

109TH CONGRESS  
1ST SESSION

# S. 2110

To amend the Endangered Species Act of 1973 to enhance the role of States in the recovery of endangered species and threatened species, to implement a species conservation recovery system, to establish certain recovery programs, to provide Federal financial assistance and a system of incentives to promote the recovery of species, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 15, 2005

Mr. CRAPO (for himself, Mrs. LINCOLN, Mr. THOMAS, and Mr. ALLARD) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Endangered Species Act of 1973 to enhance the role of States in the recovery of endangered species and threatened species, to implement a species conservation recovery system, to establish certain recovery programs, to provide Federal financial assistance and a system of incentives to promote the recovery of 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,*

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

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Collaboration for the Recovery of Endangered Species  
4 Act”.

5 (b) TABLE OF CONTENTS.—The table of contents of  
6 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—STATE GOVERNMENT ASSISTANCE

Sec. 101. Short title.

Sec. 102. Cooperation with the States.

TITLE II—PRIORITY FOR LISTING AND RECOVERY

Sec. 201. Short title.

Sec. 202. Determination and recovery of endangered species and threatened  
species.

TITLE III—INCENTIVES FOR SPECIES RECOVERY

Sec. 301. Short title.

Sec. 302. Conservation banks.

Sec. 303. Exceptions.

Sec. 304. Technical corrections.

Sec. 305. Tax incentives.

TITLE IV—PROTECTIONS AND MEASURES IN FORESTS

Sec. 401. Protections and measures.

7 **TITLE I—STATE GOVERNMENT**  
8 **ASSISTANCE**

9 **SEC. 101. SHORT TITLE.**

10 This title may be cited as the “State Government As-  
11 sistance in Recovery Act”.

12 **SEC. 102. COOPERATION WITH THE STATES.**

13 Section 6 of the Endangered Species Act (16 U.S.C.  
14 1535) is amended—

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

“(3) COOPERATIVE AGREEMENTS.—

“(A) AGREEMENTS.—

“(i) IN GENERAL.—A cooperative agreement entered into by the Secretary under this subsection may provide for development of a program for the conservation of—

“(I) a species determined to be a candidate species under section 4(b)(3)(B)(iii); or

“(II) any other species that the State and the Secretary agree is likely to be determined to be an endangered species or threatened species under section 4(a)(1).

“(ii) APPLICATION OF TAKE STATEMENT.—After consultation on the cooperative agreement in accordance with subsection (e)(2), any incidental take statement issued on the cooperative agreement shall apply to any species described in clause (i) and to the State and any landowners enrolled in any program under the

cooperative agreement, without further consultation (except any additional consultation required under subsection (e)(2)), if—

“(I) the species is subsequently determined to be an endangered species or a threatened species; and

“(II) the cooperative agreement remains an adequate and active program for the conservation of endangered species and threatened species.

“(B) MONITORING.—A cooperative agreement entered into by the Secretary under this subsection may provide for monitoring, or assistance in monitoring, the status of—

“(i) a candidate species in accordance with section 4(b)(3)(C)(iii); or

“(ii) a species that is determined to be recovered, and that is delisted, in accordance with section 4.

“(4) ENROLLMENT OF LAND OR WATER RIGHTS.—A cooperative agreement entered into by the Secretary under this subsection that provides for the enrollment of private land or water rights in any program established by the cooperative agreement

1 shall ensure that the decision to enroll is voluntary  
 2 for each owner of the land or water rights.”;

3 (2) in subsection (d)(1)—

4 (A) in the first sentence—

5 (i) by striking “pursuant to subsection  
 6 (c) of this section”; and

7 (ii) by striking “or to assist” and all  
 8 that follows through “section 4(g)” and in-  
 9 serting “under paragraphs (1) or (2) of  
 10 subsection (c) or section 4(b)(5)(C), or to  
 11 address candidate species or other species  
 12 at risk and recovered species under sub-  
 13 section (c)(3)”; and

14 (B) in subparagraph (F), by striking  
 15 “monitoring the status of candidate species”  
 16 and inserting “developing a conservation pro-  
 17 gram for, or monitoring the status of, candidate  
 18 species or other species determined to be at risk  
 19 under subsection (c)(3)”; and

20 (3) by striking subsection (e) and inserting the  
 21 following:

22 “(e) REVIEW OF STATE PROGRAMS.—

23 “(1) IN GENERAL.—Any action taken by the  
 24 Secretary under this section shall be subject to peri-  
 25 odic review by the Secretary at least every 3 years.

1           “(2) APPLICABLE AUTHORITY.—A cooperative  
 2           agreement entered into by the Secretary under sub-  
 3           section (c) shall be subject to subsections (a)(2)  
 4           through (d) of section 7 (including implementing  
 5           regulations) only before the date on which—

6                   “(A) the Secretary enters into the coopera-  
 7           tive agreement; or

8                   “(B) the Secretary approves any renewal  
 9           of, or amendment to, the cooperative agreement  
 10          that—

11                   “(i) addresses species that—

12                           “(I) are determined to be endan-  
 13                           gered species or threatened species;

14                           “(II) are not addressed in the co-  
 15                           operative agreement; and

16                           “(III) may be affected by the co-  
 17                           operative agreement; or

18                   “(ii) contains new information about  
 19           any species addressed in the cooperative  
 20           agreement that the Secretary determines—

21                           “(I) constitutes the best scientific  
 22                           and commercial data available; and

23                           “(II) indicates that the coopera-  
 24           tive agreement may have adverse ef-  
 25           fects on the species that had not been

1                   considered previously when the coop-  
2                   erative agreement was entered into or  
3                   during any revision of or amendment  
4                   to the cooperative agreement.

5                   “(3) SUSPENSION OF COOPERATIVE AGREE-  
6                   MENT.—The Secretary may suspend a cooperative  
7                   agreement entered into by the Secretary under sub-  
8                   section (c), after consultation with the Governor of  
9                   the affected State, if Secretary finds during the peri-  
10                  odic review required by paragraph (1) that the coop-  
11                  erative agreement no longer constitutes an adequate  
12                  and active program for the conservation of endan-  
13                  gered species and threatened species.

14                  “(4) TERMINATION OF COOPERATIVE AGREE-  
15                  MENT.—The Secretary may terminate a cooperative  
16                  agreement entered into by the Secretary under sub-  
17                  section (c), after consultation with the Governor of  
18                  the affected State, if—

19                         “(A) as result of subsections (a)(2)  
20                         through (d) of section 7 (including imple-  
21                         menting regulations), the Secretary determines  
22                         that—

23                                 “(i) continued implementation of the  
24                                 cooperative agreement is likely—

1 “(I) to jeopardize the continued  
 2 existence of endangered species or  
 3 threatened species; or

4 “(II) to result in the destruction  
 5 or adverse modification of critical  
 6 habitat; and

7 “(ii) the cooperative agreement is not  
 8 amended or revised to incorporate a rea-  
 9 sonable and prudent alternative offered by  
 10 the Secretary under section 7(b)(3); or

11 “(B) the cooperative agreement—

12 “(i) has been suspended under para-  
 13 graph (3); and

14 “(ii) as of the date that is 180 days  
 15 after the date of the suspension, has not  
 16 been amended or revised and found by the  
 17 Secretary to constitute an adequate and  
 18 active program for the conservation of en-  
 19 dangered species and threatened species.”.

## 20 **TITLE II—PRIORITY FOR** 21 **LISTING AND RECOVERY**

### 22 **SEC. 201. SHORT TITLE.**

23 This title may be cited as the “Priority for Listing  
 24 and Recovery Act”.



1 **SEC. 202. DETERMINATION AND RECOVERY OF ENDAN-**  
 2 **GERED SPECIES AND THREATENED SPECIES.**

3 (a) IN GENERAL.—Section 4 of the Endangered Spe-  
 4 cies Act of 1973 (16 U.S.C. 1533) is amended—

5 (1) by striking the section heading and all that  
 6 follows through “(a) GENERAL.—(1) The Secretary”  
 7 and inserting the following:

8 **“SEC. 4. DETERMINATION AND RECOVERY OF ENDAN-**  
 9 **GERED SPECIES AND THREATENED SPECIES.**

10 “(a) IN GENERAL.—

11 “(1) FACTORS.—The Secretary”;

12 (2) in subsection (a)(3)(A), by striking clause  
 13 (i) and inserting the following:

14 “(i) shall designate any habitat of an endan-  
 15 gered species or a threatened species that is consid-  
 16 ered to be critical habitat in accordance with the pri-  
 17 ority system established under subsection (b); and”;  
 18 and

19 (3) in subsection (b)—

20 (A) by striking “(b) BASIS FOR DETER-  
 21 MINATIONS.—(1)(A) The Secretary” and insert-  
 22 ing the following:

23 “(b) BASIS, PRIORITY, AND SCHEDULE FOR DECI-  
 24 SIONS.—

25 “(1) BASIS FOR DECISIONS.—

26 “(A) IN GENERAL.—The Secretary”;

1 (B) in paragraph (1), by striking “(B) In  
2 carrying out” and inserting the following:

3 “(B) CONSIDERATIONS.—In carrying out”;

4 (C) in paragraph (2), by striking “(2) The  
5 Secretary” and inserting the following:

6 “(2) DESIGNATION OF CRITICAL HABITAT.—

7 The Secretary”;

8 (D) by redesignating paragraphs (5)  
9 through (8) as paragraphs (7) through (10), re-  
10 spectively;

11 (E) in paragraph (3)—

12 (i) by striking “(3)(A) To” and in-  
13 serting the following:

14 “(5) PETITION.—

15 “(A) IN GENERAL.—To”;

16 (ii) in subparagraph (B)—

17 (I) by striking “(B) Within 12  
18 months” and inserting the following:

19 “(B) FINDINGS.—In accordance with the  
20 schedule established under paragraph (4), and  
21 not later than 3 years”;

22 (II) in clause (ii), by striking  
23 “paragraph (5)” and inserting “para-  
24 graph (7)”;

1 (III) in clause (iii)(I), by striking  
 2 “paragraphs (5) and (6)” and insert-  
 3 ing “paragraphs (7) and (8)”; and

4 (IV) by indenting clauses (i)  
 5 through (iii) and subclauses (I) and  
 6 (II) appropriately;

7 (iii) in subparagraph (C)—

8 (I) by striking “(C)(i) A peti-  
 9 tion” and inserting the following:

10 “(C) OTHER REQUIREMENTS.—

11 “(i) TREATMENT OF CERTAIN PETI-  
 12 TIONS.—A petition”;

13 (II) in clause (ii), by striking  
 14 “(ii) Any” and inserting the following:

15 “(ii) JUDICIAL REVIEW.—Any”; and

16 (III) in clause (iii)—

17 (aa) by striking “(iii) The  
 18 Secretary” and inserting the fol-  
 19 lowing:

20 “(iii) MONITORING.—The Secretary”;

21 and

22 (bb) by striking “paragraph  
 23 7” and inserting “paragraph  
 24 (9)”; and

25 (iv) in subparagraph (D)—

1 (I) by striking “(D)(i) To the  
 2 maximum extent practicable, within  
 3 90 days” and inserting the following:

4 “(D) SUBSTANTIAL SCIENTIFIC INFORMA-  
 5 TION.—

6 “(i) IN GENERAL.—In accordance  
 7 with the schedule described in paragraph  
 8 (4), and not later than 1 year”; and

9 (II) in clause (ii), by striking  
 10 “(ii) Within 12 months” and inserting  
 11 the following:

12 “(ii) INTENT TO PROCEED.—In ac-  
 13 cordance with the schedule described in  
 14 paragraph (4), and not later than 3  
 15 years”;

16 (F) in paragraph (4), by striking “(4) Ex-  
 17 cept as provided in paragraphs (5) and (6) of  
 18 this subsection” and inserting the following:

19 “(6) RULEMAKING PROCEDURES.—Except as  
 20 provided in paragraphs (7) and (8)”;

21 (G) in paragraph (7)(A) (as redesignated  
 22 by subparagraph (C))—

23 (i) in clause (i), by striking “, and”  
 24 and inserting a semicolon; and

1 (ii) by striking clause (ii) and insert-  
2 ing the following:

3 “(ii) give actual notice of the proposed reg-  
4 ulation (including the complete text of the regu-  
5 lation) to, and invite the comment of—

6 “(I) the State agency in each State in  
7 which the species is believed to occur;

8 “(II) each county or equivalent juris-  
9 diction in which the species is believed to  
10 occur; and

11 “(III) any county or municipality that  
12 has administrative jurisdiction over the  
13 area; and

14 “(iii) with respect to a regulation to des-  
15 ignate or revise a designation of critical habi-  
16 tat—

17 “(I) publish maps and coordinates  
18 that describe, in detail, the specific areas  
19 that meet the definition under section 3 of,  
20 and are designated under subsection (a)(3)  
21 as, critical habitat, and all field survey  
22 data upon which the designation is based;  
23 and

1 “(II) maintain the maps, coordinates,  
 2 and data on a publicly accessible Internet  
 3 page of the Department; and

4 “(iv) include in each of the notices re-  
 5 quired under this subparagraph a reference to  
 6 the Internet page described in clause (iii)(II);”;

7 (H) in paragraph (8) (as redesignated by  
 8 subparagraph (C))—

9 (i) in subparagraph (A), by striking  
 10 “paragraph (5)(A)(i)” and inserting “para-  
 11 graph (7)(A)(i)”;

12 (ii) in subparagraph (C), by striking  
 13 the matter preceding clause (i) and insert-  
 14 ing the following:

15 “(C) FINAL REGULATION.—Either 3 years  
 16 after the date on which a recovery program is  
 17 commissioned or in accordance with the sched-  
 18 ule described in paragraph (4), and in no case  
 19 later than 5 years after the date on which an  
 20 endangered species or threatened species is list-  
 21 ed under this Act, the Secretary shall publish a  
 22 final regulation designating the critical habitat  
 23 of the endangered species or threatened species,  
 24 unless the Secretary determines that—”; and

1 (iii) by adding at the end the fol-  
 2 lowing:

3 “(D) PROVISIONAL RECOVERY GOALS.—  
 4 The Secretary shall promulgate and publish  
 5 provisional recovery goals for a species at the  
 6 time of the listing of the species, which—

7 “(i) may set standards for delisting;  
 8 and

9 “(ii) shall remain in effect, unless re-  
 10 placed by an approved recovery plan.”;

11 (I) in paragraph (9) (as redesignated by  
 12 subparagraph (C)), by striking “(9) Neither  
 13 paragraph (4), (5), or (6)” and inserting the  
 14 following:

15 “(9) EMERGENCIES.—Neither paragraphs (6)  
 16 through (8)”;

17 (J) in paragraph (10) (as redesignated by  
 18 subparagraph (C)), by striking “(8) The publi-  
 19 cation” and inserting the following:

20 “(10) PUBLICATION OF REGULATIONS.—The  
 21 publication”;

22 (K) by inserting after paragraph (2) the  
 23 following:

1           “(3) PRIORITY FOR DETERMINATIONS, DES-  
2           IGNATIONS, AND COMMISSIONING OF RECOVERY PRO-  
3           GRAMS.—

4           “(A) IN GENERAL.—Not later than 270  
5           days after the date of enactment of the Priority  
6           for Listing and Recovery Act, the Secretary of  
7           the Interior and the Secretary of Commerce,  
8           after providing notice and an opportunity for  
9           public comment, each shall establish a priority  
10          system for making all decisions under this sub-  
11          section, subsection (a), and subsection (f) re-  
12          garding various species in the most efficient  
13          and effective manner practicable.

14          “(B) CRITERIA FOR PRIORITIES.—The pri-  
15          ority system shall assign priorities to species  
16          based on—

17                 “(i) the magnitude and immediacy of  
18                 risk of extinction (high, moderate, or low),  
19                 considering—

20                         “(I) the level of risk to the spe-  
21                         cies based on the factors described in  
22                         subsection (a)(1);

23                         “(II) the geographic distribution  
24                         of the species (wide or narrow),



1 “(III) the habitat specificity of  
2 the species (broad or restricted); and

3 “(IV) the taxonomic distinctive-  
4 ness of the species (monotypic genus,  
5 species, subspecies, or distinct popu-  
6 lation segment);

7 “(ii) the likelihood of achieving recov-  
8 ery of the species;

9 “(iii) the quality and quantity of  
10 available information, with the species pri-  
11 ority increasing progressively as current  
12 professional documentation is obtained for  
13 each of the following in order of increasing  
14 importance:

15 “(I) Distribution of the species  
16 based on data describing presence and  
17 absence.

18 “(II) Habitat types that correlate  
19 with population density (defined as  
20 various concentrations of individuals  
21 of the species occupying an area).

22 “(III) Rates of reproduction, sur-  
23 vival, or population growth.

1 “(IV) Habitat types that cor-  
 2 relate with rates of reproduction, sur-  
 3 vival, or population growth;

4 “(iv) the degree to which recovering  
 5 the species helps recover other species; and

6 “(v) the degree to which recovery ef-  
 7 forts would minimize conflicts with—

8 “(I) construction, development  
 9 projects, jobs, private property, or  
 10 other economic activities;

11 “(II) military training and oper-  
 12 ations; or

13 “(III) other human activities.

14 “(C) INCENTIVE FOR COLLABORATIVE  
 15 CONSERVATION.—

16 “(i) IN GENERAL.—The Secretary  
 17 shall assign highest priority to a decision  
 18 pending for any species if petitioned to do  
 19 so by a collaborative group that, in the  
 20 judgment of the Secretary, meets the de-  
 21 scription of an executive committee under  
 22 subsection (f)(3)(B).

23 “(ii) FACILITATION.—If a collabo-  
 24 rative group described in clause (i) uses  
 25 non-Federal funds to carry out actions

1           that support the completion of the pending  
 2           action for a species, the Secretary shall fa-  
 3           cilitate the pending action to a commensu-  
 4           rate extent.

5           “(4) SCHEDULE.—

6           “(A) IN GENERAL.—The Secretary shall  
 7           establish a schedule of all decisions under this  
 8           subsection, subsection (a), and subsection (f)  
 9           based on the priority ranking system described  
 10          in paragraph (3).

11          “(B) ESTIMATES.—Not later than Feb-  
 12          ruary 1 of each year following the date of en-  
 13          actment of this subparagraph, the Secretary  
 14          shall submit to the Committee on Appropria-  
 15          tions of the Senate and the Committee on Ap-  
 16          propriations of the House of Representatives an  
 17          estimate with respect to the following year,  
 18          based on the priority ranking system described  
 19          in paragraph (3), of—

20                 “(i) the quantity of—

21                         “(I) petitions to be reviewed  
 22                         under this section;

23                         “(II) status reviews to be com-  
 24                         pleted under this section; and

1 “(III) rules that will be promul-  
2 gated with respect to status and crit-  
3 ical habitat; and

4 “(ii) the amount of funds required for  
5 each recovery plan to be funded under this  
6 section.

7 “(C) PENDING ACTIONS.—The schedule es-  
8 tablished under subparagraph (A) shall include  
9 all decisions pending under this subsection, sub-  
10 section (a), and subsection (f), including—

11 “(i) findings and decisions based on  
12 status reviews, proposed determinations, or  
13 final determinations for which a court has  
14 issued an order prior to the date of enact-  
15 ment of the Collaboration for the Recovery  
16 of Endangered Species Act remanding to  
17 the Secretary a decision, or setting a  
18 schedule for the Secretary to act, or re-  
19 quiring any other action regarding such  
20 findings and decisions; and

21 “(ii) designations of critical habitat  
22 for which a court has issued an order prior  
23 to the date of enactment of the Collabora-  
24 tion for the Recovery of Endangered Spe-  
25 cies Act remanding to the Secretary a deci-

sion, or ordering the Secretary to act by a specified date, or requiring any other action regarding the designation of critical habitat.

“(D) REMANDED ACTIONS.—No court shall have the power to require the Secretary to complete an action inconsistent with the schedule established under subparagraph (A).

“(E) REVISIONS TO SCHEDULE.—The Secretary may revise the schedule established under subparagraph (A) during a fiscal year by—

“(i) reviewing a petition received during the fiscal year that the Secretary determines to be filed in a timely manner; or

“(ii) elevating the priority of a recovery plan that receives financial or other commitments from a non-Federal sponsor.”;

(4) by striking subsection (f) and inserting the following:

“(f) RECOVERY PROGRAMS.—

“(1) IN GENERAL.—When a species is scheduled for recovery under subsection (b)(4), or upon the petition of a collaborative group that qualifies as

1 an executive committee under paragraph (3), the  
2 Secretary—

3 “(A) shall establish a recovery program for  
4 that species, and other threatened or endan-  
5 gered species if practicable, by assigning a re-  
6 covery coordinator; and

7 “(B) may, based on the nature and extent  
8 of actions required for recovery, also form a re-  
9 covery team, an executive committee, or both.

10 “(2) RECOVERY TEAM.—

11 “(A) ESTABLISHMENT.—

12 “(i) IN GENERAL.—If the Secretary  
13 establishes a recovery team, the team shall  
14 consist of members of appropriate public  
15 and private agencies and institutions re-  
16 flecting individual perspectives and objec-  
17 tiveness resulting from professional exper-  
18 tise, and technical and academic experi-  
19 ence, relating to the species or ecosystem  
20 that is the subject of the recovery program.

21 “(ii) LACK OF BIAS.—In carrying out  
22 the duties described in subparagraph (B),  
23 members described in clause (i) shall pro-  
24 vide their expertise in good faith and not

1 express the views or representations of any  
2 organization.

3 “(B) DUTIES.—After considering the pro-  
4 visional recovery goals set by the Secretary  
5 under subsection (b)(8)(D) and identifying all  
6 relevant conservation programs of State, local,  
7 tribal, and private entities and foreign govern-  
8 ments, a recovery team shall propose a recovery  
9 plan to the executive committee.

10 “(C) FACA.—A recovery team established  
11 under this subsection shall not be subject to the  
12 Federal Advisory Committee Act (5 U.S.C.  
13 App.).

14 “(3) EXECUTIVE COMMITTEE.—

15 “(A) IN GENERAL.—For each recovery  
16 program, the Secretary shall establish an execu-  
17 tive committee to propose collaborative efforts  
18 to achieve the goals of the recovery plan.

19 “(B) MEMBERSHIP.—The membership of  
20 an executive committee shall—

21 “(i) reflect a cross-section of interests  
22 from appropriate public and private per-  
23 sons, agencies, or institutions reflecting a  
24 balance of viewpoints;

1 “(ii) to be selected for diversity of  
2 knowledge and experience in natural re-  
3 source issues and for commitment to col-  
4 laborative decisionmaking;

5 “(iii) to the maximum extent prac-  
6 ticable, be from communities within and  
7 adjacent to the recovery plans geographic  
8 area; and

9 “(iv) have an economic, social, or pro-  
10 fessional interest in the recovery of the  
11 species.

12 “(C) DUTIES.—An executive committee  
13 shall—

14 “(i) review the proposed recovery plan  
15 and make recommendations on collabo-  
16 rative efforts that may be undertaken to  
17 implement and achieve the goals of the re-  
18 covery plan;

19 “(ii) consult with the applicable recov-  
20 ery team, as necessary;

21 “(iii) consult with State, local, and  
22 tribal governments and landowners on op-  
23 portunities for implementation of the re-  
24 covery plan; and



1                   “(iv) after approval by the Secretary  
2                   of the applicable recovery plan, publish a  
3                   work plan describing the collaborative and  
4                   voluntary efforts that the executive com-  
5                   mittee recommends to contribute to the re-  
6                   covery of the applicable species.

7                   “(D) FACA.—An executive committee es-  
8                   tablished under this subsection shall not be sub-  
9                   ject to the Federal Advisory Committee Act (5  
10                  U.S.C. App.).

11                  “(4) RECOVERY COORDINATOR.—The Secretary  
12                  shall assign for each recovery program, by direct em-  
13                  ployment or cooperative arrangement with an appro-  
14                  priate Federal department or agency, a full-time re-  
15                  covery coordinator—

16                  “(A) to serve as the primary staff to im-  
17                  plement the recovery plan and manage program  
18                  operations for the executive committee, if appli-  
19                  cable; and

20                  “(B) to the maximum extent practicable,  
21                  to ensure that relevant Federal and State pro-  
22                  grams are coordinated to support programs to-  
23                  ward the recovery goals of the recovery plan.

24                  “(5) RECOVERY PLAN.—

1           “(A) IN GENERAL.—A recovery plan  
2 shall—

3           “(i) be proposed by a recovery team  
4 and an executive committee, in a case in  
5 which a recovery team and executive com-  
6 mittee are involved in the recovery pro-  
7 gram;

8           “(ii) be approved by the Secretary;  
9 and

10          “(iii) include—

11           “(I) a description of site-specific  
12 recovery actions that may be nec-  
13 essary to achieve the goal of the plan  
14 for the conservation of the species, in-  
15 cluding appropriate financial assist-  
16 ance and incentive programs for land-  
17 owners;

18           “(II) guidance on how the geo-  
19 graphic distribution of site-specific re-  
20 covery actions can enhance the effec-  
21 tiveness of the actions in promoting  
22 recovery; and

23           “(III) objective, measurable cri-  
24 teria (including population size and  
25 geographic range) that, when met,

1 would result in a determination, in ac-  
2 cordance with this section, that the  
3 status of the species should be  
4 changed from an endangered species  
5 or a threatened species, or that the  
6 species should be removed from the  
7 list.

8 “(B) EFFECT OF PLAN.—A recovery plan  
9 approved by the Secretary—

10 “(i) shall be non-binding and advisory;  
11 and

12 “(ii) may be amended by the Sec-  
13 retary or by recommendation of the execu-  
14 tive committee and approval by the Sec-  
15 retary.

16 “(C) RELATIONSHIP TO CONSERVATION  
17 PROGRAMS.—The Secretary shall—

18 “(i) acknowledge appropriate existing  
19 conservation programs; and

20 “(ii) coordinate with all governmental  
21 agencies to incorporate those programs in  
22 a recovery plan.

23 “(6) PERIODIC REVIEW.—

1           “(A) IN GENERAL.—The Secretary shall  
2           periodically review the progress of all recovery  
3           programs.

4           “(B) INQUIRY.—If the Secretary finds that  
5           a recovery program is not making progress to-  
6           wards recovery of the species or is not acting  
7           within the guidance of the recovery plan, the  
8           Secretary shall submit to the relevant executive  
9           committee a written inquiry for an explanation  
10          that requests specific remedial actions.

11          “(C) RESPONSE.—The executive com-  
12          mittee shall have 180 days from the date of re-  
13          ceipt of the inquiry to fulfill the request.

14          “(D) DISPUTE RESOLUTION.—If the exec-  
15          utive committee disputes the findings of the  
16          Secretary—

17                 “(i) the Secretary shall, in consulta-  
18                 tion with an appropriate professional soci-  
19                 ety, appoint a technical reviewer;

20                 “(ii) the executive committee shall, in  
21                 consultation with an appropriate profes-  
22                 sional society, appoint a technical reviewer;

23                 “(iii) the 2 technical reviewers shall  
24                 appoint a third technical reviewer;

1 “(iv) the technical reviewers, based on  
 2 majority opinion, shall make a rec-  
 3 ommendation to the Secretary as to wheth-  
 4 er the program is achieving progress to-  
 5 ward recovery and whether remedial ac-  
 6 tions are necessary; and

7 “(v) having considered the rec-  
 8 ommendation of the technical reviewers,  
 9 the Secretary may—

10 “(I) require remedial actions of  
 11 the executive committee;

12 “(II) decommission the recovery  
 13 program; or

14 “(III) take other appropriate ac-  
 15 tions.”;

16 (5) in subsection (g)(2), by striking “paragraph  
 17 7 of subsection (b) of this section” and inserting  
 18 “subsection (b)(9)”;

19 (6) in subsection (h)(1), by striking “subsection  
 20 (b)(3) of this section” and inserting “subsection  
 21 (b)(5)”;

22 (7) in subsection (i)—

23 (A) by striking “subsection (b)(5)(A)(ii)”  
 24 and inserting “subsection (b)(7)(A)(ii)”;

1 (B) by striking “subsection (b)(3)” and in-  
 2 serting “subsection (b)(5)”.

3 (b) CONFORMING AMENDMENT.—The table of con-  
 4 tents in the first section of the Endangered Species Act  
 5 of 1973 (16 U.S.C. 1531 note) is amended by striking  
 6 the item relating to section 4 and inserting the following:

“Sec. 4. Determination and recovery of endangered species and threatened  
 species.”.

## 7 **TITLE III—INCENTIVES FOR** 8 **SPECIES RECOVERY**

### 9 **SEC. 301. SHORT TITLE.**

10 This title may be cited as the “Incentives for Species  
 11 Recovery Act”.

### 12 **SEC. 302. CONSERVATION BANKS.**

13 (a) IN GENERAL.—The Endangered Species Act of  
 14 1973 (16 U.S.C. 1531 et seq.) is amended by inserting  
 15 after section 4 the following:

#### 16 **“SEC. 4A. CONSERVATION BANKS.**

17 “(a) PURPOSES.—The purposes of this section are—

18 “(1) to conserve, restore, and enhance habitat  
 19 for the conservation and recovery of—

20 “(A) candidate species;

21 “(B) threatened species;

22 “(C) endangered species; and

23 “(D) species of special concern; and

1           “(2) to provide market incentives that promote  
2           conservation of species on private property.

3           “(b) DEFINITIONS.—In this section:

4           “(1) CONSERVATION BANK.—The term ‘con-  
5           servation bank’ means an area of land, water, or  
6           other habitat (not necessarily contiguous) that is  
7           managed—

8                   “(A) in perpetuity, or for another appro-  
9                   priate period, under an enforceable legal instru-  
10                  ment; and

11                  “(B) for purposes of conservation and re-  
12                  covery of—

13                           “(i) a habitat;

14                           “(ii) a candidate species, threatened  
15                           species, or endangered species; or

16                           “(iii) a species of special concern.

17           “(2) CREDIT.—

18                   “(A) IN GENERAL.—The term ‘credit’  
19                   means the unit of currency of a conservation  
20                   bank, generated by preserving or restoring habi-  
21                   tat in a conservation bank agreement, as estab-  
22                   lished through a quantification of the conserva-  
23                   tion values of a species or habitat.

1           “(B) CONSERVATION VALUES.—Conserva-  
 2           tion values described in subparagraph (A)  
 3           shall—

4                   “(i) be determined by the Secretary  
 5                   for each conservation bank; and

6                   “(ii) be converted into a fixed number  
 7                   of credits that may be bought, sold, or  
 8                   traded to offset the impact of Federal,  
 9                   State, tribal, local, or private activities.

10          “(3) SERVICE AREA.—

11                   “(A) IN GENERAL.—The term ‘service  
 12                   area’ means an area identified in a conservation  
 13                   bank agreement.

14                   “(B) INCLUSIONS.—The term ‘service  
 15                   area’ includes a soil type, watershed, habitat  
 16                   type, political boundary, an area described in a  
 17                   federally-recognized conservation plan, and an  
 18                   area designated for conservation purposes in  
 19                   which a credit may be used to offset an effect  
 20                   of a project.

21          “(c) ESTABLISHMENT AND MANAGEMENT OF CON-  
 22          SERVATION BANKS.—

23                   “(1) ESTABLISHMENT.—A conservation bank  
 24                   under this section may be established by any private  
 25                   landowner that—



1           “(A) submits to the Secretary an applica-  
2           tion, in accordance with any regulations pro-  
3           mulgated by the Secretary;

4           “(B) demonstrates that the affected area  
5           of land, water, or other habitat is managed  
6           under an enforceable legal instrument; and

7           “(C) contributes to the conservation of the  
8           candidate species, threatened species, endan-  
9           gered species, or species of special concern that  
10          is the subject of the conservation bank.

11          “(2) CERTAIN PROPERTY OWNERS.—A property  
12          owner that uses Federal or State funding (including  
13          funding for technical assistance), such as funding  
14          under the Farm Security and Rural Investment Act  
15          of 2002 (Public Law 107–171; 116 Stat. 134) or an  
16          amendment made by that Act, may submit an appli-  
17          cation to the Secretary under paragraph (1)(B)(i).

18          “(3) DETERMINATIONS REGARDING APPLICA-  
19          TIONS.—The Secretary shall approve or disapprove a  
20          proposed conservation bank under paragraph (1)(B)  
21          not later than 180 days after the date on which the  
22          application relating to the conservation bank is sub-  
23          mitted to the Secretary under paragraph (1)(B)(i).

24          “(4) MANAGEMENT.—

1           “(A) IN GENERAL.—A conservation bank  
 2           established under paragraph (1) may be man-  
 3           aged, in accordance with a conservation bank  
 4           agreement under subparagraph (B), by—

5                   “(i) a State, in accordance with a  
 6                   process of the State that has been ap-  
 7                   proved by the Secretary;

8                   “(ii) the holder of the conservation  
 9                   bank;

10                   “(iii) a party other than the holder of  
 11                   the conservation bank, as specified in the  
 12                   conservation bank agreement; or

13                   “(iv) a party that acquires property  
 14                   rights relating to the conservation bank.

15           “(B) CONSERVATION BANK AGREE-  
 16           MENTS.—

17                   “(i) IN GENERAL.—The holder of a  
 18                   conservation bank under this section  
 19                   shall—

20                           “(I) establish an agreement that  
 21                           describes the proposed management of  
 22                           the conservation bank; and

23                           “(II) submit the agreement to  
 24                           the Secretary for approval.

1           “(ii) APPROVAL BY SECRETARY.—As  
 2           soon as practicable after the date on which  
 3           the Secretary receives an agreement under  
 4           clause (i)(II), the Secretary shall approve  
 5           or disapprove the agreement.

6           “(iii) AMENDMENTS.—An agreement  
 7           approved under clause (ii) may be amend-  
 8           ed on the approval of—

9                       “(I) each party to the agreement;  
 10                      and

11                     “(II) the Secretary.

12           “(iv) NULLIFICATION OF AGREE-  
 13           MENT.—The Secretary shall nullify an  
 14           agreement approved under clause (ii) on a  
 15           determination by the Secretary that—

16                     “(I) the holder of the conserva-  
 17                     tion bank has been convicted of—

18                       “(aa) making a materially  
 19                     false statement on a bank appli-  
 20                     cation or a report to the Sec-  
 21                     retary; or

22                     “(bb) any other offense that  
 23                     demonstrates that the holder is  
 24                     unfit to manage the conservation  
 25                     bank; or

1 “(II)(aa) the holder of the con-  
 2 servation bank has irremediably failed  
 3 to carry out the duties of the holder;  
 4 and

5 “(bb) the failure was not the re-  
 6 sult of a drought, hurricane, tornado,  
 7 or other event outside the reasonable  
 8 control of the holder.

9 “(d) RECOVERY PLANS AND INCENTIVE PRO-  
 10 GRAMS.—In developing and implementing recovery plans  
 11 and incentive programs, the Secretary shall—

12 “(1) take into consideration the practicability of  
 13 establishing conservation banks; and

14 “(2) not later than 180 days after the date of  
 15 enactment of this section, promulgate regulations to  
 16 manage conservation banks in a manner that bal-  
 17 ances—

18 “(A) the biological conditions of candidate  
 19 species, threatened species, and endangered spe-  
 20 cies, species of special concern, and habitat;  
 21 with

22 “(B) economic free market principles to  
 23 ensure value to landowners through a tradable  
 24 credit program.

1       “(e) REGULATIONS.—Regulations promulgated under  
2 subsection (d)(2) shall include provisions relating to—

3               “(1) conservation and recovery goals;

4               “(2) activities that may be carried out in a con-  
5 servation bank;

6               “(3) design, operation, and management to en-  
7 sure the viability of conservation banks;

8               “(4) the demonstration of adequate legal con-  
9 trol of property proposed to be included in the con-  
10 servation bank, such as a title, license, easement, or  
11 option relating to the property;

12              “(5) criteria for determining—

13                      “(A) the number of credits allocated to a  
14 conservation bank under subsection (f)(1);

15                      “(B) methods for accounting for, and re-  
16 cording, the creation and use of credits; and

17                      “(C) a timeline with respect to the transfer  
18 and accounting of credits;

19               “(6) the determination of the boundaries of  
20 service areas;

21               “(7) the applicability of, and compliance with,  
22 sections 7 and 10;

23               “(8) the monitoring of, and reporting require-  
24 ments for, conservation banks;

1           “(9) financial requirements to ensure the viabil-  
2       ity of conservation banks;

3           “(10) procedures for resolving disputes relating  
4       to conservation bank management, including proce-  
5       dures for providing notices; and

6           “(11) remedies for disputes that are not re-  
7       solved under a procedure described in paragraph  
8       (10).

9       “(f) TRANSFER OF CREDITS BY CONSERVATION  
10   BANKS.—

11           “(1) ALLOCATION.—The number of credits allo-  
12       cated for transfer by a conservation bank shall be  
13       determined by biological data that reflects—

14           “(A) the quality of habitat preserved or re-  
15       stored in the conservation bank;

16           “(B) the necessary amount of habitat  
17       needed to be preserved or restored within the  
18       entire service area of the conservation bank;  
19       and

20           “(C) the population of candidate species,  
21       threatened species, and endangered species, and  
22       species of special concern, that the conservation  
23       bank supports or could support.

24       “(2) CREDIT TRANSFER APPROVAL PROCESS.—

1           “(A) IN GENERAL.—As soon as practicable  
 2           after the date of enactment of this section, the  
 3           Secretary shall establish a standard credit  
 4           transfer approval process for each service area  
 5           to facilitate efficient and prompt transactions  
 6           relating to credits.

7           “(B) REQUIREMENTS.—The process estab-  
 8           lished under subparagraph (A) shall provide for  
 9           credit transfers for purposes of—

10           “(i) compliance with an injunctive  
 11           order of a court;

12           “(ii) meeting a requirement under  
 13           subsection (a) or (b) of section 7, or sec-  
 14           tion 10(a)(1); and

15           “(iii) out-of-kind mitigation under  
 16           subparagraph (C).

17           “(C) OUT-OF-KIND MITIGATION.—

18           “(i) DEFINITION OF OUT-OF-KIND.—  
 19           In this subparagraph, the term ‘out-of-  
 20           kind’, with respect to mitigation, means  
 21           mitigation involving the same species or  
 22           habitats, but in a different service area.

23           “(ii) DETERMINATION BY SEC-  
 24           RETARY.—The Secretary may allow out-of-  
 25           kind mitigation through the use of credits

1 if the Secretary determines that out-of-  
 2 kind mitigation—

3 “(I) is a desirable ecological al-  
 4 ternative to in-kind mitigation; and

5 “(II) is practicable for an ex-  
 6 panded market of potential buyers of  
 7 credits.

8 “(iii) PREFERENCE.—Notwith-  
 9 standing any other provision of this sub-  
 10 paragraph, the Secretary shall give pref-  
 11 erence to in-kind mitigation to the max-  
 12 imum extent practicable.

13 “(iv) EFFECT OF SUBPARAGRAPH.—  
 14 Nothing in this subparagraph affects any  
 15 requirement relating to in-kind mitigation.

16 “(D) LIMITATION.—In establishing a proc-  
 17 ess under this subsection, the Secretary shall  
 18 not—

19 “(i) regulate the price of any credit  
 20 transfer; or

21 “(ii) limit participation in the credit  
 22 transfer process by any party.

23 “(3) CREDIT TRANSFERS.—A conservation  
 24 bank may transfer credits of the conservation  
 25 bank—



1           “(A) on the date on which the Secretary  
2           approves the conservation bank under sub-  
3           section (c)(3); or

4           “(B) before the date described in subpara-  
5           graph (A), if the holder of the conservation  
6           bank demonstrates to the satisfaction of the  
7           Secretary that—

8                   “(i) the conservation bank agreement  
9                   adequately provides for each activity pro-  
10                  posed to be carried out relating to the con-  
11                  servation bank; and

12                   “(ii) a timetable relating to the activi-  
13                  ties described in clause (i) has been ap-  
14                  proved by the Secretary.

15           “(4) USE OF PROFITS BY CERTAIN HOLDERS.—  
16           A holder of a conservation bank described in sub-  
17           section (c)(2) may retain any profits from the trans-  
18           fer of a credit under this subsection.

19           “(g) INTEGRATION WITH OTHER CONSERVATION  
20           PLANS.—

21                   “(1) IN GENERAL.—Except as provided in para-  
22                  graph (2), to the maximum extent practicable, the  
23                  creation of a conservation bank shall be integrated  
24                  with conservation plans developed or being developed  
25                  under section 10 if the conservation bank—

1           “(A) meets the ecological criteria of the  
2           habitat conservation plan; and

3           “(B) provides greater economic benefits  
4           compared with other forms of mitigation of  
5           habitat destruction.

6           “(2) EFFECT OF SUBSECTION.—Notwith-  
7           standing paragraph (1), nothing in this subsection  
8           requires any person operating a conservation bank  
9           in existence on the date of enactment of this section  
10          to submit an application for the conservation bank  
11          under this section.

12          “(h) JUDICIAL REVIEW.—

13           “(1) IN GENERAL.—Any party to an agreement  
14           entered into with respect to a conservation bank may  
15           bring a civil action in a United States district court  
16           for a breach of the agreement.

17           “(2) ACTIONS BY COURT.—A United States dis-  
18           trict court described in paragraph (1) may—

19           “(A) issue such awards and judgments, in-  
20           cluding equitable relief, as the court determines  
21           to be appropriate; and

22           “(B) award costs of litigation to the pre-  
23           vailing party.

24           “(3) CERTAIN DEFENDANTS.—

1           “(A) IN GENERAL.—Notwithstanding any  
2           other provision of law, the United States, a  
3           State, an Indian tribe, or a unit of local govern-  
4           ment may 0be named as a defendant in a civil  
5           action under this subsection.

6           “(B) SOVEREIGN IMMUNITY.—An entity  
7           described in subparagraph (A) that is named as  
8           a defendant in a civil action under this sub-  
9           section shall be considered to have waived sov-  
10          ereign immunity.”.

11          (b) CONFORMING AMENDMENT.—The table of con-  
12          tents of the Endangered Species Act of 1973 (16 U.S.C.  
13          1531 note) is amended—

14               (1) by inserting after the item relating to sec-  
15          tion 4 the following:

“Sec. 4A. Conservation banks.”;

16          and

17               (2) by inserting after the item relating to sec-  
18          tion 17 the following:

“Sec. 18. Annual cost analysis by the Fish and Wildlife Service.”.

19      **SEC. 303. EXCEPTIONS.**

20          Section 10(a) of the Endangered Species Act of 1973  
21          (16 U.S.C. 1539(a)) is amended—

22               (1) in paragraph (2)—

23                       (A) in subparagraph (A)—

24                               (i) by striking clauses (i) and (iv);

1                   (ii) by redesignating clauses (ii) and  
 2                   (iii) as subclauses (I) and (II), respectively,  
 3                   and indenting the subclauses appropriately;  
 4                   (iii) in the matter preceding subclause  
 5                   (I) (as redesignated by clause (i)), by strik-  
 6                   ing “that specifies—” and inserting the  
 7                   following: “that—

8                   “(i) summarizes the potential for and degree of  
 9                   incidental take that may be reasonably expected to  
 10                  occur under the proposed action and habitat con-  
 11                  servation plan; and

12                  “(ii) specifies—”;

13                  (iv) in subclause (I) (as redesignated  
 14                  by clause (i)), by striking “and the fund-  
 15                  ing” and all that follows through the end  
 16                  of the subclause and inserting “the fund-  
 17                  ing that will be available to implement  
 18                  those steps, and reports describing the im-  
 19                  plementation and results of the conserva-  
 20                  tion plan;”;

21                  (v) in subclause (II) (as redesignated  
 22                  by clause (i)), by striking “and” at the  
 23                  end; and

24                  (vi) by adding at the end the fol-  
 25                  lowing:

1           “(III) objective, measurable biological  
2 goals to be achieved for species covered by the  
3 plan and specific measures for achieving the  
4 goals consistent with subparagraph (B);

5           “(IV) measures the applicant will take to  
6 monitor impacts of the plan on covered species  
7 and the effectiveness of the measures in achiev-  
8 ing the biological goals of the plan; and

9           “(V) adaptive management provisions nec-  
10 essary to respond to all reasonably foreseeable  
11 changes in circumstances that could appreciably  
12 reduce the likelihood of the survival and recov-  
13 ery of any species covered by the plan.”;

14           (B) in subparagraph (B)—

15           (i) in the matter preceding clause (i),  
16 by striking “If” and inserting “The Sec-  
17 retary shall issue a permit for an applica-  
18 tion and the related conservation plan if”;

19           (ii) in clause (v)—

20           (I) by striking “, if any,”;

21           (II) by striking “subparagraph  
22 (A)(iv)” and inserting “subparagraph  
23 (A)(ii)”; and

24           (III) by striking the semicolon at  
25 the end and inserting a period; and

1 (iii) by striking the matter following  
2 clause (v); and

3 (C) by striking subparagraph (C) and in-  
4 serting the following:

5 “(C) VOLUNTARY CONTRIBUTIONS TO RE-  
6 COVERY.—

7 “(i) IN GENERAL.—If a proposed con-  
8 servation plan implements a site-specific  
9 recovery action from a relevant approved  
10 recovery plan, the Secretary shall include  
11 such terms and conditions as the Secretary  
12 considers necessary to reduce or offset the  
13 impacts of incidental taking or otherwise  
14 comply with the requirements of paragraph  
15 (2)(B), such that—

16 “(I) the effect of the terms and  
17 conditions are approximately propor-  
18 tional in extent to the effect of the in-  
19 cidental take specified in the con-  
20 servation plan under subparagraph  
21 (A)(i); and

22 “(II) the terms and conditions  
23 are feasible and consistent with the  
24 goals of the plan to the maximum ex-  
25 tent practicable.

“(ii) ADDITIONAL FINDING.—If, in addition to a finding described in subparagraph (B), the Secretary finds that the proposed conservation plan will implement 1 or more site-specific recovery actions from a relevant approved recovery plan, so long as the contribution to recovery is at least proportional to the potential for and degree of incidental take that may reasonably be expected to occur under the plan, the application relating to, and issuance of a permit for, the plan shall be considered to be exempt from—

“(I) section 7; and

“(II) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(iii) EFFECT OF PARAGRAPH.—This paragraph does not limit the authority of the Secretary to require greater than acre-for-acre mitigation when necessary to address the extent of the impacts.”; and

(2) by adding at the end the following:

“(3) QUALIFICATION FOR PROVISIONAL PER-

MIT.—

1           “(A) IN GENERAL.—An applicant shall  
 2           qualify for a provisional permit with respect to  
 3           an application and the related conservation plan  
 4           if, as of the date on which the applicant sub-  
 5           mits the application and the related conserva-  
 6           tion plan to the Secretary under this sub-  
 7           section—

8                   “(i) the applicant voluntarily imple-  
 9                   ments the terms of the proposed applica-  
 10                  tion under paragraph (2) during the pend-  
 11                  ency of review; and

12                  “(ii) the applicant has completed a  
 13                  field survey to determine the area occupied  
 14                  by the species.

15           “(B) EFFECT OF PERMIT.—A provisional  
 16           permit under subparagraph (A) shall—

17                   “(i) authorize existing activities (ex-  
 18                   cept an activity that requires ground clear-  
 19                   ing) relating to the relevant land; and

20                   “(ii) remain in effect until the date on  
 21                  which a permit is issued under this sub-  
 22                  section.

23           “(C) ADMISSIBILITY OF INFORMATION.—  
 24           Information submitted by an applicant in an  
 25           application under this paragraph shall not be



1           admissible in any action relating to a prohibited  
2           act under section 9.

3           “(4) AGRICULTURAL AGREEMENTS.—If a land-  
4           owner enters into an agreement under title XII of  
5           the Food and Security Act of 1985 (16 U.S.C. 3831  
6           et. seq.) and the conservation activities of the land-  
7           owner include 1 or more site-specific recovery ac-  
8           tions from an approved recovery plan resulting in a  
9           net conservation benefit for a listed species, the Sec-  
10          retary shall permit the incidental take of that spe-  
11          cies—

12                   “(A) for the duration of the agreement;  
13          and

14                   “(B) within the area in which the net con-  
15          servation benefits will accrue, so long as the  
16          contribution to recovery is at least proportional  
17          to the potential for and degree of incidental  
18          taking that may reasonably be expected to  
19          occur in the agreement.

20           “(5) LIABILITY WHILE PERFORMING RECOVERY  
21          ACTIONS.—The Secretary shall permit the incidental  
22          take of a species that—

23                   “(A) occurs or may occur as a result of the  
24          landowner implementing a site-specific recovery  
25          action of an approved recovery plan in a man-

1           ner that contributes to the conservation of the  
2           species; and

3           “(B) occurs or may occur within the area  
4           in which the net conservation benefits will ac-  
5           crue, so long as the contribution to recovery is  
6           at least proportional to the potential for and de-  
7           gree of incidental taking that may reasonably  
8           be expected to occur.

9           “(6) REQUIREMENTS APPLICABLE UPON COM-  
10          PLIANCE WITH PERMIT.—

11           “(A) IN GENERAL.—Except as otherwise  
12           provided in this paragraph, if the holder of a  
13           permit under this subsection for any purpose  
14           other than a scientific purpose is in compliance  
15           with the terms and conditions of the permit (in-  
16           cluding any conservation plan or agreement in-  
17           corporated by reference in the permit), as deter-  
18           mined by the Secretary, the Secretary shall not  
19           require the holder to adopt any minimization,  
20           mitigation, or other measure with respect to  
21           any species that the Secretary determines to be  
22           adequately covered by the permit during the  
23           term of the permit without the consent of the  
24           holder.

1           “(B) IDENTIFIED CHANGE OF CIR-  
 2 CUMSTANCE.—If a change of circumstance that  
 3 is identified in the permit occurs, as determined  
 4 by the Secretary, the Secretary may require the  
 5 holder to carry out only such additional mini-  
 6 mization, mitigation, or other measures as are  
 7 provided under the permit with respect to the  
 8 circumstance.

9           “(C) UNIDENTIFIED CHANGE OF CIR-  
 10 CUMSTANCE.—If a change of circumstance that  
 11 is not identified in the permit occurs, the Sec-  
 12 retary may require the holder to carry out only  
 13 additional minimization, mitigation, and other  
 14 measures that do not involve—

15               “(i) the commitment of any additional  
 16 uncommitted land, water, or financial com-  
 17 pensation; or

18               “(ii) the imposition of additional re-  
 19 strictions on the use of any land, water, or  
 20 other natural resource that is otherwise  
 21 available for development or use under the  
 22 original terms and conditions of the per-  
 23 mit.

24           “(D) BURDEN OF PROOF.—The Secretary  
 25 shall have the burden of proof in demonstrating

1 and documenting, using the best scientific and  
2 commercial data available, the occurrence of  
3 any changed circumstances for the purpose of  
4 this paragraph.

5 “(E) ASSURANCES.—

6 “(i) RECENT PERMITS.—All permits  
7 issued under this subsection on or after  
8 the date of enactment of this paragraph,  
9 other than permits issued for scientific  
10 purposes, shall contain assurances regard-  
11 ing requirements specified in subpara-  
12 graphs (B) through (D) of this paragraph  
13 and subparagraphs (A) and (B) of para-  
14 graph (5).

15 “(ii) OLDER PERMITS.—All permits  
16 issued under this subsection on or after  
17 March 25, 1998, and before the date of en-  
18 actment of this paragraph, other than per-  
19 mits issued for scientific purposes, shall be  
20 governed by the applicable portions of sub-  
21 sections (b) through (d) of section 17.22,  
22 and subsections (b) through (d) of section  
23 17.32, of title 50, Code of Federal Regula-  
24 tions (as in effect as of the date of enact-  
25 ment of this paragraph).

1 “(7) REVOCATION OF PERMIT.—

2 “(A) IN GENERAL.—The Secretary shall  
3 revoke a permit issued under this subsection if  
4 the Secretary determines that the holder of the  
5 permit is not in compliance with the terms and  
6 conditions of the permit.

7 “(B) REVOCATION OF PERMIT THAT IN-  
8 CLUDES CONSERVATION PLAN.—The Secretary  
9 may revoke a permit that includes a conserva-  
10 tion plan described in this subsection due to a  
11 change in circumstances only if the Secretary—

12 “(i) determines that continuing the  
13 activities under the permit would be incon-  
14 sistent with paragraph (2);

15 “(ii) not later than 60 days before the  
16 date on which the Secretary revokes the  
17 permit, provides a notice of revocation to  
18 the holder of the permit; and

19 “(iii) is unable to otherwise remedy  
20 the inconsistency.

21 “(8) STATEMENTS AND ASSESSMENTS.—

22 “(A) IN GENERAL.—In preparing any envi-  
23 ronmental impact statement or environmental  
24 assessment under section 102 of the National  
25 Environmental Policy Act of 1969 (42 U.S.C.

1           4332) with respect to the application for, or  
2           issuance of, a permit under this subsection, the  
3           Secretary shall not identify or analyze the im-  
4           pacts and potential minimization and mitigation  
5           measures relating to any alternative other  
6           than—

7                   “(i) the alternative presented by the  
8                   permit applicant under the conservation  
9                   plan or another document; and

10                   “(ii) an alternative requiring no action  
11                   by the Secretary.

12           “(B) REGULATIONS.—The Secretary shall  
13           promulgate regulations under which the Sec-  
14           retary, subject to the availability of appropria-  
15           tions, shall reimburse a permit applicant under  
16           this subsection for reasonable amounts paid by  
17           the person for preparation by a contractor, or  
18           another person selected by the Secretary, of an  
19           environmental impact statement, environmental  
20           assessment, or related documentation or study  
21           required under section 102 of the National En-  
22           vironmental Policy Act of 1969 (42 U.S.C.  
23           4332) with respect to the application for, or  
24           issuance of, the permit.

1           “(9) PUBLICATION OF NOTICE OF DECISION.—  
 2           Not later than 15 days before the proposed effective  
 3           date of a permit, the Secretary shall publish in the  
 4           Federal Register a notice of any decision of the Sec-  
 5           retary to approve or disapprove an application for,  
 6           or amendment to, a permit under this section.”.

7   **SEC. 304. TECHNICAL CORRECTIONS.**

8           Section 4(f)(1) of the Endangered Species Act of  
 9   1978 (16 U.S.C. 1533(f)(1)) is amended—

10           (1) in the matter preceding subparagraph (A),  
 11           by striking “in development” and inserting “in de-  
 12           veloping”; and

13           (2) in subparagraph (A), by striking “activity;”  
 14           and inserting “activity; and”.

15   **SEC. 305. TAX INCENTIVES.**

16           (a) DEDUCTION FOR COST OF CONSERVATION AND  
 17   RECOVERY BANK CREDIT.—

18           (1) IN GENERAL.—Part VI of subchapter B of  
 19           chapter 1 of the Internal Revenue Code of 1986 (re-  
 20           lating to itemized deductions for individuals and cor-  
 21           porations) is amended by adding at the end the fol-  
 22           lowing new section:

23   **“SEC. 200. CONSERVATION BANK CREDITS.**

24           “There shall be allowed as a deduction an amount  
 25   equal to the cost of any credit purchased from a conserva-

1 tion bank approved under section 4A of the Endangered  
 2 Species Act of 1973 in the taxable year in which such  
 3 credit is purchased.”.

4 (2) CLERICAL AMENDMENT.—The table of sec-  
 5 tions for such part VI is amended by adding at the  
 6 end the following new item:

“Sec. 200. Conservation bank credits.”.

7 (3) EFFECTIVE DATE.—The amendments made  
 8 by this subsection shall apply to taxable years end-  
 9 ing after the date of the enactment of this Act.

10 (b) CREDIT FOR COSTS INCURRED FOR CONVERSA-  
 11 TION ACTIVITIES RELATED TO ENDANGERED, THREAT-  
 12 ENED, AND CANDIDATE SPECIES.—

13 (1) IN GENERAL.—Subpart B of part IV of  
 14 subchapter A of chapter 1 of the Internal Revenue  
 15 Code of 1986 (relating to other credits) is amended  
 16 by adding at the end the following new section:

17 **“SEC. 30D. CREDIT FOR COSTS INCURRED FOR CONVERSA-**  
 18 **TION AND RECOVERY ACTIVITIES RELATED**  
 19 **TO ENDANGERED, THREATENED, AND CAN-**  
 20 **DIDATE SPECIES.**

21 “(a) ALLOWANCE OF CREDIT.—There shall be al-  
 22 lowed as a credit against the tax imposed by this chapter  
 23 for the taxable year an amount equal to the qualified con-  
 24 servation and recovery costs of an eligible taxpayer for the  
 25 taxable year.



1       “(b) LIMITATION BASED ON AMOUNT OF TAX.—The  
 2 credit allowed under subsection (a) for the taxable year  
 3 shall not exceed the excess of—

4               “(1) the sum of the regular tax liability (as de-  
 5 fined in section 26(b)) plus the tax imposed by sec-  
 6 tion 55, over

7               “(2) the sum of the credits allowable under sub-  
 8 part A and sections 27, 30A, 30B, and 30C for the  
 9 taxable year.

10       “(c) QUALIFIED CONSERVATION AND RECOVERY  
 11 COSTS.—For purposes of this section, the term ‘qualified  
 12 conservation and recovery costs’ means costs paid or in-  
 13 curred by the eligible taxpayer in carrying out approved  
 14 site-specific recovery actions under section 4(f) of the En-  
 15 dangered Species Act (16 U.S.C. 1533(f)), or any other  
 16 Federal- or State-approved conservation and recovery  
 17 agreements involving an endangered, threatened, or can-  
 18 didate species under the Endangered Species Act (16  
 19 U.S.C. 1531 et seq.) in an amount equal to—

20               “(1) under a binding agreement for not less  
 21 than 99 years, the sum of—

22                       “(A) the amount by which the fair market  
 23 value of the land is reduced by such site-specific  
 24 recovery actions or agreements, and

1           “(B) the actual costs to the property  
2           owner of such approved site-specific recovery  
3           actions or agreements,

4           “(2) under a binding agreement for not less  
5           than 30 years but less than 99 years, the sum of—

6           “(A) 75 percent of the amount described  
7           in paragraph (1)(A), and

8           “(B) 75 percent of the actual costs of such  
9           approved site-specific recovery actions or agree-  
10          ments, and

11          “(3) under a binding agreement for not less  
12          than 10 years but less than 30 years, 75 percent of  
13          the actual costs of such approved site-specific recov-  
14          ery actions or agreements.

15          “(d) ELIGIBLE TAXPAYER.—For purposes of this  
16          section—

17               “(1) IN GENERAL.—The term ‘eligible taxpayer’  
18               means any person who submits to the Secretary, to-  
19               gether with the return of the taxpayer for the tax-  
20               able year—

21               “(A) evidence of the binding agreement de-  
22               scribed in subsection (c), and

23               “(B) a written verification from a biologist  
24               not directly employed by the taxpayer that any

1 conservation and recovery practice for which the  
 2 taxpayer seeks a credit under this section—

3 “(i) is described in a Federal- or  
 4 State-approved agreement in subsection  
 5 (c), and

6 “(ii) was carried out—

7 “(I) during the taxable year, and

8 “(II) in accordance with the  
 9 schedule of the Federal- or State-ap-  
 10 proved agreement in subsection (c).

11 “(2) EFFECT OF GOVERNMENTAL ASSISTANCE  
 12 ON ELIGIBILITY.—Such term shall not include any  
 13 taxpayer who receives any cost share assistance from  
 14 the Federal Government or a State government  
 15 under any approved site-specific recovery action or  
 16 agreement described in subsection (c) for the taxable  
 17 year, unless the adjusted gross income of the tax-  
 18 payer for such taxable year does not exceed the  
 19 amount of the adjusted gross income limitation  
 20 which would apply to such taxpayer for such taxable  
 21 year for purposes of the credit allowed under section  
 22 32.

23 “(e) CARRYBACK AND CARRYFORWARD ALLOWED.—

24 “(1) IN GENERAL.—If the credit allowable  
 25 under subsection (a) for a taxable year exceeds the

1 amount of the limitation under subsection (b) for  
 2 such taxable year (in this paragraph referred to as  
 3 the ‘unused credit year’), such excess shall be a  
 4 credit carryback to each of the 1 taxable years pre-  
 5 ceding the unused credit year and a credit  
 6 carryforward to each of the 20 taxable years fol-  
 7 lowing the unused credit year.

8 “(2) RULES.—Rules similar to the rules of sec-  
 9 tion 39 shall apply with respect to the credit  
 10 carryback and credit carryforward under subpara-  
 11 graph (A).

12 “(f) CREDITS MAY BE TRANSFERRED.—Nothing in  
 13 any law or rule of law shall be construed to limit the trans-  
 14 ferability of any credit allowed by this section through sale  
 15 and repurchase agreements.

16 “(g) SPECIAL RULES.—

17 “(1) BASIS REDUCTION.—The basis of any  
 18 property for which a credit is allowable under sub-  
 19 section (a) shall be reduced by the amount of such  
 20 credit (determined without regard to subsection (b)).

21 “(2) NO DOUBLE BENEFIT.—The amount of  
 22 any deduction or credit allowable under this chapter  
 23 (other than the credit allowable under subsection  
 24 (a)), shall be reduced by the amount of credit al-

1       lowed under subsection (a) (determined without re-  
2       gard to subsection (b)(2)) for the taxable year.

3           “(3)   REDUCTION   FOR   ASSISTANCE.—The  
4       amount taken into account under subsection (a) with  
5       respect to any project shall be reduced by the  
6       amount of any Federal, State, or local grant or  
7       other assistance received by the taxpayer during  
8       such taxable year or any prior taxable year which  
9       was used for qualified conservation and recovery  
10      costs and which was not included in the gross in-  
11      come of such taxpayer.

12      “(h) RECAPTURE.—The Secretary shall, by regula-  
13      tions, provide for the recapture of any credit allowable  
14      under subsection (a) if the taxpayer breaches or termi-  
15      nates the agreement described in subsection (c).”.

16           (2) BASIS ADJUSTMENT.—Section 1016(a) of  
17      such Code is amended by striking “and” at the end  
18      of paragraph (36), by striking the period at the end  
19      of paragraph (37) and inserting “, and”, and by  
20      adding at the end the following new paragraph:

21           “(38) to the extent provided in section  
22      30D(g)(1).”.

23           (3) CLERICAL AMENDMENT.—The table of sec-  
24      tions for subpart B of part IV of subchapter A of  
25      chapter 1 of such Code is amended by inserting

1 after the item relating to section 30C the following  
 2 new item:

“Sec. 30D. Credit for costs incurred for conversation activities related to  
 endangered, threatened, and candidate species.”.

3 (4) EFFECTIVE DATE.—The amendments made  
 4 by this subsection shall apply to taxable years end-  
 5 ing after the date of the enactment of this Act.

## 6 **TITLE IV—PROTECTIONS AND** 7 **MEASURES IN FORESTS**

### 8 **SEC. 401. PROTECTIONS AND MEASURES.**

9 Section 506(a) of the Healthy Forests Restoration  
 10 Act of 2003 (16 U.S.C. 6576(a)) is amended—

11 (1) by striking “and protection under—” and  
 12 inserting “and protection as follows:”; and

13 (2) by striking paragraphs (1) and (2) and in-  
 14 serting the following:

15 “(1) CONSERVATION ACTIVITIES THAT INCLUDE  
 16 A SITE-SPECIFIC RECOVERY ACTION.—In the case of  
 17 a landowner that enrolls in the program and the res-  
 18 toration plan of which includes 1 or more site-spe-  
 19 cific recovery actions from a recovery plan approved  
 20 under section 4(f) of the Endangered Species Act of  
 21 1973 (16 U.S.C. 1533(f)), the landowner shall not  
 22 be liable under section 9 of that Act (16 U.S.C.  
 23 1538) for the incidental take of species covered by  
 24 the restoration plan—

1           “(A) for the duration of the agreement;  
2           and

3           “(B) within the area in which the net con-  
4           servation benefits will accrue, so long as the  
5           contribution to recovery is at least proportional  
6           to the potential for and degree of incidental  
7           taking that may reasonably be expected to  
8           occur in the restoration plan.

9           “(2) CONSERVATION ACTIVITIES THAT DO NOT  
10          INCLUDE A SITE-SPECIFIC RECOVERY ACTION.—In  
11          the case of a landowner the conservation activities of  
12          which do not include a site-specific recovery action  
13          from a recovery plan approved under section 4(f) of  
14          the Endangered Species Act of 1973 (16 U.S.C.  
15          1533(f)), the Secretary of Agriculture shall make  
16          available to the landowner safe harbor or similar as-  
17          surances and protections under—

18                 “(A) section 7(b)(4) of the Endangered  
19                 Species Act of 1973 (16 U.S.C. 1536(b)(4)); or

20                 “(B) section 10 (a)(1) of that Act (16  
21                 U.S.C. 1539(a)(1)).”.

○