollar expended, put Federal money where it will do the most good. A technical assistance program would be established, and the safe harbor regulations would be codified.

Mr. Chairman, I urge my colleagues to support the responsible, bipartisan Boehlert substitute that answers the concerns of landowners, States, and sportsmen, while improving the ability to achieve timely recovery of endangered and threatened fish, wildlife, and plants. Let's mend it in light of past experience and the demands of modern times, but let's do it responsibly—support the substitute.

Mr. BLUMENAUER. Mr. Chairman, I rise in reluctant support of this amendment. I have serious concerns about the changes to the current Endangered Species Act being discussed today, both in the underlying bill and this amendment. I am especially frustrated that both bills repeal the critical habitat provisions of the ESA, which are crucial to the recovery of species. I plan to vote against final passage of any legislation that repeals this important provision.

But I will support the bipartisan substitute amendment by my colleagues Mr. MILLER and Mr. BOEHLERT because it is an honest effort to present an alternative. It does not include the most egregious parts of H.R. 3824 which make a mockery of science and conservation.

The ACTING CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from California (Mr. GEORGE MILLER).

The question was taken; and the Acting Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. GEORGE MILLER of California. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 206, noes 216, not voting 11, as follows:

[Roll No. 505]

AYES—206

Abercrombie	Gordon	Moore (WI)
Ackerman	Green, Al	Moran (VA)
Allen	Green, Gene	Murtha
Andrews	Grijalva	Nadler
Baird	Hastings (FL)	Napolitano
Baldwin	Higgins	Neal (MA)
Barrow	Hinchey	Oberstar
Bass	Hinojosa	Obey
Bean	Holden	Olver
Becerra	Holt	Owens
Berkley	Honda	Pallone
Berman	Hooley	Pascrell
Biggert	Hoyer	Pastor
Bishop (NY)	Inglis (SC)	Pelosi
Blumenauer	Inslee	Petri
Boehlert	Israel	Platts
Boucher	Jackson (IL)	Pomeroy
Boyd	Jackson-Lee (TX)	Price (NC)
Bradley (NH)	Jefferson	Rahall
Brady (PA)	Johnson (CT)	Ramstad
Brown (OH)	Johnson (IL)	Rangel
Brown, Corrine	Johnson, E. B.	Reyes
Butterfield	Jones (OH)	Rothman
Capps	Kanjorski	Roybal-Allard
Capuano	Kaptur	Ruppersberger
Cardin	Kelly	Rush
Carnahan	Kennedy (RI)	Ryan (OH)
Carson	Kildee	Sabo
Case	Kilpatrick (MI)	Sánchez, Linda T.
Castle	Kind	Sanchez, Loretta
Chandler	Kirk	Sanders
Clay	Kucinich	Saxton
Cleaver	Langevin	Schakowsky
Clyburn	Lantos	Schiff
Conyers	Larsen (WA)	Schwartz (PA)
Cooper	Larson (CT)	Schwarz (MI)
Costello	Leach	Scott (VA)
Crowley	Levin	Serrano
Cummings	Lewis (GA)	Shays
Davis (CA)	Lipinski	Sherman
Davis (IL)	LoBiondo	Skelton
Davis (TN)	Lofgren, Zoe	Slaughter
Davis, Tom	Lowey	Smith (NJ)
DeFazio	Lynch	Smith (WA)
DeGette	Maloney	Snyder
Delahunt	Markey	Solis
DeLauro	Marshall	Spratt
Dicks	Matheson	Stark
Dingell	Matsui	Strickland
Doggett	McCarthy	Stupak
Doyle	McCollum (MN)	Tanner
Ehlers	McDermott	Tauscher
Emanuel	McGovern	Taylor (MS)
Engel	McKinney	Thompson (CA)
Eshoo	McNulty	Thompson (MS)
Etheridge	Meehan	Tierney
Evans	Meek (FL)	Udall (CO)
Farr	Meeks (NY)	Udall (NM)
Ferguson	Menendez	Upton
Filner	Michaud	Van Hollen
Fitzpatrick (PA)	Millender-McDonald	Velázquez
Ford	Miller (NC)	Visclosky
Frank (MA)	Miller, George	Wasserman Schultz
Frelinghuysen	Mollohan	Waters
Gerlach	Moore (KS)	Watson
Gilchrest		
Gonzalez		

Watt
Waxman
Weiner
Weldon (PA)
Wexler
Wolf
Woolsey
Wu
Wynn

NOES—216

Aderholt
Akin
Alexander
Baca
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Beauprez
Berry
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boustany
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carter
Chabot
Chocola
Coble
Cole (OK)
Conaway
Costa
Cramer
Crenshaw
Cubin
Cuellar
Cunningham
Davis (AL)
Davis (KY)
Davis, Jo Ann
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Edwards
Emerson
English (PA)
Everett
Feeney
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Gallegly
Garrett (NJ)
Gibbons
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Issa
Istook
Jenkins
Jindal
Johnson, Sam
Jones (NC)
Keller
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris
Melancon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Ortiz
Osborne
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Pickering
Pitts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryan (WI)
Ryun (KS)
Salazar
Schmidt
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Young (AK)
Young (FL)

NOT VOTING—11

Boswell
Culberson
Davis (FL)
Fattah
Gutierrez
Harman
Hobson
Lee
Paul
Payne
Towns

□ 1653

Ms. GRANGER, Mr. BRADY of Texas, and Mr. ADERHOLT changed their vote from ''aye'' to ''no.''

Mr. RANGEL changed his vote from ''no'' to ''aye.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The Acting CHAIRMAN (Mr. SIMPSON). The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The Acting CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. THORNBERRY) having assumed the chair, Mr. SIMPSON, Acting Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (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, pursuant to House Resolution 470, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. POMBO. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, this 15-minute vote on passage of H.R. 3824 will be followed by 5-minute votes on passage of H.J. Res. 68 and suspending the rules and agreeing to H. Con. Res. 178.

The vote was taken by electronic device, and there were—ayes 229, noes 193, not voting 11, as follows:

[Roll No. 506]

AYES—229

Abercrombie
Aderholt
Akin
Alexander
Baca
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Beauprez
Berry
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boustany
Boyd
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carter
Chabot
Chocola
Coble
Cole (OK)
Conaway
Costa
Costello
Cramer
Crenshaw
Cubin
Cuellar
Cunningham
Davis (AL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Edwards
Emerson
English (PA)
Everett
Feeney
Flake
Forbes
Ford
Fortenberry
Fossella
Foxx
Franks (AZ)
Gallegly
Garrett (NJ)
Gibbons
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hinojosa
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson, Sam
Jones (NC)
Keller
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kline
Knollenberg
Kolbe
Kuhl (NY)
Latham
Lewis (CA)
Lewis (KY)
Linder
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris
Melancon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Ortiz
Osborne
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryan (WI)
Ryun (KS)
Salazar
Schmidt
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Sherwood
Shimkus
Shuster
Simpson
Skelton
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Turner
Walden (OR)
Wamp
Weldon (FL)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wynn
Young (AK)
Young (FL)

NOES—193

Ackerman
Allen
Andrews
Baird
Baldwin
Bass
Bean
Becerra
Berkley
Berman
Biggert
Bishop (NY)
Blumenauer
Boehlert
Boucher
Bradley (NH)
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Carnahan
Carson
Case
Castle
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Crowley
Cummings
Davis (CA)
Davis (IL)
Davis, Tom
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Ehlers
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Ferguson
Filner
Fitzpatrick (PA)
Foley
Frank (MA)
Frelinghuysen
Gerlach
Gilchrest
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Hastings (FL)
Higgins
Hinchey
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kelly
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kirk
Kucinich
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
LaTourette
Leach
Levin
Lewis (GA)
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)

Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Moore (KS)
Moore (WI)
Moran (VA)
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Pelosi
Platts
Price (NC)
Rahall
Ramstad
Rangel
Reichert
Reyes
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schwartz (PA)
Schwarz (MI)
Scott (VA)
Serrano
Shaw
Shays
Sherman
Simmons
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Tierney
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walsh
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Weldon (PA)
Wexler
Wolf
Woolsey
Wu

NOT VOTING—11

Boswell
Culberson
Davis (FL)
Fattah
Gutierrez
Harman
Hobson
Lee
Paul
Payne
Towns

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. THORNBERRY) (during the vote). Members are advised that two minutes remain in this vote.

□ 1712

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. FATTAH. Mr. Speaker, a prior commitment kept me from voting on H.R. 3824, the Threatened and Endangered Species Recovery Act of 2005. If present, I would have voted "yea" for the Democratic amendment offered by MILLER, DINGELL, DICKS, TAUSCHER, BOEHLERT, GILCHREST, and SAXTON. Please let the record reflect that I would voted "nay" on final passage of H.R. 3824.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 1778. An act to extend medicare cost-sharing for qualifying individuals through September 2006, to extend the Temporary Assistance for Needy Families Program, transitional medical assistance under the Medicaid Program, and related programs through March 31, 2006, and for other purposes.

CONTINUING APPROPRIATIONS FISCAL YEAR 2006

The SPEAKER pro tempore. The pending business is the vote on passage of House Joint Resolution 68 on which the yeas and nays are ordered.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. The question is on the passage of the joint resolution.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 348, nays 65, not voting 20, as follows:

[Roll No. 507]

YEAS—348

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boustany
Boyd
Bradley (NH)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Calvert
Camp
Cannon
Cantor
Capito
Cardin
Cardoza
Carnahan
Carter
Case
Castle
Chabot
Chandler
Chocola
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Cooper
Costa
Cramer
Crenshaw
Cubin
Cuellar
Cunningham
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Drake
Dreier
Duncan
Edwards
Ehlers
Emerson
Engel
Eshoo
Etheridge
Evans
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green, Al
Green, Gene
Gutknecht
Hall
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinojosa
Hoekstra
Holden
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kilpatrick (MI)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Lantos
Larsen (WA)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
McNulty
Meek (FL)
Meeks (NY)
Melancon
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Mollohan
Moore (KS)
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Napolitano
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Ortiz
Osborne
Otter
Owens
Oxley
Pallone
Pascrell
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Saxton
Schiff
Schmidt
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Turner
Udall (CO)
Upton
Van Hollen
Visclosky
Walden (OR)
Walsh
Wamp
Wasserman Schultz
Watson
Waxman
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wynn
Young (AK)
Young (FL)

NAYS—65

Baldwin
Blumenauer
Boucher
Brady (PA)
Capps
Capuano
Carson
Clay
Conyers
Costello
Crowley
DeFazio
DeGette
DeLauro
Doyle
Emanuel
Farr
Filner
Ford
Frank (MA)
Green (WI)
Grijalva
Hinchey
Holt
Honda
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kind
Kucinich
Langevin
Larson (CT)
Lewis (GA)
Markey
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
Meehan
Miller, George
Moore (WI)
Moran (VA)
Nadler
Neal (MA)
Oberstar
Obey
Olver
Pastor
Ryan (OH)
Ryan (WI)
Sanders
Schakowsky
Scott (VA)
Stark
Tierney
Udall (NM)
Velázquez
Waters
Watt
Weiner
Woolsey
Wu

NOT VOTING—20

Berman
Boswell
Brady (TX)
Buyer
Culberson
Cummings
Davis (FL)
Delahunt
English (PA)
Fattah
Gallegly
Gutierrez
Harman
Hobson
Lee
Miller, Gary
Paul
Payne
Petri
Towns

□ 1720

Mr. LARSON of Connecticut and Mr. CROWLEY changed their vote from ''yea'' to ''nay.''

Mr. VISCLOSKY and Ms. JACKSON-LEE of Texas changed their vote from ''nay'' to ''yea.''

So the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

RECOGNIZING THE NEED TO PURSUE RESEARCH INTO CAUSES, TREATMENT AND CURE FOR IDIOPATHIC PULMONARY FIBROSIS

The SPEAKER pro tempore (Mr. THORNBERRY). The unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 178, as amended.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Georgia (Mr. DEAL) that the House suspend the rules and agree to the concurrent resolution,