Service, Department of the Treasury, transmitting, pursuant to law, a rule entitled ''The Port Passenger Acceleration Service System Program'' (RIN1515–AB90); to the Committee on Finance.

EC–2956. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report of a memorandum of justification to draw down articles, services, and military education and training; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted on September 15, 1997:

By Mr. ROTH, from the Committee on Finance, discharged pursuant to section 1023 of P.L. 93–344:

S. 1144. A bill disapproving the cancellation transmitted by the President on August 11, 1997, regarding Public Law 105–33.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. D'AMATO (for himself and Mr. SARBANES) (by request):

S. 1179. A bill to amend the National Flood Insurance Act of 1968 to reauthorize the National Flood Insurance Program; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KEMPTHORNE (for himself, Mr. CHAFEE, Mr. BAUCUS, and Mr. REID):

S. 1180. A bill to reauthorize the Endangered Species Act; to the Committee on Environment and Public Works.

By Mr. KEMPTHORNE:

S. 1181. A bill to amend the Internal Revenue Code of 1986 to provide Federal tax incentives to owners of environmentally sensitive lands to enter into conservation easements for the protection of endangered species habitat, to allow a deduction from the gross estate of a decedent in an amount equal to the value of real property subject to an endangered species conservation agreement, and for other purposes; to the Committee on Finance.

By Ms. SNOWE (for herself, Mr. ABRAHAM, and Mr. GRAMM):

S. 1182. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to limit consideration of nonemergency matters in emergency legislation and permit matter that is extraneous to emergencies to be stricken as provided in the Byrd rule; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one Committee reports, the other Committee has thirty days to report or be discharged.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. D'AMATO (for himself and Mr. SARBANES) (by request):

S. 1179. A bill to amend the National Flood Insurance Act of 1968 to reauthorize the National Flood Insurance Program; to the Committee on Banking, Housing, and Urban Affairs.

THE NATIONAL FLOOD INSURANCE REAUTHORIZATION ACT OF 1997

Mr. D'AMATO. Mr. President, I rise today to introduce the National Flood Insurance Reauthorization Act of 1997 (NFIRA). This legislation provides for a simple and straightforward 5-year extension of the National Flood Insurance Program (NFIP) which is scheduled to expire on September 30, 1997. This legislation will ensure that this important program is placed on a steady and secure foundation to continue the invaluable protection it provides to flood insurance policyholders and the Federal taxpayers. I am pleased that my colleague, Senator SARBANES, the distinguished ranking member of the Banking Committee, has cosponsored this measure.

The National Flood Insurance Program, which is administered by the Federal Emergency Management Agency [FEMA], enables over 3.5 million American families to insure their homes and possessions. In my home State of New York, 85,000 families participate in the NFIP. The NFIP allows these families, on Long Island and along the Great Lakes and the State's many rivers, to purchase adequate insurance coverage to protect their homes in the event of a catastrophic flood.

The NFIP employs a comprehensive approach to alleviating the risks posed by catastrophic floods. Floodplain communities participate in FEMA's Community Rating System and are offered incentives to adopt and enforce measures to reduce the risk of flood damage and improve flood prevention building criteria. To avoid the danger of repetitive losses, the program provides stringent building standards, including increased elevation, designed to reduce the risk of future damage. These flood protection standards must be met before any structure which suffers substantial damage may be rebuilt. In addition, persons who receive disaster assistance and fail to subsequently purchase flood insurance are barred from receiving future assistance.

Mr. President, the NFIP plays a critical role in reducing the costs of Federal disaster relief. Current NFIP policyholders pay approximately $1.3 billion annually into the NFIP fund. Without this premium income, the Federal Government would likely pay spiraling costs in disaster relief. The NFIP has the added benefits of improving State and community planning and Federal support for locally driven disaster prevention and mitigation activities.

Reauthorizing the NFIP is an important step forward in reaffirming the commitment of the Federal Government to help American families protect their homes and to protect the Federal taxpayer from the risks of catastrophic floods. Clearly, we must do more. Lenders and private insurers who participate in the NFIP must do more to ensure compliance. States and local communities must improve their disaster planning, prevention, and response activities. FEMA must redouble its efforts to increase participation in the program to improve the safety and soundness of the NFIP fund. Also, the Federal Government must do more to prevent and mitigate against the losses which will inevitably occur from future floods.

Mr. President, I note that this bill is supported by the administration. I urge my colleagues to support the adoption of this legislation and I look forward to working with the members of the Banking Committee to ensure a swift and speedy passage.

By Mr. KEMPTHORNE (for himself, Mr. CHAFEE, Mr. BAUCUS, and Mr. REID):

S. 1180. A bill to reauthorize the Endangered Species Act; to the Committee on Environment and Public Works.

THE ENDANGERED SPECIES RECOVERY ACT OF 1997

Mr. KEMPTHORNE. Mr. President, 2 years ago, in Lewiston, ID, as chairman of the Drinking Water Fisheries and Wildlife Subcommittee, I held a hearing to review the current Endangered Species Act and to identify ways to improve the act. It was clear from the testimony we heard that the current law simply is not working. It isn't working for species and it isn't working for people. That message was loud and clear. Senator CHAFEE was there with us at that meeting.

We must do a better job of protecting species without jeopardizing our communities. The legislation that I am introducing today with Senator CHAFEE, Senator BAUCUS, and Senator REID will do just that. It will bring real and fundamental reform to the Endangered Species Act, and it will minimize the social and economic impact of the ESA on the lives of ordinary citizens, and it will benefit species. That is the critical point.

I want to thank Senators CHAFEE, BAUCUS, and REID, who have worked diligently with me as we have crafted this legislation, which brings about balance and a bipartisan approach to a very sensitive issue.

There are over 1,000 species on the endangered species list today but fewer than half of them have ever had a recovery plan written for them. The best evidence that the current law isn't working may be the fact that not a single species has recovered as a result of a recovery plan. It is as if you have a recovery room filled with patients and one by one these patients are brought in, given an examination by the doctor, and at the conclusion of the examination the doctor says, ''Yes, you are critical. Next.'' ''What do you mean, next, doctor? What is the prescription? What is the recovery for this critical condition?''

The emphasis has not been on recovery. It has been on continuing to list, list, list, without the emphasis on recovery.

But the law must also have balance. It must recognize the rights of people, too.

During our hearings, we heard many compelling stories from people who have had to live with the real life impact of the Endangered Species Act. We heard from families in Owyhee County, ID, who cannot get bank loans for their homes because the listing of a tiny snail—the Bruneau Hot Springs snail—has caused their property value to plummet.

We heard from a woman in Laramie, WY, who told us that the mosquito control program in their community had been suspended because of the ESA, causing severe health risks for the citizens of Laramie, including her son who contracted encephalitis from a mosquito.

We heard from a rancher in Joseph, OR, who described how Federal regulators, under the threat of lawsuit from environmentalists, tried to stop all grazing on forest lands up in the mountains because salmon were spawning in streams that ran through the private land below, but in his words, ''The cows were up in the high country as far from the spawning habitat as you could get.''

And we heard from mill workers who lost their jobs when the ESA all but shut down logging in certain national forests. I think that Ray Brady from Grangeville, ID, may have captured best the underlying feeling of frustration and anxieties:

We had a choice of moving, of going someplace else. Why should we? I chose to live in a small community like Grangeville. I chose to work there. I worked there for 28 years and somebody else in a different part of the country makes a decision that has cost me my job and occupation and 28 years worth of experience. Now I am having to start all over again. I don't have any income. I don't have any insurance for my family or myself; and I attribute it directly to this Endangered Species Act. Somebody has to do something about it. I mean, not in the future, I mean now.

Ray Brady is right. We need to improve the way that the ESA works, and we need to do it right now. We need an ESA that will make advocates out of adversaries. As it's administered today, it separates people from their environment. It invites Federal regulators to become land use managers over some of the best stewards of our environment—our farmers and our ranchers and our landowners. And we need their help if we are truly going to save species. Just remember, well over half of our endangered species depend on private property.

The ESA must provide more incentives to encourage property owners to become partners in the conservation of a rare and unique species.

The bill we are introducing today will achieve those goals. It will make the law work better. It will reduce unnecessary bureaucracy; it will enhance the recovery of species; and it will treat property owners fairly.

Let me highlight just a few of the significant improvements that we have included in this legislation.

The bill will put new emphasis on the need to use good science in everything from the listing process through recovery. The Secretary will be required to use the best available science in all of his decisions and to give greater preference to information that is empirical and peer reviewed. In addition, all listing and delisting decisions will be subject to independent peer review. That means that we can all have greater confidence in the decisions made under the ESA.

The bill will add teeth to the recovery planning process so that we're no longer just running an endangered species emergency room without also providing the prescription for recovery. For the first time, we will set deadlines for the development of recovery plans for every listed species. Each recovery plan will be developed by a recovery team that includes scientists, economists, and representatives of the communities that are affected by the listing of the species. And we establish new substantive requirements for each recovery plan, including recovery measures, benchmarks to measure progress, and a biological recovery goal that will trigger delisting when it is met. We'll know that the law is working well when species are no longer just being listed, but when they're also being delisted as a result of a successful recovery plan.

The bill recognizes that we can reduce bureaucracy and unnecessary Federal interference with land management decisions without harming species. In the consultation process, for example, the fact is that people spend too much time trying to comply with too many regulations from too many Federal agencies. That cannot only significantly increase the cost of a project, in some cases, it can be deadly.

In 1996, in Yuba County, CA, for example, the Corps of Engineers was prevented from repairing levees south of the city of Marysville because of the impact that the repairs might have on the hibernating garter snake. The work wasn't done and on January 2, a levee failed in Olivehurst, CA, killing three people and flooding 500 homes.

Under our bill, the Federal action agency, in that case the Corps of Engineers, will have the authority to make the initial determination that its repairs would not be likely to adversely affect the species. The levee repair could then proceed, unless the Fish and Wildlife Service objected to the initial determination within 60 days. This simple procedural fix will allow projects to be completed on time without jeopardizing endangered species.

Perhaps most important, the bill includes a number of incentives for property owners so that they can become partners in saving species.

The key is maximum flexibility and our bill provides that. For example, if you're an individual who wants to clear a few acres of land to build your vacation home in red cockaded woodpecker territory, our new low effect conservation plan may be just what you need. On the other hand, a county planning its development needs for the next 50 years might choose to enter into a multiple species conservation plan to preserve habitat for all of its rare and unique species. State and local governments can even enter into conservation plans to protect unlisted species.

All of the conservation plans are backed by a no-surprises provision that gives landowners certainty that their obligations will be defined by the plan. They won't be required to pay additional money for conservation measures or to further restrict their activities on the land covered by the plan.

In addition to conservation plans, the bill offers landowners the option of entering into separate agreements to manage land for the benefit of species. A small timber company whose lands are suitable habitat for spotted owls might enter into a safe harbor agreement to let the trees grow to attract the owls with the understanding that at the end of some agreed-upon period of time, it can harvest the trees. And a farmer might agree to set aside buffer strips for a species in return for compensation under a habitat reserve agreement.

Finally, the bill limits the ability of the Federal Government and environmental groups to restrict otherwise legal activities on private lands. Under the law today, the Government and environmental groups have used the take prohibition to try to prohibit logging and development on private lands and a city's pumping of an aquifer for drinking water, even where there was no scientific evidence that the activity would in fact harm an endangered species. Our bill will change that, reaffirming that the Federal Government, or an environmental group, has the burden of demonstrating that an activity will actually harm a species and they must meet that burden using real science, not just assumptions or speculation.

When we started this process just over 2 years ago, we asked ourselves the question: Should we make a concerted effort to save species? The answer was yes.

But could we do it without putting people and communities at risk?

Today, I think that we've demonstrated that we can. We can save species with less bureaucracy, using good science, incentives, and where necessary, public financial resources.

Charles Mann and Christopher Plummer wrote in their book ''Noah's Choice,'' ''If we truly want to improve the lot of endangered species, we should stop shooting for the stars, because the arrows will fall back to our feet. By aiming a little closer, we might shoot farther in the desired direction.''

And I will add, and hit the target more often. This bill hits the target.

I would like to use my prerogative to just thank my staff for their efforts on this—Buzz Fawcett, Ann Klee, Jim

Tate, and other members of my staff. I know the other Senators feel as I do about my staff, that they do a tremendous job. As we stand here with results of 18 months of hard effort, we know of the many hours they have contributed as well in making this a success.

Mr. President, we now have a bill that is bipartisan. We have a bill that is scheduled for a hearing 1 week from today and for markup in committee where amendments will be considered 2 weeks from today. It is our full expectation that we will be able to bring this bill to the floor of the Senate for debate and for a vote sometime near the middle of October. It has been many months, if not years, in the making, to create this legislation which improves the Endangered Species Act, so that we can, again, save species and do it without putting people and communities at risk.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1180

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Endangered Species Recovery Act of 1997''.

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

(c) REFERENCES TO ENDANGERED SPECIES ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to that section or provision of the Endangered Species Act (16 U.S.C. 1531 et seq.).

SEC. 2. LISTING AND DELISTING SPECIES.

(a) BEST SCIENTIFIC AND COMMERCIAL DATA AVAILABLE.—Section 3 of the Act (16 U.S.C. 1532) is amended—

(1) by striking the title and inserting the following: ''DEFINITIONS AND GENERAL PROVISIONS'';

(2) by striking ''For the purposes of this Act—'' and inserting the following:

''(a) DEFINITIONS.—For purposes of this Act—''; and

(3) by adding at the end the following new subsection:

''(b) GENERAL PROVISIONS.—

''(1) BEST SCIENTIFIC AND COMMERCIAL DATA AVAILABLE.—Where this Act requires the Secretary to use the best scientific and commercial data available, the Secretary shall when evaluating comparable data give greater weight to scientific or commercial data that is empirical, field-tested or peer-reviewed.''.

(b) CONFORMING AMENDMENT.—The table of contents in the first section (16 U.S.C. 1531) is amended by striking the item relating to section 3 and inserting the following:

''Sec. 3. Definitions and general provisions.''.

(c) LISTING AND DELISTING.—

(1) FACTORS CONSIDERED FOR LISTING.—Section 4(a)(1) is amended—

(A) in subparagraph (C) by inserting ''introduced species, competition,'' prior to ''disease or predation''; and

(B) in subparagraph (D) by inserting ''Federal, State and local government and international'' prior to ''regulatory mechanisms''.

(2) CRITICAL HABITAT.—Section 4(a) is amended by striking paragraph (3).

(3) DELISTING.—Section 4(b)(2) is amended to read as follows:

''(2) DELISTING.—The Secretary shall, in accordance with section 5 and upon a determination that the goals of the recovery plan for a species have been met, initiate the procedures for determining, in accordance with subsection (a)(1), whether to remove a species form a list published under subsection (c).''

(4) RESPONSE TO PETITIONS.—Section 4(b)(3) is amended to read as follows:

''(3) RESPONSE TO PETITIONS.—

''(A) ACTION MAY BE WARRANTED.—

''(i) IN GENERAL.—To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to—

''(I) add a species to,

''(II) remove a species from, or

''(III) change a species status from a previous determination with respect to

either of the lists published under subsection (c), the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned the Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

''(ii) MINIMUM DOCUMENTATION.—A finding that the petition presents the information described in clause (i) shall not be made unless the petition provides—

''(I) documentation that the fish, wildlife, or plant that is the subject of the petition is a species as defined in section 3;

''(II) a description of the available data on the historical and current range and distribution of the species;

''(III) an appraisal of the available data on the status and trends of populations of the species;

''(IV) an appraisal of the available data on the threats to the species; and

''(V) an identification of the information contained or referred to in the petition that has been peer-reviewed or field-tested.

''(iii) NOTIFICATION TO THE STATES.—

''(I) PETITIONED ACTIONS.—If the petition is found to present the information described in clause (i), the Secretary shall notify and provide a copy of the petition to the State agency in each State in which the species is believed to occur and solicit the assessment of the agency, to be submitted to the Secretary within 90 days of notification, as to whether the petitioned action is warranted.

''(II) OTHER ACTIONS.—If the Secretary has not received a petition for a species and the Secretary is considering proposing to list such species as either threatened or endangered under subsection (a), the Secretary shall notify the State agency in each State in which the species is believed to occur and solicit the assessment of the agency, to be submitted to the Secretary within 90 days of the notification, as to whether the listing would be in accordance with the provisions of subsection (a).

''(III) CONSIDERATION OF STATE ASSESSMENTS.—Prior to publication of a determination that a petitioned action is warranted or a proposed regulation, the Secretary shall consider any State assessments submitted within the comment period established by subclause (I) or (II).

''(B) PETITION TO CHANGE STATUS OR DELIST.—A petition may be submitted to the Secretary under subparagraph (A) to change the status of or to remove a species from either of the lists published under subsection (c) in accordance with subsection (a)(1), if—

''(i) the current listing is no longer appropriate because of a change in the factors identified in subsection (a)(1); or

''(ii) with respect to a petition to remove a species from either of the lists—

''(I) new data or a reinterpretation of prior data indicates that removal is appropriate;

''(II) the species is extinct; or

''(III) the recovery goals established for the species in a recovery plan approved under section 5(h) have been achieved.

''(C) DETERMINATION.—Within 12 months after receiving a petition that is found under subparagraph (A)(i) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:

''(i) NOT WARRANTED.—The petitioned action is not warranted, in which case the Secretary shall promptly publish the finding in the Federal Register.

''(ii) WARRANTED.—The petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement the action in accordance with paragraph (5).

''(iii) WARRANTED BUT PRECLUDED.—The petitioned action is warranted, but that—

''(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species; and

''(II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) and to remove from the lists species for which the protections of the Act are no longer necessary,

in which case the Secretary shall promptly publish the finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

''(D) SUBSEQUENT DETERMINATION.—A petition with respect to which a finding is made under subparagraph (C)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.

''(E) JUDICIAL REVIEW.—Any negative finding described in subparagraph (A)(i) and any finding described in subparagraph (C)(i) or (iii) shall be subject to judicial review.

''(F) MONITORING AND EMERGENCY LISTING.—The Secretary shall implement a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (C)(iii) and shall make prompt use of the authority under paragraph (7) to prevent a significant risk to the well-being of any such species.''.

(5) PROPOSED REGULATIONS.—Section 4(b)(5) is amended by—

(A) striking ''(5) With respect to any regulation'' and inserting the following:

''(5) PROPOSED REGULATIONS AND REVIEW.—With respect to any regulation'';

(B) striking ''a determination, designation, or revision'' and inserting ''a determination or change in status'';

(C) striking ''(a)(1) or (3),'' and inserting ''(a)(1),'';

(D) striking ''in the Federal Register,'' and inserting ''in the Federal Register as provided by paragraph (8),''; and

(E) striking subparagraph (E) and inserting the following:

''(E) at the request of any person within 45 days after the date of publication of general notice, promptly hold at least 1 public hearing in each State that would be affected by the proposed regulation (including at least 1 hearing in an affected rural area, if any) except that the Secretary may not be required to hold more than 5 hearings under this clause.''.

(7) FINAL REGULATIONS.—

(A) SCHEDULE.—Section 4(b)(6)(A) is amended to read as follows:

''(A) IN GENERAL.—Within the 1-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register—

''(i) a final regulation to implement the determination,

''(ii) notice that the 1-year period is being extended under subparagraph (B)(i), or

''(iii) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based.''.

(B) CONFORMING AMENDMENTS.—Section 4(b)(6) is amended—

(i) in subparagraph (B)(i) by striking ''or revision'';

(ii) in subparagraph (B)(iii), by striking ''or revision concerned, a finding that the revision should not be made,''; and

(iii) by striking subparagraph (C).

(8) PUBLICATION OF DATA AND INFORMATION.—Section 4(b)(8) is amended by—

(A) striking ''a summary by the Secretary of the data'' and inserting ''a summary by the Secretary of the best scientific and commercial data available'';

(B) striking ''is based and shall'' and inserting ''is based, shall''; and

(C) striking ''regulation; and if such regulation designates or revises critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation.'' and inserting ''regulation, and shall provide, to the degree that it is relevant and available, information regarding the status of the affected species, including current population, population trends, current habitat, food sources, predators, breeding habits, captive breeding efforts, governmental and non-governmental conservation efforts, or other pertinent information.''.

(9) SOUND SCIENCE.—Section 4(b) is amended by adding at the end the following:

''(9) ADDITIONAL DATA.—

''(A) IN GENERAL.—The Secretary shall identify and publish in the Federal Register with the notice of a proposed regulation pursuant to paragraph (5)(A)(i) a description of additional scientific and commercial data that would assist in the preparation of a recovery plan and—

''(i) invite any person to submit the data to the Secretary; and

''(ii) describe the steps that the Secretary plans to take for acquiring additional data.

''(B) RECOVERY PLANNING.—Data identified and obtained under subparagraph (A) shall be considered by the recovery team and the Secretary in the preparation of the recovery plan in accordance with section 5.

''(C) NO DELAY AUTHORIZED.—Nothing in this paragraph shall be deemed to waive or extend any deadline for publishing a final rule to implement a determination (except for the extension provided in paragraph (6)(B)(i)) or any deadline under section 5.

''(10) INDEPENDENT SCIENTIFIC REVIEW.—

''(A) IN GENERAL.—In the case of a regulation proposed by the Secretary to implement a determination under subsection (a)(1) that any species is an endangered species or a threatened species or that any species currently listed as an endangered species or a threatened species should be removed from any list published pursuant to subsection (c), the Secretary shall provide for independent scientific peer review by—

''(i) selecting independent referees pursuant to subparagraph (B);

''(ii) requesting the referees to conduct the review, considering all relevant information, and make a recommendation to the Secretary in accordance with this paragraph not later than 150 days after the general notice is published pursuant to paragraph (5)(A)(i).

''(B) SELECTION OF REFEREES.—For each independent scientific review to be conducted pursuant to subparagraph (A), the Secretary shall select 3 independent referees from a list provided by the National Academy of Sciences, who—

''(i) through publication of peer-reviewed scientific literature or other means, have demonstrated scientific expertise on the species or a similar species or other scientific expertise relevant to the decision of the Secretary under subsection (a);

''(ii) do not have, or represent any person with, a conflict of interest with respect to the determination that is the subject of the review; and

''(iii) are not participants in a petition to list, change the status of, or remove the species under paragraph (3)(A)(i), the assessment of a State for the species under paragraph (3)(A)(iii), or the proposed or final determination of the Secretary.

''(C) FINAL DETERMINATION.—The Secretary shall take one of the actions under paragraph (6)(A) of this subsection not later than 1 year after the date of publication of the general notice of the proposed determination. If the referees have made a recommendation in accordance with clause (ii) of subparagraph (A), the Secretary shall evaluate and consider the information that results from the independent scientific review and include in the final determination—

''(i) a summary of the results of the independent scientific review; and

''(ii) in cases where the recommendation of a majority of the referees who conducted the independent scientific review under subparagraph (A) are not followed, an explanation as to why the recommendation was not followed.

''(D) FEDERAL ADVISORY COMMITTEE ACT.—The referees selected pursuant to this paragraph shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).''.

(10) LIST.—Section 4(c) is amended by—

(A) inserting ''designated'' before ''critical habitat''; and

(B) striking ''determinations, designations and revisions'' and inserting ''determinations''.

(11) PROTECTIVE REGULATION.—Section 4(d) is amended by—

(A) striking ''Whenever any species is listed'' and inserting the following:

''(1) IN GENERAL.—Whenever any species is listed''; and

(B) adding at the end the following:

''(2) NEW LISTINGS.—With respect to each species listed as a threatened species after the date of enactment of the Endangered Species Recovery Act of 1997, regulations applicable under paragraph (1) to the species shall be specific to that species by the date on which the Secretary is required to approve a recovery plan for the species pursuant to section 5(c) and may be subsequently revised.''.

(12) RECOVERY PLANS.—Section 4 is amended by striking subsection (f) and redesignating subsections (g) through (i) as subsections (f) through (h), respectively.

(13) CONFORMING AMENDMENT.—Section 4(g) (as redesignated by paragraph (12)) is amended in paragraph (4) by striking ''subsection (f) of this section'' and inserting ''section 5''.

(d) PUBLIC AVAILABILITY OF DATA.—Section 3(b), as amended by subsection (a), is amended by adding at the end the following:

''(2) FREEDOM OF INFORMATION ACT EXEMPTION.—The Secretary, and the head of any other Federal agency upon the recommendation of the Secretary, may withhold or limit the availability of data requested to be released pursuant to section 552 of title 5, United States Code, if the data describes or identifies the location of an endangered species, a threatened species, or a species that has been proposed to be listed as threatened or endangered, and release of the data would be likely to result in increased take of the species.''.

SEC. 3. ENHANCED RECOVERY PLANNING.

(a) REDESIGNATION.—Section 5 of the Act is redesignated as section 5A.

(b) RECOVERY PLANS.—The Act is amended by inserting prior to section 5A (as redesignated by subsection (a)) the following:

''RECOVERY PLANS

''SEC. 5. (a) IN GENERAL.—The Secretary, in cooperation with the States, and on the basis of the best scientific and commercial data available, shall develop and implement plans (referred to in this Act as ''recovery plans'') for the conservation and recovery of endangered species and threatened species that are indigenous to the United States or in waters under the jurisdiction of the United States in accordance with the requirements and schedules described in this section, unless the Secretary finds, after notice and opportunity for public comment, that a plan will not promote the conservation of the species or because an existing plan or strategy to conserve the species already serves as the functional equivalent to a recovery plan. The Secretary may authorize a State agency to develop recovery plans pursuant to subsection (m).

''(b) PRIORITIES.—To the maximum extent practicable, the Secretary, in developing recovery plans, shall give priority, without regard to taxonomic classification, to recovery plans that—

''(1) address significant and immediate threats to the survival of an endangered species or a threatened species, have the greatest likelihood of achieving recovery of the endangered species or the threatened species, and will benefit species that are more taxonomically distinct;

''(2) address multiple species including (A) endangered species, (B) threatened species, or (C) species that the Secretary has identified as candidates or proposed for listing under section 4 and that are dependent on the same habitat as the endangered species or threatened species covered by the plan;

''(3) reduce conflicts with construction, development projects, jobs or other economic activities; and

''(4) reduce conflicts with military training and operations.

''(c) SCHEDULE.—For each species determined to be an endangered species or a threatened species after the date of enactment of the Endangered Species Recovery Act of 1997 for which the Secretary is required to develop a recovery plan under subsection (a), the Secretary shall publish—

''(1) not later than 18 months after the date of the publication under section 4 of the final regulation containing the listing determination, a draft recovery plan; and

''(2) not later than 30 months after the date of publication under section 4 of the final regulation containing the listing determination, a final recovery plan.

''(d) APPOINTMENT AND ROLE OF RECOVERY TEAM.—

''(1) IN GENERAL.—Not later than 60 days after the date of the publication under section 4 of the final regulation containing the listing determination for a species, the Secretary, in cooperation with the affected States, shall either appoint a recovery team to develop a recovery plan for the species or publish a notice pursuant to paragraph (3) that a recovery team shall not be appointed. Recovery teams shall include the Secretary and at least one representative from the State agency of each of the affected States choosing to participate and be broadly representative of the constituencies with an interest in the species and its recovery and in the economic or social impacts of recovery including representatives of Federal agencies, tribal governments, local governments, academic institutions, private individuals and organizations, and commercial enterprises. The recovery team members shall be selected for their knowledge of the species or for their expertise in the elements of the recovery plan or its implementation.

''(2) DUTIES OF THE RECOVERY TEAM.—Each recovery team shall prepare and submit to the Secretary the draft recovery plan that shall include the team's recommended recovery measures and alternatives, if any, to meet the recovery goal under subsection (e)(1). The recovery team may also be called upon by the Secretary to assist in the implementation, review and revision of recovery plans. The recovery team shall also advise the Secretary concerning the designation of critical habitat, if any.

''(3) EXCEPTION.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), the Secretary may, after notice and opportunity for public comment, establish criteria to identify species for which the appointment of a recovery team would not be required under this subsection, taking into account the availability of resources for recovery planning, the extent and complexity of the expected recovery activities and the degree of scientific uncertainty associated with the threats to the species.

''(B) STATE OPTION.—If the Secretary elects not to appoint a recovery team, the Secretary shall provide notice to each affected State and shall provide the affected States the opportunity to appoint a recovery team and develop a recovery plan, in accordance with the requirements and procedures set out in subsection (m).

''(C) SECRETARIAL DUTY.—In the event that a recovery team is not appointed, the Secretary shall perform all duties of the recovery team required by this section.

''(4) TRAVEL EXPENSES.—The Secretary is authorized to provide travel expenses (including per diem in lieu of subsistence at the same level as authorized by section 5703 of title 5, United States Code) to recovery team members.

''(5) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the selection or activities of a recovery team appointed pursuant to this subsection or subsection (m).

''(e) CONTENTS OF RECOVERY PLANS.—Each recovery plan shall contain:

''(1) BIOLOGICAL RECOVERY GOAL.—

''(A) IN GENERAL.—Not later than 6 months after the appointment of a recovery team under this section, those members of the recovery team with relevant scientific expertise shall establish and submit to the Secretary of recommended biological recovery goal to conserve and recover the species that, when met, would result in the determination, in accordance with the provisions of section 4, that the species be removed from the list. The goal shall be based solely on the best scientific and commercial data available. The recovery goal shall be expressed as objective and measurable biological criteria. When the goal is met, the Secretary shall be required to initiate the procedures for determining whether, in accordance with section 4(a)(1), to remove the species from the list.

''(B) PEER REVIEW.—The recovery team shall promptly obtain independent scientific review of the recommended biological recovery goal.

''(2) RECOVERY MEASURES.—The recovery plan shall incorporate recovery measures that will meet the recovery goal.

''(A) MEASURES.—The recovery measures may incorporate general and site-specific measures for the conservation and recovery of the species such as—

''(i) actions to protect and restore habitat;

''(ii) research;

''(iii) establishment of refugia, captive breeding, releases of experimental populations;

''(iv) actions that may be taken by Federal agencies, including actions that use, to the maximum extent practicable, Federal lands; and

''(v) opportunities to cooperate with State and local governments and other persons to recover species, including through the development and implementation of conservation plans under section 10.

''(B) DRAFT RECOVERY PLANS.—

''(i) IN GENERAL.—In developing a draft recovery plan, the recovery team or, if there is no recovery team, the Secretary, shall consider alternative measures and recommend measures to meet the recovery goal including the benchmarks. The recovery measures shall achieve an appropriate balance among the following factors—

''(I) the effectiveness of the measures in meeting the recovery goal;

''(II) the period of time in which the recovery goal is likely to be achieved, provided that the time period within which the recovery goal is to be achieved will not pose a significant risk to recovery of the species; and

''(III) the social and economic impacts (both quantitative and qualitative) of the measures and their distribution across regions and industries.

''(ii) DESCRIPTION OF ALTERNATIVES.—The draft plan shall include a description of any alternative recovery measures considered, but not included in the recommended measures, and an explanation of how any such measures considered were assessed and the reasons for their selection or rejection.

''(iii) DESCRIPTION OF ECONOMIC EFFECTS.—If the recommended recovery measures identified in clause (i) would impose significant costs on a municipality, county, region or industry, the recovery team shall prepare a description of the overall economic effects on the public and private sections including, as appropriate, effects on employment public revenues, and value of property as a result of the implementation of the recovery plan.

''(3) BENCHMARKS.—The recovery plan shall include objective, measurable benchmarks expected to be achieved over the course of the recovery plan to determine whether progress is being made towards the recovery goal.

''(4) FEDERAL AGENCIES.—Each recovery plan for an endangered species or a threatened species shall identify Federal agencies that authorize, fund, or carry out actions that are likely to have a significant impact on the prospects for recovering the species.

''(f) PUBLIC NOTICE AND COMMENT.—

''(1) IN GENERAL.—If the Secretary makes a preliminary determination that the draft recovery plan meets the requirements of this section, the Secretary shall publish in the Federal Register and a newspaper of general circulation in each affected State a notice of availability and a summary of, and a request for public comment on, the draft recovery plan including a description of the economic effects prepared under subsection (e)(2)(B)(iii) and the recommendations of the independent referees on the recovery goal.

''(2) HEARINGS.—At the request of any person, the Secretary shall hold at least 1 public hearing on each draft recovery plan in each State to which the plan would apply (including at least 1 hearing in an affected rural area, if any), except that the Secretary may not be required to hold more than 5 hearings under this paragraph.

''(g) PROCUREMENT AUTHORITY.—The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions and other qualified persons.

''(h) REVIEW AND SELECTION BY THE SECRETARY.—

''(1) REVIEW AND APPROVAL.—The Secretary shall review each plan submitted by a recovery team, including a recovery team appointed by a State pursuant to the authority of subsection (m), to determine whether the plan was developed in accordance with the requirements of this section. If the Secretary determines that the plan does not satisfy such requirements, the Secretary shall notify the recovery team and give the team an opportunity to address the concerns of the Secretary and resubmit a plan that satisfies the requirements of this section. After notice and opportunity for public comment on the recommendations of the recovery team, the Secretary shall adopt a final recovery plan that is consistent with the requirements of this section.

''(2) SECTION OF RECOVERY MEASURES.—In each final plan the Secretary shall select recovery measures that meet the recovery goal and the benchmarks. The recovery measures shall achieve an appropriate balance among the factors in subclauses (I) through (III) of subsection (e)(2)(B)(i).

''(3) MEASURES RECOMMENDED BY RECOVERY TEAM.—If the Secretary selects measures other than those recommended by the recovery team, the Secretary shall publish with the final plan an explanation of why the measures recommended by the recovery team were not selected for the final recovery plan.

''(4) PUBLICATION OF NOTICE ON FINAL PLANS.—The Secretary shall publish in the Federal Register a notice of availability, and a summary, of the final recovery plan, and include in the final recovery plan a response to significant comments that the Secretary received on the draft recovery plan.

''(i) REVIEW.—

''(1) EXISTING PLANS—Not later than 5 years after date of enactment of Endangered Species recovery Act of 1997, the Secretary shall review recovery plans published prior to such date.

1''(2) SUBSEQUENT PLANS.—The Secretary shall review each recovery plan first approved or revised under this section subsequent to the enactment of the Endangered Species Recovery Act of 1997, not later than 10 years after the date of approval or revision of the plan and every 10 years thereafter.

''(j) REVISION OF RECOVERY PLANS.—Notwithstanding any other provisions of this section,the Secretary shall revise a recovery plan if the Secretary finds that substantial new information, that may include the failure to meet the benchmarks included in the plan, based upon the best scientific and commercial data available, indicates that the recovery goals contained in the recovery plan will not achieve the conservation and recovery of the endangered species or threatened species covered by the plan. The Secretary

shall convene a recovery team to develop the revisions required by this subsection, unless the Secretary has established an exception for the species pursuant to subsection (d)(3).

''(k) EXISTING PLANS.—Nothing in this section shall be interpreted to require the modification of—

''(1) a recovery plan approved, or

''(2) a recovery plan on which public notice and comment has been initiated,

prior to the date of enactment of the Endangered Species Recovery Act of 1997 until revised by the Secretary in accordance with this section.

''(l) IMPLEMENTATION OF RECOVERY PLANS.—

''(1) IMPLEMENTATION AGREEMENTS.—The Secretary is authorized to enter into agreements with Federal agencies, affected States, Indian tribes, local governments, private landowners and organizations to implement specified conservation measures identified by an approved recovery plan that promote the recovery of the species on lands or waters owned by, or within the jurisdiction of, each such party. The Secretary may enter into such agreements, if the Secretary, after notice and opportunity for public comment, determines that—

''(A) each party to the agreement has the legal authority and capability to carry out the agreement;

''(B) the agreement shall be reviewed and revised as necessary on a regular basis by the parties to the agreement to ensure that it meets the requirements of this section; and

(C) the agreement establishes a mechanism for the Secretary to monitor and evaluate implementation of the agreement.

''(2) DUTY OF FEDERAL AGENCIES.—Each Federal agency identified under subsection (e)(4) shall enter into an implementation agreement with the Secretary not later than 2 years after the date on which the Secretary approves the recovery plan for the species. For purposes of satisfying this section, the substantive provisions of the agreement shall be within the sole discretion of the Secretary and the head of the Federal agency entering into the agreement.

''(3) OTHER REQUIREMENTS.—

''(A) AGENCY ACTIONS.—Any action authorized, funded or carried out by a Federal agency that is specified in a recovery plan implementation agreement between the Federal agency and the Secretary to promote the recovery of the species and for which the agreement provides sufficient information on the nature, scope and duration of the action to determine the effect of the action on any endangered species, threatened species, or critical habitat shall not be subject to the requirements of section 7(a)(2) for that species, provided the action is to be carried out during the term of such agreement and the Federal agency is in compliance with the agreement.

''(B) COMPREHENSIVE AGREEMENTS.—If a non-Federal person proposes to include in an implementation agreement a site-specific action that the Secretary determines meets the requirements of subparagraph (A) and that action would require authorization or funding by one or more Federal agencies, the agencies authorizing or funding the action shall participate in the development of the agreement and shall identify, at that time, all measures for the species that would be required under this Act as a condition of the authorization or funding.

''(4) FINANCIAL ASSISTANCE—

''(A) IN GENERAL.—In cooperation with the States and subject to the availability of appropriations under section 13(f), the Secretary may provide a grant of up to $25,000 to any individual private landowner to assist the landowner in carrying out a recovery plan implementation agreement under this subsection.

''(B) PROHIBITION ON ASSISTANCE FOR REQUIRED ACTIVITIES.—The Secretary may not provide assistance under this paragraph for any action that is required by a permit issued under this Act or that is otherwise required under this Act or other Federal law.

''(C) OTHER PAYMENTS.—Grants provided to an individual private landowner under this paragraph shall be in addition to, and not affect, the total amount of payments the landowner is otherwise eligible to receive under the Conservation Reserve Program (16 U.S.C. 3831 et seq.), the Wetlands Reserve Program (16 U.S.C. 3837 et seq.), or the Wildlife Habitat Incentives Program (16 U.S.C. 3836a).

''(m) STATE AUTHORITY FOR RECOVERY PLANNING.—

''(1) IN GENERAL.—At the request of the Governor of a State, or the Governors of several States in cooperation, the Secretary may authorize the respective State agency to develop the recovery plan for an endangered species or a threatened species in accordance with the requirements and schedules of subsections (c), (d)(1), (d)(2), and (e) and this subsection if the Secretary finds that—

''(A) the State or States have entered into a cooperative agreement with the Secretary pursuant to section 6(c); and

''(B) the State agency has submitted a statement to the Secretary demonstrating adequate authority and capability to carry out the requirements and schedules of subsections (c), (d)(1), (d)(2), and (e) of this subsection.

''(2) STANDARDS AND GUIDELINES.—The Secretary, in cooperation with the States, shall publish standards and guidelines for the development of recovery plans by a State agency under this subsection, including standards and guidelines for interstate cooperation and for the grant and withdrawal of authorization under this subsection by the Secretary.

''(3) MEMBERS AND DUTIES OF RECOVERY TEAM.—Each recovery team appointed by a State agency under this subsection shall include the Secretary. The recovery team shall prepare a draft recovery plan in accordance with the requirements of this section and shall transmit the draft plan to the Secretary through the State agency authorized to develop the recovery plan.

''(4) REVIEW OF DRAFT PLANS.—Prior to publication of a notice of availability of a draft recovery plan, the Secretary shall review each draft recovery plan developed pursuant to this subsection to determine whether it meets the requirements of this section. If the Secretary determines that the plan does not meet such requirements, the Secretary shall notify the State agency and, in cooperation with such State agency, develop a recovery plan in accordance with the requirements of this section.

''(5) REVIEW AND APPROVAL OF FINAL PLANS.—Upon receipt of a draft recovery plan transmitted by a State agency, the Secretary shall review and approve the plan in accordance with subsection (h).

''(6) WITHDRAWAL OF AUTHORITY.—

''(A) IN GENERAL.—The Secretary may withdraw the authority from a State that has been authorized to develop a recovery plan pursuant to this subsection if the actions of the State agency are not in accordance with the substantive and procedural requirements of subsections (c), (d)(1), (d)(2), and (e) of this subsection. The Secretary shall give the State agency an opportunity to correct any deficiencies identified by the Secretary and shall withdraw the authority from the State unless the State agency within 60 days has corrected the deficiencies identified by the Secretary. Upon withdrawal of State authority pursuant to this subsection, the Secretary shall have an additional 18 months to publish a draft recovery plan and an additional 12 months to publish a final recovery plan under subsection 5(c).

''(B) PETITIONS TO WITHDRAW.—Any person may submit a petition requesting the Secretary to withdraw the authority from a State on the basis that the actions of the State agency are not in accordance with the substantive and procedural requirements identified in subparagraph (A). If the Secretary has not acted on the petition pursuant to subparagraph (A) within 90 days, the petition shall be deemed denied and the denial shall be a final agency action for the purposes of judicial review.

''(7) STATE AGENCY.—For purposes of this subsection, the term 'State agency' includes—

''(A) State agencies (as defined in section 3) of the several States submitting a cooperative request under paragraph (1); and

''(B) for fish and wildlife, including related spawning grounds and habitat, on the Columbia River and its tributaries, the Pacific Northwest Electric Power and Conservation Planning Council established under the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 et seq.).

''(n) CRITICAL HABITAT DESIGNATION.—

''(1) RECOMMENDATION OF THE RECOVERY TEAM.—Not later than 9 months after the date of publication under section 4 of a final regulation containing a listing determination for a species, the recovery team appointed for the species shall provide the Secretary with a description of any habitat of the species that is recommended for designation as critical habitat pursuant to this subsection and any recommendations for special management considerations or protection that are specific to such habitat.

''(2) DESIGNATION BY THE SECRETARY.—The Secretary, to the maximum extent prudent and determinable, shall be regulation designate any habitat of an endangered species or a threatened species that is indigenous to the United States or waters under the jurisdiction of the United States that is considered to be critical habitat.

''(A) DESIGNATION.—

''(i) PROPOSAL.—Not later than 18 months after the date on which a final listing determination is made under section 4 for a species, the Secretary, after consultation and in cooperation with the recovery team, shall publish in the Federal Register a proposed regulation designating critical habitat for the species.

''(ii) PROMULGATION.—The Secretary shall, after consultation and in cooperation with the recovery team, publish a final regulation designating critical habitat for a species not later than 30 months after the date on which a final listing determination is made under section 4 for the species.

''(B) OTHER DESIGNATIONS.—If a recovery plan is not developed under this section for an endangered species or a threatened species, the Secretary shall publish a final critical habitat determination for that endangered species or threatened species within 36 months after making a determination that the species is an endangered species or a threatened species.

''(C) ADDITIONAL AUTHORITY.—The Secretary may publish a regulation designating critical habitat for an endangered species or a threatened species concurrently with the final regulation implementing the determination that the species is endangered or threatened if the Secretary determines that designation of such habitat at the time of listing is essential to avoid the imminent extinction of the species.

''(3) FACTORS TO BE CONSIDERED.—The designation of critical habitat shall be made on

the basis of the best scientific and commercial data available and after taking into consideration the economic impact, impacts to military training and operations, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary shall describe the economic impacts and other relevant impacts that are to be considered under this subsection in the publication of any proposed regulation designating critical habitat.

''(4) EXCLUSIONS.—The Secretary may exclude any area from critical habitat for a species if the Secretary determines that the benefits of the exclusion outweigh the benefits of designating the area as part of the critical habitat, unless the Secretary determines that the failure to designate the area as critical habitat will result in the extinction of the species.

''(5) REVISIONS.—The Secretary may, from time-to-time and as appropriate, revise a designation. Each area designated as critical habitat before the date of enactment of the Endangered Species Recovery Act of 1997 shall continue to be considered so designated, until the designation is revised in accordance with this subsection.

''(6) PETITIONS.—

''(A) DETERMINATION THAT REVISION MAY BE WARRANTED.—To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register.

''(B) NOTICE OF PROPOSED ACTION.—Within 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

''(7) PROPOSED AND FINAL REGULATIONS.—Any regulation to designate critical habitat or implement a requested revision shall be proposed and promulgated in accordance with paragraphs (4), (5) and (6) of section 4(b) in the same manner as a regulation to implement a determination with respect to listing a species.

''(o) REPORTS.—The Secretary shall report every two years to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to section 4 and on the status of all species for which such plans have been developed.''.

(c) CITIZEN SUITS.—Section 11(g)(1)(C) of the Act (16 U.S.C. 1540(g)(1)(C)) is amended by inserting ''or section 5'' after ''section 4''.

(d) CONFORMING AMENDMENTS FOR RECOVERY PLANNING.—

(1) Section 6(d)(1) is amended by striking ''section 4(g)'' and inserting ''section 4(f)''.

(2) Section 10(f)(5) is amended by striking the last sentence.

(3) Sections 104(c)(4)(A)(ii)(I), 115(b)(2), and 118(f)(11) of the Marine Mammal Protection Act are amended by striking ''section 4(f)'' each place it occurs and inserting ''section 5''

(4) The table of contents in the first section (16 U.S.C. 1531) is amended by striking the item related to section 5 and inserting the following:

''Sec. 5. Recovery plans.
Sec. 5A. Land acquisition.''.

(e) PLANS FOR PREVIOUSLY LISTED SPECIES.—In the case of species included in the list published under section 4(c) before the date of enactment of this Act, and for which no recovery plan was developed before that date, the Secretary shall develop a final recovery plan in accordance with the requirements of section 5 (including the priorities of section 5(b)) of the Endangered Species Act (16 U.S.C. 1531 et seq.), as amended by this Act, for not less than one-half of the species not later than 36 months after the date of enactment of this Act and for all species not later than 60 months after such date.

SEC. 4. INTERAGENCY CONSULTATION AND COOPERATION.

(A) REASONABLE AND PRUDENT ALTERNATIVES.—Section 3 (16 U.S.C. 1532) is amended by redesignating paragraphs (15) through (21) as paragraphs (16) through (22), respectively, and inserting the following new paragraph after paragraph (14):

''(15) REASONABLE AND PRUDENT ALTERNATIVES.—The term 'reasonable and prudent alternatives' means alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Secretary believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.''.

(b) INVENTORY OF SPECIES ON FEDERAL LANDS.—Section 7(a)(1)(16 U.S.C. 1536(a)(1)) is amended by—

(1) inserting ''(A)'' after ''(1)''; and

(2) adding the following at the end thereof:

''(B) INVENTORY OF SPECIES ON FEDERAL LANDS.—The head of each Federal agency that is responsible for the management of lands and waters—

''(i) shall by not later than December 31, 2003, prepare and provide to the Secretary an inventory of the presence or occurrence of endangered species, threatened species, species that have been proposed for listing, and species that the Secretary has identified as candidates for listing under section(4), that are located on lands or waters owned or under control of the agency; and

''(ii) shall at least once every 5 years thereafter update the inventory required by clause (1) including newly listed, proposed and candidate species.''.

(c) CONSULTATION.—Section 7(a)(3) (16 U.S.C. 1536(a)(3)) is amended to read as follows:

''(3) CONSULTATION.—

''(A) NOTIFICATION OF ACTIONS.—Prior to commencing any action, each Federal agency shall notify the Secretary if the agency determines that the action may affect an endangered species or a threatened species or critical habitat.

(B) AGENCY DETERMINATION.—

''(i) IN GENERAL.—Each Federal agency shall consult with the Secretary as required by paragraph (2) on each action for which notification is required under subparagraph (A) unless—

''(I) the Federal agency makes a determination based on the opinion of a qualified biologist that the action is not likely to adversely affect an endangered species, a threatened species or critical habitat;

''(II) the Federal agency notifies the Secretary that it has determined that the action is not likely to adversely affect any listed species or critical habitat and provides the Secretary, along with the notice, a copy of the information on which the agency based the determination; and

''(III) the Secretary does not object in writing to the agency's determination within 60 days from the date such notice is received.

''(ii) ACTIONS EXCLUDED.—The Secretary may by regulation identify categories of actions with respect to specific endangered species or threatened species that the Secretary determines are likely to have an adverse effect on the species or its critical habitat and, for which, the procedures of clause (i) shall not apply.

''(iii) BASIS FOR OBJECTION.—The Secretary shall object to a determination made by a Federal agency pursuant to clause (i), if—

''(I) the Secretary determines that the action may have an adverse effect on an endangered species, a threatened species or critical habitat; or

''(II) the Secretary finds that there is insufficient information in the documentation accompanying the determination to evaluate the impact of the proposed action on endangered species, threatened species, or critical habitat; or

''(III) the Secretary finds that, because of the nature of the action and its potential impact on an endangered species, a threatened species or critical habitat, review cannot be completed in 60 days.

''(iv) NAS REVIEW.—Not later than 3 years after the date of enactment of this clause, the Secretary shall enter into appropriate arrangements with the National Academy of Sciences to conduct a review of and prepare a report on the determinations made by Federal agencies pursuant to clause (i). The report shall be transmitted to the Congress not later than 5 years after the date of enactment of this clause.

''(v) REPORTS.—The Secretary shall report to the Congress not less often than bienally with respect to the implementation of this subparagraph including in the report information on the circumstances that resulted in the Secretary making any objection to a determination made by a Federal agency under clause (i) and the availability of resources to carry out the requirements of this section.

''(C) CONSULTATION AT REQUEST OF APPLICANT.—Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by the applicant's project and that implementation of the action will likely affect the species.''.

(d) GAO REPORT.—The Comptroller General of the United States shall report to the Committee on Environment and Public Works of the Senate and to the Committee on Resources of the House of Representatives not later than 3 years after the date of enactment of this Act, and 2 years thereafter, on the cost of formal consultation to Federal agencies and other persons carrying out actions subject to the requirements of section 7 of the Endangered Species Act (16 U.S.C. 1536), including the cost of reasonable and prudent measures imposed.

(e) NEW LISTINGS.—Section 7(a) (16 U.S.C. 1536(a)) is amended by adding at the end the following:

''(5) EFFECT OF LISTING ON EXISTING PLANS.—

''(A) ACTIONS.—For the purposes of paragraph (2), the term 'action' includes land use plans under the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.) and resource management plans under the Forest and Rangeland Renewable Resources Planning Act (16 U.S.C. 1600 et seq.), as amended by the National Forest Management Act (16 U.S.C. 1600 et. seq.).

''(B) RE-INITIATION OF CONSULTATION.—Whenever a determination to list a species as

an endangered species or a threatened species or designation of critical habitat requires re-initiation of consultation under section 7(a)(2) on an already approved action as defined under subparagraph (A), the consultation shall commence promptly, but no later than 90 days after the date of the determination or designation, and be completed within 12 months of the date on which the consultation is commenced.

''(C) SITE-SPECIFIC ACTIONS DURING CONSULTATION.—Notwithstanding subsection (d), the Federal agency implementing the land use plan or resource management plan under subparagraph (B) may authorize, fund, or carry out a site-specific ongoing or previously scheduled action with the scope of the plan on such lands prior to completing consultation on the plan under subparagraph (B) pursuant to the consultation procedures of this section and related regulations, if—

''(i) no consultation on the action is required; or

''(ii) consultation on the action is required and the Secretary issues a biological opinion and the action satisfies the requirements of this section.''.

(f) IMPROVED FEDERAL AGENCY COORDINATION.—Section 7(a) (16 U.S.C. 1536(a)) is amended by adding at the end the following:

''(6) CONSOLIDATION OF CONSULTATION AND CONFERENCING.—

''(A) CONSULTATION WITH A SINGLE AGENCY.—Consultation and conferencing under this subsection between the Secretary and a Federal agency may, with the approval of the Secretary, encompass a number of related or similar actions by the agency to be carried out within a particular geographic area.

''(B) CONSULTATION WITH SEVERAL AGENCIES.—The Secretary may consolidate requests for consultation or conferencing from various Federal agencies the proposed actions of which may affect the same endangered species, threatened species, or species that have been proposed for listing under section 4, within a particular geographic area.''.

(g) USE OF INFORMATION PROVIDED BY STATES.—Section 7(b)(1) (16 U.S.C. 1536(b)(1)) is amended by adding at the end the following:

''(C) USE OF STATE INFORMATION.—In conducting a consultation under subsection (a)(2), the Secretary shall actively solicit and consider information from the State agency in each affected State.''.

(h) OPPORTUNITY TO PARTICIPATE IN CONSULTATIONS.—Section 7(b)(1) (16 U.S.C. 1536(b)(1)) (as amended by subsection (g)) is further amended by adding at the end the following:

''(D) OPPORTUNITY TO PARTICIPATE IN CONSULTATIONS.—

''(i) IN GENERAL.—In conducting a consultation under subsection (a)(2), the Secretary shall provide any person who has sought authorization or funding for an action from a Federal agency and that authorization or funding is the subject of the consultation, the opportunity to—

''(I) prior to the development of a draft biological opinion, submit and discuss with the Secretary and the Federal agency information relevant to the effect of the proposed action on the species and the availability of reasonable and prudent alternatives (if a jeopardy opinion is to be issued) that the Federal agency and the person can take to avoid violation of section 7(a)(2);

''(II) receive information, upon request subject to the exemptions of the Freedom of Information Act (5 U.S.C. 552(b)) on the status of the species, threats to the species, and conservation measures, used by the Secretary to develop the draft biological opinion and the final biological opinion, including the associated incidental take statements; and

''(III) received a copy of the draft biological opinion from the Federal agency and, prior to issuance of the final biological opinion, submit comments on the draft biological opinion and discuss with the Secretary and the Federal agency the basis for any finding in the draft biological opinion.

''(ii) EXPLANATION.—If reasonable and prudent alternatives are proposed by a person under clause (i) and the Secretary does not include the alternatives in the final biological opinion, the Secretary shall explain to such person why those alternatives were not included in the opinion.''.

(i) INCIDENTAL TAKING STANDARDS FOR FEDERAL AGENCIES.—Section 7(b)(4) (16 U.S.C. 1536 (b)(4)) is amended—

(1) in clause (ii), by inserting ''and mitigate'' after ''to minimize''; and

(2) by adding at the end the following: ''For purposes of this subsection, reasonable and prudent measures shall be related both in nature and extent to the effect of the proposed activity that is the subject of the consultation.''.

(j) REVISION OF REGULATIONS.—Not later than 1 year after the date of enactment of the Endangered Species Recovery Act of 1997, the Secretary shall promulgate modifications to part 402 of title 50, Code of Federal Regulations, to implement the provisions of this section.

SEC. 5. CONSERVATION PLANS.

(a) PERMIT FOR TAKE ON THE HIGH SEAS.—Section 10(a)(1)(B) (16 U.S.C. 1539(a)(1)(B)) is amended by striking ''section 9(a)(1)(B)'' and inserting in lieu thereof ''subparagraph (B) or (C) of section 9(a)(1)''.

(b) MONITORING.—Section 10(a)(2)(B) (16 U.S.C. 1539(a)(2)(B)) is amended by striking ''reporting'' and inserting in lieu thereof ''monitoring and reporting''.

(c) OTHER PLANS.—Section 10(a) (16 U.S.C. 1539(a)) is amended by striking paragraph (2)(C) and inserting the following new paragraphs:

''(3) MULTIPLE SPECIES CONSERVATION PLANS.—

''(A) IN GENERAL.—In addition to one or more listed species, a conservation plan developed under paragraph (2) may, at the request of the applicant, include species proposed for listing under section 4(c), candidate species, or other species found on lands or waters owned or within the jurisdiction of the applicant covered by the plan.

''(B) APPROVAL CRITERIA.—The Secretary shall approve an application for a permit under paragraph (1)(B) that includes species other than species listed as endangered species or threatened species if, after notice and opportunity for public comment, the Secretary finds that the permit application and the related conservation plan satisfy the criteria of paragraphs (2)(A) and (2)(B) with respect to listed species, and that the permit application and the related conservation plan with respect to other species satisfy the following requirements:

''(i) The impact on non-listed species included in the plan will be incidental;

''(ii) The applicant will, to the maximum extent practicable, minimize and mitigate such impacts;

''(iii) The actions taken by the applicant with respect to species proposed for listing or candidates for listing included in the plan, if undertaken by all similarly situated persons within the range of such species, are likely to eliminate the need to list the species as an endangered species or a threatened species for the duration of the agreement as a result of the activities conducted by those persons;

''(iv) The actions taken by the applicant with respect to other non-listed species included in the plan, if undertaken by all similarly situated persons within the range of such species, would not be likely to contribute to a determination to list the species as an endangered species or a threatened species for the duration of the agreement;

''(v) The criteria of paragraphs (2)(A)(iv), (2)(B)(iii) and (2)(B)(v); and

the Secretary has received such other assurances as the Secretary may require that the plan will be implemented. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such monitoring and reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

''(C) TECHNICAL ASSISTANCE AND GUIDANCE.—To the maximum extent practicable, the Secretary and the heads of other Federal agencies, in cooperation with the States, are authorized and encouraged to provide technical assistance or guidance to any State or person that is developing a multiple species conservation plan under this paragraph. In providing technical assistance or guidance, priority shall be given to landowners that might otherwise encounter difficulty in developing such a plan.

''(D) DEADLINES.—A conservation plan developed pursuant to this paragraph shall be reviewed and approved or disapproved not later than 1 year after the date of submission, or within such other period of time as is mutually agreeable to the Secretary and the applicant.

''(E) STATE AND LOCAL LAW.—

''(i) OTHER SPECIES.—Nothing in this paragraph shall limit the authority of a State or local government with respect to fish, wildlife or plants that have not been listed as an endangered species or a threatened species under section 4.

''(ii) COMPLIANCE.—An action by the Secretary, the Attorney General, or a person under section 11(g) to ensure compliance with a multiple species conservation plan and permit under this paragraph may only be brought against a permittee or the Secretary.

''(F) EFFECTIVE DATE OF PERMIT FOR NONLISTED SPECIES.—For any species not listed as an endangered species or a threatened species, but covered by an approved multiple species conservation plan, the permit issued under paragraph (1)(B) shall take effect without further action by the Secretary at the time the species is listed pursuant to section 4(c), and to the extent that the taking is otherwise prohibited by subparagraphs (B) or (C) of section 9(a)(1).

''(4) LOW EFFECT ACTIVITIES.—

''(A) IN GENERAL.—Notwithstanding paragraph (2)(A), the Secretary may issue a permit for a low effect activity authorizing any taking referred to in paragraph (1)(B), if the Secretary determines that the activity will have no more than a negligible effect, both individually and cumulatively, on the species, any taking associated with the activity will be incidental, and the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The permit shall require, to the extent appropriate, actions to be taken by the permittee to offset the effects of the activity on the species.

''(B) APPLICATIONS.—The Secretary shall minimize the costs of permitting to the applicant by developing, in cooperation with the States, model permit applications that would constitute conservation plans for low effect activities.

''(C) PUBLIC COMMENT; EFFECTIVE DATE.—Upon receipt of a permit application for an activity that meets the requirements of subparagraph (A), the Secretary shall provide

notice in a newspaper of general circulation in the area of the activity not later than 30 days after receipt and an opportunity for comment on the permit. If the Secretary does not receive significant adverse comment within 30 days of the notice, the permit shall take effect without further action by the Secretary 45 days after the notice is published.

''(5) NO SURPRISES.—

''(A) IN GENERAL.—Each conservation plan developed under this subsection shall include a no surprises provision, as described in this paragraph.

''(B) NO SURPRISES.—A person who has entered into, and is in compliance with, a conservation plan under this subsection may not be required to undertake any additional mitigation measures for species covered by such plan if such measures would require the payment of additional money, or the adoption of additional use, development or management restrictions on any land, waters or water-related rights that would otherwise be available under the terms of the plan without the consent of the permittee. The Secretary and the applicant, by the terms of the conservation plan, shall identify—

''(i) other modifications to the plan; or

''(ii) other additional measures,

if any, that the Secretary may require under extraordinary circumstances.

''(6) PERMIT REVOCATION.—After notice and an opportunity for correction, as appropriate, the Secretary shall revoke a permit issued under this subsection if the Secretary finds that the permittee is not complying with the terms and conditions of the permit or the conservation plan.''.

(d) CANDIDATE CONSERVATION AGREEMENTS.—

(1) PERMITS.—Section 10(a)(1) (16 U.S.C. 1539(a)(1)) is amended by—

(A) deleting ''or'' at the end of subparagraph (A);

(B) striking the period at the end of subparagraph (B) and inserting ''; or''; and

(C) adding the following subparagraph at the end—

''(C) any taking incidental to, and not the purpose of, the carrying out of an otherwise lawful activity pursuant to a candidate conservation agreement.''.

(2) AGREEMENTS.—Section 10 (16 U.S.C. 1539) is amended by adding at the end thereof the following:

''(k) CANDIDATE CONSERVATION AGREEMENTS.—

''(1) IN GENERAL.—At the request of any non-Federal person, the Secretary may enter into a candidate conservation agreement with that person for a species that has been proposed for listing under section 4(c)(1), is a candidate species, or is likely to become a candidate species in the near future on property owned or under the jurisdiction of the person requesting such an agreement.

''(2) REVIEW BY THE SECRETARY.—

''(A) SUBMISSION TO THE SECRETARY.—A non-Federal person may submit a candidate conservation agreement developed under paragraph (1) to the Secretary for review at any time prior to the listing described in section 4(c)(1) of a species that is the subject of the agreement.

''(B) CRITERIA FOR APPROVAL.—The Secretary may approve an agreement and issue a permit under subsection (a)(1)(C) for the agreement if, after notice and opportunity for public comment, the Secretary finds that—

''(i) for species proposed for listing, candidates for listing, or species that are likely to become a candidate species in the near future, that are included in the agreement, the actions taken under the agreement, if undertaken by all similarly situated persons, would produce a conservation benefit that would be likely to eliminate the need to list the species under section 4(c) as a result of the activities of those persons during the duration of the agreement;

''(ii) the actions taken under the agreement will not adversely affect an endangered species or a threatened species;

''(iii) the agreement contains such other measures that the Secretary may require as being necessary or appropriate for the purposes of the agreement;

''(iv) the person will ensure adequate funding to implement the agreement; and

''(v) the agreement includes such monitoring and reporting requirements as the Secretary deems necessary for determining whether the terms and conditions of the agreement are being complied with.

''(3) EFFECTIVE DATE OF PERMIT.—A permit issued under subsection (a)(1)(C) shall take effect at the time the species is listed pursuant to section 4(c), provided that the permittee is in full compliance with the terms and conditions of the agreement.

''(4) ASSURANCES.—A person who has entered into a candidate conservation agreement under this subsection, and is in compliance with the agreement, may not be required to undertake any additional measures for species covered by such agreement if such measures would require the payment of additional money, or the adoption of additional use, development or management restrictions on any land, waters, or water-related rights that would otherwise be available under the terms of the agreement without the consent of the person entering into the agreement. The Secretary and the person entering into a candidate conservation agreement, by the terms of the agreement, shall identify—

''(A) other modifications to the agreements; or

''(B) other additional measures,

if any, that the Secretary may require under extraordinary circumstance.

(e) PUBLIC NOTICE.—Section 10(c) (16 U.S.C. 1539(c)) is amended by—

(1) striking ''thirty'' each place that it appears and inserting in lieu thereof ''60''; and

(2) inserting before the final sentence the following: ''The Secretary may, with approval of the applicant, provide an opportunity, as early as practicable, for public participation in the development of a multiple species conservation plan and permit application. If a multiple species conservation plan and permit application has been developed without the opportunity for public participation, the Secretary shall extend the public comment period for an additional 30 days for interested parties to submit written data, views, or arguments on the plan and application.''.

(f) SAFE HARBOR AGREEMENTS.—Section 10 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsection:

''(l) SAFE HARBOR AGREEMENTS.—

''(1) AGREEMENTS.—

''(A) IN GENERAL.—The Secretary may enter into agreements with non-Federal persons to benefit the conservation of endangered species or threatened species by creating, restoring, or improving habitat or by maintaining currently unoccupied habitat for endangered species or threatened species. Under an agreement, the Secretary shall permit the person to take endangered species or threatened species included under the agreement on lands or waters that are subject to the agreement if the taking is incidental to, and not the purpose of, carrying out of an otherwise lawful activity, provided that the Secretary may not permit through such agreements any incidental take below the baseline requirement specified pursuant to subparagraph (B).

''(B) BASELINE.—For each agreement under this subsection, the Secretary shall establish a baseline requirement that is mutually agreed upon by the applicant and the Secretary at the time of the agreement that will, at a minimum, maintain existing conditions for the species covered by the agreement on lands and waters that are subject to the agreement. The baseline may be expressed in terms of the abundance or distribution of endangered or threatened species, quantity or quality of habitat, or such other indicators as appropriate.

''(2) STANDARDS AND GUIDELINES.—the Secretary shall issue standards and guidelines for the development and approval of safe harbor agreements in accordance with this subsection.

''(3) FINANCIAL ASSISTANCE.—

''(A) IN GENERAL.—In cooperation with the States and subject to the availability of appropriations under section 15(d), the Secretary may provide a grant of up to $10,000 to any individual private landowner to assist the landowner in carrying out a safe harbor agreement under this subsection.

''(B) PROHIBITION ON ASSISTANCE FOR REQUIRED ACTIVITIES.—The Secretary may not provide assistance under this paragraph for any action that is required by a permit issued under this Act or that is otherwise required under this Act or other Federal law.

''(C) OTHER PAYMENTS.—Grants provided to an individual private landowner under this paragraph shall be in addition to, and not affect, the total amount of payments that the landowner is otherwise eligible to receive under the Conservation Reserve Program (16 U.S.C. 3831 et seq.), the Wetlands Reserve Program (16 U.S.C. 3837 et seq.), or the Wildlife Habitat Incentives Program (16 U.S.C. 3836a).''.

(g) HABITAT RESERVE AGREEMENTS.—Section 10 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsection:

''(m) HABITAT RESERVE AGREEMENTS.—

''(1) PROGRAM.—The Secretary shall establish a habitat reserve program to be implemented through contracts or easements of a mutually agreed upon duration to assist non-Federal property owners to preserve and mange suitable habitat for endangered species and threatened species.

''(2) AGREEMENTS.—The Secretary may enter into a habitat reserve agreement with a non-Federal property owner to protect, manage or enhance suitable habitat on private property for the benefit of endangered species or threatened species. Under an agreement, the Secretary shall make payments in an agreed upon amount to the property owner for carrying out the terms of the habitat reserve agreement, provided that the activities undertaken pursuant to the agreement are not otherwise required by this Act.

''(3) STANDARDS AND GUIDELINES.—The Secretary shall issue standards and guidelines for the development and approval of habitat reserve agreements in accordance with this subsection. Agreements shall, at a minimum, specify the management measures, if any, that the property owner will implement for the benefit of endangered species or threatened species, the conditions under which the property may be used, the nature and schedule for any payments agreed upon by the parties to the agreement, and the duration of the agreement.

''(4) PAYMENTS.—Any payment received by a property owner under a habitat reserve agreement shall be in addition to and shall not affect the total amount of payments that the property owner is otherwise entitled to receive under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), as amended by the Federal Agriculture Improvement and Reform Act of 1996.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Interior $10,000,000 and the Secretary of Commerce $5,000,000 for each of fiscal years 1998 through 2003 to assist non-Federal property owners to carry out the terms of habitat reserve programs under this subsection.''.

(h) HABITAT CONSERVATION PLANNING FUND.—Section 10(a) (16 U.S.C. 1539(a)) is further amended by adding at the end thereof the following new paragraph:

''(7) HABITAT CONSERVATION PLANNING FUND.—

''(A) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund, to be known as the 'Habitat Conservation Planning Fund', to be used in carrying out this subsection (referred to in this paragraph as the 'Fund'), consisting of—

''(i) amounts made available under section 15(f);

''(ii) repayments of advances from the Fund under subparagraph (C); and

''(iii) any interest earned on investment of amounts in the Fund under subparagraph (D).

''(B) EXPENDITURES FROM FUND.—

''(i) IN GENERAL.—On request by the Secretary, the Secretary of the Treasury shall transfer from the Fund to the Secretary such amounts as the Secretary determines necessary to make interest-fire advances under clause (ii).

''(ii) AUTHORITY TO MAKE GRANTS AND ADVANCES.—The Secretary may make an interest-free advance from the Fund to any State, county, municipality, or other political subdivision of a State to assist in the development of a conservation plan under this subsection. The amount of the advance under this clause may not exceed the total financial contribution of the other parties participating in the development of the plan.

''(iii) CRITERIA FOR ADVANCES.—In determining whether to make an advance from the Fund, the Secretary shall consider—

''(I) the number of species covered by the plan;

''(II) the extent to which there is a commitment to participate in the planning process from a diversity of interests (including local governmental, business, environmental, and landowner interests);

''(III) the likely benefits of the plan;

''(IV) such other factors as the Secretary considers appropriate.

''(C) REPAYMENTS OF ADVANCES FROM THE FUND.—

''(i) IN GENERAL.—Except as provided in clause (ii) amounts advanced from the Fund shall be repaid not later than 10 years after the date of the advance.

''(ii) ACCELERATED REPAYMENT.—Amounts advanced from the Fund shall be repaid—

''(I) not later than 4 years after the date of the advance if no conservation plan is developed within 3 years of the date of the advance; or

''(II) not later than 5 years after the date of the advance if no permit is issued under paragraph (1)(B) with respect to the conservation plan within 4 years of the date of the advance.

''(iii) CREDITING OF REPAYMENTS.—Amounts received by the United States as repayment of advances from the Fund shall be credited to the Fund and made available for further advances in accordance with this paragraph without further appropriation.

''(D) INVESTMENT OF FUND BALANCE.—

''(i) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

''(ii) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under clause (i), obligations may be acquired—

''(I) on original issue at the issue price; or

''(II) by purchase of outstanding obligations at the market price.

''(iii) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at market price.

''(iv) CREDITS TO THE FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

''(E) TRANSFERS OF AMOUNTS.—

''(i) IN GENERAL.—The amounts required to be transferred to the Fund under this paragraph shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

''(ii) ADJUSTMENTS.—Proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.''.

(i) EFFECT ON PERMITS AND PROPOSED PLANS.—No amendment made by this section shall be interpreted to require the modification of—

(1) a permit issued under section 10 of the Endangered Species Act (16 U.S.C. 1539); or

(2) a conservation plan submitted for approval pursuant to such section

prior to the date of enactment of this Act.

(j) RULE-MAKING.—Not later than 1 year after the date of enactment of this Act, the Secretary shall, after consultation with the States and notice and opportunity for public comment, publish final regulations implementing the provisions of section 10(a) of the Endangered Species Act (16 U.S.C. 1539(a)), as amended by this section.

(k) NAS REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall enter into appropriate arrangements with the National Academy of Sciences to conduct a review of and prepare a report on the development and implementation of conservation plans under section 10(a) of the Endangered Species Act (16 U.S.C. 1531 et seq.). The report shall assess the extent to which those plans comply with the requirements of that Act, the role of multiple species conservation plans in preventing the need to list species covered by those plans, and the relationship of conservation plans for listed species to implementation of recovery plans. The report shall be transmitted to the Congress not later than 5 years after the date of enactment of this Act.

SEC. 6. ENFORCEMENT.

(a) ENFORCEMENT FOR INCIDENTAL TAKE.—Section 11 (16 U.S.C. 1540) is amended by adding after subsection (g) the following new subsection and redesignating the subsequent subsection accordingly:

''(h) INCIDENTAL TAKE.—In any action under subsection (a), (b), or (e)(6) of this section against any person for an alleged take incidental to the carrying out of an otherwise lawful activity, the Secretary or the Attorney General must establish, using scientifically valid principles, that the acts of such person have caused, or will cause, the take, of—

''(1) an endangered species, or

''(2) a threatened species the take of which is prohibited pursuant to a regulation under section 4(d).''.

(b) CITIZEN SUIT FOR INCIDENTAL TAKE.—Section 11(g) (16 U.S.C. 1540(g)) is amended by adding the following new paragraph after paragraph (2) and redesignating the subsequent paragraphs accordingly:

''(3) INCIDENTAL TAKE.—In any suit under this subsection against any person for an alleged take incidental to the carrying out of an otherwise lawful activity, the person commencing the suit must establish, using scientifically valid principles, that the acts of the person alleged to be in violation of section 9(a)(1) have caused, or will cause, the take, of—

''(1) an endangered species, or

''(2) a threatened species the take of which is prohibited pursuant to a regulation under section 4(d).''.

SEC. 7. EDUCATION AND TECHNICAL ASSISTANCE.

(a) IN GENERAL.—Section 13 (16 U.S.C. 1542) is amended to read as follows:

''PROPERTY OWNERS EDUCATION AND TECHNICAL ASSISTANCE PROGRAM

''SEC. 13. (a) IN GENERAL.—In cooperation with the States, the Secretary shall develop and implement a private landowners education and technical assistance program to—

''(1) inform the public about this Act;

''(2) respond to requests for technical assistance from property owners interested in conserving species listed or proposed for listing under section 4(c)(1) and candidate species on the land of the landowners; and

''(3) recognize exemplary efforts to conserve species on private land.

''(b) ELEMENTS OF THE PROGRAM.—Under the program, the Secretary shall—

''(1) publish educational materials and conduct workshops for property owners and other members of the public on the role of this Act in conserving endangered species and threatened species, the principal mechanisms of this Act for achieving species recovery, and potential sources of technical and financial assistance;

''(2) assist field offices in providing timely advice to property owners on how to comply with this Act;

''(3) provide technical assistance to State and local governments and property owners interested in developing and implementing recovery plan implementation agreements, conservation plans, and safe harbor agreements;

''(4) serve as a focal point for questions, requests, and suggestions from property owners and local governments concerning policies and actions of the Secretary in the implementation of this Act;

''(5) provide training for Federal personnel responsible for implementing this Act on concerns of property owners, to avoid unnecessary conflicts, and improving implementation of this Act on private land; and

''(6) nominate for national recognition by the Secretary property owners that are exemplary managers of land for the benefit of species listed or proposed for listing under section 4(c)(1) or candidate species.''.

(b) CONFORMING AMENDMENT.—The table of contents in the first section is amended by striking the item related to section 13 and inserting the following:

''Sec. 13. Private landowners education and technical assistance program.''.

(c) EFFECT ON PRIOR AMENDMENTS.—Nothing in this section or the amendments made by this section affects the amendments made by section 13 of the Endangered Species Act of 1973 (87 State. 902), as in effect on the day before the date of enactment of this Act.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(A) IN GENERAL.—Section 15(a) (16 U.S.C. 1542(a)) is amended—

(1) in paragraph (1), by striking ''and $41,500,000 for fiscal year 1992'' and inserting ''$41,500,000 for fiscal year 1992, $135,000,000 for fiscal year 1998, $150,000,000 for fiscal year 1999, and $165,000,000 for each of fiscal years 2000 through 2003'';

(2) in paragraph (2), by striking ''and $6,750,000'' and inserting ''$6,750,000''; and inserting '',$50,000,000 for fiscal year 1998, $60,000,000 for fiscal year 1999, and $70,000,000 for each of fiscal years 2000 through 2003'' after ''and 1992''; and

(3) in paragraph (3), by striking ''and $2,600,000'' and inserting $2,600,000''; and inserting '', and $4,000,000 for each of fiscal years 1998 through 2003'' after ''and 1992''.

(b) EXEMPTIONS FROM ACT.—Section 15(b) (16 U.S.C. 1542(b)) is amended by inserting ''and $625,000 for each of fiscal years 1998 through 2003'' after ''and 1992''.

(c) CONVENTION IMPLEMENTATION.—Section 15(c) (16 U.S.C. 1542(c)) is amended by striking ''and $500,000'' and inserting $500,000,'' and by inserting ''and $1,000,000 for each fiscal year 1998 through 2003'' after ''and 1992,''.

(d) ADDITIONAL AUTHORIZATIONS.—Section 15 (16 U.S.C. 1542) is further amended by adding the following at the end:

''(d) FINANCIAL ASSISTANCE FOR SAFE HARBOR AGREEMENTS.—There are authorized to be appropriated to the Secretary of the Interior $10,000,000 and the Secretary of Commerce $5,000,000 for each of fiscal years 1998 through 2003 to carry out section 10(l).

''(e) HABITAT CONSERVATION PLANNING FUND.—There are authorized to be appropriated to the Habitat Conservation Planning Fund established by section 10(a)(7) $10,000,000 for each of fiscal years 1998 through 2000 and $5,000,000 for each of fiscal years 2001 and 2002 to assist in the development of conservation plans.

''(f) FINANCIAL ASSISTANCE FOR RECOVERY PLAN IMPLEMENTATION.—There are authorized to be appropriated to the Secretary of Interior $30,000,000 and the Secretary of Commerce $15,000,000 for each of the fiscal years 1998 through 2003 to carry out section 5(l)(4).

''(g) AVAILABILITY.—Amounts made available under this section shall remain available until expended.

''(h) LIMITATION ON USE OF FUNDS.—Of the funds made available to carry out section 5 for any fiscal year, not less than $32,000,000 shall be available to the Secretary of Interior and not less than $13,500,000 to the Secretary of Commerce to implement actions to recover listed species. Of the funds made available to the Secretary of Interior and the Secretary of Commerce in each fiscal year to list species, the Secretary of Interior and the Secretary of Commerce shall use not less than 10% of those funds in each fiscal year for delisting species. If any of the funds made available by the previous sentence are not needed in that fiscal year for delisting eligible species, those funds shall be available for listing.''.

(e) ASSISTANCE TO STATES FOR CONSERVATION ACTIVITIES.—Section 6(i) (16 U.S.C. 1535(i)) is amended by adding at the end the following:

''(3) ASSISTANCE TO STATES FOR CONSERVATION ACTIVITIES.—There are authorized to be appropriated to the Secretary such sums as are necessary for each of fiscal years 1998 through 2003 to provide financial assistance to State agencies to carry out conservation activities under other sections of this Act, including the provision of technical assistance for the development and implementation of recovery plans.''.

SEC. 9. OTHER AMENDMENTS.

(a) DEFINITIONS.—

(1) CANDIDATE SPECIES.—Section 3 is amended by inserting the following paragraph after paragraph (1) and redesignating the subsequent paragraphs accordingly:

''(2) CANDIDATE SPECIES.—The term 'candidate species' means a species for which the Secretary has on file sufficient information on biological vulnerability and threats to support a proposal to list the species as an endangered species or a threatened species, but for which listing is precluded because of pending proposals to list species that are of a higher priority. This definition shall not apply to any species defined as a 'candidate species' by the Secretary of Commerce prior to the date of enactment of the Endangered Species Recovery Act of 1997.''.

(2) IN COOPERATION WITH THE STATES.—Section 3 (16 U.S.C. 1532) is amended by inserting the following paragraph after paragraph (11) (as redesignated by this subsection):

''(12) IN COOPERATION WITH THE STATES.—The term 'in cooperation with the States' means a process in which—

''(A) the State agency in each of the affected States, or the State agency's representative, is given an opportunity to participate in a meaningful and timely manner in the development of the standards, guidelines, and regulations to implement the applicable provisions of this Act; and

''(B) the Secretary carefully considers all substantive concerns raised by the State agency, or the State agency's representative, and, to the maximum extent practicable consistent with this Act, incorporates their suggestions and recommendations, while retaining final decision making authority.''.

(3) RURAL AREA.—Section 3(16 U.S.C. 1532) is amended by inserting the following new paragraph after paragraph (16) (redesignated by this subsection and section 4(a)) and redesignating the subsequent paragraphs accordingly:

''(17) RURAL AREA.—The term 'rural area' means a county or unincorporated area that has no city or town that has a population of more than 10,000 inhabitants.''.

(4) COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—Section 3(20) (16 U.S.C. 1532(18)) (as redesignated by this subsection and section 4(a)) is amended by striking ''Trust Territories of the Pacific Islands'' and inserting ''Commonwealth of the Northern Mariana Islands''.

(b) FINDINGS, PURPOSES, AND POLICY.—Section 2(a)(3) (16 U.S.C. 1531(a)(3)) is amended by inserting ''commercial,'' after ''recreational,''.

(c) NO TAKE AGREEMENTS.—Section 9 (16 U.S.C. 1538) is amended by adding at the end thereof the following new subsection:

''(h) NO TAKE AGREEMENTS.—The Secretary and a non-Federal property owner may, at the request of the property owner, enter into an agreement identifying activities of the property owner that will not result in a violation of the prohibitions of paragraphs (1)(B), (1)(C), and (2)(B) of section 9(a). The Secretary shall respond to a request for an agreement submitted by a property owner within 90 days of receipt.''.

(d) CONFORMING AMENDMENTS.—

(1) TITLE.—The title of section 10 (16 U.S.C. 1539) is amended to read as follows: ''CONSERVATION MEASURES AND EXCEPTIONS''.

(2) TABLE OF CONTENTS.—The table of contents in the first section of the Act is amended with respect to the item relating to section 10 to read as follows:

''Sec. 10. Conservation measures and exceptions.''.

Mr. CHAFEE. Mr. President, I am proud to sponsor, along with Senators KEMPTHORNE, BAUCUS, and REID, the Endangered Species Recovery Act of 1997, which reauthorizes the Endangered Species Act, and makes some significant improvements to the act which are long overdue. The Endangered Species Act was enacted into law in 1973 to conserve threatened and endangered species, and the ecosystems upon which they depend. The ESA is our most important law to protect our Nation's natural resources and biological diversity, and has often been referred to as the ''crown jewel'' of environmental laws.

The ESA has been instrumental in saving some of our country's most treasured species. The bald eagle and the grizzly bear have both rebounded from precariously small populations, and the Pacific grey whale and American alligator have both recovered and have been delisted. All told, almost half of the species that fall under the act's protection are either stabilized or improving.

One can understand better the vital need for the ESA when one realizes what we are up against: of somewhere between 10 and 100 million species on this planet, we have discovered only some 1.4 million. Despite this bounty, loss of biological diversity is taking place at a faster rate than ever before. In 1973, Congress offered this poignant observation: ''as we homogenize the habitats in which these plants and animals evolved . . . we threaten their—and our own—genetic heritage. The value of this genetic heritage, is quite literally, incalculable.'' It was principally for this reason that Congress passed the ESA in 1973.

Controversy has surrounded the law, however, since its passage. In the mid-1970's, the law became ensnarled in a bitter fight over the construction of the $900 million Tellico Dam and the dam's impacts on the hapless snail darter. The criticism has grown significantly since 1992, when the most recent authorization of the ESA expired.

Since then, funding for implementing the law has been provided through annual appropriations, which has left the future of the law on uncertain terms, and left the current working of the law subject to numerous appropriations riders, including a moratorium on the listing of species, that resulted in more than a year delay in affording protection to hundreds of species endangered with extinction.

The bill we introduce today includes many reforms. The last major amendment to the ESA was in 1988, almost 10 years ago. Since then, we have developed a greater knowledge of the science of biodiversity, a greater understanding of the problems in implementing the law on private lands, and in this era of shrinking government, a greater need for improved coordination among all levels of government. Our bill takes all this into account by focusing on several key areas: emphasizing recovery as the ultimate goal; seeking to prevent further listings; improving the scientific foundation for decisions; increasing public participation and the role of States; facilitating compliance by, and providing incentives for, private landowners; and streamlining coordination among government agencies. In making these changes, our bill addresses the criticisms leveled against the ESA in recent years.

These criticisms have come from all directions. The environmental community believes that the law has failed in its fundamental mission to recover species to full health, but rather leaves species teetering on the razor's edge of survival. Statistics bear this out: of the approximately 1,000 species currently listed, 41 percent are either improving in status or stabilized, but only 8 percent are actually improving. Furthermore, less than half of the listed species have approved recovery plans.

Private landowners, on the other hand, believe that the ESA is fundamentally flawed in its implementation, with inflexible regulations, heavy-handed enforcement, closed-door science, and no consideration of economic costs. This, too, is largely borne out by the facts: the ESA has very few tools, other than enforcement of certain prohibitions against taking listed species, with which to protect species on private lands. This weakness in the law is heightened by the fact that more than one-third of all listed species reside entirely on private lands. Furthermore, species on private lands are faring worse than on public lands.

If the ESA is to succeed in its ultimate goal of recovering species, these problems must be addressed. Our bill does just that. Most importantly, it completely overhauls the recovery planning and implementation requirements of the ESA. Previously, recovery plans were required to be prepared, but with no deadline for doing so. Once prepared, they generally sat on the shelves with no requirement or incentive to implement them. Furthermore, the scientific findings in the plans were often compromised by political and economic considerations, nor was there any requirement to actually take cost of implementation into account.

This bill requires that recovery plans be completed within a specific deadline. The recovery goal must be developed by scientists, using only the best science available. While economic costs and social impacts must be taken into account, they are considered only in choosing the best method to achieve the biologically based recovery goals. Specifically, measure to achieve the recovery goal must strike an ''appropriate balance'' among three factors: The effectiveness in meeting the goal; the period of time needed to reach the goal; and the social and economic impacts.

For the first time, the bill provides a requirement that Federal agencies enter into recovery implementation agreements, and also provides incentives for private persons to enter into similar agreements. These incentives include a waiver of consultation normally required under section 7 for actions that are described in sufficient detail. They also include a requirement that Federal agencies participate in the development of an agreement upon the request of a private person, so that the person will know up-front all relevant requirements in undertaking conservation actions.

The bill also improves significantly the law's ability to work on private lands. Under the current law, the permit process has generally been inflexible, cumbersome, and consequently rarely used. The Clinton administration recently instituted a number of policies to encourage landowners to apply for permits in order to conduct economic activities that take listed species on their lands. As a result, the number of permits issued by the administration has increased from 14 in 1992 to more than 200 in 1997, with an additional 250 being developed. Our bill validates and expands those policies.

The bill authorizes permits for multiple species, including both listed and nonlisted species, that depend on the same habitat. New biological standards for nonlisted species ensure that permitted activities do not contribute to the need to list those species in the future. In order to address the needs of small landowners, a more streamlined, less expensive permit process is established for low effect activities. Under this process,the permit can take effect automatically within a certain period, provided that there are no significant adverse comments.

In addition, the bill authorizes several policies and incentives to further encourage landowners to work with the Federal Government. These policies include a no-surprises guarantee that the Government will not seek additional mitigation over time; a safe harbor policy to encourage landowners to protect lands valuable to species without risking additional liability; and a candidate conservation policy, which encourages landowners to undertake protections for species before they become endangered or threatened. The bill also establishes several new funding mechanisms for incentive-based programs, including a habitat reserve program, and a habitat conservation planning fund, which acts as a revolving loan fund. A program to provide technical assistance to landowners is also created.

The bill also makes important changes to the consultation process among Federal agencies. It encourages consultations to be consolidated if they involve related actions by one agency, or they involve several agencies affecting the same species. The consultation process is streamlined by allowing the Federal agency undertaking an action to make the initial determination whether its action affects listed species, and providing an opportunity for the Fish and Wildlife Service, or, for marine species, the National Marine Fisheries Service, to comment on this determination. The Service has 60 days to object, and require a more detailed analysis that it would prepare. This process is similar to the current practice that is used by the agencies.

The bill also addresses the relationship between site-specific and programmatic Federal land management actions. Several recent lawsuits enjoined numerous site-specific actions pending completion of the consultation on the overarching programmatic action. The bill explicitly recognizes that consultation is appropriate and required at both levels of decisionmaking, but ensures an orderly process for completing those consultations. In addition, the bill affords greater participation in the consultation process for any person who has sought authorization or funding from a Federal agency.

The bill goes a long way in improving the scientific basis on which decisions are made. The greatest lack of knowledge is in the status and distribution of rare and declining species. This bill requires an inventory of species on Federal lands to fill this critical data gap. Listing decisions must be peer-reviewed, and petitions to list are subject to certain minimum information requirements. Enforcement actions must use scientifically valid principles to establish whether the action caused an unlawful taking of a species. In evaluating comparable data, the Secretary would be required to use peer reviewed, field tested or empirical data.

As you can see, Mr. President, this bill not only reauthorizes the ESA, but it also significantly improves the ESA, in order to embrace needed reforms in the law. Numerous attempts to reauthorize the ESA have been made in recent years. The long and arduous effort culminating in today's bill began more than 18 months ago, as a bipartisan process to address the problems with the current law. When discussions stalled, Senator KEMPTHORNE and I spurred the process forward by releasing a discussion draft, which generated hundreds of comments. Since then, we have negotiated with Senators BAUCUS and REID, and the Clinton administration, to reach agreement on a bipartisan bill.

Just as the original ESA was passed by a Democratic Congress and signed into law by a Republican President, this bill to reauthorize the ESA is also a bipartisan product between a Republican Senate and a Democratic administration. To quote one of the foremost conservationists of our country, President Teddy Roosevelt, the conservation of natural resources is a question ''upon which men of all parties and all shades of opinion may be united for the common good.'' The need for a healthy environment, one large enough for all species that inhabit this planet with us, is a need that transcends politics, and I firmly believe that the bill we introduce today fulfills that need, as embodied in the original passage of the ESA.

I would like to thank my distinguished colleagues, Senators KEMPTHORNE, BAUCUS, and REID, for their tireless work over the months on this important legislation, and I would like to thank the Secretary of the Interior, Bruce Babbitt, as well as his very accomplished staff, led by Jaimie Clark, Director of the Fish and Wildlife Service, and Don Barry, Acting Assistant Secretary for Fish, Wildlife and

Parks, for their willingness to work with us in negotiating a bill that they can support.

Mr. BAUCUS. Mr. President, today, it is a real pleasure for me to join my colleagues on the Senate Environment and Public Works, Senators CHAFEE, REID, and KEMPTHORNE in introducing the Endangered Species Recovery Act of 1997. The bill we are introducing today represents a real victory for bipartisan, commonsense improvements to the Endangered Species Act.

The Endangered Species Act has been an important tool in our fight to conserve ecosystems and to prevent the extinction of species. But over the years, experience has shown that the act can be improved, both for the species it is designed to protect and for ranchers, farmers, and other private landowners.

Senators CHAFEE, REID, KEMPTHORNE, and I have been working, along with the administration, for the better part of 2 years to find agreement on changes that will improve the ESA on the ground, where it really counts.

The bill we are introducing today incorporates several major improvements to ESA. Let me just reiterate a few that I think are particularly noteworthy.

First, it improves the use of good science in our decisions on listing species. It's important that we elevate the role of scientific information in our decisions on whether to put species on the endangered list. An error at this stage in the process can mean extinction for a species.

Second, the bill really turns the focus of the ESA to conserving and recovering species. It puts real deadlines on development of recovery plans and gives States a greater role in developing those plans. And it insists that we have benchmarks for measuring progress toward recovering the species.

Third, the bill opens up the process to the public. More public hearings will be held on critical issues, such as whether to list a species and what actions should be taken to recover the species. And, most important, these hearings can't be just in Washington. They must also be in the States most affected by the issue.

Fourth, the bill takes important strides in cooperating with landowners to conserve species. It encourages landowners to take voluntary steps to improve habitat and protect species on their property. And it seeks to conserve species before they become endangered, thereby avoiding the need to list them.

The bill also provides landowners with something they have never had before, technical assistance and financial aid for the new conservation agreements that are created by the bill.

These are the kind of improvements that will make the ESA work better. That will better protect species and that will help landowners.

It's been a long, hard road to reach this agreement. And I want to again thank Senator CHAFEE, Senator REID, Senator KEMPTHORNE and Secretary Babbitt for their persistence throughout this process.

I look forward to taking this bill to the committee and to the Senate floor.

By Mr. KEMPTHORNE:

S. 1181. A bill to amend the Internal Revenue Code of 1986 to provide Federal tax incentives to owners of environmentally sensitive lands to enter into conservation easements for the protection of endangered species habitat, to allow a deduction from the gross estate of a decedent in an amount equal to the value of real property subject to an endangered species conservation agreement, and for other purposes; to the Committee on Finance.

THE ENDANGERED SPECIES HABITAT PROTECTION ACT OF 1997

Mr. KEMPTHORNE. Mr. President, I am introducing legislation today which is intended to provide private property owners additional tools in their dealings with the Endangered Species Act. For both those who wish to participate in the conservation of land for the preservation of endangered, threatened, and other species and those whose participation is involuntary, this legislation will add to the already substantial means provided to property owners in the Endangered Species Recovery Act of 1997.

For too long the Federal Government has used its enforcement procedures and it regulatory authority to dictate conservation in aid of endangered and threatened species. This method has failed to produce the kind of results we want. The Endangered Species Act as currently written is almost all stick and no carrot. I would like to begin to change that today.

For 18 months I have negotiated a bill to reauthorize the Endangered Species Act with the Democrats and the administration. Those negotiations have been successfully completed. We have introduced a bill that will provide a variety of incentives to property owners to preserve habitat through conservation agreements and plans, prelisting agreements and other preservation tools. I also have a number of ideas on how to provide tax incentives to private property owners to preserve habitat.

Let me emphasize that inclusion of these new tax incentives will truly benefit both species and people. I have met with many property owners who have said, ''we would be happy to step forward and preserve habitat for species and we would grant a conservation easement if there was an incentive.'' Well with adoption of the ideas included in this bill there will be.

I have had critics that have said that we should not provide these kinds of incentives to private property owners because we will have too many people coming forward and saying, ''I have an endangered species on my land.'' What is wrong with that? To my mind, that would be a welcome reversal from the current prevailing attitude that some have about the presence of an endangered species on their property. Right now you have a situation that some land owners believe that if they do have an endangered species, or if it's suggested that they might, they're just as likely to try to remove the habitat to avoid a problem down the road. We need to change that attitude if we're going to recover endangered species.

We are currently at the crossroads of two systems. One where you have Government overregulation that tells people what they can and cannot do on their land, and the other a system that encourages property owners to step forward and do something good for species because it's good for them too.

We can depend on our property owners to do what's right and what is good for species. I know that our farmers and ranchers know how to be innovative and creative. They know how to help species. And they know how to manage land.

The right system is one where we encourage active involvement of landowners through incentives. Certainly, I know that if I were an endangered species, I would much rather have a friendly and willing landlord—one that viewed me as an asset—than a reluctant one who viewed me as a threat and a liability because of some bureaucrats and regulations handed down from Washington, DC.

That is what this legislation will do. It is going to make the people active partners.

The legislation I am introducing also includes a provision designed to safeguard the property rights of individuals. The Endangered Species Recovery Act of 1997 will do much to improve and enhance the rights of property owners. The bill limits the ability of the Federal Government and environmental groups to restrict otherwise legal activities on private lands. Under the law today, the Government and environmental groups have used the take prohibition to try to prohibit logging and development on private lands and a city's pumping of an aquifer for drinking water, even where there was no scientific evidence that the activity would in fact harm an endangered species. Our bill will change that, reaffirming that the Federal Government, or an environmental group, has the burden of demonstrating that an activity will actually harm a species and they must meet that burden using real science, not just assumptions or speculation.

ESRA '97 will protect the rights of property owners by making them a part of the process—a process that has excluded them for years. Now citizens, business people and State and local government representatives will be at the table for the development of recovery plans. Furthermore, the recovery plans developed will analyze the cost on the public and private sectors and the impact on jobs and property values for any recovery plan selected.

Under ERSA '97 we will substantially reduce the number of consultations under section 7 of the act. But if a consultation is necessary under the act, property owners will have both a seat at the table and the information they need to meaningfully participate in the consultation.

Throughout ERSA '97 we have kept our bond with the property owners of Idaho and America. But there is always more that should be done.

The Endangered Species Habitat Protection Act contains strong property rights language. That language was developed in conjunction with some of the best minds in the property rights movement. Private property rights is a cornerstone of our democracy. As such it is incumbent on this Congress to address the issue in this Congress. The Endangered Species Habitat Protection Act contains my contribution to the effort.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1181

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Endangered Species Habitat Protection Act of 1997''.

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

SEC. 2. FINDINGS.

The Senate finds and declares the following:

(1) The majority of American property owners recognize the importance of protecting the environment, including the habitats upon which endangered and threatened species depend.

(2) Current Federal tax laws discourage placement of privately held lands into endangered and threatened species conservation agreements.

(3) The Federal Government should assist landowners in the goal of conserving endangered and threatened species and their habitat.

(4) If the environment is to be protected and preserved, existing Federal tax laws must be modified or changed to provide tax incentives to landowners to attain the goal of conservation of endangered and threatened species and the habitats on which they depend.

SEC. 3. NONREFUNDABLE CREDIT FOR THE AGREEMENT TO MANAGE LAND TO PRESERVE ENDANGERED SPECIES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25A the following new section:

''SEC. 25B. CREDIT FOR AGREEMENT TO MANAGE LAND TO PRESERVE ENDANGERED SPECIES.

''(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the lesser of—

''(1) the applicable acreage rate of the qualified acreage, or

''(2) $50,000.

''(b) APPLICABLE ACREAGE RATE.—For purposes of subsection (a), the applicable acreage rate is the rate established by the Secretary of the Interior for the taxable year utilizing rates comparable to rental payments under the conservation reserve program under section 1234 of the Food Security Act of 1985 (16 U.S.C. 3834).

''(c) QUALIFIED ACREAGE.—For purposes of this section, the term 'qualified acreage' means any acreage—

''(1) which is subject to an endangered species conservation agreement under the Endangered Species Act (16 U.S.C. 1531 et seq.) and accepted into the expanded conservation reserve program pursuant to section 1231(d)(2) of the Food Security Act of 1985 (16 U.S.C. 3831(d)(2)),

''(2) which is owned by one or more individuals directly or indirectly through a partnership or S corporation that is held entirely by individuals, and

''(3) subject to a perpetual restriction that is valued pursuant to section 170(h)(7).

''(d) CREDIT RECAPTURE.—If, during the period of the endangered species conservation agreement, the taxpayer transfers the qualified acreage without also transferring the taxpayer's obligations under the expanded conservation reserve program under subchapter B of chapter 1 of subtitle D of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) and the endangered species conservation agreement, then the taxpayer's tax under this chapter for the taxable year shall be increased by the amount of the credit received under this section during all prior years by such taxpayer, plus interest at the overpayment rate established under section 6621 on such amount for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved. No deduction shall be allowed under this chapter for interest described in the preceding sentence, and any increase in tax under the preceding sentence shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, D, or G of this part.

''(e) JOINT OWNERS.—For purposes of this section, the amount of credit under this section that any joint owner is entitled to constitutes the total credit allowable under this section with respect to the qualified acreage multiplied by the individual's percentage ownership in the qualified acreage. Each joint owner shall include on the return of tax in which the credit is claimed the names and taxpayer identification numbers of all other joint owners in the property.

''(f) REGULATORY AUTHORITY.—

''(1) TREASURY DEPARTMENT.—The Secretary shall promulgate regulations to ensure that a taxpayer cannot subdivide property to determine such taxpayer's qualified acreage unless all of the acreage such taxpayer owns within a significant region is submitted to the expanded conservation reserve program, whether or not such acreage is eligible for a credit under this section.

''(2) SECRETARY OF THE INTERIOR.—As necessary, the Secretary of the Interior shall determine the applicable acreage rate for regions within the United States based on rates comparable to those under the expanded conservation reserve program. Once a rate is prescribed under an endangered species conservation agreement, however, such rate shall remain in effect for the duration of that agreement.''

(b) CONFORMING AMENDMENTS.—Subchapter B of chapter 1 of subtitle D of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) is amended—

(1) in section 1231(b)—

(A) by striking the period at the end and inserting ''; or''; and

(B) by adding at the end the following new paragraph:

''(5) lands with respect to which the owner or operator and the Secretary of the Interior or the Secretary of Commerce have entered into an endangered species conservation agreement.'';

(2) in section 1231(d), by striking ''(d)'' and inserting ''(d)(1)'' and by adding at the end the following new paragraph:

''(2) The Secretary of the Interior and the Secretary of Commerce shall enter into endangered species conservation agreements under this section to enroll acreage, in addition to the 38,000,000 acres authorized by paragraph (1), into the expanded conservation reserve, for which no payment is due under section 3834, totaling 5,000,000 acres during calendar years [1997 through 2002]. In enrolling such acres, the Secretary of the Interior and the Secretary of Commerce shall reserve 1,000,000 acres for enrollment under this section in calendar year [1997].'';

(3) in section 1232, by adding at the end the following new subsection:

''(f) This section shall not apply to owners and operators subject to endangered species conservation agreements.'';

(4) in section 1234, by adding at the end the following new subsection:

''(i) This section shall not apply to owners and operators subject to endangered species conservation agreements.''; and

(5) by inserting after section 1234 the following new section:

''SEC. 1234A. NO PAYMENTS TO PROPERTIES FOR WHICH AN INCOME TAX CREDIT OR DEDUCTION IS TAKEN.

''The Secretary shall ensure that no payment be made under this subchapter to any owner if that owner has indicated an intention to claim an income tax credit (under section 25B of the Internal Revenue Code of 1986) for participation in this program, or an income tax deduction (under section 170(h)(4)(A)(iii) of such Code).''

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25A the following new item:

''Sec. 25B. Credit for agreement to manage land to preserve endangered species.''

(d) EFFECTIVE DATES.—

(1) CREDIT.—The amendments made by subsections (a) and (c) shall apply to taxable years beginning after December 31, [1995].

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (b) shall take effect on the date of enactment of the Endangered Species Habitat Protection Act of 1997.

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

(a) IN GENERAL.—Subparagraph (A) of section 170(h)(4) of the Internal Revenue Code of

1986 (defining conservation purpose) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by adding at the end the following new clause:

''(v) the protection of a species designated endangered by the Secretary of the Interior or the Secretary of Commerce.''

(b) ENHANCED VALUATION.—Section 170(h) of the Internal Revenue Code of 1986 (defining qualified conservation contribution) is amended by adding at the end the following new paragraph:

''(7) ENHANCED VALUATION OF PROPERTY WITH ENDANGERED SPECIES.—For purposes of this section, the valuation of a perpetual restriction granted to the Secretary of the Interior or the Secretary of Commerce or to a State agency implementing an endangered species program for the purpose described in paragraph (4)(A)(iii) shall be made by comparing the value of the property after the restriction is granted with the value of that same property without either the encumbrance of such restriction or any of the restrictions placed on such property by the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).''

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

SEC. 5. ADDITIONAL DEDUCTION FOR CERTAIN STATE AND LOCAL REAL PROPERTY TAXES IMPOSED WITH RESPECT TO PROPERTY SUBJECT TO AN ENDANGERED SPECIES CONSERVATION AGREEMENT.

(a) IN GENERAL.—Section 164 of the Internal Revenue Code of 1986 (relating to deductions for taxes) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

''(g) ADDITIONAL DEDUCTION FOR CERTAIN STATE AND LOCAL REAL PROPERTY TAXES IMPOSED WITH RESPECT TO PROPERTY SUBJECT TO AN ENDANGERED SPECIES CONSERVATION AGREEMENT.—

''(1) GENERAL RULE.—Except as provided in paragraph (3), in the case of property—

''(A) which, on the last day of the taxable year, is described in section 25B(c)(1), and

''(B) with respect to which no recapture event described in section 25B(d) has occurred, a deduction in the amount determined under paragraph (2) shall be allowed for all State and local real property taxes paid or accrued with respect to such property during such year. The deduction allowed by this subsection shall be in addition to any other deduction allowed by this section.

''(2) AMOUNT OF ADDITIONAL DEDUCTION.—The deduction allowed by this subsection shall equal 25 percent of the amount of State and local real property taxes that are otherwise deductible under this section without regard to this subsection.

''(3) DEDUCTION NOT ALLOWED.—No deduction shall be allowed under this subsection for taxes imposed upon real property—

''(A) with respect to which a credit under section 25B is allowable, or

''(B) subject to a perpetual restriction that is valued pursuant to section 170(h)(7).''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, [1995].

SEC. 6. EXCLUSION FROM ESTATE FOR REAL PROPERTY SUBJECT TO ENDANGERED SPECIES CONSERVATION AGREEMENT.

(a) IN GENERAL.—Part IV of subchapter A of chapter 11 of the Internal Revenue Code of 1986 (relating to taxable estate) is amended by adding at the end the following new section:

''SEC. 2057. CERTAIN REAL PROPERTY SUBJECT TO ENDANGERED SPECIES CONSERVATION AGREEMENT.

''(a) GENERAL RULE.—For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate an amount equal to the adjusted value of real property included in the gross estate which is subject to an endangered species conservation agreement.

''(b) PROPERTY SUBJECT TO AN ENDANGERED SPECIES CONSERVATION AGREEMENT.—For purposes of this section—

''(1) IN GENERAL.—Real property shall be treated as subject to an endangered species conservation agreement if—

''(A) each person who has an interest in such property (whether or not in possession) has entered into—

''(i) an endangered species conservation agreement with respect to such property, and

''(ii) a written agreement with the Secretary consenting to the application of subsection (d), and

''(B) the executor of the decedent's estate—

''(i) elects the application of this section, and

''(ii) files with the Secretary such endangered species conservation agreement.

''(2) ADJUSTED VALUE.—The adjusted value of any real property shall be its value for purposes of this chapter, reduced by any amount deductible under section 2053(a)(4) or 2055(f) with respect to the property.

''(c) ENDANGERED SPECIES CONSERVATION AGREEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'endangered species conservation agreement' means a written agreement entered into with the Secretary of the Interior or the Secretary of Commerce—

''(A) which commits each person who signed such agreement to carry out on the real property activities or practices not otherwise required by law or to refrain from carrying out on such property activities or practices that could otherwise be lawfully carried out,

''(B) which is certified by such Secretary as assisting in the conservation of any species which is—

''(i) designated by such Secretary as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.),

''(ii) proposed for such designation, or

''(iii) officially identified by such Secretary as a candidate for possible future protection as an endangered or threatened species, and

''(C) which applies to at least one-half of the total area of the property.

''(2) ANNUAL CERTIFICATION TO THE SECRETARY BY THE SECRETARY OF THE INTERIOR OR THE SECRETARY OF COMMERCE OF THE STATUS OF ENDANGERED SPECIES CONSERVATION AGREEMENTS.—If the executor elects the application of this section, the executor shall promptly give written notice of such election to the Secretary of the Interior or the Secretary of Commerce. The Secretary of the Interior or the Secretary of Commerce shall thereafter annually certify to the Secretary that the endangered species conservation agreement applicable to any property for which such election has been made remains in effect and is being satisfactorily complied with.

''(d) RECAPTURE OF TAX BENEFIT IN CERTAIN CASES.—

''(1) DISPOSITION OF INTEREST OR MATERIAL BREACH.—

''(A) IN GENERAL.—Except as provided in subparagraph (C), an additional tax in the amount determined under subparagraph (B) shall be imposed on any person on the earlier of—

''(i) the disposition by such person of any interest in property subject to an endangered species conservation agreement (other than a disposition described in subparagraph (C)),

''(ii) the failure by such person to comply with the terms of the endangered species conservation agreement, or

''(iii) the termination of the endangered species conservation agreement.

''(B) AMOUNT OF ADDITIONAL TAX.—The amount of the additional tax imposed by subparagraph (A) shall be an amount that bears the same ratio to the fair market value of the real property at the time of the event described in subparagraph (A) as the ratio of the amount by which the estate tax liability was reduced by virtue of this section bore to the fair market value of such property at the time the executor filed the agreement under subsection (b)(1). For purposes of this subparagraph, the term 'estate tax liability' means the tax imposed by section 2001 reduced by the credits allowable against such tax.

''(C) EXCEPTION IF TRANSFEREE ASSUMES OBLIGATIONS OF TRANSFEROR.—Subparagraph (A)(i) shall not apply if the transferor and the transferee of the property enter into a written agreement pursuant to which the transferee agrees—

''(i) to assume the obligations imposed on the transferor under the endangered species conservation agreement,

''(ii) to assume personal liability for any tax imposed under subparagraph (A) with respect to any future event described in subparagraph (A), and

''(iii) to notify the Secretary of the Treasury and the Secretary of the Interior or the Secretary of Commerce that the transferee has assumed such obligations and liability.

If a transferee enters into an agreement described in clauses (i), (ii), and (iii), such transferee shall be treated as signatory to the endangered species conservation agreement the transferor entered into.

''(2) DUE DATE OF ADDITIONAL TAX.—The additional tax imposed by paragraph (1) shall become due and payable on the day that is 6 months after the date of the disposition referred to in paragraph (1)(A)(i) or, in the case of an event described in clause (ii) or (iii) of paragraph (1)(A), on April 15 of the calendar year following any year in which the Secretary of the Interior or the Secretary of Commerce fails to provide the certification required under subsection (c)(2).

''(e) STATUTE OF LIMITATIONS.—If a taxpayer incurs a tax liability pursuant to subsection (d)(1)(A), then—

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

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

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

''(g) APPLICATION OF THIS SECTION TO INTERESTS IN PARTNERSHIPS, CORPORATIONS, AND TRUSTS.—The Secretary shall prescribe regulations setting forth the application of this section in the case of an interest in a partnership, corporation, or trust which, with respect to a decedent, is an interest in

a closely held business (within the meaning of paragraph (1) of section 6166(b)). For purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are heirs of the decedent shall be treated as a present interest.''

(b) CARRYOVER BASIS.—Section 1014(a)(4) of the Internal Revenue Code of 1986 (relating to basis of property acquired from a decedent) is amended by inserting ''or 2057'' after ''section 2031(c)''.

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

''Sec. 2057. Certain real property subject to endangered species conservation agreement.''

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

SEC. 7. EXCLUSION OF 75 PERCENT OF GAIN ON SALES OF LAND TO CERTAIN PERSONS FOR THE PROTECTION OF HABITAT.

(a) IN GENERAL.—Part I of subchapter P of chapter 1 of the Internal Revenue Code of 1986 (relating to treatment of capital gains) is amended by adding at the end the following new section:

''SEC. 1203. 75 PERCENT EXCLUSION FOR GAIN ON SALES OF LAND TO CERTAIN PERSONS FOR THE PROTECTION OF HABITAT.

''(a) EXCLUSION.—Gross income shall not include 75 percent of any gain from the sale of any land to a conservation purchaser if—

''(1) such land was owned by the taxpayer or a member of the taxpayer's family (as defined in section 2032A(e)(2)) at all times during the 3-year period ending on the date of the sale, and

''(2) such land is being acquired by a conservation purchaser for the purpose of protecting the habitat of any species listed by the Secretary of the Interior or the Secretary of Commerce under the Endangered Species Act as endangered or threatened, proposed for listing as endangered or threatened, or which is a candidate for such listing.

''(b) CONSERVATION PURCHASER.—For purposes of this section—

''(1) CONSERVATION PURCHASER.—The term 'conservation purchaser' means—

''(A) any agency of the United States or of any State or local government, and

''(B) any qualified organization.

''(2) QUALIFIED ORGANIZATION.—The term 'qualified organization' has the meaning given such term by section 170(h)(3) (determined without regard to section 170(b)(1)(A)(v)).''

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 1203. 75-percent exclusion for gain on sales of land to certain persons for the protection of habitat.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, [1997].

SEC. 8. RIGHT TO COMPENSATION.

(a) PROHIBITION.—No agency action affecting privately owned property under this section shall result in the diminishment of the value of any portion of that property by 30 percent or more unless compensation is offered in accordance with this section.

(b) COMPENSATION FOR DIMINISHMENT.—Any agency that takes an action the economic impact of which exceeds the amount provided in subsection (a)—

(1) shall compensate the property owner for the diminution in value of the portion of that property resulting from the action; or

(2) if the diminution in value of a portion of that property is greater than 50 percent, at the option of the owner, such agency shall buy that portion of the property and shall pay fair market value based on the value of the property before the diminution.

(c) REQUEST OF OWNER.—A property owner seeking compensation under this section shall make a written request for compensation to the agency whose action would limit the otherwise lawful use of property. The request shall, at a minimum, identify the affected portion of the property, the nature of the diminution, and the amount of compensation claimed.

(d) CHOICE OF REMEDIES.—If the parties have not reached an agreement on compensation within 180 days after the written request is made, the owner may elect binding arbitration through alternative dispute resolution or seek compensation due under this section in a civil action. The parties may by mutual agreement extend the period of negotiation on compensation beyond the 180-day period without loss of remedy to the owner under this section. In the event the extension period lapses the owner may elect binding arbitration through alternative dispute resolution or seek compensation due under this section in a civil action.

(e) ALTERNATIVE DISPUTE RESOLUTION.—

(1) IN GENERAL.—In the administration of this section—

(A) arbitration procedures shall be in accordance with the alternative dispute resolution procedures established by the American Arbitration Association; and

(B) in no event shall arbitration be a condition precedent or an administrative procedure to be exhausted before the filing of a civil action under this section.

(2) REVIEW OF ARBITRATION.—

(A) APPEAL OF DECISION.—Appeal from arbitration decisions shall be to the United States District Court for the district in which the property is located or the United States Court of Federal Claims in the manner prescribed by law for the claim under this section.

(B) RULES OF ENFORCEMENT OF AWARD.—The provisions of title 9, United States Code (relating to arbitration), shall apply to enforcement of awards rendered under this section.

(f) CIVIL ACTION.—An owner who prevails in a civil action against any agency pursuant to this section shall be entitled to, and such agency shall be liable for, just compensation, plus reasonable attorney's fees and other litigation costs, including appraisal fees.

(g) SOURCE OF PAYMENTS.—Any payment made under this section shall be paid from the responsible agency's annual appropriation supporting the agency's activities giving rise to the claim for compensation. If insufficient funds are available to the agency in the fiscal year in which the award becomes final the agency shall pay the award from appropriations available in the next fiscal year.

(h) DEFINITIONS.—For the purposes of this section—

(1) the term ''agency'' has the meaning given that term in section 551 of title 5, United States Code;

(2) the term ''agency action'' means any action or decision taken by any agency that at the time of such action or decision adversely affects private property rights;

(3) the term ''fair market value'' means the likely price at which property would change hands, in a competitive and open market under all conditions requisite to fair sale, between a willing buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts, prior to occurrence of the agency action;

(4) the term ''just compensation''—

(A) means compensation equal to the full extent of a property owner's loss, including the fair market value of the private property taken, whether the taking is by physical occupation or through regulation, exaction, or other means; and

(B) shall include compounded interest calculated from the date of the taking until the date the United States tenders payment;

(5) the term ''owner'' means the owner or possessor of property or rights in property at the time the taking occurs, including when—

(A) the statute, regulation, rule, order, guideline, policy, or action is passed or promulgated; or

(B) the permit, license, authorization, or governmental permission is denied or suspended;

(6) the term ''property'' means land, an interest in land, proprietary water rights, and any personal property that is subject to use by the Federal Government or to a restriction on use;

(7) the term ''private property'' or ''property'' means all interests constituting real property, as defined by Federal or State law, protected under the fifth amendment to the United States Constitution, any applicable Federal or State law, or this section, and more specifically constituting—

(A) real property, whether vested or unvested, including—

(i) estates in fee, life estates, estates for years, or otherwise;

(ii) inchoate interests in real property such as remainders and future interests;

(iii) personalty that is affixed to or appurtenant to real property;

(iv) easements;

(v) leaseholds;

(vi) recorded liens; and

(vii) contracts or other security interests in, or related to, real property;

(B) the right to use water or the right to receive water, including any recorded liens on such water right; or

(C) rents, issues, and profits of land, including minerals, timber, fodder, crops, oil and gas, coal, or geothermal energy.

By Ms. SNOWE (for herself, Mr. ABRAHAM and Mr. GRAMM):

S. 1182. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to limit consideration of nonemergency matters in emergency legislation and permit matter that is extraneous to emergencies to be stricken as provided in the Byrd rule; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one committee reports, the other committee have 30 days to report or be discharged.

THE EMERGENCY SPENDING CONTROL ACT

Ms. SNOWE. Mr. President, I rise today to introduce legislation that will end a common abuse of the budget process in the Congress: the attachment of nonemergency provisions to emergency spending bills. Senator ABRAHAM and Senator GRAMM are also original sponsors of this legislation.

At a time when Congress and the President have come together and agreed on a plan to balance the budget by the year 2002, I believe it is appropriate that we now seek to ensure that

all future spending decisions be fully weighed and considered before the tax dollars of hard-working Americans are spent. We must ensure that the costs and benefits of a proposal are thoroughly reviewed through our carefully structured budget process—not allowed to be pushed through the Congress with minimal debate and consideration. The legislation I am introducing today would address one of the ways in which spending programs are pushed through Congress with minimal budget scrutiny: the attachment of nonemergency provisions to emergency spending bills.

Mr. President, as my colleagues know, emergency spending bills have been afforded special treatment because of the unique problems they address. While the annual budget and appropriations process typically takes months to complete, emergency spending legislation often receives special, accelerated consideration that can lead to its adoption in days or weeks. This expedited treatment is understandable: When a flood, earthquake, or other natural disaster imperils the lives and safety of the American people, Congress and the President should be ready and able to respond quickly.

We have even made special exceptions for emergency spending bills within our budgetary rules to ensure that disasters and other emergencies are quickly addressed. While we generally require that new spending be offset to ensure the deficit is not increased, we allow this requirement to be waived if the moneys are being spent on an emergency item. In addition, we waive our annual budgetary spending caps if the moneys are being spent to address an emergency or disaster.

Because of their expedited treatment and budgetary exceptions, emergency spending bills have become a magnet for nonemergency items. Rather than subject a proposal to the regular budget and appropriations process, provisions are often attached to emergency spending bills that are moving through Congress on a virtual fast track.

Although nonemergency items in an emergency spending bill are still subject to the annual spending caps, no offset is required if such spending would be below the annual limit. Furthermore, even if a nonemergency item is offset in an emergency spending bill, the expedited consideration of that legislation often does not allow for a thorough analysis in the broader context of the budget. Rather than subjecting the nonemergency spending provision to the same scrutiny as other programs in the budget and weighing its merits accordingly, Congress is forced to make a rapid decision. Delaying the process and carefully weighing these nonemergency items would also mean risking the timely delivery of assistance to those who have been affected by an emergency or disaster. Such a delay is simply not acceptable.

Mr. President, the bill I am introducing today would eliminate this problem and this practice by ensuring that all nonemergency spending items are subject to the same budget scrutiny and same budgetary rules. If my legislation is adopted, emergency spending bills would no longer be a convenient vehicle for spending money on nonemergency items. Rather, emergency spending bills would be just that: emergency spending bills—not Christmas trees with other goodies and presents tucked beneath them.

Under my bill, nonemergency provisions in an emergency or disaster spending bill would be subject to a new three-fifths majority point of order. If a nonemergency item is included in an emergency spending bill or related conference report—or is contained in an amendment that is being offered to such a bill—this new point of order could be raised by any Member, and a three-fifths majority vote would be required to waive it.

I believe the Members of this body are familiar with the Byrd rule and its impact on the reconciliation process, and my new provision would be administered in much the same way. The only difference would be that while the Byrd rule applies to budget reconciliation bills, this rule would apply to emergency spending bills.

Mr. President, we must no longer allow nonemergency items to be attached to emergency spending bills. We have created an expedited process for considering emergency spending bills for very sound reasons—but providing a vehicle for nonemergency items to be rushed through Congress was not one of them.

As we work toward a balanced budget in the year 2002, I would urge that Congress and the President carefully weigh the merits of every spending program and make priorities accordingly. My legislation would help us achieve this objective by ensuring that nonemergency items are not rushed through Congress while riding on the back of emergency spending bills. I urge that my colleagues join me in this effort and support this legislation.

ADDITIONAL COSPONSORS

S. 474

At the request of Mr. KYL, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 474, a bill to amend sections 1081 and 1084 of title 18, United States Code.

S. 617

At the request of Mr. JOHNSON, the names of the Senator from Idaho [Mr. KEMPTHORNE], the Senator from North Dakota [Mr. CONRAD], and the Senator from Colorado [Mr. CAMPBELL] were added as cosponsors of S. 617, a bill to amend the Federal Meat Inspection Act to require that imported meat, and meat food products containing imported meat, bear a label identifying the country of origin.

S. 766

At the request of Ms. SNOWE, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 766, a bill to require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans.

S. 834

At the request of Mr. HARKIN, the name of the Senator from California [Mrs. BOXER] was added as a cosponsor of S. 834, a bill to amend the Public Health Service Act to ensure adequate research and education regarding the drug DES.

S. 852

At the request of Mr. LOTT, the names of the Senator from New Mexico [Mr. BINGAMAN] and the Senator from Vermont [Mr. JEFFORDS] were added as cosponsors of S. 852, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles.

S. 1141

At the request of Mr. JOHNSON, the name of the Senator from Missouri [Mr. ASHCROFT] was added as a cosponsor of S. 1141, a bill to amend the Energy Policy Act of 1992 to take into account newly developed renewable energy-based fuels and to equalize alternative fuel vehicle acquisition incentives to increase the flexibility of controlled fleet owners and operators, and for other purposes.

S. 1173

At the request of Mr. WARNER, the name of the Senator from Colorado [Mr. CAMPBELL] was added as a cosponsor of S. 1173, a bill to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

S. 1178

At the request of Mr. AKAKA, his name was added as a cosponsor of S. 1178, a bill to amend the Immigration and Nationality Act to extend the visa waiver pilot program, and for other purposes.

SENATE RESOLUTION 116

At the request of Mr. LEVIN, the names of the Senator from Hawaii [Mr. INOUYE] and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of Senate Resolution 116, a resolution designating November 15, 1997, and November 15, 1998, as ''America Recycles Day.''

SENATE RESOLUTION 121

At the request of Mr. SPECTER, the names of the Senator from Arkansas [Mr. HUTCHINSON], the Senator from Missouri [Mr. ASHCROFT], the Senator from Alabama [Mr. SHELBY], the Senator from New York [Mr. D'AMATO], the Senator from Ohio [Mr. DEWINE], the Senator from Oklahoma [Mr. INHOFE], and the Senator from Kentucky [Mr. FORD] were added as cosponsors of Senate Resolution 121, a resolution urging the discontinuance of financial assistance to the Palestinian Authority unles and until the Palestinian Authority demonstrates a 100-percent maximum effort to curtail terrorism.

AMENDMENTS SUBMITTED

THE FOOD AND DRUG ADMINISTRATION MODERNIZATION AND ACCOUNTABILITY ACT OF 1997 PRESCRIPTION DRUG USERS FEE REAUTHORIZATION ACT OF 1997

KENNEDY AMENDMENT NO. 1190

(Ordered to lie on the table.)

Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill (S. 830) to amend the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act to improve the regulation of food, drugs, devices, and biological products, and for other purposes; as follows:

Amend section 406 to read as follows:

SEC. 406. LIMITATIONS ON INITIAL CLASSIFICATION DETERMINATIONS.

Section 510 (21 U.S.C. 360) is amended by adding at the end the following:

''(m) The Secretary may not withhold a determination of the initial classification of a device under section 513(f)(1) because of a failure to comply with any provision of this Act that is unrelated to a substantial equivalence decision, including a failure to comply with the requirements relating to good manufacturing practices under section 520(f), unless such failure could result in harm to human health from such device.''.

HATCH AMENDMENTS NOS. 1191–1192

(Ordered to lie on the table.)

Mr. HATCH submitted two amendments intended to be proposed by him to amendments intended to be proposed to the bill, S. 830, supra; as follows:

AMENDMENT NO. 1191

At the end of the matter proposed to be inserted, insert the following:

SEC. ___. SAFETY REPORT DISCLAIMERS.

Chapter IX (21 U.S.C. 391 et seq.), as amended by section 804, is further amended by adding at the end the following:

''SEC. 908. SAFETY REPORT DISCLAIMERS.

''With respect to any entity that submits or is required to submit a safety report or other information in connection with the safety of a product (including a product which is a food, drug, new drug, device, dietary supplement, or cosmetic) under this Act (and any release by the Secretary of that report or information), such report or information shall not be construed to necessarily reflect a conclusion by the entity or the Secretary that the report or information constitutes an admission that the product involved caused or contributed to an adverse experience, or otherwise caused or contributed to a death, serious injury, serious illness, or malfunction. Such an entity need not admit, and may deny, that the report or information submitted by the entity constitutes an admission that the product involved caused or contributed to an adverse experience or caused or contributed to a death, serious injury, serious illness, or malfunction.''.

AMENDMENT NO. 1192

At the end of the matter proposed to be inserted, insert the following:

(d) MISSION STATEMENT.—Section 903(b), as amended by section 101(2), is further amended by striking paragraphs (1) and (2) and inserting the following:

''(1) IN GENERAL.—The Secretary, acting through the Commissioner, in consultation with experts in science, medicine, and public health, and in cooperation with consumers, users, manufacturers, importers packers, distributors, and retailers of regulated products, shall protect the public health by taking actions that help ensure that—

''(A) foods are safe, wholesome, sanitary, and properly labeled;

''(B) human and veterinary drugs, including biologics, are safe and effective;

''(C) there is reasonable assurance of safety and effectiveness of devices intended for human use;

''(D) cosmetics are safe; and

''(E) public health and safety are protected from electronic product radiation.

''(2) SPECIAL RULES.—The Secretary, acting through the Commissioner, shall promptly and efficiently review clinical research and take appropriate action on the marketing of regulated products in a manner that does not unduly impede innovation or product availability. The Secretary, acting through the Commissioner, shall participate with other countries to reduce the burden of regulation, to harmonize regulatory requirements, and to achieve appropriate reciprocal arrangements with other countries.''.

HARKIN (AND OTHERS) AMENDMENT NO. 1193

(Ordered to lie on the table.)

Mr. HARKIN (for himself, Mr. HATCH, Mr. DASCHLE, and Ms. MIKULSKI) submitted an amendment intended to be proposed by them to an amendment intended to be proposed to the bill, S. 830, supra; as follows:

At the end of the amendment, insert the following new section:

SEC. ____. ESTABLISHMENT OF NATIONAL CENTER FOR COMPLEMENTARY AND ALTERNATIVE MEDICINE.

(a) IN GENERAL.—Title IV of the Public Health Service Act (42 U.S.C. 281 et seq.) is amended—

(1) by striking section 404E; and

(2) in part E, by amending subpart 4 to read as follows:

''Subpart 4—National Center for Complementary and Alternative Medicine

''SEC. 485C. PURPOSE OF CENTER.

''(a) IN GENERAL.—The general purposes of the National Center for Complementary and Alternative Medicine (in this subpart referred to as the 'Center') are—

''(1) the conduct and support of basic and applied research (including both intramural and extramural research), research training, the dissemination of health information, and other programs, including prevention programs, with respect to identifying, investigating, and validating complementary and alternative treatment, prevention and diagnostic systems, modalities, and disciplines; and

''(2) carrying out the functions specified in sections 485D (relating to dietary supplements).

The Center shall be headed by a director, who shall be appointed by the Secretary. The Director of the Center shall report directly to the Director of NIH.

''(b) ADVISORY COUNCIL.—The Secretary shall establish an advisory council for the Center in accordance with section 406, except that the members of the advisory council who are not ex officio members shall include one or more practitioners from each of the disciplines and systems with which the Center is concerned, and at least 3 individuals representing the interests of individual consumers of complementary and alternative medicine.

''(c) COMPLEMENT TO CONVENTIONAL MEDICINE.—In carrying out subsection (a), the Director of the Center shall, as appropriate, study the integration of alternative medical treatment and diagnostic systems, modalities, and disciplines into the practice of conventional medicine as a complement to such medicine and into health care delivery systems in the United States.

''(d) APPROPRIATE SCIENTIFIC EXPERTISE.—The Director of the Center, after consultation with the advisory council for the Center and the division of research grants, shall ensure that scientists with appropriate expertise in research on complementary and alternative medicine are incorporated into the review, oversight, and management processes of all research projects and other activities funded by the Center. In carrying out this subsection, the Director of the Center, as necessary, may establish review groups with appropriate scientific expertise.

''(e) EVALUATION OF VARIOUS DISCIPLINES AND SYSTEMS.—In carrying out subsection (a), the Director of the Center shall identify and evaluate alternative medical treatment and diagnostic modalities in each of the disciplines and systems with which the Center is concerned, including each discipline and system in which accreditation, national certification, or a State license is available.

''(f) ENSURING HIGH QUALITY, RIGOROUS SCIENTIFIC REVIEW.—In order to ensure high quality, rigorous scientific review of complementary and alternative medical and diagnostic systems, modalities, and disciplines, the Director of the Center shall conduct or support the following activities:

''(1) Outcomes research and investigations.

''(2) Epidemiological studies.

''(3) Health services research.

''(4) Basic science research.

''(5) Clinical trials.

''(6) Other appropriate research and investigational activities.

''(g) DATA SYSTEM; INFORMATION CLEARINGHOUSE.—

''(1) DATA SYSTEM.—The Director of the Center shall establish a bibliographic system for the collection, storage, and retrieval of worldwide research relating to complementary and alternative medical treatment and diagnostic systems, modalities, and disciplines. Such a system shall be regularly updated and publicly accessible.

''(2) CLEARINGHOUSE.—The Director of the Center shall establish an information clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of alternative medical treatment and diagnostic systems and disciplines by health professionals, patients, industry, and the public.

''(h) RESEARCH CENTERS.—

''(1) IN GENERAL.—The Director of the Center, after consultation with the advisory council for the Center, shall provide support for the development and operation of multipurpose centers to conduct research and other activities described in subsection (a)(1) with respect to complementary and alternative medical treatment and diagnostic systems, modalities, and disciplines.

''(2) REQUIREMENTS.—Each center assisted under paragraph (1) shall use the facilities of a single entity, or be formed from a consortium of cooperating entities, and shall meet such requirements as may be established by the Director of the Center. Each such center shall—

''(A) be established as an independent entity; or

''(B) be established within or in affiliation with an entity that conducts research or training described in subsection (a)(1).

''(3) DURATION OF SUPPORT.—Support of a center under paragraph (1) may be for a period not exceeding 5 years. Such period may