

111TH CONGRESS
2^D SESSION

S. 3146

To amend the Internal Revenue Code to provide a tax credit to individuals who enter into agreements to protect the habitats of endangered and threatened species, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 22 (legislative day, MARCH 19), 2010

Mr. CRAPO (for himself, Mrs. LINCOLN, Mr. BURR, Mr. BROWNBACK, Ms. COLLINS, Ms. SNOWE, Mr. COCHRAN, Mr. CORNYN, Mr. TESTER, and Mr. RISCH) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code to provide a tax credit to individuals who enter into agreements to protect the habitats of endangered and threatened species, 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.**

4 This Act may be cited as the “Endangered Species
5 Recovery Act of 2010”.

1 **SEC. 2. ENDANGERED SPECIES RECOVERY CREDIT.**

2 (a) IN GENERAL.—Subpart B of part IV of sub-
 3 chapter A of chapter 1 of the Internal Revenue Code of
 4 1986 is amended by adding at the end the following new
 5 section:

6 **“SEC. 30E. ENDANGERED SPECIES RECOVERY CREDIT.**

7 “(a) IN GENERAL.—In the case of an eligible tax-
 8 payer, there shall be allowed as a credit against the tax
 9 imposed by this chapter for the taxable year an amount
 10 equal to the sum of—

11 “(1) the habitat protection easement credit,
 12 plus

13 “(2) the habitat restoration credit.

14 “(b) LIMITATION.—

15 “(1) IN GENERAL.—The credit allowed under
 16 subsection (a) for any eligible taxpayer for any tax-
 17 able year shall not exceed the endangered species re-
 18 covery credit limitation allocated to the eligible tax-
 19 payer under subsection (f) for the calendar year in
 20 which the taxpayer’s taxable year ends.

21 “(2) CARRYFORWARDS.—

22 “(A) IN GENERAL.—If the amount of the
 23 credit allowable under subsection (a) for any
 24 taxpayer for any taxable year exceeds the en-
 25 dangered species recovery credit limitation allo-
 26 cated under subsection (f) to such taxpayer for

1 the calendar year in which the taxpayer's tax-
 2 able year ends, such excess may be carried for-
 3 ward to the next taxable year for which such
 4 taxpayer is allocated a portion of the endan-
 5 gered species recovery credit limitation.

6 “(B) CARRYFORWARD OF ALLOCATION
 7 AMOUNT.—If the amount of the endangered
 8 species recovery credit limitation allocated to an
 9 eligible taxpayer for any calendar year under
 10 subsection (f) exceeds the amount of the credit
 11 allowed to the taxpayer under subsection (a) for
 12 the taxable year ending in such calendar year,
 13 such excess may be carried forward to the next
 14 taxable year of the taxpayer. For purposes of
 15 this paragraph, any amount carried to another
 16 taxable year under this subparagraph shall be
 17 treated as allocated to the taxpayer for use in
 18 such taxable year under subsection (f).

19 “(c) ELIGIBLE TAXPAYER.—For purposes of this sec-
 20 tion—

21 “(1) IN GENERAL.—The term ‘eligible taxpayer’
 22 means—

23 “(A) a taxpayer who—

24 “(i) owns real property which contains
 25 the habitat of a qualified species, and

1 “(ii) enters into a qualified perpetual
2 habitat protection agreement, a qualified
3 30-year habitat protection agreement, or a
4 qualified habitat protection agreement with
5 the appropriate Secretary with respect to
6 such real property, and

7 “(B) any other taxpayer who—

8 “(i) is a party to a qualified perpetual
9 habitat protection agreement, a qualified
10 30-year habitat protection agreement, or a
11 qualified habitat protection agreement, and

12 “(ii) as part of any such agreement,
13 agrees to assume responsibility for costs
14 paid or incurred as a result of imple-
15 menting such agreement.

16 “(2) QUALIFIED PERPETUAL HABITAT PROTEC-
17 TION AGREEMENT.—The term ‘qualified perpetual
18 habitat protection agreement’ means an agree-
19 ment—

20 “(A) under which the taxpayer grants to
21 the appropriate Secretary, the Secretary of Ag-
22 riculture, the Secretary of Defense, or a State
23 an easement in perpetuity for the protection of
24 the habitat of a qualified species, and

1 “(B) which meets the requirements of
2 paragraph (5).

3 “(3) QUALIFIED 30-YEAR HABITAT PROTECTION
4 AGREEMENT.—The term ‘qualified 30-year habitat
5 protection agreement’ means an agreement—

6 “(A) under which the taxpayer grants to
7 the appropriate Secretary, the Secretary of Ag-
8 riculture, the Secretary of Defense, or a State
9 an easement for a period of not less than 30
10 years and less than perpetuity for the protec-
11 tion of the habitat of a qualified species, and

12 “(B) which meets the requirements of
13 paragraph (5).

14 “(4) QUALIFIED HABITAT PROTECTION AGREE-
15 MENT.—The term ‘qualified habitat protection
16 agreement’ means an agreement—

17 “(A) under which the taxpayer enters into
18 an agreement with the appropriate Secretary,
19 the Secretary of Agriculture, the Secretary of
20 Defense, or a State to protect the habitat of a
21 qualified species for a specified period of time,
22 and

23 “(B) which meets the requirements of
24 paragraph (5).

1 “(5) REQUIREMENTS.—An agreement meets
2 the requirements of this paragraph if—

3 “(A) the agreement is consistent with any
4 recovery plan which is applicable and which has
5 been approved for a qualified species under sec-
6 tion 4 of the Endangered Species Act of 1973,

7 “(B) the appropriate Secretary and the eli-
8 gible taxpayer enter into a habitat management
9 plan designed to—

10 “(i) restore or enhance the habitat of
11 a qualified species, or

12 “(ii) reduce threats to a qualified spe-
13 cies through the management of the habi-
14 tat, and

15 “(C) the appropriate Secretary ensures
16 that the eligible taxpayer is provided with tech-
17 nical assistance in carrying out the duties of the
18 taxpayer under the terms of the agreement.

19 “(d) HABITAT PROTECTION EASEMENT CREDIT.—

20 “(1) IN GENERAL.—For purposes of subsection
21 (a)(1), the habitat protection easement credit for
22 any taxable year is an amount equal to—

23 “(A) in the case of an eligible taxpayer
24 who has entered into a qualified perpetual habi-

1 tat protection agreement during such taxable
2 year, 100 percent of the excess (if any) of—

3 “(i) the fair market value of the real
4 property with respect to which the quali-
5 fied perpetual habitat protection agreement
6 is made, determined on the day before
7 such agreement is entered into, over

8 “(ii) the fair market value of such
9 property, determined on the day after such
10 agreement is entered into,

11 “(B) in the case of an eligible taxpayer
12 who has entered into a qualified 30-year habitat
13 protection agreement during such taxable year,
14 75 percent of such excess, and

15 “(C) in the case of any other eligible tax-
16 payer, zero.

17 “(2) REDUCTION FOR AMOUNT RECEIVED FOR
18 EASEMENT.—The credit allowed under subsection
19 (a)(1) shall be reduced by any amount received by
20 the taxpayer in connection with the easement.

21 “(3) LIMITATION BASED ON AMOUNT OF
22 TAX.—The credit allowed under subsection (a)(1) for
23 any taxable year shall not exceed the sum of—

24 “(A) the taxpayer’s regular tax liability for
25 the taxable year reduced by the sum of the

1 credits allowable under subpart A and sections
2 27, 30, 30B, 30C, and 30D, and

3 “(B) the tax imposed by section 55(a) for
4 the taxable year.

5 “(4) CARRYFORWARD OF UNUSED CREDIT.—If
6 the credit allowable under subsection (a)(1) for any
7 taxable year exceeds the limitation imposed by para-
8 graph (3) for such taxable year, such excess shall be
9 carried to the succeeding taxable year and added to
10 the credit allowable under subsection (a)(1) for such
11 succeeding taxable year.

12 “(5) QUALIFIED APPRAISALS REQUIRED.—No
13 amount shall be taken into account under this sub-
14 section unless the eligible taxpayer includes with the
15 taxpayer’s return for the taxable year a qualified ap-
16 praisal (within the meaning of section
17 170(f)(11)(E)) of the real property.

18 “(e) HABITAT RESTORATION CREDIT.—

19 “(1) IN GENERAL.—For purposes of subsection
20 (a)(2), the habitat restoration credit for any taxable
21 year shall be an amount equal to—

22 “(A) in the case of a qualified perpetual
23 habitat protection agreement, 100 percent of
24 the costs paid or incurred by an eligible tax-
25 payer during such taxable year pursuant to the

1 habitat management plan entered into under
2 such agreement,

3 “(B) in the case of a qualified 30-year
4 habitat protection agreement, 75 percent of the
5 costs paid or incurred by an eligible taxpayer
6 during such taxable year pursuant to the habi-
7 tat management plan entered into under such
8 agreement, and

9 “(C) in the case of a qualified habitat pro-
10 tection agreement, 50 percent of the costs paid
11 or incurred by an eligible taxpayer during such
12 taxable year pursuant to the habitat manage-
13 ment plan entered into under such agreement.

14 “(2) LIMITATION BASED ON AMOUNT OF
15 TAX.—The credit allowed under subsection (a)(2) for
16 any taxable year shall not exceed the excess (if any)
17 of—

18 “(A) the regular tax liability for the tax-
19 able year reduced by the sum of the credits al-
20 lowable under subpart A and sections 27, 30,
21 30B, 30C, and 30D, over

22 “(B) the tentative minimum tax for the
23 taxable year.

24 “(3) CARRYFORWARD OF UNUSED CREDIT.—If
25 the credit allowable under subsection (a)(2) for any

1 taxable year exceeds the limitation imposed by para-
2 graph (2) for such taxable year, such excess shall be
3 carried to the succeeding taxable year and added to
4 the credit allowable under subsection (a)(2) for such
5 succeeding taxable year.

6 “(4) SPECIAL RULES.—

7 “(A) CERTAIN COSTS NOT INCLUDED.—No
8 credit shall be allowed under subsection (a)(2)
9 for any cost which is paid or incurred by a tax-
10 payer to comply with any requirement of a Fed-
11 eral, State, or local government.

12 “(B) SUBSIDIZED FINANCING.—For pur-
13 poses of paragraph (1), the amount of costs
14 paid or incurred by an eligible taxpayer pursu-
15 ant to any agreement described in subsection
16 (c) shall be reduced by the amount of any fi-
17 nancing provided under any Federal or State
18 program a principal purpose of which is to sub-
19 sidize financing for the conservation of the
20 habitat of a qualified species.

21 “(f) ENDANGERED SPECIES RECOVERY CREDIT LIM-
22 ITATION.—

23 “(1) IN GENERAL.—There is an endangered
24 species recovery credit limitation for each calendar
25 year. Such limitation is—

1 “(A) for 2011, 2012, 2013, 2014, and
2 2015—

3 “(i) \$300,000,000 with respect to
4 qualified perpetual habitat protection
5 agreements,

6 “(ii) \$60,000,000 with respect to
7 qualified 30-year habitat protection agree-
8 ments, and

9 “(iii) \$40,000,000 with respect to
10 qualified habitat protection agreements,
11 and

12 “(B) except as provided in paragraph (3),
13 zero thereafter.

14 “(2) ALLOCATION OF LIMITATION.—

15 “(A) IN GENERAL.—The Secretary, in con-
16 sultation with the Secretary of the Interior and
17 the Secretary of Commerce, shall allocate the
18 endangered species recovery credit limitation to
19 eligible taxpayers.

20 “(B) ESTABLISHMENT OF ALLOCATION
21 PROGRAM.—Not later than 180 days after the
22 date of the enactment of this Act, the Secretary
23 of the Treasury, in consultation with the Sec-
24 retary of the Interior and the Secretary of
25 Commerce, shall, by regulation, establish a pro-

1 gram to process applications from eligible tax-
2 payers and to determine how to best allocate
3 the credit limitation under subparagraph (A),
4 taking into account the considerations described
5 in subparagraph (C).

6 “(C) CONSIDERATIONS.—In accepting ap-
7 plications to make allocations to eligible tax-
8 payers under this section, priority shall be given
9 to taxpayers with agreements—

10 “(i) relating to habitats that will sig-
11 nificantly increase the likelihood of recov-
12 ering and delisting a species as an endan-
13 gered species or a threatened species (as
14 defined under section 2 of the Endangered
15 Species Act of 1973),

16 “(ii) that are cost-effective and maxi-
17 mize the benefits to a qualified species per
18 dollar expended,

19 “(iii) relating to habitats of species
20 which have a federally approved recovery
21 plan pursuant to section 4 of the Endan-
22 gered Species Act of 1973,

23 “(iv) relating to habitats with the po-
24 tential to contribute significantly to the im-

1 improvement of the status of a qualified spe-
2 cies,

3 “(v) relating to habitats with the po-
4 tential to contribute significantly to the
5 eradication or control of invasive species
6 that are imperiling a qualified species,

7 “(vi) with habitat management plans
8 that will manage multiple qualified species,

9 “(vii) with habitat management plans
10 that will create adjacent or proximate habi-
11 tat for the recovery of a qualified species,

12 “(viii) relating to habitats for quali-
13 fied species with an urgent need for protec-
14 tion,

15 “(ix) with habitat management plans
16 that assist in preventing the listing of a
17 species as endangered or threatened under
18 the Endangered Species Act of 1973 or a
19 similar State law,

20 “(x) with habitat management plans
21 that may resolve conflicts between the pro-
22 tection of qualified species and otherwise
23 lawful human activities, and

24 “(xi) with habitat management plans
25 that may resolve conflicts between the pro-

1 tection of a qualified species and military
2 training or other military operations.

3 “(3) CARRYOVER OF UNUSED LIMITATION.—If
4 for any calendar year the limitation under paragraph
5 (1) (after the application of this paragraph) exceeds
6 the amount allocated to all eligible taxpayers for
7 such calendar year, the limitation amount for the
8 following calendar year shall be increased by the
9 amount of such excess.

10 “(g) OTHER DEFINITIONS AND SPECIAL RULES.—

11 “(1) APPROPRIATE SECRETARY.—The term ‘ap-
12 propriate Secretary’ has the meaning given to the
13 term ‘Secretary’ under section 3(15) of the Endan-
14 gered Species Act of 1973.

15 “(2) HABITAT MANAGEMENT PLAN.—The term
16 ‘habitat management plan’ means, with respect to
17 any habitat, a plan which—

18 “(A) identifies one or more qualified spe-
19 cies to which the plan applies,

20 “(B) describes the management practices
21 to be undertaken by the taxpayer,

22 “(C) describes the technical assistance to
23 be provided to the taxpayer and identifies the
24 entity that will provide such assistance,

1 “(D) provides a schedule of deadlines for
2 undertaking such management practices, and

3 “(E) requires monitoring of the manage-
4 ment practices and the status of the qualified
5 species.

6 “(3) QUALIFIED SPECIES.—The term ‘qualified
7 species’ means—

8 “(A) any species listed as an endangered
9 species or threatened species under the Endan-
10 gered Species Act of 1973, or

11 “(B) any species for which a finding has
12 been made under section 4(b)(3) of Endangered
13 Species Act of 1973 that listing under such Act
14 may be warranted.

15 “(4) TAKING.—The term ‘taking’ has the
16 meaning given to such term under the Endangered
17 Species Act of 1973.

18 “(5) REDUCTION IN BASIS.—For purposes of
19 this subtitle, the basis of any property for which a
20 credit is allowable under subsection (a)(1) shall be
21 reduced by the amount of the credit so allowed.

22 “(6) DENIAL OF DOUBLE BENEFIT.—No deduc-
23 tion shall be allowed under this chapter for any
24 amount with respect to which a credit is allowed
25 under subsection (a).

1 “(7) CERTIFICATION.—No credit shall be al-
2 lowed under subsection (a) unless the appropriate
3 Secretary certifies that any agreement described in
4 subsection (c) which is entered into by an eligible
5 taxpayer will contribute to the recovery of a qualified
6 species.

7 “(8) REQUEST FOR AUTHORIZATION OF INCI-
8 DENTAL TAKINGS.—The Secretary shall request the
9 appropriate Secretary to consider whether to author-
10 ize under the Endangered Species Act of 1973
11 takings by an eligible taxpayer of a qualified species
12 to which an agreement described in subsection (c)
13 relates if the takings are incidental to—

14 “(A) the restoration, enhancement, or
15 management of the habitat pursuant to the
16 habitat management plan under the agreement,
17 or

18 “(B) the use of the property to which the
19 agreement pertains at any time after the expi-
20 ration of the easement or the specified period
21 described in subsection (c)(4)(A), but only if
22 such use will leave the qualified species at least
23 as well off on the property as it was before the
24 agreement was made.

1 “(9) RECAPTURE.—The Secretary shall, by reg-
2 ulations, provide for recapturing the benefit under
3 any credit allowable under subsection (a) if the Sec-
4 retary, in consultation with the appropriate Sec-
5 retary, determines that—

6 “(A) the eligible taxpayer has failed to
7 carry out the duties of the taxpayer under the
8 terms of a qualified perpetual habitat protection
9 agreement, a qualified 30-year habitat protec-
10 tion agreement, or a qualified habitat protection
11 agreement, and

12 “(B) there are no other available means to
13 remediate such failure.”.

14 (b) GAO STUDY.—

15 (1) IN GENERAL.—The Comptroller General of
16 the United States shall undertake a study on the ef-
17 fectiveness of the endangered species recovery credit
18 under section 30E of the Internal Revenue Code of
19 1986 (as added by this Act).

20 (2) ISSUES TO BE STUDIED.—The study under
21 paragraph (1) shall—

22 (A) evaluate—

23 (i) the effectiveness of the endangered
24 species recovery credit in encouraging
25 landowners to enter into agreements for

1 the protection of the habitats of endan-
2 gered and threatened species, and

3 (ii) the degree to which such agree-
4 ments are effective in—

5 (I) preserving the habitats of en-
6 dangered and threatened species, and

7 (II) assisting in the recovery of
8 such species, and

9 (B) include recommendations for improv-
10 ing the effectiveness of endangered species re-
11 covery credit.

12 (3) REPORTS.—

13 (A) INTERIM REPORT.—Not later than 3
14 years after the date of the enactment of this
15 Act, the Comptroller General of the United
16 States shall submit to Congress an interim re-
17 port on the study conducted under paragraph
18 (1).

19 (B) FINAL REPORT.—Not later than 5
20 years after the date of the enactment of this
21 Act, the Comptroller General of the United
22 States shall submit to Congress a final report
23 on the study conducted under paragraph (1).

24 (c) CONFORMING AMENDMENTS.—

1 (1) Section 1016(a) of the Internal Revenue
2 Code of 1986 is amended by striking “and” at the
3 end of paragraph (36), by striking the period at the
4 end of paragraph (37) and inserting “, and”, and by
5 inserting after paragraph (37) the following new
6 paragraph:

7 “(38) to the extent provided in section
8 30E(g)(5).”.

9 (2) The table of sections for subpart B of part
10 IV of subchapter A of chapter 1 of such Code is
11 amended by inserting after the item relating to sec-
12 tion 30D the following new item:

“Sec. 30E. Endangered species recovery credit.”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning after
15 December 31, 2010.

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