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109TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 109–240

PROVIDING FOR CONSIDERATION OF H.R. 3824, THREATENED AND ENDANGERED SPECIES RECOVERY ACT OF 2005

SEPTEMBER 28, 2005.—Referred to the House Calendar and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 470]

The Committee on Rules, having had under consideration House Resolution 470, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 3824, the Threatened and Endangered Species Recovery Act of 2005, under a structured rule. The rule provides ninety minutes of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Resources.

The rule waives all points of order against consideration of the bill. The rule provides that in lieu of the amendment recommended by the Committee on Resources now printed in the bill, the amendment in the nature of a substitute consisting of the text of the Resources Committee Print dated September 26, 2005 shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against that committee amendment in the nature of a substitute.

The rule makes in order only those amendments printed in this report. The rule provides that the amendments printed in this report may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the

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Committee of the Whole. The rule waives all points of order against the amendments printed in the report.

Finally, the rule provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of the bill includes a waiver of clause 4(a) of rule XIII (requiring a three-day layover of the committee report) because the Committee on Resources filed its report (H. Rept. 109–237) with the House on Tuesday, September 27, 2005, and the bill may be considered by the House as early as Thursday, September 29, 2005. The waiver of all points of order also includes a waiver of section 303 of the Congressional Budget Act of 1974 (prohibiting consideration of legislation, as reported, providing new budget authority, change in revenues, change in public debt, new entitlement authority, or new credit authority for a fiscal year until the budget resolution for that year has been agreed to). It is important to note, however, that the delayed spending effects do not result from legislative design, but rather from the time required for the administrative agency to implement the program.

SUMMARY OF AMENDMENTS MADE IN ORDER

1. Pombo: Manager's Amendment.—Makes a number of technical changes to clarify certain provisions and address issues concerning science, definition of "jeopardy", consolidation of ESA related programs, and review of protective regulations. Allows actions authorized under an approved Section 10 permit to be carried out without duplicative consultation. Prevents water stakeholders from being held accountable for impacts due to State actions. Requires the four Power Marketing Administrations to include ESA costs in their monthly billings. Directs the Secretary of Interior to survey certain federal lands to assess their value for report to Congress. Clarifies conflicting statutes to make ESA the governing statutory authority when receiving a dock building permit. (20 minutes)

2. Miller, George (CA)/Boehlert/Dingell/Gilchrest/Dicks/Saxton/Tauscher/Kirk: Amendment in the Nature of a Substitute.—Improves the use of science, providing certainty to landowners, providing flexibility on deadlines for listing species, creating a voluntary conservation program to promote species conservation on private lands, creating a technical assistance program to help small landowners, increasing the role of State and localities, ensuring accountability of the Department of Interior, ensuring that permit and license applicants fully participate in the consultations process, and requiring a balancing of risks in planning for species recovery. (60 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

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

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

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

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

"(ii) data consists of empirical data; or

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

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

Page 4, after line 14, insert the following:

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

Page 6, after line 24, insert the following:

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

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

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

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

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

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

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

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

Page 16, after line 19, insert the following:

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

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

Page 20, line 5, strike "by".

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

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

Page 33, after line 20, insert the following:

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

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

"(i) addresses or affects species that are determined to be endangered species or threatened species and the species

were not addressed or the effects were not considered previously in the agreement; or

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

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

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

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

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

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

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

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

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

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

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

Page 57, after line 23, insert the following:

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

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

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

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

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

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

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

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

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

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

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

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

At the end of the bill add the following:

SEC. 21. CONSOLIDATION OF PROGRAMS.

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

(b) CONFORMING AMENDMENT.—

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

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

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

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

SEC. 22. REVIEW OF PROTECTIVE REGULATIONS.

The Secretary of the Interior shall—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

Sec. 1. Short title; table of contents.
Sec. 2. Amendment references.
Sec. 3. Definitions.
Sec. 4. Determinations of endangered species and threatened species.
Sec. 5. Repeal of critical habitat requirements.
Sec. 6. Petitions and procedures for determinations and revisions.
Sec. 7. Reviews of listings and determinations.
Sec. 8. Protective regulations.
Sec. 9. Secretarial guidelines; State comments.
Sec. 10. Recovery plans and land acquisitions.
Sec. 11. Cooperation with States and Indian tribes.

Sec. 12. Interagency cooperation and consultation.
Sec. 13. Exceptions to prohibitions.
Sec. 14. Private property conservation.
Sec. 15. Public accessibility and accountability.
Sec. 16. Annual cost analyses.
Sec. 17. Reimbursement for depredation of livestock by reintroduced species.
Sec. 18. Authorization of appropriations.
Sec. 19. Miscellaneous technical corrections.
Sec. 20. Establishment of Science Advisory Board.
Sec. 21. Clerical amendment to table of contents.

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

SEC. 2. AMENDMENT REFERENCES.

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

SEC. 3. DEFINITIONS.

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

"(2) The term 'best available scientific data' means data and analyses, regardless of source, produced by scientifically accepted methods and procedures that are available to the Secretary at the time of a decision or action for which such data are required by this Act, and that meet scientifically accepted standards of objectivity, accuracy, reliability, and relevance. For the purpose of this paragraph, the term 'scientifically accepted' means those methods, procedures, and standards that are widely used within the relevant fields of science, including wildlife biology and management.".

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

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

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

"(12) The term 'jeopardize the continued existence' means to engage in an action that, directly or indirectly, makes it less likely that a threatened species or an endangered species will be brought to the point at which measures provided pursuant to this Act are no longer necessary, is likely to significantly delay doing so, or is likely to significantly increase the cost of doing so.".

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

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

(a) REQUIREMENT TO MAKE DETERMINATIONS.—Section 4 (16 U.S.C. 1533) is amended by striking so much as precedes subsection (a)(2) and inserting the following:

"DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

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

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

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

"(C) Disease or predation.

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

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

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

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

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

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

"(2)(A) The Secretary shall—

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

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

"(I) removal from such list;

"(II) change in status from an endangered species to a threatened species; or

"(III) change in status from a threatened species to an endangered species.

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

SEC. 5. REPEAL OF CRITICAL HABITAT REQUIREMENTS.

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

(b) CONFORMING AMENDMENTS.—

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

(2) Section 4(b) (16 U.S.C. 1533(b)) is further amended in paragraph (2), as redesignated by paragraph (1) of this subsection, by striking subparagraph (D).

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

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

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

(A) in the second sentence—

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) TREATMENT OF PETITIONS.—

(1) IN GENERAL.—Section 4(b) (16 U.S.C. 1533(b)) is amended in paragraph (2), as redesignated by section 5(b)(1) of this Act, by adding at the end of subparagraph (A) the following: "The Secretary shall not make a finding that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted unless the petitioner provides to the Secretary a copy of all information cited in the petition."

(2) ADDITIONAL DATA.—Section 4(b) is further amended in paragraph (2), as redesignated by section 5(b)(1) of this Act, in subparagraph (A) by adding at the end the following: "If the Secretary finds with respect to a petition under this subparagraph, that there is substantial disagreement regarding the

sufficiency or accuracy of the available data relevant to the petitioned action, the Secretary, in consultation with the States, may for the purpose of seeking additional data postpone making a finding under this subsection by no more than 18 months.".

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

"(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded within current fiscal year funding by higher priority pending proposals determined by the Secretary to involve species at greater risk of extinction, and".

(b) IMPLEMENTING REGULATIONS.—

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

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

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

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

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

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

(v) by adding at the end the following:

"(iii) maintain, and shall make available, a complete record of all information not protected by copyright concerning the determination or revision in the possession of the Secretary, on a publicly accessible website on the Internet, including an index to such information."; and

(B) by adding at the end the following:

"(8)(A) Information maintained and made available under paragraph (5)(A)(iii) shall include any status review, all information not protected by copyright cited in such a status review, all information referred to in the proposed regulation and the preamble to the proposed regulation, and all information submitted to the Secretary by third parties.

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

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

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

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

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

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

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

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

(D) by striking subparagraph (C).

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

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

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

SEC. 7. REVIEWS OF LISTINGS AND DETERMINATIONS.

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

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

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

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

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

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

SEC. 8. PROTECTIVE REGULATIONS.

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

(1) inserting "(1)" before "Whenever";

(2) inserting "in consultation with the States" after "the Secretary shall"; and

(3) adding at the end the following new paragraphs:

"(2) Each regulation published under this subsection after the enactment of the Threatened and Endangered Species Recovery Act of 2005 shall be accompanied with a statement by the Secretary of the reason or reasons for applying any particular prohibition to the threatened species.

"(3) A regulation issued under this subsection after the enactment of the Threatened and Endangered Species Recovery Act of 2005 may apply to more than one threatened species only if the specific threats to, and specific biological conditions and needs of, the species are identical, or sufficiently similar, to warrant the application of identical prohibitions.

"(4) The Secretary may review regulations issued under this subsection prior to the enactment of the Threatened and Endangered Species Recovery Act of 2005. A species afforded protections by any such regulation shall continue to be afforded those protections until such time as the Secretary shall review the regulations issued prior to the enactment of the Threatened and Endangered Species Recovery Act of 2005 as they pertain to that species.".

SEC. 9. SECRETARIAL GUIDELINES; STATE COMMENTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) by striking "agency's".

SEC. 10. RECOVERY PLANS AND LAND ACQUISITIONS.

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

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

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

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

"RECOVERY PLANS AND LAND ACQUISITION

"SEC. 5. (a) RECOVERY PLANS.—The Secretary shall, in accordance with this section, develop and implement a plan (in this sub-

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

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

"(2) In the case of any species determined to be an endangered species or threatened species after the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005, the Secretary shall publish a final recovery plan for a species within 3 years after the date the species is listed under section 4(c).

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

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

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

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

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

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

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

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

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

"(5) The Secretary, using the priority ranking system required under paragraph (3), shall revise such plans within 10 years after

the date of enactment of the Threatened and Endangered Species Recovery Act of 2005.

"(6) In development of recovery plans, the Secretary shall use comparative risk assessments, if appropriate, to consider and analyze the short-term and long-term consequences of alternative recovery strategies.

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

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

"(ii) A description of such site-specific or other measures that would achieve the criteria established under clause (i), including such intermediate measures as are warranted to effect progress toward achievement of the criteria.

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

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

"(B) The Secretary may at the time of listing or at any time prior to the approval of a recovery plan for a species issue such guidance as the Secretary considers appropriate to assist Federal agencies, State agencies, and other persons in complying with the requirements of this Act by identifying either particular types of activities or particular areas of land or water within which those or other activities may impede the conservation of the species.

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

"(i) whenever possible include alternative measures; and

"(ii) in developing such alternative measures, seek to identify, among such alternative measures of comparable expected efficacy and timeliness, the alternative measures that are least costly.

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

"(d) RECOVERY TEAMS.—(1) The Secretary shall promulgate regulations that provide for the establishment of recovery teams that may advise the Secretary in the development of recovery plans under this section. The recovery teams may help the Secretary ensure that recovery plans are scientifically rigorous and that the evaluation of costs required by paragraph (1)(A)(iii) of subsection (c) are economically rigorous.

"(2) Such regulations shall—

"(A) establish criteria and the process for selecting the members of recovery teams that ensure that each team—

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

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

"(B) include provisions regarding operating procedures of and recordkeeping by recovery teams.

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

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

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

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

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

"(ii) the basis for that assessment; and

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

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

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

"(h) INDIAN TRIBE DEFINED.—For purposes of this Act, the term 'Indian tribe' means—

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

"(2) with respect to Alaska, the Metlakatla Indian Community.

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

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

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

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

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

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

(b) CONFORMING AMENDMENTS.—

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

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

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

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

SEC. 11. COOPERATION WITH STATES AND INDIAN TRIBES.

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

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

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

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

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

"(4) Any cooperative agreement entered into by the Secretary under this subsection that provides for the enrollment of private

lands or water rights in any program established by the agreement shall ensure that the decision to enroll is voluntary for each owner of such lands or water rights.

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

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

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

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

(2) in subsection (d)(1)—

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

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

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

(3) in subsection (e)—

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

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

(C) by adding at the end the following:

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

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

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

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

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

SEC. 12. INTERAGENCY COOPERATION AND CONSULTATION.

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

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

(2) in paragraph (2)—

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

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

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

(3) in paragraph (4)—

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

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

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

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

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

(3) in paragraph (3)(A)—

(A) in the first sentence—

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

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

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

(B) by striking all after the first sentence and inserting the following: "The Secretary shall consider any comment from the Federal agency and the permit or license applicant, if any, prior to issuance of the final written statement of the Secretary's opinion. The Secretary shall issue the final written statement of the Secretary's opinion by providing the written statement to the Federal agency and the permit or license applicant, if any, and publishing notice of the written statement in the Federal Register. If jeopardy is found, the Secretary shall suggest in the final written statement those reasonable and prudent alter-

natives, if any, that the Secretary believes would not violate subsection (a)(2) and can be taken by the Federal agency or applicant in implementing the agency action. The Secretary shall cooperate with the Federal agency and any permit or license applicant in the preparation of any suggested reasonable and prudent alternatives.";

(4) in paragraph (4)—

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

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

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

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

(5) by adding at the end the following:

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

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

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

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

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

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

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

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

(1) by repealing subsection (j);

(2) by redesignating the remaining subsections accordingly; and

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

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

(B) by striking the second sentence.

SEC. 13. EXCEPTIONS TO PROHIBITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

"(3) Any terms and conditions offered by the Secretary pursuant to paragraph (2)(B) to reduce or offset the impacts of incidental taking shall be no more than necessary to offset the impact of the incidental taking specified in the conservation plan pursuant to in paragraph (2)(A)(i).

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

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

"(C) For any changed circumstance not identified in the permit or incorporated document, the Secretary may, in the absence of consent of the permit holder, require only such additional minimization, mitigation, or other measures to address such changed

circumstance that do not involve the commitment of any additional land, water, or financial compensation not otherwise committed, or the imposition of additional restrictions on the use of any land, water or other natural resources otherwise available for development or use, under the original terms and conditions of the permit or incorporated document.

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

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

"(F) If the Secretary determines that a conservation plan under this subsection reasonably can be expected to fail to achieve the goals specified under paragraph (2)(A)(iv), the Secretary shall, at the Secretary's expense, implement remedial conservation measures. Nothing in the preceding sentence shall be construed to allow the Secretary to require the holder of a permit issued under this subsection to undertake any additional measures without the consent of the holder.

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

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

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

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

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

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

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

(1) in paragraph (1), by striking "For purposes" and all that follows through the end of the paragraph and inserting the following: "For purposes of this subsection, the term 'experimental population' means any population (including any offspring arising therefrom) authorized by the Secretary for release under paragraph (2), but only when such population is in the area designated for it by the Secretary, and such area is,

at the time of release, wholly separate geographically from areas occupied by nonexperimental populations of the same species. For purposes of this subsection, the term 'areas occupied by nonexperimental populations' means areas characterized by the sustained and predictable presence of more than negligible numbers of successfully reproducing individuals over a period of many years.";

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

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

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

"(k) WRITTEN DETERMINATION OF COMPLIANCE.—(1) A property owner (in this subsection referred to as a 'requester') may request the Secretary to make a written determination as to whether a proposed use of the owner's property that is lawful under State and local law will require a permit under section 10(a), by submitting a written description of the proposed action to the Secretary by certified mail.

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

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

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

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

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

"(5)(A) Subject to subparagraph (B), the Secretary shall provide to the requestor a written determination of whether the proposed use, as proposed by the requestor, will require a permit under section 10(a), by not later than expiration of the 180-day period beginning on the date of the submission of the request.

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

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

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

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

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

SEC. 14. PRIVATE PROPERTY CONSERVATION.

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

"PRIVATE PROPERTY CONSERVATION PROGRAM

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

"(1) REQUIREMENT.—The Secretary shall establish a Private Property Conservation Program to improve the habitat and promote the conservation, on private lands, of endangered species, threatened species, and species that are candidates to be determined to be endangered species or threatened species.

"(2) AGREEMENTS AUTHORIZED.—The Secretary may enter into an agreement with a private property owner under which the Secretary shall, subject to appropriations, make annual or other payments to the person to implement the agreement.

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

"(A) specify a management plan that the private property owner shall commit to implement on the property of the private property owner, including—

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

"(ii) a finding by the Secretary that the land to which the agreement applies is appropriate for the species and habitat covered by the agreement;

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

"(iv) a description of the existing or future economic activities on the land to which the agreement applies that are compatible with the goals of the program.

"(B) specify the terms of the agreement, including—

"(i) the terms of payment to be provided by the Secretary to the private property owner;

"(ii) a description of any technical assistance the Secretary will provide to the private property owner to implement the management plan;

"(iii) the terms and conditions under which the Secretary and the private property owner mutually agree that the agreement may be modified or terminated;

"(iv) acts or omissions by the Secretary or the private property owner that shall be considered violations of the agreement, and procedures under which notice and an opportunity to remedy any violation by the private property owner shall be given;

"(v) a finding by the Secretary that the private property owner owns the land to which the agreement ap-

plies or has sufficient control over the use of such land to ensure implementation of agreement; and

"(vi) such other duties of the Secretary and of the private property owner as are appropriate.

"(4) COST SHARE.—The Secretary may provide up to 70 percent of the cost to implement the management plan under the terms of the agreement.

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

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

"(B) reasonably can be expected to achieve the greatest benefit for the conservation of the species covered by the agreement relative to the total amount of funds to be expended to implement the agreement.

"(6) TECHNICAL ASSISTANCE.—Any State agency, local government, nonprofit organization, or federally recognized Indian tribe may provide technical assistance to a private property owner in the preparation of a management plan, or participate in the implementation of a management plan, including identifying and making available certified fisheries or wildlife biologists with expertise in the conservation of species.

"(7) TRANSFER OF PROPERTY.—Upon any conveyance or other transfer of interest in land that is subject to an agreement under this section

"(A) the agreement shall continue in effect with respect to such land, with the same terms and conditions, if the person to whom the land or interest is conveyed or otherwise transferred notifies the Secretary of the person's election to continue the agreement by not later than 30 days after the date of the conveyance or other transfer;

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

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

"(8) MODEL FORM OF AGREEMENT.—Not later than 1 year after the date of the enactment of the Threatened and Endangered Species Act of 2005, the Secretary shall establish a model form of agreement that a person may enter into with the Secretary under this section.

"(9) VOLUNTARY PROGRAM.—

"(A) AGREEMENTS MAY NOT BE REQUIRED.—The Secretary, or any other Federal official, may not require a person to enter into an agreement under this section as a term or condition of any right, privilege, or benefit, or of any action or refraining from any action, under this or any other law.

"(B) REQUIREMENTS UNDER LAWS AND PERMITS.—None of the activities otherwise required by law or by the terms of any permit may be included in any agreement under this section.

"(10) RELATIONSHIP TO HABITAT CONSERVATION PLANS.—The Secretary may consider an agreement under this subsection that applies to an endangered species or threatened species in

determining the adequacy of a conservation plan for the purpose of section 10(a)(2).

"(b) TECHNICAL ASSISTANCE PROGRAM FOR SMALL LANDOWNERS.—

"(1) IN GENERAL.—The Secretary shall establish a program to offer technical assistance to owners of private property seeking guidance on the conservation of endangered species or threatened species, or species that are candidates for being determined to be endangered species or threatened species.

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

"(A) helping to prepare and implement a conservation agreement under subsection (a);

"(B) training the managers of private property in best practices to conserve species and create, restore, enhance, and protect habitat for species;

"(C) helping to prepare an application for a permit and a conservation plan under section 10(a); and

"(D) any other purpose the Secretary determines is appropriate to meet the goals of the program under subsection (a).

"(3) PRIORITY.—The Secretary shall give priority in offers of technical assistance to owners of private property that the Secretary determines cannot reasonably be expected to afford adequate technical assistance.

"(4) FUNDING FOR PROGRAM.—For any year for which funds are appropriated to carry out this Act, 10 percent shall be for carrying out this subsection, unless the Secretary determines for any fiscal year that a smaller percentage is sufficient and submits a report to the Congress containing the percentage and an explanation of the basis for the determination.".

SEC. 15. PUBLIC ACCESSIBILITY AND ACCOUNTABILITY.

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

"PUBLIC ACCESSIBILITY AND ACCOUNTABILITY

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

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

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

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

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

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

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

SEC. 16. ANNUAL COST ANALYSES.

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

"ANNUAL COST ANALYSIS BY UNITED STATES FISH AND WILDLIFE SERVICE

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

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

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

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

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

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

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

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

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

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

SEC. 17. REIMBURSEMENT FOR DEPREDATION OF LIVESTOCK BY REINTRODUCED SPECIES.

The Endangered Species Act of 1973 is further amended—

(1) by striking sections 15 and 16;

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

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

"REIMBURSEMENT FOR DEPREDATION OF LIVESTOCK BY REINTRODUCED SPECIES

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

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

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

SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

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

"AUTHORIZATION OF APPROPRIATIONS

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

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

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

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

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

SEC. 19. MISCELLANEOUS TECHNICAL CORRECTIONS.

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

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

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

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

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

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

(3) in subsection (e)—

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

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

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

(1) in subsection (a)—

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

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

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

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

(2) in subsection (b)—

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

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

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

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

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

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

(6) in subsection (f)—

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

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

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

(1) in paragraph (1)—

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

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

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

(2) in paragraph (2)—

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

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

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

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

(2) by striking "of this Act".

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

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

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

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

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

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

(j) SUBSTITUTION OF GENDER-NEUTRAL REFERENCES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) REFERENCES TO "HIM".—

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

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

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

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

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

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

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

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

(8) REFERENCES TO "HIS".—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 20. ESTABLISHMENT OF SCIENCE ADVISORY BOARD.

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

"SCIENCE ADVISORY BOARD

"SEC. 19.

"(a) IN GENERAL.—Within 12 months after the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005, the Secretary of Interior, through the Director of the United States Fish and Wildlife Service, shall establish a Science Advisory Board (in this section referred to as the 'Board') to provide such scientific advice as may be requested by the Secretary to assist in the evaluation of the use of science in implementing this Act, including in the development of policies and procedures pertaining to the use of scientific information.

"(b) COMPOSITION.—The Board shall each consist of 9 members appointed by the Secretary of the Interior from a list of nominees recommended by the National Academy of Sciences, utilizing a system of staggered 3-year terms of appointment. One member shall be elected by the members of the Board as its Chairman. Members of the Board shall be selected on the basis of their professional qualifications in the areas of ecology, fish and wildlife management, plant ecology, or natural resource conservation. Members of the Board shall not hold another office or position in the Federal Government. If a vacancy occurs on the Board due to expiration of a term, resignation, or any other reason, each replacement shall be selected by the Secretary from a group of at least 4 nominees recommended by the National Academy of Sciences. The Secretary

may extend the term of a Board member until the new member is appointed to fill the vacancy. If a vacancy occurs due to resignation, or reason other than expiration of a term, the Secretary shall appoint a member to serve during the unexpired term utilizing the nomination process set forth in this subsection. The Secretary shall publish in the Federal Register the name, business address, and professional affiliations of each appointee.

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

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

SEC. 21. CLERICAL AMENDMENT TO TABLE OF CONTENTS.

The table of contents in the first section is amended—

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

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

; and

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

"Sec. 13. Private property conservation program.
"Sec. 14. Public accessibility and accountability.
"Sec. 15. Marine Mammal Protection Act of 1972.
"Sec. 16. Annual cost analysis by United States Fish and Wildlife Service.
"Sec. 17. Reimbursement for depredation of livestock by reintroduced species.
"Sec. 18. Authorization of appropriations.
"Sec. 19. Science Advisory Board.".

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