

104TH CONGRESS  
1ST SESSION

# H. R. 2275

To reauthorize and amend the Endangered Species Act of 1973.

---

## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 7, 1995

Mr. YOUNG of Alaska (for himself, Mr. POMBO, Mr. TAUZIN, Mr. BREWSTER, Mr. DOOLITTLE, Mr. HANSEN, Mr. DOOLEY, Mr. CALVERT, Mr. CONDIT, Mr. STENHOLM, Mr. STUMP, Mr. SMITH of Texas, Mr. GALLEGLY, Mr. FIELDS of Texas, Mr. KOLBE, Ms. DANNER, Mr. HUTCHINSON, Mr. HAYWORTH, Mr. HASTINGS of Washington, Mr. BONILLA, Mr. McHUGH, Mr. DORNAN, Mr. HERGER, Mr. EVERETT, Mr. TAYLOR of North Carolina, Mr. PACKARD, Mr. CUNNINGHAM, Mr. THORNBERRY, Mr. HAYES, Mr. ROYCE, Mr. COMBEST, Mr. COOLEY, Mr. SALMON, Mr. BONO, Mr. BAKER of California, Mr. HUNTER, Mr. LEWIS of California, Mrs. CUBIN, Mr. McKEON, Mr. RADANOVICH, Mr. RIGGS, Mr. ROHRBACHER, Mrs. SEASTRAND, Mr. THOMAS, Mr. ALLARD, Mr. SCHAEFER, Mr. MICA, Mr. CHAMBLISS, Mr. COLLINS of Georgia, Mr. LINDER, Mr. BAKER of Louisiana, Mr. CRAPO, Mr. EWING, Mr. BURTON of Indiana, Mr. HOSTETTLER, Mr. McINTOSH, Mr. ROBERTS, Mr. LEWIS of Kentucky, Mr. BARTLETT of Maryland, Mr. KNOLLENBERG, Mr. EMERSON, Mr. HANCOCK, Mr. SKEEN, Mr. PAXON, Mr. SOLOMON, Mr. BALLENGER, Mr. JONES, Mr. OXLEY, Mr. COBURN, Mr. LARGENT, Mr. LUCAS, Mr. WATTS of Oklahoma, Mr. BARTON of Texas, Mr. DELAY, Mr. SAM JOHNSON of Texas, Mr. STOCKMAN, Mr. SHADEGG, Mr. CALLAHAN, Mr. LAUGHLIN, Mrs. VUCANOVICH, Mr. TEJEDA, Mr. BACHUS, Mr. COX of California, Mr. FUNDERBURK, Mr. BOEHNER, Mr. CRANE, Mr. DREIER, Mr. EDWARDS, Mr. NETHERCUTT, Mr. PETE GEREN of Texas, Mr. ORTIZ, Mr. HALL of Texas, Mr. DUNCAN, Mr. McCRERY, and Mr. LIVINGSTON) introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

# A BILL

To reauthorize and amend the Endangered Species Act of 1973.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Endangered Species Conservation and Management Act  
6 of 1995”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. References to Endangered Species Act of 1973.
- Sec. 3. Findings, purposes, and policy of Endangered Species Act of 1973.

### TITLE I—PRIVATE PROPERTY RIGHTS AND VOLUNTARY INCENTIVES FOR PRIVATE PROPERTY OWNERS

- Sec. 101. Compensation for use or taking of private property.
- Sec. 102. Voluntary cooperative management agreements.
- Sec. 103. Grants for improving and conserving habitat for species.
- Sec. 104. Technical assistance programs.
- Sec. 105. Water rights.

### TITLE II—IMPROVING ABILITY TO COMPLY WITH THE ENDANGERED SPECIES ACT OF 1973

- Sec. 201. Enforcement procedures.
- Sec. 202. Removing punitive disincentives.
- Sec. 203. Allowing non-Federal persons to use the consultation procedures.
- Sec. 204. Permitting requirements for incidental takes.
- Sec. 205. General, research, and educational permits.
- Sec. 206. Maintenance of aquatic habitats for listed species.
- Sec. 207. Compliance with international requirements and treaties.
- Sec. 208. Incentives for protection of marine species.

### TITLE III—IMPROVING SCIENTIFIC INTEGRITY OF LISTING DECISIONS AND PROCEDURES

- Sec. 301. Improving the validity and credibility of decisions.
- Sec. 302. Peer review.
- Sec. 303. Making data public.
- Sec. 304. Improving the petition and designation processes.

- Sec. 305. Greater State involvement.
- Sec. 306. Monitoring the status of species.
- Sec. 307. Petitions to delist species.

#### TITLE IV—RECOGNIZING OTHER FEDERAL ACTION, LAWS, AND MISSIONS

- Sec. 401. Balance ESA with other laws and missions.
- Sec. 402. Exemptions from consultation and conferencing.
- Sec. 403. Eliminating the exemption committee (GOD committee).

#### TITLE V—BETTER MANAGEMENT AND CONSERVATION OF LISTED SPECIES

- Sec. 501. Setting conservation objectives.
- Sec. 502. Preparing a conservation plan.
- Sec. 503. Interim measures.
- Sec. 504. Critical habitat for species.
- Sec. 505. Recognition of captive propagation as means of recovery.
- Sec. 506. Introduction of species.
- Sec. 507. Conserving threatened species.

#### TITLE VI—HABITAT PROTECTIONS

- Sec. 601. Federal biological diversity reserve.
- Sec. 602. Land acquisition.
- Sec. 603. Property exchanges.

#### TITLE VII—STATE AUTHORITY TO PROTECT ENDANGERED AND THREATENED SPECIES

- Sec. 701. State authority.
- Sec. 702. State programs affected by the Convention.

#### TITLE VIII—FUNDING OF CONSERVATION MEASURES

- Sec. 801. Authorizing increased appropriations.
- Sec. 802. Funding of Federal mandates.
- Sec. 803. Endangered Species and Threatened Species Conservation Trust Fund.

#### TITLE IX—MISCELLANEOUS PROVISIONS

- Sec. 901. Amendments to definitions.
- Sec. 902. Review of species of national interest.
- Sec. 903. Preparation of conservation plans for species listed before enactment of this Act.
- Sec. 904. Conforming amendment to table of contents.

### 1 **SEC. 2. REFERENCES TO ENDANGERED SPECIES ACT OF** 2 **1973.**

3 Except as otherwise expressly provided, whenever in  
4 this Act an amendment or repeal is expressed in terms

1 of an amendment to, or repeal of, a section or other provi-  
2 sion, the reference shall be considered to be made to such  
3 section or other provision of the Endangered Species Act  
4 of 1973 (16 U.S.C. 1531 et seq.).

5 **SEC. 3. FINDINGS, PURPOSES, AND POLICY OF ENDAN-**  
6 **GERED SPECIES ACT OF 1973.**

7 (a) FINDINGS.—Section 2(a) (16 U.S.C. 1531(a)) is  
8 amended—

9 (1) by amending paragraph (1) to read as fol-  
10 lows:

11 “(1) various species of fish, wildlife, and plants  
12 in the United States have been rendered extinct be-  
13 cause of inadequate conservation practices and natu-  
14 ral processes;”; and

15 (2) by striking “and” after the semicolon at the  
16 end of paragraph (4)(G), by striking the period at  
17 the end of paragraph (5) and inserting “; and”, and  
18 by adding at the end the following new paragraph:

19 “(6) the Nation’s economic well-being is essen-  
20 tial to the ability to maintain a sustainable resource  
21 base, therefore economic impacts and private prop-  
22 erty owners’ rights must be considered while encour-  
23 aging practices that protect species.”.

24 (b) PURPOSES AND POLICY.—Section 2 (b) and (c)  
25 (16 U.S.C. 1531 (b), (c)) are amended to read as follows:

1       “(b) PURPOSES.—The purposes of this Act are the  
2 following:

3           “(1) To provide a feasible and practical means  
4 to conserve endangered species and threatened spe-  
5 cies consistent with protection of the rights of pri-  
6 vate property owners and ensuring economic stabil-  
7 ity.

8           “(2) To provide a program for the conservation  
9 and management of such endangered species and  
10 threatened species taking into account the economic  
11 and social consequences of such program.

12           “(3) To take such steps as may be practicable  
13 to achieve the purposes of the treaties and conven-  
14 tions set forth in subsection (a) of this section.

15       “(c) POLICY.—

16           “(1) FEDERAL AUTHORITY.—It is further de-  
17 clared to be the policy of Congress that all Federal  
18 departments and agencies shall seek to conserve and  
19 manage endangered species and threatened species  
20 and shall, consistent with their primary missions,  
21 utilize their authorities in furtherance of the pur-  
22 poses of this Act.

23           “(2) COOPERATION WITH STATES.—It is fur-  
24 ther declared to be the policy of Congress that Fed-  
25 eral agencies shall cooperate with State and local

1 agencies to resolve water resource issues in concert  
 2 with conservation of endangered species and consist-  
 3 ent with State and local water laws.

4 “(3) PROTECTION OF PRIVATE PROPERTY  
 5 RIGHTS.—It is the policy of the Federal Government  
 6 that agency action taken pursuant to this Act shall  
 7 not use or limit the use of privately owned property  
 8 when such action diminishes the value of such prop-  
 9 erty without payment of fair market value to the  
 10 owner of private property. Each Federal agency, of-  
 11 ficer, and employee shall exercise authority under  
 12 this Act to ensure that agency action will not violate  
 13 the policy established in this paragraph.”.

14 **TITLE I—PRIVATE PROPERTY**  
 15 **RIGHTS AND VOLUNTARY IN-**  
 16 **CENTIVES FOR PRIVATE**  
 17 **PROPERTY OWNERS**

18 **SEC. 101. COMPENSATION FOR USE OR TAKING OF PRIVATE**  
 19 **PROPERTY.**

20 The Endangered Species Act of 1973 (16 U.S.C.  
 21 1531 et seq.) is amended by adding at the end the follow-  
 22 ing new section:

23 **“SEC. 19. RIGHT TO COMPENSATION.**

24 “(a) PROHIBITION.—The Federal Government shall  
 25 not take an agency action affecting privately owned prop-

erty or nonfederally owned property under this Act which results in diminishment of value of any portion of that property by 20 percent or more unless compensation is offered in accordance with this section.

“(b) COMPENSATION FOR USE OR LIMITATION ON USE.—The agency or agencies that take an agency action that exceeds the amount provided in subsection (a) shall compensate the private property owner for the otherwise lawful use or limitation on the otherwise lawful use in the amount of the diminution in value of the portion of that property resulting from the use or limitation on use. If the diminution in value of a portion of that property is greater than 50 percent, at the option of the owner, the agency or agencies shall buy that portion of the property and shall pay fair market value based on the value of the property before the use or limitation on use was imposed. Compensation paid shall reflect the duration of the use or limitation on use necessary to achieve the purposes of this Act.

“(c) REQUEST OF OWNER.—An owner seeking compensation under this section shall make a written request for compensation to the agency implementing the agency action. The request shall, at a minimum, identify the affected portion of the property, the nature of the use or limitation, and the amount of compensation claimed. No

1 such request may be made later than one year after the  
2 owner receives actual notice that the use of property has  
3 been limited by an agency action.

4 “(d) NEGOTIATIONS.—The agency may negotiate  
5 with that owner to reach agreement on the amount of the  
6 compensation and the terms of any agreement for pay-  
7 ment. If such an agreement is reached, the agency shall  
8 promptly pay the owner the amount agreed upon. An  
9 agreement under this section may include a transfer of  
10 the title or an agreement to use the property for a limited  
11 period of time.

12 “(e) CHOICE OF REMEDIES.—If, not later than 180  
13 days after the written request is made, the parties have  
14 not reached an agreement on compensation, the owner  
15 may elect binding arbitration or seek compensation due  
16 under this section in a civil action.

17 “(f) ARBITRATION.—The procedures that govern the  
18 arbitration shall, as nearly as practicable, be those estab-  
19 lished under title 9, United States Code, for arbitration  
20 proceedings to which that title applies. An award made  
21 in such arbitration shall include a reasonable attorney’s  
22 fee and other arbitration costs, including appraisal fees.  
23 The agency shall promptly pay any award made to the  
24 owner.



1       “(g) CIVIL ACTION.—An owner who prevails in a civil  
2 action against the agency pursuant to this section shall  
3 be entitled to, and the agency shall be liable for, the  
4 amount of compensation awarded plus reasonable attor-  
5 ney’s fees and other litigation costs, including appraisal  
6 fees. The court shall award interest on the amount of any  
7 compensation from the time of the limitation.

8       “(h) SOURCE OF PAYMENTS.—Any payment made  
9 under this section to an owner, and any judgment obtained  
10 by an owner in a civil action under this section shall, not-  
11 withstanding any other provision of law, be made from the  
12 annual appropriation of the agency that took the agency  
13 action. If the agency action resulted from a requirement  
14 imposed by another agency, then the agency making the  
15 payment or satisfying the judgment may seek partial or  
16 complete reimbursement from the appropriated funds of  
17 the other agency. For this purpose the head of the agency  
18 concerned may transfer or reprogram any appropriated  
19 funds available to the agency. If insufficient funds exist  
20 for the payment or to satisfy the judgment, it shall be  
21 the duty of the head of the agency to seek the appropria-  
22 tion of such funds for the next fiscal year.

23       “(i) AVAILABILITY OF APPROPRIATIONS.—Notwith-  
24 standing any other provision of law, any obligation of the

1 United States to make any payment under this section  
2 shall be subject to the availability of appropriations.

3 “(j) DUTY OF NOTICE TO OWNERS.—Whenever an  
4 agency takes an agency action limiting the use of private  
5 property the agency shall give appropriate notice to the  
6 owners of that property directly affected explaining their  
7 rights under this section and the procedures for obtaining  
8 any compensation that may be due to them under this sec-  
9 tion.

10 “(k) RULES OF CONSTRUCTION.—The following rules  
11 of construction shall apply to this Act:

12 “(1) OTHER RIGHTS PRESERVED.—Nothing in  
13 this Act shall be construed to limit any right to com-  
14 pensation that exists under the Constitution or  
15 under other laws.

16 “(2) EXTENT OF FEDERAL AUTHORITY.—Pay-  
17 ment of compensation under this section (other than  
18 when the property is bought by the Federal Govern-  
19 ment at the option of the owner) shall not confer  
20 any rights on the Federal Government other than  
21 the use or limitation on use resulting from the agen-  
22 cy action for the duration so that the agency action  
23 may achieve the species conservation purposes of  
24 this Act.

25 “(l) DEFINITIONS.—For the purposes of this section:

1           “(1) AGENCY.—The term ‘agency’ has the  
2 meaning given that term in section 551 of title 5,  
3 United States Code.

4           “(2) AGENCY ACTION.—The term ‘agency ac-  
5 tion’—

6                 “(A) subject to subparagraph (B), has the  
7 meaning given that term in section 551 of title  
8 5, United States Code, and

9                 “(B) includes—

10                         “(i) the loss of use of property to  
11 avoid prosecution under section 11;

12                         “(ii) a designation pursuant to section  
13 9(i) of privately owned property as critical  
14 habitat;

15                         “(iii) the denial of a permit under sec-  
16 tion 10 that restricts the use of private  
17 property;

18                         “(iv) an agency action pursuant to a  
19 biological opinion under section 7 that  
20 would cause an agency to restrict the use  
21 of private property;

22                         “(v) an agreement under section 6 to  
23 set aside property for habitat under the  
24 terms of an easement or other contract;

1           “(vi) a restriction imposed on private  
2           property as part of a conservation plan  
3           adopted by the Secretary under section 5;

4           “(vii) any other agency action that re-  
5           stricts a legal right to use that property,  
6           including, the right to alter habitat; and

7           “(viii) the making of a grant of land  
8           or money, to a public authority or a pri-  
9           vate entity as a predicate to an agency ac-  
10          tion by the recipient that would constitute  
11          a limitation if done directly by the agency.

12          “(3) FAIR MARKET VALUE.—The term ‘fair  
13          market value’ means the most probable price at  
14          which property would change hands, in a competitive  
15          and open market under all conditions requisite to  
16          fair sale, between a willing buyer and willing seller,  
17          neither being under any compulsion to buy or sell  
18          and both having reasonable knowledge of relevant  
19          facts, prior to occurrence of the agency action.

20          “(4) LAW OF THE STATE.—The term ‘law of  
21          the State’ includes the law of a political subdivision  
22          of a State.

23          “(5) LIMITATION ON USE.—The term ‘limita-  
24          tion on use’ means only a limitation on a use which

1 is otherwise permissible under applicable State  
2 property or nuisance laws.

3 “(6) PRIVATE PROPERTY, PRIVATELY OWNED  
4 PROPERTY, NON-FEDERAL PROPERTY.—The term  
5 ‘private property’, ‘privately owned property’, or  
6 ‘non-Federal property’ means property which is  
7 owned by a person other than any Federal entity of  
8 government.

9 “(7) PROPERTY.—The term ‘property’ means  
10 land, an interest in land, the right to use or receive  
11 water, and any personal property that is subject to  
12 use by the Federal Government or to a restriction on  
13 use.”.

14 **SEC. 102. VOLUNTARY COOPERATIVE MANAGEMENT**  
15 **AGREEMENTS.**

16 (a) COOPERATIVE MANAGEMENT AGREEMENT DE-  
17 FINED.—Section 3 (16 U.S.C. 1532) is amended—

18 (1) by redesignating paragraphs (2) through  
19 (21) in order as paragraphs (3), (4), (5), (7), (9),  
20 (10), (11), (12), (13), (18), (19), (20), (22), (23),  
21 (24), (25), (26), (27), and (28); and

22 (2) by adding after paragraph (5) (as redesign-  
23 dated by paragraph (1) of this section) the following  
24 new paragraph:

1 “(6) The term ‘cooperative management agreement’  
2 means a voluntary agreement entered into under section  
3 6(b).”.

4 (b) VOLUNTARY COOPERATIVE MANAGEMENT  
5 AGREEMENTS.—Section 6 (16 U.S.C. 1535) is amended  
6 by striking so much as precedes subsection (c) and insert-  
7 ing the following:

8 **“SEC. 6. COOPERATION WITH NON-FEDERAL PERSONS.**

9 “(a) GENERALLY.—In carrying out the program au-  
10 thorized by this Act, the Secretary shall cooperate to the  
11 maximum extent practicable with the States and other  
12 non-Federal persons. Such cooperation shall include con-  
13 sultation with the States and non-Federal persons con-  
14 cerned before acquiring any land or water, or interest  
15 therein, for the purpose of conserving any endangered spe-  
16 cies or threatened species.

17 “(b) COOPERATIVE MANAGEMENT AGREEMENTS.—

18 “(1) IN GENERAL.—The Secretary may enter  
19 into a cooperative management agreement with any  
20 State or group of States, political subdivision of a  
21 State, local government, or non-Federal person—

22 “(A) for the management of a species or  
23 group of species listed as endangered species or  
24 threatened species under section 4, a species or  
25 group of species proposed to be listed under

1 section 4, or species or group of species which  
2 are candidates for listing; or

3 “(B) for the management or acquisition of  
4 an area which provides habitat for a species.

5 “(2) SCOPE OF COOPERATIVE MANAGEMENT  
6 AGREEMENTS.—(A) A cooperative management  
7 agreement entered into under this subsection—

8 “(i) may provide for the management of a  
9 species or group of species on both public and  
10 private lands which are under the authority,  
11 control or ownership of a State or group of  
12 States, political subdivision of a State, local  
13 government, or non-Federal person and which  
14 are affected by a listing determination, pro-  
15 posed determination, or proposed candidacy for  
16 determination; and

17 “(ii) may include the acquisition or des-  
18 ignation of land as habitat for species.

19 “(B) A cooperative management agreement  
20 may not restrict private or non-Federal property un-  
21 less written consent to such restrictions by the non-  
22 Federal owner is given either to the Secretary or the  
23 State, political subdivision, local government, or non-  
24 Federal person who is a party to the agreement.

1           “(C) The Secretary may grant to a party to an  
2           agreement the authority to undertake programs to  
3           enhance the population or habitat of a species on  
4           federally owned lands, except that such authority  
5           shall not otherwise conflict with other uses of such  
6           land which are approved by the Secretary or author-  
7           ized by the Congress.

8           “(D) The Secretary is authorized, in conjunc-  
9           tion with entering into and as a part of any agree-  
10          ment under this section, to provide funds to carry  
11          out the agreement to a non-Federal person, as pro-  
12          vided in paragraph (11).

13          “(3) NOTIFICATION.—Not later than 30 days  
14          after submission of a request to enter into a cooper-  
15          ative management agreement, the party submitting  
16          the request shall provide notice of the request to any  
17          non-Federal person or Federal power marketing ad-  
18          ministration that would be subject to the proposed  
19          cooperative management agreement.

20          “(4) DEVELOPMENT OF PROPOSED AGREE-  
21          MENT.—(A) The requesting party shall develop and  
22          submit to the Secretary a proposed cooperative man-  
23          agement agreement.

24          “(B) The Secretary shall publish in the Federal  
25          Register a notice of availability and a request for



1 public comment on any proposed cooperative man-  
2 agement agreement between the Secretary and any  
3 governmental entity and shall hold a public hearing  
4 on such a proposed cooperative management agree-  
5 ment in each county or parish in which the proposed  
6 agreement would be in effect.

7 “(C) Before entering into a cooperative man-  
8 agement agreement with another governmental en-  
9 tity or a non-Federal person for the management of  
10 federally owned land, the Secretary shall consider  
11 and weigh carefully all information received in re-  
12 sponse to the request for comment published under  
13 subparagraph (B) and testimony presented in each  
14 hearing held under subparagraph (B).

15 “(5) APPROVAL OF AGREEMENT.—(A) Not  
16 later than 120 days after the submission of a pro-  
17 posed cooperative management agreement under  
18 paragraph (4), the Secretary shall determine wheth-  
19 er the proposed agreement is in accordance with this  
20 subsection and will promote the conservation of the  
21 species to which the proposed agreement applies.

22 “(B) The Secretary shall approve and enter  
23 into a proposed cooperative management agreement,  
24 if the Secretary finds that—

1           “(i) the requesting party has sufficient au-  
2           thority under law to implement and carry out  
3           the terms of the agreement;

4           “(ii) the agreement defines an area that  
5           serves as habitat for the species or group of  
6           species to which the agreement applies;

7           “(iii) the agreement adequately provides  
8           for the administration and management of the  
9           identified management area;

10          “(iv) the agreement promotes the conserva-  
11          tion of the species to which the agreement ap-  
12          plies by committing Federal or non-Federal ef-  
13          forts to the conservation;

14          “(v) the term of the agreement is of suffi-  
15          cient duration to accomplish the provisions of  
16          the agreement; and

17          “(vi) the agreement is adequately funded  
18          to carry out the agreement.

19          “(C) No later than 30 days after entering into  
20          a cooperative management agreement with a govern-  
21          mental entity, the Secretary shall publish in the  
22          Federal Register a notice of availability of the terms  
23          of such agreement and the response of the Secretary  
24          to all information received or presented with respect  
25          to the agreement pursuant to paragraph (4)(B).

1           “(6) ENVIRONMENTAL ASSESSMENTS.—Prepa-  
2           ration, approval, and entering into a cooperative  
3           management agreement under this subsection shall  
4           not be subject to section 102(2) of the National En-  
5           vironmental Policy Act of 1969 (42 U.S.C. 4332(2)).

6           “(7) NO SURPRISES.—For any species or area  
7           that is the subject of a cooperative management  
8           agreement under this subsection, a party to the  
9           agreement shall not be required—

10                 “(A) to make any additional payment for  
11                 any purpose, or to accept any additional restric-  
12                 tion on any parcel of land available for develop-  
13                 ment or land management under the agree-  
14                 ment, without consent of the party; or

15                 “(B) to undertake any other measure to  
16                 minimize or mitigate impacts on the species in  
17                 addition to measures required by the agreement  
18                 as established.

19           “(8) EFFECT OF LISTING OF SPECIES.—A co-  
20           operative management agreement entered into under  
21           this subsection shall remain in effect and shall not  
22           be required to be amended if a species to which the  
23           agreement does not apply is determined to be an en-  
24           dangered species or threatened species under section  
25           4.

1           “(9) APPLICABILITY OF CERTAIN PROVI-  
2       SIONS.—Sections 5, 7, and 9 shall not apply to those  
3       activities of a party to a cooperative management  
4       agreement which are conducted in accordance with  
5       such agreement.

6           “(10) VIOLATIONS OF AGREEMENTS.—(A) If  
7       the Secretary determines that a party to a coopera-  
8       tive management agreement is not administering or  
9       acting in accordance with the agreement, the Sec-  
10      retary shall notify the party.

11          “(B) If a party that is notified under subpara-  
12      graph (A) fails to take appropriate corrective action  
13      within a period of time determined by the Secretary  
14      to be reasonable (not to exceed 90 days after the  
15      date of the notification)—

16           “(i) the Secretary shall rescind the entire  
17      cooperative management agreement or the ap-  
18      plicability of the agreement to the party that is  
19      the subject of the notification; and

20           “(ii) beginning on the date of the rescis-  
21      sion—

22           “(I) the entire agreement shall not be  
23      effective, or the agreement shall not be ef-  
24      fective with respect to the party, whichever  
25      is appropriate; and

1 “(II) sections 5, 7, and 9 shall apply  
2 to activities of the party.”.

3 **SEC. 103. GRANTS FOR IMPROVING AND CONSERVING**  
4 **HABITAT FOR SPECIES.**

5 Section 6 (16 U.S.C. 1535), as amended by section  
6 102(b) of this Act, is amended by adding at the end of  
7 subsection (b) the following new paragraph:

8 “(11) HABITAT CONSERVATION GRANTS.—(A)  
9 The Secretary may, from amounts in the account es-  
10 tablished by section 13 or from funds appropriated  
11 for such purpose, provide a grant to a non-Federal  
12 person (other than an officer, employee, or agent  
13 (acting in an official capacity) or a department or  
14 instrumentality of a State, municipality, or political  
15 subdivision thereof) for the purpose of conserving,  
16 preserving, or improving habitat for any species that  
17 is determined under section 4 to be an endangered  
18 species or a threatened species.

19 “(B) The Secretary may provide a grant under  
20 this paragraph if the Secretary determines that—

21 “(i) the property for which the grant is  
22 provided contains habitat that significantly con-  
23 tributes to the protection of the population of  
24 the species;

1           “(ii) the property has been managed for  
2           species protection for a period of time that has  
3           been sufficient to significantly contribute to the  
4           protection of the population of the species; and

5           “(iii) the management of the habitat ad-  
6           vances the interest of species protection.

7           “(C) A grant made under this paragraph shall  
8           be transferable to subsequent owners of the property  
9           for which the grant is provided.”.

10 **SEC. 104. TECHNICAL ASSISTANCE PROGRAMS.**

11           Section 5 (16 U.S.C. 1534), as added by section 501  
12 of this Act and as amended by sections 502(a), 503,  
13 504(a), and 505 of this Act, is amended by adding at the  
14 end the following new subsection:

15           “(m) TECHNICAL ASSISTANCE PROGRAM.—

16           “(1) IN GENERAL.—The Secretary shall initiate  
17           a technical assistance program to provide technical  
18           advice and assistance to non-Federal persons who  
19           wish to participate in achieving the conservation ob-  
20           jective for a species for which a conservation goal  
21           has been adopted under this section. The technical  
22           assistance provided shall include information on  
23           habitat needs of species, optimum management of  
24           habitat for species, methods for propagation of spe-  
25           cies, feeding needs and habits, predator controls,

1 and any other information which a non-Federal per-  
2 son may utilize or request for the purpose of con-  
3 serving a species determined to be an endangered  
4 species or threatened species or proposed to be de-  
5 termined as an endangered species or threatened  
6 species.

7 “(2) REGULATIONS TO PROVIDE EXEMPTIONS  
8 FROM SECTION 9.—The Secretary shall promulgate  
9 regulations that establish exemptions from section 9  
10 for any person who participates in a conservation  
11 program under this subsection.”.

12 **SEC. 105. WATER RIGHTS.**

13 Section 6 (16 U.S.C. 1535) is amended by adding  
14 at the end the following:

15 “(j) WATER RIGHTS.—Nothing in this Act shall be  
16 construed to supersede, abrogate, or otherwise impair any  
17 right or authority of a State to allocate or administer  
18 quantities of water (including boundary waters). Nothing  
19 in this Act shall be implemented, enforced, or construed  
20 to allow any officer or agency of the United States to uti-  
21 lize directly or indirectly the authorities established under  
22 this Act to impose any requirement not imposed by the  
23 State which would supersede, abrogate, condition, restrict,  
24 or otherwise impair rights to the use of water resources  
25 allocated under State law, interstate water compact, or

1 Supreme Court decree, or held by the United States for  
2 use by a State, its political subdivisions, or its citizens.  
3 The exercise of authority pursuant to or in furtherance  
4 of this Act shall not be construed to create a limitation  
5 on the exercise of rights to water or constitute a cause  
6 for nondelivery of water pursuant to contract or State  
7 law.”.

8 **TITLE II—IMPROVING ABILITY**  
9 **TO COMPLY WITH THE EN-**  
10 **DANGERED SPECIES ACT OF**  
11 **1973**

12 **SEC. 201. ENFORCEMENT PROCEDURES.**

13 (a) IN GENERAL.—Section 9(a) (16 U.S.C. 1538(a))  
14 is amended—

15 (1) in paragraph (1) by amending the matter  
16 preceding subparagraph (A) to read as follows: “(1)  
17 Except as provided in paragraph (3), section  
18 6(g)(2), subsections (d)(3) and (e) of section 5, sec-  
19 tion 7(a), and section 10, with respect to any endan-  
20 gered species of fish or wildlife listed pursuant to  
21 section 4 it is unlawful for any person subject to the  
22 jurisdiction of the United States to—”;

23 (2) in paragraph (2) by amending the matter  
24 preceding subparagraph (A) to read as follows: “(2)  
25 Except as provided in section 6(g)(2), subsections



1 (d)(3) and (e) of section 5, and section 10, with re-  
2 spect to any endangered species of plants listed pur-  
3 suant to section 4, it is unlawful for any person sub-  
4 ject to the jurisdiction of the United States to—”;  
5 and

6 (3) by adding at the end the following new  
7 paragraph:

8 “(3) PERMITTED TAKINGS.—An activity of a  
9 non-Federal person is not a taking of a species if the  
10 activity—

11 “(A) is consistent with the provisions of a  
12 final conservation plan or conservation objec-  
13 tive;

14 “(B) complies with the terms and condi-  
15 tions of an incidental take permit or a coopera-  
16 tive management agreement;

17 “(C) addresses a critical, imminent threat  
18 to public health or safety or a catastrophic nat-  
19 ural event, or is mandated by any Federal,  
20 State, or local government agency for public  
21 health or safety purposes; or

22 “(D) is incidental to, and not the purpose  
23 of, the carrying out of an otherwise lawful ac-  
24 tivity that occurs within an area of the terri-  
25 torial sea or exclusive economic zone established

1 by Proclamation Numbered 5030, dated March  
2 10, 1983, that is not designated as critical  
3 habitat under section 5(i), and the affected spe-  
4 cies is not a species of fish.”.

5 (b) REWARDS AND INCIDENTAL EXPENSES.—Section  
6 11 (16 U.S.C. 1540) is amended—

7 (1) in subsection (d)(2) by inserting after “tem-  
8 porary care for any” the following: “endangered spe-  
9 cies or threatened species of”;

10 (2) in subsection (e)(3) in the fourth sentence  
11 by striking “Any fish, wildlife,” and inserting “Any  
12 endangered species or threatened species of fish or  
13 wildlife,”;

14 (3) in subsection (e)(4)(A) by inserting “endan-  
15 gered species or threatened species of” after “All”;

16 (4) in subsection (e)(4)(B) by inserting “endan-  
17 gered species or threatened speices of” after “im-  
18 porting of any”;

19 (5) in subsection (f) in the first sentence by in-  
20 serting “endangered species or threatened species  
21 of” after “storage of”;

22 (6) in subsection (e) by adding at the end the  
23 following new paragraph:

24 “(7) ADOPTION OF REGULATIONS.—(A) No in-  
25 terpretation, policy, guideline, finding, or other in-

1 formal determination may be relied upon by the Sec-  
2 retary in the implementation and enforcement of  
3 this Act unless such determination has been the sub-  
4 ject of a proposed rule, subject to review by the pub-  
5 lic and comment for a period of no less than 60  
6 days. Any proposed rule under this subparagraph  
7 must include—

8 “(i) a plain-language explanation of the  
9 reasons for and purpose of the proposed rule;

10 “(ii) an analysis of the anticipated impact  
11 of the proposed rule;

12 “(iii) an analysis showing that the restora-  
13 tion benefit of the proposed rule outweighs any  
14 negative conservation impact of that proposed  
15 rule;

16 “(iv) an analysis showing that compliance  
17 with the proposed rule is reasonably within the  
18 means of the State or the range nation con-  
19 cerned; and

20 “(v) a summary of the literature reviewed  
21 and experts consulted in regard to the species  
22 involved, and a summary of the Secretary’s  
23 findings based on that review and consultation.

24 “(B) No refusal of entry, seizure of evidence, or  
25 other enforcement action may take place under this

1 Act if the action is based solely on a notification  
2 under the Convention or on a resolution of the Con-  
3 ference of the Parties to the Convention.

4 “(C) The burden is on the Secretary to show  
5 that a specimen belongs to a species which is deter-  
6 mined to be an endangered species or threatened  
7 species under this Act or is included in an Appendix  
8 to the Convention. The Secretary may not detain a  
9 specimen for longer than 30 days for the purpose of  
10 identification. If the specimen cannot be positively  
11 identified within that time, then it shall be re-  
12 leased.”; and

13 (7) by amending subsection (g) to read as fol-  
14 lows:

15 “(g) CITIZEN SUITS.—

16 “(1) IN GENERAL.—Except as provided in para-  
17 graph (2), a civil suit may be commenced by any  
18 person on his or her own behalf, who satisfies the  
19 requirements of the Constitution and who has suf-  
20 fered or is threatened with economic or other injury  
21 resulting from the violation, regulation, application,  
22 nonapplication, or failure to act—

23 “(A) to enjoin the United States or any  
24 agency or official of the United States who is  
25 alleged to be in violation of any provision of this

1 Act or regulation issued under the authority  
2 thereof, if the violation poses immediate and ir-  
3 reparable harm to a threatened species or en-  
4 dangered species;

5 “(B) to compel the Secretary to apply, or  
6 modify the application of, the prohibitions set  
7 forth in or authorized pursuant to section  
8 9(a)(1)(B) or 4(d);

9 “(C) to compel the Secretary to apply, or  
10 modify the application of, the provisions of sec-  
11 tion 10(a); or

12 “(D) against the Secretary where there is  
13 alleged a failure of the Secretary to perform  
14 any act or duty under section 4(d) which is not  
15 discretionary with the Secretary.

16 The district courts shall have jurisdiction to enforce  
17 any such provision or regulation, or to order the  
18 Secretary to perform such act or duty, as the case  
19 may be.

20 “(2) PREREQUISITE PROCEDURES.—(A) No ac-  
21 tion may be commenced under paragraph (1)(A)—

22 “(i) prior to 60 days after written notice of  
23 the alleged violation has been given to the Sec-  
24 retary, and to any agency or official of the  
25 United States who is alleged to be in violation,

1           except that a State may commence an action at  
2           any time;

3           “(ii) if the Secretary has commenced ac-  
4           tion to impose a penalty pursuant to subsection  
5           (a); or

6           “(iii) if the United States has commenced  
7           and is diligently prosecuting a criminal action  
8           in a court of the United States or a State to  
9           redress the alleged violation of any such provi-  
10          sion or regulation.

11          “(B) No action may be commenced under para-  
12          graph (1)(B) prior to 60 days after written notice  
13          has been given to the Secretary setting forth the  
14          reasons for applying, or modifying the application of,  
15          the prohibitions with respect to the taking of a  
16          threatened species.

17          “(C) No action may be commenced under para-  
18          graph (1)(C) prior to 60 days after written notice  
19          has been given to the Secretary, except that such ac-  
20          tion may be brought immediately after such notifica-  
21          tion in the case of an action under this subsection  
22          respecting an emergency posing a significant risk to  
23          the well-being of any species of fish or wildlife or  
24          plants.

1           “(3) VENUE.—Any suit under this subsection  
2           may be brought in the judicial district in which the  
3           violation occurs.

4           “(4) COSTS.—The court, in issuing any final  
5           order in any suit brought pursuant to paragraph  
6           (1), may award costs of litigation (excluding attor-  
7           ney and expert witness fees) to any party, whenever  
8           the court determines such award is appropriate.

9           “(5) INJUNCTIVE RELIEF.—The injunctive re-  
10          lief provided by this subsection shall not restrict any  
11          right which any person (or class of persons) may  
12          have under any statute or common law to seek en-  
13          forcement of any standard or limitation or to seek  
14          any other relief (including relief against the Sec-  
15          retary or a State agency).

16          “(6) INTERVENTION.—Any person may inter-  
17          vene as a matter of right in any civil suit brought  
18          under this subsection if such suit presents a reason-  
19          able threat of economic injury to such person. Any  
20          intervenor under this paragraph shall have the same  
21          right to present argument and to accept or reject po-  
22          tential settlements as do the parties to the suit.”.

23 **SEC. 202. REMOVING PUNITIVE DISINCENTIVES.**

24          Section 3(26) (as redesignated by section 102(a)(1)  
25          of this Act) is amended to read as follows:

1           “(26)(A) The term ‘take’ means to harm, pur-  
 2           sue, hunt, shoot, wound, kill, trap, capture, or col-  
 3           lect, or to attempt to engage in that conduct.

4           “(B) In subparagraph (A), the term ‘harm’  
 5           means to take a direct action against any member  
 6           of an endangered species of fish or wildlife that ac-  
 7           tually injures or kills a member of the species.”.

8   **SEC. 203. ALLOWING NON-FEDERAL PERSONS TO USE THE**  
 9                           **CONSULTATION PROCEDURES.**

10          Section 10(a) (16 U.S.C. 1539(a)), as amended by  
 11          section 204(b) of this Act, is amended by adding at the  
 12          end the following new paragraph:

13               “(3) VOLUNTARY CONSULTATION.—(A) Subject  
 14               to such regulations as the Secretary may issue, any  
 15               non-Federal person may initiate consultation with  
 16               the Secretary on any prospective activity of the per-  
 17               son—

18                       “(i) to determine if the activity is consist-  
 19                       ent or inconsistent with a conservation plan or  
 20                       conservation objective; or

21                       “(ii) if the person determines that the ac-  
 22                       tivity is inconsistent, to determine whether the  
 23                       activity is likely to jeopardize the continued ex-  
 24                       istence of an endangered species or a threat-  
 25                       ened species, or to destroy or adversely modify



1 the designated critical habitat of the species in  
2 a manner that is likely to jeopardize the contin-  
3 ued existence of the species.

4 “(B) The voluntary consultation process for  
5 non-Federal persons authorized by subparagraph (A)  
6 shall be conducted in accordance with the procedures  
7 and requirements for consultation on agency actions  
8 set forth in section 7, except that—

9 “(i) the period for completion of the con-  
10 sultation shall be 90 days from the date on  
11 which the consultation is initiated, or not later  
12 than such other date as is mutually agreeable  
13 to the Secretary and the person initiating the  
14 consultation;

15 “(ii) the person initiating the consultation  
16 shall not be required to prepare a biological as-  
17 sessment or equivalent document;

18 “(iii) neither the activity for which the con-  
19 sultation process is sought nor the consultation  
20 process itself shall be deemed a Federal action  
21 for the purpose of compliance with section  
22 102(2) of the National Environmental Policy  
23 Act of 1969 (42 U.S.C. 4332(2)) or an agency  
24 action for the purpose of compliance with the  
25 consultation requirement of section 7(a)(2);

1 “(iv) the Secretary shall provide the person  
2 initiating the consultation with a written opin-  
3 ion only, unless such person requests a permit  
4 referred to in paragraph (1)(B) and meets the  
5 requirements of clause (v); and

6 “(v) a permit described in clause (iv) shall  
7 be issued if the Secretary makes a finding of—

8 “(I) consistency pursuant to subpara-  
9 graph (A)(i);

10 “(II) no jeopardy pursuant to sub-  
11 paragraph (A)(ii); or

12 “(III) jeopardy pursuant to subpara-  
13 graph (A)(ii), but offers a reasonable and  
14 prudent alternative which the person initi-  
15 ating the consultation accepts.”.

16 **SEC. 204. PERMITTING REQUIREMENTS FOR INCIDENTAL**  
17 **TAKES.**

18 (a) INCIDENTAL TAKE PERMIT DEFINED.—Section  
19 3 (16 U.S.C. 1532) is amended by adding after paragraph  
20 (14) (as added by section 301(b)(3) of this Act) the follow-  
21 ing new paragraph:

22 “(15) The term ‘incidental take permit’ means  
23 a permit issued under section 10(a)(1)(B).”.

1 (b) TAKE PERMITS.—Section 10 (16 U.S.C. 1539)  
2 is amended by striking so much as precedes subsection  
3 (b) and inserting the following:

4 **“SEC. 10. EXCEPTIONS.**

5 “(a) PERMITS.—

6 “(1) AUTHORITY TO ISSUE PERMITS.—The Sec-  
7 retary may permit, under such terms and conditions  
8 as the Secretary shall prescribe—

9 “(A) any act otherwise prohibited by sec-  
10 tion 9 undertaken for scientific purposes or to  
11 enhance the propagation or survival of the af-  
12 fected species, including, but not limited to—

13 “(i) acts necessary for the establish-  
14 ment and maintenance of experimental  
15 populations pursuant to subsection (j);

16 “(ii) the public display or exhibition of  
17 living wildlife in a manner designed to edu-  
18 cate, or which otherwise contributes to the  
19 education of the public about the ecological  
20 role and conservation needs of the affected  
21 species;

22 “(iii) in the case of foreign species,  
23 acts that are consistent with the Conven-  
24 tion and with conservation strategies

1           adopted by the foreign nations responsible  
2           for the conservation of the species; and

3           “(iv) acts necessary for the research  
4           in and carrying out of captive propagation;  
5           or

6           “(B) any taking otherwise prohibited by  
7           section 9(a)(1)(B) if such taking is incidental  
8           to, and not the purpose of, the carrying out of  
9           an otherwise lawful activity.

10          “(2) SPECIES CONSERVATION PLANS.—(A) Ex-  
11          cept as provided in paragraph (3), no permit may be  
12          issued by the Secretary authorizing any taking re-  
13          ferred to in paragraph (1)(B) unless the applicant  
14          therefor submits to the Secretary a species conserva-  
15          tion plan that specifies—

16               “(i) the impact on the species which will be  
17               the likely result of the activities to be per-  
18               mitted;

19               “(ii) what steps the applicant can reason-  
20               ably and economically take consistent with the  
21               purposes and objectives of the activity to mini-  
22               mize such impacts, and the funding that will be  
23               available to implement such steps; and

1           “(iii) what alternative actions to such tak-  
2           ing the applicant considered and the reasons  
3           why such alternatives are not being utilized.

4           “(B) If the Secretary finds, after opportunity  
5           for public comment, with respect to a permit appli-  
6           cation and the related species conservation plan  
7           that—

8           “(i) the taking will be incidental;

9           “(ii) the applicant will, to the extent rea-  
10          sonable and economically practicable, minimize  
11          the impacts of such taking;

12          “(iii) the applicant will ensure that ade-  
13          quate funding for the plan will be provided;

14          “(iv) the taking will not appreciably reduce  
15          the likelihood of the survival and conservation  
16          of the species; and

17          “(v) the measures specified under subpara-  
18          graph (A)(ii) will be met;

19          and the Secretary has received such other assur-  
20          ances as the Secretary may require that the plan will  
21          be implemented, the Secretary shall issue the permit.

22          The permit shall contain such reasonable and eco-  
23          nomically practicable terms and conditions consist-  
24          ent with the purposes and objectives of the activity  
25          as the Secretary deems necessary or appropriate to

1 carry out the purposes of this paragraph, including,  
2 but not limited to, such reporting requirements as  
3 the Secretary deems necessary for determining  
4 whether such terms and conditions are being com-  
5 plied with.

6 “(C) The Secretary may not require the appli-  
7 cant, as a condition of processing the application or  
8 issuing the permit, to expand the application to in-  
9 clude land, an interest in land, right to use or re-  
10 ceive water, or a proprietary water right not owned  
11 by the applicant or to address a species other than  
12 the species for which the application is made.

13 “(D)(i) The Secretary shall complete the proc-  
14 essing of, and approve or deny, any application for  
15 a permit under paragraph (1)(B) within 90 days of  
16 the date of submission of the application or within  
17 such other period of time after such date of submis-  
18 sion to which the Secretary and the permit applicant  
19 mutually agree.

20 “(ii) The preparation and approval of a species  
21 conservation plan and issuance of a permit under  
22 paragraph (1)(B) shall not be subject to section  
23 102(2) of the National Environmental Policy Act of  
24 1969 (42 U.S.C. 4332(2)).

1           “(E) No additional measures to minimize and  
2       mitigate impacts on a species that is a subject of a  
3       permit issued under paragraph (1)(B) shall be re-  
4       quired of a permittee that is in compliance with the  
5       permit. With respect to any species that is a subject  
6       of such a permit, under no circumstance shall a per-  
7       mittee in compliance with the permit be required to  
8       make any additional payment for any purpose, or ac-  
9       cept any additional restriction on any parcel of land  
10      available for development or land management or  
11      any water or water-related right under the permit,  
12      without the consent of the permittee.

13           “(F)(i) For such activities as the Secretary de-  
14      termines will not appreciably reduce the chances of  
15      survival of a species, the Secretary may issue an in-  
16      terim permit to any applicant for a permit under  
17      this section that provides evidence of appropriate in-  
18      terim measures that—

19                   “(I) will minimize impacts of any inciden-  
20                   tal taking that may be associated with the ac-  
21                   tivity proposed for permitting; and

22                   “(II) are to be performed while the under-  
23                   lying permit application is being considered  
24                   under this section.

1           “(ii) An interim permit issued under clause  
2           (i)—

3                   “(I) shall specifically state the types of ac-  
4           tivities that are authorized to be carried out  
5           under the interim permit;

6                   “(II) shall not create any right to the issu-  
7           ance of a permit under this section;

8                   “(III) shall expire on the date of the grant-  
9           ing or denial of the underlying permit applica-  
10          tion; and

11                   “(IV) may be revoked by the Secretary  
12          upon failure to comply with any term of the in-  
13          terim permit.

14                   “(G) The Secretary shall revoke a permit issued  
15          under this paragraph if he finds that the permittee  
16          is not complying with the terms and conditions of  
17          the permit.”.

18          (c) MULTI-SPECIES PLANNING.—Section 10 (16  
19          U.S.C. 1539) is amended by adding at the end the follow-  
20          ing new subsection:

21                   “(k) MULTIPLE SPECIES CONSERVATION PLANS.—

22                   “(1) DEVELOPMENT.—The Secretary may as-  
23          sist a non-Federal person in the development of a  
24          plan, to be known as a ‘multiple species conservation  
25          plan’, for the conservation of—



1           “(A) any species with respect to which a  
2           finding is made and a status review is com-  
3           menced under section 4(b)(3)(B); and

4           “(B) any other species that—

5                 “(i) inhabit the area covered by the  
6                 plan; and

7                 “(ii) are designated in the plan or are  
8                 within a taxonomic group designated in the  
9                 plan.

10           “(2) ISSUANCE OF PERMITS.—The Secretary  
11           may issue a permit under subsection (a)(1)(B) au-  
12           thorizing the take described in section 9(a)(1)(B) of  
13           a species for which a multiple species conservation  
14           plan is developed under this subsection, if the Sec-  
15           retary, after providing opportunity for public com-  
16           ment on the plan—

17                 “(A) determines that the plan specifies the  
18                 information described in subsection (a)(2)(A);

19                 “(B) makes the findings described in sub-  
20                 section (a)(2)(B) with respect to the permit ap-  
21                 plication and the plan; and

22                 “(C) receives such assurances as the Sec-  
23                 retary may require that the plan will be imple-  
24                 mented.

1           “(3) EFFECT OF LISTING OF SPECIES.—A mul-  
2       tiple species conservation plan developed under this  
3       subsection and a permit issued with respect to the  
4       plan shall remain in effect and shall not be required  
5       to be amended if a species to which the plan and  
6       permit apply is determined to be an endangered spe-  
7       cies or a threatened species under section 4.”.

8       (d) FOREIGN SPECIES.—Section 10(a), as amended  
9       by subsection (b) of this section and sections 203 and  
10      205(a) of this Act, is amended by adding at the end the  
11      following new paragraph:

12           “(7) FOREIGN SPECIES.—(A) In determining  
13       whether to issue a permit under subsection  
14       (a)(1)(A)(iii), there shall be a rebuttable presump-  
15       tion that the survival of a species is enhanced by the  
16       ordinary benefit occurring from the taking of a spec-  
17       imen for an inherently limited use in accordance  
18       with the laws and wildlife management policies of  
19       the nation in which it is found.

20           “(B) The Secretary may not refuse to issue a  
21       permit for such specimens and may not limit the  
22       number of such specimens which may be imported  
23       unless he makes and publishes in the Federal Reg-  
24       ister a finding that there is substantial evidence that  
25       the detriment resulting from the taking of such

1 specimens outweighs the benefit derived, and subse-  
2 quently promulgates regulations containing the limi-  
3 tation.

4 “(C) The Secretary shall transmit the full text  
5 and a complete description of the proposed regula-  
6 tion referred to in the preceding paragraph directly  
7 to the appropriate wildlife management authorities  
8 of the nations from which the specimens are ex-  
9 ported, in the language of those countries, with at  
10 least 180 days allowed for review and comment. The  
11 180-day period shall be counted from the date of the  
12 delivery of the materials to the wildlife management  
13 authority of each of the nations.

14 “(D) For the purpose of this paragraph, the  
15 term ‘inherently limited use’ means scientific collec-  
16 tion, live export for captive breeding, sport hunting,  
17 and falconry.”.

18 **SEC. 205. GENERAL, RESEARCH, AND EDUCATIONAL PER-**  
19 **MITTS.**

20 (a) IN GENERAL.—Section 10(a) (16 U.S.C.  
21 1539(a)), as amended by sections 203 and 204(b) of this  
22 Act, is amended by adding at the end the following new  
23 paragraphs:

24 “(4) GENERAL PERMITS.—(A) After providing  
25 notice and opportunity for public hearing, the Sec-

1       retary may issue a general permit under paragraph  
2       (1)(B) on a county, parish, State, regional, or na-  
3       tionwide basis for any category of activities that may  
4       affect a species determined to be an endangered spe-  
5       cies or threatened species if the Secretary deter-  
6       mines that the activities in the category are similar  
7       in nature, will cause only minimal adverse effects on  
8       the species if performed separately, and will have  
9       only minimal cumulative adverse effects on the spe-  
10      cies generally. A general permit issued under this  
11      paragraph shall specify the requirements and stand-  
12      ards that apply to an activity authorized by the gen-  
13      eral permit.

14           “(B) A general permit issued under this para-  
15      graph shall be effective for a period to be specified  
16      by the Secretary, but not to exceed the 5-year period  
17      that begins on the date of issuance of the permit.

18           “(C) The Secretary may revoke or modify a  
19      general permit if, after providing notice and oppor-  
20      tunity for public hearing, the Secretary determines  
21      that the activities authorized by the general permit  
22      have a greater than minimal adverse effect on a spe-  
23      cies that is included in a list published under section  
24      4(c)(1) or that the activities are more appropriately

1 authorized by individual permits issued under para-  
2 graph (1) or (3).

3 “(5) RESEARCH ON ALTERNATIVE METHODS  
4 AND TECHNOLOGIES.—Priority for issuing permits  
5 under paragraph (1)(A) shall be accorded to applica-  
6 tions for permits to conduct research, captive breed-  
7 ing, or education on alternative methods and tech-  
8 nologies, and the comparative costs of the methods  
9 and technologies, to reduce the incidental taking as  
10 described in paragraph (1)(B) of an endangered spe-  
11 cies or a threatened species for which the employ-  
12 ment of existing methods or technologies for avoid-  
13 ance of the incidental taking entails significant costs  
14 for non-Federal persons.

15 “(6) EDUCATIONAL OR PROPAGATION PER-  
16 MITS.—(A) A permit under paragraph (1)(A)(ii) or  
17 (iv) shall be issued if—

18 “(i)(I) the applicant holds a current and  
19 valid license as an exhibitor under the Animal  
20 Welfare Act (7 U.S.C. 2131 et seq.);

21 “(II) in the case of a permit under para-  
22 graph (1)(A)(ii), the applicant maintains a pub-  
23 lic display or exhibition of living wildlife de-  
24 scribed in that paragraph; and

1           “(III) viewing of the public display or exhi-  
2           bition is not limited or restricted other than by  
3           charging an admission fee; or

4           “(ii) in the case of a permit under para-  
5           graph (1)(A)(iv), the applicant has dem-  
6           onstrated the ability to use propagation tech-  
7           niques that result in increases in the popu-  
8           lations of species held in captivity for eventual  
9           release into the wild, maintenance of live speci-  
10          mens, or falconry purposes.

11          “(B)(i) The Secretary shall issue a permit with-  
12          in 30 days from the effective date of this subpara-  
13          graph to any qualified organization or person who  
14          has demonstrated the ability to handle or recover  
15          species for a minimum of 15 years or who has at  
16          least 10 permits in the aggregate issued pursuant to  
17          this Act or the other laws listed in subparagraph  
18          (H).

19          “(ii) The Secretary shall issue a permit within  
20          90 days of receipt of a completed application from  
21          any qualified organization or person who currently  
22          does not hold any permit but who has demonstrated  
23          the ability to handle or recover species for a mini-  
24          mum of 15 years of who has received at least 10  
25          permits in the aggregate and who has not violated

1 any terms or conditions of any permits previously is-  
2 sued pursuant to this Act or the laws listed in sub-  
3 paragraph (H).

4 “(C) A permit referred to in paragraph  
5 (1)(A)(ii) shall be for a term of not less than 6  
6 years.

7 “(D) A permit referred to in paragraph  
8 (1)(A)(ii) shall also authorize the permittee to im-  
9 port, export, sell, purchase, or otherwise transfer  
10 possession of the affected species.

11 “(E) The Secretary shall revoke a permit re-  
12 ferred to in paragraph (1)(A)(ii) if the Secretary de-  
13 termines that the permittee—

14 “(i) no longer meets the requirements of  
15 subparagraph (A) and is not reasonably likely  
16 to meet the requirements in the near future;

17 “(ii) is not complying with the terms and  
18 conditions of the permit; or

19 “(iii) is engaging in an activity likely to  
20 jeopardize the continued existence of the species  
21 subject to the permit.

22 “(F) The Secretary may require an annual re-  
23 port on the activities authorized by a general permit,  
24 but may not require reports more frequently than  
25 annually.

1           “(G) A permit authorized in this paragraph  
2       shall be the only permit required for the activities  
3       authorized therein, and may cover activities for one  
4       or more species or taxa simultaneously.

5           “(H) The authorizations for any activities per-  
6       mitted under this paragraph or permitted by the  
7       Bald Eagle Protection Act (16 U.S.C. 668–668d),  
8       the Fish and Wildlife Conservation Act of 1980 (16  
9       U.S.C. 2901–2911), the Lacey Act Amendments of  
10      1981 (18 U.S.C. 42; 16 U.S.C. 3371–3378), the  
11      Marine Mammal Protection Act of 1972 (16 U.S.C.  
12      1361–1407), the Migratory Bird Conservation Act  
13      (16 U.S.C. 715–715d), the Migratory Bird Treaty  
14      Act (16 U.S.C. 703–712), or the Wild Bird Con-  
15      servation Act of 1992 (Public Law 102–440) shall  
16      be consolidated into a general permit to cover all au-  
17      thorized activities, notwithstanding any law or regu-  
18      lation to the contrary.”.

19       (b) EXCEPTIONS FOR WILDLIFE BRED IN CAP-  
20      TIVITY.—Section 10, as amended by section 204(c) of this  
21      Act, is amended by adding at the end the following new  
22      subsection:

23       “(I) WILDLIFE BRED IN CAPTIVITY.—For the pur-  
24      poses of this Act or any regulation adopted pursuant to  
25      this Act, the terms ‘bred in captivity’ or ‘captive-bred’,



1 with respect to wildlife, means wildlife, including eggs,  
2 born or otherwise produced in captivity from parents that  
3 mated or otherwise transferred gametes in captivity if re-  
4 production is sexual, or from parents that were in captivity  
5 when development of the progeny began, if development  
6 is asexual. Such progeny shall be considered domestic fish  
7 or wildlife for all purposes and shall not come under the  
8 provisions and prohibitions of this Act and the laws listed  
9 in subsection (a)(6)(H) unless intentionally and perma-  
10 nently released to the wild. Any person holding any fish  
11 or wildlife or their progeny as described in this subsection  
12 must be able to demonstrate that such fish or wildlife do,  
13 in fact, qualify under the provision of this subsection, and  
14 shall maintain and submit to the Secretary, on request,  
15 such inventories, documentation, and records as the Sec-  
16 retary may by regulation require as being reasonable and  
17 appropriate to carry out the purposes of this subsection.  
18 Such requirements shall not unnecessarily duplicate the  
19 requirements of other rules and regulations promulgated  
20 by the Secretary.”.

21 **SEC. 206. MAINTENANCE OF AQUATIC HABITATS FOR LIST-**  
22 **ED SPECIES.**

23 The Endangered Species Act of 1973 (16 U.S.C.  
24 1851 et seq.) is amended by adding at the end the follow-  
25 ing new section:

1 “RECOGNIZING NET BENEFITS TO AQUATIC SPECIES

2 “SEC. 20. (a) ENCOURAGING NET BENEFITS.—In  
3 carrying out this Act, if the number of individual members  
4 of an endangered species or threatened species exiting an  
5 aquatic habitat area under the control, authority or owner-  
6 ship of a non-Federal person is equal to or greater than  
7 the number of individual members of the species entering  
8 such area, the Secretary shall not require, provide for, or  
9 recommend the imposition of any restriction or obligation  
10 on the activity of the non-Federal person in a manner  
11 which would require the non-Federal person to support the  
12 maintenance of any greater number of individual members  
13 of the species than that which enters such aquatic habitat  
14 area.

15 “(b) CONSIDERATION OF HATCHERY POPU-  
16 LATIONS.—In calculating the number of individual mem-  
17 bers of a species entering and exiting a specific aquatic  
18 habitat area pursuant to this section, the Secretary shall  
19 consider hatchery populations.

20 “(c) LIMITATIONS.—The Secretary shall not require,  
21 provide for, or recommend the imposition of any restric-  
22 tion or obligation on the activity of any non-Federal per-  
23 son in an aquatic habitat area to remedy adverse impacts  
24 on a species resulting from activities of individuals other  
25 than the non-Federal person.”.

1 **SEC. 207. COMPLIANCE WITH INTERNATIONAL REQUIRE-**  
2 **MENTS AND TREATIES.**

3 (a) RESPECTING THE SOVEREIGNTY OF OTHER NA-  
4 TIONS.—Section 8 (16 U.S.C. 1537) is amended by adding  
5 at the end the following new subsection:

6 “(e) ENCOURAGEMENT OF FOREIGN PROGRAMS.—  
7 Any action taken by the Secretary pursuant to this Act  
8 in regard to a foreign species which occurs in a country  
9 which is a party to the Convention—

10 “(1) shall be done in cooperation with the wild-  
11 life conservation authorities of such country; and

12 “(2) shall not obstruct any wildlife conservation  
13 program of such country unless the Secretary can  
14 show, based on adequate findings supported by sub-  
15 stantial evidence, that the country’s wildlife con-  
16 servation program for the species in question is not  
17 consistent with the Convention.”.

18 (b) COMPLIANCE WITH THE CONVENTION.—Section  
19 8A (16 U.S.C. 1537a) is amended by adding at the end  
20 the following new subsections:

21 “(f) NONDUPLICATION OF FINDINGS.—The Sec-  
22 retary, in making the findings required in paragraph 3(a)  
23 of Article III of the Convention, shall limit such findings  
24 to the purpose of the importation, and shall not duplicate  
25 the findings required to be made by the exporting nation

1 except for good cause based on adequate findings sup-  
2 ported by substantial evidence.

3 “(g) RELATIONSHIP OF PROTECTIVE REGULATIONS  
4 TO THE CONVENTION.—In determining the provisions of  
5 protective regulations pursuant to section 4(d) of this Act  
6 when such regulations relate to a foreign species—

7 “(1) the Secretary may not prohibit any act  
8 that is permissible under the Convention, notwith-  
9 standing Article XIV of the Convention;

10 “(2) the Secretary shall, prior to publishing a  
11 proposal for such protective regulations in the Fed-  
12 eral Register, transmit the full text and a complete  
13 description of the proposed regulation directly to the  
14 appropriate wildlife management authority of that  
15 country, in the language of that country, with at  
16 least 180 days allowed for review and comment, the  
17 180 days shall be counted from the date of delivery  
18 of the materials to the wildlife authorities of the  
19 country;

20 “(3) such transmission must be accompanied  
21 by—

22 “(A) a plain-language explanation of the  
23 reasons for and purpose of the proposed regula-  
24 tion;

1           “(B) an analysis of the anticipated bene-  
2           ficial impact or detrimental impact of the regu-  
3           lation on the economic, social, and cultural uti-  
4           lization of the species, if any, and of the bene-  
5           ficial or detrimental impact on the resource  
6           management and conservation programs of that  
7           country; and

8           “(C) a summary of the literature reviewed  
9           and experts consulted by the Secretary in re-  
10          gard to the species involved, and a summary of  
11          the Secretary’s findings based on that review  
12          and consultation;

13          “(4) the Secretary shall enter into discussions  
14          with appropriate wildlife management officials of the  
15          countries to which he has sent the transmission re-  
16          ferred to in the previous paragraph, and if those of-  
17          ficials feel that further studies of the species are in-  
18          dicated the Secretary shall assist in finding the  
19          funds for such studies and in carrying out the stud-  
20          ies; and

21          “(5) the Secretary must obtain the written con-  
22          currence of all the nations contacted, and if such  
23          concurrence is not obtained the Secretary may not  
24          issue the proposed regulation except by an order  
25          submitted to and approved by the President.”.

1       (c) CONSERVATION OF THREATENED SPECIES.—Sec-  
2       tion 9 (16 U.S.C. 1538), as amended by section 206 of  
3       this Act, is amended by adding at the end the following  
4       new subsection:

5       “(i) IMPORTATION AND EXPORTATION.—

6               “(1) LIMITATION ON IMPORTATION.—The pro-  
7       hibition on importation in subsection (a) of this sec-  
8       tion shall not apply to a specimen of a threatened  
9       species taken for an inherently limited use in accord-  
10      ance with the laws of a foreign nation and accom-  
11      panied by an export permit issued by that nation or  
12      an equivalent document. For the purpose of this  
13      subsection, the term ‘inherently limited use’ means  
14      scientific collection, live export for captive breeding,  
15      sport hunting, and falconry.

16              “(2) REGULATIONS FOR SHIPPING UNDER CON-  
17      VENTION.—(A) The Secretary shall adopt regula-  
18      tions regarding the finding required by the Conven-  
19      tion that live specimens exported from the United  
20      States will be so prepared as to minimize the risk  
21      of injury, damage to health, or cruel treatment.  
22      Such regulations shall provide clear, consistent and  
23      reliable guidance to exporters.

24              “(B) In any instance in which the Secretary be-  
25      lieves that a shipment for export is not prepared in

1       accordance with the regulations, a detailed written  
2       notice of noncompliance shall be issued to the ex-  
3       porter. The notice shall contain recommendations as  
4       to how future shipments should be modified in order  
5       to come into compliance with the regulations. The  
6       notice shall go into effect 30 days after receipt by  
7       the shipper, subject to appeal to an Administrative  
8       Law Judge or a court. The filing of an appeal shall  
9       toll the effectiveness of the notice. The issue of non-  
10      compliance may be appealed as well as the issue of  
11      the appropriateness of the recommendation for com-  
12      pliance.”.

13   **SEC. 208. INCENTIVES FOR PROTECTION OF MARINE SPE-**  
14                   **CIES.**

15       (a) IN GENERAL.—Section 10 (16 U.S.C. 1539), as  
16      amended by section 205(b) of this Act, is amended by add-  
17      ing at the end the following new subsection:

18       “(m) INCENTIVES.—(1) The Secretary shall exempt,  
19      under such terms and conditions as the Secretary may  
20      prescribe by regulation, any operator of a trawl vessel re-  
21      quired to use a turtle excluder device under regulations  
22      promulgated under this Act from such requirement if such  
23      operator agrees to support a conservation program ap-  
24      proved under paragraph (2) and such support is deter-  
25      mined to be appropriate under paragraph (4).

1       “(2) No later than 180 days after the effective date  
2 of this subsection and each year thereafter, the Secretary  
3 shall—

4           “(A) review all those programs intended to con-  
5 serve the endangered species and threatened species  
6 of sea turtles found in the Gulf of Mexico and along  
7 the Atlantic seaboard, including those programs in-  
8 volving protection of nesting beaches in other na-  
9 tions;

10          “(B) approve any such program determined by  
11 the Secretary to be of significant benefit to the re-  
12 covery of the species of such sea turtles under this  
13 subsection; and

14          “(C) publish notice of such determination in the  
15 Federal Register.

16       “(3)(A) Any person or group of persons operating  
17 trawl vessels may submit in writing a request to the Sec-  
18 retary for an exemption under this subsection.

19       “(B) Not later than 60 days after receipt of such re-  
20 quest the Secretary shall provide such person or group  
21 written notice of the issuance or denial of such request.

22       “(4) The Secretary shall determine that the support  
23 offered by an operator in a written request submitted  
24 under paragraph (3) is appropriate if the benefits provided  
25 by such support to the recovery of such species exceed any



1 harm to the recovery of such species incurred as a result  
 2 of the operator not using turtle excluder devices under an  
 3 exemption provided under this subsection.

4 “(5) The Secretary shall prescribe such regulations  
 5 as the Secretary considers necessary and appropriate to  
 6 carry out the purposes of this subsection.”.

7 (b) INCIDENTAL TAKE STATEMENTS.—Section 7(b)  
 8 (16 U.S.C. 1536(b)) is amended by adding at the end of  
 9 paragraph (4)(C)(ii) the following: “including incentives  
 10 to encourage the support of conservation programs ap-  
 11 proved under section 10(k),”.

## 12 **TITLE III—IMPROVING SCI-** 13 **ENTIFIC INTEGRITY OF LIST-** 14 **ING DECISIONS AND PROCE-** 15 **DURES**

### 16 **SEC. 301. IMPROVING THE VALIDITY AND CREDIBILITY OF** 17 **DECISIONS.**

18 (a) BASING LISTINGS ON CREDIBLE SCIENCE.—

19 (1) LISTING DETERMINATIONS.—Subsections  
 20 (a) and (b) (1) and (2) of section 4 (16 U.S.C.  
 21 1533) are amended to read as follows:

22 “(a) GENERALLY.—The Secretary shall by regulation  
 23 promulgated in accordance with subsection (b) determine  
 24 whether any species is an endangered species or a threat-  
 25 ened species because of any of the following factors:

1           “(1) The present or threatened loss of its habi-  
2       tat.

3           “(2) Overutilization for commercial, rec-  
4       reational, scientific, or educational purposes.

5           “(3) Disease or predation.

6           “(4) The inadequacy of existing Federal, State,  
7       and local government regulatory mechanisms.

8           “(5) Other natural or manmade factors affect-  
9       ing its continued existence.

10          “(b) SECRETARIAL DETERMINATIONS.—

11           “(1) BASIS FOR DETERMINATION.—(A) The  
12       Secretary shall make determinations required by  
13       subsection (a)(1) solely on the basis of the best sci-  
14       entific and commercial data available to the Sec-  
15       retary after conducting a review of the status of the  
16       species and after soliciting and fully considering the  
17       best scientific and commercial data available con-  
18       cerning the status of a species from any affected  
19       State or any interested non-Federal person, and tak-  
20       ing into account those efforts being made by any  
21       State, any political subdivision of a State, or any  
22       non-Federal person or conservation organization, to  
23       protect such species, whether by predator control,  
24       protection of habitat and food supply, or other con-  
25       servation practices, within any area under its juris-

1 diction, or on the high seas, and shall accord greater  
2 weight, consideration, and preference to empirical  
3 data rather than projections or other extrapolations  
4 developed through modeling.

5 “(B) In making a determination whether a spe-  
6 cies is an endangered species or a threatened species  
7 under this section, the Secretary shall fully consider  
8 populations of the species that are bred through pri-  
9 vate sector, university, and Federal, State, and local  
10 government breeding programs for release in the  
11 habitat of the species. In the case of fish species, the  
12 bred populations referred to in the preceding sen-  
13 tence shall include hatchery populations.

14 “(2) CONSIDERATION OF STATE RECOMMENDA-  
15 TIONS.—In making a determination pursuant to  
16 paragraph (1), the Secretary shall give consideration  
17 to species which have been identified as in danger of  
18 extinction, or likely to become so within the foresee-  
19 able future, by any State agency that is responsible  
20 for the conservation of fish or wildlife or plants.”.

21 (2) LISTING FOREIGN SPECIES.—Section 4(b)  
22 (16 U.S.C. 1533(b)), as amended by subsection (f)  
23 of this section, is amended by adding at the end the  
24 following new paragraph:

1           “(10) FOREIGN SPECIES.—(A) In determining  
2           under subsection (a) whether a foreign species is an  
3           endangered species or a threatened species, the Sec-  
4           retary shall not determine that a species that is list-  
5           ed under the Convention is endangered or threat-  
6           ened unless he makes an adequate finding, sup-  
7           ported by substantial evidence, that the Convention  
8           does not provide adequate regulation.

9           “(B) The Secretary shall, prior to publishing a  
10          proposal in the Federal Register to determine that  
11          a foreign species is endangered or threatened, trans-  
12          mit the full text and a complete description of the  
13          proposed listing directly to the appropriate wildlife  
14          management authority of that nation, in the lan-  
15          guage of that nation, with at least 180 days allowed  
16          for review and comment. The 180 days shall be  
17          counted from the date of delivery of the materials  
18          supporting the proposed listing to the wildlife au-  
19          thorities of the country.

20          “(C) Such transmission must be accompanied  
21          by—

22                  “(i) a plain-language explanation of the ob-  
23                  jective criteria for and purpose of the proposed  
24                  listing;

1           “(ii) an analysis of the anticipated bene-  
2           ficial impact or detrimental impact of the list-  
3           ing on the economic, social, and cultural utiliza-  
4           tion of the species, if any, and of the beneficial  
5           or detrimental impact on the resource manage-  
6           ment and conservation programs of that nation;  
7           and

8           “(iii) a summary of the literature reviewed  
9           and experts consulted by the Secretary in re-  
10          gard to the species involved, and a summary of  
11          the Secretary’s findings based on that review  
12          and consultation.

13          “(D) The Secretary shall enter into discussions  
14          with the appropriate wildlife management officials of  
15          the nations to which he has sent the transmission  
16          referred to in subparagraph (C). If those officials  
17          feel that further studies of the species are indicated,  
18          the Secretary shall assist in finding the funds for  
19          such studies and in carrying out the studies.

20          “(E) The Secretary must obtain the written  
21          concurrence of all the nations contacted. If such con-  
22          currence is not obtained, the Secretary may not  
23          issue the proposed regulation except by an order  
24          submitted to and approved by the President.”.

1 (b) DEFINITIONS.—Section 3 (16 U.S.C. 1532) is  
2 amended—

3 (1) by adding after paragraph (1) the following  
4 new paragraph:

5 “(2) The term ‘best scientific and commercial  
6 data available’ means factual information, including  
7 but not limited to peer reviewed scientific informa-  
8 tion obtainable from any source, including govern-  
9 mental and nongovernmental sources, which has  
10 been to the maximum extent feasible verified by field  
11 testing.”;

12 (2) by adding after paragraph (7) (as redesign-  
13 nated by section 102(a)(1) of this Act) the following  
14 new paragraphs:

15 “(8) The term ‘distinct population of national  
16 interest’ means a distinct population of a vertebrate  
17 species that is not otherwise an endangered species  
18 or threatened species in the United States, Canada,  
19 or Mexico, but which because of its value to the Na-  
20 tion as a whole has been designated by Congress as  
21 needing protection under this Act.

22 “(8a) The term ‘foreign species’ means a spe-  
23 cies naturally occurring outside the territory of the  
24 United States, but does not include any marine spe-  
25 cies, any species having a significant population oc-

1 curring in the wild within the United States, or any  
2 migratory species whose migration route includes  
3 United States territory.”;

4 (3) by adding after paragraph (13) (as redesign-  
5 nated by section 102(a)(1) of this Act) the following  
6 new paragraph:

7 “(14) The term ‘imminent threat to the exist-  
8 ence of’, with respect to a species, means, as deter-  
9 mined by the Secretary under section 4(b)(7) or the  
10 President under section 5(e)(2) solely on the basis of  
11 the best scientific and commercial data available,  
12 that there is a significant likelihood that the species  
13 will become extinct, or will be placed on an irrevers-  
14 ible course to extinction, during the 2-year period  
15 beginning on the date of the determination that the  
16 species is an endangered species or a threatened spe-  
17 cies, unless the species is accorded fully the protec-  
18 tion available under this Act during such period.”;

19 (4) by amending paragraph (22) (as redesign-  
20 nated by section 102(a)(1) of this Act) to read as  
21 follows:

22 “(22) The term ‘Secretary’ means, except as  
23 otherwise herein provided, the Secretary of the Inte-  
24 rior, except that with respect to the enforcement of  
25 the provisions of this Act and the Convention which

1       pertain to the importation or exportation of terres-  
2       trial plants, the term also means the Secretary of  
3       Agriculture.”; and

4               (5) by amending paragraph (23) (as redesign-  
5       nated by section 102(a)(1) of this Act) to read as  
6       follows:

7               “(23) The term ‘species’ includes any sub-  
8       species of fish or wildlife or plants, and any distinct  
9       population of national interest of any species or ver-  
10      tebrate fish or wildlife which interbreeds when ma-  
11      ture.”.

12      (c) SOLICITING SCIENTIFIC INFORMATION.—Section  
13      4(b)(3) (16 U.S.C. 1533(b)(3)), as amended by sections  
14      303(a), 304(a), 305(a), and 306 of this Act, is amended  
15      by adding at the end the following new subparagraph:

16              “(F) Before any further action is taken in ac-  
17      cordance with this paragraph, the Secretary shall  
18      publish in the Federal Register a solicitation for fur-  
19      ther information regarding the status of a species  
20      which is the subject of a proposed rule to list the  
21      species as an endangered species or threatened spe-  
22      cies, including current population, populations  
23      trends, current habitat, Federal conservation lands  
24      which could provide habitat for the species, food  
25      sources, predators, breeding habits, captive breeding



1 efforts, commercial, nonprofit, avocational, or vol-  
2 untary conservation activities, or other pertinent in-  
3 formation which may assist in making a determina-  
4 tion under this section. The solicitation shall give a  
5 time limit within which to submit the information  
6 which shall be not less than 180 days. The time  
7 limit shall be extended for an additional 180 days at  
8 the request of any person who submits a request for  
9 such extension along with the reasons therefor. The  
10 Secretary in making the determination required in  
11 this subsection, shall give equal weight to the infor-  
12 mation submitted in accordance with this para-  
13 graph.”.

14 (d) EMERGENCY LISTINGS.—Section 4(b)(7) (16  
15 U.S.C. 1533(b)(7)) is amended—

16 (1) by striking the matter preceding subpara-  
17 graph (A) and inserting the following:

18 “(7) EMERGENCY REGULATIONS.—Neither  
19 paragraph (4), (5), or (6) of this subsection nor sec-  
20 tion 553 of title 5, United States Code, shall apply  
21 to any regulation issued by the Secretary in regard  
22 to any emergency posing an imminent threat to the  
23 existence of any species of fish or wildlife or plants,  
24 but only if—”; and

1           (2) by adding at the end the following new sen-  
2           tence: “The Secretary may not delegate the final de-  
3           cision to issue an emergency regulation under this  
4           paragraph.”.

5           (e) USING BEST DATA.—Section 4(b)(8) (16 U.S.C.  
6           1533(b)(8)) is amended by striking “the data” and insert-  
7           ing “the best scientific and commercial data”.

8           (f) IDENTIFYING DATA USED FOR DECISIONS.—Sec-  
9           tion 4(b) (16 U.S.C. 1533(b)) is amended by adding at  
10          the end the following new paragraph:

11           “(9) PUBLICATION IN FEDERAL REGISTER.—

12           (A) The Secretary shall identify and publish in the  
13           Federal Register with each proposed rule under  
14           paragraph (1) or section 5(i) a description of—

15                   “(i) all data that are to be considered in  
16                   making the determination under the subsection  
17                   to which the proposed rule relates and that  
18                   have yet to be collected or field verified;

19                   “(ii) data that are necessary to make de-  
20                   terminations and that can be collected prior to  
21                   any determination; and

22                   “(iii) data that are necessary to ensure the  
23                   scientific validity of the determination, and each  
24                   deadline for collecting these data.

1           “(B) In making a determination pursuant to  
2       paragraph (1) or section 5(i), the Secretary shall  
3       collect and consider the data identified and described  
4       pursuant to subparagraph (A)(ii).

5           “(C) The Secretary shall identify and publish in  
6       the Federal Register with each final rule promul-  
7       gated under paragraph (1) or section 5(i)—

8           “(i) a description of any data that have  
9       not been collected and considered in the deter-  
10      mination to which the rule relates and that are  
11      necessary to ensure the continued scientific va-  
12      lidity of the determination; and

13          “(ii) each deadline by which the Secretary  
14      shall collect and consider the data in accordance  
15      with subparagraph (D).

16          “(D) Not later than the deadline published by  
17      the Secretary pursuant to subparagraph (C)(ii), the  
18      Secretary shall—

19          “(i) collect the data referred to in each  
20      paragraph;

21          “(ii) provide an opportunity for public re-  
22      view and comment on the data;

23          “(iii) consider the data after the review  
24      and comment; and

1           “(iv) publish in the Federal Register the  
2           results of that consideration and a description  
3           of and schedule for any actions warranted by  
4           the data.”.

5           (g) JUDICIAL REVIEW.—Section 4 (16 U.S.C. 1533),  
6           as amended by section 302 of this Act, is amended by add-  
7           ing at the end the following new subsection:

8           “(j) JUDICIAL REVIEW OF DETERMINATIONS.—Any  
9           determination with regard to whether a species is a threat-  
10          ened species or endangered species shall be subject to a  
11          de novo judicial review with the court determining whether  
12          the decision is supported by a preponderance of the evi-  
13          dence.”.

14       **SEC. 302. PEER REVIEW.**

15          Section 4 (16 U.S.C. 1533) is amended by adding  
16          after subsection (h), as redesignated by section 507(b)(2)  
17          of this Act, the following new subsection:

18          “(i) PEER REVIEW REQUIREMENT.—

19               “(1) DEFINITIONS.—In this subsection:

20                   “(A) The term ‘action’ means—

21                           “(i) the determination that a species  
22                           is an endangered species or a threatened  
23                           species under subsection (a);

24                           “(ii) the determination under sub-  
25                           section (a) that an endangered species or

1 a threatened species be removed from any  
2 list published under subsection (c)(1);

3 “(iii) the designation, or revision of  
4 the designation, of critical habitat for an  
5 endangered species or a threatened species  
6 under section 5(i); and

7 “(iv) the determination that a pro-  
8 posed action is likely to jeopardize the con-  
9 tinued existence of a listed species and the  
10 proposal of any reasonable and prudent al-  
11 ternatives by the Secretary under section  
12 7(b)(3).

13 “(B) The term ‘qualified individual’ means  
14 an individual with expertise in the biological  
15 sciences—

16 “(i) who is by virtue of advanced edu-  
17 cation, training, or avocational, academic,  
18 commercial, research, or other experience  
19 competent to review the adequacy of any  
20 scientific methodology supporting the ac-  
21 tion, the validity of any conclusions drawn  
22 from the supporting data, and the com-  
23 petency of the individual who conducted  
24 the research or prepared the data;

1                   “(ii) who is not otherwise employed by  
2                   or under contract to the Secretary of the  
3                   Interior; and

4                   “(iii) who has not participated in the  
5                   listing decision.

6                   “(2) LIST OF PEER REVIEWERS.—In order to  
7                   provide a substantial list of individuals who on a vol-  
8                   untary basis are available to participate in peer re-  
9                   view actions, the Secretary shall, through the Fed-  
10                  eral Register, through scientific and commercial  
11                  journals, and through the National Academy of  
12                  Sciences and other such institutions, seek nomina-  
13                  tions of persons who agree to peer review action  
14                  upon appointment by the Secretary.

15                  “(3) APPOINTMENT OF PEER REVIEWERS.—Be-  
16                  fore any action shall become final, the Secretary  
17                  shall appoint, from among the list prepared in ac-  
18                  cordance with paragraph (2), not more than 2 quali-  
19                  fied individuals who shall review, and report to the  
20                  Secretary on, the scientific information and analyses  
21                  on which the proposed action is based. The Governor  
22                  of each State in which the species is located that is  
23                  the subject of the proposal, may appoint up to 2  
24                  qualified individuals to conduct peer review of the  
25                  action. If any individual declines the appointment,

1 the Secretary or the Governor shall appoint another  
2 individual to conduct the peer review.

3 “(4) DATA PROVIDED TO PEER REVIEWER.—  
4 The Secretary shall make available to each person  
5 conducting peer review all scientific information  
6 available regarding the species which is the subject  
7 of the peer review. The Secretary shall not indicate  
8 to a peer reviewer the name of any person that sub-  
9 mitted a petition for listing or delisting that is re-  
10 viewed by the reviewer.

11 “(5) OPINION OF PEER REVIEWERS.—The peer  
12 reviewer shall give his or her opinion with regard to  
13 any technical or scientific deficiencies in the pro-  
14 posal, whether the methodology and analysis sup-  
15 porting the petition conform to the standards of the  
16 academic and scientific community, and whether the  
17 proposal is supported by sufficient credible evidence.

18 “(6) PUBLICATION OF PEER REVIEW RE-  
19 PORT.—The Secretary shall publish with any final  
20 regulation implementing an action a summary of the  
21 report of the peer review panel noting points of dis-  
22 agreement between peer reviewers, if any, and the  
23 response of the Secretary to the report.”.

1 **SEC. 303. MAKING DATA PUBLIC.**

2 (a) PUBLIC DATA.—Section 4(b)(3) (16 U.S.C.  
3 1533(b)(3)), as amended by sections 304(a), 305(a), and  
4 306 of this Act, is amended by adding at the end the fol-  
5 lowing new subparagraph:

6 “(E)(i) All data or information considered by  
7 the Secretary in making the determination to list as  
8 provided in this section, shall be considered public  
9 information and shall be subject to section 552 of  
10 title 5, United States Code (commonly referred to as  
11 the ‘Freedom of Information Act’) unless the Sec-  
12 retary, for good cause, determines that the informa-  
13 tion must be kept confidential. The burden shall be  
14 on the Secretary to prove that such information  
15 shall be confidential and such decision shall be  
16 reviewable by a district court of competent jurisdic-  
17 tion, which shall review the decision in chambers.  
18 Good cause can include that the information is of a  
19 proprietary nature or that release of the location of  
20 the species may endanger the species further.

21 “(ii) The Secretary shall minimize releasing the  
22 identification of particular private property as habi-  
23 tat for a species which is determined to be an endan-  
24 gered species or threatened species or proposed to be  
25 determined to be an endangered species or threat-  
26 ened species, unless the Secretary first notifies the



1 owner thereof and receives his or her consent, or the  
2 information is otherwise public information.”.

3 (b) PUBLIC HEARINGS.—Section 4(b) (16 U.S.C.  
4 1533(b)) is amended—

5 (1) in paragraph (5) (as amended by section  
6 305(b) of this Act) by adding at the end the follow-  
7 ing new subparagraph:

8 “(E) promptly hold at least 1 hearing in each  
9 State in which the species proposed for determina-  
10 tion as an endangered species or a threatened spe-  
11 cies is believed to occur, and in a location that is as  
12 close as possible to the center of the habitat of such  
13 species in such State.”; and

14 (2) in paragraph (6) by amending all that pre-  
15 cedes subparagraph (B) to read as follows:

16 “(6) PUBLICATION OF DETERMINATION.—(A)  
17 Within the one-year period beginning on the date on  
18 which general notice is published in accordance with  
19 paragraph (5)(A)(i) regarding a proposed regulation,  
20 the Secretary shall publish in the Federal Register,  
21 if a determination as to whether a species is an en-  
22 dangered species or a threatened species is involved,  
23 either—

24 “(i) a final regulation to implement such  
25 determination,

1           “(ii) a final regulation to implement such  
2           revision or a finding that such revision should  
3           not be made,

4           “(iii) notice that such one-year period is  
5           being extended under subparagraph (B)(i), or

6           “(iv) notice that the proposed regulation is  
7           being withdrawn under subparagraph (B)(ii),  
8           together with the finding on which such with-  
9           drawal is based.”.

10       (c) NOTICE OF HEARINGS.—Section 14 is amended  
11 to read as follows:

12       **“SEC. 14. NOTICE OF HEARINGS.**

13       “Except as otherwise provided by this Act, the Sec-  
14 retary shall provide notice of any hearing or other public  
15 meeting at which public comment is accepted under this  
16 Act by publication in the Federal Register and in a news-  
17 paper of general circulation in the location of the hearing  
18 or meeting at least 30 days prior to the hearing or meet-  
19 ing.”.

20       **SEC. 304. IMPROVING THE PETITION AND DESIGNATION**  
21               **PROCESSES.**

22       (a) PETITIONS TO LIST.—Section 4(b)(3) (16 U.S.C.  
23 1533(b)(3)) is amended to read as follows:

24           “(3) PETITIONS.—(A) A petition submitted to  
25       the Secretary asserting that a species is a threat-

1        ened species or endangered species and requesting  
2        that the Secretary make a determination to that ef-  
3        fect shall contain at a minimum the following:

4                “(i) Information on the current population  
5                and range of the species.

6                “(ii) Any information on efforts to field  
7                test the population estimates on the species.

8                “(iii) If literature from scientific or other  
9                journals, dissertations or other such scientific  
10              writings of another person are submitted, they  
11              must be accompanied by an affidavit that the  
12              literature or writings have been peer reviewed  
13              along with the names of the persons performing  
14              the peer review.

15              “(iv) The qualifications of any person as-  
16             serting expertise on the species or status of the  
17              species.

18              “(v) Information about the demonstrated  
19              habitat needs of the species, along with the  
20              known occupied habitat of the species.

21              “(vi) Known causes of the species decline.

22              “(B) Petitions to add a species to, or to remove  
23              a species from, either of the lists published under  
24              subsection (c)(1) shall be submitted in accordance  
25              with section 553(e) of title 5, United States Code.

1       The Secretary may commence a review of the status  
2       of the species concerned consistent with the prior-  
3       ities set by the Secretary for the listing of species.  
4       The Secretary shall promptly publish any finding  
5       made under this subparagraph in the Federal Reg-  
6       ister.”.

7       (b) CONFORMING AMENDMENTS.—Section 4(g), as  
8       redesignated by section 507(b)(2), is amended—

9               (1) by striking paragraph (2); and

10              (2) by redesignating paragraphs (3) and (4) in  
11       order as paragraphs (2) and (3).

12   **SEC. 305. GREATER STATE INVOLVEMENT.**

13       (a) STATE CONSULTATION ON PETITIONS.—Section  
14       4(b)(3) (16 U.S.C. 1533(b)(3)), as amended by section  
15       304(a) of this Act, is amended by adding after subpara-  
16       graph (B) the following subparagraph:

17               “(C) At the time the review provided in sub-  
18       paragraph (B) is commenced—

19                       “(i) the Secretary shall contact the Gov-  
20       ernor of each State in which the proposed spe-  
21       cies is located and shall solicit from the Gov-  
22       ernor information about the action requested in  
23       the petition in that State necessary to render a  
24       decision and shall solicit the advice of the Gov-  
25       ernor on whether the status of species merits

1 the action petitioned for, and if the Governor  
2 advises that the petition action is not warranted  
3 and thereafter the Secretary proceeds with the  
4 action, the Secretary shall have the burden of  
5 showing that the information submitted by the  
6 Governor is incorrect and that the action is  
7 warranted; and

8 “(ii) the Secretary shall, to the maximum  
9 extent feasible, require by field testing, the ver-  
10 ification of the information presented regarding  
11 the status of the species.”.

12 (b) REGULATIONS TO IMPLEMENT DETERMINA-  
13 TIONS.—Section 4(b)(5) (16 U.S.C. 1533(b)(5)) is  
14 amended to read as follows:

15 “(5) NOTICE REQUIRED.—With respect to any  
16 regulation proposed by the Secretary to implement a  
17 determination referred to in subsection (a)(1) of this  
18 section, the Secretary shall—

19 “(A) not less than 90 days before the ef-  
20 fective date of the regulation—

21 “(i) publish a general notice and the  
22 complete text of the proposed regulation in  
23 the Federal Register, and

24 “(ii) give actual notice of the proposed  
25 regulation (including the complete text of

1           the regulation) to the Governor of each  
2           State in which the species is believed to  
3           occur, and to each county, or equivalent ju-  
4           risdiction in which the species is believed  
5           to occur, and consult with such agency,  
6           and each such jurisdiction, thereon;

7           “(B) in cooperation with the Secretary of  
8           State, give notice of the proposed regulation to  
9           each foreign nation in which the species is be-  
10          lieved to occur or whose citizens harvest the  
11          species on the high seas, and consult with such  
12          nation thereon;

13          “(C) give notice of the proposed regulation  
14          to any person who requests such notice, any  
15          person who has submitted additional data, each  
16          State and local government within which the  
17          species is believed to occur or which is likely to  
18          experience any effects of any measures to pro-  
19          tect the species under this Act, and such profes-  
20          sional scientific organizations as the Secretary  
21          deems appropriate; and

22          “(D) publish a summary of the proposed  
23          regulation in a newspaper of general circulation  
24          in each area of the United States in which the  
25          species is believed to occur.”.

1 (c) STATE CONSULTATION ON FINAL DETERMINA-  
2 TION.—Section 4(h), as redesignated by section 507(b)(2)  
3 of this Act, is amended to read as follows:

4 “(h) SUBMISSION TO STATE AGENCY OF JUSTIFICA-  
5 TION FOR REGULATIONS INCONSISTENT WITH STATE  
6 AGENCY’S COMMENTS OR PETITION.—If, in the case of  
7 any regulation proposed by the Secretary under the au-  
8 thority of this section, a State agency which consulted with  
9 the Secretary in accordance with subsection (b)(5)(A)(ii)  
10 of this section files comments disagreeing with all or part  
11 of the proposed regulation, the Secretary shall not issue  
12 a final regulation which is in conflict with such comments  
13 until the Secretary further consults with the President, or  
14 if the Secretary fails to adopt a regulation pursuant to  
15 an action petitioned by a State agency under subsection  
16 (b)(3) of this section, the Secretary shall submit to the  
17 State agency a written justification for the failure of the  
18 Secretary to adopt regulations consistent with the agen-  
19 cy’s comments or petition.”.

20 **SEC. 306. MONITORING THE STATUS OF SPECIES.**

21 Section 4(b)(3) (16 U.S.C. 1533(b)(3)), as amended  
22 by sections 304(a) and 305(a) of this Act, is amended by  
23 adding after subparagraph (C) the following subpara-  
24 graph:

1           “(D) The Secretary shall implement a system  
2           to monitor effectively the status of all species with  
3           respect to which a finding is made that the peti-  
4           tioned action is warranted but precluded by propos-  
5           als to determine whether any species is an endan-  
6           gered species or a threatened species and progress is  
7           being made to add qualified species to the list pub-  
8           lished under subsection (c) and to remove from lists  
9           published under that subsection species for which  
10          protection of this Act is no longer necessary, and  
11          shall make prompt use of the authority under para-  
12          graph (7) to prevent a significant risk to the well  
13          being of any such species.”.

14   **SEC. 307. PETITIONS TO DELIST SPECIES.**

15          Section 4(b)(3) (16 U.S.C. 1533(b)(3)), as amended  
16          by sections 301(a) and (c), 303(a), 304(a), 305(a), and  
17          306 of this Act, is further amended by adding at the end  
18          the following new subparagraphs:

19               “(G) Any person may submit to the Secretary  
20               a petition to revise a previous determination by the  
21               Secretary under this Act that a species is an endan-  
22               gered species or threatened species and to remove  
23               the species from a list published under subsection  
24               (c), on the basis that—



1 “(i) new data or a reinterpretation of prior  
2 data indicates that the previous determination  
3 was in error;

4 “(ii) the species is extinct; or

5 “(iii) the population level target established  
6 for the species in a conservation plan under sec-  
7 tion 5(c)(3)(C)(vii) has been achieved.

8 “(H) Not later than 90 days after receiving a  
9 petition under subparagraph (D) for a species, the  
10 Secretary shall publish—

11 “(i) a proposed regulation to revise a pre-  
12 vious determination for the species and to re-  
13 move the species from a list published under  
14 subsection (c) on a basis set forth in subpara-  
15 graph (G); or

16 “(ii) a finding that such a basis for the ac-  
17 tion requested by the petition does not exist.”.

18 **TITLE IV—RECOGNIZING OTHER**  
19 **FEDERAL ACTION, LAWS, AND**  
20 **MISSIONS**

21 **SEC. 401. BALANCE ESA WITH OTHER LAWS AND MISSIONS.**

22 (a) FEDERAL AGENCY ACTIONS.—Section 7 (16  
23 U.S.C. 1536) is amended by amending the matter preced-  
24 ing subsection (b) to read as follows:

1 **“SEC. 7. INTERAGENCY COOPERATION.**

2 “(a) FEDERAL AGENCY ACTIONS AND CONSULTA-  
3 TIONS.—

4 “(1) PROGRAMS ADMINISTERED BY THE SEC-  
5 RETARY OF THE INTERIOR.—The Secretary shall re-  
6 view other programs administered by the Secretary  
7 and utilize such programs in furtherance of the pur-  
8 poses of this Act. Except as provided in section 5(d),  
9 (e), and (i), all other Federal agencies shall, consist-  
10 ent with their primary missions and in consultation  
11 with and with the assistance of the Secretary, utilize  
12 their authorities in furtherance of the purposes of  
13 this Act by carrying out programs for the conserva-  
14 tion of endangered species and threatened species  
15 listed pursuant to section 4.

16 “(2) PROGRAMS ADMINISTERED BY OTHER  
17 AGENCIES.—Except as provided in section 5(d) and  
18 (e), each Federal agency shall ensure that any action  
19 authorized, funded, or carried out by such agency  
20 (hereinafter in this section referred to as an ‘agency  
21 action’) is not likely to jeopardize the continued ex-  
22 istence of any endangered species or threatened spe-  
23 cies or destroy or adversely modify any habitat that  
24 is designated by the Secretary as critical habitat of  
25 the species in a manner that is likely to jeopardize  
26 the continued existence of the species. In the case of

1 any agency action that the agency has determined is  
2 subject to this paragraph and that is likely to sig-  
3 nificantly and adversely affect an endangered species  
4 or a threatened species, the Federal agency shall ful-  
5 fill the requirements of this paragraph in consulta-  
6 tion with and with the assistance of the Secretary.  
7 As provided in section 5(d)(2), each Federal agency  
8 may initiate consultation with the Secretary to re-  
9 ceive guidance from the Secretary on the consistency  
10 of its action with the conservation objective or con-  
11 servation plan for such species developed pursuant  
12 to section 5, with an incidental take permit for such  
13 species issued pursuant to section 10(a), or with a  
14 cooperative management agreement concerning such  
15 species executed pursuant to section 6(b). In fulfill-  
16 ing the requirements of this paragraph each agency  
17 shall use the best available scientific and commercial  
18 data, shall consider expert opinion and any reason-  
19 able and prudent alternatives developed under sub-  
20 section (b)(3)(A), and shall render the decision of  
21 the agency in a manner consistent with the obliga-  
22 tions and responsibilities of the agency under each  
23 applicable law and treaty.

24 “(3) INVOLVEMENT OF APPLICANTS FOR FED-  
25 ERAL APPROVALS.—Subject to such guidelines as

1       the Secretary may establish, a Federal agency shall  
2       consult with the Secretary on any prospective agency  
3       action at the request of, with the involvement of,  
4       and in cooperation with, the prospective permit or li-  
5       cense applicant if the applicant has reason to believe  
6       that an endangered species or a threatened species  
7       may be present in the area affected by his project,  
8       that the project is inconsistent with the conservation  
9       objective or plan for such species developed pursuant  
10      to section 5, an incidental take permit for such spe-  
11      cies issued pursuant to section 10(a), or a coopera-  
12      tive management agreement for such species exe-  
13      cuted pursuant to section 6(b), and that implemen-  
14      tation of such action will likely affect such species.

15           “(4) CONFERRING ON CANDIDATE SPECIES.—  
16      Each Federal agency shall confer with the Secretary  
17      on any agency action which is likely to jeopardize  
18      the continued existence of any species proposed to be  
19      listed under section 4 or to destroy or adversely  
20      modify any habitat that is proposed to be designated  
21      by the Secretary as critical habitat of such a species  
22      in a manner that is likely to jeopardize the contin-  
23      ued existence of the species. This paragraph does  
24      not require a limitation on the commitment of re-  
25      sources as described in subsection (d).

1           “(5) LIMITATIONS ON MODIFICATIONS TO LAND  
2       MANAGEMENT.—Notwithstanding any other provi-  
3       sion of this Act, the authority in this Act shall not  
4       be construed to authorize or form the basis for any  
5       Federal agency to modify a land management plan,  
6       policy, standard, or guideline or water allocation  
7       plan unless a determination has been made under  
8       section 4 that a species is threatened or endangered.  
9       Notwithstanding any other law or regulation, man-  
10      agement plans, practices, policies, projects, or guide-  
11      lines, including management plans which, as of Oc-  
12      tober 1, 1995, are subject to modification pending  
13      completion of a final environmental impact state-  
14      ment, shall not be amended for the purpose of main-  
15      taining viable populations of native and desired non-  
16      native species unless it is determined under this Act  
17      that current practices are likely to jeopardize the  
18      continued existence of the species.”.

19       (b) RESOLVING CONFLICTS BETWEEN FEDERAL  
20      AGENCIES.—Section 7(a), as amended by subsection (a)  
21      of this section and section 402 of this Act, is amended  
22      by adding at the end the following new paragraphs:

23           “(8) RELATIONSHIP TO DUTIES UNDER OTHER  
24      LAWS.—(A) The responsibilities of a Federal agency  
25      under this section shall not supersede and shall be

1 implemented in a manner consistent with duties as-  
2 signed to the Federal agency by any other laws or  
3 by any treaties.

4 “(B)(i) If a Federal agency determines that the  
5 responsibilities and duties described in subparagraph  
6 (A) are in irreconcilable conflict, the action agency  
7 shall request the President to resolve the conflict.

8 “(ii) In determining a resolution to such a con-  
9 flict, the President shall consider and choose the  
10 course of action that best meets the public interest  
11 and, to the extent possible, balances pursuit of the  
12 conservation objective or the purposes of the con-  
13 servation plan with economic and social needs and  
14 pursuit of the purposes of the other laws or treaties.  
15 The authority assigned to the President by this sub-  
16 paragraph may not be delegated to a member of the  
17 executive branch who has not been confirmed by the  
18 Senate.

19 “(9) MODIFICATION OF PROJECTS AND FACILI-  
20 TIES.—Any consultation and conferencing required  
21 under paragraphs (2) and (4) for an agency action  
22 that consists solely of a modification of a Federal,  
23 State, local government, or private project or facility  
24 shall be limited to the consideration of the effects

1       that result from the modification that comprises the  
2       agency action.”.

3       (c) PROCEDURES FOR CONSULTATION.—Section 7(b)  
4       (16 U.S.C. 1536(b)) is amended by striking so much as  
5       precedes paragraph (3)(B) and inserting the following:

6       “(b) OPINION OF SECRETARY.—

7               “(1) PERIODS WITHIN WHICH CONSULTATION  
8       MUST BE COMPLETED.—(A) Consultation under sub-  
9       section (a)(2) with respect to any agency action shall  
10      be concluded within the 90-day period beginning on  
11      the date on which initiated by the Federal agency.  
12      The period may be extended by not more than 45  
13      days by the Secretary or head of the Federal agency  
14      by publication of notice in the Federal Register that  
15      sets forth the reasons for the extension. Consultation  
16      on an agency action involving a permit or license ap-  
17      plicant shall be concluded not later than the earlier  
18      of—

19               “(i) 1 year after the date of submission of  
20      the application to the Federal agency; or

21               “(ii) the end of the period established  
22      under subparagraph (B).

23               “(B) Subject to subparagraph (A), in the case  
24      of an agency action involving a permit or license ap-  
25      plicant, the Secretary and the Federal agency may

1 not mutually agree to conclude consultation within a  
2 period exceeding 90 days unless the Secretary, be-  
3 fore the close of the 90th day referred to in subpara-  
4 graph (A)—

5 “(i) if the consultation period proposed to  
6 be agreed to will end before the 150th day after  
7 the date on which consultation was initiated,  
8 submits to the applicant a written statement  
9 setting forth—

10 “(I) the reasons why a longer period  
11 is required,

12 “(II) the information that is required  
13 to complete the consultation, and

14 “(III) the estimated date on which  
15 consultation will be completed; or

16 “(ii) if the consultation period proposed to  
17 be agreed to will end on or after the 150th day  
18 but before the 210th day after the date on  
19 which consultation was initiated, obtains the  
20 consent of the applicant to such period.

21 “(C) If consultation is not concluded and the  
22 written statement of the Secretary required under  
23 paragraph (3)(A) is not provided to the Federal  
24 agency by the applicable deadline established under  
25 this paragraph, the requirements of subsection



1 (a)(2) shall be deemed met and the Federal agency  
2 may proceed with the agency action.

3 “(D) A permit or license applicant shall be enti-  
4 tled to participate fully in any consultation or con-  
5 ferencing under this section with respect to any  
6 agency action required for the granting of an au-  
7 thorization or provision of funding to the applicant.

8 “(2) PROCEDURE FOR APPLICANT CONSULTA-  
9 TION.—Consultation under subsection (a)(3) shall be  
10 concluded within such period as is agreeable to the  
11 Secretary, the Federal agency, and the applicant  
12 concerned.

13 “(3) WRITTEN OPINION OF SECRETARY.—(A)(i)  
14 Promptly after conclusion of consultation under  
15 paragraph (2) or (3) of subsection (a), the Secretary  
16 shall provide to the Federal agency and the appli-  
17 cant, if any, a written statement setting forth the  
18 Secretary’s opinion, and a summary of the informa-  
19 tion on which the opinion is based, detailing whether  
20 the agency action is consistent with the conservation  
21 objective or plan developed pursuant to section 5, an  
22 incidental taking permit issued pursuant to section  
23 10(a), or a cooperative management agreement exe-  
24 cuted pursuant to section 6(b). If the Secretary de-  
25 termines that the action is likely to jeopardize the

1 continued existence of the species as described in  
2 subsection (a), the Secretary shall suggest reason-  
3 able and prudent alternatives (considering any rea-  
4 sonable and prudent alternatives undertaken by  
5 other Federal agencies) that are consistent with sub-  
6 section (a)(2) and that impose the least social and  
7 economic costs.

8 “(ii) Unless required by law other than sub-  
9 sections (a) through (d), the Secretary, in any opin-  
10 ion or statement concerning an agency action made  
11 under this subsection (including any reasonable and  
12 prudent alternative suggested under clause (i) or  
13 any reasonable and prudent measure specified under  
14 clause (ii) of paragraph (4)), and the head of the  
15 Federal agency proposing the agency action, may  
16 not require, provide for, or recommend the imposi-  
17 tion of any restriction or obligation on the activity  
18 of any person that is not authorized, funded, carried  
19 out, or otherwise subject to regulation by the Fed-  
20 eral agency. Nothing in this clause prevents the Sec-  
21 retary from pursuing any appropriate remedy under  
22 section 11 for any activity prohibited by section 4(d)  
23 or 9.

24 “(iii) The Secretary shall not require a reason-  
25 able and prudent alternative that may or will result

1 in a significant adverse impact upon waterfowl popu-  
2 lations, waterfowl habitat management, or waterfowl  
3 hunting opportunities in a significant waterfowl  
4 breeding, staging, or wintering habitat area. In this  
5 clause, the term 'significant adverse impact' means  
6 any actions, proposed or in effect, which individually  
7 or cumulatively are likely to reduce the carrying ca-  
8 pacity of habitat for waterfowl by 10 percent or  
9 more of its current capability, as determined on a  
10 local, regional, statewide or national basis. In this  
11 clause, the term 'significant waterfowl breeding,  
12 staging, or wintering habitat areas' means those pri-  
13 vate or public lands managed primarily for, or pro-  
14 viding, waterfowl breeding, staging or wintering  
15 habitat including seasonal/permanent marsh lands or  
16 land under rice cultivation for three out of the past  
17 five years.

18 “(iv) Notwithstanding any other provision of  
19 law, if the Secretary renders an opinion or suggests  
20 any reasonable and prudent alternative which has  
21 general application to a group of individuals con-  
22 ducting a commercial operation, the Secretary may  
23 not promulgate an emergency rule without providing  
24 at least 30 days for public comment on the emer-  
25 gency rule.

1 (d) ACTIVITIES PRIOR TO COMPLETION OF CON-  
2 SULTATION.—Section 7(d) (16 U.S.C. 1536(d)) is amend-  
3 ed to read as follows:

4 “(d) LIMITATION ON COMMITMENT OF RE-  
5 SOURCES.—

6 “(1) IN GENERAL.—Except as provided in para-  
7 graph (2), after initiation of consultation required  
8 under subsection (a)(2), the Federal agency and the  
9 permit or license applicant shall not make any irre-  
10 versible or irretrievable commitment of resources  
11 with respect to the agency action which has the ef-  
12 fect of foreclosing the formulation or implementation  
13 of any reasonable and prudent alternative measures  
14 which would not violate subsection (a)(2).

15 “(2) RELATIONSHIP TO LAND MANAGEMENT  
16 PLANNING REQUIREMENTS.—If the listing of a spe-  
17 cies, or other procedure or decision related to a spe-  
18 cies listed under section 4(c)(1), requires consulta-  
19 tion under subsection (a)(2) on a land use plan or  
20 land or resource management plan (or an amend-  
21 ment to or revision of the plan) prepared under sec-  
22 tion 202 of the Federal Land Policy and Manage-  
23 ment Act of 1976 (43 U.S.C. 1712) or section 6 of  
24 the Forest and Rangeland Renewable Resources  
25 Planning Act of 1974 (16 U.S.C. 1604), the land

1 management agency implementing the plan may au-  
2 thorize, fund, or carry out an agency action that is  
3 consistent with the plan prior to the completion of  
4 the consultation, if, under the procedures established  
5 by this section, the head of the land management  
6 agency responsible for the action determines or has  
7 determined that the action—

8 “(A) is not likely to significantly and ad-  
9 versely affect the species; or

10 “(B) is likely to significantly and adversely  
11 affect the species, and the Secretary issues an  
12 opinion on the action that finds that the ac-  
13 tion—

14 “(i) is not likely to jeopardize the con-  
15 tinued existence of the species; or

16 “(ii) is likely to jeopardize the contin-  
17 ued existence of the species, and the agen-  
18 cy agrees to a reasonable and prudent al-  
19 ternative.”.

20 (e) DEFINITIONS.—Section 3 (16 U.S.C. 1532) is  
21 amended—

22 (1) by adding after paragraph (15) (as added  
23 by section 204(a) of this Act) the following new  
24 paragraph:

1           “(16) The term ‘likely to jeopardize the contin-  
2       ued existence of’, with respect to an action or activ-  
3       ity affecting an endangered species or a threatened  
4       species, means an action or activity that significantly  
5       diminishes the likelihood of the survival of the spe-  
6       cies by significantly reducing the numbers or dis-  
7       tribution of the entire species.’”;

8           (2) by amending paragraph (18) (as redesign-  
9       nated by section 102(a)(1) of this Act) to read as  
10      follows:

11          “(18) The term ‘permit or license applicant’  
12       means, with respect to the consultation procedures  
13       established by section 7, any person that requires  
14       authorization or funding from a Federal agency as  
15       a prerequisite to conducting an activity (including a  
16       party to a written lease, right-of-way, license, con-  
17       tract to purchase or provide a product or service, or  
18       other permit with a Federal agency) that requires an  
19       action from the agency to obtain the benefit of the  
20       activity.’”; and

21          (3) by adding after paragraph (20) (as redesign-  
22       nated by section 102(a)(1) of this Act) the following  
23       new paragraph:

24          “(21) The term ‘reasonable and prudent alter-  
25       native’ means an alternative action under section

1       7(b)(3) during consultation on an agency action  
2       that—

3               “(A) can be implemented in a manner con-  
4               sistent with the intended purpose of the agency  
5               action or the activity of a non-Federal person  
6               under section 10;

7               “(B) can be implemented consistent with  
8               the scope of the legal authority and jurisdiction  
9               of the Federal agency;

10              “(C) is economically and technologically  
11              feasible for the applicant or non-Federal person  
12              to undertake; and

13              “(D) the Secretary believes would avoid  
14              being likely to jeopardize the continued exist-  
15              ence of the species.”.

16 **SEC. 402. EXEMPTIONS FROM CONSULTATION AND CON-**  
17 **FERENCING.**

18       Section 7(a), as amended by section 401(a) of this  
19 Act, is amended by adding at the end the following new  
20 paragraphs:

21              “(6) ACTIONS EXEMPT FROM CONSULTATION  
22              AND CONFERENCING.—Consultation and conferenc-  
23              ing under paragraphs (2) and (4) shall not be re-  
24              quired for any agency action that—

1           “(A) is consistent with the provisions of a  
2           final conservation plan under section 5(c)(5) or  
3           a conservation objective described in section  
4           5(b)(3);

5           “(B) is consistent with a cooperative man-  
6           agement agreement or an incidental taking per-  
7           mit;

8           “(C) addresses a critical, imminent threat  
9           to public health or safety or a catastrophic nat-  
10          ural event or compliance with Federal, State, or  
11          local safety or public health requirements;

12          “(D) consists of routine operation, mainte-  
13          nance, rehabilitation, repair, or replacement to  
14          a Federal or non-Federal project or facility, in-  
15          cluding operation of a project or facility in ac-  
16          cordance with a previously issued Federal li-  
17          cense, permit, or other authorization; or

18          “(E) permits activities that occur on pri-  
19          vate land.

20          “(7) ACTIONS NOT PROHIBITED.—An agency  
21          action shall not constitute a taking of a species pro-  
22          hibited by this Act or any regulation issued under  
23          this Act if the action is consistent with—

24                 “(A) the actions provided for in a final  
25                 conservation plan under section 5(c)(5) or a



1 conservation objective described in section  
2 5(b)(3); or

3 “(B) a cooperative management agreement  
4 or an incidental take permit.”.

5 **SEC. 403. ELIMINATING THE EXEMPTION COMMITTEE (GOD**  
6 **COMMITTEE).**

7 (a) CONFORMING AMENDMENTS.—Section 7(c) (16  
8 U.S.C. 1536(c)) is amended—

9 (1) in the first full sentence by striking “(1) To  
10 facilitate” and inserting “To facilitate”; and

11 (2) by striking paragraph (2).

12 (b) PRESIDENTIAL EXEMPTIONS.—Section 7(e) (16  
13 U.S.C. 1536(e)) is amended to read as follows:

14 “(e) EXEMPTIONS.—Notwithstanding any other pro-  
15 vision of this Act—

16 “(1) the Secretary shall grant an exemption  
17 from this Act for any activity if the Secretary of De-  
18 fense determines that the exemption of the activity  
19 is necessary for reasons of national security; and

20 “(2) the President may grant an exemption  
21 from this Act for any area that the President has  
22 declared to be a major disaster area under The Rob-  
23 ert T. Stafford Disaster Relief and Emergency As-  
24 sistance Act (42 U.S.C. 5121 et seq.) for any project  
25 for the repair or replacement of a public facility sub-

1       stantially as the facility existed prior to the disaster  
 2       under section 405 or 406 of that Act (42 U.S.C.  
 3       5171 and 5172), if the President determines that  
 4       the project—

5               “(A) is necessary to prevent the recurrence  
 6               of such a natural disaster and to reduce the po-  
 7               tential loss of human life; and

8               “(B) involves an emergency situation that  
 9               does not allow the procedures of this Act (other  
 10              than this subsection) to apply.”.

11       (c) REPEAL.—Subsections (f) through (p) of section  
 12       7 (16 U.S.C. 1536(f)–(p)) are repealed.

## 13   **TITLE V—BETTER MANAGEMENT** 14       **AND CONSERVATION OF LIST-** 15       **ED SPECIES**

### 16   **SEC. 501. SETTING CONSERVATION OBJECTIVES.**

17       Section 5 (16 U.S.C. 1534) is redesignated as section  
 18       5A, and the following new section is added after section  
 19       4:

#### 20   **“SEC. 5. SPECIES CONSERVATION PLANS.**

21       “(a) IN GENERAL.—Except as provided in subsection  
 22       (b)(3)(C), the Secretary shall publish a conservation objec-  
 23       tive and a conservation plan for each species determined  
 24       to be an endangered species or a threatened species pursu-  
 25       ant to section 4.

1       “(b) DEVELOPMENT OF CONSERVATION OBJEC-  
2 TIVE.—

3               “(1) ASSESSMENT AND PLANNING TEAM.—Not  
4 later than 30 days after the listing determination,  
5 the Secretary shall appoint an assessment and plan-  
6 ning team which shall not be subject to the Federal  
7 Advisory Committee Act (5 U.S.C. App.) and shall  
8 consist of—

9               “(A) experts in biology or pertinent sci-  
10 entific fields, economics, property law and regu-  
11 lation, and other appropriate disciplines from  
12 the Department of the Secretary, other Federal  
13 agencies, and the private sector;

14               “(B) a representative nominated by the  
15 Governor of each affected State;

16               “(C) representatives nominated by each af-  
17 fected local government, if the local government  
18 agrees to the appointment of a representative;  
19 and

20               “(D) representatives of persons who may  
21 be directly, economically impacted by the con-  
22 servation plan.

23               “(2) ASSESSMENTS.—Not later than 180 days  
24 after the listing determination, the assessment and  
25 planning team shall report to the Secretary the as-

1        sessment of the following biological, economic, and  
2        intergovernmental factors with respect to the listed  
3        species:

4                “(A) The team shall assess—

5                        “(i) the biological considerations nec-  
6                        essary to carry out this Act;

7                        “(ii) the biological significance of the  
8                        species;

9                        “(iii) the geographic range and occu-  
10                        pied habitat of the species, and the type  
11                        and amounts of habitat needed, at a mini-  
12                        mum, to maintain the existence of the spe-  
13                        cies and, at a maximum, to secure recovery  
14                        of the species;

15                        “(iv) the current population, and the  
16                        population trend, of the species;

17                        “(v) the technical practicality of re-  
18                        covering the species;

19                        “(vi) the potential management meas-  
20                        ures capable of recovering, or reducing the  
21                        risks to survival of, the species, including  
22                        the contribution of existing or potential  
23                        captive breeding programs for the species,  
24                        predator control, enhancement of food  
25                        sources, supplemental feeding, and other

1 methods which enhance the survival of the  
2 young of the species; and

3 “(vii) where appropriate, the demon-  
4 strable commercial or medicinal value of  
5 the species.

6 “(B) The team shall assess the direct, indi-  
7 rect, and cumulative economic and social im-  
8 pacts on the public and private sectors, includ-  
9 ing local governments, that may result from the  
10 listing determination and any potential manage-  
11 ment measures identified under subparagraph  
12 (A)(vi), including impacts on the cost of govern-  
13 mental actions, tax and other revenues, employ-  
14 ment, the use and value of property, other so-  
15 cial, cultural, and community values, and an as-  
16 sessment of any commercial activity which  
17 could potentially result in a net benefit to the  
18 conservation of the species.

19 “(C) The team shall assess the impacts on  
20 State and local land use laws, conservation  
21 measures, and water allocation policies that  
22 may result from the listing determination and  
23 from the potential management measures iden-  
24 tified under subparagraph (A)(vi).

1           “(3) SECRETARIAL REVIEW OF ASSESSMENTS  
2           AND ESTABLISHMENT OF CONSERVATION OBJEC-  
3           TIVE.—(A) Not later than 210 days after a listing  
4           determination, the Secretary shall review the report  
5           of the assessment and planning team prepared pur-  
6           suant to paragraph (2), establish a conservation ob-  
7           jective for the species, and publish in the Federal  
8           Register the conservation objective, along with a  
9           statement of findings on which the conservation ob-  
10          jective was established.

11           “(B) The conservation objective may be, in the  
12          discretion of the Secretary—

13                   “(i) recovery of the listed species;

14                   “(ii) such level of conservation of the spe-  
15                  cies which the Secretary determines practicable  
16                  and reasonable to the extent that the benefits  
17                  of the potential conservation measures outweigh  
18                  the economic and social costs of such measures,  
19                  including but not limited to maintenance of ex-  
20                  isting population levels;

21                   “(iii) no Federal action other than enforce-  
22                  ment against any person whose activity violates  
23                  the prohibitions specified in section 9(a), in-  
24                  cluding any activity that results in a taking of  
25                  the species, unless the taking is incidental to,

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

3 “(iv) such other objective as the Secretary  
4 may determine that does not provide a lesser  
5 level of protection than the level described in  
6 clause (iii).

7 “(C) If the conservation objective established by  
8 the Secretary is the objective provided in subpara-  
9 graph (B)(iii), the Secretary shall not develop a con-  
10 servation plan for the affected species under sub-  
11 section (c).”.

12 **SEC. 502. PREPARING A CONSERVATION PLAN.**

13 (a) IN GENERAL.—Section 5 (16 U.S.C. 1534), as  
14 added by section 501 of this Act, is amended by adding  
15 at the end the following new subsections:

16 “(c) DEVELOPMENT OF CONSERVATION PLAN.—

17 “(1) PRIORITIES.—In the development and im-  
18 plementation of a conservation plan under this sub-  
19 section, the Secretary shall accord priority to—

20 “(A) the development of an integrated plan  
21 for 2 or more endangered species or threatened  
22 species that are likely to benefit from an inte-  
23 grated conservation plan;

24 “(B) the geographic areas where conflicts  
25 between the conservation of the affected species

1 and development projects or other forms of eco-  
2 nomic activity exist or are likely to exist;

3 “(C) protection of the listed species on  
4 units of the National Biological Diversity Re-  
5 serve as provided in section 5A(a);

6 “(D) the implementation of conservation  
7 measures that have the least economic and so-  
8 cial costs;

9 “(E) nonregulatory, incentive-based con-  
10 servation measures and commercial activities  
11 that provide a net benefit to the conservation of  
12 the species; and

13 “(F) plans in which States or private orga-  
14 nizations or persons are the primary  
15 implementors.

16 “(2) PUBLICATION OF DRAFT PLAN.—Not later  
17 than 12 months after the date of a determination  
18 that a species is an endangered species or a threat-  
19 ened species, the assessment and planning team for  
20 the species shall publish a draft conservation plan  
21 for the species which is based on the assessments  
22 made pursuant to subsection (b)(2) and designed to  
23 achieve the conservation objective established pursu-  
24 ant to subsection (b)(3).



1           “(3) CONTENTS OF DRAFT PLAN.—Each draft  
2       conservation plan shall contain—

3           “(A) recommendations for Federal agency  
4       compliance with section 7(a)(1) and 7(a)(2);

5           “(B) recommendations for avoiding a tak-  
6       ing of a listed species prohibited under section  
7       9(a)(1) and a list of specific activities that  
8       would constitute a take under section 9;

9           “(C) alternative strategies to achieve the  
10      conservation objective for the listed species  
11      which range from a strategy requiring the least  
12      possible Federal management to achieve the  
13      conservation objective to a strategy involving  
14      more intensive Federal management to achieve  
15      the objective, each of which contains—

16           “(i) an estimate of the risks to the  
17      survival and recovery of the species that  
18      the alternative would entail;

19           “(ii) a description of any site-specific  
20      management measures recommended for  
21      the alternative;

22           “(iii) an analysis of the relationship of  
23      any habitat of the species proposed for  
24      designation as critical habitat to the rec-  
25      ommended management measures;

1           “(iv) a description of the direct, indi-  
2 rect, and cumulative economic and social  
3 impacts on the public and private sectors  
4 including impacts on employment, the cost  
5 of government actions, tax and other reve-  
6 nues, the use and value of property, and  
7 other social, cultural, and community val-  
8 ues;

9           “(v) a description of any captive  
10 breeding program recommended for the al-  
11 ternative;

12           “(vi) an analysis of whether the alter-  
13 native would include any release of an ex-  
14 perimental population outside the current  
15 range of the species and an identification  
16 of candidate geographic areas for the re-  
17 lease;

18           “(vii) objective and measurable cri-  
19 teria, including a population level target,  
20 that, if met, would result in a determina-  
21 tion under section 4 that the species is no  
22 longer an endangered species or threatened  
23 species;

24           “(viii) estimates of the time and costs  
25 required to carry out the management

1 measures, including any intermediate  
2 steps; and

3 “(ix) a description of the role of each  
4 affected State, if any, in achieving the con-  
5 servation objective.

6 “(4) PLAN PREPARATION PROCEDURES.—(A)  
7 The Secretary shall consult with the Governor of  
8 each State in which the affected species is located  
9 during the preparation of each draft and final con-  
10 servation plan. Each plan shall provide for equitable  
11 treatment of affected States and other non-Federal  
12 persons.

13 “(B) The Secretary shall publish in the Federal  
14 Register and a newspaper of general circulation in  
15 each affected county and parish a notice of the avail-  
16 ability and a summary of, and a request for the sub-  
17 mission of comments on, each draft conservation  
18 plan.

19 “(C) The Secretary shall hold at least 1 hearing  
20 on each draft conservation plan in each State to  
21 which the plan would apply in a location that is as  
22 close as possible to the center of the habitat of the  
23 affected species in such State.

24 “(D) Prior to any decision to adopt a final con-  
25 servation plan, the Secretary shall consider and

1 weigh carefully all information presented during  
2 each hearing held under subparagraph (C) or re-  
3 ceived in response to a request for comments pub-  
4 lished under subparagraph (B).

5 “(5) PUBLICATION OF FINAL PLAN.—Not later  
6 than 18 months from the date of a determination  
7 that a species is an endangered species or a threat-  
8 ened species, the Secretary shall publish in the Fed-  
9 eral Register a notice of the availability, and a sum-  
10 mary, of a final conservation plan for the species.  
11 The notice shall include a detailed description of—

12 “(A) the reasons for the selection of the  
13 final conservation plan;

14 “(B) the reasons for not selecting each of  
15 the other alternatives included in the draft con-  
16 servation plan, including, if any alternative is  
17 selected other than the alternative that would  
18 impose the least total costs on the public and  
19 private sectors, the reasons for such selection;

20 “(C) the effect of the priorities specified in  
21 paragraph (1) on the selection; and

22 “(D) the response of the Secretary to the  
23 information referred to in paragraph (4).

24 “(6) PARTICIPATION BY OTHER PERSONS.—In  
25 developing and implementing conservation plans, the

1 Secretary may use the services of appropriate public  
2 and private agencies and institutions and other  
3 qualified persons.

4 “(7) PLAN REVISION OR AMENDMENT.—Any re-  
5 vision of or amendment to a conservation plan shall  
6 be made in accordance with the procedures and re-  
7 quirements of subsection (b) and this subsection, ex-  
8 cept that the Secretary by regulation may provide  
9 for other procedures and requirements for any  
10 amendment that does not increase the direct or indi-  
11 rect cost of implementation of the plan or enlarge  
12 the area to which the plan applies.

13 “(d) NO FURTHER PROCEDURES OR REQUIREMENTS  
14 FOR ACTIONS CONSISTENT WITH THE CONSERVATION  
15 PLAN.—If a conservation plan is prepared under sub-  
16 section (c) or if a conservation objective is established  
17 under subsection (b)(3)(C)—

18 “(1) any Federal agency that determines that  
19 the actions of the agency are consistent with the  
20 provisions of the conservation plan or conservation  
21 objective shall be considered to comply with section  
22 7(a)(1) for the affected species;

23 “(2) any agency action that the Federal agency  
24 determines is consistent with the provisions of the  
25 conservation plan or conservation objective shall not

1 be subject to section 7(a)(2) for the affected species,  
2 except that a Federal agency may initiate consulta-  
3 tion under section 7(a)(2) if the agency desires guid-  
4 ance from the Secretary on the consistency of the  
5 action of the agency with the conservation plan or  
6 conservation objective; and

7 “(3) any action of any person that is consistent  
8 with the provisions of the conservation plan or con-  
9 servation objective shall not constitute a violation  
10 concerning the affected species of any applicable  
11 prohibition under section 9(a), except that a non-  
12 Federal person may initiate consultation under sec-  
13 tion 10(a)(2)—

14 “(A) if the person desires guidance from  
15 the Secretary on the consistency of the action  
16 with the plan or objective; or

17 “(B) in order to determine whether to  
18 apply for a permit under section 10 for any ac-  
19 tion that is inconsistent with the plan or objec-  
20 tive.”.

21 (b) CONSERVATION OBJECTIVE AND CONSERVATION  
22 RULE DEFINED.—Section 3(4) (16 U.S.C. 1532), as re-  
23 designated by section 102(a) of this Act, is amended to  
24 read as follows:

1           “(4) The terms ‘conservation objective’ and  
2           ‘conservation plan’ (except when modified by ‘non-  
3           Federal’) mean a conservation objective and a con-  
4           servation plan, respectively, developed under section  
5           5.”.

6 **SEC. 503. INTERIM MEASURES.**

7           Section 5 (16 U.S.C. 1534), as added by section 501  
8 of this Act and as amended by section 502 of this Act,  
9 is amended by adding at the end the following new sub-  
10 sections:

11           “(e) MANAGEMENT PRIOR TO PUBLICATION OF CON-  
12 SERVATION PLAN.—

13           “(1) IN GENERAL.—After a listing determina-  
14 tion and before the publication of a final conserva-  
15 tion plan, or, if no plan is required pursuant to sub-  
16 section (b)(3)(C), a conservation objective, for the  
17 species—

18           “(A) the prohibitions of section 9(a) shall  
19 apply to any person, except in the case of a tak-  
20 ing of a member of the species that is incidental  
21 to, and not the purpose of, the carrying out of  
22 an otherwise lawful activity which incidental  
23 taking activity may include but is not limited to  
24 the routine operation, maintenance, rehabilita-  
25 tion, replacement, or repair of any structure,

1 building, road, dam, airport, or any irrigation  
2 or other facility which is in operation prior to  
3 the publication of the determination under sec-  
4 tion 4(b)(6); and

5 “(B) no Federal agency shall be required  
6 to comply with section 7(a)(1) and no consulta-  
7 tion shall be required on any agency action  
8 under section 7(a)(2).

9 “(2) EMERGENCY RULEMAKING PROTEC-  
10 TIONS.—Notwithstanding paragraph (1), sections  
11 7(a) and 9(a) shall apply fully to the listed species  
12 during a period in which an emergency rulemaking  
13 is in effect pursuant to section 4(b)(7) or if the  
14 President declares, and advises the Secretary, that  
15 there exists an imminent threat to the existence of  
16 the species. Such declaration of the President ex-  
17 pires upon the deadline for publication of a final  
18 conservation plan for the species pursuant to sub-  
19 section (c)(5) or the publication of a conservation  
20 objective for the species provided in subsection  
21 (b)(3) or if no conservation plan is required pursu-  
22 ant to subsection (b)(3)(C).

23 “(f) SUSPENSION OF CONSERVATION PLAN OR OB-  
24 JECTIVE.—If the Secretary issues an incidental take per-  
25 mit or enters into a cooperative management agreement



1 under section 6, the Secretary, by publication of notice  
2 in the Federal Register, shall suspend the conservation ob-  
3 jective or conservation plan with respect to the geographic  
4 area or action applicable to the species to which the permit  
5 or agreement applies.

6 “(g) NONDELEGATION OF DUTIES.—The Secretary  
7 may not delegate the authority to make the final decision  
8 to select a conservation objective, issue a conservation  
9 plan, or designate critical habitat under this section.

10 “(h) REVIEW OF CONSERVATION PLANS.—

11 “(1) DEADLINES.—The Secretary shall review  
12 each conservation plan and the conservation objec-  
13 tive on which it is based before the end of the 5-year  
14 period that begins on the date of publication of the  
15 conservation plan, and before the end of each 5-  
16 year period thereafter.

17 “(2) REVISIONS.—The Secretary shall revise a  
18 conservation plan or the conservation objective on  
19 which it is based if the Secretary determines—

20 “(A) through a 5-year review under para-  
21 graph (1), that the conservation plan or con-  
22 servation objective does not meet the require-  
23 ments of this section; or

24 “(B) at any time—

1 “(i) that funding is not available for  
2 the implementation of a specific conserva-  
3 tion measure that is integral to the con-  
4 servation plan or that a more cost-effective  
5 alternative exists for a specific conserva-  
6 tion measure that is integral to the con-  
7 servation plan; or

8 “(ii) on the basis of scientific or com-  
9 mercial data that were not available during  
10 the development of the conservation objec-  
11 tive or conservation plan, that the con-  
12 servation objective is not achievable or the  
13 conservation plan will not achieve the con-  
14 servation objective.

15 “(3) NO REOPENING OF CONSULTATIONS.—  
16 Section 7 consultations shall not be reopened as a  
17 result of modifications to a conservation plan under  
18 paragraph (2).”.

19 **SEC. 504. CRITICAL HABITAT FOR SPECIES.**

20 (a) CRITICAL HABITAT DESIGNATION.—Section 5, as  
21 added by section 501 of this Act and as amended by sec-  
22 tions 502 and 503 of this Act, is amended by adding at  
23 the end the following new subsections:

24 “(i) CRITICAL HABITAT DESIGNATION.—

1           “(1) DESIGNATION.—The Secretary may, by  
2 regulation and to the extent prudent and determina-  
3 ble—

4           “(A) designate critical habitat of a species  
5 determined to be an endangered species or  
6 threatened species that meets the requirements  
7 of paragraph (3) utilizing the National  
8 Biodiversity Reserve established under section  
9 5A(a) as a first priority; and

10          “(B) revise a critical habitat designation  
11 on determining that the critical habitat does  
12 not meet the requirements of paragraph (3).

13 Designation of critical habitat shall not result in re-  
14 opening or reinitiation of consultations on Federal  
15 actions pursuant to section 7.

16          “(2) DEADLINES FOR DESIGNATION.—Any pro-  
17 posed regulation and any final regulation to des-  
18 ignate critical habitat shall be published not later  
19 than 12 months and 18 months, respectively, after  
20 the date on which the affected species is determined  
21 to be an endangered species or a threatened species.

22          “(3) BASIS FOR DESIGNATION.—The designa-  
23 tion of critical habitat, and any revision of the des-  
24 ignation, shall be made on the basis of the best  
25 available scientific and commercial data after taking

1 into consideration the economic impact, and any  
2 other relevant impact, of designating any particular  
3 area as critical habitat and of the determination that  
4 the affected species is an endangered species or  
5 threatened species. The Secretary shall exclude any  
6 area from critical habitat—

7 “(A) which does not meet the definition of  
8 critical habitat set forth in section 3(7);

9 “(B) which is not necessary to achieve the  
10 conservation objective for the affected species  
11 established pursuant to subsection (b);

12 “(C) for which the Secretary determines  
13 that the benefits of the exclusion of the area  
14 from designation as critical habitat outweigh  
15 the benefits of designation, unless the Secretary  
16 determines, on the basis of the best available  
17 scientific and commercial data, that the failure  
18 to designate the area as critical habitat will re-  
19 sult in the extinction of the affected species; or

20 “(D) in the case of property owned by a  
21 non-Federal person, where the owner thereof  
22 has not given written consent to the designation  
23 or has not been compensated as provided in sec-  
24 tion 19.

1           “(4) PROCEDURE FOR DESIGNATION.—In the  
2       Federal Register notice containing the proposed reg-  
3       ulation to designate critical habitat, the Secretary  
4       shall describe the economic impacts and other rel-  
5       evant impacts that are to be considered, and the  
6       benefits that are to be weighed, under paragraph (3)  
7       in designating an area as critical habitat, along with  
8       maps showing the location of the area to be des-  
9       ignated as critical habitat. The Secretary shall sub-  
10      mit the description, and the documentation support-  
11      ing the description, to the Bureau of Labor Statis-  
12      tics of the Department of Labor. The Commissioner  
13      of Labor Statistics shall submit written comments  
14      during the comment period on the proposed regula-  
15      tion. The Secretary shall hold at least one public  
16      hearing in each State on the proposed rule in which  
17      critical habitat is designated for a species. In issuing  
18      any final regulation designating critical habitat, the  
19      Secretary shall respond separately and fully to each  
20      comment.

21           “(5) JUDICIAL REVIEW OF CRITICAL HABITAT  
22      DESIGNATION.—The decision whether to designate  
23      critical habitat shall be subject to a de novo judicial  
24      review with the court determining whether the deci-

1 sion is supported by a preponderance of the evi-  
2 dence.

3 “(j) JUDICIAL REVIEW OF CONSERVATION OBJEC-  
4 TIVE OR PLAN.—The standard for judicial review of any  
5 decision of the Secretary, or a Federal agency pursuant  
6 to this section shall be whether the decision is arbitrary,  
7 capricious, an abuse of discretion, or otherwise not in ac-  
8 cordance with law.

9 “(k) CONSERVATION PLANS FOR FOREIGN SPE-  
10 CIES.—In developing conservation objectives and con-  
11 servation plans under this section, the Secretary shall, in  
12 regard to foreign species—

13 “(1) act consistently with the Convention; and

14 “(2) cooperate and support the conservation  
15 strategy adopted for that species by any foreign na-  
16 tion in which the species occurs.”.

17 (b) CONFORMING AMENDMENTS.—Section 4(b)(6)  
18 (16 U.S.C. 1533(b)(6)) is amended—

19 (1) in subparagraph (B)(i) by striking “or revi-  
20 sion concerned”;

21 (2) in subparagraph (B)(iii) by striking “or re-  
22 vision concerned, a finding that the revision should  
23 not be made,”; and

24 (3) by striking subparagraph (C).

1 (c) CONFORMING AMENDMENT.—Section 4(b)(8) (16  
2 U.S.C. 1533(b)(8)) is amended by striking “regulation”  
3 the third time it appears and all that follows through the  
4 end of the paragraph and inserting “regulation.”.

5 (d) DEFINITION OF CRITICAL HABITAT.—Section  
6 3(7), as redesignated by section 102(a) of this Act, is  
7 amended to read as follows:

8 “(7)(A) The term ‘critical habitat’ for an en-  
9 dangered species or a threatened species means the  
10 specific areas which are within the geographic area  
11 found to be occupied by a species at the time the  
12 species is determined to be an endangered species or  
13 a threatened species in accordance with section 4  
14 and which contain such physical or biological fea-  
15 tures as—

16 “(i) are essential to the persistence of the  
17 species over the 50-year period beginning on the  
18 date the regulation designating the critical  
19 habitat, or any revision of the regulation, is  
20 promulgated; and

21 “(ii) require special management consider-  
22 ations or protection.

23 “(B) Except in those circumstances determined  
24 by the Secretary, critical habitat shall not include

1 the entire geographical area occupied by the threat-  
2 ened species or endangered species.”.

3 **SEC. 505. RECOGNITION OF CAPTIVE PROPAGATION AS**  
4 **MEANS OF RECOVERY.**

5 Section 5, as added by section 501 of this Act and  
6 as amended by sections 502, 503, and 504 of this Act,  
7 is amended by adding at the end the following new sub-  
8 section:

9 “(I) RECOGNITION OF CAPTIVE PROPAGATION AS  
10 MEANS OF CONSERVATION.—

11 “(1) IN GENERAL.—In carrying out this Act,  
12 the Secretary shall recognize to the maximum extent  
13 practicable, and may utilize, captive propagation as  
14 a means of protecting or conserving an endangered  
15 species or a threatened species.

16 “(2) CAPTIVE PROPAGATION GRANTS.—The  
17 Secretary may, subject to appropriations therefor,  
18 provide annual grants to non-Federal persons to  
19 fund captive propagation programs for the purpose  
20 of protecting or conserving any species that is deter-  
21 mined under section 4 to be an endangered species  
22 or a threatened species, if the Secretary determines  
23 that such a program contributes to enhancement of  
24 the population of the species.”.



1 **SEC. 506. INTRODUCTION OF SPECIES.**

2 Section 10(j) (16 U.S.C. 1539(j)) is amended—

3 (1) by amending paragraph (2)(B) to read as  
4 follows:

5 “(B) Before authorizing the release of any  
6 population under subparagraph (A), the Sec-  
7 retary shall by regulation identify the popu-  
8 lation and the precise boundaries of the geo-  
9 graphic area for the release and determine, on  
10 the basis of the best available information,  
11 whether the release is in the public interest,  
12 whether or not such population is essential to  
13 the continued existence of an endangered spe-  
14 cies or a threatened species.”;

15 (2) in paragraph (2)(C)—

16 (A) in clause (i) by striking “and” after  
17 the semicolon; and

18 (B) by striking clause (ii) and inserting the  
19 following:

20 “(ii) for the purposes of sections 4(d)  
21 and 9(a)(1)(B), any member of an experi-  
22 mental population found outside the geo-  
23 graphic area in which the population is re-  
24 leased shall not be treated as a threatened  
25 species if the member poses a threat to the  
26 welfare of the public; and

1 “(iii) critical habitat shall not be des-  
2 ignated under this Act for any experi-  
3 mental population determined under sub-  
4 paragraph (B) to be not essential to the  
5 continued existence of a species.”;

6 (3) by redesignating paragraph (3) as para-  
7 graph (4); and

8 (4) by inserting after paragraph (2) the follow-  
9 ing new paragraph:

10 “(3) REQUIREMENTS FOR RELEASES.—In au-  
11 thorizing the release of a population under para-  
12 graph (2), the Secretary shall require that—

13 “(A) to the maximum extent practicable,  
14 the release occurs only in a unit of the National  
15 Park System or the National Wildlife Refuge  
16 System;

17 “(B) a release outside a unit occurs only in  
18 an area that has been identified as a candidate  
19 site for release of the population in a conserva-  
20 tion plan for the species;

21 “(C) in the case of a release outside a unit,  
22 measures to protect the safety and welfare of  
23 the public and domestic animals and the fund-  
24 ing for the measures are identified in the regu-

1           lations authorizing the release and are imple-  
2           mented;

3           “(D) the regulations authorizing the re-  
4           lease identify precisely the geographic area for  
5           the release;

6           “(E) a release on non-Federal land occurs  
7           only with the written consent of the owner of  
8           the land; and

9           “(F) the regulations authorizing the re-  
10          lease include measurable reintroduction goals to  
11          restore viable populations only within the spe-  
12          cific geographic area identified for release in  
13          the regulations.”.

14   **SEC. 507. CONSERVING THREATENED SPECIES.**

15          (a) REGULATIONS.—Section 4(d) (16 U.S.C.  
16 1533(d)) is amended to read as follows:

17          “(d) REGULATIONS TO PROTECT THREATENED SPE-  
18          CIES.—Whenever any species is listed as a threatened spe-  
19          cies pursuant to subsection (c), the Secretary shall issue,  
20          concurrently with the regulation that provides for the list-  
21          ing of the species, such regulations as the Secretary deems  
22          necessary and advisable to provide for the conservation of  
23          such species. Such regulations may apply to the threat-  
24          ened species one or more of the prohibitions under section  
25          9(a)(1), in the case of fish and wildlife, or section 9(a)(2)

1 in the case of plants, with respect to endangered species.  
2 The prohibition applied to the threatened species shall ad-  
3 dress the specific circumstances of such species and may  
4 not be as restrictive as such prohibition for endangered  
5 species. With respect to the taking of resident species of  
6 fish or wildlife, such regulations shall apply in any State  
7 which has entered into a cooperative agreement pursuant  
8 to section 6(c) only to the extent that such regulations  
9 have also been adopted by such State.”.

10 (b) CONFORMING AMENDMENTS.—Section 4 (16  
11 U.S.C. 1533) is amended—

12 (1) by striking subsection (f); and

13 (2) by redesignating subsections (g), (h), and

14 (i) in order as subsections (f), (g), and (h).

15 (c) CONSERVATION GUIDELINES.—Section 4 is  
16 amended in subsection (g), as redesignated by subsection  
17 (b)(2) of this section, by amending paragraph (3), as re-  
18 designated by section 304(b)(2) of this Act, to read as  
19 follows:

20 “(3) a system for developing and implementing,  
21 on a priority basis, conservation objectives and con-  
22 servation plans. The Secretary shall provide to the  
23 public notice of, and opportunity to submit written  
24 comments on, any guideline (including any amend-

1       ment thereto) proposed to be established under this  
2       subsection.”.

## 3                   **TITLE VI—HABITAT** 4                   **PROTECTIONS**

### 5   **SEC. 601. FEDERAL BIOLOGICAL DIVERSITY RESERVE.**

6       Section 5A, as redesignated by section 501 of this  
7   Act, is amended to read as follows:

#### 8   **“SEC. 5A. PROTECTION OF HABITAT.**

9       “(a) ESTABLISHMENT OF NATIONAL BIOLOGICAL  
10   DIVERSITY RESERVE.—

11           “(1) IN GENERAL.—There is hereby established  
12       a National Biological Diversity Reserve (hereinafter  
13       in this Act referred to as the ‘Reserve’). The Reserve  
14       shall be composed of units of Federal and State  
15       lands designated in accordance with paragraph (2)  
16       and managed in accordance with paragraph (3).

17           “(2) DESIGNATION OF RESERVE UNITS.—(A)  
18       Not later than 18 months after the date of enact-  
19       ment of the Endangered Species Conservation and  
20       Management Act of 1995, the Secretary of the Inte-  
21       rior and the Secretary of Agriculture shall designate  
22       to the Reserve by regulation those units of the na-  
23       tional conservation systems which are within the ju-  
24       risdiction of the Secretary concerned and which the  
25       Secretary determines would contribute to the protec-

1       tion, maintenance, and enhancement of biological di-  
2       versity in accordance with the provisions of this Act.  
3       The term ‘national conservation systems’ means  
4       wholly federally owned lands within the National  
5       Park System, the National Wildlife Refuge System,  
6       or the National Wilderness Preservation System,  
7       and wild segments of rivers within the National Wild  
8       and Scenic Rivers System.

9           “(B) The Secretary of the Interior shall—

10           “(i) designate to the Reserve by regulation  
11           a unit of State-owned lands if such unit is nom-  
12           inated for designation by the Governor of the  
13           State and is managed under State law in ac-  
14           cordance with paragraph (3);

15           “(ii) designate to the Reserve by regulation  
16           privately owned land that is nominated for des-  
17           ignation by the owner of the land, and shall re-  
18           move such land from the Reserve if the owner  
19           requests removal;

20           “(iii) remove from the Reserve by regula-  
21           tion any unit designated pursuant to clause (i)  
22           which the Secretary finds is not managed under  
23           State law in accordance with paragraph (3);  
24           and

1           “(iv) remove from the Reserve any State-  
2           owned lands at the request of the Governor of  
3           that State.

4           “(C) Designation of a Reserve unit shall not af-  
5           fect any valid existing permit, right, right-of-way,  
6           access, interest in land, right to use or receive water,  
7           or property right.

8           “(3) MANAGEMENT OF THE RESERVE.—(A)  
9           Each unit of the Reserve shall have as an objective  
10          for the management thereof the preservation, main-  
11          tenance, and enhancement of biological diversity.  
12          Such objective shall be supplementary to any other  
13          objective established for such unit by or pursuant to  
14          any provision of law applicable to such unit. Each  
15          such unit shall be managed in accordance with such  
16          objective to the extent that such objective is not in-  
17          consistent with the purpose for which the unit was  
18          established, other provisions of law applicable to  
19          such unit, and the activities which occur on such  
20          unit.

21          “(B) The manager of each Reserve unit should  
22          consistent with paragraph (4) utilize his authority to  
23          use active management and recovery measures, in-  
24          cluding those specified in section 5(b)(2)(A)(vi), and

1 shall conduct a survey to determine the populations  
2 of species within the Reserve.

3 “(C) Nothing in this Act shall—

4 “(i) alter, establish, or affect the respective  
5 rights of the United States, the States, or any  
6 person with respect to any water or water-relat-  
7 ed right; or

8 “(ii) affect the laws, rules, and regulations  
9 pertaining to hunting, fishing, and other lawful  
10 wildlife harvest under existing State and Fed-  
11 eral laws and Indian treaties.

12 “(D) Within 1 year of the designation of a unit  
13 to the Reserve, the manager of such unit shall com-  
14 plete, and the Secretary concerned shall make avail-  
15 able to the public by notice in the Federal Register,  
16 an inventory of the species composing the biological  
17 diversity within such unit.

18 “(4) OTHER FEDERAL LANDS.—Nothing in this  
19 Act shall be construed as limiting the authority of  
20 the Secretary of the Interior or the Secretary of Ag-  
21 riculture to take such actions as are necessary and  
22 authorized by other law to protect, maintain, and  
23 enhance biological diversity on other Federal lands  
24 not designated to the Reserve except that, before  
25 taking any such action, the Secretary concerned



1 shall make a finding based on the best available sci-  
2 entific and commercial data, that the biological di-  
3 versity for which such action is proposed is not pro-  
4 tected, maintained, or enhanced in whole or substan-  
5 tial part on any unit of the Reserve. Such finding  
6 shall be published, along with the reasons therefor in  
7 the Federal Register.”.

8 **SEC. 602. LAND ACQUISITION.**

9 Section 5A, as redesignated by section 501 of this  
10 Act and as amended by section 601 of this Act, is amend-  
11 ed by adding at the end the following new subsection:

12 “(b) LAND ACQUISITION.—

13 “(1) PROGRAM.—The Secretary, and the Sec-  
14 retary of Agriculture with respect to the National  
15 Forest System, shall establish and implement a pro-  
16 gram to conserve fish, wildlife, and plants, including  
17 those which are determined to be endangered species  
18 or threatened species pursuant to section 4. To  
19 carry out such a program, the appropriate Sec-  
20 retary—

21 “(A) shall utilize the land acquisition and  
22 other authority under the Fish and Wildlife Act  
23 of 1956 (16 U.S.C. 742a et seq.), the Fish and  
24 Wildlife Coordination Act (16 U.S.C. 661 et

1 seq.), and the Migratory Bird Conservation Act  
2 (16 U.S.C. 715 et seq.), as appropriate; and

3 “(B) is authorized to acquire by purchase,  
4 lease, donation, or otherwise, lands, waters, or  
5 interest therein, including short- or long-term  
6 conservation easements, and such authority  
7 shall be in addition to any other land acqui-  
8 sition authority vested in that Secretary.

9 “(2) AVAILABILITY OF FUNDS FOR ACQUI-  
10 SITION OF LANDS, WATER, ETC.—Funds made avail-  
11 able pursuant to the Land and Water Conservation  
12 Fund Act of 1965 (16 U.S.C. 4601–4 et seq.) may  
13 be used for the purpose of acquiring or leasing  
14 lands, waters, or interests therein under subsection  
15 (a) of this section.”.

16 **SEC. 603. PROPERTY EXCHANGES.**

17 Section 5A, as redesignated by section 501 of this  
18 Act and as amended by sections 601 and 602 of this Act,  
19 is amended by adding at the end the following new sub-  
20 sections:

21 “(c) EXCHANGES.—

22 “(1) IN GENERAL.—In accordance with sub-  
23 section (a), the Secretary of the Interior and the  
24 Secretary of Agriculture shall encourage exchanges  
25 of lands, waters, or interests in land or water within

1 the jurisdiction of each Secretary (other than units  
2 of the National Park System and units of the Na-  
3 tional Wilderness Preservation System) for lands,  
4 waters, or interests in land or water that are not in  
5 Federal ownership and that are affected by this Act.

6 “(2) TIMING OF EXCHANGES.—An exchange  
7 under this subsection may be made if the Secretary  
8 of the Interior or the Secretary of Agriculture deter-  
9 mines, without a formal appraisal, that the lands to  
10 be exchanged are of approximately equal value.

11 “(3) ENVIRONMENTAL ASSESSMENT.—An envi-  
12 ronmental assessment shall be the only document  
13 under section 102(2) of the National Environmental  
14 Policy Act of 1976 (16 U.S.C. 4332(2)) that shall  
15 be prepared with respect to any exchange under this  
16 subsection.

17 “(4) EXPEDITIOUS EXCHANGE DECISIONS.—An  
18 exchange under this subsection shall be processed as  
19 expeditiously as practicable. The Secretary of the In-  
20 terior or the Secretary of Agriculture shall periodi-  
21 cally provide information to the non-Federal land-  
22 owner on the status of the exchange.

23 “(5) APPLICABLE LAW.—The Secretary of the  
24 Interior and the Secretary of Agriculture shall proc-  
25 ess exchanges under this subsection in accordance

1 with applicable laws that are consistent with this  
2 subsection.

3 “(d) VALUATION.—Any land, water, or interest in  
4 land or water to be acquired by the Secretary or the Sec-  
5 retary of Agriculture by purchase, exchange, donation, or  
6 otherwise under this section shall be valued as if the land,  
7 water, or interest in land or water were not subject to any  
8 restriction on use under this Act imposed after the date  
9 of acquisition by the current owner of the land, water, or  
10 interest in land or water.

11 “(e) \_\_\_\_.—For any land or water acquired by the  
12 Secretary or the Secretary of Agriculture by purchase, ex-  
13 change, lease, donation or otherwise under this section,  
14 the Secretary or Secretary of Agriculture shall ensure that  
15 such purchase, exchange, lease, donation, or other transfer  
16 shall not supersede, abrogate, or otherwise impair existing  
17 easements, rights-of-way, fencing, water sources, water de-  
18 livery lines or ditches, and current uses of adjacent land.”.

19 **TITLE VII—STATE AUTHORITY**  
20 **TO PROTECT ENDANGERED**  
21 **AND THREATENED SPECIES**

22 **SEC. 701. STATE AUTHORITY.**

23 (a) IN GENERAL.—Section 6 (16 U.S.C. 1535) is  
24 amended by striking subsection (c) and all that follows  
25 through subsection (f) and inserting the following:

1       “(c) STATE AUTHORITY TO PROTECT ENDANGERED  
2 AND THREATENED SPECIES.—

3               “(1) DELEGATION OF AUTHORITY.—In further-  
4       ance of the purposes of this Act, the Secretary may  
5       delegate to a State which establishes and maintains  
6       an adequate program for the conservation of endan-  
7       gered species and threatened species the authority  
8       contained in this Act with respect to species of fish,  
9       wildlife, and plants that are residents in the State.  
10      Within 120 days after the Secretary receives a cer-  
11      tified copy of such a proposed State program, the  
12      Secretary shall make a determination whether such  
13      program will be adequate to provide protections to  
14      endangered species and threatened species in such  
15      State. In order for a State program to be deter-  
16      mined to be an adequate program for the conserva-  
17      tion of endangered species and threatened species,  
18      the Secretary must find that under the State pro-  
19      gram—

20               “(A)(i) authority resides in the State agen-  
21      cy to conserve resident species of fish or wildlife  
22      determined by the State agency or the Sec-  
23      retary to be endangered species or threatened  
24      species;

1           “(ii) the State agency has established ac-  
2           ceptable conservation programs, consistent with  
3           the purposes and policies of this Act, for all  
4           resident species of fish or wildlife in the State  
5           which are deemed by the Secretary to be endan-  
6           gered species or threatened species or for those  
7           species or taxonomic groups of species which  
8           the State proposes to cover under its program,  
9           and has furnished a copy of such plan and pro-  
10          gram together with all pertinent details, infor-  
11          mation, requested to the Secretary;

12           “(iii) the State agency is authorized to  
13          conduct investigations to determine the status  
14          and requirements for survival of resident spe-  
15          cies of fish and wildlife;

16           “(iv) an agency of the State is authorized  
17          to establish programs, including the acquisition  
18          of land or aquatic habitat or interests therein,  
19          for the conservation of resident endangered spe-  
20          cies or threatened species of fish or wildlife;

21           “(v) provision is made for public participa-  
22          tion in designating resident species of fish or  
23          wildlife as endangered species or threatened  
24          species; and

1           “(vi) the State agency has initiated or en-  
2           couraged voluntary or incentive based programs  
3           to further the conservation objectives for the  
4           species; or

5           “(B)(i) the requirements set forth in  
6           clauses (iii), (iv), and (v) of subparagraph (A)  
7           are complied with, and

8           “(ii) plans are included under which imme-  
9           diate attention will be given to those resident  
10          species of fish and wildlife which are deter-  
11          mined by the Secretary or the State agency to  
12          be endangered species or threatened species and  
13          which the Secretary and the State agency agree  
14          are most urgently in need of conservation pro-  
15          grams.

16          “(2) PROHIBITIONS NOT AFFECTED.—A delega-  
17          tion to a State whose program is deemed adequate  
18          pursuant to paragraph (1) shall not affect the appli-  
19          cability of prohibitions set forth in or authorized  
20          pursuant to section 4(d) or section 9(a)(1) with re-  
21          spect to the taking of any resident endangered spe-  
22          cies or threatened species in the State.

23          “(d) ALLOCATION OF FUNDS.—

24          “(1) FINANCIAL ASSISTANCE.—The Secretary  
25          may provide financial assistance to any State,

1 through its respective State agency, which has re-  
2 ceived delegation pursuant to subsection (c) of this  
3 section to assist in development of programs for the  
4 conservation of endangered species and threatened  
5 species or to assist in monitoring the status of can-  
6 didate species pursuant to subparagraph (C) of sec-  
7 tion 4(b)(3) and recovered species pursuant to sec-  
8 tion 4(f). The Secretary shall allocate each annual  
9 appropriation made in accordance with subsection (i)  
10 to such States based on consideration of—

11 “(A) the international commitments of the  
12 United States to protect endangered species or  
13 threatened species;

14 “(B) the readiness of a State to proceed  
15 with a conservation program consistent with the  
16 objectives and purposes of this Act;

17 “(C) the number of endangered species  
18 and threatened species within a State;

19 “(D) the potential for restoring endan-  
20 gered species and threatened species within a  
21 State;

22 “(E) the relative urgency to initiate a pro-  
23 gram to restore and protect an endangered spe-  
24 cies or threatened species in terms of survival  
25 of the species;



1           “(F) the importance of monitoring the sta-  
2           tus of candidate species within a State to pre-  
3           vent a significant risk to the well-being of any  
4           such species; and

5           “(G) the importance of monitoring the sta-  
6           tus of recovered species within a State to assure  
7           that such species do not return to the point at  
8           which the measures provided pursuant to this  
9           Act are again necessary.

10          So much of the annual appropriation made in ac-  
11          cordance with subsection (i) allocated for obligation  
12          to any State for any fiscal year as remains unobli-  
13          gated at the close thereof may be made available to  
14          that State until the close of the succeeding fiscal  
15          year. Any amount allocated to any State which is  
16          unobligated at the end of the period during which it  
17          is available for expenditure may be made available  
18          for expenditure by the Secretary in conducting pro-  
19          grams under this section.

20               “(2) CONTENTS OF DELEGATION AGREE-  
21          MENT.—Such delegation shall provide for—

22               “(A) the actions to be taken by the Sec-  
23          retary and the States;

1           “(B) the benefits that are expected to be  
2           derived in connection with the conservation of  
3           endangered species or threatened species;

4           “(C) the estimated cost of these actions;  
5           and

6           “(D) the share of such costs to be borne  
7           by the Federal Government and by the States;  
8           except that—

9                   “(i) the Federal share of such pro-  
10                  gram costs shall not exceed 75 percent of  
11                  the estimated program cost stated in the  
12                  agreement; and

13                   “(ii) the Federal share may be in-  
14                  creased to 90 percent whenever two or  
15                  more States having a common interest in  
16                  one or more endangered species or threat-  
17                  ened species, the conservation of which  
18                  may be enhanced by cooperation of such  
19                  States, enter jointly into an agreement  
20                  with the Secretary.

21           The Secretary may, in the Secretary’s discretion,  
22           and under such rules and regulations as he may pre-  
23           scribe, advance funds to the State for financing the  
24           United States pro rata share agreed upon in the co-  
25           operative agreement. For the purposes of this sec-

1       tion, the non-Federal share may, in the discretion of  
2       the Secretary, be in the form of money or real prop-  
3       erty, the value of which will be determined by the  
4       Secretary, whose decision shall be final.

5           “(3) COMPLIANCE WITH PROCEDURES.—In im-  
6       plementing this Act under authority delegated to a  
7       State by the Secretary, the State shall comply with  
8       all requirements, prohibitions, and procedures set  
9       forth by this Act.

10       “(e) REVIEW OF STATE PROGRAMS.—Any action  
11      taken by the Secretary under this section shall be subject  
12      to his periodic review at no greater than intervals of 5  
13      years.

14       “(f) CONFLICTS BETWEEN FEDERAL AND STATE  
15      LAWS.—Any State law or regulation which applies with  
16      respect to the importation or exportation of, or interstate  
17      or foreign commerce in, endangered species or threatened  
18      species is void to the extent that it may effectively—

19           “(1) permit what is prohibited by this Act or by  
20      any regulation which implements this Act, or

21           “(2) prohibit what is authorized pursuant to an  
22      exemption or permit provided for in this Act or in  
23      any regulation which implements this Act. This Act  
24      shall not otherwise be construed to void any State  
25      law or regulation which is intended to conserve mi-

1 gratory, resident, or introduced fish or wildlife, or to  
 2 permit or prohibit sale of such fish or wildlife. Any  
 3 State law or regulation respecting the taking of an  
 4 endangered species or threatened species may be  
 5 more restrictive than the exemptions or permits pro-  
 6 vided for in this Act or in any regulation which im-  
 7 plements this Act.”.

8 (b) CONFORMING AMENDMENT.—Section 6(g)(2)(A)  
 9 (16 U.S.C. 1535(g)(2)(A)) is amended to read as follows:  
 10 “(A) to which the Secretary has delegated au-  
 11 thority under subsection (c); or”.

12 **SEC. 702. STATE PROGRAMS AFFECTED BY THE CONVEN-**  
 13 **TION.**

14 Section 8A (16 U.S.C. 1537a), as amended by section  
 15 207(b) of this Act, is amended by adding at the end the  
 16 following new subsection:

17 “(h) ISSUANCE OF PERMITS FOR EXPORT.—

18 “(1) COMPLIANCE WITH STATE RECOMMENDA-  
 19 TION.—In any instance in which a State has a pro-  
 20 gram for management of a native species which is  
 21 the subject of a request for an export permit under  
 22 the Convention, the Secretary shall act in accord-  
 23 ance with the recommendation of the State unless  
 24 the Secretary makes a finding and publishes a notice

1 in the Federal Register that scientific evidence justi-  
2 fies a conclusion contrary to the advice of the State.

3 “(2) APPEAL.—The State which is the subject  
4 to such a finding, or any person in that State di-  
5 rectly affected because of inability to obtain a per-  
6 mit, may appeal the finding to an Administrative  
7 Law Judge or a court. The burden shall be on the  
8 Secretary to show that the evidence supports a find-  
9 ing contrary to the recommendation of the State.”.

## 10 **TITLE VIII—FUNDING OF** 11 **CONSERVATION MEASURES**

### 12 **SEC. 801. AUTHORIZING INCREASED APPROPRIATIONS.**

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

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

16 “(a) IN GENERAL.—In addition to the amounts au-  
17 thorized to be appropriated under section 6(i) and sub-  
18 sections (b) through (e), there are authorized to be appro-  
19 priated—

20 “(1) to the Department of the Interior to carry  
21 out the duties of the Secretary of the Interior under  
22 this Act \$110,000,000 for fiscal year 1996,  
23 \$120,000,000 for fiscal year 1997, \$130,000,000 for  
24 fiscal year 1998, \$140,000,000 for fiscal year 1999,

1       \$150,000,000 for fiscal year 2000, and  
2       \$160,000,000 for fiscal year 2001;

3           “(2) to the Department of Commerce to carry  
4       out the duties of the Secretary of Commerce under  
5       this Act \$15,000,000 for fiscal year 1996,  
6       \$20,000,000 for fiscal year 1997, \$25,000,000 for  
7       fiscal year 1998, \$30,000,000 for fiscal year 1999,  
8       \$35,000,000 for fiscal year 2000, and \$40,000,000  
9       for fiscal year 2001; and

10          “(3) to the Department of Agriculture to carry  
11       out the duties of the Secretary of Agriculture under  
12       this Act \$4,000,000 for each of fiscal years 1996  
13       through 2001.

14          “(b) COOPERATIVE MANAGEMENT AGREEMENTS.—  
15       There are authorized to be appropriated to the Depart-  
16       ment of the Interior to carry out section 6(b),  
17       \$20,000,000 for each of fiscal years 1996 through 2001,  
18       to remain available until expended.

19          “(c) CONVENTION IMPLEMENTATION.—There are au-  
20       thorized to be appropriated to the Department of the Inte-  
21       rior to carry out section 8A(e) \$1,000,000 for each of fis-  
22       cal years 1996 through 2001, to remain available until ex-  
23       pended.

24          “(d) NON-FEDERAL CONSERVATION PLANNING.—  
25       There are authorized to be appropriated to the Depart-

1 ment of the Interior to carry out section 10(a)(2)(F)  
2 \$20,000,000 for each of fiscal years 1996 through 2001,  
3 to remain available until expended.

4 “(e) HABITAT CONSERVATION GRANTS.—There are  
5 authorized to be appropriated to the Department of the  
6 Interior to provide habitat conservation grants under sec-  
7 tion 6(b)(14) \$20,000,000 for each of fiscal years 1996  
8 though 2001, to remain available until expended.”.

9 **SEC. 802. FUNDING OF FEDERAL MANDATES.**

10 Section 16 is amended to read as follows:

11 **“SEC. 16. FEDERAL COST-SHARING REQUIREMENTS FOR**  
12 **CONSERVATION OBLIGATIONS.**

13 “(a) DIRECT COSTS DEFINED.—In this section, the  
14 term ‘direct costs’ means—

15 “(1) expenditures on labor, material, facilities,  
16 utilities, equipment, supplies and other resources  
17 which are necessary to undertake a specific con-  
18 servation measure;

19 “(2) increased purchase power costs and lost  
20 revenues caused by changes in the operation of a hy-  
21 dropower system from which the non-Federal person  
22 or Federal power marketing administration markets  
23 power to meet a specific conservation measure; and

1           “(3) other reimbursable costs specifically identi-  
2       fied by the Secretary as directly related to the per-  
3       formance of a specific conservation measure.

4       “(b) COST-SHARING.—

5           “(1) CONSERVATION PLANS.—For any non-  
6       Federal person or Federal power marketing adminis-  
7       tration, the Secretary shall pay 50 percent of any di-  
8       rect costs that result from the compliance by the  
9       person or administration mandated by a conserva-  
10      tion plan issued under section 5 or any conservation  
11      measure that provides protection to a listed species  
12      under a plan developed under the Pacific Northwest  
13      Electric Power Planning and Conservation Act (16  
14      U.S.C. 839 et seq.) including a plan that provides  
15      protection to a larger population unit of the same  
16      listed species.

17          “(2) CONSULTATION REQUIREMENTS.—For any  
18      non-Federal person or Federal power marketing ad-  
19      ministration, the Secretary shall pay 50 percent of  
20      direct costs that result solely from requirements im-  
21      posed by the Secretary on the person or marketing  
22      administration under section 7.

23          “(3) INCIDENTAL TAKE PERMITS.—For any  
24      non-Federal person issued an incidental take permit  
25      under section 10, the Secretary shall pay to such



1 person 50 percent of the direct costs of preparing  
2 the application for the permit and implementing the  
3 terms and conditions of the permit.

4 “(4) COOPERATIVE MANAGEMENT AGREEMENTS.—The Secretary shall pay 50 percent of the  
5 direct costs of preparing and implementing the  
6 terms and conditions of a cooperative management  
7 agreement incurred by a party to the agreement and  
8 any costs incurred by any other non-Federal person  
9 or Federal power marketing administration subject  
10 to the terms of such agreement.

12 “(c) METHOD OF COST-SHARING.—

13 “(1) IN GENERAL.—Except as provided in para-  
14 graph (2), the Secretary may make a contribution  
15 required under subsection (b) by—

16 “(A) providing a habitat reserve grant  
17 under section 6(b)(14);

18 “(B) acquiring, from or for the party to  
19 the cost-share, land or an interest in land as  
20 provided in section 5A; or

21 “(C) providing appropriated funds.

22 “(2) COST-SHARE PAYMENT FOR FEDERAL  
23 POWER MARKETING ADMINISTRATIONS AND OTHER  
24 STATE OR LOCAL GOVERNMENTAL ENTITIES.—The  
25 Secretary shall make a contribution under sub-

1 section (b) to a Federal power marketing adminis-  
2 tration or any other State or local governmental en-  
3 tity by providing appropriated funds directly to the  
4 administration or governmental entity.

5 “(3) APPROPRIATED FUNDS.—To the maximum  
6 extent practicable, any appropriated funds paid by  
7 the Secretary under paragraphs (1) and (2) shall be  
8 paid directly (in lieu of reimbursement) to the party,  
9 person, or administration.

10 “(4) LOANS.—The Secretary may not consider  
11 a loan to the party to the cost-share as a contribu-  
12 tion or portion of a contribution under subsection  
13 (b).

14 “(5) RECOVERED COSTS.—The Secretary may  
15 not claim as a portion of the Federal share under  
16 subsection (b) any costs to the Federal Government  
17 that are recovered through rates for the sale or  
18 transmission of power or water.

19 “(6) EFFECT OF FEDERAL NONPAYMENT.—If  
20 the Secretary fails to make the contribution required  
21 under subsection (b), the application of the applica-  
22 ble provision of the conservation plan, requirement  
23 under section 7, term under the incidental take per-  
24 mit, or provision of the cooperative management  
25 agreement shall be suspended until such time as the

1 full contribution is made. If the suspended provision  
2 or requirement includes a conservation easement or  
3 other instrument restricting title to the property of  
4 the non-Federal person, nonpayment of the full con-  
5 tribution shall result in the nullification of the pre-  
6 viously granted restriction on title.

7 “(7) IN-KIND CONTRIBUTIONS.—A non-Federal  
8 person or Federal power marketing administration  
9 may include in-kind contributions in calculating the  
10 appropriate share of the costs of the person or ad-  
11 ministration under this section.

12 “(8) COSTS PAID BY THE SECRETARY.—Com-  
13 pensation from the Federal Government under sec-  
14 tion 19 may not cover costs incurred by a non-Fed-  
15 eral person that were otherwise paid by the Sec-  
16 retary under subsection (b).

17 “(d) EXISTING COST-SHARING AGREEMENTS.—Any  
18 cost-sharing agreement with a non-Federal person pro-  
19 vided in any recovery plan or other agreement in existence  
20 prior to the date of enactment of this subsection shall re-  
21 main in effect unless the non-Federal person requests that  
22 the cost-sharing percentage be reconsidered.

23 “(e) ADJUSTMENTS TO COST-SHARING PERCENT-  
24 AGE.—At the request of the non-Federal person, the Sec-

1 retary may adjust the percentage of the Federal contribu-  
2 tion to a higher share.”.

3 **SEC. 803. ENDANGERED SPECIES AND THREATENED SPE-**  
4 **CIES CONSERVATION TRUST FUND.**

5 Section 13 is amended to read as follows:

6 **“SEC. 13. ENDANGERED SPECIES AND THREATENED SPE-**  
7 **CIES CONSERVATION TRUST FUND.**

8 “(a) ESTABLISHMENT.—There is established in the  
9 general fund of the Treasury a separate account which  
10 shall be known as the ‘Endangered Species and Threat-  
11 ened Species Conservation Trust Fund’ (in this section re-  
12 ferred to as the ‘Fund’).

13 “(b) CONTENTS.—The Fund shall consist of the fol-  
14 lowing:

15 “(1) Amounts received as gifts, bequests, and  
16 devises under subsection (d).

17 “(2) Other amounts appropriated to or other-  
18 wise deposited in the Fund.

19 “(c) USE.—Amounts in the fund shall be available  
20 to the Secretary, subject to appropriations, for the follow-  
21 ing:

22 “(1) Payment of compensation under section  
23 19.

24 “(2) Habitat conservation grants under section  
25 6(b)(11).

1 “(3) Payment of cost sharing under section 16.

2 “(d) GIFTS, BEQUESTS, AND DEVISES.—

3 “(1) IN GENERAL.—The Secretary may accept,  
4 use, and dispose of gifts, bequests, or devises of  
5 services or property, both real and personal, for the  
6 purpose of carrying out this Act.

7 “(2) DEPOSIT INTO FUND.—Gifts, bequests, or  
8 devises of money, and proceeds from sales of other  
9 property received as gifts, bequests, or devises, shall  
10 be deposited in the Fund and shall be available for  
11 disbursement upon order of the Secretary.

12 “(3) TREATMENT.—For purposes of Federal in-  
13 come, estate, and gift taxes, property accepted under  
14 this subsection shall be considered as a gift, bequest,  
15 or devise to the United States.”.

## 16 **TITLE IX—MISCELLANEOUS** 17 **PROVISIONS**

### 18 **SEC. 901. AMENDMENTS TO DEFINITIONS.**

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

20 (1) by adding after paragraph (16) (as added  
21 by section 401(e)(1) of this Act) the following new  
22 paragraph:

23 “(17) The term ‘non-Federal person’ means a  
24 person other than an officer, employee, agent, de-  
25 partment, or instrumentality of the Federal Govern-

1       ment or a foreign government, acting in the official  
2       capacity of the person.”; and

3               (2) by amending paragraph (3) (as redesign-  
4       nated by section 102(a)(1) of this Act) to read as  
5       follows:

6               “(3) The term ‘commercial activity’ means all  
7       activities of industry and trade, including, but not  
8       limited to, the buying or selling of commodities and  
9       activities conducted for the purpose of facilitating  
10      such buying and selling, except that it does not in-  
11      clude exhibition of commodities or species by exhibi-  
12      tors licensed under the Animal Welfare Act (7  
13      U.S.C. 2131 et seq.), museums, or similar cultural  
14      or historical organizations.”.

15   **SEC. 902. REVIEW OF SPECIES OF NATIONAL INTEREST.**

16       No later than 60 days after the date of the enactment  
17      of this Act, the Secretary (as that term is defined in sec-  
18      tion 3 of the Endangered Species Act of 1973, as amended  
19      by this Act) shall identify those species which are listed  
20      under section 4 of that Act as a result of being determined  
21      to be a population segment. No later than one year after  
22      the date of the enactment of this Act, the Secretary shall  
23      review and determine whether or not it is in the national  
24      interest to continue to list each such population segment.  
25      Those population segments which the Secretary rec-

1 ommends for continued listing in the national interest  
2 shall be submitted to the Congress for approval. Any pop-  
3 ulation segment which is not determined to be in the na-  
4 tional interest shall be delisted within 60 days after that  
5 determination.

6 **SEC. 903. PREPARATION OF CONSERVATION PLANS FOR**  
7 **SPECIES LISTED BEFORE ENACTMENT OF**  
8 **THIS ACT.**

9 (a) LISTED SPECIES WITHOUT RECOVERY PLANS.—

10 (1) PRIORITY FOR DEVELOPMENT OF CON-  
11 SERVATION PLANS.—Not later than 30 days after  
12 the date of enactment of this Act, the Secretary (as  
13 defined in section 3 of the Endangered Species Act  
14 of 1973, as amended by this Act) shall publish a list  
15 of all species that were determined to be endangered  
16 species or threatened species under section 4 of the  
17 Act (16 U.S.C. 1533) for which no final recovery  
18 plans were issued under section 4(f) of the Act (16  
19 U.S.C. 1533(f)) (as in effect on the day before the  
20 date of enactment of this Act) divided equally into  
21 three tiers of priority for preparation of conservation  
22 objectives and conservation plans therefor pursuant  
23 to section 5 of the Act. Any species which is listed  
24 as an endangered species or threatened species in

1 more than one State shall be placed in the first tier  
2 of priority.

3 (2) SCHEDULE FOR ADOPTION OF PLANS.—The  
4 Secretary shall publish pursuant to section 5 of the  
5 Endangered Species Act of 1973 a conservation ob-  
6 jective, draft conservation plan, and final conserva-  
7 tion plan (except when a conservation objective is  
8 published pursuant to section 5(b)(3)(C) of such  
9 Act) for each species within each tier of priority  
10 identified pursuant to paragraph (1) within the fol-  
11 lowing periods after the date of enactment of this  
12 Act:

13 (A) Conservation objective: First tier, 120  
14 days; second tier, 12 months; and third tier, 24  
15 months.

16 (B) Draft conservation plan: First tier, 6  
17 months; second tier, 18 months; and third tier,  
18 30 months.

19 (C) Final conservation plan: First tier, 12  
20 months; second tier, 24 months; and third tier,  
21 36 months.

22 (b) LISTED SPECIES WITH RECOVERY PLANS.—

23 (1) PRIORITY FOR REVISION OF EXISTING  
24 PLANS.—Except as provided in paragraph (3), a  
25 final recovery plan issued under section 4(f) of the



1       Endangered Species Act of 1973 (16 U.S.C.  
2       1533(f)) (as in effect on the day before the date of  
3       enactment of this Act) shall continue in effect until  
4       the expiration of the deadline for revision thereof es-  
5       tablished under this paragraph. Within 90 days after  
6       the date of enactment of this Act, the Secretary  
7       shall publish a list of all species that were deter-  
8       mined to be endangered species or threatened spe-  
9       cies under section 4 of such Act (16 U.S.C. 1533)  
10      and for which final recovery plans were issued under  
11      section 4(f) of such Act (16 U.S.C. 1533(f)) (as in  
12      effect on the day before the date of enactment of  
13      this Act) divided equally into three tiers of priority  
14      for preparation of conservation objectives pursuant  
15      to section 5(b) of such Act and revisions of the re-  
16      covery plans consistent with the requirements for  
17      conservation plans set forth in section 5(c) of such  
18      Act. Any species which is listed as an endangered  
19      species or threatened species in more than one State  
20      shall be placed in the first tier of priority.

21           (2) SCHEDULE FOR REVISION OF PLANS.—The  
22      Secretary shall publish pursuant to section 5 of the  
23      Endangered Species Act of 1973 a conservation ob-  
24      jective, draft revision of the existing recovery plan,  
25      and final revision of the existing recovery plan (ex-

1       cept when a conservation objective is published pur-  
2       suant to section 5(b)(3)(C) of such Act) for each  
3       species within each tier of priority identified pursu-  
4       ant to paragraph (1) within the following periods  
5       after the date of enactment of this Act:

6               (A) Conservation objective: First tier, 180  
7               days; second tier, 18 months; and third tier, 30  
8               months.

9               (B) Draft revised recovery plan: First tier,  
10              12 months; second tier, 24 months; and third  
11              tier, 36 months.

12              (C) Final revised recovery plan: First tier,  
13              18 months; second tier, 30 months; and third  
14              tier, 42 months.

15              (3) SPECIES FOR WHICH NO CONSERVATION  
16       PLAN IS REQUIRED.—If the Secretary publishes a  
17       conservation objective for which no conservation plan  
18       is required pursuant to section 5(b)(3)(C) of the En-  
19       dangered Species Act of 1973 for any species subject  
20       to this subsection, the final recovery plan applicable  
21       to the species shall be rescinded.

22              (c) PROHIBITION ON ADDITIONAL REQUIRE-  
23       MENTS.—The Secretary or any other Federal agency may  
24       not require any increase in any measurable criterion con-  
25       tained in, or any site specific management action in addi-

tion to those provided in, a final recovery plan issued under section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)) (as in effect on the day before the date of enactment of this Act) until such time as a conservation plan, or, pursuant to section 5(b)(3)(C) of such Act, a conservation objective, has been published under section 5 of such Act.

(d) EXISTING BIOLOGICAL OPINIONS.—In conjunction with the issuance of a conservation plan, or, pursuant to section 5(b)(3)(C) of the Endangered Species Act of 1973, a conservation objective under subsection (a) or (b), the Secretary (as defined in section 3 of such Act (16 U.S.C. 1532)) shall review and reissue, in accordance with section 7 of such Act, any written opinion of the Secretary that relates to the affected species and was issued after January 1, 1995, under section 7(b)(3) of such Act (16 U.S.C. 1536(b)(3)) (as in effect on the day before the date of enactment of this Act).

**SEC. 904. CONFORMING AMENDMENT TO TABLE OF CONTENTS.**

The table of contents at the end of the first section is amended to read as follows:

**“TABLE OF CONTENTS**

“Sec. 2. Findings, purposes, and policy.

“Sec. 3. Definitions.

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

“Sec. 5. Species conservation plans.

“Sec. 5A. Protection of habitat.

- “Sec. 6. Cooperation with non-Federal persons.
- “Sec. 7. Interagency cooperation.
- “Sec. 8. International cooperation.
- “Sec. 8A. Convention implementation.
- “Sec. 9. Prohibited acts.
- “Sec. 10. Exceptions.
- “Sec. 11. Penalties and enforcement.
- “Sec. 12. Endangered plants.
- “Sec. 13. Endangered Species and Threatened Species Conservation Trust Fund.
- “Sec. 14. Notice of hearings.
- “Sec. 15. Authorization of appropriations.
- “Sec. 16. Federal cost-sharing requirements for conservation obligations.
- “Sec. 17. Marine Mammal Protection Act of 1972.
- “Sec. 18. Annual cost analysis by the Fish and Wildlife Service.
- “Sec. 19. Right to compensation.
- “Sec. 20. Recognizing net benefits to aquatic species.”.



HR 2275 IH——2

HR 2275 IH——3

HR 2275 IH——4

HR 2275 IH——5

HR 2275 IH——6

HR 2275 IH——7

HR 2275 IH——8

HR 2275 IH——9

HR 2275 IH——10

HR 2275 IH——11