

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
POMBO OF CALIFORNIA, OR HIS
DESIGNEE, DEBATABLE FOR 20 MINUTES:

*Revised
Used #7*

**EN BLOC AMENDMENTS TO H.R. 3824
OFFERED BY MR. POMBO OF CALIFORNIA**

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

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

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

3 “(i) compliance with guidance issued under sec-
4 tion 515 of the Treasury and General Government
5 Appropriations Act of 2001 (Public Law 106-554;
6 114 Stat. 2763A-171) by the Director of the Office
7 of Management and Budget and the Secretary;

8 “(ii) data consists of empirical data; or

9 “(iii) data is found in sources that have been
10 subject to peer review by qualified individuals rec-
11 ommended by the National Academy of Sciences to
12 serve as independent reviewers for a covered action
13 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:



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

Page 6, after line 24, insert the following:

6 (d) ANALYSIS OF IMPACTS AND BENEFITS.—Section
 7 4(a) (16 U.S.C. 1533(a)), as amended by section 4(a) of
 8 this Act, is further amended by striking paragraph (3) and
 9 inserting the following:

10 “(4)(A) The Secretary shall, concurrently with mak-
 11 ing a determination under paragraph (1) that a species
 12 is an endangered species or a threatened species, prepare
 13 an analysis of—

14 “(i) the economic impact and benefit of that de-
 15 termination;

16 “(ii) the impact and benefit on national security
 17 of that determination; and

18 “(iii) any other relevant impact and benefit of
 19 that determination.

20 “(B) Nothing in this paragraph shall delay the Sec-
 21 retary’s decision or change the criteria used in making de-
 22 terminations 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:

1 “(B) Nothing in this paragraph shall be construed
2 to affect the authority of the Secretary to issue any emer-
3 gency 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:

4 “(F) A species conservation contract agreement may
5 list other Federal program payments that incidentally con-
6 tribute to conservation of a listed species. The head of a
7 Federal agency shall not use the payments for the pur-
8 poses of implementing the species conservation contract
9 agreement.



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

1 “(i) addresses or affects species that are
2 determined to be endangered species or threat-
3 ened species and the species were not addressed
4 or the effects were not considered previously in
5 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 “(6) This subsection shall not apply to any agency
7 action that may affect any species for which a permit is
8 issued under section 10 for other than scientific purposes,
9 if the action implements or is consistent with any con-
10 servation plan or agreement incorporated by reference in
11 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:

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

4 “(n) EXEMPTION FROM LIABILITY FOR TAKE OF
5 LISTED AQUATIC SPECIES.—The operator of a water stor-
6 age reservoir, water diversion structure, canal, or other ar-
7 tificial water delivery facility shall not be in violation of
8 section 9(a) by reason of any take of any aquatic species
9 listed under section 4(c) that results from predation, com-

1 petition, or other adverse effects attributable to rec-
2 reational fishing programs managed by a State Agency in
3 a river basin in which the water storage reservoir, water
4 diversion structure, canal, or other artificial water delivery
5 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:

1 “(d) AUTHORIZATION OF APPROPRIATIONS.—Pay-
2 ments under this section are subject to appropriations.”.

At the end of the bill add the following:

3 **SEC. 21. CONSOLIDATION OF PROGRAMS.**

4 (a) TRANSFER.—The President shall, by not later
5 than one year after the date of enactment of this Act,
6 transfer to the Secretary of the Interior all duties, re-
7 sources, and responsibilities of the Secretary of Commerce
8 under the Endangered Species Act of 1973 existing imme-
9 diately before the enactment of this Act.

10 (b) CONFORMING AMENDMENT.—

11 (1) AMENDMENT.—Section 3 (16 U.S.C. 1532)
12 is further amended in paragraph (15) (relating to
13 the definition of “Secretary”) by striking “or the
14 Secretary of Commerce as program responsibilities
15 are vested pursuant to the provisions of Reorganiza-
16 tion Plan Numbered 4 of 1970”.

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

20 (c) REPORT.—No later than 180 days after the date
21 of enactment of this Act, the Secretary of the Interior and
22 the Secretary of Commerce shall jointly submit to the



1 Committee on Resources and the Committee on Appro-
2 priations of the House of Representatives, and the Com-
3 mittee on Environment and Public Works and the Com-
4 mittee on Appropriations of the Senate, a detailed descrip-
5 tion of the process by which the transfer of functions
6 under the amendment made by subsection (a) shall be im-
7 plemented.

8 (d) PRIOR DETERMINATIONS AND ACTIONS NOT AF-
9 FECTED.—This section shall not affect any determination
10 or action by the Secretary of Commerce made or taken,
11 respectively, under the Endangered Species Act of 1973
12 before the date of the enactment of this Act, except that
13 such determinations and actions shall be treated as deter-
14 minations and actions, respectively, of the Secretary of the
15 Interior.

16 **SEC. 22. REVIEW OF PROTECTIVE REGULATIONS.**

17 The Secretary of the Interior shall—

18 (1) review regulations issued before the date of
19 the enactment of this Act pursuant to section 4(d)
20 of the Endangered Species Act of 1973, in order to
21 determine whether revision of such regulations would
22 be desirable in order to facilitate and improve co-
23 operation with the States pursuant to section 6 of
24 such Act; and



1 (2) report to the Committee on Resources of
2 the House of Representatives and the Committee on
3 Environment and Public Works of the Senate re-
4 garding the findings of such review.

5 **SEC. 23. PROVISION OF INFORMATION REGARDING COM-**
6 **PLIANCE COSTS OF FEDERAL POWER ADMIN-**
7 **ISTRATIONS.**

8 (a) CUSTOMER BILLINGS.—The Administrator of the
9 Bonneville Power Administration, the Western Area
10 Power Administration, the Southwestern Power Adminis-
11 tration, and the Southeastern Power Administration shall
12 each include in monthly firm power customer billings sent
13 to each customer information identifying and reporting
14 such customer's share of the Federal power marketing and
15 generating agencies' direct and indirect costs incurred by
16 such administration related to compliance with the Endan-
17 gered Species Act of 1973 (16 U.S.C. 1531 et seq.) and
18 activities related to such Act.

19 (b) DIRECT COSTS.—In identifying and reporting di-
20 rect costs, each Administrator shall include Federal agen-
21 cy obligations related to study-related costs, capital, oper-
22 ation, maintenance, and replacement costs, and staffing
23 costs.



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

4 (d) COORDINATION.—Each Administrator shall co-
5 ordinate identification of costs under this subsection with
6 the appropriate Federal power generating agencies.

7 **SEC. 24. SURVEY OF BLM LANDS AND FOREST SERVICE**
8 **LANDS FOR MANAGEMENT FOR RECOVERY**
9 **OF LISTED SPECIES.**

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

13 (1) survey all lands under the administrative ju-
14 risdiction of the Bureau of Land Management and
15 all lands under the administrative jurisdiction Forest
16 Service immediately before the enactment of this
17 Act, for the purpose of assessing the value of such
18 lands for management for the recovery of any spe-
19 cies included in a list published under section 4(c)
20 of the Endangered Species Act of 1973 and for addi-
21 tion to the National Wildlife Refuge System; and

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



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

6 **SEC. 25. RELATIONSHIP BETWEEN SECTION 7 CONSULTA-**
7 **TION AND INCIDENT TAKE AUTHORIZATION**
8 **UNDER MARINE MAMMAL PROTECTION ACT**
9 **OF 1972.**

10 Consultation under section 7 of the Endangered Spe-
11 cies Act of 1973 (16 U.S.C. 1536) is equivalent to a sec-
12 tion 101 incidental take authorization required under the
13 Marine Mammal Protection Act of 1972 (16 U.S.C. 1631
14 et seq.) for receiving dock building permits.

