

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE  
GEORGE MILLER OF CALIFORNIA, OR HIS  
DESIGNEE, DEBATABLE FOR 60 MINUTES:

**Offered by Mr. Miller (CA), for himself, Mr. Boehlert,  
Mr. Dingell, Mr. Gilchrest, Mr. Dicks, Mr. Saxton, Ms. Tauscher,  
and Mr. Kirk**

**AMENDMENT TO H.R. 3824**

**OFFERED BY \_\_\_\_\_**

**(Page and line numbers refer to the Committee Print of the  
bill as ordered reported by the Committee on Resources,  
printed September 26, 2005)**

Strike all after the enacting clause and insert the  
following:

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

**2 (a) TABLE OF CONTENTS.—**The table of contents for

**3 this Act is as follows:**

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendment references.
- Sec. 3. Definitions.
- Sec. 4. Determinations of endangered species and threatened species.
- Sec. 5. Repeal of critical habitat requirements.
- Sec. 6. Petitions and procedures for determinations and revisions.
- Sec. 7. Reviews of listings and determinations.
- Sec. 8. Protective regulations.
- Sec. 9. Secretarial guidelines; State comments.
- Sec. 10. Recovery plans and land acquisitions.
- Sec. 11. Cooperation with States and Indian tribes.
- Sec. 12. Interagency cooperation and consultation.
- Sec. 13. Exceptions to prohibitions.
- Sec. 14. Private property conservation.
- Sec. 15. Public accessibility and accountability.
- Sec. 16. Annual cost analyses.
- Sec. 17. Reimbursement for depredation of livestock by reintroduced species.
- Sec. 18. Authorization of appropriations.
- Sec. 19. Miscellaneous technical corrections.
- Sec. 20. Establishment of Science Advisory Board.
- Sec. 21. Clerical amendment to table of contents.

**4 (b) SHORT TITLE.—**This Act may be cited as the

**5 "Threatened and Endangered Species Recovery Act of**

**6 2005".**



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

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

8 **SEC. 3. DEFINITIONS.**

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

15 “(2) The term ‘best available scientific data’ means  
16 data and analyses, regardless of source, produced by sci-  
17 entifically accepted methods and procedures that are avail-  
18 able to the Secretary at the time of a decision or action  
19 for which such data are required by this Act, and that  
20 meet scientifically accepted standards of objectivity, accu-  
21 racy, reliability, and relevance. For the purpose of this  
22 paragraph, the term ‘scientifically accepted’ means those  
23 methods, procedures, and standards that are widely used  
24 within the relevant fields of science, including wildlife biol-  
25 ogy and management.”.



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

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

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

12 “(12) The term ‘jeopardize the continued existence’  
13 means to engage in an action that, directly or indirectly,  
14 makes it less likely that a threatened species or an endan-  
15 gered species will be brought to the point at which meas-  
16 ures provided pursuant to this Act are no longer nec-  
17 essary, is likely to significantly delay doing so, or is likely  
18 to significantly increase the cost of doing so.”

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

22 **SEC. 4. DETERMINATIONS OF ENDANGERED SPECIES AND**  
23 **THREATENED SPECIES.**

24 (a) REQUIREMENT TO MAKE DETERMINATIONS.—  
25 Section 4 (16 U.S.C. 1533) is amended by striking so

1 much as precedes subsection (a)(2) and inserting the fol-  
2 lowing:

3 "DETERMINATION OF ENDANGERED SPECIES AND  
4 THREATENED SPECIES

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

10 "(A) The present or threatened destruction,  
11 modification, or curtailment of its habitat or range,  
12 including by human activities, competition from  
13 other species, drought, fire, or other catastrophic  
14 natural causes.

15 "(B) Overutilization for commercial, rec-  
16 reational, scientific, or educational purposes.

17 "(C) Disease or predation.

18 "(D) The inadequacy of existing regulatory  
19 mechanisms, including any efforts identified pursu-  
20 ant to subsection (b)(1).

21 "(E) Other natural or manmade factors affect-  
22 ing its continued existence."

23 (b) BASIS FOR DETERMINATION.—Section  
24 4(b)(1)(A) (16 U.S.C. 1533(b)(1)(A)) is amended—



1           (1) by striking “best scientific and commercial  
2           data available to him” and inserting “best available  
3           scientific data”; and

4           (2) by inserting “Federal agency, any” after  
5           “being made by any”.

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

8           “(2)(A) The Secretary shall—

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

16                   “(ii) determine on the basis of such review  
17                   and any other information the Secretary con-  
18                   siders relevant whether any such species should  
19                   be proposed for—

20                           “(I) removal from such list;

21                           “(II) change in status from an endan-  
22                           gered species to a threatened species; or

23                           “(III) change in status from a threat-  
24                           ened species to an endangered species.



1           “(B) Each determination under subparagraph  
2           (A)(ii) shall be made in accordance with subsections  
3           (a) and (b).”.

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

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

7           (b) CONFORMING AMENDMENTS.—

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

13           (2) Section 4(b) (16 U.S.C. 1533(b)) is further  
14           amended in paragraph (2), as redesignated by para-  
15           graph (1) of this subsection, by striking subpara-  
16           graph (D).

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

23           (4) Section 4(b) (16 U.S.C. 1533(b)) is further  
24           amended in paragraph (7), as redesignated by para-  
25           graph (1) of this subsection, by striking “; and if



1 such regulation” and all that follows through the  
2 end of the sentence and inserting a period.

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

5 (A) in the second sentence—

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

8 (ii) by striking “, and specify any”  
9 and all that follows through the end of the  
10 sentence and inserting a period; and

11 (B) in the third sentence by striking “,  
12 designations,”.

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

17 (7) Section 6(c) (16 U.S.C. 1535(c)), as  
18 amended by section 10(1) of this Act, is further  
19 amended in paragraph (3) by striking “section  
20 4(b)(3)(B)(iii)” each place it appears and inserting  
21 “section 4(b)(2)(B)(iii)”.

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

23 (A) in subsection (a)(2) in the first sen-  
24 tence by striking “or result in the destruction  
25 or adverse modification of any habitat of such

1 species” and all that follows through the end of  
2 the sentence and inserting a period;

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

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

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

12 (A) by striking “that—” and all that fol-  
13 lows through “(i) solely” and inserting “that  
14 solely”; and

15 (B) by striking “; and” and all that follows  
16 through the end of the sentence and inserting  
17 a period.

18 **SEC. 6. PETITIONS AND PROCEDURES FOR DETERMINA-**  
19 **TIONS AND REVISIONS.**

20 (a) TREATMENT OF PETITIONS.—

21 (1) IN GENERAL.—Section 4(b) (16 U.S.C.  
22 1533(b)) is amended in paragraph (2), as redesign-  
23 nated by section 5(b)(1) of this Act, by adding at  
24 the end of subparagraph (A) the following: “The  
25 Secretary shall not make a finding that the petition



1 presents substantial scientific or commercial infor-  
2 mation indicating that the petitioned action may be  
3 warranted unless the petitioner provides to the Sec-  
4 retary a copy of all information cited in the peti-  
5 tion.”

6 (2) ADDITIONAL DATA.—Section 4(b) is further  
7 amended in paragraph (2), as redesignated by sec-  
8 tion 5(b)(1) of this Act, in subparagraph (A) by  
9 adding at the end the following: “If the Secretary  
10 finds with respect to a petition under this subpara-  
11 graph, that there is substantial disagreement regard-  
12 ing the sufficiency or accuracy of the available data  
13 relevant to the petitioned action, the Secretary, in  
14 consultation with the States, may for the purpose of  
15 seeking additional data postpone making a finding  
16 under this subsection by no more than 18 months.”.

17 (3) PRIORITIZATION ALLOWED.—Section 4(b) is  
18 further amended in paragraph (2), as redesignated  
19 by section 5(b)(1) of this Act, in subparagraph  
20 (B)(iii) by amending subclause (I) to read as follows:

21 “(I) the immediate proposal and timely  
22 promulgation of a final regulation implementing  
23 the petitioned action in accordance with para-  
24 graphs (5) and (6) is precluded within current  
25 fiscal year funding by higher priority pending

1 proposals determined by the Secretary to in-  
2 volve species at greater risk of extinction, and”.

3 (b) IMPLEMENTING REGULATIONS.—

4 (1) PROPOSED REGULATIONS.—Section 4(b)  
5 (16 U.S.C. 1533(b)) is amended—

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

8 (i) in clause (i) by striking “, and”  
9 and inserting a semicolon;

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

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

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

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

19 “(iii) maintain, and shall make available, a  
20 complete record of all information not protected by  
21 copyright concerning the determination or revision in  
22 the possession of the Secretary, on a publicly acces-  
23 sible website on the Internet, including an index to  
24 such information.”; and

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

1           “(8)(A) Information maintained and made  
2 available under paragraph (5)(A)(iii) shall include  
3 any status review, all information not protected by  
4 copyright cited in such a status review, all informa-  
5 tion referred to in the proposed regulation and the  
6 preamble to the proposed regulation, and all infor-  
7 mation submitted to the Secretary by third parties.

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

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

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

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

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

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

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

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

7 (D) by striking subparagraph (C).

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

12 (A) in the matter preceding subparagraph  
13 (A), by inserting "with respect to a determina-  
14 tion of a species to be an endangered species"  
15 after "any regulation"; and

16 (B) in subparagraph (B), by striking "the  
17 State agency in" and inserting "the Governor  
18 of, and State agency in,".

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

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

22 "(3) Each determination under paragraph (2)(B)  
23 shall consider the following as applicable:



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

4           “(B) If the recovery plan is issued before the  
5 criteria required under section 5(c)(1)(A) are estab-  
6 lished or if no recovery plan exists for the species,  
7 the factors for determination that a species is an en-  
8 dangered species or a threatened species set forth in  
9 subsections (a)(1) and (b)(1).

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

13           “(D) A determination that the species is no  
14 longer an endangered species or threatened species  
15 or in danger of extinction, based on an analysis of  
16 the factors that are the basis for listing under sec-  
17 tion 4(a)(1).”.

18 **SEC. 8. PROTECTIVE REGULATIONS.**

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

20           (1) inserting “(1)” before “Whenever”;

21           (2) inserting “in consultation with the States”  
22 after “the Secretary shall”; and

23           (3) adding at the end the following new para-  
24 graphs:

1       “(2) Each regulation published under this subsection  
2 after the enactment of the Threatened and Endangered  
3 Species Recovery Act of 2005 shall be accompanied with  
4 a statement by the Secretary of the reason or reasons for  
5 applying any particular prohibition to the threatened spe-  
6 cies.

7       “(3) A regulation issued under this subsection after  
8 the enactment of the Threatened and Endangered Species  
9 Recovery Act of 2005 may apply to more than one threat-  
10 ened species only if the specific threats to, and specific  
11 biological conditions and needs of, the species are iden-  
12 tical, or sufficiently similar, to warrant the application of  
13 identical prohibitions.

14       “(4) The Secretary may review regulations issued  
15 under this subsection prior to the enactment of the  
16 Threatened and Endangered Species Recovery Act of  
17 2005. A species afforded protections by any such regula-  
18 tion shall continue to be afforded those protections until  
19 such time as the Secretary shall review the regulations  
20 issued prior to the enactment of the Threatened and En-  
21 dangered Species Recovery Act of 2005 as they pertain  
22 to that species.”.

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

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

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

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

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

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

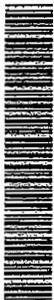
12 (C) by redesignating paragraph (4) as  
13 paragraph (5);

14 (D) in paragraph (3) by striking "and"  
15 after the semicolon at the end, and by inserting  
16 after paragraph (3) the following:

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

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

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



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

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

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

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

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

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

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

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

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



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

4           "RECOVERY PLANS AND LAND ACQUISITION

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

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

22          "(2) In the case of any species determined to be an  
23 endangered species or threatened species after the date of  
24 the enactment of the Threatened and Endangered Species  
25 Recovery Act of 2005, the Secretary shall publish a final

1 recovery plan for a species within 3 years after the date  
2 the species is listed under section 4(c).

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

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

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

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

22           “(i) a recovery plan for the species is not pub-  
23 lished under this Act before the date of enactment  
24 of the Threatened and Endangered Species Recovery  
25 Act of 2005 and the Secretary finds such a plan



1 would promote the conservation and survival of the  
2 species; or

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

7 “(C)(i) The Secretary shall, to the maximum extent  
8 practicable, adhere to the list and schedule published  
9 under subparagraph (A)(ii) in developing or revising re-  
10 covery plans pursuant to this paragraph.

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

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

20 “(5) The Secretary, using the priority ranking system  
21 required under paragraph (3), shall revise such plans  
22 within 10 years after the date of enactment of the Threat-  
23 ened and Endangered Species Recovery Act of 2005.

24 “(6) In development of recovery plans, the Secretary  
25 shall use comparative risk assessments, if appropriate, to

1 consider and analyze the short-term and long-term con-  
2 sequences of alternative recovery strategies.

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

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

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

18           “(iii) Estimates of the time required and the  
19 costs to carry out those measures described under  
20 clause (ii), including, to the extent practicable, esti-  
21 mated costs for any recommendations, by the recov-  
22 ery team, or by the Secretary if no recovery team is  
23 selected, that any of the areas identified under  
24 clause (iv) be acquired on a willing seller basis.

1           “(iv) An identification of those publicly owned  
2           areas of land or water that are necessary to achieve  
3           the purpose of the recovery plan under subsection  
4           (a), and, if such species is unlikely to be conserved  
5           on such areas, such other areas as are necessary to  
6           achieve the purpose of the recovery plan.

7           “(B) The Secretary may at the time of listing or at  
8           any time prior to the approval of a recovery plan for a  
9           species issue such guidance as the Secretary considers ap-  
10          propriate to assist Federal agencies, State agencies, and  
11          other persons in complying with the requirements of this  
12          Act by identifying either particular types of activities or  
13          particular areas of land or water within which those or  
14          other activities may impede the conservation of the spe-  
15          cies.

16          “(C) In specifying measures in a recovery plan under  
17          subparagraph (A), the Secretary shall—

18                 “(i) whenever possible include alternative meas-  
19                 ures; and

20                 “(ii) in developing such alternative measures,  
21                 seek to identify, among such alternative measures of  
22                 comparable expected efficacy and timeliness, the al-  
23                 ternative measures that are least costly.

24          “(2) In the case of any species for which critical habi-  
25          tat has been designated prior to the enactment of the



1 Threatened and Endangered Species Recovery Act of  
2 2005, and for which no recovery plan has been developed  
3 or revised after the enactment of such Act, the Secretary  
4 shall treat the critical habitat of the species as an area  
5 described in subparagraph (A)(iv) until a recovery plan  
6 for the species is developed or the existing recovery plan  
7 for the species is revised pursuant to subsection (b)(4).  
8 In determining, pursuant to section 7(a)(2), whether an  
9 agency action is likely to jeopardize the continued exist-  
10 ence of an endangered species or threatened species, the  
11 Secretary shall consider the effects of the action on any  
12 areas identified pursuant to subsection (b)(4).

13       “(d) RECOVERY TEAMS.—(1) The Secretary shall  
14 promulgate regulations that provide for the establishment  
15 of recovery teams that may advise the Secretary in the  
16 development of recovery plans under this section. The re-  
17 covery teams may help the Secretary ensure that recovery  
18 plans are scientifically rigorous and that the evaluation of  
19 costs required by paragraph (1)(A)(iii) of subsection (c)  
20 are economically rigorous.

21       “(2) Such regulations shall—

22               “(A) establish criteria and the process for se-  
23 lecting the members of recovery teams that ensure  
24 that each team—



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

3           “(ii) includes sufficient representation  
4           from scientists with relevant expertise and con-  
5           stituencies with a demonstrated direct interest  
6           in the species and its conservation or in the eco-  
7           nomic and social impacts of its conservation to  
8           ensure that the views of such constituencies will  
9           be considered in the development of the plan;  
10          and

11          “(B) include provisions regarding operating  
12          procedures of and recordkeeping by recovery teams.

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

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

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

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

5               “(i) changes in population, range, or  
6 threats; and

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

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

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

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



1 mitted by the Governor on behalf of a regional or local  
2 land use agency in the Governor's State.

3       “(h) INDIAN TRIBE DEFINED.—For purposes of this  
4 Act, the term ‘Indian tribe’ means—

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

8       “(2) with respect to Alaska, the Metlakatla Indian  
9 Community.

10       “(i) USE OF PLANS.—(1) Each Federal agency shall  
11 consider any relevant best available scientific data con-  
12 tained in a recovery plan in any analysis conducted under  
13 section 102 of the National Environmental Policy Act of  
14 1969 (42 U.S.C. 4332).

15       “(2)(A) The head of any Federal agency may enter  
16 into an agreement with the Secretary specifying the meas-  
17 ures the agency will carry out to implement a recovery  
18 plan.

19       “(B) Each such agreement shall be published in draft  
20 form with notice and an opportunity for public comment.

21       “(C) Each such final agreement shall be published,  
22 with responses by the head of the Federal agency to any  
23 public comments submitted on the draft agreement.

24       “(j) MONITORING.—(1) The Secretary shall imple-  
25 ment a system in cooperation with the States to monitor



1 effectively for not less than five years the status of all spe-  
2 cies that have recovered to the point at which the meas-  
3 ures provided pursuant to this Act are no longer necessary  
4 and that, in accordance with this section, have been re-  
5 moved from the lists published under section 4(c).

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

9 (b) CONFORMING AMENDMENTS.—

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

13 (2) The Marine Mammal Protection Act of  
14 1972 is amended—

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

18 (B) in section 115(b)(2) (16 U.S.C.  
19 1383b(b)(2)) by striking “section 4(f) of the  
20 Endangered Species Act of 1973 (16 U.S.C.  
21 1533(f))” and inserting “section 5 of the En-  
22 dangered Species Act of 1973”.

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

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



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

3 “(3)(A) Any cooperative agreement entered into by  
4 the Secretary under this subsection may also provide for  
5 development of a program for conservation of species de-  
6 termined to be candidate species pursuant to section  
7 4(b)(3)(B)(iii) or any other species that the State and the  
8 Secretary agree is at risk of being determined to be an  
9 endangered species or threatened species under section  
10 4(a)(1) in that State.

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

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

21 “(4) Any cooperative agreement entered into by the  
22 Secretary under this subsection that provides for the en-  
23 rollment of private lands or water rights in any program  
24 established by the agreement shall ensure that the decision



1 to enroll is voluntary for each owner of such lands or water  
2 rights.

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

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

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

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

14 (2) in subsection (d)(1)—

15 (A) by striking “pursuant to subsection (c)  
16 of this section”;

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

23 (C) in subparagraph (F), by striking  
24 “monitoring the status of candidate species”  
25 and inserting “developing a conservation pro-

1           gram for, or monitoring the status of, candidate  
2           species or other species determined to be at risk  
3           pursuant to subsection (c)(3)"; and

4           (3) in subsection (e)—

5                 (A) by inserting "(1)" before the first sen-  
6           tence;

7                 (B) in paragraph (1), as designated by  
8           subparagraph (A) of this paragraph, by striking  
9           "at no greater than annual intervals" and in-  
10          serting "every 3 years"; and

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

12          "(2) Any cooperative agreement entered into by the  
13          Secretary under subsection (c) shall be subject to section  
14          7(a)(2) through (d) and regulations implementing such  
15          provisions.

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

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



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

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

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

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

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

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



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

4 (2) in paragraph (2)—

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

10 (B) in the second sentence, by striking  
11 "best scientific and commercial data available"  
12 and inserting "best available scientific data";  
13 and

14 (C) by adding at the end the following: "In  
15 fulfilling the requirements of this paragraph,  
16 the Secretary shall take into account whether  
17 the adverse impacts to individuals of a species  
18 are outweighed by any conservation benefits to  
19 the species as a whole.".

20 (3) in paragraph (4)—

21 (A) by striking "listed under section 4"  
22 and inserting "an endangered species or a  
23 threatened species"; and

24 (B) by inserting ", under section 4" after  
25 "such species".

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

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

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

7 (3) in paragraph (3)(A)—

8 (A) in the first sentence—

9 (i) by striking “Promptly after” and  
10 inserting “Before”;

11 (ii) by inserting “permit or license”  
12 before “applicant”; and

13 (iii) by inserting “proposed” before  
14 “written statement”; and

15 (B) by striking all after the first sentence  
16 and inserting the following: “The Secretary  
17 shall consider any comment from the Federal  
18 agency and the permit or license applicant, if  
19 any, prior to issuance of the final written state-  
20 ment of the Secretary’s opinion. The Secretary  
21 shall issue the final written statement of the  
22 Secretary’s opinion by providing the written  
23 statement to the Federal agency and the permit  
24 or license applicant, if any, and publishing no-  
25 tice of the written statement in the Federal



1 Register. If jeopardy is found, the Secretary  
2 shall suggest in the final written statement  
3 those reasonable and prudent alternatives, if  
4 any, that the Secretary believes would not vio-  
5 late subsection (a)(2) and can be taken by the  
6 Federal agency or applicant in implementing  
7 the agency action. The Secretary shall cooper-  
8 ate with the Federal agency and any permit or  
9 license applicant in the preparation of any sug-  
10 gested reasonable and prudent alternatives.”;

11 (4) in paragraph (4)—

12 (A) by redesignating subparagraphs (A),  
13 (B), and (C) as clauses (i), (ii), and (iii), re-  
14 spectively;

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

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

23 “(B) A statement described in this subparagraph—

24 ”; and

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



1       “(5)(A) Any terms and conditions set forth pursuant  
2 to paragraph (4)(B)(iv) shall be no more than necessary  
3 to offset the impact of the incidental taking identified pur-  
4 suant to paragraph (4) in the written statement prepared  
5 under paragraph (3).

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

9           “(i) must be capable of successful implementa-  
10 tion; and

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

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

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

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



1 (d) MODIFICATION OF AN ENDANGERED SPECIES  
2 COMMITTEE PROCESS.—Section 7 (16 U.S.C. 1536) is  
3 amended—

4 (1) by repealing subsection (j);

5 (2) by redesignating the remaining subsections  
6 accordingly; and

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

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

16 (B) by striking the second sentence.

17 **SEC. 13. EXCEPTIONS TO PROHIBITIONS.**

18 (a) INCIDENTAL TAKE PERMITS.—Section 10(a)(2)  
19 (16 U.S.C. 1539(a)(2)) is amended—

20 (1) in subparagraph (A) by striking “and” after  
21 the semicolon at the end of clause (iii), by redesignig-  
22 nating clause (iv) as clause (vii), and by inserting  
23 after clause (iii) the following:

24 “(iv) objective, measurable biological goals to be  
25 achieved for species covered by the plan and specific



1 measures for achieving such goals consistent with  
2 the requirements of subparagraph (B);

3 “(v) measures the applicant will take to monitor  
4 impacts of the plan on covered species and the effec-  
5 tiveness of the plan’s measures in achieving the  
6 plan’s biological goals;

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

12 (2) in subparagraph (B) by striking “and”  
13 after the semicolon at the end of clause (iv), by re-  
14 designating clause (v) as clause (vi), and by insert-  
15 ing after clause (iv) the following:

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

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

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

23 “(III) the adequacy of information under-  
24 lying the plan;



1           “(IV) the length of time necessary to im-  
2           plement and achieve the benefits of the plan;  
3           and

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

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

8           “(3) Any terms and conditions offered by the Sec-  
9           retary pursuant to paragraph (2) (B) to reduce or offset  
10          the impacts of incidental taking shall be no more than nec-  
11          essary to offset the impact of the incidental taking speci-  
12          fied in the conservation plan pursuant to in paragraph  
13          (2) (A) (i).

14          “(4) (A) If the holder of a permit issued under this  
15          subsection for other than scientific purposes is in compli-  
16          ance with the terms and conditions of the permit, and any  
17          conservation plan or agreement incorporated by reference  
18          therein, the Secretary may not require the holder, without  
19          the consent of the holder, to adopt any new minimization,  
20          mitigation, or other measure with respect to any species  
21          adequately covered by the permit during the term of the  
22          permit, except as provided in subparagraphs (B) and (C)  
23          to meet circumstances that have changed subsequent to  
24          the issuance of the permit.



1       “(B) For any circumstance identified in the permit  
2 or incorporated document that has changed, the Secretary  
3 may, in the absence of consent of the permit holder, re-  
4 quire only such additional minimization, mitigation, or  
5 other measures as are already provided in the permit or  
6 incorporated document for such changed circumstance.

7       “(C) For any changed circumstance not identified in  
8 the permit or incorporated document, the Secretary may,  
9 in the absence of consent of the permit holder, require only  
10 such additional minimization, mitigation, or other meas-  
11 ures to address such changed circumstance that do not  
12 involve the commitment of any additional land, water, or  
13 financial compensation not otherwise committed, or the  
14 imposition of additional restrictions on the use of any  
15 land, water or other natural resources otherwise available  
16 for development or use, under the original terms and con-  
17 ditions of the permit or incorporated document.

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

22       “(E) All permits issued under this subsection on or  
23 after the date of the enactment of the Threatened and  
24 Endangered Species Recovery Act of 2005, other than per-  
25 mits for scientific purposes, shall contain the assurances



1 contained in subparagraphs (B) through (D) of this para-  
2 graph and paragraph (5)(A) and (B). Permits issued  
3 under this subsection on or after March 25, 1998, and  
4 before the date of the enactment of the Threatened and  
5 Endangered Species Recovery Act of 2005, other than per-  
6 mits for scientific purposes, shall be governed by the appli-  
7 cable sections of parts 17.22(b), (c), and (d), and  
8 17.32(b), (c), and (d) of title 50, Code of Federal Regula-  
9 tions, as the same exist on the date of the enactment of  
10 the Threatened and Endangered Species Act of 2005.

11       “(F) If the Secretary determines that a conservation  
12 plan under this subsection reasonably can be expected to  
13 fail to achieve the goals specified under paragraph  
14 (2)(A)(iv), the Secretary shall, at the Secretary’s expense,  
15 implement remedial conservation measures. Nothing in the  
16 preceding sentence shall be construed to allow the Sec-  
17 retary to require the holder of a permit issued under this  
18 subsection to undertake any additional measures without  
19 the consent of the holder.

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

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



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

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

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

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

14       (c) EXPERIMENTAL POPULATIONS.—Section 10(j)  
15 (16 U.S.C. 1539(j)) is amended—

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



1 occupied by nonexperimental populations of the  
2 same species. For purposes of this subsection, the  
3 term 'areas occupied by nonexperimental popu-  
4 lations' means areas characterized by the sustained  
5 and predictable presence of more than negligible  
6 numbers of successfully reproducing individuals over  
7 a period of many years.”;

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

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

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

16 “(k) WRITTEN DETERMINATION OF COMPLIANCE.—  
17 (1) A property owner (in this subsection referred to as  
18 a ‘requester’) may request the Secretary to make a written  
19 determination as to whether a proposed use of the owner’s  
20 property that is lawful under State and local law will re-  
21 quire a permit under section 10(a), by submitting a writ-  
22 ten description of the proposed action to the Secretary by  
23 certified mail.

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

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

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

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

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

22       “(5)(A) Subject to subparagraph (B), the Secretary  
23 shall provide to the requestor a written determination of  
24 whether the proposed use, as proposed by the requestor,  
25 will require a permit under section 10(a), by not later than



1 expiration of the 180-day period beginning on the date of  
2 the submission of the request.

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

6       “(6) At the end of each fiscal year, the Secretary  
7 shall transmit a report to the Congress listing the requests  
8 to which the Secretary did not provide a requestor a timely  
9 response under paragraph (5)(A) or (B), the status of  
10 those requests at the time of transmittal of the report,  
11 and an explanation for the circumstances that prevented  
12 the Secretary from providing any such requestor with a  
13 timely response.

14       “(7) This subsection shall not apply with respect to  
15 agency actions that are subject to consultation under sec-  
16 tion 7.”.

17       (e) NATIONAL SECURITY EXEMPTION.—Section 10  
18 (16 U.S.C. 1539) is further amended by adding at the  
19 end the following:

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



1 **SEC. 14. PRIVATE PROPERTY CONSERVATION.**

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

4 "PRIVATE PROPERTY CONSERVATION PROGRAM

5 "SEC. 13. (a) ESTABLISHMENT OF PROGRAM.—

6 "(1) REQUIREMENT.—The Secretary shall es-  
7 tablish a Private Property Conservation Program to  
8 improve the habitat and promote the conservation,  
9 on private lands, of endangered species, threatened  
10 species, and species that are candidates to be deter-  
11 mined to be endangered species or threatened spe-  
12 cies.

13 "(2) AGREEMENTS AUTHORIZED.—The Sec-  
14 retary may enter into an agreement with a private  
15 property owner under which the Secretary shall, sub-  
16 ject to appropriations, make annual or other pay-  
17 ments to the person to implement the agreement.

18 "(3) CONTENTS.—Any agreement the Secretary  
19 enters into under this section shall—

20 "(A) specify a management plan that the  
21 private property owner shall commit to imple-  
22 ment on the property of the private property  
23 owner, including—

24 "(i) an identification of the species  
25 and habitat covered by the plan;



1           “(ii) a finding by the Secretary that  
2           the land to which the agreement applies is  
3           appropriate for the species and habitat  
4           covered by the agreement;

5           “(iii) a description of the activities the  
6           private property owner shall undertake to  
7           conserve the species and to create, restore,  
8           enhance, or protect habitat; and

9           “(iv) a description of the existing or  
10          future economic activities on the land to  
11          which the agreement applies that are com-  
12          patible with the goals of the program.

13          “(B) specify the terms of the agreement,  
14          including—

15                 “(i) the terms of payment to be pro-  
16                 vided by the Secretary to the private prop-  
17                 erty owner;

18                 “(ii) a description of any technical as-  
19                 sistance the Secretary will provide to the  
20                 private property owner to implement the  
21                 management plan;

22                 “(iii) the terms and conditions under  
23                 which the Secretary and the private prop-  
24                 erty owner mutually agree that the agree-  
25                 ment may be modified or terminated;



1           “(iv) acts or omissions by the Sec-  
2           retary or the private property owner that  
3           shall be considered violations of the agree-  
4           ment, and procedures under which notice  
5           and an opportunity to remedy any violation  
6           by the private property owner shall be  
7           given;

8           “(v) a finding by the Secretary that  
9           the private property owner owns the land  
10          to which the agreement applies or has suf-  
11          ficient control over the use of such land to  
12          ensure implementation of agreement; and

13          “(vi) such other duties of the Sec-  
14          retary and of the private property owner as  
15          are appropriate.

16          “(4) COST SHARE.—The Secretary may provide  
17          up to 70 percent of the cost to implement the man-  
18          agement plan under the terms of the agreement.

19          “(5) PRIORITY.—In entering into agreements  
20          under this section, the Secretary shall give priority  
21          to those agreements—

22                  “(A) that apply to areas identified under  
23                  section 5(c)(1)(A)(iv); and

24                  “(B) reasonably can be expected to achieve  
25                  the greatest benefit for the conservation of the

1 species covered by the agreement relative to the  
2 total amount of funds to be expended to imple-  
3 ment the agreement.

4 “(6) TECHNICAL ASSISTANCE.—Any State  
5 agency, local government, nonprofit organization, or  
6 federally recognized Indian tribe may provide tech-  
7 nical assistance to a private property owner in the  
8 preparation of a management plan, or participate in  
9 the implementation of a management plan, including  
10 identifying and making available certified fisheries  
11 or wildlife biologists with expertise in the conserva-  
12 tion of species.

13 “(7) TRANSFER OF PROPERTY.—Upon any con-  
14 veyance or other transfer of interest in land that is  
15 subject to an agreement under this section

16 “(A) the agreement shall continue in effect  
17 with respect to such land, with the same terms  
18 and conditions, if the person to whom the land  
19 or interest is conveyed or otherwise transferred  
20 notifies the Secretary of the person’s election to  
21 continue the agreement by not later than 30  
22 days after the date of the conveyance or other  
23 transfer;



1           “(B) the agreement shall terminate if the  
2           agreement does not continue in effect under  
3           subparagraph (A); and

4           “(C) the person to whom the land or inter-  
5           est is conveyed or otherwise transferred may  
6           seek a new agreement under this section.

7           “(8) MODEL FORM OF AGREEMENT.—Not later  
8           than 1 year after the date of the enactment of the  
9           Threatened and Endangered Species Act of 2005,  
10          the Secretary shall establish a model form of agree-  
11          ment that a person may enter into with the Sec-  
12          retary under this section.

13          “(9) VOLUNTARY PROGRAM.—

14                 “(A) AGREEMENTS MAY NOT BE RE-  
15                 QUIRED.—The Secretary, or any other Federal  
16                 official, may not require a person to enter into  
17                 an agreement under this section as a term or  
18                 condition of any right, privilege, or benefit, or  
19                 of any action or refraining from any action,  
20                 under this or any other law.

21                 “(B) REQUIREMENTS UNDER LAWS AND  
22                 PERMITS.—None of the activities otherwise re-  
23                 quired by law or by the terms of any permit  
24                 may be included in any agreement under this  
25                 section.

1           “(10) RELATIONSHIP TO HABITAT CONSERVA-  
2           TION PLANS.—The Secretary may consider an agree-  
3           ment under this subsection that applies to an endan-  
4           gered species or threatened species in determining  
5           the adequacy of a conservation plan for the purpose  
6           of section 10(a)(2).

7           “(b) TECHNICAL ASSISTANCE PROGRAM FOR SMALL  
8           LANDOWNERS.—

9           “(1) IN GENERAL.—The Secretary shall estab-  
10          lish a program to offer technical assistance to own-  
11          ers of private property seeking guidance on the con-  
12          servation of endangered species or threatened spe-  
13          cies, or species that are candidates for being deter-  
14          mined to be endangered species or threatened spe-  
15          cies.

16          “(2) ALLOWABLE ACTIVITIES.—Upon request,  
17          the Secretary may provide technical assistance to an  
18          owner of private property for the purpose of—

19                 “(A) helping to prepare and implement a  
20                 conservation agreement under subsection (a);

21                 “(B) training the managers of private  
22                 property in best practices to conserve species  
23                 and create, restore, enhance, and protect habi-  
24                 tat for species;

1           “(C) helping to prepare an application for  
2           a permit and a conservation plan under section  
3           10(a); and

4           “(D) any other purpose the Secretary de-  
5           termines is appropriate to meet the goals of the  
6           program under subsection (a).

7           “(3) PRIORITY.—The Secretary shall give pri-  
8           ority in offers of technical assistance to owners of  
9           private property that the Secretary determines can-  
10          not reasonably be expected to afford adequate tech-  
11          nical assistance.

12          “(4) FUNDING FOR PROGRAM.—For any year  
13          for which funds are appropriated to carry out this  
14          Act, 10 percent shall be for carrying out this sub-  
15          section, unless the Secretary determines for any fis-  
16          cal year that a smaller percentage is sufficient and  
17          submits a report to the Congress containing the per-  
18          centage and an explanation of the basis for the de-  
19          termination.”.

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

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

23                 “PUBLIC ACCESSIBILITY AND ACCOUNTABILITY

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

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



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

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

5           “(4) all draft and final recovery plans issued  
6 under section 5(a), and all final recovery plans  
7 issued and in effect under section 4(f)(1) of this Act  
8 as in effect immediately before the enactment of the  
9 Threatened and Endangered Species Recovery Act of  
10 2005;

11           “(5) all reports required under sections 5(e)  
12 and 16, and all reports required under sections  
13 4(f)(3) and 18 of this Act as in effect immediately  
14 before the enactment of the Threatened and Endan-  
15 gered Species Recovery Act of 2005; and

16           “(6) to the extent practicable, data contained in  
17 the reports referred to in paragraph (5) of this sec-  
18 tion, and that were produced after the date of enact-  
19 ment of the Threatened and Endangered Species  
20 Recovery Act of 2005, in the form of databases that  
21 may be searched by the variables included in the re-  
22 ports.”.

23 **SEC. 16. ANNUAL COST ANALYSES.**

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

1 "ANNUAL COST ANALYSIS BY UNITED STATES FISH AND  
2 WILDLIFE SERVICE

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

10 "(b) SPECIFICATION OF EXPENDITURES.—Each re-  
11 port under this section shall specify—

12 "(1) expenditures of Federal funds on a spe-  
13 cies-by-species basis, and expenditures of Federal  
14 funds that are not attributable to a specific species;

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

19 "(3) based on data submitted pursuant to sub-  
20 section (c), expenditures voluntarily reported by local  
21 governmental entities on a species-by-species basis,  
22 and such expenditures that are not attributable to a  
23 specific species.

24 "(c) ENCOURAGEMENT OF VOLUNTARY SUBMISSION  
25 OF DATA BY LOCAL GOVERNMENTS.—The Secretary shall



1 "REIMBURSEMENT FOR DEPREDATION OF LIVESTOCK BY  
2 REINTRODUCED SPECIES

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

11 "(b) USE OF DONATIONS.—The Secretary may ac-  
12 cept and use donations of funds to pay reimbursement  
13 under this section.

14 "(c) AVAILABILITY OF APPROPRIATIONS.—The re-  
15 quirement to pay reimbursement under this section is sub-  
16 ject to the availability of funds for such payments."

17 **SEC. 18. AUTHORIZATION OF APPROPRIATIONS.**

18 (a) AUTHORIZATION.—The Endangered Species Act  
19 of 1973 is further amended by adding at the end the fol-  
20 lowing:

21 "AUTHORIZATION OF APPROPRIATIONS

22 "SEC. 18. (a) IN GENERAL.—There are authorized  
23 to be appropriated to carry out this Act, other than section  
24 8A(e)—

25 "(1) to the Secretary of the Interior to carry  
26 out functions and responsibilities of the Department

1 of the Interior under this Act, such sums as are nec-  
2 essary for fiscal years 2006 through 2010; and

3 “(2) to the Secretary of Agriculture to carry  
4 out functions and responsibilities of the Department  
5 of the Interior with respect to the enforcement of  
6 this Act and the convention which pertain the impor-  
7 tation of plants, such sums as are necessary for fis-  
8 cal year 2006 through 2010.

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

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

16 **SEC. 19. MISCELLANEOUS TECHNICAL CORRECTIONS.**

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

19 (1) in subsection (a) in the first sentence by  
20 striking “any endangered species or threatened spe-  
21 cies listed” and inserting “any species determined to  
22 be an endangered species or a threatened species”;  
23 and

24 (2) in subsection (b) in paragraph (1), by strik-  
25 ing “endangered species and threatened species list-



1 ed” and inserting “species determined to be endan-  
2 gered species and threatened species”.

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

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

8 (2) in subsection (d), by striking “Merchant  
9 Marine and Fisheries” and inserting “Resources”;  
10 and

11 (3) in subsection (e)—

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

15 (B) by striking paragraph (3) and redesign-  
16 ating paragraph (4) as paragraph (3).

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

19 (1) in subsection (a)—

20 (A) in paragraph (1), in the matter pre-  
21 ceding subparagraph (A), by striking “of this  
22 Act, with respect to any endangered species of  
23 fish or wildlife listed pursuant to section 4 of  
24 this Act” and inserting “, with respect to any

1 species of fish or wildlife determined to be an  
2 endangered species under section 4”;

3 (B) in paragraph (1)(G), by striking  
4 “threatened species of fish or wildlife listed pur-  
5 suant to section 4 of this Act” and inserting  
6 “species of fish or wildlife determined to be a  
7 threatened species under section 4”;

8 (C) in paragraph (2), in the matter pre-  
9 ceding subparagraph (A), by striking “of this  
10 Act, with respect to any endangered species of  
11 plants listed pursuant to section 4 of this Act”  
12 and inserting “, with respect to any species of  
13 plants determined to be an endangered species  
14 under section 4”;

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

19 (2) in subsection (b)—

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

22 (B) in paragraph (1), in the first sentence,  
23 by striking “adding such” and all that follows  
24 through “: *Provided, That*” and inserting “de-  
25 termining such fish or wildlife species to be an

1           endangered species or a threatened species  
2           under section 4, if"; and

3           (C) in paragraph (1), in the second sen-  
4           tence, by striking "adding such" and all that  
5           follows through "this Act" and inserting "deter-  
6           mining such fish or wildlife species to be an en-  
7           dangered species or a threatened species under  
8           section 4";

9           (3) in subsection (c)(2)(A), by striking "an en-  
10          dangered species listed" and inserting "a species de-  
11          termined to be an endangered species";

12          (4) in subsection (d)(1)(A), by striking clause  
13          (i) and inserting the following: "(i) are not deter-  
14          mined to be endangered species or threatened spe-  
15          cies under section 4, and";

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

20          (6) in subsection (f)—

21               (A) in paragraph (1), in the first sentence,  
22               by striking clause (A) and inserting the fol-  
23               lowing: "(A) are not determined to be endan-  
24               gered species or threatened species under sec-  
25               tion 4, and"; and



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

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

5 (1) in paragraph (1)—

6 (A) by striking "an endangered species"  
7 and all that follows through "section 4 of this  
8 Act" and inserting "an endangered species or a  
9 threatened species and the subsequent deter-  
10 mination that the species is an endangered spe-  
11 cies or a threatened species under section 4";

12 (B) by striking "section 9(a) of this Act"  
13 and inserting "section 9(a)"; and

14 (C) by striking "fish or wildlife listed by  
15 the Secretary as endangered" and inserting  
16 "fish or wildlife determined to be an endan-  
17 gered species or threatened species by the Sec-  
18 retary"; and

19 (2) in paragraph (2)—

20 (A) by inserting "or a threatened species"  
21 after "endangered species" each place it ap-  
22 pears; and

23 (B) in subparagraph (B), by striking "list-  
24 ed species" and inserting "endangered species  
25 or threatened species".



1 (e) PERMIT AND EXEMPTION POLICY.—Section  
2 10(d) (16 U.S.C. 1539(d)) is amended—

3 (1) by inserting “or threatened species” after  
4 “endangered species”; and

5 (2) by striking “of this Act”.

6 (f) PRE-ACT PARTS AND SCRIMSHAW.—Section 10(f)  
7 (16 U.S.C. 1539(f)) is amended—

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

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

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

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

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

1 (j) SUBSTITUTION OF GENDER-NEUTRAL REF-  
2 ERENCES.—

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

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

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

10 (C) Section 4(b)(7) (16 U.S.C.  
11 1533(b)(7)), in the matter following subpara-  
12 graph (B).

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

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

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

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

17 (H) Section 10(b)(3) (16 U.S.C.  
18 1539(b)(3)).

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

20 (J) Section 10(e)(4) (16 U.S.C.  
21 1539(e)(4)).

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

24 (L) Section 11(e)(5) (16 U.S.C.  
25 1540(e)(5)).

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

4           (3) "SECRETARY OF THE INTERIOR" FOR  
5 "HE".—Section 8(b)(3) (16 U.S.C. 1537(b)(3)) is  
6 amended by striking "he" and inserting "the Sec-  
7 retary of the Interior".

8           (4) "PERSON" FOR "HE".—The following provi-  
9 sions are amended by striking "he" each place it ap-  
10 pears and inserting "the person":

11           (A) Section 10(f)(3) (16 U.S.C.  
12 1539(f)(3)).

13           (B) Section 11(e)(3) (16 U.S.C.  
14 1540(e)(3)).

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

18           (A) Section 11(a)(3) (16 U.S.C.  
19 1540(a)(3)).

20           (B) Section 11(b)(3) (16 U.S.C.  
21 1540(b)(3)).

22           (6) REFERENCES TO "HIM".—

23           (A) Section 4(c)(1) (16 U.S.C. 1533(c)(1))  
24 is amended by striking "him or the Secretary of



1 Commerce" each place it appears and inserting  
2 "the Secretary".

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

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

11 (D) Section 7(a)(1) (16 U.S.C.  
12 1536(a)(1)) is amended in the first sentence by  
13 striking "him" and inserting "the Secretary".

14 (E) Section 8A(c)(2) (16 U.S.C.  
15 1537a(c)(2)) is amended by striking "him" and  
16 inserting "the Secretary".

17 (F) Section 9(d)(2)(A) (16 U.S.C.  
18 1538(d)(2)(A)) is amended by striking "him"  
19 each place it appears and inserting "such per-  
20 son".

21 (G) Section 10(b)(1) (16 U.S.C.  
22 1539(b)(1)) is amended by striking "him" and  
23 inserting "the Secretary".

24 (7) REFERENCES TO "HIMSELF OR HER-  
25 SELF".—Section 11 (16 U.S.C. 1540) is amended in

1 subsections (a) (3) and (b) (3) by striking "himself or  
2 herself" each place it appears and inserting "the de-  
3 fendant".

4 (8) REFERENCES TO "HIS".—

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

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

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

13 (ii) in subsection (e)(1), as designated  
14 by section 10(3)(A) of this Act, by striking  
15 "his periodic review" and inserting "peri-  
16 odic review by the Secretary".

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

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

23 (E) Section 9 (16 U.S.C. 1538) is amend-  
24 ed in subsection (d)(2)(B) and subsection (f) by

1 striking "his" each place it appears and insert-  
2 ing "such person's".

3 (F) Section 10(b)(3) (16 U.S.C.  
4 1539(b)(3)) is amended by striking "his" and  
5 inserting "the Secretary's".

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

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

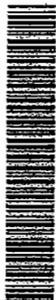
10 (i) in subsection (a)(1) by striking  
11 "his" and inserting "the Secretary's";

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

15 (iii) in subsection (d) by striking  
16 "his" and inserting "the officer's or em-  
17 ployee's";

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

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



1 **SEC. 20. ESTABLISHMENT OF SCIENCE ADVISORY BOARD.**

2 The Endangered Species Act of 1973 (16 U.S.C.  
3 1531 et seq.) is further amended by adding at the end  
4 the following:

5 "SCIENCE ADVISORY BOARD

6 "SEC. 19.

7 "(a) IN GENERAL.—Within 12 months after the date  
8 of the enactment of the Threatened and Endangered Spe-  
9 cies Recovery Act of 2005, the Secretary of Interior,  
10 through the Director of the United States Fish and Wild-  
11 life Service, shall establish a Science Advisory Board (in  
12 this section referred to as the 'Board') to provide such  
13 scientific advice as may be requested by the Secretary to  
14 assist in the evaluation of the use of science in imple-  
15 menting this Act, including in the development of policies  
16 and procedures pertaining to the use of scientific informa-  
17 tion.

18 "(b) COMPOSITION.—The Board shall each consist of  
19 9 members appointed by the Secretary of the Interior from  
20 a list of nominees recommended by the National Academy  
21 of Sciences, utilizing a system of staggered 3-year terms  
22 of appointment. One member shall be elected by the mem-  
23 bers of the Board as its Chairman. Members of the Board  
24 shall be selected on the basis of their professional quali-  
25 fications in the areas of ecology, fish and wildlife manage-  
26 ment, plant ecology, or natural resource conservation.

1 Members of the Board shall not hold another office or po-  
2 sition in the Federal Government. If a vacancy occurs on  
3 the Board due to expiration of a term, resignation, or any  
4 other reason, each replacement shall be selected by the  
5 Secretary from a group of at least 4 nominees rec-  
6 ommended by the National Academy of Sciences. The Sec-  
7 retary may extend the term of a Board member until the  
8 new member is appointed to fill the vacancy. If a vacancy  
9 occurs due to resignation, or reason other than expiration  
10 of a term, the Secretary shall appoint a member to serve  
11 during the unexpired term utilizing the nomination proc-  
12 ess set forth in this subsection. The Secretary shall pub-  
13 lish in the Federal Register the name, business address,  
14 and professional affiliations of each appointee.

15 . "(c) COMPENSATION.—Each member of the Board  
16 shall receive per diem compensation at a rate not in excess  
17 of that fixed for GS-15 of the General Schedule as may  
18 be determined by the Secretary of the Interior.

19 "(d) STAFF.—Upon the recommendation of the  
20 Board, the Secretary of the Interior shall make available  
21 employees as necessary to exercise and fulfill the Board's  
22 responsibilities. "

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

24 The table of contents in the first section is  
25 amended—

1 (1) by striking the item relating to section 5

2 and inserting the following:

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

3 ; and

4 (2) by striking the items relating to sections 13

5 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."

