

110TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

Mr. CRAPO (for himself, Mrs. LINCOLN, Mr. BAUCUS, Mr. GRASSLEY, Mr. ALLARD, Mr. SALAZAR, Mr. SMITH, Mr. REID, Mr. LIEBERMAN, Mr. BENNETT, Mr. ENZI, Mr. PRYOR, Mr. CRAIG, Mr. NELSON of Nebraska, Ms. COLLINS, Mr. COCHRAN, and Mr. BROWNBACK) introduced the following bill; which was read twice and referred to the Committee on

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**A BILL**

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Endangered Species  
5 Recovery Act of 2007”.

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

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

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

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

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

13 “(2) the habitat restoration credit.

14 “(b) LIMITATION.—

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

21 “(2) CARRYFORWARDS.—

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

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

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

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

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

23 “(A) a taxpayer who—

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

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

7           “(B) any other taxpayer who—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19           “(d) HABITAT PROTECTION EASEMENT CREDIT.—

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

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

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

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

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

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

15                  “(C) in the case of any other eligi-  
16                  ble taxpayer, zero.

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

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

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

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

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

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

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

18 “(e) HABITAT RESTORATION CREDIT.—

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

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

1 habitat management plan entered into under  
2 such agreement,

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

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

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

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

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

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

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

6 “(4) SPECIAL RULES.—

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

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

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

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

1           “(A) for 2008, 2009, 2010, 2011, and  
2           2012—

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

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

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

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

14                 “(2) ALLOCATION OF LIMITATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

12 (3) REPORTS.—

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

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

24 (c) CONFORMING AMENDMENTS.—

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

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

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

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

13           (d) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to taxable years beginning after  
15 December 31, 2007.

16 **SEC. 3. DEDUCTION FOR ENDANGERED SPECIES RECOV-**  
17 **ERY EXPENDITURES.**

18           (a) DEDUCTION FOR ENDANGERED SPECIES RECOV-  
19 ERY EXPENDITURES.—

20           (1) IN GENERAL.—Paragraph (1) of section  
21 175(c) of the Internal Revenue Code of 1986 (relat-  
22 ing to definitions) is amended by inserting after the  
23 first sentence the following new sentence: “Such  
24 term shall include expenditures paid or incurred for  
25 the purpose of achieving specific actions rec-

1 ommended in recovery plans approved pursuant to  
2 the Endangered Species Act of 1973.”.

3 (2) CONFORMING AMENDMENTS.—

4 (A) Section 175 of such Code is amended  
5 by inserting “, or for endangered species recov-  
6 ery” after “prevention of erosion of land used  
7 in farming” each place it appears in subsections  
8 (a) and (c).

9 (B) The heading of section 175 of such  
10 Code is amended by inserting “; **ENDAN-  
11 GERED SPECIES RECOVERY EXPENDI-  
12 TURES**” before the period.

13 (C) The item relating to section 175 in the  
14 table of sections for part VI of subchapter B of  
15 chapter 1 of such Code is amended by inserting  
16 “; endangered species recovery expenditures”  
17 before the period.

18 (b) LIMITATIONS.—Paragraph (3) of section 175(c)  
19 of the Internal Revenue Code of 1986 (relating to addi-  
20 tional limitations) is amended—

21 (1) in the heading, by inserting “OR ENDAN-  
22 GERED SPECIES RECOVERY PLAN” after “CONSERVA-  
23 TION PLAN”, and

24 (2) in subparagraph (A)(i), by inserting “or the  
25 recovery plan approved pursuant to the Endangered

1 Species Act of 1973” after “Department of Agri-  
2 culture”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to expenditures paid or incurred  
5 after the date of the enactment of this Act.

6 **SEC. 4. EXCLUSION FOR COST SHARING PAYMENTS UNDER**  
7 **THE PARTNERS FOR FISH AND WILDLIFE ACT**  
8 **AND CERTAIN OTHER PROGRAMS AUTHOR-**  
9 **IZED BY THE FISH AND WILDLIFE ACT OF**  
10 **1956.**

11 (a) IN GENERAL.—Subsection (a) of section 126 of  
12 the Internal Revenue Code of 1986 (relating to certain  
13 cost-sharing payments) is amended by redesignating para-  
14 graph (10) as paragraph (12) and by inserting after para-  
15 graph (9) the following new paragraphs:

16 “(10) The Partners for Fish and Wildlife Pro-  
17 gram authorized by the Partners for Fish and Wild-  
18 life Act.

19 “(11) The Landowner Incentive Program, the  
20 State Wildlife Grants Program, and the Private  
21 Stewardship Grants Program authorized by the Fish  
22 and Wildlife Act of 1956.”.

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