§ 81.2 Cooperation with the States.

The Secretary is authorized by the act to cooperate with any State which establishes and maintains an adequate and active program for the conservation of various endangered and threatened species. In order for a State program to be deemed an adequate and active program, the Secretary must find and reconfirm, on an annual basis, that under the State program, either:

(a) Authority resides in the State agency to conserve resident species of fish and wildlife or plants determined by the State agency or the Secretary to be endangered or threatened;

(b) The State agency has established an acceptable conservation program, consistent with the purposes and policies of the act, for all residents species of fish and wildlife or plants in the State which are deemed by the Secretary to be endangered or threatened; and has furnished a copy of such program together with all pertinent details, information, and data requested to the Secretary;

(c) The State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife or plants;

d) Fish or wildlife. Any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

e) Plant. Any member of the plant kingdom, including seeds, roots, and other parts thereof.

(f) Program. A State-developed set of goals, objectives, strategies, action, and funding necessary to be taken to promote the conservation and management of resident endangered or threatened species.

(g) Secretary. The Secretary of the Interior or his authorized representative.

(h) Species. This term includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

(i) State. Any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(j) State agency. The State agency or agencies, or other governmental entity or entities which are responsible for the management and conservation of fish or wildlife resources within a State.

(k) Plan. A course of action under which immediate attention will be given to a State’s resident species determined to be endangered or threatened.

(l) Threatened species. Any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, as determined by the Secretary.

(m) Project. A plan undertaken to conserve the various species of fish and wildlife or plants facing extinction.


(o) Project segment. An essential part or a division of a project, usually separated as a period of time, occasionally as a unit of work.

(p) Resident species. For the purposes of the Endangered Species Act of 1973, a species is resident in a State if it exists in the wild in that State during any part of its life.
§ 81.3 Cooperative Agreement.

Upon determination by the Secretary that a State program is adequate and active and complies with §81.2, the Secretary shall enter into an Agreement with the State. A Cooperative Agreement is necessary before a Project Agreement can be approved for endangered or threatened species projects. A cooperative agreement under §81.2 must be reconfirmed annually to reflect new laws, species lists, rules and regulations, and programs, and to demonstrate that the program is still active and adequate. The Secretary, in determining which species are most urgently in need of a conservation program as provided for in §81.2(e), shall apply the following criteria: (1) the degree of threat to the continued existence of the species; (2) the recovery potential of the species; (3) the taxonomic status, e.g., giving full species priority over subspecies or populations; and (4) such other relevant biological factors as determined appropriate.

§ 81.4 Allocation of funds.

The Secretary shall semi-annually allocate funds, appropriated for the purpose of carrying out Section 6, to various State programs using the following as the basis for his determination:

(a) The international commitments of the United States to protect endangered or threatened species;

(b) The readiness of a State to proceed with a conservation program consistent with the objectives and purposes of the Act;

(c) The number of endangered and threatened species within a State;

(d) The potential for restoring endangered and threatened species within a State; and

(e) The relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of survival of the species.

§ 81.5 Information for the Secretary.

Before any Federal funds may be obligated for any project to be undertaken in a State, the State must have entered into a Cooperative Agreement with the Secretary pursuant to section 6(c) of the Act.

§ 81.6 Project Agreement.

(a) Subsequent to the establishment of a Cooperative Agreement pursuant to §81.3, the Secretary may further agree with the States to provide financial assistance in the development and implementation of acceptable projects for the conservation of endangered and threatened species. Financial agreements will consist of an Application for Federal Assistance and a Project Agreement. Such agreements’ continued existence, and continued financial assistance under such agreements, shall be contingent upon the continued existence of the Cooperative Agreement described in §81.3 of this part.