

106<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3156

To amend the Endangered Species Act of 1973 to ensure the recovery of the declining biological diversity of the United States, to reaffirm and strengthen the commitment of the United States to protect wildlife, to safeguard the economic and ecological future of children of the United States, and to provide certainty to local governments, communities, and individuals in their planning and economic development efforts.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 3 (legislative day, SEPTEMBER 22), 2000

Mr. LAUTENBERG (for himself, Mrs. BOXER, Mr. KENNEDY, Mr. WELLSTONE, Mr. DODD, Mr. MOYNIHAN, Mr. SCHUMER, Mr. KERRY, Mr. TORRICELLI, Mr. LEAHY, and Mr. REID ) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Endangered Species Act of 1973 to ensure the recovery of the declining biological diversity of the United States, to reaffirm and strengthen the commitment of the United States to protect wildlife, to safeguard the economic and ecological future of children of the United States, and to provide certainty to local governments, communities, and individuals in their planning and economic development efforts.

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; REF-**  
 2 **ERENCES TO ENDANGERED SPECIES ACT OF**  
 3 **1973.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
 5 “Endangered Species Recovery Act of 2000”.

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

Sec. 1. Short title; table of contents; references to Endangered Species Act of 1973.

Sec. 2. Findings.

**TITLE I—ENDANGERED SPECIES RECOVERY**

Sec. 101. Definitions.

Sec. 102. Designation of interim and critical habitat.

Sec. 103. Schedule for listing determinations.

Sec. 104. Contents of listing petitions.

Sec. 105. Recovery planning.

Sec. 106. Endangered species conservation agreements.

Sec. 107. Interagency cooperation.

Sec. 108. Permits and conservation plans.

Sec. 109. Citizen suits.

Sec. 110. Natural resource damage liability.

Sec. 111. Authorization of appropriations.

**TITLE II—SPECIES CONSERVATION TAX INCENTIVES**

Sec. 201. Tax exclusion for cost-sharing payments under Partners for Fish and Wildlife Program.

Sec. 202. Enhanced deduction for the donation of a conservation easement.

Sec. 203. Exclusion from estate tax for real property subject to endangered species conservation agreement.

Sec. 204. Expansion of estate tax exclusion for real property subject to qualified conservation easement.

8 (c) **REFERENCES TO ENDANGERED SPECIES ACT OF**  
 9 **1973.**—Except as otherwise expressly provided, whenever  
 10 in this Act an amendment or repeal is expressed in terms  
 11 of an amendment to, or repeal of, a section or other provi-  
 12 sion, the reference shall be considered to be made to a

1 section or other provision of the Endangered Species Act  
2 of 1973 (16 U.S.C. 1531 et seq.).

3 **SEC. 2. FINDINGS.**

4 Congress finds that—

5 (1) the American public recognizes the impor-  
6 tance of protecting the natural environmental legacy  
7 of the United States;

8 (2) it is only through the protection of all spe-  
9 cies of plants and animals and the ecosystems on  
10 which the species depend that the people of the  
11 United States will conserve a world for our children  
12 with the spiritual, medicinal, agricultural, and eco-  
13 nomic benefits that plants and animals offer;

14 (3) we have a moral responsibility not to drive  
15 other species to extinction;

16 (4) we are rapidly proceeding in a manner that  
17 will deny to future generations a world of abundant,  
18 varied species;

19 (5) although the Endangered Species Act of  
20 1973 (16 U.S.C. 1531 et seq.) has prevented the ex-  
21 tinction of many animal, plant, and fish species,  
22 many of those species have not fully recovered and  
23 that Act must ensure their long-term survival and  
24 recovery;

1           (6) Federal agencies and other persons should  
2           act to protect declining species before they need the  
3           full application of the Endangered Species Act of  
4           1973;

5           (7) all members of the public have a right to be  
6           involved in the decisions made to protect biodiver-  
7           sity;

8           (8) to avoid extinction in the wild, habitats  
9           must be conserved by using the best available  
10          science;

11          (9) only by taking actions that implement the  
12          recovery goals of the Endangered Species Act of  
13          1973 can we ensure that species will eventually be  
14          removed from the lists of endangered species and  
15          threatened species; and

16          (10) we can provide certainty for communities,  
17          local governments, and private landowners that will  
18          enable them to move forward with planning and eco-  
19          nomic development efforts while still protecting spe-  
20          cies.

21       **TITLE I—ENDANGERED SPECIES**  
22                               **RECOVERY**

23       **SEC. 101. DEFINITIONS.**

24          Section 3 (16 U.S.C. 1532) is amended—

1           (1) by redesignating paragraphs (2) through  
2           (5), (6) through (9), (10), (12) through (14), and  
3           (15) through (21) as paragraphs (3) through (6),  
4           (9) through (12), (14), (20) through (22), and (24)  
5           through (30), respectively;

6           (2) by inserting after paragraph (1) the fol-  
7           lowing:

8           “(2) CANDIDATE SPECIES.—The term ‘can-  
9           didate species’ means any species—

10           “(A) that is not the subject of a proposed  
11           regulation under section 4(a)(1);

12           “(B) that the Secretary is considering for  
13           listing as an endangered species or threatened  
14           species; and

15           “(C) for which the Secretary has—

16           “(i) sufficient information to support  
17           a proposed regulation for that listing; or

18           “(ii) information indicating that pro-  
19           posing that listing may be appropriate, but  
20           for which further information is required  
21           to support such a proposed regulation.”;

22           (3) by striking paragraph (6) (as so redesign-  
23           nated) and inserting the following:

1           “(6) CRITICAL HABITAT.—The term ‘critical  
2           habitat’ for an endangered species or threatened  
3           species or includes—

4                   “(A) the specific areas within the geo-  
5                   graphic area occupied by the species, at the  
6                   time the species is listed in accordance with sec-  
7                   tion 4, on which are found physical or biological  
8                   features that—

9                           “(i) are essential to the conservation  
10                           of the species; and

11                           “(ii) may require special management  
12                           considerations or protections; and

13                   “(B) specific areas outside the geo-  
14                   graphical area occupied by the species, at the  
15                   time the species is listed in accordance with sec-  
16                   tion 4, on a determination by the Secretary that  
17                   the areas are essential for the conservation of  
18                   the species.”;

19           (4) by inserting after paragraph (6) (as so re-  
20           designated) the following:

21                   “(7) CUMULATIVE IMPACTS.—The term ‘cumu-  
22                   lative impacts’ means the direct impacts and indirect  
23                   impacts on a species or its habitat that result from  
24                   the incremental impact of a proposed action when  
25                   added to other past, present, and reasonably foresee-

1       able future actions, regardless of which person un-  
2       dertakes such other actions.

3               “(8) DIRECT IMPACTS.—The term ‘direct im-  
4       pacts’ means impacts that are caused by a proposed  
5       action and that occur at the same time and place as  
6       the proposed action.”;

7               (5) by inserting after paragraph (12) (as so re-  
8       designated) the following:

9               “(13) IMPACTS.—The term ‘impacts’ includes—

10               “(A) loss of individual members of a spe-  
11       cies;

12               “(B) diminishment of the habitat of the  
13       species, both qualitatively and quantitatively;

14               “(C) disruption of normal behavioral pat-  
15       terns, such as breeding, feeding, and sheltering;  
16       and

17               “(D) impairment of the ability of the spe-  
18       cies to withstand random fluctuations in envi-  
19       ronmental conditions.”;

20               (6) by inserting after paragraph (14) (as so re-  
21       designated) the following:

22               “(15) INDIRECT IMPACTS.—The term ‘indirect  
23       impacts’ means impacts that are caused by a pro-  
24       posed action and that occur later in time than, or

1 farther removed in distance from, the proposed ac-  
2 tion, but that are still reasonably foreseeable.

3 “(16) INTERIM HABITAT.—The term ‘interim  
4 habitat’ includes the habitat necessary to support  
5 current populations of a species or populations that  
6 are necessary to ensure survival, whichever is larger.

7 “(17) JEOPARDIZE THE CONTINUED EXIST-  
8 ENCE OF.—The term ‘jeopardize the continued exist-  
9 ence of’ means to engage in an action that reason-  
10 ably would be expected, directly, indirectly, or cumu-  
11 latively, to reduce appreciably the likelihood of recov-  
12 ery in the wild of any foreign or domestic species in-  
13 cluded in a list published under section 4(c).

14 “(18) MINIMIZE.—The term ‘minimize’  
15 means—

16 “(A) subject to subparagraph (B), to avoid  
17 to the extent possible, in designing and engag-  
18 ing in an activity, adverse impacts to an endan-  
19 gered species or threatened species or in the  
20 course of the activity; and

21 “(B) in the case of an activity for which it  
22 is determined, after consideration of a reason-  
23 able range of alternatives, that avoidance of ad-  
24 verse impacts to the species is impossible, to de-  
25 sign and implement the activity in a manner

1           that results in the lowest possible individual  
2           and cumulative adverse impacts on the species.

3           “(19) MITIGATE.—The term ‘mitigate’ means  
4           to redress adverse impacts to an endangered species  
5           or threatened species in connection with an action,  
6           by replacing the number of plants and animals in  
7           the wild, and the value to the species of the habitat,  
8           that were lost as a result of the adverse impacts.”;

9           (7) by inserting after paragraph (22) (as so re-  
10          designated) the following:

11          “(23) RECOVERY.—The term ‘recovery’ means  
12          a condition in which—

13                 “(A) the threats to a species, as deter-  
14                 mined under section 4(a), have been eliminated;

15                 “(B) the species has achieved long-term vi-  
16                 ability; and

17                 “(C) the protective measures under this  
18                 Act are no longer needed.”;

19          (8) by striking paragraph (25) (as so redesignig-  
20          nated) and inserting the following:

21          “(25) SPECIES.—The term ‘species’ includes—

22                 “(A) any subspecies of fish or wildlife or  
23                 plant;

1           “(B) any distinct population segment of  
2           any species of vertebrate fish or wildlife that  
3           interbreeds when mature; and

4           “(C) the last remaining distinct population  
5           segment in the United States of any plant or  
6           invertebrate species.”; and

7           (9) in paragraph (26) (as so redesignated), by  
8           striking “and the Trust Territory of the Pacific Is-  
9           lands” and inserting “the Freely Associated States,  
10          and (for the purposes of subsections (c) and (d) of  
11          section 6), any Indian tribe”.

12 **SEC. 102. DESIGNATION OF INTERIM AND CRITICAL HABI-**  
13 **TAT.**

14          (a) IN GENERAL.—Section 4(a) (16 U.S.C. 1533(a))  
15 is amended by striking paragraph (3) and inserting the  
16 following:

17           “(3) INTERIM AND CRITICAL HABITAT.—The  
18          Secretary, by regulation promulgated in accordance  
19          with subsection (b), shall—

20           “(A) subject to subparagraph (C), concu-  
21          rently with making a determination under para-  
22          graph (1) that a species is an endangered spe-  
23          cies or threatened species, designate interim  
24          habitat of the species;

1           “(B) subject to subparagraph (C), concur-  
2           rently with adoption of the final recovery plan  
3           for a species under subsection (f), designate  
4           critical habitat of the species;

5           “(C) in the case of a highly migratory ma-  
6           rine species, designate interim habitat and crit-  
7           ical habitat for the species to the maximum ex-  
8           tent biologically determinable; and

9           “(D) from time to time thereafter as ap-  
10          propriate, revise a designation under this para-  
11          graph, if the Secretary determines that the revi-  
12          sion would expedite or assist the recovery of the  
13          species.”.

14          (b) BASIS FOR DETERMINATIONS.—Section 4(b) (16  
15          U.S.C. 1533(b)) is amended by striking paragraph (2) and  
16          inserting the following:

17                 “(2) INTERIM AND CRITICAL HABITAT.—

18                         “(A) CRITICAL HABITAT.—The Secretary  
19                         shall designate critical habitat, and make revi-  
20                         sions to the designations, under subsection  
21                         (a)(3)—

22                                 “(i) on the basis of the best scientific  
23                                 data available; and

24                                 “(ii) after taking into consideration  
25                                 the economic impact, and any other rel-

1           evant impact, of specifying any particular  
2           area as critical habitat.

3           “(B) INTERIM HABITAT.—In the case of  
4           interim habitat designated at the time of list-  
5           ing, the Secretary shall revise and finalize the  
6           habitat as critical habitat concurrently with the  
7           adoption of the final recovery plan.

8           “(C) EXCLUSION OF AREAS FROM CRIT-  
9           ICAL HABITAT.—The Secretary may exclude  
10          any area from critical habitat on the basis that  
11          the benefits of the exclusion outweigh the bene-  
12          fits of specifying the area as part of the critical  
13          habitat, if the Secretary determines, based on  
14          the best scientific and commercial data avail-  
15          able, that the failure to designate the area as  
16          critical habitat will not impair the recovery of  
17          the species.

18          “(D) DESIGNATION OF INTERIM HABITAT  
19          BASED ON BIOLOGICAL FACTORS.—The Sec-  
20          retary shall designate interim habitat of a spe-  
21          cies based only on biological factors, giving spe-  
22          cial consideration to habitat that is, at the time  
23          of the designation, occupied by the species.”.

1 **SEC. 103. SCHEDULE FOR LISTING DETERMINATIONS.**

2 Section 4(b)(3)(C) (16 U.S.C. 1533(b)(3)(C)) is  
3 amended by adding at the end the following:

4 “(iv) SPECIES WITH EXISTING FIND-  
5 ING OF WARRANTED ACTION.—Not later  
6 than 1 year after the date of enactment of  
7 this clause, for each species for which a  
8 finding under subparagraph (B)(iii) was  
9 made before the date of enactment of this  
10 clause, the Secretary shall publish in the  
11 Federal Register—

12 “(I) a proposal to list the species  
13 as an endangered species or threat-  
14 ened species; or

15 “(II) a finding that the peti-  
16 tioned action is not warranted under  
17 subparagraph (B)(i).

18 “(v) SPECIES WITH NEW FINDING OF  
19 WARRANTED ACTION.—Not later than 4  
20 years after the date on which a finding  
21 under subparagraph (B)(iii) is published  
22 for a species for which a finding under  
23 subparagraph (B)(iii) was made on or  
24 after the date of enactment of this clause,  
25 or a date on which such a species is other-  
26 wise designated by the Secretary as a can-

1 didate species, the Secretary shall publish  
2 in the Federal Register—

3 “(I) a proposal to list the species  
4 as an endangered species or threat-  
5 ened species; or

6 “(II) a finding that the peti-  
7 tioned action is not warranted under  
8 subparagraph (B)(i).”.

9 **SEC. 104. CONTENTS OF LISTING PETITIONS.**

10 Section 4(b)(3) (16 U.S.C. 1533(b)(3)) is amended  
11 by adding at the end the following:

12 “(E) CONTENTS OF LISTING PETITIONS.—  
13 A petition referred to in subparagraph (A)  
14 shall, to the maximum extent practicable,  
15 contain—

16 “(i) a description of the current  
17 known and historic ranges of the species;

18 “(ii) a description of the most recent  
19 population estimates and trends, if avail-  
20 able;

21 “(iii) a statement of the reason that  
22 the petitioned action is warranted, includ-  
23 ing a description of known or perceived  
24 threats to the species;

1           “(iv) a bibliography of scientific lit-  
2           erature on the species, if any, in support of  
3           the petition; and

4           “(v) any other information that the  
5           petitioner determines is appropriate.”.

6 **SEC. 105. RECOVERY PLANNING.**

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

8           (1) in paragraph (1)—

9           (A) in the first sentence—

10           (i) by striking “develop and imple-  
11           ment plans” and inserting “, not later  
12           than 18 months after the date on which a  
13           species is added to a list under subsection  
14           (c), develop a draft plan and, not later  
15           than 30 months after that date, develop  
16           and begin implementation of a final plan”;

17           (ii) by inserting “each” before “en-  
18           dangered”; and

19           (iii) by striking “, unless he finds that  
20           such a plan will not promote the conserva-  
21           tion of the species”; and

22           (B) in the second sentence, by striking  
23           subparagraph (B) and inserting the following:

24           “(B) include in each plan specific provisions, in-  
25           cluding provisions required under subparagraph (C),

1 that provide for the conservation in the recovery  
2 plan area of all species listed as endangered species  
3 or threatened species, candidate species, and species  
4 proposed for listing;

5 “(C) incorporate in each recovery plan for a  
6 species—

7 “(i) a description of such site-specific man-  
8 agement actions, including identification of ac-  
9 tions of the highest priority and greatest recov-  
10 ery potential, as may be necessary to achieve  
11 the goals of the plan for the recovery of the  
12 species;

13 “(ii) objective, measurable criteria, includ-  
14 ing habitat needs and population levels, that,  
15 when met, would result in a determination, in  
16 accordance with this section, that the species be  
17 removed from the list;

18 “(iii) estimates of the time required and  
19 the cost to carry out those measures needed to  
20 achieve the goals of the plan and to achieve in-  
21 termediate steps toward each goal;

22 “(iv) a general description of the types of  
23 actions likely to violate the taking prohibition of  
24 section 9 or the jeopardy prohibition of section  
25 7; and

1           “(v) a list of Federal agencies, States,  
2           tribes, and local government entities, signifi-  
3           cantly affected by the goals or management ac-  
4           tions specified in the recovery plan, that should  
5           complete a recovery implementation plan pursu-  
6           ant to paragraph (5)(A); and

7           “(D) for the purposes of determining the cri-  
8           teria under subparagraph (C)(ii), select, in consulta-  
9           tion with the National Academy of Sciences, inde-  
10          pendent scientists who—

11           “(i) through publication of peer-reviewed  
12           scientific literature, have demonstrated relevant  
13           scientific expertise in that species or a similar  
14           species; and

15           “(ii) do not have, nor represent anyone  
16           with, a significant economic interest in the re-  
17           covery plan.”; and

18           (2) by striking paragraph (5) and inserting the  
19          following:

20           “(5) RECOVERY IMPLEMENTATION PLANS.—

21           “(A) IN GENERAL.—Each Federal agency  
22           significantly affected by the goals or manage-  
23           ment actions specified in a final recovery plan  
24           shall develop and implement a plan (referred to  
25           in this paragraph as a ‘recovery implementation

1 plan’), after providing public notice and an op-  
2 portunity for public review and comment on the  
3 recovery implementation plan.

4 “(B) CONTENTS.—Each recovery imple-  
5 mentation plan shall—

6 “(i) identify the affirmative conserva-  
7 tion duties and management responsibil-  
8 ities of the agency that will contribute to  
9 the achievement of recovery goals identi-  
10 fied in the final recovery plan;

11 “(ii) specify specific agency actions,  
12 timetables, and funding required to achieve  
13 and monitor progress toward meeting re-  
14 covery goals or management responsibil-  
15 ities;

16 “(iii) identify any land or water under  
17 the jurisdiction or ownership of the agency  
18 that provide or may provide suitable habi-  
19 tat for the species;

20 “(iv) identify any actions needed to  
21 acquire additional suitable habitat under  
22 section 5(a); and

23 “(v) describe management actions  
24 that the agency will take on land or water  
25 under the jurisdiction or ownership of the

1           agency to contribute toward recovery of the  
2           species.

3           “(C) STATE COOPERATION.—Consistent  
4           with section 6, the Secretary shall cooperate, to  
5           the maximum extent practicable, with States,  
6           tribes, and local government entities, that are  
7           significantly affected by a final recovery plan, to  
8           develop State cooperative plans to achieve the  
9           goals and implement the management actions  
10          identified in the recovery plan.”.

11 **SEC. 106. ENDANGERED SPECIES CONSERVATION AGREE-**  
12 **MENTS.**

13          Section 5 (16 U.S.C. 1534) is amended by adding  
14 at the end the following:

15          “(c) ENDANGERED SPECIES CONSERVATION AGREE-  
16 MENTS.—

17           “(1) IN GENERAL.—The Secretary may enter  
18          into an agreement in accordance with this sub-  
19          section, to be known as an ‘endangered species con-  
20          servation agreement’, with any person that is an  
21          owner or lessee of real property on which will be car-  
22          ried out conservation measures for any species de-  
23          scribed in paragraph (3) in accordance with the en-  
24          dangered species conservation agreement.

1           “(2) REQUIRED TERMS.—The Secretary shall  
2 include in an endangered species conservation agree-  
3 ment with a person under this subsection provisions  
4 that—

5           “(A) require the person—

6           “(i) to carry out on real property  
7 owned or leased by the person activities  
8 not otherwise required by law that con-  
9 tribute to the conservation of a species de-  
10 scribed in paragraph (3); or

11           “(ii) to refrain from carrying out on  
12 real property owned or leased by the per-  
13 son otherwise lawful activities that would  
14 inhibit the conservation of a species de-  
15 scribed in paragraph (3);

16           “(B) describe the real property referred to  
17 in clauses (i) and (ii) of subparagraph (A);

18           “(C) specify species conservation goals for  
19 the activities by the person, and measures for  
20 attaining the conservation goals of this sub-  
21 section;

22           “(D) require the person to make measur-  
23 able progress each year in achieving the goals;

24           “(E) specify actions to be taken by the  
25 Secretary or the person, or both, to monitor the

1 effectiveness of the endangered species con-  
2 servation agreement in attaining the goals;

3 “(F) require the person to notify the Sec-  
4 retary if—

5 “(i) any right or obligation of the per-  
6 son under the endangered species conserva-  
7 tion agreement is assigned to any other  
8 person; or

9 “(ii) any term of the endangered spe-  
10 cies conservation agreement is breached by  
11 the person or any other person to whom is  
12 assigned a right or obligation of the person  
13 under the endangered species conservation  
14 agreement;

15 “(G) specify the date on which the endan-  
16 gered species conservation agreement takes ef-  
17 fect; and

18 “(H) provide that the endangered species  
19 conservation agreement shall not be in effect on  
20 and after any date on which the Secretary pub-  
21 lishes a certification under paragraph (5) that  
22 the person has not complied with the endan-  
23 gered species conservation agreement.

1           “(3) COVERED SPECIES.—A species referred to  
2           in clauses (i) and (ii) of paragraph (2)(A) is any  
3           species that is—

4                   “(A) listed as an endangered species or  
5                   threatened species under section 4;

6                   “(B) proposed for such listing under sec-  
7                   tion 4; or

8                   “(C) identified by the Secretary as a can-  
9                   didate for such listing under section 4.

10           “(4) REVIEW AND APPROVAL OF PROPOSED EN-  
11           DANGERED SPECIES CONSERVATION AGREEMENTS  
12           BY SECRETARY.—On submission by any person of a  
13           proposed endangered species conservation agreement  
14           under this subsection, the Secretary shall—

15                   “(A) review the proposed endangered spe-  
16                   cies conservation agreement and determine  
17                   whether the endangered species conservation  
18                   agreement complies with the requirements of  
19                   this subsection; and

20                   “(B) if the Secretary determines that the  
21                   endangered species conservation agreement  
22                   complies with the requirements of this  
23                   subsection—

24                           “(i) approve the endangered species  
25                           conservation agreement and enter into the

1           endangered species conservation agreement  
2           with the person; and

3           “(ii) promptly notify the Secretary of  
4           the Treasury that the endangered species  
5           conservation agreement has been entered  
6           into and specify the date on which the en-  
7           dangered species conservation agreement  
8           takes effect.

9           “(5) MONITORING IMPLEMENTATION OF EN-  
10          DANGERED SPECIES CONSERVATION AGREE-  
11          MENTS.—The Secretary shall—

12           “(A) periodically monitor the implementa-  
13           tion of each endangered species conservation  
14           agreement entered into under this subsection;  
15           and

16           “(B) based on the information obtained  
17           from the monitoring, annually certify to the  
18           Secretary of the Treasury whether or not each  
19           person that has entered into an endangered  
20           species conservation agreement under this sub-  
21           section has complied with the endangered spe-  
22           cies conservation agreement.

23           “(6) STATE COOPERATION.—The Secretary  
24           shall establish a technical assistance program in co-  
25           operation with the States to assist landowners in the

1 development and implementation of endangered spe-  
2 cies conservation agreements.”.

3 **SEC. 107. INTERAGENCY COOPERATION.**

4 (a) FEDERAL AGENCY ACTIONS AND CONSULTA-  
5 TIONS.—Section 7(a) (16 U.S.C. 1536(a)) is amended—

6 (1) in the second sentence of paragraph (1)—

7 (A) by striking “All other Federal agen-  
8 cies” and inserting “Each other Federal agen-  
9 cy”;

10 (B) by striking “their” and inserting “its”;

11 and

12 (C) by inserting before the period the fol-  
13 lowing: “, including recovery actions identified  
14 in recovery implementation plans of the agen-  
15 cy”;

16 (2) in the first sentence of paragraph (2), by  
17 inserting after “to be critical,” the following: “in  
18 such a way as to diminish the value of that habitat  
19 for the recovery of the species,”; and

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

21 “(5) CONSULTATION WITH SECRETARY CON-  
22 CERNING CANDIDATE SPECIES.—

23 “(A) IN GENERAL.—Any Federal agency  
24 may consult with the Secretary regarding any

1 action that may affect any candidate species or  
2 species proposed for listing under section 4(c).

3 “(B) ADDITIONAL CONSULTATION.—If  
4 consultation under this paragraph is completed  
5 before the listing of the species—

6 “(i) no additional consultation is re-  
7 quired solely as a consequence of the sub-  
8 sequent listing of the species, if the Sec-  
9 retary determines that there have been no  
10 significant changes in the agency proposal  
11 and that there is no significant new infor-  
12 mation that was not considered in the  
13 original consultation; and

14 “(ii) the Secretary shall reinitiate con-  
15 sultation under paragraph (2), if the Sec-  
16 retary determines that there has been a  
17 significant change in the agency proposal  
18 or that there is significant new information  
19 that was not considered in the original  
20 consultation.

21 “(C) NOTIFICATION OF CHANGE OR NEW  
22 INFORMATION.—A Federal agency shall notify  
23 the Secretary of any significant change in, or  
24 significant new information regarding, any ac-

1           tion regarding which the agency consulted with  
2           the Secretary under this paragraph.

3           “(6) MONITORING.—The head of each Federal  
4           agency shall monitor the status and trends of endan-  
5           gered species, threatened species, and candidate spe-  
6           cies that occur on land or in water under the juris-  
7           diction or ownership of the agency.”.

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

10           (1) by striking paragraph (3) and inserting the  
11           following:

12           “(3) STATEMENT OF OPINION OF SEC-  
13           RETARY.—

14           “(A) IN GENERAL.—Promptly after conclu-  
15           sion of consultation under paragraph (2), (3),  
16           or (5) of subsection (a), the Secretary shall pro-  
17           vide to the Federal agency and the applicant, if  
18           any, a written statement setting forth the Sec-  
19           retary’s opinion, and a summary of the infor-  
20           mation on which the opinion is based, detailing  
21           how the agency action affects the species or its  
22           critical habitat, including a description of the  
23           quantity of habitat and the number of members  
24           of the species that will be taken, and conserva-  
25           tion actions to minimize and mitigate the im-

1           pacts of any incidental taking that may result  
2           from the action.

3           “(B) ALTERNATIVES.—If jeopardy or ad-  
4           verse modification is found, the Secretary shall  
5           suggest those reasonable and prudent alter-  
6           natives that the Secretary believes would not  
7           violate subsection (a)(2) and that can be taken  
8           by the Federal agency or applicant in imple-  
9           menting the agency action.”;

10          (2) in paragraph (4)—

11           (A) in subparagraphs (A) and (B), by  
12           striking “violate such subsection” each place it  
13           appears and inserting “interfere with the timely  
14           achievement of recovery goals”;

15           (B) in clause (ii), by inserting “and miti-  
16           gate” after “minimize”;

17           (C) in clause (iii), by striking “and” after  
18           the comma at the end;

19           (D) in clause (iv), by striking the period at  
20           the end and inserting “, and”; and

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

22           “(v) directs the Federal agency to assess and  
23           report to the Secretary not later than 2 years after  
24           the date of issuance of the written statement and  
25           every 2 years thereafter for as long as any incidental

1 taking continues, the quantity of the incidental tak-  
2 ing that has occurred as a direct impact, indirect  
3 impact, or cumulative impact.

4 If an assessment under clause (v) indicates that the quan-  
5 tity of incidental taking authorized under the written  
6 statement has been exceeded, the Federal agency shall im-  
7 mediately reinitiate consultation with the Secretary pursu-  
8 ant to subsection (a)(2).”; and

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

10 “(5) NOTICE OF CONSULTATION AND AC-  
11 TION.—

12 “(A) IN GENERAL.—On receipt of a re-  
13 quest to initiate consultation under paragraph  
14 (2), (3), or (5) of subsection (a), the Secretary  
15 shall promptly publish a notice in the Federal  
16 Register announcing that the consultation has  
17 been initiated and briefly describing the pro-  
18 posed agency action.

19 “(B) AVAILABILITY OF INFORMATION.—  
20 The Secretary shall make available on request  
21 any information in the possession or control of  
22 the Secretary concerning the consultation or the  
23 opinion prepared pursuant to this subsection  
24 with respect to the consultation.

1           “(6) INDEPENDENT SCIENTISTS.—In preparing  
2           an opinion pursuant to this subsection, the Secretary  
3           shall invite independent scientists described in sec-  
4           tion 4(f)(1)(D) with expertise on species that may be  
5           affected by the proposed agency action to provide  
6           input into the consultation or opinion.

7           “(7) PUBLICATION OF FINDINGS AND REA-  
8           SONS.—Not later than 30 days after the date on  
9           which the Secretary provides a written statement  
10          under paragraph (3) to the Federal agency and the  
11          applicant for a permit, if any, the Secretary shall  
12          publish in the Federal Register a description of the  
13          findings and reasons of the Secretary for making  
14          any determination under this subsection.”.

15          (c) BIOLOGICAL ASSESSMENT.—Section 7(c)(1) (16  
16 U.S.C. 1536(c)(1)) is amended in the last sentence by  
17 striking “Such assessment may be undertaken” and in-  
18 serting “The assessment shall be made available to the  
19 public and may be undertaken”.

20          (d) FOREIGN SPECIES.—Section 7 (16 U.S.C. 1536)  
21 is amended by adding at the end the following:

22          “(q) FOREIGN SPECIES.—This section shall apply to  
23 any agency action with respect to any endangered species,  
24 threatened species, species proposed to be added to a list  
25 under section 4(c), or candidate species carried out in

1 whole or in part, in the United States, in a foreign coun-  
2 try, or on the high seas.”.

3 (e) STREAMLINING AND CONSOLIDATING INTER-  
4 AGENCY COOPERATION.—Section 7 (16 U.S.C. 1536) (as  
5 amended by subsection (d)) is amended by adding at the  
6 end the following:

7 “(r) REGULATIONS TO ENSURE TIMELY CONCLU-  
8 SION OF CONSULTATIONS.—

9 “(1) DEFINITION OF ECOSYSTEM.—In this sub-  
10 section, the term ‘ecosystem’ means a dynamic com-  
11 plex of organisms and biological communities, and  
12 their associated nonliving environment, interacting  
13 together as an ecological unit.

14 “(2) REQUIREMENT.—Not later than 1 year  
15 after the date of enactment of this subsection, the  
16 Secretary, in cooperation with the States, shall pro-  
17 mulgate regulations to ensure timely conclusion of  
18 consultations under this section.

19 “(3) CONTENT.—Regulations under this sub-  
20 section shall provide that—

21 “(A) consultations and conferences under  
22 this section between the Secretary and a Fed-  
23 eral agency shall, to the maximum extent prac-  
24 ticable and if approved by the Secretary, en-  
25 compass a number of similar or related agency

1 actions to be undertaken within a particular  
2 geographical range or ecosystem; and

3 “(B) the Secretary shall, to the maximum  
4 extent practicable, consolidate requests for con-  
5 sultations or conferences from various Federal  
6 agencies whose proposed actions may affect en-  
7 dangered species, threatened species, or can-  
8 didate species that are dependent on the same  
9 ecosystem.”.

10 **SEC. 108. PERMITS AND CONSERVATION PLANS.**

11 Section 10 (16 U.S.C. 1539) is amended by striking  
12 subsection (a) and inserting the following:

13 “(a) PERMITS.—

14 “(1) IN GENERAL.—The Secretary may permit,  
15 under the terms and conditions provided for in this  
16 section—

17 “(A) any act otherwise prohibited by sec-  
18 tion 9 for scientific purposes or to enhance the  
19 propagation or survival of the affected species,  
20 or the conservation of the species in the wild,  
21 such as acts necessary for the conservation, es-  
22 tablishment, and maintenance of experimental  
23 populations pursuant to subsection (j); or

24 “(B) any taking otherwise prohibited by  
25 section 9(a)(1) if the taking is incidental to,

1           and not the purpose of, the carrying out of an  
2           otherwise lawful activity.

3           “(2) DURATION.—The Secretary shall limit the  
4           duration of a permit under paragraph (1) as nec-  
5           essary to ensure that changes in circumstances that  
6           could occur in the period covered by the permit and  
7           that would jeopardize the continued existence of the  
8           species are reasonably foreseeable.

9           “(3) CONSERVATION PLAN.—

10           “(A) IN GENERAL.—No permit may be  
11           issued by the Secretary authorizing any taking  
12           referred to in paragraph (1)(B) unless the ap-  
13           plicant for the permit submits to the Secretary  
14           a conservation plan in accordance with this  
15           paragraph that is based on the best scientific  
16           and commercial information available.

17           “(B) CONTENTS.—A conservation plan  
18           under this paragraph shall provide a description  
19           and analysis of—

20                   “(i) the specific activities sought to be  
21                   authorized by the permit;

22                   “(ii) a reasonable range of alternative  
23                   actions to the taking of each species cov-  
24                   ered by the plan;

1           “(iii) the individual and cumulative  
2 impacts that may reasonably be antici-  
3 pated to result from the permitted activi-  
4 ties covered by the plan, including the im-  
5 pacts of modification or destruction of  
6 habitat of species authorized under the  
7 permit;

8           “(iv) objective, measurable biological  
9 goals to be achieved for each species cov-  
10 ered by the plan;

11           “(v) the conservation measures that  
12 the applicant will implement to minimize  
13 and mitigate the impacts described in  
14 clause (iii), including—

15           “(I) the specific conservation  
16 measures for achieving the biological  
17 goals of the plan; and

18           “(II) any additional requirements  
19 or restrictions or other adaptive man-  
20 agement provisions that are necessary  
21 to respond to all reasonably foresee-  
22 able changes in circumstances that  
23 would jeopardize the continued exist-  
24 ence of any species covered by the  
25 plan, including new scientific informa-

1                   tion and changing environmental con-  
2                   ditions, including natural disasters;

3                   “(vi) the reasonably anticipated costs  
4                   of the measures described in clause (v);

5                   “(vii) the actions that the applicant  
6                   will take to monitor—

7                   “(I) the effectiveness of the  
8                   plan’s conservation measures in  
9                   achieving the plan’s biological goals;  
10                  and

11                  “(II) impacts on the recovery of  
12                  each species;

13                  “(viii) funding that will be available to  
14                  the applicant, throughout the term of the  
15                  plan, to implement the plan and the con-  
16                  servation measures specified in the plan;  
17                  and

18                  “(ix) such other matters as the Sec-  
19                  retary determines are necessary or appro-  
20                  priate for the purposes of carrying out the  
21                  plan.

22                  “(C) FINDINGS.—The Secretary shall not  
23                  issue a permit under paragraph (1)(B) for the  
24                  taking of any species unless the Secretary finds,  
25                  after opportunity for public comment with re-

1           spect to a permit application and the related  
2           conservation plan, that—

3                   “(i) the conservation plan submitted  
4                   for the permit meets all of the require-  
5                   ments of this paragraph;

6                   “(ii) the taking will be incidental;

7                   “(iii) the applicant will minimize and  
8                   mitigate the individual impacts and cumu-  
9                   lative impacts of the taking;

10                  “(iv) the activities authorized by the  
11                  permit and conservation plan are con-  
12                  sistent with the recovery of the species and  
13                  will result in no net loss of the value to the  
14                  species of the habitat occupied by the spe-  
15                  cies;

16                  “(v) the applicant has, in accordance  
17                  with paragraph (9), filed a performance  
18                  bond or other evidence of financial security  
19                  to ensure adequate funding for each ele-  
20                  ment of the conservation plan; and

21                  “(vi) the permit contains—

22                           “(I) such terms and conditions as  
23                           are necessary or appropriate to carry  
24                           out this paragraph and ensure imple-

1                   mentation of the conservation plan by  
2                   the applicant; and

3                   “(II) such reporting and moni-  
4                   toring requirements as are necessary  
5                   for determining whether the terms  
6                   and conditions are being complied  
7                   with.

8                   “(D) REPORTS ON BIOLOGICAL STATUS  
9                   AND GOALS.—

10                   “(i) IN GENERAL.—Each permit shall  
11                   require the permittee to provide to the Sec-  
12                   retary, not later than 1 year after the date  
13                   of issuance of the permit and at least once  
14                   each year thereafter during the term of the  
15                   permit, a complete report on—

16                   “(I) the biological status of the  
17                   species in the affected area;

18                   “(II) the impacts of the habitat  
19                   conservation plan and the permitted  
20                   action on the species; and

21                   “(III) whether the biological  
22                   goals of the plan are being met.

23                   “(ii) AVAILABILITY TO PUBLIC.—The  
24                   Secretary shall make reports required

1 under this subparagraph available to the  
2 public.

3 “(E) ADDITIONAL CONSERVATION MEAS-  
4 URES.—

5 “(i) IN GENERAL.—If necessary to en-  
6 sure that the permitted action does not  
7 jeopardize the continued existence of any  
8 species affected by the permitted action,  
9 the Secretary shall require a permittee to  
10 implement conservation measures in addi-  
11 tion to the conservation measures specified  
12 in the plan.

13 “(ii) COST SHARING.—The Secretary  
14 shall pay the costs of any additional con-  
15 servation measures required under this  
16 subparagraph that are in excess of the rea-  
17 sonably anticipated costs specified in the  
18 plan.

19 “(4) REVIEW BY SECRETARY.—

20 “(A) IN GENERAL.—Every 3 years after  
21 the date of approval of a permit application and  
22 conservation plan under this section, the Sec-  
23 retary shall review and report on the progress  
24 toward implementation of the terms and condi-  
25 tions of the permit and plan and make rec-

1           ommendations on actions necessary to ensure  
2           that—

3                   “(i) the terms and conditions do not  
4                   jeopardize the continued existence of any  
5                   species;

6                   “(ii) progress is being made toward  
7                   achieving the biological goals of the plan;  
8                   and

9                   “(iii) the requirements, goals, and  
10                  purposes of this Act are being met.

11                 “(B) AVAILABILITY TO PUBLIC.—The Sec-  
12                 retary shall annually—

13                   “(i) prepare and make publicly avail-  
14                   able a report on the status of all permits  
15                   reviewed pursuant to this paragraph since  
16                   the date of the last report; and

17                   “(ii) publish in the Federal Register a  
18                   notice of the availability of the most recent  
19                   report.

20                 “(5) PERMIT REVOCATION.—The Secretary  
21                 shall revoke a permit issued under this section and  
22                 issue an order suspending activities allowed under  
23                 the permit that may be reasonably expected to cause  
24                 a taking of any species covered by the permit, if—

1           “(A) the permittee is not in compliance  
2 with the terms and conditions of the permit, the  
3 requirements of this Act, and the regulations  
4 issued under this Act, including any failure by  
5 a permittee to substantially comply with the  
6 conservation plan required for a permit issued  
7 under paragraph (1)(B); or

8           “(B) the level of the taking authorized by  
9 the permit has been exceeded.

10           “(6) ACTIONS BY SECRETARY ON FAILURE BY  
11 PERMITTEE.—

12           “(A) IN GENERAL.—If a permittee defaults  
13 on any obligation of the permittee under a per-  
14 mit issued under paragraph (1)(B) or a con-  
15 servation plan required for the permit, the Sec-  
16 retary shall undertake actions to conserve each  
17 species covered by the plan and permit.

18           “(B) FUNDING.—To carry out actions re-  
19 quired under subparagraph (A) with respect to  
20 a default by a permittee, the Secretary may  
21 use—

22           “(i) the proceeds of the performance  
23 bond or other financial security under  
24 paragraph (9) provided by the permittee;  
25 and

1           “(ii) amounts in the Habitat Con-  
2           servation Plan Fund established by para-  
3           graph (10).

4           “(7) LOW EFFECT, SMALL SCALE PLANS.—

5           “(A) IN GENERAL.—The Secretary shall  
6           develop and implement a streamlined applica-  
7           tion and approval procedure for a permit issued  
8           under paragraph (1)(B) and related conserva-  
9           tion plan that the Secretary determines to be a  
10          low effect, small scale plan.

11          “(B) PREREQUISITES.—A permit and re-  
12          lated conservation plan may be treated as a low  
13          effect, small scale permit and plan if—

14                 “(i) the permitted action is expected  
15                 to be of less than 5 years in duration;

16                 “(ii) the conservation plan is applica-  
17                 ble to an area of less than 5 acres;

18                 “(iii) the affected acreage is not adja-  
19                 cent to other land that has been the sub-  
20                 ject of a permit issued under this section  
21                 within the preceding 5 years to the same  
22                 person, or as part of the same project;

23                 “(iv) the permitted action is not part  
24                 of a single larger project that will have ad-

1           ditional impacts on the endangered species  
2           or threatened species;

3           “(v) the Secretary determines that the  
4           plan will have a negligible cumulative im-  
5           pact and individual impact on the recovery  
6           of the endangered species or threatened  
7           species; and

8           “(vi) the permitted action is not re-  
9           lated to other actions that will have addi-  
10          tional impacts on the endangered species  
11          or threatened species.

12          “(C) RELATED ACTIONS.—For the pur-  
13          poses of subparagraph (B)(vi), actions shall be  
14          considered related if they—

15               “(i) automatically trigger other ac-  
16               tions that may affect endangered species  
17               or threatened species;

18               “(ii) cannot or will not proceed unless  
19               other actions are taken previously or si-  
20               multaneously; or

21               “(iii) are interdependent on parts of a  
22               larger action and depend on the larger ac-  
23               tion for their justification.

24          “(D) MONITORING.—

1           “(i) IN GENERAL.—The Secretary  
2           shall monitor the implementation and re-  
3           sults of low effect, small scale permits and  
4           conservation plans to ensure that the per-  
5           mits and plans do not jeopardize the con-  
6           tinued existence of any endangered species  
7           or threatened species.

8           “(ii) ADDITIONAL REQUIREMENTS OR  
9           RESTRICTIONS.—If the Secretary deter-  
10          mines that additional requirements or re-  
11          strictions are required to ensure that ac-  
12          tions authorized by a low effect, small  
13          scale conservation plan do not jeopardize  
14          the continued existence of any species de-  
15          termined to be an endangered species or  
16          threatened species after the plan was ap-  
17          proved, the Secretary shall require appro-  
18          priate modifications to the plan to imple-  
19          ment those requirements or restrictions.

20          “(iii) COST SHARING.—The Secretary  
21          shall pay all costs of implementing addi-  
22          tional requirements or restrictions required  
23          under clause (ii).

24          “(E) FINANCIAL SECURITY.—The per-  
25          mittee for which a low effect, small scale permit

1 and conservation plan is approved under this  
2 paragraph shall not be required to provide a  
3 performance bond or other financial security  
4 under paragraph (9).

5 “(8) MONITORING.—The Secretary shall mon-  
6 itor the implementation and results of all conserva-  
7 tion plans approved under this subsection to ensure  
8 that the plans do not jeopardize the continued exist-  
9 ence of any endangered species or threatened spe-  
10 cies.

11 “(9) PERFORMANCE BONDS.—

12 “(A) IN GENERAL.—After the approval of  
13 an incidental taking permit under paragraph  
14 (1)(B) and associated conservation plan in ac-  
15 cordance with this subsection, but before the  
16 permit is issued, the applicant shall—

17 “(i) file with the Secretary a perform-  
18 ance bond payable to the United States,  
19 and conditional on faithful performance of  
20 all the requirements of the permit; or

21 “(ii) deposit another form of financial  
22 security, payable to the United States, in  
23 a form and manner approved by the Sec-  
24 retary, and conditional on such faithful  
25 performance, having a cash or market

1 value, as applicable, equal to or greater  
2 than the amount of a performance bond  
3 otherwise required under clause (i).

4 “(B) AMOUNT.—The amount of the bond  
5 or deposit of other financial security required  
6 for each permit shall be—

7 “(i) determined by the Secretary;

8 “(ii) based on the mitigation require-  
9 ments needed to meet the biological goals  
10 of the conservation plan; and

11 “(iii) sufficient to ensure the comple-  
12 tion of all conservation measures to be im-  
13 plemented by the permittee under the con-  
14 servation plan that are specified in the  
15 plan.

16 “(C) PHASED OR ADJUSTED BONDS OR  
17 DEPOSITS.—In the case of a bond or deposit of  
18 other financial security required for a large-  
19 scale conservation plan (as defined in para-  
20 graph (12)(A)), or a conservation plan for  
21 which the reasonably foreseeable costs may be  
22 prohibitive, the Secretary may authorize the use  
23 of—

24 “(i) phased bonds or deposits, by  
25 which the permittee may divide the area or

1 actions covered by the conservation plan  
2 into discrete sections and execute a sepa-  
3 rate bond or deposit for each section before  
4 undertaking any action on that section; or

5 “(ii) adjusted bonds or deposits,  
6 through which the amount of the bond or  
7 deposits required and the terms of accept-  
8 ance of a bond or deposits shall be ad-  
9 justed by the Secretary from time to time  
10 as the extent of actions that affect endan-  
11 gered species or threatened species in-  
12 creases or decreases.

13 “(D) EXECUTION.—The bond or deposits  
14 shall be executed by the permittee and a cor-  
15 porate surety or depository, respectively.

16 “(E) RELEASE OF BOND OR DEPOSIT.—

17 “(i) IN GENERAL.—The permittee  
18 may file a request with the Secretary for  
19 the release of all or any part of a perform-  
20 ance bond or deposit of any other financial  
21 security required under this paragraph.

22 “(ii) NOTICE AND COMMENT.—Not  
23 later than 30 days after any request for re-  
24 lease has been filed with the Secretary, the  
25 Secretary shall—

1                   “(I) file notice of the request in  
2                   the Federal Register; and

3                   “(II) provide opportunity for  
4                   public comment before making a deci-  
5                   sion under clause (iii).

6                   “(iii) REVIEW.—Not later than 30  
7                   days after receipt of the request, the Sec-  
8                   retary shall conduct a review of the imple-  
9                   mentation of the conservation plan to de-  
10                  termine whether—

11                  “(I) the requirements of the plan  
12                  have been fully implemented;

13                  “(II) the plan has achieved its bi-  
14                  ological goals; and

15                  “(III) no further action is needed  
16                  to ensure that the permitted action is  
17                  not jeopardizing the existence of the  
18                  species covered by the plan.

19                  “(iv) NOTICE OF DECISION.—Not  
20                  later than 90 days after receipt of the re-  
21                  quest, the Secretary shall notify the per-  
22                  mittee in writing of the decision of the Sec-  
23                  retary to release or not to release all or  
24                  part of the bond or deposit.

1                   “(v) NOTICE OF REASONS FOR NO RE-  
2                   LEASE.—If the Secretary does not release  
3                   any portion of the bond or deposit, the  
4                   Secretary shall notify the permittee in  
5                   writing of the reasons that the portion was  
6                   not released and recommended corrective  
7                   actions necessary to secure that release.

8                   “(10) HABITAT CONSERVATION PLAN FUND.—

9                   “(A) ESTABLISHMENT.—There is estab-  
10                  lished in the Treasury a separate account to be  
11                  known as the ‘Habitat Conservation Plan Fund’  
12                  (referred to in this paragraph as the ‘Fund’).

13                  “(B) CONTENTS.—The Fund shall consist  
14                  of—

15                         “(i) donations to the Fund;

16                         “(ii) appropriations to the Fund;

17                         “(iii) amounts received by the United  
18                         States as fees charged for permits under  
19                         this section;

20                         “(iv) amounts received by the United  
21                         States as natural resource damages under  
22                         section 11(i); and

23                         “(v) the proceeds of performance  
24                         bonds and other deposits of financial secu-  
25                         rity under paragraph (9).

1           “(C) USE.—Amounts in the Fund shall be  
2 available to the Secretary until expended, with-  
3 out further appropriation, to pay the cost of—

4           “(i) additional conservation measures  
5 required under paragraph (3)(E) and addi-  
6 tional requirements and restrictions re-  
7 quired under paragraph (7)(C)(iii) for re-  
8 covery of a species;

9           “(ii) actions by the Secretary to con-  
10 serve species under paragraph (6);

11           “(iii) permitting with respect to which  
12 fees are deposited in the Fund under sub-  
13 paragraph (B)(iii); and

14           “(iv) restoration or replacement of  
15 natural resources with respect to which  
16 natural resource damages are deposited in  
17 the Fund under subparagraph (B)(iv).

18           “(11) MULTIPLE LANDOWNER, MULTISPECIES  
19 PLANNING.—

20           “(A) IN GENERAL.—The Secretary shall  
21 encourage the development of multiple land-  
22 owner, multispecies conservation plans, that—

23           “(i) make a significant contribution to  
24 the recovery of an endangered species or  
25 threatened species;

1           “(ii) rely on the best available sci-  
2           entific information;

3           “(iii) rely, to the maximum extent  
4           practicable, on ecosystem planning; and

5           “(iv) maintain the well-being of other  
6           species located within the planning area.

7           “(B) STREAMLINING OF PERMITTING  
8           PROCESSES ACROSS JURISDICTIONS.—

9           “(i) IN GENERAL.—To encourage the  
10          development of the plans, the Secretary  
11          shall cooperate, to the maximum extent  
12          practicable, with States and local govern-  
13          ments to streamline permitting processes  
14          across jurisdictions.

15          “(ii) LARGE-SCALE CONSERVATION  
16          PLANS.—The cooperation shall include  
17          issuing permits under paragraph (1)(B) to  
18          a State, local government, or group of local  
19          governments for large-scale conservation  
20          plans that involve more than 1 landowner.

21          “(C) INCIDENTAL TAKING CERTIFI-  
22          CATES.—A permit under subparagraph (B)(ii)  
23          may authorize the State, local government, or  
24          group of local governments to issue incidental  
25          taking certificates to landowners that authorize

1 takings under the authority of the permit with-  
2 in the jurisdiction of the State, local govern-  
3 ment, or group of local governments, if—

4 “(i) the State, local government, or  
5 group of local governments meets the per-  
6 formance bond or other financial security  
7 requirements under paragraph (9) with re-  
8 spect to all such certificates, or each cer-  
9 tificate is effective only after the landowner  
10 to whom the certificate is issued has met  
11 those requirements with respect to the cer-  
12 tificate;

13 “(ii) the State, local government, or  
14 group of local governments ensures that all  
15 incidental taking certificates issued under  
16 the permit are consistent with the permit  
17 and approved habitat conservation plan;

18 “(iii) the State, local government, or  
19 group of local governments provides ade-  
20 quate public notice and opportunity to  
21 comment on decisions to issue incidental  
22 taking certificates; and

23 “(iv) the Secretary and the State,  
24 local government, or group of local govern-  
25 ments have adequate authority to enforce

1 the terms and conditions of the incidental  
2 taking certificates.

3 “(D) ENCOURAGEMENT OF PLANS.—The  
4 Secretary shall—

5 “(i) ensure the participation of a  
6 broad range of public and private interests  
7 in the development of the plan;

8 “(ii) provide technical assistance to  
9 the maximum extent practicable; and

10 “(iii) give the plans priority consider-  
11 ation for funding under section 6.

12 “(E) POOLED BONDS OR DEPOSITS.—The  
13 Secretary may approve the use of pooled bonds  
14 or deposits in order to meet the requirements of  
15 paragraph (9) for plans approved under this  
16 paragraph that—

17 “(i) do not meet the requirements of  
18 subparagraph (C); and

19 “(ii) involve more than 1 landowner.

20 “(12) CITIZEN PARTICIPATION; INDEPENDENT  
21 SCIENTISTS.—

22 “(A) DEFINITIONS.—In this paragraph:

23 “(i) AGENCY INVOLVEMENT.—The  
24 term ‘agency involvement’ means any role  
25 played by the Secretary in the development

1 of a conservation plan under paragraph  
2 (3).

3 “(ii) INDEPENDENT SCIENTIST.—The  
4 term ‘independent scientist’ means a sci-  
5 entist that meets the criteria specified in  
6 section 4(f)(1)(D).

7 “(iii) LARGE-SCALE CONSERVATION  
8 PLAN.—The term ‘large-scale conservation  
9 plan’ means a conservation plan that cov-  
10 ers a significant portion of the range of an  
11 endangered species, threatened species,  
12 candidate species, or species proposed for  
13 listing under section 4.

14 “(B) NOTICE AND COMMENT.—The Sec-  
15 retary may issue a permit under this section  
16 only after—

17 “(i) notice of the receipt of an appli-  
18 cation for the permit has been published in  
19 the Federal Register;

20 “(ii) at least a 60-day public comment  
21 period has been provided; and

22 “(iii) a notice of permit approval has  
23 been published in the Federal Register  
24 with agency responses to public comments.

25 “(C) AGENCY INVOLVEMENT.—

1           “(i) IN GENERAL.—On receipt of re-  
2           quest for involvement by an agency in the  
3           development of a large-scale conservation  
4           plan pursuant to paragraphs (3)(A) and  
5           (11), the Secretary shall promptly publish  
6           a notice in the Federal Register announc-  
7           ing the agency’s involvement and briefly  
8           describing the activities that would be per-  
9           mitted under the plan.

10           “(ii) AVAILABILITY OF INFORMA-  
11           TION.—The Secretary shall make available,  
12           on request, any information in the Sec-  
13           retary’s possession or control concerning  
14           the planning efforts.

15           “(D) PUBLIC PARTICIPATION.—

16           “(i) IN GENERAL.—The Secretary  
17           shall invite members of the public to par-  
18           ticipate in the development of large-scale  
19           conservation plans and multiple landowner,  
20           multispecies plans.

21           “(ii) BALANCED DEVELOPMENT PROC-  
22           ESS.—The Secretary shall promulgate reg-  
23           ulations establishing a development process  
24           under this paragraph that ensures an equi-  
25           table balance of participation between—

1                   “(I) citizens with a primary in-  
2                   terest in carrying out economic devel-  
3                   opment activities that may affect spe-  
4                   cies conservation; and

5                   “(II) citizens whose primary in-  
6                   terest is in species conservation.

7                   “(iii) MEETINGS.—A meeting of par-  
8                   ticipants under this subparagraph shall not  
9                   be subject to the Federal Advisory Com-  
10                  mittee Act (5 U.S.C. App.), but shall be  
11                  open to the public.

12                  “(E) INDEPENDENT SCIENTISTS.—On re-  
13                  ceipt of a request for involvement by an agency  
14                  in the development of a large-scale conservation  
15                  plan, the Secretary shall invite independent sci-  
16                  entists with expertise on species that may be af-  
17                  fected by the plan to provide input.

18                  “(13) COMMUNITY ASSISTANCE PROGRAM.—

19                  “(A) ESTABLISHMENT.—The Secretary  
20                  shall establish a community assistance program  
21                  to provide timely and accurate information to  
22                  local governments and property owners in ac-  
23                  cordance with subparagraph (B).

24                  “(B) FIELD OFFICE EMPLOYEES.—Under  
25                  the community assistance program, the Sec-

1           retary shall assign to each field office of the  
2           United States Fish and Wildlife Service employ-  
3           ees whose duties include—

4                   “(i) providing accurate, timely infor-  
5                   mation on local impacts of determinations  
6                   that species are endangered species or  
7                   threatened species, recovery planning ef-  
8                   forts, and other actions under this Act;

9                   “(ii) providing assistance on obtaining  
10                  permits under this section and otherwise  
11                  complying with this Act;

12                  “(iii) serving as a focal point for ques-  
13                  tions, requests, complaints, and sugges-  
14                  tions from property owners and local gov-  
15                  ernments concerning the policies and ac-  
16                  tivities of the United States Fish and  
17                  Wildlife Service or other Federal agencies  
18                  in the implementation of this Act; and

19                  “(iv) training Federal personnel on  
20                  public outreach efforts under this Act.”.

21 **SEC. 109. CITIZEN SUITS.**

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

23                   (1) in paragraph (1)(A), by striking “in viola-  
24                   tion” and all that follows through the end of the  
25                   subparagraph and inserting “in violation of this Act,

1 any regulation or permit issued under this Act, any  
2 statement provided by the Secretary under section  
3 7(b)(3), or any agreement concluded under this  
4 Act;” and

5 (2) in paragraph (2)—

6 (A) in subparagraph (A)(i), by inserting  
7 before the semicolon at the end the following “,  
8 except that notwithstanding this clause such an  
9 action may be brought immediately after the  
10 notice in the case of an action against any per-  
11 son regarding an emergency posing a signifi-  
12 cant risk to any species of fish, wildlife, or  
13 plant included in a list under section 4(c) or  
14 proposed for inclusion in such a list”; and

15 (B) in subparagraph (B)(i), by inserting  
16 before the semicolon at the end the following: “,  
17 except that notwithstanding this clause such an  
18 action may be brought immediately after such  
19 notice in the case of an action under this sec-  
20 tion against any person regarding an emergency  
21 posing a significant risk to any species of fish,  
22 wildlife, or plant included in a list under section  
23 4(e)”.

1 **SEC. 110. NATURAL RESOURCE DAMAGE LIABILITY.**

2 Section 11 (16 U.S.C. 1540) is amended by adding  
3 at the end the following:

4 “(i) NATURAL RESOURCE DAMAGE LIABILITY.—

5 “(1) IN GENERAL.—Any person that, in viola-  
6 tion of this Act, negligently damages any member or  
7 habitat of a species included in a list under section  
8 4(c) shall be liable to—

9 “(A) the United States for the costs in-  
10 curred by the United States in restoring or re-  
11 placing the member or habitat, including rea-  
12 sonable costs of assessing the damage; and

13 “(B) a State for the costs incurred by the  
14 State in restoring or replacing the member or  
15 habitat under a management agreement with  
16 the Secretary under section 6(a) or a coopera-  
17 tive agreement with the Secretary under section  
18 6(c), including reasonable costs of assessing the  
19 damage.

20 “(2) DEPOSIT.—Amounts received by the  
21 United States under this subsection—

22 “(A) shall be deposited in the Habitat  
23 Conservation Plan Fund established by section  
24 10(a)(10); and

1           “(B) may be obligated only for the acqui-  
2           tion or rehabilitation of damaged habitat or  
3           populations.

4           “(3) CIVIL ACTIONS BY SECRETARY.—The Sec-  
5           retary may commence a civil action on behalf of the  
6           United States under this subsection.

7           “(4) NOTICE.—No action may be commenced  
8           under this subsection by the Secretary or a State be-  
9           fore the end of the 60-day period beginning on the  
10          date on which the Secretary or the State, respec-  
11          tively, provides written notice of the action to the  
12          person against whom the action is commenced.”.

13 **SEC. 111. AUTHORIZATION OF APPROPRIATIONS.**

14          Section 15 (16 U.S.C. 1542) is amended to read as  
15 follows:

16 **“SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

17          “(a) IN GENERAL.—There are authorized to be  
18 appropriated—

19                 “(1) to the Secretary of the Interior for car-  
20 rying out this Act—

21                         “(A) \$135,000,000 for fiscal year 2001;

22                         “(B) \$140,000,000 for fiscal year 2002;

23                         “(C) \$145,000,000 for fiscal year 2003;

24                         “(D) \$150,000,000 for fiscal year 2004;

25                         and

1           “(E) \$155,000,000 for fiscal year 2005;

2           and

3           “(2) to the Secretary of Commerce for carrying

4           out this Act—

5           “(A) \$35,000,000 for fiscal year 2001;

6           “(B) \$40,000,000 for fiscal year 2002;

7           “(C) \$45,000,000 for fiscal year 2003;

8           “(D) \$50,000,000 for fiscal year 2004;

9           and

10           “(E) \$55,000,000 for fiscal year 2005.

11           “(b) CONVENTION IMPLEMENTATION.—In addition

12           to other amounts authorized by this section, there are au-

13           thorized to be appropriated to the Secretary of the Interior

14           for carrying out functions under section 8 relating to im-

15           plementation of the Convention on International Trade in

16           Endangered Species of Wild Fauna and Flora—

17           “(1) \$3,000,000 for fiscal year 2001; and

18           “(2) \$4,000,000 for each of fiscal years 2002

19           and 2003.

20           “(c) HABITAT CONSERVATION PLAN FUND.—In ad-

21           dition to other amounts authorized by this section, there

22           is authorized to be appropriated to the Habitat Conserva-

23           tion Plan Fund established by section 10(a)(10)

24           \$20,000,000 for each of fiscal years 2001, 2002, and

25           2003.

1 “(d) COOPERATIVE AGREEMENT FUNDS.—In addi-  
2 tion to other amounts authorized by this section, there are  
3 authorized to be appropriated—

4 “(1) to the Secretary of the Interior for enter-  
5 ing into cooperative agreements under section 6 with  
6 States and Indian tribes, \$20,000,000 for each of  
7 fiscal years 2001, 2002, and 2003; and

8 “(2) to the Secretary of Commerce for entering  
9 into cooperative agreements under section 6 with  
10 States and Indian tribes, \$5,000,000 for each of fis-  
11 cal years 2001, 2002, and 2003.”.

## 12 **TITLE II—SPECIES CONSERVA-** 13 **TION TAX INCENTIVES**

### 14 **SEC. 201. TAX EXCLUSION FOR COST-SHARING PAYMENTS**

#### 15 **UNDER PARTNERS FOR FISH AND WILDLIFE** 16 **PROGRAM.**

17 (a) IN GENERAL.—Section 126(a) of the Internal  
18 Revenue Code of 1986 (relating to certain cost-sharing  
19 payments) is amended by redesignating paragraph (10) as  
20 paragraph (11) and by inserting after paragraph (9) the  
21 following:

22 “(10) The Partners for Fish and Wildlife Pro-  
23 gram authorized by the Fish and Wildlife Act of  
24 1956 (16 U.S.C. 742a et seq.).”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to payments received after the date  
3 of the enactment of this Act.

4 **SEC. 202. ENHANCED DEDUCTION FOR THE DONATION OF A**  
5 **CONSERVATION EASEMENT.**

6 (a) IN GENERAL.—Subparagraph (A) of section  
7 170(h)(4) of the Internal Revenue Code of 1986 (defining  
8 conservation purpose) is amended by striking “or” at the  
9 end of clause (iii), by striking the period at the end of  
10 clause (iv) and inserting “, or”, and by adding at the end  
11 the following:

12 “(v) the conservation of a species des-  
13 ignated by the Secretary of the Interior or  
14 the Secretary of Commerce under the En-  
15 dangered Species Act of 1973 (16 U.S.C.  
16 1531 et seq) as endangered or threatened,  
17 proposed by such Secretary for designation  
18 as endangered or threatened, or identified  
19 by such Secretary as a candidate for such  
20 designation, provided the property is not  
21 required, as of the date of contribution, to  
22 be used for such purpose other than by  
23 reason of the terms of contribution.”.

24 (b) ENHANCED DEDUCTIONS.—Subsection (e) of sec-  
25 tion 170 of the Internal Revenue Code of 1986 (defining

1 qualified conservation contribution) is amended by adding  
2 at the end the following:

3 “(7) SPECIAL RULES FOR CONTRIBUTIONS RE-  
4 LATED TO CONSERVATION OF SPECIES.—In the case  
5 of a qualified conservation contribution by an indi-  
6 vidual for the conservation of endangered or threat-  
7 ened species, proposed species, or candidate species  
8 under subsection (h)(4)(v):

9 “(A) 50 PERCENT LIMITATION TO  
10 APPLY.—Such a contribution shall be treated  
11 for the purposes of this section as described in  
12 subsection (b)(1)(A).

13 “(B) 20-YEAR CARRY FORWARD.—Sub-  
14 section (d)(1) shall be applied by substituting  
15 ‘20 years’ for ‘5 years’ each place it appears  
16 and with appropriate adjustments in the appli-  
17 cation of subparagraph (A)(ii) thereof.

18 “(C) UNUSED DEDUCTION CARRYOVER AL-  
19 LOWED ON TAXPAYER’S LAST RETURN.—If the  
20 taxpayer dies before the close of the last taxable  
21 year for which a deduction could have been al-  
22 lowed under subsection (d)(1), any portion of  
23 the deduction for such contribution which has  
24 not been allowed shall be allowed as a deduction  
25 under subsection (a) (without regard to sub-

1 section (b)) for the taxable year in which such  
 2 death occurs or such portion may be used as a  
 3 deduction against the gross estate of the tax-  
 4 payer.”.

5 (c) EFFECTIVE DATE.—The amendments made by  
 6 this section shall apply to contributions made after the  
 7 date of the enactment of this Act.

8 **SEC. 203. EXCLUSION FROM ESTATE TAX FOR REAL PROP-**  
 9 **ERTY SUBJECT TO ENDANGERED SPECIES**  
 10 **CONSERVATION AGREEMENT.**

11 (a) IN GENERAL.—Part IV of subchapter A of chap-  
 12 ter 11 of the Internal Revenue Code of 1986 (relating to  
 13 taxable estate) is amended by adding at the end the fol-  
 14 lowing new section:

15 **“SEC. 2058. CERTAIN REAL PROPERTY SUBJECT TO ENDAN-**  
 16 **GERED SPECIES CONSERVATION AGREE-**  
 17 **MENT.**

18 “(a) GENERAL RULE.—For purposes of the tax im-  
 19 posed by section 2001, the value of the taxable estate shall  
 20 be determined by deducting from the value of the gross  
 21 estate an amount equal to lesser of—

22 “(1) the adjusted value of real property in-  
 23 cluded in the gross estate which is subject to an en-  
 24 dangered species conservation agreement, or

25 “(2) \$10,000,000.

1       “(b) PROPERTY SUBJECT TO AN ENDANGERED SPE-  
2 CIES CONSERVATION AGREEMENT.—For purposes of this  
3 section—

4           “(1) IN GENERAL.—Real property shall be  
5 treated as subject to an endangered species con-  
6 servation agreement if—

7           “(A) such property was owned by the dece-  
8 dent or a member of the decedent’s family at all  
9 times during the 3-year period ending on the  
10 date of the decedent’s death,

11           “(B) each person who has an interest in  
12 such property (whether or not in possession)  
13 has entered into—

14           “(i) an endangered species conserva-  
15 tion agreement with respect to such prop-  
16 erty, and

17           “(ii) a written agreement with the  
18 Secretary consenting to the application of  
19 subsection (d), and

20           “(C) the executor of the decedent’s  
21 estate—

22           “(i) elects the application of this sec-  
23 tion, and

24           “(ii) files with the Secretary such en-  
25 dangerous species conservation agreement.

1 “(2) ADJUSTED VALUE.—

2 “(A) IN GENERAL.—The adjusted value of  
3 any real property shall be its value for purposes  
4 of this chapter, reduced by—

5 “(i) any amount deductible under sec-  
6 tion 2055(f) with respect to the property,  
7 and

8 “(ii) any acquisition indebtedness with  
9 respect to the property.

10 “(B) ACQUISITION INDEBTEDNESS.—For  
11 purposes of this paragraph, the term ‘acqui-  
12 sition indebtedness’ means, with respect to any  
13 real property, the unpaid amount of—

14 “(i) the indebtedness incurred by the  
15 donor in acquiring such property,

16 “(ii) the indebtedness incurred before  
17 the acquisition of such property if such in-  
18 debtedness would not have been incurred  
19 but for such acquisition,

20 “(iii) the indebtedness incurred after  
21 the acquisition of such property if such in-  
22 debtedness would not have been incurred  
23 but for such acquisition and the incurrence  
24 of such indebtedness was reasonably fore-  
25 seeable at the time of such acquisition, and

1                   “(iv) the extension, renewal, or refi-  
2                   nancing of an acquisition indebtedness.

3           “(c) ENDANGERED SPECIES CONSERVATION AGREE-  
4   MENT.—For purposes of this section—

5           “(1) IN GENERAL.—The term ‘endangered spe-  
6           cies conservation agreement’ means a written agree-  
7           ment entered into with the Secretary of the Interior  
8           or the Secretary of Commerce—

9           “(A) which commits each person who  
10           signed such agreement to carry out on the real  
11           property activities or practices not otherwise re-  
12           quired by law or to refrain from carrying out on  
13           such property activities or practices that could  
14           otherwise be lawfully carried out and includes—

15                   “(i) objective and measurable species  
16                   of concern conservation goals,

17                   “(ii) site-specific and other manage-  
18                   ment measures necessary to achieve those  
19                   goals, and

20                   “(iii) objective and measurable criteria  
21                   to monitor progress toward those goals,

22           “(B) which is certified by such Secretary  
23           as providing a major contribution to the con-  
24           servation of a species of concern, and

1           “(C) which is for a term that such Sec-  
2           retary determines is sufficient to achieve the  
3           purposes of the agreement, but not less than 10  
4           years beginning on the date of the decedent’s  
5           death.

6           “(2) SPECIES OF CONCERN.—The term ‘species  
7           of concern’ means any species designated by the Sec-  
8           retary of the Interior or the Secretary of Commerce  
9           under the Endangered Species Act of 1973 (16  
10          U.S.C. 1531 et seq) as endangered or threatened,  
11          proposed by such Secretary for designation as en-  
12          dangered or threatened, or identified by such Sec-  
13          retary as a candidate for such designation.

14          “(3) ANNUAL CERTIFICATION TO THE SEC-  
15          RETARY BY THE SECRETARY OF THE INTERIOR OR  
16          THE SECRETARY OF COMMERCE OF THE STATUS OF  
17          ENDANGERED SPECIES CONSERVATION AGREE-  
18          MENTS.—If the executor elects the application of  
19          this section, the executor shall promptly give written  
20          notice of such election to the Secretary of the Inte-  
21          rior or the Secretary of Commerce. The Secretary of  
22          the Interior or the Secretary of Commerce shall  
23          thereafter annually certify to the Secretary that the  
24          endangered species conservation agreement applica-  
25          ble to any property for which such election has been

1       made remains in effect and is being satisfactorily  
2       complied with.

3       “(d) RECAPTURE OF TAX BENEFIT IN CERTAIN  
4       CASES.—

5               “(1) DISPOSITION OF INTEREST OR MATERIAL  
6       BREACH.—

7               “(A) IN GENERAL.—An additional tax in  
8       the amount determined under subparagraph  
9       (B) shall be imposed on any person on the ear-  
10      lier of—

11               “(i) the disposition by such person of  
12      any interest in property subject to an en-  
13      dangered species conservation agreement  
14      (other than a disposition described in sub-  
15      paragraph (C)),

16               “(ii) a material breach by such person  
17      of the endangered species conservation  
18      agreement, or

19               “(iii) the termination of the endan-  
20      gered species conservation agreement.

21       “(B) AMOUNT OF ADDITIONAL TAX.—

22               “(i) IN GENERAL.—The amount of  
23      the additional tax imposed by subpara-  
24      graph (A) with respect to any interest shall

1 be an amount equal to the applicable per-  
2 centage of the lesser of—

3 “(I) the adjusted tax difference  
4 attributable to such interest (within  
5 the meaning of section  
6 2032A(c)(2)(B)), or

7 “(II) the excess of the amount  
8 realized with respect to the interest  
9 (or, in any case other than a sale or  
10 exchange at arm’s length, the fair  
11 market value of the interest) over the  
12 value of the interest determined under  
13 subsection (a).

14 “(ii) APPLICABLE PERCENTAGE.—For  
15 purposes of clause (i), the applicable per-  
16 centage is determined in accordance with  
17 the following table:

<b>“If, with respect to the date of the agreement, the date of the event described in subparagraph (A) occurs—</b>	<b>The applicable percentage is—</b>
Before 10 years .....	100
After 9 years and before 20 years .....	75
After 19 years and before 30 years .....	50
After 29 years and before 40 years .....	25
After 39 .....	0.

18 “(C) EXCEPTION IF CERTAIN HEIRS AS-  
19 SUME OBLIGATIONS UPON THE DEATH OF A

1 PERSON EXECUTING THE AGREEMENT.—Sub-  
2 paragraph (A)(i) shall not apply if—

3 “(i) upon the death of a person de-  
4 scribed in subsection (b)(1)(B) during the  
5 term of such agreement, the property sub-  
6 ject to such agreement passes to a member  
7 of the person’s family, and

8 “(ii) the member agrees—

9 “(I) to assume the obligations  
10 imposed on such person under the en-  
11 dangered species conservation agree-  
12 ment,

13 “(II) to assume personal liability  
14 for any tax imposed under subpara-  
15 graph (A) with respect to any future  
16 event described in subparagraph (A),  
17 and

18 “(III) to notify the Secretary of  
19 the Treasury and the Secretary of the  
20 Interior or the Secretary of Commerce  
21 that the member has assumed such  
22 obligations and liability.

23 If a member of the person’s family enters into  
24 an agreement described in subclauses (I), (II),  
25 and (III), such member shall be treated as sig-

1 natory to the endangered species conservation  
2 agreement the person entered into.

3 “(2) DUE DATE OF ADDITIONAL TAX.—The ad-  
4 ditional tax imposed by paragraph (1) shall become  
5 due and payable on the day that is 6 months after  
6 the date of the disposition referred to in paragraph  
7 (1)(A)(i) or, in the case of an event described in  
8 clause (ii) or (iii) of paragraph (1)(A), on April 15  
9 of the calendar year following any year in which the  
10 Secretary of the Interior or the Secretary of Com-  
11 merce fails to provide the certification required  
12 under subsection (c)(3).

13 “(e) STATUTE OF LIMITATIONS.—If a taxpayer in-  
14 curs a tax liability pursuant to subsection (d)(1)(A),  
15 then—

16 “(1) the statutory period for the assessment of  
17 any additional tax imposed by subsection (d)(1)(A)  
18 shall not expire before the expiration of 3 years from  
19 the date the Secretary is notified (in such manner  
20 as the Secretary may by regulation prescribe) of the  
21 incurring of such tax liability, and

22 “(2) such additional tax may be assessed before  
23 the expiration of such 3-year period notwithstanding  
24 the provisions of any other law or rule of law that  
25 would otherwise prevent such assessment.

1       “(f) ELECTION AND FILING OF AGREEMENT.—The  
2 election under this section shall be made on the return  
3 of the tax imposed by section 2001. Such election, and  
4 the filing under subsection (b) of an endangered species  
5 conservation agreement, shall be made in such manner as  
6 the Secretary shall by regulation provide.

7       “(g) APPLICATION OF THIS SECTION TO INTERESTS  
8 IN PARTNERSHIPS, CORPORATIONS, AND TRUSTS.—This  
9 section shall apply to an interest in a partnership, corpora-  
10 tion, or trust if at least 30 percent of the entity is owned  
11 (directly or indirectly) by the decedent, as determined  
12 under the rules described in section 2057(e)(3).

13       “(h) MEMBER OF FAMILY.—For purposes of this sec-  
14 tion, the term ‘member of the family’ means any member  
15 of the family (as defined in section 2032A(e)(2)) of the  
16 decedent.”.

17       (b) CARRYOVER BASIS.—Section 1014(a)(4) of the  
18 Internal Revenue Code of 1986 (relating to basis of prop-  
19 erty acquired from a decedent) is amended by inserting  
20 “or 2058” after “section 2031(c)”.

21       (c) CLERICAL AMENDMENT.—The table of sections  
22 for part IV of subchapter A of chapter 11 of the Internal  
23 Revenue Code of 1986 is amended by adding at the end  
24 the following new item:

“Sec. 2058. Certain real property subject to endangered species  
conservation agreement.”.

1 (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to estates of decedents dying after  
3 the date of the enactment of this Act.

4 **SEC. 204. EXPANSION OF ESTATE TAX EXCLUSION FOR**  
5 **REAL PROPERTY SUBJECT TO QUALIFIED**  
6 **CONSERVATION EASEMENT.**

7 (a) REPEAL OF CERTAIN RESTRICTIONS ON WHERE  
8 LAND IS LOCATED.—Clause (i) of section 2031(c)(8)(A)  
9 of the Internal Revenue Code of 1986 (defining land sub-  
10 ject to a qualified conservation easement) is amended to  
11 read as follows:

12 “(i) which is located in the United  
13 States or any possession of the United  
14 States,”.

15 (b) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to estates of decedents dying after  
17 the date of the enactment of this Act.

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