

**[STAFF DISCUSSION DRAFT]**

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

**H. R.** \_\_\_\_\_

To amend the Endangered Species Act of 1973 to provide incentives and opportunities for greater State, local government, and tribal participation in the implementation of that Act, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. \_\_\_\_\_ introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the Endangered Species Act of 1973 to provide incentives and opportunities for greater State, local government, and tribal participation in the implementation of that Act, and for other purposes.

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

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

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

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

- 3 Sec. 1. Short title; table of contents.
- 4 Sec. 2. Amendment references.
- 5 Sec. 3. Amendments to definitions.
- 6 Sec. 4. Amendments relating to determinations of endangered species and  
7 threatened species.
- 8 Sec. 5. Designation of critical habitat.
- 9 Sec. 6. Petitions and procedures for determinations, designations, and revisions.
- 10 Sec. 7. Reviews of listings, determinations, and designations.
- 11 Sec. 8. Protective regulations.
- 12 Sec. 9. Similarity of appearance cases.
- 13 Sec. 10. Secretarial guidelines; State comments.
- 14 Sec. 11. Notice of data availability.
- 15 Sec. 12. Recovery plans.
- 16 Sec. 13. Cooperation with States.
- 17 Sec. 14. Interagency cooperation and consultation.
- 18 Sec. 15. International cooperation.
- 19 Sec. 16. Management authority and scientific authority.
- 20 Sec. 17. Prohibited acts.
- 21 Sec. 18. Exceptions to prohibitions.
- 22 Sec. 19. Penalties and enforcement; administrative appeals procedures.
- 23 Sec. 20. Compensation for taken property.
- 24 Sec. 21. Public accessibility and accountability.
- 25 Sec. 22. Annual cost analyses.
- 26 Sec. 23. Authorization of appropriations.
- 27 Sec. 24. Sunset.
- 28 Sec. 25. Clerical amendment to table of contents.

### 3 SEC. 2. AMENDMENT REFERENCES.

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

### 10 SEC. 3. AMENDMENTS TO DEFINITIONS.

11 (a) AGENCY ACTION.—Section 3 (16 U.S.C. 1532)  
12 is amended by redesignating paragraphs (1) through (21)  
13 in order as paragraphs (2), (4), (5), (6), (7), (8), (9), (10),

1 (11), (12), (16), (17), (18), (19), (20), (21), (22), (23),  
2 (24), and (25), respectively, and by inserting before para-  
3 graph (2), as so redesignated, the following:

4       “(1) The term ‘agency action’ means any activ-  
5 ity or program occurring in the United States or on  
6 the high seas that is authorized, funded, or carried  
7 out by a Federal agency, with respect to which the  
8 Federal agency has discretionary authority, under  
9 law or contract, to act or refrain from acting on the  
10 basis of information concerning endangered species,  
11 threatened species, or critical habitat.”

12 (b) BEST AVAILABLE SCIENTIFIC DATA.—

13       (1) DEFINITION.—Section 3 (16 U.S.C. 1532)  
14 is further amended by inserting before paragraph  
15 (4), as so redesignated, the following:

16       “(3)(A) The term ‘best available scientific data’  
17 means scientific data, regardless of source, that are  
18 available to the Secretary at the time of a decision  
19 or action for which such data are required by this  
20 Act and that the Secretary determines are the most  
21 accurate, reliable, and relevant for use in that deci-  
22 sion or action.

23       “(B) If the Secretary determines that data for  
24 a decision or action do not comply with the criteria  
25 established by regulation for determining what con-

1       stitute the best available scientific data for purposes  
2       of subparagraph (A), do not comply with guidance  
3       issued under section 515 of the Treasury and Gen-  
4       eral Government Appropriations Act, 2001 (Public  
5       Law 106-554; 114 Stat. 2763A-171) by the Direc-  
6       tor of the Office of Management and Budget and  
7       the Secretary, do not consist of any empirical data,  
8       or are found in sources that have not been subject  
9       to peer review in a generally acceptable manner, the  
10      Secretary shall undertake the necessary measures to  
11      assure compliance with such criteria or guidance, to  
12      secure such empirical data, or to seek appropriate  
13      peer review, and may reconsider the decision or ac-  
14      tion based on any supplemental or different data  
15      provided or any peer review conducted pursuant to  
16      this subparagraph.”

17           (2) CRITERIA TO DETERMINE BEST AVAILABLE  
18      SCIENTIFIC DATA.—Within one year after the date  
19      of the enactment of this Act, the Secretary, as that  
20      term is defined in section 3 of the Endangered Spe-  
21      cies Act of 1973, as amended by this Act, shall issue  
22      regulations that establish criteria that must be met  
23      to determine which data constitute the best available  
24      scientific data for purposes of paragraph (3)(A) of  
25      that section.

1 (c) CONSERVE, CONSERVING, AND CONSERVATION.—

2 Section 3 (16 U.S.C. 1532) is further amended in para-  
3 graph (5), as so redesignated—

4 (1) in the first sentence, by striking “bring any  
5 endangered species or threatened species” and in-  
6 serting “protect any endangered species or threat-  
7 ened species, including methods and procedures to  
8 assist in improving the status of such species”; and

9 (2) in the second sentence, by inserting “eradi-  
10 cation or suppression of invasive species,” after  
11 “habitat acquisition and maintenance.”

12 (d) CRITICAL HABITAT.—Section 3 (16 U.S.C. 1532)  
13 is further amended by amending paragraph (7), as so re-  
14 designated, to read as follows:

15 “(7)(A) The term ‘critical habitat’ for an en-  
16 dangered species means—

17 “(i) the specific areas within the geo-  
18 graphical area occupied by the endangered spe-  
19 cies for breeding, feeding, sheltering, or another  
20 essential behavioral pattern at the time the de-  
21 termination of critical habitat is made pursuant  
22 to section 4, on which are found those physical  
23 or biological features that—

1           “(I) are necessary to avoid jeopardy  
2           to the continued existence of the species;  
3           and

4           “(II) may require special management  
5           considerations or protection in addition to  
6           any consideration or protection already in  
7           effect; and

8           “(ii) specific areas outside the geographical  
9           area occupied by the endangered species at the  
10          time the determination of critical habitat is  
11          made under section 4, upon a determination by  
12          the Secretary that—

13          “(I) such areas were formerly occu-  
14          pied by the species for breeding, feeding,  
15          sheltering or another essential behavioral  
16          pattern, and possess significant potential  
17          for reoccupation by the species; and

18          “(II) the areas referred to in clause  
19          (i) will not contain sufficient habitat to  
20          provide for the survival of the species in  
21          the foreseeable future without the inclusion  
22          of additional areas that meet the criteria of  
23          subclause (I).

24          “(B) Except in those circumstances determined  
25          by the Secretary, critical habitat shall not include

1 the entire geographical area which can be occupied  
2 by the endangered species.”

3 (e) ENDANGERED SPECIES.—Section 3 (16 U.S.C.  
4 1532) is further amended in paragraph (8), as so redesign-  
5 nated, by striking “in danger of extinction throughout all  
6 or a significant portion of its range” and inserting “in  
7 danger of extinction in the foreseeable future throughout  
8 all of its current range, or a portion of its current range  
9 sufficient to present such danger,”

10 (f) INVASIVE SPECIES.—Section 3 (16 U.S.C. 1532)  
11 is further amended by inserting after paragraph (12), as  
12 so redesignated, the following:

13 “(13) The term ‘invasive species’ means any  
14 species that—

15 “(A) is not indigenous to the habitat of an  
16 endangered species or a threatened species;

17 “(B) is not grown for food or fiber or  
18 other human use; and

19 “(C) may significantly degrade the value of  
20 the habitat for, or otherwise pose a risk to,  
21 such endangered species or threatened spe-  
22 cies.”

23 (g) LIST; LISTED SPECIES.—Section 3 (16 U.S.C.  
24 1532) is further amended by inserting after paragraph

1 (13), as added by subsection (f) of this section, the fol-  
2 lowing:

3           “(14) LIST.—The term ‘list’ means to include  
4 in a list published under section 4(c).

5           “(15) LISTED SPECIES.—The term ‘listed spe-  
6 cies’ means a species included in a list published  
7 under section 4(c).”

[To be determined: Places in draft at which this de-  
fined term may be substituted.]

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

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

17           (i) SECRETARY.—

18           (1) IN GENERAL.—Section 3 (16 U.S.C. 1532)  
19 is further amended in paragraph (19), as so redesign-  
20 nated, by striking “or the Secretary of Commerce as  
21 program responsibilities are vested pursuant to the  
22 provisions of Reorganization Plan Numbered 4 of  
23 1970”.



1           (2) CURRENT LISTINGS NOT AFFECTED.—This  
2 subsection shall not affect any determination or ac-  
3 tion by the Secretary of Commerce made or taken,  
4 respectively, under the Endangered Species Act of  
5 1973 before the date of the enactment of this Act,  
6 except that such determinations and actions shall be  
7 treated as determinations and actions, respectively,  
8 of the Secretary of the Interior.

[To be determined: Whether draft should include (i)  
an express transfer of functions from Secretary of Com-  
merce to Secretary of the Interior; (ii) additional transi-  
tional provisions to preserve actions of, permits by, and  
ongoing proceedings of the Secretary of Commerce (see,  
e.g., section 1512, 1516, and 1517 of Homeland Security  
Act of 2002 (Public Law 107-296)).]

9           (j) SPECIES.—Section 3 (16 U.S.C. 1532) is further  
10 amended in paragraph (20), as so redesignated—

11           (1) by striking “segment”; and

12           (2) by striking “which interbreeds when ma-  
13 ture”.

14           (k) THREATENED SPECIES.—Section 3 (16 U.S.C.  
15 1532) is further amended in paragraph (24), as so redes-  
16 ignated, by striking “throughout all or a significant por-  
17 tion of its range” and inserting “throughout all of it cur-

1 rent range or a portion of its current range sufficient to  
2 present such likelihood”.

3 **SEC. 4. AMENDMENTS RELATING TO DETERMINATIONS OF**  
4 **ENDANGERED SPECIES AND THREATENED**  
5 **SPECIES.**

6 (a) REQUIREMENT TO MAKE DETERMINATIONS.—

7 Section 4 (16 U.S.C. 1533) is amended by striking so  
8 much as precedes subsection (a)(3) and inserting the fol-  
9 lowing:

10 “DETERMINATION OF ENDANGERED SPECIES AND  
11 THREATENED SPECIES.

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

17 “(i) The present or threatened destruction,  
18 modification, or curtailment of its habitat or range  
19 by human activities or by invasive species, competi-  
20 tion from other species, drought, fire, or other cata-  
21 strophic natural causes.

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

24 “(iii) Disease or predation.

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

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

6           “(B) The Secretary shall use the authority provided  
7 by subparagraph (A) to determine any distinct population  
8 of any species of vertebrate fish or wildlife to be an endan-  
9 gered species or a threatened species only sparingly and  
10 only if the determination is based on best available sci-  
11 entific data that are conclusive.”.

12           (b) BASIS FOR DETERMINATION.—Section  
13 4(b)(1)(A) (16 U.S.C. 1533(b)(1)(A)) is amended—

14           (1) by striking “best scientific and commercial  
15 data available to him” and inserting “best available  
16 scientific data”;

17           (2) by inserting “Federal agency, any” after  
18 “being made by any”;

19           (3) by inserting “eradication or suppression of  
20 invasive species,” after “food supply,”; and

21           (4) by adding at the end the following: “In  
22 making any such determination, the Secretary shall  
23 not rely on any information that was not made avail-  
24 able for public review and comment under paragraph

25           (5)(A)(iii) of this subsection and subsection (i).”.

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

3 (1) by striking “of the Interior”; and

4 (2) in the third sentence, by inserting “if it is  
5 an endangered species” before the period.

6 **SEC. 5. DESIGNATION OF CRITICAL HABITAT.**

7 (a) DESIGNATION.—

8 (1) IN GENERAL.—Section 4(a) (16 U.S.C.  
9 1533(a)) is further amended by striking so much of  
10 paragraph (3) as precedes subparagraph (B)(i) and  
11 inserting the following:

12 “(2)(A) The Secretary, by regulation promulgated in  
13 accordance with subsection (b) and to the maximum ex-  
14 tent prudent and determinable, shall issue a final regula-  
15 tion designating any habitat of a species that is deter-  
16 mined to be an endangered species under paragraph (1)  
17 of this subsection as critical habitat for the species by not  
18 later than the earlier of—

19 “(i) one year after the date of the final ap-  
20 proval of a recovery plan for the species under sec-  
21 tion 5; or

22 “(ii) 3 years after the date of publication of the  
23 final regulation making the determination under  
24 paragraph (1).

1       “(B) The Secretary shall reconsider any determina-  
2 tion that designation of critical habitat for an endangered  
3 species is not determinable during the next review of the  
4 species under subsection (c)(2) or at the time of a final  
5 approval of a recovery plan for the species under section  
6 5, whichever is earlier.

7       “(C) The Secretary may, from time-to-time as the  
8 Secretary considers appropriate, revise any designation of  
9 critical habitat under this paragraph.

10       “(D) The Secretary shall not designate as critical  
11 habitat any area to which applies, and any designation of  
12 critical habitat shall not apply with respect to any action  
13 that is covered by a—

14               “(i) permit or agreement under section 10(a);

15               “(ii) written statement under section 7(b)(4); or

16               “(iii) land conservation or species management  
17 program of a Federal agency, State, political sub-  
18 division of a State, federally recognized Indian tribe  
19 located within the contiguous 48 States, or the  
20 Metlokatla Indian Community.”.

21       (2) EXISTING DESIGNATIONS.—Nothing in this  
22 Act and the amendments made by this Act requires  
23 the Secretary of the Interior to remove the designa-  
24 tion of critical habitat for any threatened species  
25 made before the date of the enactment of this Act

1 until the species undergoes the next 5-year review  
2 after the date of the enactment of this Act pursuant  
3 to section 4(b)(2) of the Endangered Species Act of  
4 1973, as amended by this subsection.

5 (b) CONSULTATION AND CONSIDERATIONS REGARD-  
6 ING CRITICAL HABITAT.—Section 4(b)(2) (16 U.S.C.  
7 1533(b)(2) is amended—

8 (1) by inserting “(A)” before the first sentence;  
9 (2) in subparagraph (A), as designated by para-  
10 graph (1) of this subsection—

11 (A) by striking “subsection (a)(3)” and in-  
12 serting “(a)(2)”;

13 (B) by striking “best scientific data avail-  
14 able” and inserting “best available scientific  
15 data”; and

16 (C) by striking “best scientific and com-  
17 mercial data available” and inserting “best  
18 available scientific data”; and

19 (3) by adding at the end the following:

20 “(B) In determining whether an area is critical habi-  
21 tat under subsection (a)(2), the Secretary shall seek and  
22 consider any information from State and local govern-  
23 ments in the vicinity of the area, including local resource  
24 data and maps, that constitutes best available scientific

1 data or is information relevant to the consideration of im-  
 2 pacts pursuant to subparagraph (A).

3 “(C) Consideration of economic impact pursuant to  
 4 subparagraph (A) shall include—

5 “(i) direct, indirect, and cumulative economic  
 6 costs and benefits, including changes in revenues re-  
 7 ceived by landowners, the Federal Government, and  
 8 State and local governments; and

9 “(ii) costs associated with the preparation of re-  
 10 ports, surveys and analyses required to be under-  
 11 taken, as a consequence of a proposed designation of  
 12 critical habitat, by landowners seeking to obtain per-  
 13 mits, licenses, or approvals to act under Federal,  
 14 State, or local law.”

15 **SEC. 6. PETITIONS AND PROCEDURES FOR DETERMINA-**  
 16 **TIONS, DESIGNATIONS, AND REVISIONS.**

17 (a) TREATMENT OF PETITIONS.—Section 4(b)(3) (16  
 18 U.S.C. 1533(b)(3)) is amended—

19 (1) by adding at the end of subparagraph (A)  
 20 the following: “The Secretary shall not make a find-  
 21 ing that the petition presents substantial scientific  
 22 or commercial information indicating that the peti-  
 23 tioned action may be warranted unless the petitioner  
 24 provides to the Secretary a copy of all information  
 25 cited in the petition.”; and

1 (2) in subparagraph (D)(i) by inserting "pre-  
2 viously made pursuant to subsection (a)(2)" after  
3 "critical habitat designation".

4 (b) IMPLEMENTING REGULATIONS.—

5 (1) PROPOSED REGULATIONS.—Section 4(b)(5)  
6 (16 U.S.C. 1533(b)(5)) is amended—

7 (A) in subparagraph (A)—

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 make available for public  
20 review, comment, and duplication, in not less than  
21 one office under the jurisdiction of the Secretary in  
22 each State in which the species is believed to occur,  
23 a complete record of all information concerning the  
24 determination, designation, or revision in the posses-  
25 sion of the Secretary, and make available on a pub-



1       licly accessible Web site on the Internet an index to  
2       such information.”;

3               (B) in subparagraph (C) by striking “he”  
4               and inserting “the Secretary”; and

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

6 “Information maintained and made available under sub-  
7 paragraph (A)(iii) shall include any status review, all in-  
8 formation cited in such a status review, all information  
9 referred to in the proposed regulation and the preamble  
10 to the proposed regulation, and all information submitted  
11 to the Secretary by third parties. All information main-  
12 tained and made available under subparagraph (A)(iii)  
13 shall be clearly marked as to whether it constitutes or does  
14 not constitute best available scientific data and therefore  
15 has been or will be, or has not been and will not be, consid-  
16 ered in the proposed regulation or the final regulation to  
17 implement the determination, designation, or revision. The  
18 Secretary shall withhold from public review under sub-  
19 paragraph (A)(iii) any information that may, or is re-  
20 quired to be, withheld under 552 of title 5, United States  
21 Code.”.

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

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

1           “(i) a final regulation to implement such a de-  
2           termination as to whether a species is an endangered  
3           species or a threatened species;

4           “(ii) a final regulation to implement such a re-  
5           vision of critical habitat or a finding that such revi-  
6           sion should not be made;

7           “(iii) notice that such one-year period is being  
8           extended under subparagraph (B)(i); or

9           “(iv) notice that the proposed regulation is  
10          being withdrawn under subparagraph (B)(ii), to-  
11          gether with the finding on which such withdrawal is  
12          based.”;

13                 (B) in subparagraph (B)(i) by striking  
14                 “subparagraph (A)(i)” and inserting “subpara-  
15                 graph (A)”;

16                 (C) in subparagraph (B)(ii) by striking  
17                 “subparagraph (A)(i)” and inserting “subpara-  
18                 graph (A)”;

19                 (D) by striking subparagraph (C).

20           (3) EMERGENCY DETERMINATIONS.—Section  
21           4(b)(7) (16 U.S.C. 1533(b)(7)) is amended—

22                 (A) in the matter preceding subparagraph  
23                 (A), by inserting “with respect to a determina-  
24                 tion of a species to be an endangered species or

1 a threatened species" after "any regulation";  
2 and

3 (B) in subparagraph (B), by striking "the  
4 State agency in" and inserting "the Governor  
5 of, and State agency in,".

6 **SEC. 7. REVIEWS OF LISTINGS, DETERMINATIONS, AND**  
7 **DESIGNATIONS.**

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

10 (1) in subparagraph (A) by striking "and" after  
11 the semicolon at the end;

12 (2) in subparagraph (B)—

13 (A) in the matter preceding clause (i), by  
14 striking "any such species should";

15 (B) in each of clause (i), (ii), and (iii), by  
16 inserting "any such species should" before  
17 "be"; and

18 (C) by striking "or" after the semicolon at  
19 the end of clause (ii), by striking the period at  
20 the end of clause (iii) and inserting "; or", and  
21 by adding at the end the following:

22 "(iv) any critical habitat for such species should  
23 be revised or removed."; and

24 (3) by striking the last sentence and inserting  
25 the following:

1       “(3) Each determination under paragraph (2)(B)  
2 shall be made on the basis of—

3           “(A) in the case of a the determination under  
4 paragraph (2)(B)(i), (ii), or (iii), and except as pro-  
5 vided in subparagraph (B) of this paragraph, the  
6 criteria in the recovery plan for the species required  
7 by section 5(c)(1)(A) or (B);

8           “(B) in the case of a the determination under  
9 paragraph (2)(B)(i), (ii), or (iii), and if the recovery  
10 plan is issued before the criteria required under sec-  
11 tion 5(c)(1)(A) and (B) are established or if no re-  
12 covery plan exists for the species, the factors for de-  
13 termination that a species is an endangered species  
14 or a threatened species set forth in subsections  
15 (a)(1)(A) and (b)(1);

16           “(C) in the case of a the determination under  
17 paragraph (2)(B)(iv), the requirements for designa-  
18 tion of critical habitat set forth in section 3(7) and  
19 subsections (a)(2), (b)(1) and (b)(2); or

20           “(D) a finding of fundamental error in the de-  
21 termination that the species is an endangered spe-  
22 cies or a threatened species or of extinction of the  
23 species.”

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

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

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

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

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

22 "(4) With".

**23 SEC. 9. SIMILARITY OF APPEARANCE CASES.**

24 Section 4(e) (16 U.S.C. 1533(e)) is amended to read  
25 as follows:

1       “(e) SIMILARITY OF APPEARANCE CASES.—The Sec-  
2 retary may, by regulation of commerce or taking, and to  
3 the extent the Secretary considers advisable, treat any spe-  
4 cies as an endangered species or a threatened species even  
5 through it is not determined to be such a species pursuant  
6 to subsection (a)(1), if the Secretary finds that—

7           “(1) such species so closely resembles in ap-  
8 pearance, at the point in question, a species which  
9 has been determined to be an endangered species or  
10 a threatened species under such subsection that en-  
11 forcement personnel would have substantial dif-  
12 ficulty in attempting to differentiate between the  
13 species;

14           “(2) the effect of this substantial difficulty is  
15 an additional threat to an endangered species or a  
16 threatened species; and

17           “(3) such treatment of a species not determined  
18 to be an endangered species or a threatened species  
19 will substantially facilitate the enforcement and fur-  
20 ther the policy of this Act.”

21 **SEC. 10. SECRETARIAL GUIDELINES; STATE COMMENTS.**

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

23           (1) by striking subsections (f) and (g) and re-  
24 designating subsections (h) and (i) as subsections (f)  
25 and (g), respectively;

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

3 (A) in the heading by striking “AGENCY”  
4 and inserting “SECRETARIAL”;

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

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

11 (D) by inserting after paragraph (3) the  
12 following:

13 “(4) the criteria for determining best available  
14 scientific data pursuant to section 3(3); and”;

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

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

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

23 (B) by striking “a State agency” the first  
24 place it appears and inserting “the Governor of  
25 a State or a State agency”;

1 (C) by striking "a State agency" the sec-  
2 ond place it appears and inserting "a Governor  
3 or State agency";

4 (D) by striking "the State agency" and in-  
5 serting "the Governor or the State agency";

6 (E) by striking "his" and inserting "the";  
7 and

8 (F) by striking "the agency's" and insert-  
9 ing "the Governor's or State agency's".

10 **SEC. 11. NOTICE OF DATA AVAILABILITY.**

11 Section 4 (16 U.S.C. 1533), as amended by section  
12 10 of this Act, is further amended by adding at the end  
13 the following:

14 "(h) NOTICE OF DATA AVAILABILITY.—(1) Not less  
15 than 30 days before making the final decision on a covered  
16 action described in paragraph (4), the Secretary shall pub-  
17 lish a notice of the availability of the draft determination  
18 of which scientific and commercial data qualify as the best  
19 available scientific data on which the final decision will  
20 be based and which such data do not so qualify, including  
21 any ongoing assessments that are expected to produce  
22 such data.

23 "(2) The Secretary shall provide the public with not  
24 less than 15 days to identify any additional data that  
25 should be considered, or to challenge the draft determina-



1 tion of any data, as best available scientific data with re-  
2 spect to a covered action described in paragraph (4), in-  
3 cluding the reasons why such data should or should not  
4 be so considered.

5       “(3) The Secretary shall explain, in the notice of final  
6 covered action with respect to a covered action described  
7 in paragraph (4)(A) or (B), or in a final recovery plan  
8 or final biological opinion with respect to a covered action  
9 described in paragraph (4)(C) or (D), why data identified  
10 or challenged in public comment under paragraph (2) does  
11 or does not qualify as the best available scientific data.

12       “(4) In this subsection the term ‘covered action’  
13 means—

14               “(A) a proposed determination under subsection  
15 (a)(1) that a species is an endangered species or a  
16 threatened species;

17               “(B) a proposed determination under sub-  
18 section (a)(1) that would change the status of a spe-  
19 cies as an endangered species or a threatened spe-  
20 cies or would remove such a species from any list  
21 published under subsection (c)(1);

22               “(C) the development of a recovery plan for an  
23 endangered species or a threatened species under  
24 section 5;

1           “(D) the provision to a Federal agency and an  
2 applicant (if any) of the opinion of the Secretary on  
3 an agency action under section 7(b)(3); and

4           “(E) the designation of critical habitat under  
5 section 4(a)(2).”

6 **SEC. 12. RECOVERY PLANS.**

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

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

11           (2) in subsection (l), as redesignated by para-  
12 graph (1) of this section, by striking “subsection (a)  
13 of this section” and inserting “subsection (k)”; and

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

17           “RECOVERY PLANS AND LAND ACQUISITION

18           “SEC. 5. (a) RECOVERY PLANS.—The Secretary  
19 shall, in accordance with this section, publish a plan (in  
20 this subsection referred to as a ‘recovery plan’) for the  
21 recovery of any species determined under section 4(a)(1)  
22 to be an endangered species or a threatened species, unless  
23 the Secretary publishes in the Federal Register a finding  
24 that such a plan will not promote the recovery of the spe-  
25 cies.

1       “(b) PRIORITY OF PLANS.—The Secretary, in pub-  
2 lishing recovery plans, shall, to the maximum extent prac-  
3 ticable, give priority to those endangered species or threat-  
4 ened species, without regard to taxonomic classification,  
5 that are most likely to benefit from such plans, particu-  
6 larly those species that are, or may be, in conflict with  
7 construction or other development projects or other forms  
8 of economic activity.

9       “(c) PLAN CONTENTS.—(1) A recovery plan shall be  
10 based on the best available scientific data and shall include  
11 the following:

12           “(A) Objective, measurable criteria that, when  
13 met, would result in a determination, in accordance  
14 with this Act, that the species be removed from the  
15 lists published under section 4(c).

16           “(B) Objective, measurable criteria to achieve  
17 any desired level of abundance or distribution of the  
18 species distinct from the level that would result in  
19 a determination, in accordance with this Act, that  
20 the species be removed from the lists published  
21 under section 4(c).

22           “(C) A description of such site-specific or other  
23 actions as may be necessary to achieve the criteria  
24 specified pursuant to subparagraphs (A) and (B),

1 and such intermediate actions as are warranted to  
2 make progress toward achievement of those criteria.

3 “(D) Estimates of the time required and the  
4 cost to carry out the actions and intermediate ac-  
5 tions specified pursuant to subparagraph (C).

6 “(2) Any recovery plan for an endangered species or  
7 a threatened species that occupies more than one State  
8 shall identify criteria and actions pursuant to paragraph  
9 (1) for each State that are necessary so that the State  
10 may pursue a determination that the portion of the species  
11 found in that State may be removed from lists published  
12 under section 4(c).

13 “(d) RECOVERY TEAMS.—(1) The Secretary shall ap-  
14 point a recovery team to develop a recovery plan for an  
15 endangered species or a threatened species, and may pro-  
16 cure the services of appropriate public and private agen-  
17 cies and institutions and other qualified persons.

18 “(2) A recovery team for a species shall include the  
19 following:

20 “(A) One representative of each Federal agency  
21 that regularly conducts or authorizes significant  
22 ground or water disturbing activities within the cur-  
23 rent range of the species.

24 “(B) One representative from each State within  
25 the current range of the species.

1           “(C) One representative of any recognized In-  
2           dian tribe that resides within the current range of  
3           the species.

4           “(D) One representative from each type of pri-  
5           vate activity that has been identified in the preamble  
6           to any regulation issued pursuant to section 4(a) or  
7           any consultation under section 7(a)(2) as posing a  
8           risk to the species or its habitat.

9           “(E) One representative from each nongovern-  
10          mental organization or academic institution that is  
11          considered by the Secretary to have special expertise  
12          in the species

13          “(3) Any member of the recovery team who disagrees  
14          with a recommendation or finding of the recovery team  
15          may append to the recovery plan a written explanation of  
16          the member's views.

17          “(4) Recovery teams appointed under this subsection  
18          shall not be subject to the Federal Advisory Committee  
19          Act (5 App. U.S.C.).

20          “(e) REPORTS TO CONGRESS.—(1) The Secretary  
21          shall report every two years to the Committee on Environ-  
22          ment and Public Works of the Senate and the Committee  
23          on Resources of the House of Representatives on the sta-  
24          tus of efforts to develop and implement recovery plans for  
25          all endangered species and threatened species and on the

1 status of all such species for which such plans have been  
2 developed.

3 “(2) The Secretary shall, to the maximum extent  
4 practicable, include in such reports for each listed  
5 species—

6 “(A) quantitative population and distribution  
7 data as of the time of listing, and the most recent  
8 such information available;

9 “(B) a measurement of the degree of confidence  
10 in data included in the report; and

11 “(C) objective and measurable criteria estab-  
12 lished and in effect under (as applicable)—

13 “(i) section 5(e)(1)(A) and (B) of this Act;  
14 or

15 “(ii) section 4(f)(1)(B)(ii) of this Act, as in  
16 effect immediately before the enactment of the  
17 Threatened and Endangered Species Recovery  
18 Act of 2005.

19 “(f) PUBLIC NOTICE AND COMMENT.—The Secretary  
20 shall, prior to final approval of a new or revised recovery  
21 plan, provide public notice and an opportunity for public  
22 review and comment on such plan. The Secretary shall  
23 consider all information presented during the public com-  
24 ment period prior to approval of the plan.

1       “(g) STATE COMMENT.—The Secretary shall, prior  
2 to final approval of a new or revised recovery plan, provide  
3 a draft of such plan and an opportunity to comment on  
4 such draft to the Governor of, and State agency in, any  
5 State to which the document applies. The Secretary shall  
6 include in the final recovery plan the Secretary’s response  
7 to the comments of the Governor and the State agency.

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

13       “(2) The Secretary shall, in accordance with section  
14 4(c)(3)(A), apply the criteria required by subsection  
15 (c)(1)(A) or (B) in the recovery plan for a species in mak-  
16 ing a determination whether the species should be removed  
17 from a list published under section 4(c)(1).

18       “(3) Nothing in this section shall be construed to au-  
19 thorize a recovery plan to establish regulatory require-  
20 ments or otherwise to have an effect other than as non-  
21 binding guidance.

22       “(i) PERIODIC REVIEW.—The Secretary shall, at  
23 least once every five years, review the implementation of  
24 a recovery plan, publish the findings of such review, and,

1 if considered by the Secretary to be necessary, initiate re-  
2 vision of the plan.

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

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

13 (b) CLERICAL AND CONFORMING AMENDMENTS.—

14 (1) The table of contents in the first section is  
15 amended by striking the item relating to section 5  
16 and inserting the following:

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

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

20 (3) The Marine Mammal Protection Act of  
21 1972 is amended—

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



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

6 **SEC. 13. COOPERATION WITH STATES.**

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

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

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

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

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

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

14       (2) in subsection (d)(1), by—

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

17               (B) striking “or to assist” and all that fol-  
18 lows through “section 4(g)” and inserting “pur-  
19 suant to subsection (c)(1) and (2) or to address  
20 candidate species or other species at risk and  
21 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)";

4           (3) in subsection (d)(2), in the matter following  
5           clause (ii), by striking "his" and inserting "the Sec-  
6           retary's"; and

7           (4) in subsection (e)—

8                 (A) by inserting "(1)" before the first sen-  
9                 tence;

10                (B) in paragraph (1), as designated by  
11                paragraph (1) of this subsection—

12                   (i) by striking "his periodic review"  
13                   and inserting "periodic review by the Sec-  
14                   retary"; and

15                   (ii) by striking "at no greater than  
16                   annual intervals" and inserting "every 3  
17                   years"; and

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

19                 “(2) Any cooperative agreement entered into by the  
20                 Secretary under subsection (c) shall be subject to section  
21                 7(a)(2) through (d) and regulations implementing such  
22                 provisions only before—

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

24                 and

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

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

7           “(ii) new information about any species ad-  
8           dressed in the agreement that the Secretary  
9           determines—

10           “(I) constitutes the best available sci-  
11           entific data; and

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

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

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

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

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

1 SEC. 14. INTERAGENCY COOPERATION AND CONSULTA-  
2 TION.

3 (a) CONSULTATION REQUIREMENT.—Section 7(a)  
4 (16 U.S.C. 1536(a)) is amended—

5 (1) in paragraph (1) in the second sentence, by  
6 striking “endangered species” and all that follows  
7 through the end of the sentence and inserting “spe-  
8 cies determined to be endangered species and threat-  
9 ened species under section 4.”;

10 (2) in paragraph (2)—

11 (A) in the first sentence by striking “ac-  
12 tion” the first place it appears and all that fol-  
13 lows through “is not” and inserting “agency ac-  
14 tion authorized, funded, or carried out by such  
15 agency is not”;

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

19 (C) in the second sentence, by striking  
20 “best scientific and commercial data available”  
21 and inserting “best available scientific data”;  
22 and

23 (D) by inserting “(A)” before the first sen-  
24 tence and by adding at the end the following:  
25 “The Secretary may identify specific agency ac-  
26 tions or categories of agency actions that may

1 be determined to meet the standards of this  
2 paragraph by alternative procedures to the pro-  
3 cedures set forth in this subsection and sub-  
4 sections (b) through (d), except that subsections  
5 (b)(4) and (e) may apply only to an action that  
6 the Secretary finds, or concurs, does meet such  
7 standards, and the Secretary shall suggest, or  
8 concur in any suggested, reasonable and pru-  
9 dent alternatives described in subsection (b)(3)  
10 for any action determined not to meet such  
11 standards. Any such agency action or category  
12 of agency actions shall be identified, and any  
13 such alternative procedures shall be established,  
14 by regulation promulgated prior or subsequent  
15 to the date of enactment of this Act.”;

16 (3) in paragraph (3), by striking “his” and in-  
17 serting “the applicant’s”;

18 (4) in paragraph (4)—

19 (A) by striking “listed under section 4”  
20 and inserting “an endangered species or a  
21 threatened species,”; and

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

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

1       “(5) Any Federal agency or the Secretary, in con-  
2 ducting any analysis pursuant to paragraph (2), shall con-  
3 sider only the effects of any agency action that are distinct  
4 from a baseline of all effects upon the relevant species or  
5 critical habitat that have occurred or are occurring prior  
6 to the action.”.

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

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

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

13       (3) in paragraph (3)(A)—

14               (A) in the first sentence by inserting “pro-  
15 posed” before “written statement”; and

16               (B) by striking all after the first sentence  
17 and inserting the following: “The Secretary  
18 shall consider any comment from the Federal  
19 agency and the permit or license applicant, if  
20 any, prior to issuance of the final written state-  
21 ment of the Secretary’s opinion. The Secretary  
22 shall issue the final written statement of the  
23 Secretary’s opinion by providing the written  
24 statement to the Federal agency and the permit  
25 or license applicant, if any, and publishing of



1 notice of the written statement in the Federal  
2 Register. If jeopardy or destruction or adverse  
3 modification is found, the Secretary shall sug-  
4 gest in the final written statement those reason-  
5 able and prudent alternatives that the Secretary  
6 believes would not violate subsection (a)(2) and  
7 can be taken by the Federal agency or appli-  
8 cant, if any, in implementing the agency action.  
9 The Secretary shall cooperate with the Federal  
10 agency and any permit or license applicant in  
11 the preparation of any suggested reasonable  
12 and prudent alternatives.”;

13 (4) in paragraph (4)—

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

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

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

1 “(B) A statement described in this subparagraph—  
2 ”; and

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

4 “(5)(A) Any terms and conditions set forth pursuant  
5 to paragraph (4)(B)(iv) shall be roughly proportional in  
6 extent to the impact of the incidental taking identified  
7 pursuant to paragraph (4) in the written statement pre-  
8 pared under paragraph (3).

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

12 “(i) must be capable of successful implementa-  
13 tion; and

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

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

19 (1) by striking “(1)”;

20 (2) by striking paragraph (2);

21 (3) in the first sentence, by striking “which is  
22 listed” and all that follows through the end of the  
23 sentence and inserting “that is determined to be an  
24 endangered species or a threatened species, or for  
25 which such a determination is proposed pursuant to

1 section 4, may be present in the area of such pro-  
2 posed action.”; and

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

6 (d) ELIMINATION OF ENDANGERED SPECIES COM-  
7 MITTEE PROCESS; ADMINISTRATIVE APPEAL.—Section 7  
8 (16 U.S.C. 1536) is amended—

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

11 (2) by redesignating subsections (o) and (p) as  
12 subsections (f) and (g), respectively;

13 (3) by inserting after subsection (d) the fol-  
14 lowing:

15 “(e) ADMINISTRATIVE APPEAL PROCEDURES.—(1)  
16 Any applicant for a permit or license that is the subject  
17 of a determination, alternative, measure, term, or condi-  
18 tion described in paragraph (2), and any person that  
19 would be injured by such a determination, alternative,  
20 measure, term, or condition, may file an administrative  
21 appeal of such matter in accordance with section 11(i).

22 “(2) The determinations, alternatives, measures,  
23 terms, and conditions referred to in paragraph (1) are the  
24 following:

1           “(A) Any determination made with respect to  
2 such permit or license pursuant to subsection  
3 (b)(3)(A) that an agency action complies with or vio-  
4 lates the standards in subsection (a)(2).

5           “(B) Any reasonable and prudent alternatives  
6 suggested with respect to such permit or license pur-  
7 suant to subsection (b)(3)(A).

8           “(C) Any reasonable and prudent measures, or  
9 terms and conditions, established with respect to  
10 such permit or license pursuant to subsection  
11 (b)(3)(C)(ii) or (iv).”;

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

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

16           (B) by striking “such section” and all that  
17 follows through “(2)” and inserting “such sec-  
18 tion,”; and

19           (5) in subsection (g), as redesignated by para-  
20 graph (2) of this subsection—

21           (A) in the first sentence, by striking “is  
22 authorized” and all that follows through “of  
23 this section” and inserting “may exempt an  
24 agency action from compliance with the require-  
25 ments of subsections (a) through (d) of this

1 section before the initiation of such agency ac-  
2 tion,"; and

3 (B) by striking the second sentence.

4 **SEC. 15. INTERNATIONAL COOPERATION.**

5 Section 8 (16 U.S.C. 1537) is amended—

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

10 (2) in subsection (b) in paragraph (1), by strik-  
11 ing "endangered species and threatened species list-  
12 ed" and inserting "species determined to be endan-  
13 gered species and threatened species"; and

14 (3) in subsection (c)(1), by striking "his" and  
15 inserting "the Secretary's".

16 **SEC. 16. MANAGEMENT AUTHORITY AND SCIENTIFIC AU-**  
17 **THORITY.**

18 Section 8A (16 U.S.C. 1537a) is amended—

19 (1) in subsection (a), by striking "of the Inte-  
20 rior (hereinafter in this section referred to as the  
21 'Secretary')";

22 (2) in subsection (d), by striking "Merchant  
23 Marine and Fisheries" and inserting "Resources";  
24 and

25 (3) in subsection (d)—

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

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

6 **SEC. 17. PROHIBITED ACTS.**

7 Section 9 (16 U.S.C. 1538) is amended—

8 (1) in subsection (a)—

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

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

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

1 plants determined to be an endangered species  
2 under section 4"; and

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

7 (2) in subsection (b)—

8 (A) by striking "(1)" before "SPECIES"  
9 and inserting "(1)" before the first sentence;

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

[This amendment is proposed to replace the anti-  
quated proviso structure with text that more clearly  
states a condition for the rule set forth in the amended  
sentence.]

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

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

4 (4) in subsection (d)—

5 (A) in paragraph (1)(A), by striking clause  
6 (i) and inserting the following: "(i) are not de-  
7 termined to be endangered species or threat-  
8 ened species under section 4, and"; and

9 (B) in paragraph (2)(B), by striking "his"  
10 each place it appears and inserting "such per-  
11 son's";

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

16 (6) in subsection (f)—

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

22 (B) by striking "Secretary of the Interior"  
23 each place it appears and inserting "Secretary";  
24 and



1 (C) by striking "his" and inserting "the  
2 Secretary's".

3 **SEC. 18. EXCEPTIONS TO PROHIBITIONS.**

4 (a) **INCIDENTAL TAKE PERMITS.**—Section 10(a) (16  
5 U.S.C. 1539(a)) is amended by striking subparagraph (C)  
6 of paragraph (2) and inserting the following:

7 "(3) Any terms or conditions offered by the Secretary  
8 pursuant to paragraph (2)(B)(v) shall address only such  
9 effects on the affected species of the activity or activities  
10 to which the permit applies that are distinct from a base-  
11 line of all effects upon the species that have occurred or  
12 are occurring prior to the activity or activities.

13 "(4) Any terms and conditions offered by the Sec-  
14 retary pursuant to paragraph (2)(B)(v) shall be roughly  
15 proportional in extent to the impact of the incidental tak-  
16 ing specified in the conservation plan pursuant to in para-  
17 graph (2)(A)(i). In any case in which various terms and  
18 conditions are available, the terms and conditions shall be  
19 capable of successful implementation and shall be con-  
20 sistent with the objective of the applicant to the greatest  
21 extent possible.

22 "(5)(A) If the holder of a permit issued under this  
23 subsection for other than scientific purposes is in compli-  
24 ance with the terms and conditions of the permit, and any  
25 conservation plan or agreement incorporated by reference

1 therein, the Secretary may not require the holder, without  
2 the consent of the holder, to adopt any new minimization,  
3 mitigation, or other measure with respect to any species  
4 adequately covered by the permit during the term of the  
5 permit, except as provided in subparagraphs (B) and (C)  
6 to meet circumstances that have changed subsequent to  
7 the issuance of the permit.

8       “(B) For any changed circumstance identified in the  
9 permit or incorporated document, the Secretary may, in  
10 the absence of consent of the permit holder, require only  
11 such additional minimization, mitigation, or other meas-  
12 ures as are already provided in the permit or incorporated  
13 document for such changed circumstance.

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

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

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

14       “(6)(A) The Secretary shall revoke a permit issued  
15 under paragraph (2) if the Secretary finds that the per-  
16 mittee is not complying with the terms and conditions of  
17 the permit.

18       “(B) Any permit subject to paragraph (5)(A) may be  
19 revoked due to changed circumstances only if—

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

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

1           “(iii) the Secretary, despite the Secretary’s best  
2           efforts, is unable to, and the permittee chooses not  
3           to, remedy the condition causing such inconsistency.

4           “(7)(A) In preparing any environmental impact state-  
5           ment or environmental assessment required under section  
6           102 of the National Environmental Policy Act of 1969 (42  
7           U.S.C. 4332) with respect to the application for, and  
8           issuance of, a permit under this subsection, the Secretary  
9           is not required to identify or analyze the impacts and po-  
10          tential minimization and mitigation measures related to  
11          any alternative other than the alternative presented by the  
12          permit applicant in the conservation plan or other permit  
13          application document and the no-action alternative.

14          “(B) The Secretary shall issue regulations under  
15          which the Secretary, subject to the availability of appro-  
16          priations, shall reimburse a person that is an applicant  
17          for a permit under this subsection for reasonable amounts  
18          paid by the person for preparation for the Secretary by  
19          a contractor or other person selected by the Secretary of  
20          any environmental impact statement or environmental as-  
21          sessment, or related documentation or study, required  
22          under section 102 of the National Environmental Policy  
23          Act of 1969 (42 U.S.C. 4332) with respect to the applica-  
24          tion for and issuance of the permit.

25          “(8) Section 7(a) shall not apply to—

1           “(A) the issuance or amendment of any permit  
2           for other than scientific purposes under this sub-  
3           section with respect to any species to which the per-  
4           mit applies; or

5           “(B) any agency action that may affect such  
6           species if the action implements or is consistent with  
7           any conservation plan or agreement incorporated by  
8           reference in the permit.

9           “(9) The Secretary shall publish notice of any deci-  
10          sion to issue or deny an application for issuance, or  
11          amendment of, a permit under this section in the Federal  
12          Register 15 days before the effective date of the permit.

13          “(10)(A) Any applicant for or holder of a permit  
14          under this subsection may file an administrative appeal  
15          in accordance with section 11(i), of—

16                 “(i) any denial of an application for the permit  
17                 or an amendment thereto;

18                 “(ii) any term or condition the Secretary re-  
19                 quires be included in the permit or accompanying  
20                 document as a condition of approval of the permit  
21                 or an amendment thereto; or

22                 “(iii) any suspension or revocation of the per-  
23                 mit.

24          “(B) Any person that would be injured by the  
25          issuance or amendment of a permit under this subsection

1 may appeal the issuance or amendment in accordance with  
2 section 11(i).”

3 (b) **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”;

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”; and

1 (3) in paragraph (3) by striking "his" and in-  
2 serting "the Secretary's".

3 (c) PERMIT AND EXEMPTION POLICY.—Section  
4 10(d) is amended—

5 (1) by striking "his" and inserting "the";

6 (2) by inserting "or threatened species" after  
7 "endangered species"; and

8 (3) by striking "of this Act".

9 (d) ANTIQUE ARTICLES.—Section 10(h)(1)(B) (16  
10 U.S.C. 1539(h)(1)(B)) is amended by striking "endan-  
11 gered species or threatened species listed" and inserting  
12 "species determined to be an endangered species or a  
13 threatened species".

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

16 (1) in paragraph (2)(B), by striking "informa-  
17 tion" and inserting "scientific data";

18 (2) in paragraph (2)(C)(i), by striking "listed"  
19 and inserting "determined to be an endangered spe-  
20 cies or a threatened species"; and

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

22 "(k) INVASIVE SPECIES.—Use of pesticides in ac-  
23 cordance with the Federal Insecticide, Fungicide, and  
24 Rodenticide Act (7 U.S.C. 136 et seq.), prescribed burns  
25 in accordance with the Clean Air Act (42 U.S.C. 7401

1 et seq.), and other methods in accordance with applicable  
2 law to eradicate or suppress invasive species that pose a  
3 risk to any endangered species or threatened species or  
4 the ecosystem on which they depend shall not subject the  
5 persons responsible for such use, or on whose land or  
6 water the use occurs, to any of the prohibitions under sec-  
7 tion 9 or section 4(d) if such use is identified in—

8 “(1) a recovery plan prepared under section 5;

9 “(2) procedures undertaken pursuant to section  
10 7(a)(2);

11 “(3) a permit or agreement (or any associated  
12 document) issued or executed, respectively, under  
13 section 10(a); or

14 “(4) a cooperative agreement entered into by  
15 the Secretary with a State under section 6.”

16 (f) MISCELLANEOUS TECHNICAL CORRECTIONS.—

17 (1) Section 10(f) (16 U.S.C. 1539(f)) is  
18 amended—

19 (A) by inserting after “(f)” the following:

20 “PRE-ACT PARTS AND SCRIMSHAW.—”;

21 (B) in paragraph (2), by striking “of this  
22 Act” each place it appears;

23 (C) in paragraph (3), by striking “he” and  
24 inserting “the person”; and



1 (D) in paragraph (5)(B), by striking "sec-  
 2 tion 4(f)(2)(A)(i) of this Act" and inserting  
 3 ["section \_\_\_\_"].

[There is no section 4(f)(2)(A)(i) in the current ver-  
 sion of ESA. To what section should this refer?]

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

8 **SEC. 19. PENALTIES AND ENFORCEMENT; ADMINISTRATIVE**  
 9 **APPEALS PROCEDURES.**

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

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

13 (2) in subsection (a)(3)—

14 (A) by striking "he" and inserting "the de-  
 15 fendant"; and

16 (B) by striking "his or her" and inserting  
 17 "the defendant's";

18 (3) in subsection (b)(1)—

19 (A) in the first sentence, by striking "be  
 20 fined" and all that follows through the end of  
 21 the sentence and inserting "be fined under title  
 22 18, United States Code, imprisoned for not  
 23 more than 1 year, or both."; and

1 (B) in the second sentence, by striking "be  
2 fined" and all that follows through the end of  
3 the sentence and inserting "be fined under title  
4 18, United States Code, imprisoned for not  
5 more than 6 months, or both.";

6 (4) in subsection (b)(3)—

7 (A) by striking "he" and inserting "the de-  
8 fendant"; and

9 (B) by striking "his or her" and inserting  
10 "the defendant's";

11 (5) in subsection (d), by striking "his" and in-  
12 serting "the officer's or employee's";

13 (6) in subsection (e)(3), in the second  
14 sentence—

15 (A) by striking "Such persons" and insert-  
16 ing "Such a person"; and

17 (B) by striking "his" and inserting "the  
18 person's";

19 (7) in subsection (g)(1), by striking "his" and  
20 inserting "the persons"; and

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

22 "(i) PROCEDURES FOR ADMINISTRATIVE APPEALS.—

23 (1) In this subsection the term 'covered appeal' means any  
24 administrative appeal under section 7(e) or section  
25 10(a)(10).

1       “(2) A person may not file a covered appeal on the  
2 basis of being injured by the matter that is the subject  
3 of the appeal, if—

4               “(A) an opportunity for the submission of pub-  
5 lic comment on the matter was provided; and

6               “(B) the person did not provide timely sub-  
7 stantive written or oral comment.

8       “(3) A covered appeal may not be filed by any person  
9 acting in their capacity as an officer, employee, agent, de-  
10 partment, or instrumentality of the Federal Government.

11       “(4) Any covered appeal shall be filed with the Sec-  
12 retary no later than 15 days after publication in the Fed-  
13 eral Register of, as applicable, notice of issuance of a writ-  
14 ten statement of the Secretary's opinion issued under sec-  
15 tion 7(b)(3) or notice concerning issuance of, or amend-  
16 ment to, a permit under section 10(a)(9).

17       “(5)(A) The Secretary shall issue a written decision  
18 in any covered appeal pursuant to paragraph (1) before  
19 the end of the 30-day period beginning on the date of the  
20 filing of the appeal.

21       “(B) If no decision is issued by the Secretary before  
22 the end of such 30-day period, the covered appeal is  
23 deemed to be rejected.

24       “(6) No decision on an agency action or issuance of  
25 a permit or permit amendment that is subject to adminis-

1 trative appeal under section 7(e) or section 10(a)(10) may  
2 become effective until—

3       “(A) the expiration of the 15-day period begin-  
4       ning on the date of publication of notice in the Fed-  
5       eral Register under section 7(b)(3) or section  
6       10(a)(9), respectively, if no administrative appeal is  
7       filed in accordance with this subsection; or

8       “(B) the expiration of the 45-day period begin-  
9       ning on the date of publication of notice in the Fed-  
10      eral Register under section 7(b)(3) or section  
11      10(a)(9), respectively, if an appeal is filed in accord-  
12      ance with this subsection.

13      “(7) The Secretary shall dismiss any covered appeal  
14      without review if any of the following occurs:

15      “(A) The appeal is not filed timely in accord-  
16      ance with paragraph (3).

17      “(B) In the case of a covered appeal filed by a  
18      person on the basis of being injured by the matter  
19      that is the subject of the appeal, the person does not  
20      qualify on that basis or under the regulation issued  
21      under paragraph (9).

22      “(C) The challenged action is not an action  
23      that is subject to administrative appeal under sec-  
24      tion 7(e) or section 10(a)(10).

1           “(D) The requested relief cannot be granted  
2     under law or regulation.

3           “(E) The appeal does not contain contents re-  
4     quired by the regulation issued under paragraph (9).

5           “(8) A decision by the Secretary on an appeal under  
6     paragraph (1) constitutes the final administrative deter-  
7     mination on the action that is the subject of the appeal.

8           “(9) A person may bring a civil action challenging  
9     an action that is subject to a covered appeal only if the  
10    person—

11           “(A) has appealed the action in accordance  
12    with, and exhausted, the procedures of this sub-  
13    section;

14           “(B) is a permit or license applicant under sec-  
15    tion 7(a)(2) or an applicant for or holder of a permit  
16    under section 10(a), that is injured by a decision of  
17    the Secretary in a covered appeal, filed by another  
18    person; or

19           “(C) is a person that is injured by a decision  
20    of the Secretary in a covered appeal filed by a per-  
21    mit or license applicant under section 7(a)(2) or an  
22    applicant for or holder of a permit under section  
23    10(a).

24           “(10) Within 180 days after the date of the enact-  
25    ment of the Threatened and Endangered Species Recovery

1 Act of 2005, the Secretary shall promulgate a regulation  
2 that sets forth requirements for the procedures related to,  
3 and the contents of, any appeal under this subsection.”

4 **SEC. 20. COMPENSATION FOR TAKEN PROPERTY.**

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

7 “COMPENSATION FOR TAKEN PROPERTY

8 “SEC. 13. (a) IN GENERAL.—No private property  
9 may be taken by governmental action pursuant to or reli-  
10 ance on this Act except for public use and with just com-  
11 pensation to the property owner. A property owner shall  
12 receive just compensation if—

13 “(1) the governmental action exacts or affects  
14 the owner’s constitutional or otherwise lawful right  
15 to use the property or a portion of such property as  
16 a condition for the granting, or as justification for  
17 denial, of a permit, license, or any other agency ac-  
18 tion without a rough proportionality between the  
19 stated need for the required dedication and the im-  
20 pact of the proposed use of the property;

21 “(2) the governmental action results in the  
22 property owner being deprived, either temporarily or  
23 permanently, of all or substantially all economically  
24 beneficial or productive use of the property or that  
25 part of the property affected by the action without

1 a showing that such deprivation inheres in the title  
2 itself;

3 "(3) the governmental action diminishes the  
4 fair market value of the property or the affected  
5 portion of the property which is the subject of the  
6 action by 50 percent or more with respect to the  
7 value immediately prior to the governmental action;  
8 or

9 "(4) under any other circumstance where a tak-  
10 ing has occurred within the meaning of the fifth  
11 amendment of the United States Constitution.

12 **"(b) NO CLAIM AGAINST STATE OR STATE INSTRU-**  
13 **MENTALITY.**—No action may be filed under this section  
14 against a State agency. Claims arising from the action,  
15 inaction, or decision of a State agency are properly filed  
16 against the Federal agency which administers the relevant  
17 Federal program.

18 **"(c) BURDEN OF PROOF.**—(1) The Government shall  
19 bear the burden of proof in any action described under  
20 subsection (a)(1) and (2).

21 "(2) The property owner shall have the burden of  
22 proof in any action described under subsection (a)(3) with  
23 regard to establishing the diminution of value of property.

24 **"(d) COMPENSATION AND NUISANCE EXCEPTION TO**  
25 **PAYMENT OF JUST COMPENSATION.**—(1) No compensa-

tion shall be required by this section if the use or proposed use of the property by the owner is a nuisance as commonly understood and defined by background principles of nuisance and property law, as understood within the State in which the property is situated. To bar an award of damages under this section, the United States shall have the burden of proof to establish that the use or proposed use of the property is a nuisance.

“(2)(A) Subject to paragraph (1), if a governmental action directly takes property or a portion of property under subsection (a), compensation to the owner of the property that is affected by the action shall be equal to the difference between—

“(i) the fair market value of the property or the affected portion of the property before such property or the affected portion of such property became the object of the governmental action; and

“(ii) the fair market value of the property or the affected portion of the property when such property or the affected portion of such property becomes subject to the governmental action.

“(B) Where appropriate, the calculation of fair market value shall include business losses.



1       “(e) TRANSFER OF PROPERTY INTEREST.—The  
2 United States shall take title to the property interest for  
3 which the United States pays a claim under this section.

4       “(f) SOURCE OF COMPENSATION.—Awards of com-  
5 pensation referred to in this section, whether by judgment,  
6 settlement, or administrative action, shall be promptly  
7 paid by the Federal agency responsible for the govern-  
8 mental action, or the Federal program under which the  
9 State governmental action occurs, out of currently avail-  
10 able appropriations supporting the action or program giv-  
11 ing rise to the claim for compensation. If the governmental  
12 action resulted from a requirement imposed by another  
13 agency, the agency making the payment or satisfying the  
14 judgment may seek partial or complete reimbursement  
15 from the appropriated funds of the other agency. If insuf-  
16 ficient funds are available to the agency for the fiscal year  
17 in which the award becomes final, the agency shall either  
18 pay the award from appropriations available in the next  
19 fiscal year or promptly seek additional appropriations for  
20 such purpose.

21       “(g) DEFINITION.—In this section, the term ‘govern-  
22 mental action’ means any action by a Federal or State  
23 agency pursuant to or in reliance on this Act, except—

24               “(1) a condemnation action filed in an applica-  
25               ble court; or

1           “(2) an action filed in an applicable court relat-  
2           ing to criminal forfeiture.”.

3 **SEC. 21. PUBLIC ACCESSIBILITY AND ACCOUNTABILITY.**

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

6           “PUBLIC ACCESSIBILITY AND ACCOUNTABILITY

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

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

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

12           “(3) all draft and final economic assessments of  
13           critical habitat designations made under section  
14           4(b)(2);

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

17           “(5) all draft and final recovery plans issued  
18           under section 5(a), and all final recovery plans  
19           issued and in effect under section 4(f)(1) of this Act  
20           as an effect immediately before the enactment of the  
21           Threatened and Endangered Species Recovery Act of  
22           2005;

23           “(6) the findings of all recovery plan reviews  
24           under section 5(i);

25           “(7) all reports required under sections 5(e)  
26           and 16, and all reports required under sections

1 4(f)(3) and 18 of this Act as in effect immediately  
2 before the enactment of the Threatened and Endan-  
3 gered Species Recovery Act of 2005; and

4 “(8) data contained in the reports referred to in  
5 paragraph (7) of this section, required under sec-  
6 tions 5(e) and 16, in the form of databases that may  
7 be searched by the variables included in the re-  
8 ports.”

9 **SEC. 22. ANNUAL COST ANALYSES.**

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

12 “ANNUAL COST ANALYSIS BY UNITED STATES FISH AND  
13 WILDLIFE SERVICE

14 “SEC. 18. (a) IN GENERAL.—On or before January  
15 15 of each year, the Secretary, acting through the United  
16 States Fish and Wildlife Service, shall submit to the Con-  
17 gress an annual report covering the preceding fiscal year  
18 that contains an accounting of all reasonably identifiable  
19 expenditures made primarily for the conservation of spe-  
20 cies included on lists published and in effect under section  
21 4(c).

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

24 “(i) expenditures of Federal funds on a spe-  
25 cies-by-species basis, and expenditures of Federal  
26 funds that are not attributable to a specific species;

1           “(2) expenditures by States that received  
2 grants under section 6 for the fiscal year covered by  
3 the report on a species-by-species basis, and expendi-  
4 tures by such States that are not attributable to a  
5 specific species; and

6           “(3) based on data submitted pursuant to sub-  
7 section (c), expenditures voluntarily reported by gov-  
8 ernmental entities below the State level on a species-  
9 by-species basis, and such expenditures that are not  
10 attributable to a specific species.

11           “(c) ENCOURAGEMENT OF VOLUNTARY SUBMISSION  
12 OF DATA BY LOCAL GOVERNMENTS.—The Secretary shall  
13 provide a means by which governmental entities below the  
14 State level may—

15           “(1) voluntarily submit, electronically, data re-  
16 garding their expenditures for conservation of spe-  
17 cies listed under section 4(c); and

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

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

22           “(3) A State shall not be eligible for financial assist-  
23 ance under this section for a fiscal year unless the State  
24 has provided to the Secretary for the preceding fiscal year

1 information regarding the expenditures referred to in sec-  
 2 tion 16(b)(2).”

3 **SEC. 23. AUTHORIZATION OF APPROPRIATIONS.**

4 The Endangered Species Act of 1973 is further  
 5 amended—

6 (1) by striking sections 15 and 16;

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

9 (3) by adding after section 16, as so redesi-  
 10 gnated, the following:

11 “AUTHORIZATION OF APPROPRIATIONS

12 “SEC. 17. (a) IN GENERAL.—There are authorized  
 13 to be appropriated to carry out this Act, other than section  
 14 5(e)—

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

19 “(2) to the Secretary of [Agriculture/Homeland  
 20 Security?] to carry out functions and responsibilities  
 21 of the Department of the Interior with respect to the  
 22 enforcement of this Act and the convention which  
 23 pertain the importation of plants, such sums as are  
 24 necessary for fiscal year 2006 through 2010.

25 “(b) CONVENTION IMPLEMENTATION.—There is au-  
 26 thorized to be appropriated to the Secretary of the Interior

1 to carry out section 5(c) such sums as are necessary for  
 2 fiscal years 2006 through 2010.”

3 **SEC. 24. SUNSET.**

4 The Endangered Species Act of 1973 is further  
 5 amended by adding at the end the following:

6 “SUNSET

7 “SEC. 17. (a) IN GENERAL.—All provisions of this  
 8 Act shall cease to have any force and effect on October  
 9 1, 2015.

10 “(b) LICENSE AND CONTRACT TERMS.—All provi-  
 11 sions of Federal permits, licenses, and other authoriza-  
 12 tions issued to, and all Federal contracts with, non-Fed-  
 13 eral persons that are included in such documents pursuant  
 14 to or in reliance on this Act shall terminate and not be  
 15 enforceable upon the expiration of the provisions of this  
 16 Act under subsection (a).”

17 **SEC. 25. CLERICAL AMENDMENT TO TABLE OF CONTENTS.**

18 The table of contents in the first section is amended  
 19 by striking the items relating to sections 13 through 17  
 20 and inserting the following:

“Sec. 13. Compensation for taken property.

“Sec. 14. Public accessibility and accountability.

“Sec. 15. Annual cost analysis by United States Fish and Wildlife Service.

“Sec. 16. Marine Mammal Protection Act of 1972.

“Sec. 17. Authorization of appropriations.

“Sec. 18. Sunset.”

## 1 SEC. 26. TECHNICAL CORRECTIONS SUBSTITUTING GEN-

2 ~~DEE-NEUTRAL REFERENCES.~~

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

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

7 (2) Section 4(b)(3)(D)(ii) (16 U.S.C.  
8 1533(b)(3)(D)(ii)).

9 (3) Section 4(b)(5)(C) (16 U.S.C.  
10 1533(b)(5)(C)).

11 (4) Section 4(b)(6)(B)(ii) (16 U.S.C.  
12 1533(b)(6)(B)(ii)).

13 (5) Section 4(b)(7)(B) (16 U.S.C.  
14 1533(b)(7)(B)).

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

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

17 (8) Section 9(f) (16 U.S.C. 1538(f)).

18 (9) Section 10(a) (16 U.S.C. 1539(a)).

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

20 (11) Section 10(d) (16 U.S.C. 1539(d)).

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

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

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

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

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

8 (d) "PERSON" FOR "HE".—The following provisions  
9 are amended by striking "he" each place it appears and  
10 inserting "the person":

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

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

13 (e) "DEFENDANT" FOR "HE".—The following provi-  
14 sions are amended by striking "he" each place it appears  
15 and inserting "the defendant".

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

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

18 (f) REFERENCES TO "HIM".—

19 (1) Section 4(c)(1) (16 U.S.C. 1533(c)(1)) is  
20 amended by striking "him or the Secretary of Com-  
21 merce" each place it appears and inserting "the Sec-  
22 retary".

23 (2) Section 4(b)(7) (16 U.S.C. 1533(b)(7)) is  
24 amended in the matter following subparagraph (B)  
25 by striking "him" and inserting "the Secretary".



1 (3) Section 5(k)(2), as redesignated by section  
2 12(1) of this Act, is amended by striking "him" and  
3 inserting "the Secretary".

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

7 (5) Section 8A(c)(2) (16 U.S.C. 1537a(c)(2)) is  
8 amended by striking "him" and inserting "the Sec-  
9 retary".

10 (6) Section 9(d)(2)(A) (16 U.S.C.  
11 1538(d)(2)(A)) is amended by striking "him" each  
12 place it appears and inserting "such person".

13 (7) Section 10(b)(1) (16 U.S.C. 1539(b)(1)) is  
14 amended by striking "him" and inserting "the Sec-  
15 retary".

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

[To be added: amendments correcting references to  
"his".]