109TH CONGRESS
1ST SESSION

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.

IN THE SENATE OF THE UNITED STATES

Mr. CRAPO introduced the following bill; which was read twice and referred to the Committee on

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.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Collaboration for the Recovery of Endangered Species Act”.

(b) Table of Contents.—The table of contents of 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.

TITLE I—STATE GOVERNMENT ASSISTANCE

SEC. 101. SHORT TITLE.

This title may be cited as the “State Government Assistance in Recovery Act”.

SEC. 102. COOPERATION WITH THE STATES.

Section 6 of the Endangered Species Act (16 U.S.C. 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
shall ensure that the decision to enroll is voluntary for each owner of the land or water rights.”;

(2) in subsection (d)(1)—

(A) in the first sentence—

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

(ii) by striking “or to assist” and all that follows through “section 4(g)” and inserting “under paragraphs (1) or (2) of subsection (c) or section 4(b)(5)(C), or to address candidate species or other species at risk and recovered species under subsection (e)(3)”;

and

(B) in subparagraph (F), by striking “monitoring the status of candidate species” and inserting “developing a conservation program for, or monitoring the status of, candidate species or other species determined to be at risk under subsection (e)(3)”;

and

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

“(e) REVIEW OF STATE PROGRAMS.—

“(1) IN GENERAL.—Any action taken by the Secretary under this section shall be subject to periodic review by the Secretary at least every 3 years.
“(2) **APPLICABLE AUTHORITY.**—A cooperative agreement entered into by the Secretary under subsection (c) shall be subject to subsections (a)(2) through (d) of section 7 (including implementing regulations) only before the date on which—

“(A) the Secretary enters into the cooperative agreement; or

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

“(i) addresses species that—

“(I) are determined to be endangered species or threatened species;

“(II) are not addressed in the cooperative agreement; and

“(III) may be affected by the cooperative agreement; or

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

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

“(II) indicates that the cooperative agreement may have adverse effects on the species that had not been
considered previously when the cooperative agreement was entered into or during any revision of or amendment to the cooperative agreement.

“(3) Suspension of Cooperative Agreement.—The Secretary may suspend a cooperative agreement entered into by the Secretary under subsection (c), after consultation with the Governor of the affected State, if Secretary finds during the periodic review required by paragraph (1) that the cooperative agreement no longer constitutes an adequate and active program for the conservation of endangered species and threatened species.

“(4) Termination of Cooperative Agreement.—The Secretary may terminate a cooperative agreement entered into by the Secretary under subsection (c), after consultation with the Governor of the affected State, if—

“(A) as result of subsections (a)(2) through (d) of section 7 (including implementing regulations), the Secretary determines that—

“(i) continued implementation of the cooperative agreement is likely—
“(I) to jeopardize the continued existence of endangered species or threatened species; or
“(II) to result in the destruction or adverse modification of critical habitat; and
“(ii) the cooperative agreement is not amended or revised to incorporate a reasonable and prudent alternative offered by the Secretary under section 7(b)(3); or
“(B) the cooperative agreement—
“(i) has been suspended under paragraph (3); and
“(ii) as of the date that is 180 days after the date of the suspension, has not been amended or revised and found by the Secretary to constitute an adequate and active program for the conservation of endangered species and threatened species.”.

**TITLE II—PRIORITY FOR LISTING AND RECOVERY**

**SEC. 201. SHORT TITLE.**

This title may be cited as the “Priority for Listing and Recovery Act”. 
SEC. 202. DETERMINATION AND RECOVERY OF ENDANGERED SPECIES AND THREATENED SPECIES.

(a) In General.—Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

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

“SEC. 4. DETERMINATION AND RECOVERY OF ENDANGERED SPECIES AND THREATENED SPECIES.

“(a) In General.—

“(1) Factors.—The Secretary;

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

“(i) shall designate any habitat of an endangered species or a threatened species that is considered to be critical habitat in accordance with the priority system established under subsection (b); and”;

and

(3) in subsection (b)—

(A) by striking “(b) Basis for Determinations.—(1)(A) The Secretary” and inserting the following:

“(b) Basis, Priority, and Schedule for Decisions.—

“(1) Basis for decisions.—

“(A) In general.—The Secretary”;
(B) in paragraph (1), by striking “(B) In carrying out” and inserting the following:

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

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

“(2) DESIGNATION OF CRITICAL HABITAT.—The Secretary”;

(D) by redesignating paragraphs (5) through (8) as paragraphs (7) through (10), respectively;

(E) in paragraph (3)—

(i) by striking “(3)(A) To” and inserting the following:

“(5) PETITION.—

“(A) IN GENERAL.—To”;

(ii) in subparagraph (B)—

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

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

(II) in clause (ii), by striking “paragraph (5)” and inserting “paragraph (7)”;
(III) in clause (iii)(I), by striking “paragraphs (5) and (6)” and inserting “paragraphs (7) and (8)”; and

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

(iii) in subparagraph (C)—

(I) by striking “(C)(i) A petition” and inserting the following:

“(C) OTHER REQUIREMENTS.—

“(i) TREATMENT OF CERTAIN PETITIONS.—A petition”;

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

“(ii) JUDICIAL REVIEW.—Any”; and

(III) in clause (iii)—

(aa) by striking “(iii) The Secretary” and inserting the following:

“(iii) MONITORING.—The Secretary”; and

and

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

(iv) in subparagraph (D)—
(I) by striking “(D)(i) To the maximum extent practicable, within 90 days” and inserting the following:

“(D) SUBSTANTIAL SCIENTIFIC INFORMATION.—

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

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

“(ii) INTENT TO PROCEED.—In accordance with the schedule described in paragraph (4), and not later than 3 years”;

(F) in paragraph (4), by striking “(4) Except as provided in paragraphs (5) and (6) of this subsection” and inserting the following:

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

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

(i) in clause (i), by striking “, and” and inserting a semicolon; and
(ii) by striking clause (ii) and inserting the following:

“(ii) give actual notice of the proposed regulation (including the complete text of the regulation) to, and invite the comment of—

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

“(II) each county or equivalent jurisdiction in which the species is believed to occur; and

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

“(iii) with respect to a regulation to designate or revise a designation of critical habitat—

“(I) publish maps and coordinates that describe, in detail, the specific areas that meet the definition under section 3 of, and are designated under subsection (a)(3) as, critical habitat, and all field survey data upon which the designation is based; and
“(II) maintain the maps, coordinates, and data on a publicly accessible Internet page of the Department; and

“(iv) include in each of the notices required under this subparagraph a reference to the Internet page described in clause (iii)(II);”;

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

(i) in subparagraph (A), by striking “paragraph (5)(A)(i)” and inserting “paragraph (7)(A)(i)”;

(ii) in subparagraph (C), by striking the matter preceding clause (i) and inserting the following:

“(C) FINAL REGULATION.—Not later than 3 years after the date on which a recovery program is commissioned, or in accordance with the schedule described in paragraph (4), or not later than 5 years after the date on which an endangered species or threatened species is listed under this Act, the Secretary shall publish a final regulation designating the critical habitat of the endangered species or threatened species, unless the Secretary determines that—”; and
(iii) by adding at the end the following:

“(D) Provisional recovery goals.—The Secretary shall promulgate and publish provisional recovery goals for a species at the time of the listing of the species, which—

“(i) may set standards for delisting; and

“(ii) shall remain in effect, unless replaced by an approved recovery plan.”;

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

“(9) Emergencies.—Neither paragraphs (6) through (8)”;

(J) in paragraph (10) (as redesignated by subparagraph (C)), by striking “(8) The publication” and inserting the following:

“(10) Publication of regulations.—The publication”;

(K) by inserting after paragraph (2) the following:
“(3) PRIORITY FOR DETERMINATIONS, DESIGNATIONS, AND COMMISSIONING OF RECOVERY PROGRAMS.—

“(A) IN GENERAL.—Not later than 270 days after the date of enactment of the Priority for Listing and Recovery Act, the Secretary of the Interior and the Secretary of Commerce, after providing notice and an opportunity for public comment, each shall establish a priority system for making all decisions under this subsection, subsection (a), and subsection (f) regarding various species in the most efficient and effective manner practicable.

“(B) CRITERIA FOR PRIORITIES.—The priority system shall assign priorities to species based on—

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

“(I) the level of risk to the species based on the factors described in subsection (a)(1);

“(II) the geographic distribution of the species (wide or narrow),
“(III) the habitat specificity of the species (broad or restricted); and

“(IV) the taxonomic distinctiveness of the species (monotypic genus, species, subspecies, or distinct population segment);

“(ii) the likelihood of achieving recovery of the species;

“(iii) the quality and quantity of available information, with the species priority increasing progressively as current professional documentation is obtained for each of the following in order of increasing importance:

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

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

“(III) Rates of reproduction, survival, or population growth.
“(IV) Habitat types that correlate with rates of reproduction, survival, or population growth;
“(iv) the degree to which recovering the species helps recover other species; and
“(v) the degree to which recovery efforts would minimize conflicts with—
“(I) construction, development projects, jobs, private property, or other economic activities;
“(II) military training and operations; or
“(III) other human activities.
“(C) INCENTIVE FOR COLLABORATIVE CONSERVATION.—
“(i) IN GENERAL.—The Secretary shall assign highest priority to a decision pending for any species if petitioned to do so by a collaborative group that, in the judgment of the Secretary, meets the description of an executive committee under subsection (f)(3)(B).
“(ii) FACILITATION.—If a collaborative group described in clause (i) uses non-Federal funds to carry out actions
that support the completion of the pending action for a species, the Secretary shall facilitate the pending action to a commensurate extent.

“(4) Schedule.—

“(A) In general.—The Secretary shall establish a schedule of all decisions under this subsection, subsection (a), and subsection (f) based on the priority ranking system described in paragraph (3).

“(B) Estimates.—Not later than February 1 of each year following the date of enactment of this subparagraph, the Secretary shall submit to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives an estimate with respect to the following year, based on the priority ranking system described in paragraph (3), of—

“(i) the quantity of—

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

“(II) status reviews to be completed under this section; and
“(III) rules that will be promulgated with respect to status and critical habitat; and
“(ii) the amount of funds required for each recovery plan to be funded under this section.
“(C) PENDING ACTIONS.—The schedule established under subparagraph (A) shall include all decisions pending under this subsection, subsection (a), and subsection (f), including—
“(i) findings and decisions based on status reviews, proposed determinations, or final determinations for which a court has issued an order prior to the date of enactment of the Collaboration for the Recovery of Endangered Species Act remanding to the Secretary a decision, or setting a schedule for the Secretary to act, or requiring any other action regarding such findings and decisions; and
“(ii) designations of critical habitat for which a court has issued an order prior to the date of enactment of the Collaboration for the Recovery of Endangered Species Act remanding to the Secretary a decision.
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
an executive committee under paragraph (3), the Secretary—

“(A) shall establish a recovery program for that species, and other threatened or endangered species if practicable, by assigning a recovery coordinator; and

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

“(2) RECOVERY TEAM.—

“(A) Establishment.—

“(i) In general.—If the Secretary establishes a recovery team, the team shall consist of members of appropriate public and private agencies and institutions reflecting individual perspectives and objectiveness resulting from professional expertise, and technical and academic experience, relating to the species or ecosystem that is the subject of the recovery program.

“(ii) Lack of bias.—In carrying out the duties described in subparagraph (B), members described in clause (i) shall provide their expertise in good faith and not
express the views or representations of any organization.

“(B) DUTIES.—After considering the provisional recovery goals set by the Secretary under subsection (b)(8)(D) and identifying all relevant conservation programs of State, local, tribal, and private entities and foreign governments, a recovery team shall propose a recovery plan to the executive committee.

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

“(3) EXECUTIVE COMMITTEE.—

“(A) IN GENERAL.—For each recovery program, the Secretary shall establish an executive committee to propose collaborative efforts to achieve the goals of the recovery plan.

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

“(i) reflect a cross-section of interests from appropriate public and private persons, agencies, or institutions reflecting a balance of viewpoints;
“(ii) to be selected for diversity of knowledge and experience in natural resource issues and for commitment to collaborative decisionmaking;

“(iii) to the maximum extent practicable, be from communities within and adjacent to the recovery plans geographic area; and

“(iv) have an economic, social, or professional interest in the recovery of the species.

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

“(i) review the proposed recovery plan and make recommendations on collaborative efforts that may be undertaken to implement and achieve the goals of the recovery plan;

“(ii) consult with the applicable recovery team, as necessary;

“(iii) consult with State, local, and tribal governments and landowners on opportunities for implementation of the recovery plan; and

“(iv) develop a summary of the committee’s recommendations, and send a copy of the summary to the Secretary and to the recovery team.
“(iv) after approval by the Secretary of the applicable recovery plan, publish a work plan describing the collaborative and voluntary efforts that the executive committee recommends to contribute to the recovery of the applicable species.

“(D) FACA.—An executive committee established under this subsection shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

“(4) Recovery Coordinator.—The Secretary shall assign for each recovery program, by direct employment or cooperative arrangement with an appropriate Federal department or agency, a full-time recovery coordinator—

“(A) to serve as the primary staff to implement the recovery plan and manage program operations for the executive committee, if applicable; and

“(B) to the maximum extent practicable, to ensure that relevant Federal and State programs are coordinated to support programs toward the recovery goals of the recovery plan.

“(5) Recovery Plan.—
“(A) IN GENERAL.—A recovery plan shall—

“(i) be proposed by a recovery team and an executive committee, in a case in which a recovery team and executive committee are involved in the recovery program;

“(ii) be approved by the Secretary; and

“(iii) include—

“(I) a description of site-specific recovery actions that may be necessary to achieve the goal of the plan for the conservation of the species, including appropriate financial assistance and incentive programs for landowners;

“(II) guidance on how the geographic distribution of site-specific recovery actions can enhance the effectiveness of the actions in promoting recovery; and

“(III) objective, measurable criteria (including population size and geographic range) that, when met,
would result in a determination, in accordance with this section, that the status of the species should be changed from an endangered species or a threatened species, or that the species should be removed from the list.

“(B) Effect of plan.—A recovery plan approved by the Secretary—

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

and

“(ii) may be amended by the Secretary or by recommendation of the executive committee and approval by the Secretary.

“(C) Relationship to conservation programs.—The Secretary shall—

“(i) acknowledge appropriate existing conservation programs; and

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

“(6) Periodic review.—
“(A) IN GENERAL.—The Secretary shall periodically review the progress of all recovery programs.

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

“(C) RESPONSE.—The executive committee shall have 180 days from the date of receipt of the inquiry to fulfill the request.

“(D) DISPUTE RESOLUTION.—If the executive committee disputes the findings of the Secretary—

“(i) the Secretary shall, in consultation with an appropriate professional society, appoint a technical reviewer;

“(ii) the executive committee shall, in consultation with an appropriate professional society, appoint a technical reviewer;

“(iii) the 2 technical reviewers shall appoint a third technical reviewer;
“(iv) the technical reviewers, based on majority opinion, shall make a recommen-dation to the Secretary as to whether the program is achieving progress toward recovery and whether remedial actions are necessary; and

“(v) having considered the recommen-dation of the technical reviewers, the Secretary may—

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

“(II) decommission the recovery program; or

“(III) take other appropriate actions.”;

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

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

(7) in subsection (i)—

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

and
(B) by striking “subsection (b)(3)” and inserting “subsection (b)(5)”.

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

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

TITLE III—INCENTIVES FOR SPECIES RECOVERY

SEC. 301. SHORT TITLE.

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

SEC. 302. CONSERVATION BANKS.

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

“SEC. 4A. CONSERVATION BANKS.

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

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

“(A) candidate species;

“(B) threatened species;

“(C) endangered species; and

“(D) species of special concern; and
“(2) to provide market incentives that promote conservation of species on private property.

“(b) DEFINITIONS.—In this section:

“(1) CONSERVATION BANK.—The term ‘conservation bank’ means an area of land, water, or other habitat (not necessarily contiguous) that is managed—

“(A) in perpetuity, or for another appropriate period, under an enforceable legal instrument; and

“(B) for purposes of conservation and recovery of—

“(i) a habitat;

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

“(iii) a species of special concern.

“(2) CREDIT.—

“(A) IN GENERAL.—The term ‘credit’ means the unit of currency of a conservation bank, generated by preserving or restoring habitat in a conservation bank agreement, as established through a quantification of the conservation values of a species or habitat.
“(B) CONSERVATION VALUES.—Conservation values described in subparagraph (A) shall—

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

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

“(3) SERVICE AREA.—

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

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

“(c) ESTABLISHMENT AND MANAGEMENT OF CONSERVATION BANKS.—

“(1) ESTABLISHMENT.—A conservation bank under this section may be established by any private landowner that—
“(A) submits to the Secretary an application, in accordance with any regulations promulgated by the Secretary;

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

“(C) contributes to the conservation of the candidate species, threatened species, endangered species, or species of special concern that is the subject of the conservation bank.

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

“(3) DETERMINATIONS REGARDING APPLICATIONS.—The Secretary shall approve or disapprove a proposed conservation bank under paragraph (1)(B) not later than 180 days after the date on which the application relating to the conservation bank is submitted to the Secretary under paragraph (1)(B)(i).

“(4) MANAGEMENT.—
"(A) IN GENERAL.—A conservation bank established under paragraph (1) may be managed, in accordance with a conservation bank agreement under subparagraph (B), by—

"(i) a State, in accordance with a process of the State that has been approved by the Secretary;

"(ii) the holder of the conservation bank;

"(iii) a party other than the holder of the conservation bank, as specified in the conservation bank agreement; or

"(iv) a party that acquires property rights relating to the conservation bank.

"(B) CONSERVATION BANK AGREEMENTS.—

"(i) IN GENERAL.—The holder of a conservation bank under this section shall—

"(I) establish an agreement that describes the proposed management of the conservation bank; and

"(II) submit the agreement to the Secretary for approval.
“(ii) Approval by Secretary.—As soon as practicable after the date on which the Secretary receives an agreement under clause (i)(II), the Secretary shall approve or disapprove the agreement.

“(iii) Amendments.—An agreement approved under clause (ii) may be amended on the approval of—

“(I) each party to the agreement;

and

“(II) the Secretary.

“(iv) Nullification of Agreement.—The Secretary shall nullify an agreement approved under clause (ii) on a determination by the Secretary that—

“(I) the holder of the conservation bank has been convicted of—

“(aa) making a materially false statement on a bank application or a report to the Secretary; or

“(bb) any other offense that demonstrates that the holder is unfit to manage the conservation bank; or
“(II)(aa) the holder of the conservation bank has irremediably failed to carry out the duties of the holder; and

“(bb) the failure was not the result of a drought, hurricane, tornado, or other event outside the reasonable control of the holder.

“(d) Recovery Plans and Incentive Programs.—In developing and implementing recovery plans and incentive programs, the Secretary shall—

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

“(2) not later than 180 days after the date of enactment of this section, promulgate regulations to manage conservation banks in a manner that balances—

“(A) the biological conditions of candidate species, threatened species, and endangered species, species of special concern, and habitat; with

“(B) economic free market principles to ensure value to landowners through a tradable credit program.
“(e) REGULATIONS.—Regulations promulgated under subsection (d)(2) shall include provisions relating to—

“(1) conservation and recovery goals;

“(2) activities that may be carried out in a conservation bank;

“(3) design, operation, and management to ensure the viability of conservation banks;

“(4) the demonstration of adequate legal control of property proposed to be included in the conservation bank, such as a title, license, easement, or option relating to the property;

“(5) criteria for determining—

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

“(B) methods for accounting for, and recording, the creation and use of credits; and

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

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

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

“(8) the monitoring of, and reporting requirements for, conservation banks;
“(9) financial requirements to ensure the viability of conservation banks;

“(10) procedures for resolving disputes relating to conservation bank management, including procedures for providing notices; and

“(11) remedies for disputes that are not resolved under a procedure described in paragraph (10).

“(f) Transfer of Credits by Conservation Banks.—

“(1) Allocation.—The number of credits allocated for transfer by a conservation bank shall be determined by biological data that reflects—

“(A) the quality of habitat preserved or restored in the conservation bank;

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

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

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

“(B) REQUIREMENTS.—The process established under subparagraph (A) shall provide for credit transfers for purposes of—

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

“(ii) meeting a requirement under subsection (a) or (b) of section 7, or section 10(a)(1); and

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

“(C) OUT-OF-KIND MITIGATION.—

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

“(ii) DETERMINATION BY SECRETARY.—The Secretary may allow out-of-kind mitigation through the use of credits
if the Secretary determines that out-of-kind mitigation—

“(I) is a desirable ecological alternative to in-kind mitigation; and

“(II) is practicable for an expanded market of potential buyers of credits.

“(iii) Preference.—Notwithstanding any other provision of this subparagraph, the Secretary shall give preference to in-kind mitigation to the maximum extent practicable.

“(iv) Effect of Subparagraph.—Nothing in this subparagraph affects any requirement relating to in-kind mitigation.

“(D) Limitation.—In establishing a process under this subsection, the Secretary shall not—

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

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

“(3) Credit Transfers.—A conservation bank may transfer credits of the conservation bank—
“(A) on the date on which the Secretary approves the conservation bank under subsection (c)(3); or

“(B) before the date described in subparagraph (A), if the holder of the conservation bank demonstrates to the satisfaction of the Secretary that—

“(i) the conservation bank agreement adequately provides for each activity proposed to be carried out relating to the conservation bank; and

“(ii) a timetable relating to the activities described in clause (i) has been approved by the Secretary.

“(4) USE OF PROFITS BY CERTAIN HOLDERS.—A holder of a conservation bank described in subsection (c)(2) may retain any profits from the transfer of a credit under this subsection.

“(g) INTEGRATION WITH OTHER CONSERVATION PLANS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), to the maximum extent practicable, the creation of a conservation bank shall be integrated with conservation plans developed or being developed under section 10 if the conservation bank—
“(A) meets the ecological criteria of the
habitat conservation plan; and

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

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

“(h) JUDICIAL REVIEW.—

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

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

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

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

“(3) CERTAIN DEFENDANTS.—
“(A) IN GENERAL.—Notwithstanding any other provision of law, the United States, a State, an Indian tribe, or a unit of local government may be named as a defendant in a civil action under this subsection.

“(B) SOVEREIGN IMMUNITY.—An entity described in subparagraph (A) that is named as a defendant in a civil action under this subsection shall be considered to have waived sovereign immunity.”.

(b) CONFORMING AMENDMENT.—The table of contents of the Endangered Species Act of 1973 (16 U.S.C. 1531 note) is amended—

(1) by inserting after the item relating to section 4 the following:

“Sec. 4A. Conservation banks.”; and

(2) by inserting after the item relating to section 17 the following:

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

SEC. 303. EXCEPTIONS.

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

(1) in paragraph (2)—

(A) in subparagraph (A)—

(i) by striking clauses (i) and (iv);
(ii) by redesignating clauses (ii) and (iii) as subclauses (I) and (II), respectively, and indenting the subclauses appropriately;

(iii) in the matter preceding subclause (I) (as redesignated by clause (i)), by striking “that specifies—” and inserting the following: “that—

“(i) summarizes the potential for and degree of incidental take that may be reasonably expected to occur under the proposed action and habitat conservation plan; and

“(ii) specifies—”;

(iv) in subclause (I) (as redesignated by clause (i)), by striking “and the funding” and all that follows through the end of the subclause and inserting “the funding that will be available to implement those steps, and reports describing the implementation and results of the conservation plan;”;

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

(vi) by adding at the end the following:
“(III) objective, measurable biological goals to be achieved for species covered by the plan and specific measures for achieving the goals consistent with subparagraph (B);

“(IV) measures the applicant will take to monitor impacts of the plan on covered species and the effectiveness of the measures in achieving the biological goals of the plan; and

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

(B) in subparagraph (B)—

(i) in the matter preceding clause (i), by striking “If” and inserting “The Secretary shall issue a permit to a conservation plan if”;

(ii) in clause (v)—

(I) by striking “, if any,”;

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

(III) by striking the semicolon at the end and inserting a period; and
(iii) by striking the matter following clause (v); and

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

“(C) Voluntary contributions to recovery.—

“(i) In general.—If a proposed conservation plan implements a site-specific recovery action from a relevant approved recovery plan, the Secretary shall include such terms and conditions as the Secretary considers necessary to reduce or offset the impacts of incidental taking or otherwise comply with the requirements of paragraph (2)(B), such that—

“(I) the effect of the terms and conditions are approximately proportional in extent to the effect of the incidental take specified in the conservation plan under subparagraph (A)(i); and

“(II) the terms and conditions are feasible and consistent with the goals of the plan to the maximum extent 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 PERM.
“(A) IN GENERAL.—An applicant shall qualify for a provisional permit with respect to a species if, as of the date on which the applicant submits the application to the Secretary under this subsection—

“(i) the applicant voluntarily implements the terms of the proposed application under paragraph (2) during the pendency of review; and

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

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

“(i) authorize existing activities (except an activity that requires ground clearing) relating to the relevant land; and

“(ii) remain in effect until the date on which a permit is issued under this subsection.

“(C) ADMISSIBILITY OF INFORMATION.—Information submitted by an applicant in an application under this paragraph shall not be admissible in any action relating to a prohibited act under section 9.
“(4) AGRICULTURAL AGREEMENTS.—If a land-
owner enters into an agreement under title XII of
the Food and Security Act of 1985 (16 U.S.C. 3831
et. seq.) and the conservation activities of the land-
owner include 1 or more site-specific recovery ac-
tions from an approved recovery plan resulting in a
net conservation benefit for a listed species, the Sec-
retary shall permit the incidental take of that spe-
cies—

“(A) for the duration of the agreement;

and

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

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

“(A) occurs or may occur as a result of the
landowner implementing a site-specific recovery
action of an approved recovery plan in a man-
ner that contributes to the conservation of the
species; and
“(B) occurs or may occur within the area in which the net conservation benefits will accrue, so long as the contribution to recovery is at least proportional to the potential for and degree of incidental taking that may reasonably be expected to occur.

“(6) REQUIREMENTS APPLICABLE UPON COMPLIANCE WITH PERMIT.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, if the holder of a permit under this subsection for any purpose other than a scientific purpose is in compliance with the terms and conditions of the permit (including any conservation plan or agreement incorporated by reference in the permit), as determined by the Secretary, the Secretary shall not require the holder to adopt any minimization, mitigation, or other measure with respect to any species that the Secretary determines to be adequately covered by the permit during the term of the permit without the consent of the holder.

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

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

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

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

“(D) BURDEN OF PROOF.—The Secretary
shall have the burden of proof in demonstrating
and documenting, using the best scientific and
commercial data available, the occurrence of
any changed circumstances for the purpose of this paragraph.

"(E) ASSURANCES.—

"(i) RECENT PERMITS.—All permits issued under this subsection on or after the date of enactment of this paragraph, other than permits issued for scientific purposes, shall contain assurances regarding requirements specified in subparagraphs (B) through (D) of this paragraph and subparagraphs (A) and (B) of paragraph (5).

"(ii) OLDER PERMITS.—All permits issued under this subsection on or after March 25, 1998, and before the date of enactment of this paragraph, other than permits issued for scientific purposes, shall be governed by the applicable portions of subsections (b) through (d) of section 17.22, and subsections (b) through (d) of section 17.32, of title 50, Code of Federal Regulations (as in effect as of the date of enactment of this paragraph).

"(7) REVOCATION OF PERMIT.—
“(A) In general.—The Secretary shall revoke a permit issued under this subsection if the Secretary determines that the holder of the permit is not in compliance with the terms and conditions of the permit.

“(B) Revocation of permit that includes conservation plan.—The Secretary may revoke a permit that includes a conservation plan described in this subsection due to a change in circumstances only if the Secretary—

“(i) determines that continuing the activities under the permit would be inconsistent with paragraph (2);

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

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

“(8) Statements and assessments.—

“(A) In general.—In preparing any environmental impact statement or environmental assessment under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) with respect to the application for, or
issuance of, a permit under this subsection, the Secretary shall not identify or analyze the impacts and potential minimization and mitigation measures relating to any alternative other than—

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

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

“(B) REGULATIONS.—The Secretary shall promulgate regulations under which the Secretary, subject to the availability of appropriations, shall reimburse a permit applicant under this subsection for reasonable amounts paid by the person for preparation by a contractor, or another person selected by the Secretary, of an environmental impact statement, environmental assessment, or related documentation or study required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) with respect to the application for, or issuance of, the permit.

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

SEC. 304. TECHNICAL CORRECTIONS.

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

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

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

SEC. 305. TAX INCENTIVES.

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

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

“SEC. 200. CONSERVATION BANK CREDITS.

“There shall be allowed as a deduction an amount
equal to the cost of any credit purchased from a conserva-
tion bank approved under section 4A of the Endangered
Species Act of 1973 in the taxable year in which such credit is purchased.”.

(2) CLERICAL AMENDMENT.—The table of sections for such part VI is amended by adding at the end the following new item:

“Sec. 200. Conservation bank credits.”.

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

(b) CREDIT FOR COSTS INCURRED FOR CONSERVATION ACTIVITIES RELATED TO ENDANGERED, THREATENED, AND CANDIDATE SPECIES.—

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

“SEC. 30D. CREDIT FOR COSTS INCURRED FOR CONSERVATION AND RECOVERY ACTIVITIES RELATED TO ENDANGERED, THREATENED, AND CANDIDATE SPECIES.

“(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the qualified conservation and recovery costs of an eligible taxpayer for the taxable year.
(b) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

"(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(2) the sum of the credits allowable under subpart A and sections 27, 30A, 30B, and 30C for the taxable year.

(c) QUALIFIED CONSERVATION AND RECOVERY COSTS.—For purposes of this section, the term 'qualified conservation and recovery costs' means costs paid or incurred by the eligible taxpayer in carrying out approved site-specific recovery actions under section 4(f) of the Endangered Species Act (16 U.S.C. 1533(f)), or any other Federal- or State-approved conservation and recovery agreements involving an endangered, threatened, or candidate species under the Endangered Species Act (16 U.S.C. 1531 et seq.) in an amount equal to—

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

"(A) the amount by which the fair market value of the land is reduced by such site-specific recovery actions or agreements, and
“(B) the actual costs to the property owner of such approved site-specific recovery actions or agreements,
“(2) under a binding agreement for not less than 30 years but less than 99 years, the sum of—
“(A) 75 percent of the amount described in paragraph (1)(A), and
“(B) 75 percent of the actual costs of such approved site-specific recovery actions or agreements, and
“(3) under a binding agreement for not less than 10 years but less than 30 years, 75 percent of the actual costs of such approved site-specific recovery actions or agreements.
“(d) ELIGIBLE TAXPAYER.—For purposes of this section—
“(1) IN GENERAL.—The term ‘eligible taxpayer’ means any person who submits to the Secretary, together with the return of the taxpayer for the taxable year—
“(A) evidence of the binding agreement described in subsection (c), and
“(B) a written verification from a biologist not directly employed by the taxpayer that any
conservation and recovery practice for which the taxpayer seeks a credit under this section—

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

“(ii) was carried out—

“(I) during the taxable year, and

“(II) in accordance with the schedule of the Federal- or State-approved agreement in subsection (c).

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

“(e) CARRYBACK AND CARRYFORWARD ALLOWED.—

“(1) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the
amount of the limitation under subsection (b) for such taxable year (in this paragraph referred to as the ‘unused credit year’), such excess shall be a credit carryback to each of the 1 taxable years preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year.

“(2) Rules.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).

“(f) Credits May Be Transferred.—Nothing in any law or rule of law shall be construed to limit the transferability of any credit allowed by this section through sale and repurchase agreements.

“(g) Special Rules.—

“(1) Basis Reduction.—The basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit (determined without regard to subsection (b)).

“(2) No Double Benefit.—The amount of any deduction or credit allowable under this chapter (other than the credit allowable under subsection (a)), shall be reduced by the amount of credit al-
allowed under subsection (a) (determined without regard to subsection (b)(2)) for the taxable year.

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

“(h) RECAPTURE.—The Secretary shall, by regulations, provide for the recapture of any credit allowable under subsection (a) if the taxpayer breaches or terminates the agreement described in subsection (e).”.

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

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

(3) CLERICAL AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 of such Code is amended by inserting
after the item relating to section 30C the following new item:

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

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

TITLE IV—PROTECTIONS AND MEASURES IN FORESTS

SEC. 401. PROTECTIONS AND MEASURES.

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

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

(2) by striking paragraphs (1) and (2) and inserting the following:

“(1) CONSERVATION ACTIVITIES THAT INCLUDE A SITE-SPECIFIC RECOVERY ACTION.—In the case of a landowner that enrolls in the program and the restoration plan of which includes 1 or more site-specific recovery actions from a recovery plan approved under section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)), the landowner shall not be liable under section 9 of that Act (16 U.S.C. 1538) for the incidental take of species covered by the restoration plan—
“(A) for the duration of the agreement; and

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

“(2) **Conservation activities that do not include a site-specific recovery action.**—In the case of a landowner the conservation activities of which do not include a site-specific recovery action from a recovery plan approved under section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)), the Secretary of Agriculture shall make available to the landowner safe harbor or similar assurances and protections under—

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

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