

Union Calendar No. 420

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

**H. R. 2275**

[Report No. 104-778, Part I]

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**A BILL**

To reauthorize and amend the Endangered Species  
Act of 1973.

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SEPTEMBER 9, 1996

Reported from the Committee on Resources with an  
amendment

SEPTEMBER 9, 1996

Referral to the Committee on Agriculture extended for a  
period ending not later than September 9, 1996

SEPTEMBER 9, 1996

Committee on Agriculture discharged; committed to the  
Committee of the Whole House on the State of the  
Union and ordered to be printed

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 7, 1995

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

SEPTEMBER 9, 1996

Additional sponsors: Mr. DICKEY, Mr. CHAPMAN, Mr. SHUSTER, Mr. NEY, Mr. SPENCE, Mr. TIAHRT, Mr. CAMP, Mr. GEKAS, Mr. MCDADE, Mr. NORWOOD, Mr. DEAL of Georgia, Mr. CHRISTENSEN, Mr. BATEMAN, Mr. METCALF, Mr. LAHOOD, Mr. HASTERT, Mr. PARKER, Ms. DUNN of Washington, Mr. HOEKSTRA, Mr. MYERS of Indiana, Mr. SCARBOROUGH, Mr. ROTH, Mr. QUILLEN, Mr. CREMEANS, Mr. BRYANT of Tennessee, Mr. MONTGOMERY, Mr. BARRETT of Nebraska, Mr. CRAMER, Mrs. MYRICK, Mr. TATE, Mr. BARR of Georgia, Mr. ROGERS, and Mr. UNDERWOOD

Deleted sponsor: Mr. MARTINEZ (added September 14, 1995; deleted September 28, 1995)

SEPTEMBER 9, 1996

Reported from the Committee on Resources with an amendment  
[Strike out all after the enacting clause and insert the part printed in *italic*]

SEPTEMBER 9, 1996

Referral to the Committee on Agriculture extended for a period ending not later than September 9, 1996

SEPTEMBER 9, 1996

Committee on Agriculture discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed  
[For text of introduced bill, see copy of bill as introduced on September 7, 1995]

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## A BILL

To reauthorize and amend the Endangered Species Act of 1973.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

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

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

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

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

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

- Sec. 201. Enforcement procedures.*  
*Sec. 202. Removing punitive disincentives.*  
*Sec. 203. Allowing non-Federal persons to use the consultation procedures.*  
*Sec. 204. Permitting requirements for incidental takes.*  
*Sec. 205. General, research, and educational permits.*  
*Sec. 206. Maintenance of aquatic habitats for listed species.*  
*Sec. 207. Compliance with international requirements and treaties.*  
*Sec. 208. Incentives for protection of marine species.*  
*Sec. 209. International cooperation to conserve sea turtles.*

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

- Sec. 301. Improving the validity and credibility of decisions.*  
*Sec. 302. Peer review.*  
*Sec. 303. Making data public.*  
*Sec. 304. Improving the petition and designation processes.*  
*Sec. 305. Greater State involvement.*  
*Sec. 306. Monitoring the status of species.*  
*Sec. 307. Petitions to delist species.*  
*Sec. 308. Determinations by the Secretary to delist.*

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

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

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

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

- Sec. 506. Introduction of species.*  
*Sec. 507. Conserving threatened species.*  
*Sec. 508. Delegation of authority to States.*

**TITLE VI—HABITAT PROTECTIONS**

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

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

- Sec. 701. State authority.*  
*Sec. 702. State programs affected by the Convention.*  
*Sec. 703. Collaborative rulemaking with the States.*

**TITLE VIII—FUNDING OF CONSERVATION MEASURES**

- Sec. 801. Authorizing increased appropriations.*  
*Sec. 802. Funding of Federal mandates.*  
*Sec. 803. National Endowment for Fish and Wildlife.*

**TITLE IX—MISCELLANEOUS PROVISIONS**

- Sec. 901. Amendments to definitions.*  
*Sec. 902. Review of species of national interest.*  
*Sec. 903. Preparation of conservation plans for species listed before enactment of  
this Act.*  
*Sec. 904. Application of conservation plans for single or multiple species to habi-  
tat conservation plans approved prior to this Act.*  
*Sec. 905. Washington County, Utah Desert Tortoise Habitat Conservation Plan.*  
*Sec. 906. Taking of species to conserve listed species.*  
*Sec. 907. Conforming amendments.*  
*Sec. 908. Application of provisions to certified applicators of registered pesticides.*

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

*3 Except as otherwise expressly provided, whenever in  
4 this Act an amendment or repeal is expressed in terms of  
5 an amendment to, or repeal of, a section or other provision,  
6 the reference shall be considered to be made to such section  
7 or other provision of the Endangered Species Act of 1973  
8 (16 U.S.C. 1531 et seq.).*

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

3 (a) *FINDINGS.*—Section 2(a) (16 U.S.C. 1531(a)) is  
4 amended—

5 (1) by amending paragraph (1) to read as fol-  
6 lows:

7 “(1) various species of fish, wildlife, and plants  
8 in the United States have been rendered extinct be-  
9 cause of inadequate conservation practices and natu-  
10 ral processes;”; and

11 (2) by striking “and” after the semicolon at the  
12 end of paragraph (4)(G), by striking the period at the  
13 end of paragraph (5) and inserting “; and”, and by  
14 adding at the end the following new paragraph:

15 “(6) the Nation’s economic well-being is essential  
16 to the ability to maintain a sustainable resource base,  
17 therefore economic impacts and private property own-  
18 ers’ rights must be considered while encouraging prac-  
19 tices that protect species.”.

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

22 “(b) *PURPOSES.*—The purposes of this Act are the fol-  
23 lowing:

24 “(1) To provide a feasible and practical means  
25 to conserve endangered species and threatened species

1       *consistent with protection of the rights of private*  
2       *property owners and ensuring economic stability.*

3               “(2) *To provide a program for the conservation*  
4       *and management of such endangered species and*  
5       *threatened species taking into account the economic*  
6       *and social consequences of such program.*

7               “(3) *To take such steps as may be practicable to*  
8       *achieve the purposes of the treaties and conventions*  
9       *set forth in subsection (a) of this section.*

10       “(c) *POLICY.—*

11               “(1) *FEDERAL AUTHORITY.—It is further de-*  
12       *clared to be the policy of Congress that all Federal de-*  
13       *partments and agencies shall seek to conserve and*  
14       *manage endangered species and threatened species*  
15       *and shall, consistent with and not prevailing over*  
16       *their primary missions, utilize their authorities in*  
17       *furtherance of the purposes of this Act.*

18               “(2) *COOPERATION WITH STATES.—It is further*  
19       *declared to be the policy of Congress that Federal*  
20       *agencies shall cooperate with State and local agencies*  
21       *to resolve water resource issues in concert with con-*  
22       *servation of endangered species and consistent with*  
23       *State and local water laws.*

24               “(3) *PROTECTION OF PRIVATE PROPERTY*  
25       *RIGHTS.—It is the policy of the Federal Government*

1        *that agency action taken pursuant to this Act shall*  
2        *not use or limit the use of privately owned property*  
3        *when such action diminishes the value of such prop-*  
4        *erty without payment of fair market value to the*  
5        *owner of private property. Each Federal agency, offi-*  
6        *cer, and employee shall exercise authority under this*  
7        *Act to ensure that agency action will not violate the*  
8        *policy established in this paragraph.”.*

9        **TITLE I—PRIVATE PROPERTY**  
10       **RIGHTS AND VOLUNTARY IN-**  
11       **CENTIVES FOR PRIVATE**  
12       **PROPERTY OWNERS**

13       **SEC. 101. COMPENSATION FOR USE OR TAKING OF PRIVATE**  
14       **PROPERTY.**

15       *The Endangered Species Act of 1973 (16 U.S.C. 1531*  
16       *et seq.) is amended by adding at the end the following new*  
17       *section:*

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

19       *“(a) PROHIBITION.—The Federal Government shall*  
20       *not take an agency action affecting privately owned prop-*  
21       *erty or nonfederally owned property under this Act which*  
22       *results in diminishment of value of any portion of that*  
23       *property by 20 percent or more unless compensation is of-*  
24       *fered in accordance with this section.*

1           “(b) *COMPENSATION FOR USE OR LIMITATION ON*  
2 *USE.*—*The agency or agencies that take an agency action*  
3 *that exceeds the amount provided in subsection (a) shall*  
4 *compensate the private property owner for the otherwise*  
5 *lawful use or limitation on the otherwise lawful use in the*  
6 *amount of the diminution in value of the portion of that*  
7 *property resulting from the use or limitation on use. If the*  
8 *diminution in value of a portion of that property is greater*  
9 *than 50 percent, at the option of the owner, the agency or*  
10 *agencies shall buy that portion of the property and shall*  
11 *pay fair market value based on the value of the property*  
12 *before the use or limitation on use was imposed. Compensa-*  
13 *tion paid shall reflect the duration of the use or limitation*  
14 *on use necessary to achieve the purposes of this Act.*

15           “(c) *REQUEST OF OWNER.*—*An owner seeking com-*  
16 *ensation under this section shall make a written request*  
17 *for compensation to the agency implementing the agency*  
18 *action. The request shall, at a minimum, identify the af-*  
19 *ected portion of the property, the nature of the use or limi-*  
20 *tation, and the amount of compensation claimed. No such*  
21 *request may be made later than one year after the owner*  
22 *receives actual notice that the use of property has been lim-*  
23 *ited by an agency action.*

24           “(d) *NEGOTIATIONS.*—*The agency may negotiate with*  
25 *that owner to reach agreement on the amount of the com-*

1 *pen­sation and the terms of any agree­ment for pay­ment. If*  
2 *such an agree­ment is reached, the agency shall within 90*  
3 *days pay the owner the amount agreed upon. An agree­ment*  
4 *under this section may include a trans­fer of the title or*  
5 *an agree­ment to use the prop­erty for a limited period of*  
6 *time.*

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

12       “(f) *ARBITRATION.—The pro­ce­dures that govern the*  
13 *arbitration shall, as nearly as practicable, be those estab­*  
14 *lished under title 9, United States Code, for arbitration pro­*  
15 *ceedings to which that title applies. An award made in such*  
16 *arbitration shall include a reasonable attorney’s fee and*  
17 *other arbitration costs, including appraisal fees. The agency*  
18 *shall promptly pay any award made to the owner.*

19       “(g) *CIVIL ACTION.—An owner who prevails in a civil*  
20 *action against the agency pursuant to this section shall be*  
21 *entitled to, and the agency shall be liable for, the amount*  
22 *of com­pen­sa­tion awarded plus reasonable attorney’s fees*  
23 *and other litigation costs, including appraisal fees. The*  
24 *court shall award interest on the amount of any com­pen­sa­tion*  
25 *from the time of the limitation.*

1       “(h) *SOURCE OF PAYMENTS.*—Any payment made  
2 under this section to an owner, and any judgment obtained  
3 by an owner in a civil action under this section shall, not-  
4 withstanding any other provision of law, be made from the  
5 annual appropriation of the agency that took the agency  
6 action. If the agency action resulted from a requirement im-  
7 posed by another agency, then the agency making the pay-  
8 ment or satisfying the judgment may seek partial or com-  
9 plete reimbursement from the appropriated funds of the  
10 other agency. For this purpose the head of the agency con-  
11 cerned may transfer or reprogram any appropriated funds  
12 available to the agency. If insufficient funds exist for the  
13 payment or to satisfy the judgment, it shall be the duty  
14 of the head of the agency to seek the appropriation of such  
15 funds for the next fiscal year.

16       “(i) *AVAILABILITY OF APPROPRIATIONS.*—Notwith-  
17 standing any other provision of law, any obligation of the  
18 United States to make any payment under this section shall  
19 be subject to the availability of appropriations.

20       “(j) *DUTY OF NOTICE TO OWNERS.*—An agency may  
21 not take any action limiting the use of private property  
22 unless the agency has given appropriate notice to the owners  
23 of that property directly affected explaining their rights  
24 under this section and the procedures for obtaining any  
25 compensation that may be due to them under this section.

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

3               “(1) *OTHER RIGHTS PRESERVED.*—*Nothing in*  
4 *this Act shall be construed to limit any right to com-*  
5 *ensation that exists under the Constitution or under*  
6 *other laws.*

7               “(2) *EXTENT OF FEDERAL AUTHORITY.*—*Pay-*  
8 *ment of compensation under this section (other than*  
9 *when the property is bought by the Federal Govern-*  
10 *ment at the option of the owner) shall not confer any*  
11 *rights on the Federal Government other than the use*  
12 *or limitation on use resulting from the agency action*  
13 *for the duration so that the agency action may*  
14 *achieve the species conservation purposes of this Act.*

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

16               “(1) *AGENCY.*—*The term ‘agency’ has the mean-*  
17 *ing given that term in section 551 of title 5, United*  
18 *States Code.*

19               “(2) *AGENCY ACTION.*—*The term ‘agency ac-*  
20 *tion’—*

21                       “(A) *subject to subparagraph (B), has the*  
22 *meaning given that term in section 551 of title*  
23 *5, United States Code, and*

24                       “(B) *includes—*

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

3           “(ii) a designation pursuant to section  
4 9(i) of privately owned property as critical  
5 habitat;

6           “(iii) the denial of a permit under sec-  
7 tion 10 that restricts the use of private  
8 property;

9           “(iv) an agency action pursuant to a  
10 biological opinion under section 7 that  
11 would cause an agency to restrict the use of  
12 private property;

13           “(v) an agreement under section 6 to  
14 set aside property for habitat under the  
15 terms of an easement or other contract;

16           “(vi) a restriction imposed on private  
17 property as part of a conservation plan  
18 adopted by the Secretary under section 5;

19           “(vii) any other agency action that re-  
20 stricts a legal right to use that property, in-  
21 cluding, the right to alter habitat; and

22           “(viii) the making of a grant of land  
23 or money, to a public authority or a private  
24 entity as a predicate to an agency action by

1           *the recipient that would constitute a limita-*  
2           *tion if done directly by the agency.*

3           “(3) *FAIR MARKET VALUE.*—*The term ‘fair mar-*  
4           *ket value’ means the most probable price at which*  
5           *property would change hands, in a competitive and*  
6           *open market under all conditions requisite to fair*  
7           *sale, between a willing buyer and willing seller, nei-*  
8           *ther being under any compulsion to buy or sell and*  
9           *both having reasonable knowledge of relevant facts,*  
10          *prior to occurrence of the agency action.*

11          “(4) *LAW OF THE STATE.*—*The term ‘law of the*  
12          *State’ includes the law of a political subdivision of a*  
13          *State.*

14          “(5) *LIMITATION ON USE.*—*The term ‘limitation*  
15          *on use’ means only a limitation on a use which is*  
16          *otherwise permissible under applicable State property*  
17          *or nuisance laws.*

18          “(6) *PRIVATE PROPERTY, PRIVATELY OWNED*  
19          *PROPERTY, NON-FEDERAL PROPERTY.*—*The term ‘pri-*  
20          *vate property’, ‘privately owned property’, or ‘non-*  
21          *Federal property’ means property which is owned by*  
22          *a person other than any Federal entity of govern-*  
23          *ment.*

24          “(7) *PROPERTY.*—*The term ‘property’ means*  
25          *land, an interest in land, the right to use or receive*

1       *water, and any personal property that is subject to*  
 2       *use by the Federal Government or to a restriction on*  
 3       *use.”.*

4   **SEC. 102. VOLUNTARY COOPERATIVE MANAGEMENT AGREE-**  
 5                                   **MENTS.**

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

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

12                  *(2) by adding after paragraph (5) (as redesign-*  
 13      *ated by paragraph (1) of this section) the following*  
 14      *new paragraph:*

15      *“(6) The term ‘cooperative management agreement’*  
 16      *means a voluntary agreement entered into under section*  
 17      *6(b).”.*

18      *(b) VOLUNTARY COOPERATIVE MANAGEMENT AGREE-*  
 19      *MENTS.—Section 6 (16 U.S.C. 1535) is amended by strik-*  
 20      *ing so much as precedes subsection (c) and inserting the*  
 21      *following:*

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

23      *“(a) GENERALLY.—In carrying out the program au-*  
 24      *thorized by this Act, the Secretary shall cooperate to the*  
 25      *maximum extent practicable with the States and other non-*

1 *Federal persons. Such cooperation shall include consulta-*  
2 *tion with the States and non-Federal persons concerned be-*  
3 *fore acquiring any land or water, or interest therein, for*  
4 *the purpose of conserving any endangered species or threat-*  
5 *ened species.*

6 “(b) *COOPERATIVE MANAGEMENT AGREEMENTS.*—

7 “(1) *IN GENERAL.*—*The Secretary may enter*  
8 *into a cooperative management agreement with any*  
9 *State or group of States, political subdivision of a*  
10 *State, local government, or non-Federal person—*

11 “(A) *for the management of a species or*  
12 *group of species listed as endangered species or*  
13 *threatened species under section 4, a species or*  
14 *group of species proposed to be listed under sec-*  
15 *tion 4, or species or group of species which are*  
16 *candidates for listing; or*

17 “(B) *for the management or acquisition of*  
18 *an area which provides habitat for a species.*

19 “(2) *SCOPE OF COOPERATIVE MANAGEMENT*  
20 *AGREEMENTS.*—(A) *A cooperative management agree-*  
21 *ment entered into under this subsection—*

22 “(i) *may provide for the management of a*  
23 *species or group of species on both public and*  
24 *private lands which are under the authority,*  
25 *control or ownership of a State or group of*

1           *States, political subdivision of a State, local gov-*  
2           *ernment, or non-Federal person and which are*  
3           *affected by a listing determination, proposed de-*  
4           *termination, or proposed candidacy for deter-*  
5           *mination; and*

6                     *“(i) may include the acquisition or des-*  
7                     *ignation of land as habitat for species.*

8                     *“(B) A cooperative management agreement may*  
9           *not restrict private or non-Federal property unless*  
10          *written consent to such restrictions by the non-Fed-*  
11          *eral owner is given either to the Secretary or the*  
12          *State, political subdivision, local government, or non-*  
13          *Federal person who is a party to the agreement.*

14                    *“(C) The Secretary may grant to a party to an*  
15          *agreement the authority to undertake programs to en-*  
16          *hance the population or habitat of a species on feder-*  
17          *ally owned lands, except that such authority shall not*  
18          *otherwise conflict with other uses of such land which*  
19          *are approved by the Secretary or authorized by the*  
20          *Congress.*

21                    *“(D) The Secretary is authorized, in conjunction*  
22          *with entering into and as a part of any agreement*  
23          *under this section, to provide funds to carry out the*  
24          *agreement to a non-Federal person, as provided in*  
25          *paragraph (11).*

1           “(3) *NOTIFICATION.*—*Not later than 30 days*  
2 *after submission of a request to enter into a coopera-*  
3 *tive management agreement, the party submitting the*  
4 *request shall provide notice of the request to any non-*  
5 *Federal person or Federal power marketing adminis-*  
6 *tration that would be subject to the proposed coopera-*  
7 *tive management agreement.*

8           “(4) *DEVELOPMENT OF PROPOSED AGREE-*  
9 *MENT.*—(A) *The requesting party shall develop and*  
10 *submit to the Secretary a proposed cooperative man-*  
11 *agement agreement.*

12           “(B) *The Secretary shall publish in the Federal*  
13 *Register a notice of availability and a request for*  
14 *public comment on any proposed cooperative manage-*  
15 *ment agreement between the Secretary and any gov-*  
16 *ernmental entity and shall hold a public hearing on*  
17 *such a proposed cooperative management agreement*  
18 *in each county or parish in which the proposed agree-*  
19 *ment would be in effect.*

20           “(C) *Before entering into a cooperative manage-*  
21 *ment agreement with another governmental entity or*  
22 *a non-Federal person for the management of federally*  
23 *owned land, the Secretary shall consider and weigh*  
24 *carefully all information received in response to the*  
25 *request for comment published under subparagraph*

1       *(B) and testimony presented in each hearing held*  
2       *under subparagraph (B).*

3               “(5) *APPROVAL OF AGREEMENT.—(A) Not later*  
4       *than 120 days after the submission of a proposed co-*  
5       *operative management agreement under paragraph*  
6       *(4), the Secretary shall determine whether the pro-*  
7       *posed agreement is in accordance with this subsection*  
8       *and will promote the conservation of the species to*  
9       *which the proposed agreement applies.*

10              “(B) *The Secretary shall approve and enter into*  
11       *a proposed cooperative management agreement, if the*  
12       *Secretary finds that—*

13                      “(i) *the requesting party has sufficient au-*  
14       *thority under law to implement and carry out*  
15       *the terms of the agreement;*

16                      “(ii) *the agreement defines an area that*  
17       *serves as habitat for the species or group of spe-*  
18       *cies to which the agreement applies;*

19                      “(iii) *the agreement adequately provides for*  
20       *the administration and management of the iden-*  
21       *tified management area;*

22                      “(iv) *the agreement promotes the conserva-*  
23       *tion of the species to which the agreement applies*  
24       *by committing Federal or non-Federal efforts to*  
25       *the conservation;*

1           “(v) the term of the agreement is of suffi-  
2           cient duration to accomplish the provisions of  
3           the agreement; and

4           “(vi) the agreement is adequately funded to  
5           carry out the agreement.

6           “(C) No later than 30 days after entering into  
7           a cooperative management agreement with a govern-  
8           mental entity, the Secretary shall publish in the Fed-  
9           eral Register a notice of availability of the terms of  
10          such agreement and the response of the Secretary to  
11          all information received or presented with respect to  
12          the agreement pursuant to paragraph (4)(B).

13          “(6) ENVIRONMENTAL ASSESSMENTS.—Prepara-  
14          tion, approval, and entering into a cooperative man-  
15          agement agreement under this subsection shall not be  
16          subject to section 102(2) of the National Environ-  
17          mental Policy Act of 1969 (42 U.S.C. 4332(2)).

18          “(7) NO SURPRISES.—For any species or area  
19          that is the subject of a cooperative management agree-  
20          ment under this subsection, a party to the agreement  
21          shall not be required—

22                 “(A) to make any additional payment for  
23                 any purpose, or to accept any additional restric-  
24                 tion on any parcel of land available for develop-

1           *ment or land management under the agreement,*  
2           *without consent of the party; or*

3           “(B) *to undertake any other measure to*  
4           *minimize or mitigate impacts on the species in*  
5           *addition to measures required by the agreement*  
6           *as established.*

7           “(8) *EFFECT OF LISTING OF SPECIES.—A coop-*  
8           *erative management agreement entered into under*  
9           *this subsection shall remain in effect and shall not*  
10          *be required to be amended if a species to which the*  
11          *agreement does not apply is determined to be an en-*  
12          *dangered species or threatened species under section*  
13          *4.*

14          “(9) *APPLICABILITY OF CERTAIN PROVISIONS.—*  
15          *Sections 5, 7, and 9 shall not apply to those activities*  
16          *of a party to a cooperative management agreement*  
17          *which are conducted in accordance with such agree-*  
18          *ment.*

19          “(10) *VIOLATIONS OF AGREEMENTS.—(A) If the*  
20          *Secretary determines that a party to a cooperative*  
21          *management agreement is not administering or act-*  
22          *ing in accordance with the agreement, the Secretary*  
23          *shall notify the party.*

24          “(B) *If a party that is notified under subpara-*  
25          *graph (A) fails to take appropriate corrective action*

1       *within a period of time determined by the Secretary*  
2       *to be reasonable (not to exceed 90 days after the date*  
3       *of the notification)—*

4               “(i) *the Secretary shall rescind the entire*  
5               *cooperative management agreement or the appli-*  
6               *cability of the agreement to the party that is the*  
7               *subject of the notification; and*

8               “(ii) *beginning on the date of the rescis-*  
9               *sion—*

10               “(I) *the entire agreement shall not be*  
11               *effective, or the agreement shall not be effec-*  
12               *tive with respect to the party, whichever is*  
13               *appropriate; and*

14               “(II) *sections 5, 7, and 9 shall apply*  
15               *to activities of the party.*

16               “(11) *FACA.—Consultation with States pursu-*  
17               *ant to this section shall not be subject to the Federal*  
18               *Advisory Committee Act (5 U.S.C. App.).”.*

19       **SEC. 103. GRANTS FOR IMPROVING AND CONSERVING HABI-**  
20               **TAT FOR SPECIES.**

21               *Section 6 (16 U.S.C. 1535), as amended by section 105*  
22       *of this Act, is further amended by adding at the end the*  
23       *following new subsection:*

24               “(k) *HABITAT CONSERVATION GRANTS.—(1) The Sec-*  
25       *retary may, from amounts in the account established by*

1 *section 13 or from funds appropriated for such purpose,*  
2 *provide a grant to a non-Federal person (other than an offi-*  
3 *cer, employee, or agent (acting in an official capacity) or*  
4 *a department or instrumentality of a State, municipality,*  
5 *or political subdivision thereof) for the purpose of conserv-*  
6 *ing, preserving, or improving habitat for any species that*  
7 *is determined under section 4 to be an endangered species*  
8 *or a threatened species or for any conservation measures*  
9 *that enhances the survivability of such species, including*  
10 *predator control.*

11       “(2) *The Secretary may provide a grant under this*  
12 *subsection if the Secretary determines that—*

13               “(A) *the property for which the grant is provided*  
14 *contains habitat that significantly contributes to the*  
15 *protection of the population of the species;*

16               “(B) *the property has been managed for species*  
17 *protection for a period of time that has been sufficient*  
18 *to significantly contribute to the protection of the*  
19 *population of the species; and*

20               “(C) *the management of the habitat advances the*  
21 *interest of species protection.*

22       “(3) *A grant made under this subsection shall be trans-*  
23 *ferable to subsequent owners of the property for which the*  
24 *grant is provided.”.*

1 **SEC. 104. TECHNICAL ASSISTANCE PROGRAMS.**

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

6 *“(m) TECHNICAL ASSISTANCE PROGRAM.—*

7 *“(1) IN GENERAL.—The Secretary shall initiate*  
8 *a technical assistance program to provide technical*  
9 *advice and assistance to non-Federal persons who*  
10 *wish to participate in achieving the conservation ob-*  
11 *jective for a species. The technical assistance provided*  
12 *shall include information on habitat needs of species,*  
13 *optimum management of habitat for species, methods*  
14 *for propagation of species, feeding needs and habits,*  
15 *predator controls, and any other information which*  
16 *a non-Federal person may utilize or request for the*  
17 *purpose of conserving a species determined to be an*  
18 *endangered species or threatened species or proposed*  
19 *to be determined as an endangered species or threat-*  
20 *ened species.*

21 *“(2) REGULATIONS TO PROVIDE EXEMPTIONS*  
22 *FROM SECTION 9.—The Secretary shall promulgate*  
23 *regulations that establish exemptions from section 9*  
24 *for any person who participates in a conservation*  
25 *program under this subsection.”.*

1 **SEC. 105. WATER RIGHTS.**

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

4       “(j) *WATER RIGHTS.*—Nothing in this Act shall be  
5 construed to supersede, abrogate, or otherwise impair any  
6 right or authority of a State to allocate or administer quan-  
7 tities of water (including boundary waters). Nothing in this  
8 Act shall be implemented, enforced, or construed to allow  
9 any officer or agency of the United States to utilize directly  
10 or indirectly the authorities established under this Act to  
11 impose any requirement not imposed by the State which  
12 would supersede, abrogate, condition, restrict, or otherwise  
13 impair rights to the use of water resources allocated under  
14 State law, interstate water compact, or Supreme Court de-  
15 cree, or held by the United States for use by a State, its  
16 political subdivisions, or its citizens. The exercise of author-  
17 ity pursuant to or in furtherance of this Act shall not be  
18 construed to create a limitation on the exercise of rights  
19 to water or constitute a cause for nondelivery of water pur-  
20 suant to contract or State law.”.

1 **TITLE II—IMPROVING ABILITY**  
2 **TO COMPLY WITH THE EN-**  
3 **DANGERED SPECIES ACT OF**  
4 **1973**

5 **SEC. 201. ENFORCEMENT PROCEDURES.**

6 (a) *IN GENERAL.*—Section 9(a) (16 U.S.C. 1538(a))  
7 is amended—

8 (1) in paragraph (1) by amending the matter  
9 preceding subparagraph (A) to read as follows:

10 “(1) Except as provided in paragraph (3), section  
11 6(g)(2), subsections (d)(3) and (e) of section 5, section 7(a),  
12 and section 10, with respect to any endangered species of  
13 fish or wildlife listed pursuant to section 4 it is unlawful  
14 for any person subject to the jurisdiction of the United  
15 States to—”;

16 (2) in paragraph (2) by amending the matter  
17 preceding subparagraph (A) to read as follows:

18 “(2) Except as provided in section 6(g)(2), subsections  
19 (d)(3) and (e) of section 5, and section 10, with respect to  
20 any endangered species of plants listed pursuant to section  
21 4, it is unlawful for any person subject to the jurisdiction  
22 of the United States to—”; and

23 (3) by adding at the end the following new para-  
24 graph:

1           “(3) *PERMITTED TAKINGS*.—An activity of a  
2           *non-Federal person is not a taking of a species if the*  
3           *activity—*

4                   “(A) *is consistent with the provisions of a*  
5                   *final conservation plan or conservation objective;*

6                   “(B) *complies with the terms and condi-*  
7                   *tions of an incidental take permit or a coopera-*  
8                   *tive management agreement;*

9                   “(C) *addresses a critical, imminent threat*  
10                   *to public health or safety or a catastrophic natu-*  
11                   *ral event, or is mandated by any Federal, State,*  
12                   *or local government agency for public health or*  
13                   *safety purposes;*

14                   “(D) *is incidental to, and not the purpose*  
15                   *of, the carrying out of an otherwise lawful activ-*  
16                   *ity that consists of—*

17                           “(i) *on-going maintenance, routine op-*  
18                           *eration or use, and emergency repair of ex-*  
19                           *isting pipelines, fire breaks, transmission*  
20                           *and distribution lines, groundwater re-*  
21                           *charge facilities and areas, water storage fa-*  
22                           *ilities, water conveyance structures and*  
23                           *channels, and appurtenant facilities;*

24                           “(ii) *road and right-of-away mainte-*  
25                           *nance, use, and repair; or*

1                   “(iii) emergency repair or restoration  
2                   of any property or non-Federal facility to  
3                   the condition in which it existed or operated  
4                   immediately before an emergency or disas-  
5                   ter, meeting current standards; or

6                   “(E) is incidental to, and not the purpose  
7                   of, the carrying out of an otherwise lawful activ-  
8                   ity that occurs within an area of the territorial  
9                   sea or exclusive economic zone established by  
10                  Proclamation Numbered 5030, dated March 10,  
11                  1983, that is not designated as critical habitat  
12                  under section 5(i), and the affected species is not  
13                  a species of fish.”.

14                  (b) *REWARDS AND INCIDENTAL EXPENSES.*—Section  
15 11 (16 U.S.C. 1540) is amended—

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

19                  (2) in subsection (e)(3) in the fourth sentence by  
20                  striking “Any fish, wildlife,” and inserting “Any en-  
21                  dangered species or threatened species of fish or wild-  
22                  life,”;

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

1           (4) *in subsection (e)(4)(B) by inserting “endan-*  
2 *gered species or threatened species of” after “import-*  
3 *ing of any”;*

4           (5) *in subsection (f) in the first sentence by in-*  
5 *serting “endangered species or threatened species of”*  
6 *after “storage of”;*

7           (6) *in subsection (a)(1) by striking “knowingly”*  
8 *each place it appears and inserting “with specific in-*  
9 *tent”;*

10          (7) *in subsection (b)(1) by striking “knowingly”*  
11 *each place it appears and inserting “with specific in-*  
12 *tent”;*

13          (8) *in subsection (e) by adding at the end the fol-*  
14 *lowing new paragraph:*

15           “(7) *ADOPTION OF REGULATIONS.—No interpre-*  
16 *tation, policy, guideline, finding, or other informal*  
17 *determination may be relied upon by the Secretary in*  
18 *the implementation and enforcement of this Act unless*  
19 *such determination has been the subject of a proposed*  
20 *rule, subject to review by the public and comment for*  
21 *a period of no less than 60 days. Any proposed rule*  
22 *under this subparagraph must include—*

23           “(A) *a plain-language explanation of the*  
24 *reasons for and purpose of the proposed rule;*

1           “(B) an analysis of the anticipated impact  
2 of the proposed rule;

3           “(C) an analysis showing that the restora-  
4 tion benefit of the proposed rule outweighs any  
5 negative conservation impact of that proposed  
6 rule;

7           “(D) an analysis showing that compliance  
8 with the proposed rule is reasonably within the  
9 means of the State or the range nation con-  
10 cerned; and

11           “(E) a summary of the literature reviewed  
12 and experts consulted in regard to the species in-  
13 volved, and a summary of the Secretary’s find-  
14 ings based on that review and consultation.

15           “(8) BASIS FOR REFUSAL OF ENTRY.—No refusal  
16 of entry, seizure of evidence, or other enforcement ac-  
17 tion may take place under this Act if the action is  
18 based solely on a notification under the Convention or  
19 on a resolution of the Conference of the Parties to the  
20 Convention.

21           “(9) DETENTION FOR PURPOSE OF IDENTIFICA-  
22 TION.—The burden is on the Secretary to show that  
23 a specimen belongs to a species which is determined  
24 to be an endangered species or threatened species  
25 under this Act or is included in an Appendix to the

1       *Convention. The Secretary may not detain a speci-*  
2       *men for longer than 30 days for the purpose of identi-*  
3       *fication except where the specimen has been substan-*  
4       *tially changed from its natural appearance, in which*  
5       *case it may be retained for an additional 30 days for*  
6       *identification. If the specimen cannot be positively*  
7       *identified within that time, then it shall be released.”;*  
8       *and*

9               *(9) by amending subsection (g) to read as fol-*  
10       *lows:*

11       “(g) *CITIZEN SUITS.*—

12               “(1) *IN GENERAL.*—*Except as provided in para-*  
13       *graph (2), a civil suit may be commenced by any per-*  
14       *son on his or her own behalf, who satisfies the re-*  
15       *quirements of the Constitution and who has suffered*  
16       *or is threatened with economic or other injury result-*  
17       *ing from the violation, regulation, application, non-*  
18       *application, or failure to act—*

19               “(A) *to enjoin the United States or any*  
20       *agency or official of the United States who is al-*  
21       *leged to be in violation of any provision of this*  
22       *Act or regulation issued under the authority*  
23       *thereof, if the violation poses immediate and ir-*  
24       *reparable harm to a threatened species or endan-*  
25       *gered species;*

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

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

8           “(D) against the Secretary where there is  
9           alleged a failure of the Secretary to perform any  
10          act or duty under section 4(d) which is not dis-  
11          cretionary with the Secretary.

12          *The district courts shall have jurisdiction to enforce*  
13          *any such provision or regulation, or to order the Sec-*  
14          *retary to perform such act or duty, as the case may*  
15          *be.*

16          “(2) *PREREQUISITE PROCEDURES.*—(A) *No ac-*  
17          *tion may be commenced under paragraph (1)(A)—*

18                 “(i) *prior to 60 days after written notice of*  
19                 *the alleged violation has been given to the Sec-*  
20                 *retary, and to any agency or official of the Unit-*  
21                 *ed States who is alleged to be in violation, except*  
22                 *that a State may commence an action at any*  
23                 *time;*

1           “(ii) if the Secretary has commenced action  
2           to impose a penalty pursuant to subsection (a);  
3           or

4           “(iii) if the United States has commenced  
5           and is diligently prosecuting a criminal action  
6           in a court of the United States or a State to re-  
7           dress the alleged violation of any such provision  
8           or regulation.

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

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

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

1           “(4) *COSTS.*—*The court, in issuing any final*  
2           *order in any suit brought pursuant to paragraph (1),*  
3           *may award costs of litigation (excluding attorney and*  
4           *expert witness fees) to any party, whenever the court*  
5           *determines such award is appropriate.*

6           “(5) *INJUNCTIVE RELIEF.*—*The injunctive relief*  
7           *provided by this subsection shall not restrict any*  
8           *right which any person (or class of persons) may have*  
9           *under any statute or common law to seek enforcement*  
10           *of any standard or limitation or to seek any other re-*  
11           *lief (including relief against the Secretary or a State*  
12           *agency).*

13           “(6) *INTERVENTION.*—*Any person may intervene*  
14           *as a matter of right in any civil suit brought under*  
15           *this subsection if such suit presents a reasonable*  
16           *threat of economic injury to such person. Any interve-*  
17           *nor under this paragraph shall have the same right*  
18           *to present argument and to accept or reject potential*  
19           *settlements as do the parties to the suit.”.*

20 **SEC. 202. REMOVING PUNITIVE DISINCENTIVES.**

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

23           “(26)(A) *The term ‘take’ means to harm, pursue,*  
24           *hunt, shoot, wound, kill, trap, capture, or collect, or*  
25           *to attempt to engage in that conduct.*

1           “(B) In subparagraph (A), the term ‘harm’  
2           means an action that proximately and foreseeably  
3           kills or physically injures an identifiable member of  
4           an endangered species.”.

5   **SEC. 203. ALLOWING NON-FEDERAL PERSONS TO USE THE**  
6                           **CONSULTATION PROCEDURES.**

7           Section 10(a) (16 U.S.C. 1539(a)), as amended by sec-  
8           tion 204(b) of this Act, is amended by adding at the end  
9           the following new paragraph:

10           “(3) VOLUNTARY CONSULTATION.—(A) Subject to  
11           such regulations as the Secretary may issue, any non-  
12           Federal person may initiate consultation with the  
13           Secretary on any prospective activity of the person—

14                   “(i) to determine if the activity is consistent  
15                   or inconsistent with a conservation plan or con-  
16                   servation objective; or

17                   “(ii) if the person determines that the activ-  
18                   ity is inconsistent, to determine whether the ac-  
19                   tivity is likely to jeopardize the continued exist-  
20                   ence of an endangered species or a threatened  
21                   species, or to destroy or adversely modify the des-  
22                   ignated critical habitat of the species in a man-  
23                   ner that is likely to jeopardize the continued ex-  
24                   istence of the species.

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

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

12                   “(ii) *the person initiating the consultation*  
13                   *shall not be required to prepare a biological as-*  
14                   *essment or equivalent document;*

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

23                   “(iv) *the Secretary shall provide the person*  
24                   *initiating the consultation with a written opin-*  
25                   *ion only, unless such person requests a permit*

1           referred to in paragraph (1)(B) and meets the  
2           requirements of clause (v); and

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

5                           “(I) consistency pursuant to subpara-  
6                           graph (A)(i);

7                           “(II) no jeopardy pursuant to subpara-  
8                           graph (A)(ii); or

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

13                   “(C) Any person that is not an owner of prop-  
14                   erty is prohibited from participating in the consulta-  
15                   tion process under this paragraph with respect to the  
16                   property without written permission from the owner  
17                   of the property.”.

18 **SEC. 204. PERMITTING REQUIREMENTS FOR INCIDENTAL**  
19                   **TAKES.**

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

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

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

4 **“SEC. 10. EXCEPTIONS.**

5       “(a) *PERMITS.*—

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

9                       “(A) any act otherwise prohibited by section  
10 undertaken for scientific purposes or to en-  
11 hance the propagation or survival of the affected  
12 species, including, but not limited to—

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

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

22                               “(iii) in the case of foreign species, acts  
23 that are consistent with the Convention and  
24 with conservation strategies adopted by the

1                   *foreign nations responsible for the conserva-*  
2                   *tion of the species; and*

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

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

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

15                  “*(i) the impact on the species which will be*  
16                  *the likely result of the activities to be permitted;*

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

22                  “*(iii) what alternative actions to such tak-*  
23                  *ing the applicant considered and the reasons*  
24                  *why such alternatives are not being utilized.*

1           “(B) If the Secretary finds, after opportunity for  
2           public comment, with respect to a permit application  
3           and the related species conservation plan that—

4                     “(i) the taking will be incidental;

5                     “(ii) the applicant will, to the extent rea-  
6                     sonable and economically practicable, minimize  
7                     the impacts of such taking;

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

10                    “(iv) the taking will not appreciably reduce  
11                    the likelihood of the survival and conservation of  
12                    the species; and

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

15           and the Secretary has received such other assurances  
16           as the Secretary may require that the plan will be  
17           implemented, the Secretary shall issue the permit.  
18           The permit shall contain such reasonable and eco-  
19           nomically practicable terms and conditions consistent  
20           with the purposes and objectives of the activity as the  
21           Secretary deems necessary or appropriate to carry  
22           out the purposes of this paragraph, including, but not  
23           limited to, such reporting requirements as the Sec-  
24           retary deems necessary for determining whether such  
25           terms and conditions are being complied with.

1           “(C) *The Secretary may not require the appli-*  
2           *cant, as a condition of processing the application or*  
3           *issuing the permit, to expand the application to in-*  
4           *clude land, an interest in land, right to use or receive*  
5           *water, or a proprietary water right not owned by the*  
6           *applicant or to address a species other than the spe-*  
7           *cies for which the application is made.*

8           “(D)(i) *The Secretary shall complete the process-*  
9           *ing of, and approve or deny, any application for a*  
10           *permit under paragraph (1)(B) within 90 days of the*  
11           *date of submission of the application or within such*  
12           *other period of time after such date of submission to*  
13           *which the Secretary and the permit applicant mutu-*  
14           *ally agree.*

15           “(ii) *The preparation and approval of a species*  
16           *conservation plan and issuance of a permit under*  
17           *paragraph (1)(B) shall not be subject to section*  
18           *102(2) of the National Environmental Policy Act of*  
19           *1969 (42 U.S.C. 4332(2)).*

20           “(E) *No additional measures to minimize and*  
21           *mitigate impacts on a species that is a subject of a*  
22           *permit issued under paragraph (1)(B) shall be re-*  
23           *quired of a permittee that is in compliance with the*  
24           *permit. With respect to any species that is a subject*  
25           *of such a permit, under no circumstance shall a per-*

1        *mittee in compliance with the permit be required to*  
2        *make any additional payment for any purpose, or ac-*  
3        *cept any additional restriction on any parcel of land*  
4        *available for development or land management or any*  
5        *water or water-related right under the permit, with-*  
6        *out the consent of the permittee.*

7            *“(F)(i) For such activities as the Secretary de-*  
8        *termines will not appreciably reduce the chances of*  
9        *survival of a species, the Secretary may issue an in-*  
10       *terim permit to any applicant for a permit under*  
11       *this section that provides evidence of appropriate in-*  
12       *terim measures that—*

13            *“(I) will minimize impacts of any inciden-*  
14        *tal taking that may be associated with the activ-*  
15        *ity proposed for permitting; and*

16            *“(II) are to be performed while the underly-*  
17        *ing permit application is being considered under*  
18        *this section.*

19            *“(ii) An interim permit issued under clause*  
20        *(i)—*

21            *“(I) shall specifically state the types of ac-*  
22        *tivities that are authorized to be carried out*  
23        *under the interim permit;*

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

1           “(III) shall expire on the date of the grant-  
2           ing or denial of the underlying permit applica-  
3           tion; and

4           “(IV) may be revoked by the Secretary upon  
5           failure to comply with any term of the interim  
6           permit.

7           “(G) The Secretary shall revoke a permit issued  
8           under this paragraph if he finds that the permittee is  
9           not complying with the terms and conditions of the  
10          permit.”.

11          (c) *MULTI-SPECIES PLANNING.*—Section 10 (16  
12 *U.S.C. 1539)* is amended by adding at the end the following  
13 *new subsection:*

14          “(k) *MULTIPLE SPECIES CONSERVATION PLANS.*—

15                 “(1) *DEVELOPMENT.*—The Secretary may assist  
16                 a non-Federal person in the development of a plan,  
17                 to be known as a ‘multiple species conservation plan’,  
18                 for the conservation of—

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

22                         “(B) any other species that—

23                                 “(i) inhabit the area covered by the  
24                                 plan; and

1                   “(ii) are designated in the plan or are  
2                   within a taxonomic group designated in the  
3                   plan.

4                   “(2) *ISSUANCE OF PERMITS.*—A non-Federal  
5                   person may submit a species conservation plan pre-  
6                   pared under this subsection for the conservation of  
7                   multiple species to the Secretary for approval under  
8                   subsection (a)(2). If the Secretary approves the plan,  
9                   the Secretary shall issue an incidental take permit  
10                  authorizing take of any threatened species subject to  
11                  the plan under section 4(d). The Secretary shall also  
12                  recommend terms and conditions to address species  
13                  subject to the plan which have not been determined to  
14                  be endangered species or threatened species.

15                  “(3) *EFFECT OF LISTING OF SPECIES.*—A mul-  
16                  tiple species conservation plan developed under this  
17                  subsection and a permit issued with respect to the  
18                  plan shall remain in effect and shall not be required  
19                  to be amended if a species to which the plan and per-  
20                  mit apply is determined to be an endangered species  
21                  or a threatened species under section 4, except that  
22                  the Secretary’s recommendations under paragraph (2)  
23                  shall become terms and conditions of the permit. No  
24                  additional restrictions or prohibitions under this Act  
25                  shall be imposed upon the plan permittee for such

1 *species or geographic area beyond those provided for*  
2 *in the approved plan or the permit terms and condi-*  
3 *tions.*

4 “(4) *CONSIDERATION OF STATE RECOMMENDA-*  
5 *TIONS.—The Secretary shall, in cooperation with the*  
6 *States, develop a process whereby full consideration*  
7 *can be given to State recommendations regarding*  
8 *standards and guidelines for the development and ap-*  
9 *proval of a broad range of multiple species conserva-*  
10 *tion plans. To the maximum extent practicable and*  
11 *consistent with the conservation of the affected species,*  
12 *such standards and guidelines shall—*

13 “(A) *develop clear criteria by which con-*  
14 *servation plans would be approved;*

15 “(B) *encourage the development of conserva-*  
16 *tion plans which would reduce economic impacts*  
17 *while providing conservation of affected species;*

18 “(C) *include assurances that further con-*  
19 *servation measures would not be required of a*  
20 *non-Federal person should any species dependent*  
21 *upon that habitat type be subsequently listed un-*  
22 *less any additional costs are assumed by the Sec-*  
23 *retary; and*

24 “(D) *provide incentives to a non-Federal*  
25 *person who voluntarily agrees to manage to en-*

1            *hance habitat for species on their property by ex-*  
2            *cluding them from restrictions if they later re-*  
3            *turn their land to its previous condition or use.*

4            *“(5) TECHNICAL ASSISTANCE OR GUIDANCE.—To*  
5            *the maximum extent practicable, the Secretary and*  
6            *other Federal agencies, in cooperation with the af-*  
7            *ected States, are authorized and encouraged to pro-*  
8            *vide technical assistance or guidance to any non-Fed-*  
9            *eral person who is developing a multiple species con-*  
10           *servation plan pursuant to this subsection.”.*

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

15           *“(7) FOREIGN SPECIES.—(A) In determining*  
16           *whether to issue a permit under subsection*  
17           *(a)(1)(A)(iii), there shall be a rebuttable presumption*  
18           *that the survival of a species is enhanced by the ordi-*  
19           *nary benefit occurring from the taking of a specimen*  
20           *for an inherently limited use in accordance with the*  
21           *laws and wildlife management policies of the nation*  
22           *in which it is found.*

23           *“(B) The Secretary may not refuse to issue a*  
24           *permit for such specimens and may not limit the*  
25           *number of such specimens which may be imported un-*

1        *less he makes and publishes in the Federal Register*  
2        *a finding that there is substantial evidence that the*  
3        *detriment resulting from the taking of such specimens*  
4        *outweighs the benefit derived, and subsequently pro-*  
5        *mulgates regulations containing the limitation.*

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

16           *“(D) For the purpose of this paragraph, the term*  
17        *‘inherently limited use’ means scientific collection,*  
18        *live export for captive breeding, sport hunting, and*  
19        *falconry.”.*

20        *(e) EXPEDITED PERMITTING PROCESS FOR LOW-IM-*  
21        *PACT ACTIVITIES.—Section 10(a), as amended by sub-*  
22        *sections (b) and (d) of this section and sections 203, 205(a),*  
23        *and 401(f) of this Act, is amended by adding at the end*  
24        *the following new paragraph:*

1           “(9) *EXPEDITED PERMITTING PROCESS FOR*  
2 *LOW-IMPACT ACTIVITIES.*—(A) *Not later than 180*  
3 *days after the date of the enactment of the Endan-*  
4 *gered Species Conservation and Management Amend-*  
5 *ments of 1995, the Secretary shall issue regulations*  
6 *which establish a simple, standardized application*  
7 *form for a permit under paragraph (1)(B) for a low-*  
8 *impact activity.*

9           “(B) *If a person submits an application for a*  
10 *permit under paragraph (1)(B) in accordance with*  
11 *the form established by the Secretary under subpara-*  
12 *graph (A)—*

13                 “(i) *the person shall not be required to sub-*  
14 *mit any other information to obtain the permit;*  
15 *and*

16                 “(ii) *the Secretary shall complete processing*  
17 *of the application, and approve or deny the per-*  
18 *mit, within 30 days after the date the Secretary*  
19 *receives the completed application.*

20           “(C) *The regulations under this paragraph—*

21                 “(i) *shall describe classes of activities that*  
22 *are low-impact activities for purposes of this*  
23 *paragraph; and*

24                 “(ii) *shall treat as a low-impact activity*  
25 *any activity which has no significant effect on*

1           *the survival of endangered species and threatened*  
2           *species.*

3           “(D) *For purposes of this paragraph, the term*  
4           *‘low-impact activity’ means an activity in a class of*  
5           *activities described in regulations under subpara-*  
6           *graph (C)(i).”.*

7   **SEC. 205. GENERAL, RESEARCH, AND EDUCATIONAL PER-**  
8           **MITTS.**

9           *(a) IN GENERAL.—Section 10(a) (16 U.S.C. 1539(a)),*  
10          *as amended by sections 203 and 204(b) of this Act, is*  
11          *amended by adding at the end the following new para-*  
12          *graphs:*

13                  “(4) *GENERAL PERMITS.—(A) After providing*  
14                  *notice and opportunity for public hearing, the Sec-*  
15                  *retary may issue a general permit under paragraph*  
16                  *(1)(B) on a county, parish, State, regional, or nation-*  
17                  *wide basis for any category of activities that may af-*  
18                  *fect a species determined to be an endangered species*  
19                  *or threatened species if the Secretary determines that*  
20                  *the activities in the category are similar in nature,*  
21                  *will cause only minimal adverse effects on the species*  
22                  *if performed separately, and will have only minimal*  
23                  *cumulative adverse effects on the species generally. A*  
24                  *general permit issued under this paragraph shall*

1       *specify the requirements and standards that apply to*  
2       *an activity authorized by the general permit.*

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

7               “(C) *The Secretary may revoke or modify a gen-*  
8       *eral permit if, after providing notice and opportunity*  
9       *for public hearing, the Secretary determines that the*  
10       *activities authorized by the general permit have a*  
11       *greater than minimal adverse effect on a species that*  
12       *is included in a list published under section 4(c)(1)*  
13       *or that the activities are more appropriately author-*  
14       *ized by individual permits issued under paragraph*  
15       *(1) or (3).*

16               “(5) *RESEARCH ON ALTERNATIVE METHODS AND*  
17       *TECHNOLOGIES.—Priority for issuing permits under*  
18       *paragraph (1)(A) shall be accorded to applications for*  
19       *permits to conduct research, captive breeding, or edu-*  
20       *cation on alternative methods and technologies, and*  
21       *the comparative costs of the methods and technologies,*  
22       *to reduce the incidental taking as described in para-*  
23       *graph (1)(B) of an endangered species or a threatened*  
24       *species for which the employment of existing methods*

1        *or technologies for avoidance of the incidental taking*  
2        *entails significant costs for non-Federal persons.*

3            “(6) *EDUCATIONAL OR PROPAGATION PER-*  
4        *MITS.—(A) A permit under paragraph (1)(A)(ii) or*  
5        *(iv) shall be issued if—*

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

9            “(II) *in the case of a permit under para-*  
10       *graph (1)(A)(ii), the applicant maintains a pub-*  
11       *lic display or exhibition of living wildlife de-*  
12       *scribed in that paragraph; and*

13           “(III) *viewing of the public display or exhi-*  
14       *bition is not limited or restricted other than by*  
15       *charging an admission fee; or*

16           “(ii) *in the case of a permit under para-*  
17       *graph (1)(A)(iv), the applicant has demonstrated*  
18       *the ability to use propagation techniques that re-*  
19       *sult in increases in the populations of species*  
20       *held in captivity for eventual release into the*  
21       *wild, maintenance of live specimens, or falconry*  
22       *purposes.*

23           “(B)(i) *The Secretary shall issue an educational*  
24       *or propagation permit as authorized in subparagraph*  
25       *(A) within 30 days from the effective date of this sub-*

1       *paragraph to any qualified organization or qualified*  
2       *person for educational or propagation purposes, who*  
3       *has demonstrated the ability to propagate, handle, or*  
4       *recover species for a minimum of 15 years or who had*  
5       *at least 10 permits in the aggregate issued pursuant*  
6       *to this Act or any of the laws listed in subparagraph*  
7       *(H).*

8               *“(ii) The Secretary shall issue a permit within*  
9       *90 days of receipt of a completed application from*  
10       *any qualified organization or person who currently*  
11       *does not hold any permit but who has demonstrated*  
12       *the ability to handle or recover species for a mini-*  
13       *imum of 15 years of who has received at least 10 per-*  
14       *mits in the aggregate and who has not violated any*  
15       *terms or conditions of any permits previously issued*  
16       *pursuant to this Act or the laws listed in subpara-*  
17       *graph (H).*

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

20               *“(D) A permit referred to in paragraph*  
21       *(1)(A)(ii) shall also authorize the permittee to import,*  
22       *export, sell, purchase, or otherwise transfer possession*  
23       *of the affected species.*

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

4                   “(i) *no longer meets the requirements of*  
5 *subparagraph (A) and is not reasonably likely to*  
6 *meet the requirements in the near future;*

7                   “(ii) *is not complying with the terms and*  
8 *conditions of the permit; or*

9                   “(iii) *is engaging in an activity likely to*  
10 *jeopardize the continued existence of the species*  
11 *subject to the permit.*

12           “(F) *The Secretary may require an annual re-*  
13 *port on the activities authorized by a general permit,*  
14 *but may not require reports more frequently than an-*  
15 *nually.*

16           “(G) *A permit authorized in this paragraph*  
17 *shall be the only permit required for the activities au-*  
18 *thorized therein, and may cover activities for one or*  
19 *more species or taxa simultaneously.*

20           “(H) *The authorizations for any activities per-*  
21 *mitted under this paragraph or permitted by the*  
22 *Bald Eagle Protection Act (16 U.S.C. 668–668d), the*  
23 *Fish and Wildlife Conservation Act of 1980 (16*  
24 *U.S.C. 2901–2911), the Lacey Act Amendments of*  
25 *1981 (18 U.S.C. 42; 16 U.S.C. 3371–3378), the Ma-*

1 *rine Mammal Protection Act of 1972 (16 U.S.C.*  
2 *1361–1407), the Migratory Bird Conservation Act (16*  
3 *U.S.C. 715–715d), the Migratory Bird Treaty Act (16*  
4 *U.S.C. 703–712), or the Wild Bird Conservation Act*  
5 *of 1992 (Public Law 102–440) shall be consolidated*  
6 *into a general permit to cover all authorized activi-*  
7 *ties, notwithstanding any law or regulation to the*  
8 *contrary.”.*

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

13 *“(l) WILDLIFE BRED IN CAPTIVITY.—For the purposes*  
14 *of this Act or any regulation adopted pursuant to this Act,*  
15 *the terms ‘bred in captivity’ or ‘captive-bred’, with respect*  
16 *to wildlife, means wildlife, including eggs, born or otherwise*  
17 *produced in captivity from parents that mated or otherwise*  
18 *transferred gametes in captivity if reproduction is sexual,*  
19 *or from parents that were in captivity when development*  
20 *of the progeny began, if development is asexual. Such prog-*  
21 *eny shall be considered domestic fish or wildlife for all pur-*  
22 *poses and shall not come under the provisions and prohibi-*  
23 *tions of this Act and the laws listed in subsection (a)(6)(H)*  
24 *unless intentionally and permanently released to the wild.*  
25 *Any person holding any fish or wildlife or their progeny*

1 *as described in this subsection must be able to demonstrate*  
2 *that such fish or wildlife do, in fact, qualify under the pro-*  
3 *vision of this subsection, and shall maintain and submit*  
4 *to the Secretary, on request, such inventories, documenta-*  
5 *tion, and records as the Secretary may by regulation re-*  
6 *quire as being reasonable and appropriate to carry out the*  
7 *purposes of this subsection. Such requirements shall not un-*  
8 *necessarily duplicate the requirements of other rules and*  
9 *regulations promulgated by the Secretary.”.*

10 **SEC. 206. MAINTENANCE OF AQUATIC HABITATS FOR LIST-**  
11 **ED SPECIES.**

12 *The Endangered Species Act of 1973 (16 U.S.C. 1851*  
13 *et seq.) is amended by adding at the end the following new*  
14 *section:*

15 **“SEC. 20. RECOGNIZING NET BENEFITS TO AQUATIC SPE-**  
16 **CIES.**

17 *“(a) ENCOURAGING NET BENEFITS.—In carrying out*  
18 *this Act, if the number of individual members of an endan-*  
19 *gered species or threatened species exiting an aquatic habi-*  
20 *tat area under the control, authority or ownership of a non-*  
21 *Federal person is equal to or greater than the number of*  
22 *individual members of the species entering such area, the*  
23 *Secretary shall not require, provide for, or recommend the*  
24 *imposition of any restriction or obligation on the activity*  
25 *of the non-Federal person in a manner which would require*

1 *the non-Federal person to support the maintenance of any*  
2 *greater number of individual members of the species than*  
3 *that which enters such aquatic habitat area.*

4       “(b) *CONSIDERATION OF HATCHERY POPULATIONS.*—  
5 *In calculating the number of individual members of a spe-*  
6 *cies entering and exiting a specific aquatic habitat area*  
7 *pursuant to this section, the Secretary shall consider hatch-*  
8 *ery populations.*

9       “(c) *LIMITATIONS.*—*The Secretary shall not require,*  
10 *provide for, or recommend the imposition of any restriction*  
11 *or obligation on the activity of any non-Federal person in*  
12 *an aquatic habitat area to remedy adverse impacts on a*  
13 *species resulting from activities of individuals other than*  
14 *the non-Federal person.”.*

15 **SEC. 207. COMPLIANCE WITH INTERNATIONAL REQUIRE-**  
16 **MENTS AND TREATIES.**

17       “(a) *RESPECTING THE SOVEREIGNTY OF OTHER NA-*  
18 *TIONS.*—*Section 8 (16 U.S.C. 1537) is amended by adding*  
19 *at the end the following new subsection:*

20       “(e) *ENCOURAGEMENT OF FOREIGN PROGRAMS.*—*Any*  
21 *action taken by the Secretary pursuant to this Act in regard*  
22 *to a foreign species which occurs in a country which is a*  
23 *party to the Convention—*

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

1           “(2) shall not obstruct any wildlife conservation  
2           program of such country unless the Secretary can  
3           show, based on adequate findings supported by sub-  
4           stantial evidence, that the country’s wildlife conserva-  
5           tion program for the species in question is not con-  
6           sistent with the Convention.”.

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

10           “(f) NONDUPLICATION OF FINDINGS.—The Secretary,  
11           in making the findings required in paragraph 3(a) of Arti-  
12           cle III of the Convention, shall limit such findings to the  
13           purpose of the importation, and shall not duplicate the  
14           findings required to be made by the exporting nation except  
15           for good cause based on adequate findings supported by sub-  
16           stantial evidence.

17           “(g) RELATIONSHIP OF PROTECTIVE REGULATIONS TO  
18           THE CONVENTION.—In determining the provisions of pro-  
19           tective regulations pursuant to section 4(d) of this Act when  
20           such regulations relate to a foreign species—

21                   “(1) the Secretary may not prohibit any act that  
22                   is permissible under the Convention, notwithstanding  
23                   Article XIV of the Convention;

24                   “(2) the Secretary shall, prior to publishing a  
25                   proposal for such protective regulations in the Federal

1       *Register, transmit the full text and a complete de-*  
2       *scription of the proposed regulation directly to the ap-*  
3       *propriate wildlife management authority of that*  
4       *country, in the language of that country, with at least*  
5       *180 days allowed for review and comment, the 180*  
6       *days shall be counted from the date of delivery of the*  
7       *materials to the wildlife authorities of the country;*

8               *“(3) such transmission must be accompanied*  
9       *by—*

10                   *“(A) a plain-language explanation of the*  
11                   *reasons for and purpose of the proposed regula-*  
12                   *tion;*

13                   *“(B) an analysis of the anticipated bene-*  
14                   *ficial impact or detrimental impact of the regu-*  
15                   *lation on the economic, social, and cultural utili-*  
16                   *zation of the species, if any, and of the beneficial*  
17                   *or detrimental impact on the resource manage-*  
18                   *ment and conservation programs of that country;*  
19                   *and*

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

1           “(4) the Secretary shall enter into discussions  
2           with appropriate wildlife management officials of the  
3           countries to which he has sent the transmission re-  
4           ferred to in the previous paragraph, and if those offi-  
5           cials feel that further studies of the species are indi-  
6           cated the Secretary may assist in finding funds from  
7           private sources for such studies and in carrying out  
8           the studies; and

9           “(5) the Secretary must obtain the written con-  
10          currence of all the nations contacted, and if such con-  
11          currence is not obtained the Secretary may not issue  
12          the proposed regulation except by an order submitted  
13          to and approved by the President.”.

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

18          “(h) IMPORTATION AND EXPORTATION.—

19                 “(1) LIMITATION ON IMPORTATION.—The prohi-  
20                 bition on importation in subsection (a) of this section  
21                 shall not apply to a specimen of a threatened species  
22                 taken for an inherently limited use in accordance  
23                 with the laws of a foreign nation which is a party  
24                 to the Convention and accompanied by an export per-  
25                 mit issued by that nation or an equivalent document.

1       *For the purpose of this subsection, the term ‘inher-*  
2       *ently limited use’ means scientific collection, live ex-*  
3       *port for captive breeding, sport hunting, and falconry.*

4               “(2) *REGULATIONS FOR SHIPPING UNDER CON-*  
5       *VENTION.—(A) The Secretary shall adopt regulations*  
6       *regarding the finding required by the Convention that*  
7       *live specimens exported from the United States will be*  
8       *so prepared as to minimize the risk of injury, damage*  
9       *to health, or cruel treatment. Such regulations shall*  
10       *provide clear, consistent and reliable guidance to ex-*  
11       *porters.*

12               “(B) *In any instance in which the Secretary be-*  
13       *lieves that a shipment for export is not prepared in*  
14       *accordance with the regulations, a detailed written*  
15       *notice of noncompliance shall be issued to the ex-*  
16       *porter. The notice shall contain recommendations as*  
17       *to how future shipments should be modified in order*  
18       *to come into compliance with the regulations. The no-*  
19       *tice shall go into effect 30 days after receipt by the*  
20       *shipper, subject to appeal to an Administrative Law*  
21       *Judge or a court. The filing of an appeal shall toll*  
22       *the effectiveness of the notice. The issue of noncompli-*  
23       *ance may be appealed as well as the issue of the ap-*  
24       *propriateness of the recommendation for compli-*  
25       *ance.”.*

1 **SEC. 208. INCENTIVES FOR PROTECTION OF MARINE SPE-**  
2 **CIES.**

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

6 “(m) *INCENTIVES.*—(1) *The Secretary shall exempt,*  
7 *under such terms and conditions as the Secretary may pre-*  
8 *scribe by regulation, any operator of a trawl vessel required*  
9 *to use a turtle excluder device under regulations promul-*  
10 *gated under this Act from such requirement if such operator*  
11 *agrees to support a conservation program approved under*  
12 *paragraph (2) and such support is determined to be appro-*  
13 *priate under paragraph (4).*

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

17 “(A) *review all those programs intended to con-*  
18 *serve the endangered species and threatened species of*  
19 *sea turtles found in the Gulf of Mexico and along the*  
20 *Atlantic seaboard, including those programs involving*  
21 *protection of nesting beaches in other nations;*

22 “(B) *approve any such program determined by*  
23 *the Secretary to be of significant benefit to the recov-*  
24 *ery of the species of such sea turtles under this sub-*  
25 *section; and*

1           “(C) publish notice of such determination in the  
2       *Federal Register*.

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

6           “(B) Not later than 60 days after receipt of such re-  
7       quest the Secretary shall provide such person or group writ-  
8       ten notice of the issuance or denial of such request.

9           “(4) The Secretary shall determine that the support  
10       offered by an operator in a written request submitted under  
11       paragraph (3) is appropriate if the benefits provided by  
12       such support to the recovery of such species exceed any harm  
13       to the recovery of such species incurred as a result of the  
14       operator not using turtle excluder devices under an exemp-  
15       tion provided under this subsection.

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

19          (b) *INCIDENTAL TAKE STATEMENTS*.—Section 7(b)  
20       (16 U.S.C. 1536(b)) is amended by adding at the end of  
21       paragraph (4)(C)(ii) the following: “including incentives to  
22       encourage the support of conservation programs approved  
23       under section 10(k),”.

1 **SEC. 209. INTERNATIONAL COOPERATION TO CONSERVE**  
2 **SEA TURTLES.**

3 (a) *IN GENERAL.*—*The Secretary of State, in consulta-*  
4 *tion with the Secretary of Commerce and the Secretary of*  
5 *the Interior, may enter into international agreements for*  
6 *the conservation of sea turtles listed under section 4 of the*  
7 *Endangered Species Act of 1973, as amended by this Act.*

8 (b) *TERMS OF AGREEMENT.*—*Any international agree-*  
9 *ment entered into under this section shall—*

10 (1) *provide for the conservation of the habitat*  
11 *and nesting beaches of sea turtles and encourage na-*  
12 *tional programs to enhance sea turtle populations;*

13 (2) *include provisions with respect to commercial*  
14 *fishing to ensure that—*

15 (A) *the capture, injury, and mortality of*  
16 *sea turtles incidental to such fishing are reduced*  
17 *to the extent practicable;*

18 (B) *the productivity of commercial fisheries*  
19 *is maintained; and*

20 (C) *measures taken by the nations con-*  
21 *cerned to reduce the capture, injury, and mortal-*  
22 *ity of sea turtles incidental to such fishing are*  
23 *comparable to each other;*

24 (3) *create an institutional mechanism for inter-*  
25 *national cooperation on a continuing basis which can*  
26 *take account of new developments and information,*

1       *adopt measures relating to commercial fishing, and*  
2       *otherwise facilitate international cooperation;*

3             (4) *provide for international cooperation in sci-*  
4       *entific research on sea turtles; and*

5             (5) *provide for effective monitoring and evalua-*  
6       *tion of measures taken by each country that is party*  
7       *to the agreement to ensure compliance with the agree-*  
8       *ment by persons and vessels subject to its jurisdiction.*

9       (c) *ENTRY INTO FORCE.—International agreements*  
10      *entered into under this section shall enter into force for the*  
11      *United States in accordance with the procedures for govern-*  
12      *ing international fishery agreements set forth in section 203*  
13      *of the Magnuson Fishery Conservation and Management*  
14      *Act (16 U.S.C. 1823).*

15       (d) *ACCEPTANCE AND IMPLEMENTATION OF REC-*  
16      *COMMENDATIONS.—The Secretary of State is authorized to*  
17      *act for the United States with respect to any international*  
18      *agreement entered into under this section, and to receive,*  
19      *on behalf of the United States, any recommendations for*  
20      *the conservation of sea turtles made pursuant to such agree-*  
21      *ment. Any such recommendation shall be acted on by the*  
22      *United States unless the Secretaries of State, Commerce,*  
23      *and the Interior agree otherwise. The Secretary of Com-*  
24      *merce or the Secretary of the Interior shall promulgate such*  
25      *regulations as may be necessary to carry out any such*

1 *agreement or recommendation as has been accepted by the*  
2 *United States, except that no regulation promulgated under*  
3 *this Act may impose restrictions on United States commer-*  
4 *cial fishing vessels which decrease the productivity of such*  
5 *vessels more than provided for in an agreement or rec-*  
6 *ommendation approved under this section.*

7       *(e) REPORT.—The Secretary of State shall submit to*  
8 *Congress, not later than May 1, 1996, and every year there-*  
9 *after a report describing the efforts of the Secretary to im-*  
10 *plement this section, the results of such efforts, and any*  
11 *plans for further such efforts. The report shall contain a*  
12 *list of the countries participating effectively in and comply-*  
13 *ing with agreements which have been approved pursuant*  
14 *to subsection (c).*

15       *(f) EFFECT ON PRIOR LAW.—Section 609(b) of the Act*  
16 *making appropriations for the Departments of Commerce,*  
17 *Justice, and State, the Judiciary, and related agencies for*  
18 *the fiscal year ending September 30, 1990, and for other*  
19 *purposes (16 U.S.C. 1537 note) shall not apply to any coun-*  
20 *try that is a party to, and is complying with, an agreement*  
21 *entered into under this section whose geographical scope in-*  
22 *cludes the Gulf of Mexico and the Wider Caribbean Sea.*  
23 *The Secretary of State is encouraged to enter into inter-*  
24 *national agreements under this section which include other*  
25 *regions not affected by that Act.*

1 **TITLE III—IMPROVING SCI-**  
 2 **ENTIFIC INTEGRITY OF LIST-**  
 3 **ING DECISIONS AND PROCE-**  
 4 **DURES**

5 **SEC. 301. IMPROVING THE VALIDITY AND CREDIBILITY OF**  
 6 **DECISIONS.**

7 *(a) BASING LISTINGS ON CREDIBLE SCIENCE.—*

8 *(1) LISTING DETERMINATIONS.—Section 4 (16*  
 9 *U.S.C. 1533) is amended—*

10 *(A) by striking so much as precedes sub-*  
 11 *section (a)(2) and inserting the following:*

12 **“SEC. 4. DETERMINATION OF ENDANGERED SPECIES AND**  
 13 **THREATENED SPECIES.**

14 *“(a) GENERALLY.—(1) The Secretary shall by regula-*  
 15 *tion promulgated in accordance with subsection (b) deter-*  
 16 *mine whether any species is an endangered species or a*  
 17 *threatened species because of any of the following factors:*

18 *“(A) The present or threatened loss of its habitat.*

19 *“(B) Overutilization for commercial, rec-*  
 20 *reational, scientific, or educational purposes.*

21 *“(C) Disease or predation.*

22 *“(D) The inadequacy of existing Federal, State,*  
 23 *and local government regulatory mechanisms.*

24 *“(E) Other natural or manmade factors affecting*  
 25 *its continued existence.”;*

1                   (B) by striking paragraph (3) of subsection  
2                   (a); and

3                   (C) by amending so much of subsection (b)  
4                   as precedes paragraph (3) to read as follows:

5                   “(b) *SECRETARIAL DETERMINATIONS.*—

6                   “(1) *BASIS FOR DETERMINATION.*—(A) *The Sec-*  
7                   *retary shall make determinations required by sub-*  
8                   *section (a)(1) solely on the basis of the best scientific*  
9                   *and commercial data available to the Secretary after*  
10                   *conducting a review of the status of the species and*  
11                   *after soliciting and fully considering the best sci-*  
12                   *entific and commercial data available concerning the*  
13                   *status of a species from any affected State or any in-*  
14                   *terested non-Federal person, and taking into account*  
15                   *those efforts being made by any State, any political*  
16                   *subdivision of a State, or any non-Federal person or*  
17                   *conservation organization, to protect such species,*  
18                   *whether by predator control, protection of habitat and*  
19                   *food supply, or other conservation practices, within*  
20                   *any area under its jurisdiction, or on the high seas,*  
21                   *and shall accord greater weight, consideration, and*  
22                   *preference to empirical data rather than projections*  
23                   *or other extrapolations developed through modeling.*

24                   “(B) *In making a determination whether a spe-*  
25                   *cies is an endangered species or a threatened species*

1        *under this section, the Secretary shall fully consider*  
2        *populations of the species that are bred through pri-*  
3        *vate sector, university, and Federal, State, and local*  
4        *government breeding programs for release in the habi-*  
5        *tat of the species. In the case of fish species, the bred*  
6        *populations referred to in the preceding sentence shall*  
7        *include hatchery populations.*

8                *“(C) In making a determination whether a spe-*  
9        *cies is an endangered species or threatened species*  
10        *under this section, the Secretary shall consider the fu-*  
11        *ture conservation benefits to be provided to the species*  
12        *under any species conservation plans prepared pursu-*  
13        *ant to section 10 or to any cooperative management*  
14        *agreement entered into under section 6.*

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

22                *(2) STANDARDS FOR TAXONOMIC DECISIONS.—*  
23        *Section 4(b)(1) (15 U.S.C. 1533(b)(1)), as amended*  
24        *by paragraph (1), is further amended by adding at*  
25        *the end the following:*

1       “(D) Within 18 months after the date of the enactment  
2 of the Endangered Species Conservation and Management  
3 Act of 1995, the Secretary shall promulgate scientifically  
4 valid standards for rendering taxonomic determinations of  
5 species and subspecies. The standards shall provide that to  
6 be eligible for determination as a subspecies under this Act,  
7 a subspecies must be reproductively isolated from other sub-  
8 specific population units and constitute an important com-  
9 ponent in the evolutionary legacy of the species.”.

10           (3) LISTING FOREIGN SPECIES.—Section 4(b)  
11       (16 U.S.C. 1533(b)), as amended by subsection (f) of  
12       this section, is amended by adding at the end the fol-  
13       lowing new paragraph:

14           “(10) FOREIGN SPECIES.—(A) In determining  
15       under subsection (a) whether a foreign species is an  
16       endangered species or a threatened species, the Sec-  
17       retary shall not determine that a species that is listed  
18       under the Convention is endangered or threatened un-  
19       less he makes an adequate finding, supported by sub-  
20       stantial evidence, that the Convention does not pro-  
21       vide adequate regulation.

22           “(B) The Secretary shall, prior to publishing a  
23       proposal in the Federal Register to determine that a  
24       foreign species is endangered or threatened, transmit  
25       the full text and a complete description of the pro-

1        *posed listing directly to the appropriate wildlife man-*  
2        *agement authority of that nation, in the language of*  
3        *that nation, with at least 180 days allowed for review*  
4        *and comment. The 180 days shall be counted from the*  
5        *date of delivery of the materials supporting the pro-*  
6        *posed listing to the wildlife authorities of the country.*

7            *“(C) Such transmission must be accompanied*  
8        *by—*

9            *“(i) a plain-language explanation of the ob-*  
10        *jective criteria for and purpose of the proposed*  
11        *listing;*

12            *“(ii) an analysis of the anticipated bene-*  
13        *ficial impact or detrimental impact of the listing*  
14        *on the economic, social, and cultural utilization*  
15        *of the species, if any, and of the beneficial or det-*  
16        *rimental impact on the resource management*  
17        *and conservation programs of that nation; and*

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

23            *“(D) The Secretary shall enter into discussions*  
24        *with the appropriate wildlife management officials of*  
25        *the nations to which he has sent the transmission re-*

1       ferred to in subparagraph (C). If those officials feel  
2       that further studies of the species are indicated, the  
3       Secretary shall assist in finding the funds for such  
4       studies and in carrying out the studies.

5               “(E) The Secretary must obtain the written con-  
6       currence of all the nations contacted. If such concur-  
7       rence is not obtained, the Secretary may not issue the  
8       proposed regulation except by an order submitted to  
9       and approved by the President.”.

10       (b) *DEFINITIONS.*—Section 3 (16 U.S.C. 1532) is  
11       amended—

12               (1) by adding after paragraph (1) the following  
13       new paragraph:

14               “(2) The term ‘best scientific and commercial  
15       data available’ means factual information, including  
16       but not limited to peer reviewed scientific information  
17       and genetic data, obtainable from any source, includ-  
18       ing governmental and nongovernmental sources,  
19       which has been to the maximum extent feasible veri-  
20       fied by field testing.”;

21               (2) by adding after paragraph (7) (as redesign-  
22       ated by section 102(a)(1) of this Act) the following  
23       new paragraphs:

24               “(8) The term ‘distinct population of national  
25       interest’ means a distinct population of a vertebrate

1       *species that is not otherwise an endangered species or*  
2       *threatened species in the United States, Canada, or*  
3       *Mexico, but which because of its value to the Nation*  
4       *as a whole has been designated by Congress as need-*  
5       *ing protection under this Act.*

6               “(8a) *The term ‘foreign species’ means a species*  
7       *naturally occurring outside the territory of the United*  
8       *States, but does not include any marine species, any*  
9       *species having a significant population occurring in*  
10       *the wild within the United States, or any migratory*  
11       *species whose migration route includes United States*  
12       *territory.”;*

13               (3) *by adding after paragraph (13) (as redesign-*  
14       *ated by section 102(a)(1) of this Act) the following*  
15       *new paragraph:*

16               “(14) *The term ‘imminent threat to the existence*  
17       *of’, with respect to a species, means, as determined by*  
18       *the Secretary under section 4(b)(7) or the President*  
19       *under section 5(e)(2) solely on the basis of the best*  
20       *scientific and commercial data available, that there is*  
21       *a significant likelihood that the species will become*  
22       *extinct, or will be placed on an irreversible course to*  
23       *extinction, during the 2-year period beginning on the*  
24       *date of the determination that the species is an en-*  
25       *dangered species or a threatened species, unless the*

1 *species is accorded fully the protection available*  
2 *under this Act during such period.”; and*

3 *(4) by amending paragraph (23) (as redesignated*  
4 *by section 102(a)(1) of this Act) to read as follows:*

6 *“(23) The term ‘species’ includes any subspecies*  
7 *of fish or wildlife or plants, and any distinct population*  
8 *of national interest of any species or vertebrate*  
9 *fish or wildlife which interbreeds when mature.”.*

10 *(c) SOLICITING SCIENTIFIC INFORMATION.—Section*  
11 *4(b)(3) (16 U.S.C. 1533(b)(3)), as amended by sections*  
12 *303(a), 304(a), 305(a), and 306 of this Act, is amended by*  
13 *adding at the end the following new subparagraph:*

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

1       *which may assist in making a determination under*  
2       *this section. The solicitation shall give a time limit*  
3       *within which to submit the information which shall*  
4       *be not less than 180 days. The time limit shall be ex-*  
5       *tended for an additional 180 days at the request of*  
6       *any person who submits a request for such extension*  
7       *along with the reasons therefor. The Secretary in*  
8       *making the determination required in this subsection,*  
9       *shall give equal weight to the information submitted*  
10       *in accordance with this paragraph.”.*

11       *(d) EMERGENCY LISTINGS.—Section 4(b)(7) (16*  
12       *U.S.C. 1533(b)(7)) is amended—*

13               *(1) by striking the matter preceding subpara-*  
14       *graph (A) and inserting the following:*

15               *“(7) EMERGENCY REGULATIONS.—Neither para-*  
16       *graph (4), (5), or (6) of this subsection nor section*  
17       *553 of title 5, United States Code, shall apply to any*  
18       *regulation issued by the Secretary in regard to any*  
19       *emergency posing an imminent threat to the existence*  
20       *of any species of fish or wildlife or plants, but only*  
21       *if—”; and*

22               *(2) by adding at the end the following new sen-*  
23       *tence: “The Secretary may not delegate the final deci-*  
24       *sion to issue an emergency regulation under this*  
25       *paragraph.”.*

1       (e) *USING BEST DATA.*—Section 4(b)(8) (16 U.S.C.  
2 1538(b)(8)) is amended—

3           (1) by striking “the data” and inserting “the  
4 best scientific and commercial data available”; and

5           (2) by adding at the end the following new sen-  
6 tence: “Each regulation proposed by the Secretary to  
7 implement a determination referred to in subsection  
8 (a)(1) shall be based only upon peer-reviewed sci-  
9 entific information obtainable from any source, in-  
10 cluding governmental and nongovernmental sources,  
11 which has been to the maximum extent feasible veri-  
12 fied by field testing.”.

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

16           “(9) *PUBLICATION IN FEDERAL REGISTER.*—(A)  
17 The Secretary shall identify and publish in the Fed-  
18 eral Register with each proposed rule under para-  
19 graph (1) or section 5(i) a description of—

20           “(i) all data that are to be considered in  
21 making the determination under the subsection  
22 to which the proposed rule relates and that have  
23 yet to be collected or field verified;

1           “(ii) data that are necessary to make deter-  
2           minations and that can be collected prior to any  
3           determination; and

4           “(iii) data that are necessary to ensure the  
5           scientific validity of the determination, and each  
6           deadline for collecting these data.

7           “(B) In making a determination pursuant to  
8           paragraph (1) or section 5(i), the Secretary shall col-  
9           lect and consider the data identified and described  
10          pursuant to subparagraph (A)(ii).

11          “(C) The Secretary shall identify and publish in  
12          the Federal Register with each final rule promulgated  
13          under paragraph (1) or section 5(i)—

14                 “(i) a description of any data that have not  
15                 been collected and considered in the determina-  
16                 tion to which the rule relates and that are nec-  
17                 essary to ensure the continued scientific validity  
18                 of the determination; and

19                 “(ii) each deadline by which the Secretary  
20                 shall collect and consider the data in accordance  
21                 with subparagraph (D).

22          “(D) Not later than the deadline published by  
23          the Secretary pursuant to subparagraph (C)(ii), the  
24          Secretary shall—

1           “(i) collect the data referred to in each  
2 paragraph;

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

5           “(iii) consider the data after the review and  
6 comment; and

7           “(iv) publish in the *Federal Register* the re-  
8 sults of that consideration and a description of  
9 and schedule for any actions warranted by the  
10 data.”.

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

14       “(j) *JUDICIAL REVIEW OF DETERMINATIONS*.—Any  
15 determination with regard to whether a species is a threat-  
16 ened species or endangered species shall be subject to a de  
17 novo judicial review with the court determining whether the  
18 decision is supported by a preponderance of the evidence.”.

19       (h) *ANALYSIS OF ECONOMIC AND SOCIAL EFFECTS*.—  
20 Section 4(b) (16 U.S.C. 1533(b)), as amended by section  
21 305(d) of this Act, is further amended by adding at the end  
22 the following new paragraph:

23       “(12) *ANALYSIS OF ECONOMIC AND SOCIAL*  
24 *COSTS*.—Concurrently with a determination that a  
25 species warrants listing as an endangered species or

1        *threatened species, the Secretary shall issue an analy-*  
2        *sis of the economic and social effects the listing may*  
3        *have. The analysis shall be published in the Federal*  
4        *Register with the listing determination and shall in-*  
5        *clude an estimate of the effects the listing may have*  
6        *on Federal, State, and local expenditures and reve-*  
7        *nuues, and the costs and benefits of the listing for the*  
8        *private sector, including lost opportunity costs.”.*

9        **SEC. 302. PEER REVIEW.**

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

13        *“(i) PEER REVIEW REQUIREMENT.—*

14                *“(1) DEFINITIONS.—In this subsection:*

15                        *“(A) The term ‘action’ means—*

16                                *“(i) the determination that a species is*  
17                                *an endangered species or a threatened spe-*  
18                                *cies under subsection (a);*

19                                *“(ii) the determination under sub-*  
20                                *section (a) that an endangered species or a*  
21                                *threatened species be removed from any list*  
22                                *published under subsection (c)(1);*

23                                *“(iii) the designation, or revision of the*  
24                                *designation, of critical habitat for an en-*

1           *dangered species or a threatened species*  
2           *under section 5(i); and*

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

9           “(B) *The term ‘qualified individual’ means*  
10          *an individual with expertise in the biological*  
11          *sciences—*

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

21           “(ii) *who is not otherwise employed by*  
22           *or under contract to the Secretary or the*  
23           *State in which the species is located;*

24           “(iii) *who has not actively partici-*  
25           *pated in the prelisting or listing processes*

1           or advocated that a listing decision be  
2           made;

3           “(iv) who has not been employed by or  
4           under contract to the Secretary or the State  
5           in which the species is located for work re-  
6           lated to the action or species under consid-  
7           eration; and

8           “(v) who has no direct financial inter-  
9           est, and is not employed by any person with  
10          a direct financial interest, in opposing the  
11          action under consideration.

12          “(2) *LIST OF PEER REVIEWERS.*—In order to  
13          provide a substantial list of individuals who on a vol-  
14          untary basis are available to participate in peer re-  
15          view actions, the Secretary shall, through the *Federal*  
16          *Register*, through scientific and commercial journals,  
17          and through the *National Academy of Sciences* and  
18          other such institutions, seek nominations of persons  
19          who agree to peer review action upon appointment by  
20          the Secretary.

21          “(3) *APPOINTMENT OF PEER REVIEWERS.*—Be-  
22          fore any action shall become final, the Secretary shall  
23          appoint, from among the list prepared in accordance  
24          with paragraph (2), not more than 2 qualified indi-  
25          viduals who shall review, and report to the Secretary

1        *on, the scientific information and analyses on which*  
2        *the proposed action is based. The Governor of each*  
3        *State in which the species is located that is the subject*  
4        *of the proposal, may appoint up to 2 qualified indi-*  
5        *viduals to conduct peer review of the action. If any*  
6        *individual declines the appointment, the Secretary or*  
7        *the Governor shall appoint another individual to con-*  
8        *duct the peer review.*

9                *“(4) DATA PROVIDED TO PEER REVIEWER.—The*  
10        *Secretary shall make available to each person con-*  
11        *ducting peer review all scientific information avail-*  
12        *able regarding the species which is the subject of the*  
13        *peer review. The Secretary shall not indicate to a peer*  
14        *reviewer the name of any person that submitted a pe-*  
15        *tition for listing or delisting that is reviewed by the*  
16        *reviewer.*

17                *“(5) OPINION OF PEER REVIEWERS.—The peer*  
18        *reviewer shall give his or her opinion with regard to*  
19        *any technical or scientific deficiencies in the proposal,*  
20        *whether the methodology and analysis supporting the*  
21        *petition conform to the standards of the academic and*  
22        *scientific community, and whether the proposal is*  
23        *supported by sufficient credible evidence.*

24                *“(6) PUBLICATION OF PEER REVIEW REPORT.—*  
25        *The Secretary shall publish with any final regulation*

1 *implementing an action a summary of the report of*  
2 *the peer review panel noting points of disagreement*  
3 *between peer reviewers, if any, and the response of the*  
4 *Secretary to the report. The report of the peer review-*  
5 *ers shall be included in the official record of the pro-*  
6 *posed action and shall be available for public review*  
7 *prior to the close of the comment period on the regula-*  
8 *tion.”.*

9 **SEC. 303. MAKING DATA PUBLIC.**

10 *(a) PUBLIC DATA.—Section 4(b)(3) (16 U.S.C.*  
11 *1533(b)(3)), as amended by sections 304(a), 305(a), and*  
12 *306 of this Act, is amended by adding at the end the follow-*  
13 *ing new subparagraph:*

14 *“(E)(i) All data or information considered by*  
15 *the Secretary in making the determination to list as*  
16 *provided in this section, shall be considered public in-*  
17 *formation and shall be subject to section 552 of title*  
18 *5, United States Code (commonly referred to as the*  
19 *‘Freedom of Information Act’) unless the Secretary,*  
20 *for good cause, determines that the information must*  
21 *be kept confidential. The burden shall be on the Sec-*  
22 *retary to prove that such information shall be con-*  
23 *fidential and such decision shall be reviewable by a*  
24 *district court of competent jurisdiction, which shall*  
25 *review the decision in chambers. Good cause can in-*

1 *clude that the information is of a proprietary nature*  
2 *or that release of the location of the species may en-*  
3 *danger the species further.*

4 *“(ii) The Secretary shall minimize releasing the*  
5 *identification of particular private property as habi-*  
6 *tat for a species which is determined to be an endan-*  
7 *gered species or threatened species or proposed to be*  
8 *determined to be an endangered species or threatened*  
9 *species, unless the Secretary first notifies the owner*  
10 *thereof and receives his or her consent, or the infor-*  
11 *mation is otherwise public information.”.*

12 *(b) PUBLIC HEARINGS.—Section 4(b) (16 U.S.C.*  
13 *1533(b)) is amended—*

14 *(1) in paragraph (5) (as amended by section*  
15 *305(b) of this Act) by adding at the end the following*  
16 *new subparagraph:*

17 *“(E) promptly hold at least 1 hearing in each*  
18 *State in which the species proposed for determination*  
19 *as an endangered species or a threatened species is be-*  
20 *lieved to occur, and in a location that is as close as*  
21 *possible to the center of the habitat of such species in*  
22 *such State, including at least one hearing in an af-*  
23 *ected rural area specified by the Governor of the*  
24 *State, if the Governor determines that 1 or more rural*

1        *areas within the State are affected by the determina-*  
2        *tion.”; and*

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

5                *“(6) PUBLICATION OF DETERMINATION.—(A)*  
6        *Within the one-year period beginning on the date on*  
7        *which general notice is published in accordance with*  
8        *paragraph (5)(A)(i) regarding a proposed regulation,*  
9        *the Secretary shall publish in the Federal Register,*  
10       *if a determination as to whether a species is an en-*  
11       *dangered species or a threatened species is involved,*  
12       *either—*

13                *“(i) a final regulation to implement such*  
14        *determination,*

15                *“(ii) a final regulation to implement such*  
16        *revision or a finding that such revision should*  
17        *not be made,*

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

20                *“(iv) notice that the proposed regulation is*  
21        *being withdrawn under subparagraph (B)(i),*  
22        *together with the finding on which such with-*  
23        *drawal is based.”.*

24        *(c) NOTICE OF HEARINGS AND MEETINGS.—Section*  
25       *14 is amended to read as follows:*

1 **“SEC. 14. PUBLIC HEARINGS AND PUBLIC MEETINGS.**

2       “(a) *IN GENERAL.*—*Except as otherwise provided by*  
3 *this Act, the Secretary shall provide notice of any hearing*  
4 *or other public meeting at which public comment is accept-*  
5 *ed under this Act by publication in the Federal Register*  
6 *and in a newspaper of general circulation in the location*  
7 *of the hearing or meeting at least 30 days prior to the hear-*  
8 *ing or meeting.*

9       “(b) *HEARINGS.*—*Public hearings held pursuant to*  
10 *this Act shall provide an opportunity for the public to make*  
11 *statements and receive information from the agency regard-*  
12 *ing the impact of the proposal that is the subject of the pub-*  
13 *lic hearing. To the maximum extent practicable, the Sec-*  
14 *retary shall ensure that members of the public are provided*  
15 *with the information sought at the public hearing.”.*

16 **SEC. 304. IMPROVING THE PETITION AND DESIGNATION**  
17 **PROCESSES.**

18       “(a) *PETITIONS TO LIST.*—*Section 4(b)(3) (16 U.S.C.*  
19 *1533(b)(3)) is amended to read as follows:*

20               “(3) *PETITIONS.*—(A) *A petition submitted to*  
21 *the Secretary asserting that a species is a threatened*  
22 *species or endangered species and requesting that the*  
23 *Secretary make a determination to that effect shall*  
24 *contain at a minimum the following:*

25                       “(i) *Information on the current population*  
26 *and range of the species.*

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

3           “(iii) If literature from scientific or other  
4           journals, dissertations or other such scientific  
5           writings of another person are submitted, they  
6           must be accompanied by an affidavit that the  
7           literature or writings have been peer reviewed.

8           “(iv) The qualifications of any person as-  
9           serting expertise on the species or status of the  
10          species.

11          “(v) Information about the demonstrated  
12          habitat needs of the species, along with the  
13          known occupied habitat of the species.

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

15          “(B) Petitions to add a species to, or to remove  
16          a species from, either of the lists published under sub-  
17          section (c)(1) shall be submitted in accordance with  
18          section 553(e) of title 5, United States Code. The Sec-  
19          retary may commence a review of the status of the  
20          species concerned consistent with the priorities set by  
21          the Secretary for the listing of species. The Secretary  
22          shall promptly publish any finding made under this  
23          subparagraph in the Federal Register.”.

24          (b) CONFORMING AMENDMENTS.—Section 4(g), as re-  
25          designated by section 507(b)(2), is amended—

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

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

4 **SEC. 305. GREATER STATE INVOLVEMENT.**

5           (a) *STATE CONSULTATION ON PETITIONS.*—Section  
6 4(b)(3) (16 U.S.C. 1533(b)(3)), as amended by section  
7 304(a) of this Act, is amended by adding after subpara-  
8 graph (B) the following subparagraph:

9           “(C) At the time the review provided in subpara-  
10 graph (B) is commenced—

11           “(i) the Secretary shall contact the Gov-  
12 ernor of each State in which the proposed species  
13 is located and shall solicit from the Governor in-  
14 formation about the action requested in the peti-  
15 tion in that State necessary to render a decision  
16 and shall solicit the advice of the Governor on  
17 whether the status of species merits the action pe-  
18 titioned for, and if the Governor advises that the  
19 petition action is not warranted and thereafter  
20 the Secretary proceeds with the action, the Sec-  
21 retary shall have the burden of showing that the  
22 information submitted by the Governor is incor-  
23 rect and that the action is warranted; and

24           “(ii) the Secretary shall, to the maximum  
25 extent feasible, require by field testing, the ver-

1           *ification of the information presented regarding*  
2           *the status of the species.”.*

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

6           “(5) **NOTICE REQUIRED.**—*With respect to any*  
7           *regulation proposed by the Secretary to implement a*  
8           *determination referred to in subsection (a)(1) of this*  
9           *section, the Secretary shall—*

10           “(A) *not less than 90 days before the effec-*  
11           *tive date of the regulation—*

12           “(i) *publish a general notice and the*  
13           *complete text of the proposed regulation in*  
14           *the Federal Register, and*

15           “(ii) *give actual notice of the proposed*  
16           *regulation (including the complete text of*  
17           *the regulation) to the Governor of each*  
18           *State in which the species is believed to*  
19           *occur, and invite the determination of such*  
20           *State as to whether the action is warranted*  
21           *and if the Governor notifies the Secretary*  
22           *that the action is not warranted, the Sec-*  
23           *retary must provide to the Governor a*  
24           *record of decision for such determination,*  
25           *including information made available to the*

1            *Secretary which did not support the deter-*  
2            *mination, and the written reasons for the*  
3            *determination;*

4            *“(B) in cooperation with the Secretary of*  
5            *State, give notice of the proposed regulation to*  
6            *each foreign nation in which the species is be-*  
7            *lieved to occur or whose citizens harvest the spe-*  
8            *cies on the high seas, and consult with such na-*  
9            *tion thereon;*

10           *“(C) give notice of the proposed regulation*  
11           *to any person who requests such notice, any per-*  
12           *son who has submitted additional data, each*  
13           *State and local government within which the*  
14           *species is believed to occur or which is likely to*  
15           *experience any effects of any measures to protect*  
16           *the species under this Act, and such professional*  
17           *scientific organizations as the Secretary deems*  
18           *appropriate;*

19           *“(D) publish a summary of the proposed*  
20           *regulation in a newspaper of general circulation*  
21           *in each area of the United States in which the*  
22           *species is believed to occur; and”.*

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

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

18       (d) *FACA.—Section 4(b) (16 U.S.C. 1533(b)), as*  
19 *amended by section 301(a)(3) and (f) of this Act, is further*  
20 *amended by adding at the end the following new paragraph:*

21               “(11) *FACA.—Consultation with States regard-*  
22 *ing petitions and proposed regulations under this*  
23 *subsection shall not be subject to the Federal Advisory*  
24 *Committee Act (5 U.S.C. App.).”.*

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

2 *Section 4(b)(3) (16 U.S.C. 1533(b)(3)), as amended by*  
3 *sections 304(a) and 305(a) of this Act, is amended by add-*  
4 *ing after subparagraph (C) the following subparagraph:*

5 *“(D) The Secretary shall implement a system to*  
6 *monitor effectively the status of all species with re-*  
7 *spect to which a finding is made that the petitioned*  
8 *action is warranted but precluded by proposals to de-*  
9 *termine whether any species is an endangered species*  
10 *or a threatened species and progress is being made to*  
11 *add qualified species to the list published under sub-*  
12 *section (c) and to remove from lists published under*  
13 *that subsection species for which protection of this Act*  
14 *is no longer necessary, and shall make prompt use of*  
15 *the authority under paragraph (7) to prevent an im-*  
16 *minent threat to the existence of any such species.”.*

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

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

22 *“(G) Any person may submit to the Secretary a*  
23 *petition to revise a previous determination by the*  
24 *Secretary under this Act that a species is an endan-*  
25 *gered species or threatened species and to remove the*

1 species from a list published under subsection (c), on  
2 the basis that—

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

6 “(ii) the species is extinct;

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

10 “(iv) the original listing of the species did  
11 not undergo adequate peer review.

12 “(H)(i) After receiving a petition under sub-  
13 paragraph (G), the Secretary shall complete a review  
14 of the species, which review shall include the solicita-  
15 tion of information as described in subparagraph (F).

16 “(ii) The determination of the Secretary with re-  
17 spect to such petition shall be considered an action for  
18 purposes of subsection (i).

19 “(iii) If the Secretary has not made a final de-  
20 termination by the end of the 18-month period begin-  
21 ning on the date of the filing of a petition under sub-  
22 paragraph (G), the species covered by the petition  
23 shall not be considered to be an endangered species or  
24 threatened species for the purposes of this Act and

1       *shall not be included or considered to be included in*  
2       *any list published under subsection (c).*

3               “(iv) *If, following review required under clause*  
4       *(i) of this paragraph and subsection (i) of this sec-*  
5       *tion, the final determination of the Secretary is to re-*  
6       *tain the species as an endangered species or threat-*  
7       *ened species on a list published under subsection (c),*  
8       *that decision shall be considered to be a listing deter-*  
9       *mination for purposes of section 5.*

10              “(v) *This subparagraph shall not apply to a pe-*  
11       *tition to delist a species for which a review, as re-*  
12       *quired by this subparagraph, has been conducted by*  
13       *the Secretary in the preceding 10-year period.”.*

14       **SEC. 308. DETERMINATIONS BY THE SECRETARY TO DELIST.**

15       *Section 4(c)(2) (16 U.S.C. 1533(c)(2)) is amended to*  
16       *read as follows:*

17              “(2) *The Secretary shall—*

18                      “(A) *conduct, at least once every 5 years, a re-*  
19       *view of all species included in a list which is pub-*  
20       *lished pursuant to paragraph (1) and which is in ef-*  
21       *fect at the time of such review; and*

22                      “(B) *determine on the basis of such review*  
23       *whether any such species should—*

1           “(i) be removed from such list, which shall  
2           be proposed within 90 days of the date upon  
3           which it is determined that—

4                   “(I) new data or a reinterpretation of  
5                   prior data indicates that the previous deter-  
6                   mination was in error;

7                   “(II) the species is extinct; or

8                   “(III) the population level target estab-  
9                   lished for the species in a conservation plan  
10                  under section 5(c)(3)(C)(vii) has been  
11                  achieved;

12                  “(ii) be changed in status from an endan-  
13                  gered species to a threatened species; or

14                  “(iii) be changed in status from a threat-  
15                  ened species to an endangered species.

16 *Each determination under subparagraph (B) shall be made*  
17 *in accordance with the provisions of subsections (a) and*  
18 *(b) of this section.”.*

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

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

23           (a) *FEDERAL AGENCY ACTIONS.*—Section 7 (16 U.S.C.  
24 *1536) is amended by amending the matter preceding sub-*  
25 *section (b) to read as follows:*

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

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

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

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

1        *agency action that the agency has determined is sub-*  
2        *ject to this paragraph and that is likely to signifi-*  
3        *cantly and adversely affect an endangered species or*  
4        *a threatened species, the Federal agency shall fulfill*  
5        *the requirements of this paragraph in consultation*  
6        *with and with the assistance of the Secretary. As pro-*  
7        *vided in section 5(d)(2), each Federal agency may*  
8        *initiate consultation with the Secretary to receive*  
9        *guidance from the Secretary on the consistency of its*  
10       *action with the conservation objective or conservation*  
11       *plan for such species developed pursuant to section 5,*  
12       *with an incidental take permit for such species issued*  
13       *pursuant to section 10(a), or with a cooperative man-*  
14       *agement agreement concerning such species executed*  
15       *pursuant to section 6(b). In fulfilling the require-*  
16       *ments of this paragraph each agency shall use the best*  
17       *available scientific and commercial data, shall con-*  
18       *sider expert opinion and any reasonable and prudent*  
19       *alternatives developed under subsection (b)(3)(A), and*  
20       *shall render the decision of the agency in a manner*  
21       *consistent with the obligations and responsibilities of*  
22       *the agency under each applicable law and treaty.*

23                *“(3) INVOLVEMENT OF APPLICANTS FOR FED-*  
24        *ERAL APPROVALS.—Subject to such guidelines as the*  
25        *Secretary may establish, a Federal agency shall con-*

1        *sult with the Secretary on any prospective agency ac-*  
2        *tion at the request of, with the involvement of, and in*  
3        *cooperation with, the prospective permit or license*  
4        *applicant if the applicant has reason to believe that*  
5        *an endangered species or a threatened species may be*  
6        *present in the area affected by his project, that the*  
7        *project is inconsistent with the conservation objective*  
8        *or plan for such species developed pursuant to section*  
9        *5, an incidental take permit for such species issued*  
10       *pursuant to section 10(a), or a cooperative manage-*  
11       *ment agreement for such species executed pursuant to*  
12       *section 6(b), and that implementation of such action*  
13       *will likely affect such species.*

14                *“(4) CONFERRING ON SPECIES PROPOSED FOR*  
15        *LISTING.—Each Federal agency shall confer with the*  
16        *Secretary on any agency action which is likely to*  
17        *jeopardize the continued existence of any species pro-*  
18        *posed to be listed under section 4 or to destroy or ad-*  
19        *versely modify any habitat that is proposed to be des-*  
20        *ignated by the Secretary as critical habitat of such a*  
21        *species in a manner that is likely to jeopardize the*  
22        *continued existence of the species. This paragraph*  
23        *does not require a limitation on the commitment of*  
24        *resources as described in subsection (d).*

1           “(5) *LIMITATIONS ON MODIFICATIONS TO LAND*  
2           *MANAGEMENT.*—*Notwithstanding any other provision*  
3           *of this Act, the authority in this Act shall not be con-*  
4           *strued to authorize or form the basis for any Federal*  
5           *agency to modify a land management plan, policy,*  
6           *standard, or guideline or water allocation plan unless*  
7           *a determination has been made under section 4 that*  
8           *a species is threatened or endangered. Notwithstand-*  
9           *ing any other law or regulation, management plans,*  
10           *practices, policies, projects, or guidelines, including*  
11           *management plans which, as of October 1, 1995, are*  
12           *subject to modification pending completion of a final*  
13           *environmental impact statement, shall not be amend-*  
14           *ed for the purpose of maintaining viable populations*  
15           *of native and desired non-native species unless it is*  
16           *determined under this Act that current practices are*  
17           *likely to jeopardize the continued existence of the spe-*  
18           *cies.*

19           “(6) *DEMONSTRATION BY SECRETARY RE-*  
20           *QUIRED.*—*The Secretary shall have the responsibility*  
21           *of demonstrating, based on the best information avail-*  
22           *able at the time of the request for consultation, that—*

23                   “(A) *a threatened species or endangered spe-*  
24                   *cies or its respective critical habitat is located in*

1           *the geographic area that would be affected by the*  
2           *proposed action; and*

3           “(B) *such proposed action will jeopardize*  
4           *the continued existence of a threatened species or*  
5           *endangered species.*”

6           “(7) *PROHIBITION ON OPINIONS BASED ON IN-*  
7           *SUFFICIENT DATA.—The Secretary shall not issue an*  
8           *opinion under subsection (b) that a proposed action*  
9           *will jeopardize the continued existence of a threatened*  
10           *or endangered species based on the insufficiency of*  
11           *available data on the impact of a proposed action on*  
12           *such species.*”

13           “(b) *RESOLVING CONFLICTS BETWEEN FEDERAL AGEN-*  
14           *CIES.—Section 7(a), as amended by subsection (a) of this*  
15           *section and section 402 of this Act, is amended by adding*  
16           *at the end the following new paragraphs:*

17           “(10) *RELATIONSHIP TO DUTIES UNDER OTHER*  
18           *LAWS.—(A) The responsibilities of a Federal agency*  
19           *under this Act shall not supersede and shall be imple-*  
20           *mented in a manner consistent with duties assigned*  
21           *to the Federal agency by any other laws or by any*  
22           *treaties.*”

23           “(B)(i) *If a Federal agency determines that the*  
24           *responsibilities and duties described in subparagraph*

1       (A) are in irreconcilable conflict, the action agency  
2 shall request the President to resolve the conflict.

3           “(ii) In determining a resolution to such a con-  
4 flict, the President shall consider and choose the  
5 course of action that best meets the public interest  
6 and, to the extent possible, balances pursuit of the  
7 conservation objective or the purposes of the conserva-  
8 tion plan with economic and social needs and pursuit  
9 of the purposes of the other laws or treaties. The au-  
10 thority assigned to the President by this subpara-  
11 graph may not be delegated to a member of the execu-  
12 tive branch who has not been confirmed by the Sen-  
13 ate.

14           “(11) MODIFICATION OF PROJECTS AND FACILI-  
15 TIES.—Any consultation and conferencing required  
16 under paragraphs (2) and (4) for an agency action  
17 that consists solely of a modification of a Federal,  
18 State, local government, or private project or facility  
19 shall be limited to the consideration of the effects that  
20 result from the modification that comprises the agen-  
21 cy action.”.

22       (c) PROCEDURES FOR CONSULTATION.—Section 7(b)  
23 (16 U.S.C. 1536(b)) is amended by striking so much as pre-  
24 cedes paragraph (3)(B) and inserting the following:

25           “(b) OPINION OF SECRETARY.—

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

13                     “(i) *1 year after the date of submission of*  
14                     *the application to the Federal agency; or*

15                     “(ii) *the end of the period established under*  
16                     *subparagraph (B).*

17           “(B) *Subject to subparagraph (A), in the case of*  
18           *an agency action involving a permit or license appli-*  
19           *cant, the Secretary and the Federal agency may not*  
20           *mutually agree to conclude consultation within a pe-*  
21           *riod exceeding 90 days unless the Secretary, before the*  
22           *close of the 90th day referred to in subparagraph*  
23           *(A)—*

24                     “(i) *if the consultation period proposed to*  
25                     *be agreed to will end before the 150th day after*

1           *the date on which consultation was initiated,*  
2           *submits to the applicant a written statement set-*  
3           *ting forth—*

4                     *“(I) the reasons why a longer period is*  
5                     *required,*

6                     *“(II) the information that is required*  
7                     *to complete the consultation, and*

8                     *“(III) the estimated date on which con-*  
9                     *sultation will be completed; or*

10                    *“(ii) if the consultation period proposed to*  
11                    *be agreed to will end on or after the 150th day*  
12                    *but before the 210th day after the date on which*  
13                    *consultation was initiated, obtains the consent of*  
14                    *the applicant to such period.*

15                    *“(C) If consultation is not concluded and the*  
16                    *written statement of the Secretary required under*  
17                    *paragraph (3)(A) is not provided to the Federal agen-*  
18                    *cy by the applicable deadline established under this*  
19                    *paragraph, the requirements of subsection (a)(2) shall*  
20                    *be deemed met and the Federal agency may proceed*  
21                    *with the agency action.*

22                    *“(D) A permit or license applicant shall be enti-*  
23                    *tled to participate fully in any consultation or con-*  
24                    *ferencing under this section with respect to any agen-*

1 *cy action required for the granting of an authoriza-*  
2 *tion or provision of funding to the applicant.*

3 “(2) *PROCEDURE FOR APPLICANT CONSULTA-*  
4 *TION.—Consultation under subsection (a)(3) shall be*  
5 *concluded within such period as is agreeable to the*  
6 *Secretary, the Federal agency, and the applicant con-*  
7 *cerned.*

8 “(3) *WRITTEN OPINION OF SECRETARY.—(A)(i)*  
9 *Promptly after conclusion of consultation under para-*  
10 *graph (2) or (3) of subsection (a), the Secretary shall*  
11 *provide to the Federal agency and the applicant, if*  
12 *any, a written statement setting forth the Secretary’s*  
13 *opinion, and a summary of the information on which*  
14 *the opinion is based, detailing whether the agency ac-*  
15 *tion is consistent with the conservation objective or*  
16 *plan developed pursuant to section 5, an incidental*  
17 *taking permit issued pursuant to section 10(a), or a*  
18 *cooperative management agreement executed pursuant*  
19 *to section 6(b). If the Secretary determines that the*  
20 *action is likely to jeopardize the continued existence*  
21 *of the species as described in subsection (a), the Sec-*  
22 *retary shall suggest reasonable and prudent alter-*  
23 *natives (considering any reasonable and prudent al-*  
24 *ternatives undertaken by other Federal agencies) that*  
25 *are consistent with subsection (a)(2) and that impose*

1 *the least social and economic costs. In the develop-*  
2 *ment of a biological opinion, the Secretary shall so-*  
3 *licit and utilize information and advice from the*  
4 *Governor of any State in which is located a species*  
5 *or land that is the subject of the Federal action re-*  
6 *quiring consultation.*

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

22 *“(iii) The Secretary shall not require a reason-*  
23 *able and prudent alternative that may or will result*  
24 *in a significant adverse impact upon waterfowl popu-*  
25 *lations, waterfowl habitat management, or waterfowl*

1        *hunting opportunities in a significant waterfowl*  
2        *breeding, staging, or wintering habitat area. In this*  
3        *clause, the term ‘significant adverse impact’ means*  
4        *any actions, proposed or in effect, which individually*  
5        *or cumulatively are likely to reduce the carrying ca-*  
6        *capacity of habitat for waterfowl by 10 percent or more*  
7        *of its current capability, as determined on a local, re-*  
8        *gional, statewide or national basis. In this clause, the*  
9        *term ‘significant waterfowl breeding, staging, or win-*  
10       *tering habitat areas’ means those private or public*  
11       *lands managed primarily for, or providing, waterfowl*  
12       *breeding, staging or wintering habitat including sea-*  
13       *sonal/permanent marsh lands or land under rice cul-*  
14       *tivation for three out of the past five years.*

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

23            *“(v) No additional measures to minimize or*  
24        *mitigate impacts on a species that is a subject of an*  
25        *opinion issued under this paragraph shall be required*

1       of a permit applicant or licensee that is in compli-  
2       ance with the opinion and any agreement or permit  
3       issued to implement the opinion.”.

4       (d) *ACTIVITIES PRIOR TO COMPLETION OF CONSULTA-*  
5 *TION.*—Section 7(d) (16 U.S.C. 1536(d)) is amended to  
6 read as follows:

7       “(d) *LIMITATION ON COMMITMENT OF RESOURCES.*—

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

17               “(2) *RELATIONSHIP TO LAND MANAGEMENT*  
18 *PLANNING REQUIREMENTS.*—If the listing of a species,  
19       or other procedure or decision related to a species list-  
20       ed under section 4(c)(1), requires consultation under  
21       subsection (a)(2) on a land use plan or land or re-  
22       source management plan (or an amendment to or re-  
23       vision of the plan) prepared under section 202 of the  
24       Federal Land Policy and Management Act of 1976  
25       (43 U.S.C. 1712) or section 6 of the Forest and

1       *Rangeland Renewable Resources Planning Act of*  
2       *1974 (16 U.S.C. 1604), the land management agency*  
3       *implementing the plan may authorize, fund, or carry*  
4       *out an agency action that is consistent with the plan*  
5       *prior to the completion of the consultation, if, under*  
6       *the procedures established by this section, the head of*  
7       *the land management agency responsible for the ac-*  
8       *tion determines or has determined that the action—*

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

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

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

17                      *“(ii) is likely to jeopardize the contin-*  
18                      *ued existence of the species, and the agency*  
19                      *agrees to a reasonable and prudent alter-*  
20                      *native.”.*

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

23               (1) *by adding after paragraph (15) (as added by*  
24               *section 204(a) of this Act) the following new para-*  
25               *graph:*

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

8           (2) *by amending paragraph (18) (as redesign-*  
9 *ated by section 102(a)(1) of this Act) to read as fol-*  
10 *lows:*

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

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

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

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

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

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

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

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

16       (f) *RESTRICTION ON NEW OR ADDITIONAL REQUIRE-*  
17       *MENTS.—*

18              (1) *COMPLIANCE WITH BIOLOGICAL OPINION.—*  
19              *Section 7(b) (16 U.S.C. 1536(b)) is amended by add-*  
20              *ing at the end the following new paragraph:*

21              “(5) *The Secretary shall, once a Biological Opinion*  
22              *has been rendered and the applicant has agreed to the terms*  
23              *and conditions contained in the Biological Opinion, pro-*  
24              *vide to the applicant a written approval which shall guar-*  
25              *antee that, so long as the project at issue is pursued consist-*

1 *ent with the Biological Opinion, the applicant shall not be*  
 2 *subject to new or additional requirements for the specific*  
 3 *protection of any species beyond the requirements set forth*  
 4 *in the Biological Opinion. All public entities shall be bound*  
 5 *by the Secretary's approval.”.*

6 (2) *COMPLIANCE WITH PERMIT.—Section 10(a)*  
 7 *(16 U.S.C. 1539(a)) is further amended by adding at*  
 8 *the end the following new paragraph:*

9 “(8) *RESTRICTION ON NEW OR ADDITIONAL RE-*  
 10 *QUIREMENTS.—The Secretary shall, as part of the*  
 11 *conservation planning process, guarantee that, so long*  
 12 *as the permittee is complying with the terms and con-*  
 13 *ditions of the permit issued under this section, the*  
 14 *permittee shall not be subject to new or additional re-*  
 15 *quirements for the specific protection of any species*  
 16 *beyond the requirements set forth in the conservation*  
 17 *plan. All public entities shall be bound by this guar-*  
 18 *antee.”.*

19 **SEC. 402. EXEMPTIONS FROM CONSULTATION AND CON-**  
 20 **FERENCING.**

21 *Section 7(a), as amended by section 401(a) of this Act,*  
 22 *is amended by adding at the end the following new para-*  
 23 *graphs:*

24 “(8) *ACTIONS EXEMPT FROM CONSULTATION AND*  
 25 *CONFERENCING.—Consultation and conferencing*

1        *under paragraphs (2) and (4) shall not be required*  
2        *for any agency action that—*

3                *“(A) is consistent with the provisions of a*  
4                *final conservation plan under section 5(c)(5) or*  
5                *a conservation objective described in section*  
6                *5(b)(3);*

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

10               *“(C) addresses a critical, imminent threat*  
11               *to public health or safety or a catastrophic natu-*  
12               *ral event or compliance with Federal, State, or*  
13               *local safety or public health requirements;*

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

20               *“(E) permits activities that occur on pri-*  
21               *ivate land.*

22               *“(9) ACTIONS NOT PROHIBITED.—An agency ac-*  
23               *tion shall not constitute a taking of a species prohib-*  
24               *ited by this Act or any regulation issued under this*  
25               *Act if the action is consistent with—*

1           “(A) the actions provided for in a final con-  
2           servation plan under section 5(c)(5) or a con-  
3           servation objective described in section 5(b)(3);

4           “(B) a cooperative management agreement  
5           or an incidental take permit; or

6           “(C) the terms and conditions specified in  
7           a written statement provided under subsection  
8           (b)(3) of this section.”.

9   **SEC. 403. ELIMINATING THE EXEMPTION COMMITTEE (GOD**  
10                                   **COMMITTEE).**

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

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

15                   (2) by striking paragraph (2).

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

18           “(e) *EXEMPTIONS.*—Notwithstanding any other provi-  
19           sion of this Act—

20                   “(1) the Secretary shall grant an exemption from  
21                   this Act for any activity if the Secretary of Defense  
22                   determines that the exemption of the activity is nec-  
23                   essary for reasons of national security; and

24                   “(2) the President may grant an exemption from  
25                   this Act for any area that the President has declared

1       to be a major disaster area under *The Robert T. Staf-*  
2       *ford Disaster Relief and Emergency Assistance Act*  
3       (42 U.S.C. 5121 *et seq.*) for any project for the repair  
4       or replacement of a public facility substantially as  
5       the facility existed prior to the disaster under section  
6       405 or 406 of that Act (42 U.S.C. 5171 and 5172),  
7       if the President determines that the project—

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

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

14       (c) *REPEAL.*—Subsections (f) through (p) of section 7  
15       (16 U.S.C. 1536(f)–(p)) are repealed.

16       **TITLE V—BETTER MANAGEMENT**  
17       **AND CONSERVATION OF LIST-**  
18       **ED SPECIES**

19       **SEC. 501. SETTING CONSERVATION OBJECTIVES.**

20       Section 5 (16 U.S.C. 1534) is redesignated as section  
21       5A, and the following new section is added after section 4:

22       **“SEC. 5. SPECIES CONSERVATION PLANS.**

23              “(a) *IN GENERAL.*—Except as provided in subsection  
24       (b)(3)(C), the Secretary shall publish a conservation objec-  
25       tive and a conservation plan for each species determined

1 *to be an endangered species or a threatened species pursu-*  
2 *ant to section 4.*

3 “(b) *DEVELOPMENT OF CONSERVATION OBJECTIVE.*—

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

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

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

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

21 “(D) *representatives of persons who may be*  
22 *directly, economically impacted by the conserva-*  
23 *tion plan.*

1       *The chairman of the team shall be selected from rep-*  
2       *resentatives of participating States or local govern-*  
3       *ments.*

4               “(2) *ASSESSMENTS.*—*Not later than 180 days*  
5       *after the listing determination, the assessment and*  
6       *planning team shall report to the Secretary the as-*  
7       *essment of the following biological, economic, and*  
8       *intergovernmental factors with respect to the listed*  
9       *species:*

10               “(A) *The team shall assess—*

11                       “(i) *the biological considerations nec-*  
12                       *essary to carry out this Act;*

13                       “(ii) *the biological significance of the*  
14                       *species;*

15                       “(iii) *the geographic range and occu-*  
16                       *ped habitat of the species, and the type and*  
17                       *amounts of habitat needed, at a minimum,*  
18                       *to maintain the existence of the species and,*  
19                       *at a maximum, to secure recovery of the*  
20                       *species;*

21                       “(iv) *the current population, and the*  
22                       *population trend, of the species;*

23                       “(v) *the technical practicality of recov-*  
24                       *ering the species;*

1           “(vi) the potential management meas-  
2           ures capable of recovering, or reducing the  
3           risks to survival of, the species, including  
4           the contribution of existing or potential  
5           captive breeding programs for the species,  
6           predator control, enhancement of food  
7           sources, supplemental feeding, and other  
8           methods which enhance the survival of the  
9           young of the species; and

10           “(vii) where appropriate, the demon-  
11           strable commercial or medicinal value of the  
12           species.

13           “(B) The team shall assess the direct, indi-  
14           rect, and cumulative economic and social im-  
15           pacts on the public and private sectors, includ-  
16           ing local governments, that may result from the  
17           listing determination and any potential manage-  
18           ment measures identified under subparagraph  
19           (A)(vi), including impacts on the cost of govern-  
20           mental actions, tax and other revenues, employ-  
21           ment, the use and value of property, other social,  
22           cultural, and community values, and an assess-  
23           ment of any commercial activity which could po-  
24           tentially result in a net benefit to the conserva-  
25           tion of the species.

1           “(C) *The team shall assess the impacts on*  
2           *State and local land use laws, conservation*  
3           *measures, and water allocation policies that may*  
4           *result from the listing determination and from*  
5           *the potential management measures identified*  
6           *under subparagraph (A)(vi).*

7           “(D) *The Secretary shall provide funding to*  
8           *the team to employ or obtain such technical as-*  
9           *sistance as necessary to fulfill its duties under*  
10          *this paragraph.*

11          “(E) *Upon completion of the assessment, the*  
12          *Secretary shall publish in the Federal Register a*  
13          *notice of availability of the report and allow 30*  
14          *days for public comment.*

15          “(3) *SECRETARIAL REVIEW OF ASSESSMENTS*  
16          *AND ESTABLISHMENT OF CONSERVATION OBJEC-*  
17          *TIVE.—(A) Not later than 210 days after a listing de-*  
18          *termination, the Secretary shall review the report of*  
19          *the assessment and planning team prepared pursuant*  
20          *to paragraph (2), establish a conservation objective*  
21          *for the species, and publish in the Federal Register*  
22          *the conservation objective, along with a statement of*  
23          *findings on which the conservation objective was es-*  
24          *tablished.*

1           “(B) *The conservation objective may be, in the*  
2           *discretion of the Secretary—*

3                     “(i) *recovery of the listed species;*

4                     “(ii) *such level of conservation of the species*  
5                     *which the Secretary determines practicable and*  
6                     *reasonable to the extent that the benefits of the*  
7                     *potential conservation measures outweigh the*  
8                     *economic and social costs of such measures, in-*  
9                     *cluding but not limited to maintenance of exist-*  
10                    *ing population levels;*

11                    “(iii) *no Federal action other than enforce-*  
12                    *ment against any person whose activity violates*  
13                    *the prohibitions specified in section 9(a), includ-*  
14                    *ing any activity that results in a taking of the*  
15                    *species, unless the taking is incidental to, and*  
16                    *not the purpose of, the carrying out of an other-*  
17                    *wise lawful activity; or*

18                    “(iv) *such other objective as the Secretary*  
19                    *may determine that does not provide a lesser*  
20                    *level of protection than the level described in*  
21                    *clause (iii).*

22           “(C) *If the conservation objective established by*  
23           *the Secretary is the objective provided in subpara-*  
24           *graph (B)(iii), the Secretary shall not develop a con-*

1        *ervation plan for the affected species under sub-*  
2        *section (c).”.*

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

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

7        *“(c) DEVELOPMENT OF CONSERVATION PLAN.—*

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

11                        *“(A) the development of an integrated plan*  
12                        *for 2 or more endangered species or threatened*  
13                        *species that are likely to benefit from an inte-*  
14                        *grated conservation plan;*

15                        *“(B) the geographic areas where conflicts*  
16                        *between the conservation of the affected species*  
17                        *and development projects or other forms of eco-*  
18                        *nom ic activity exist or are likely to exist;*

19                        *“(C) protection of the listed species on units*  
20                        *of the National Biological Diversity Reserve as*  
21                        *provided in section 5A(a);*

22                        *“(D) the implementation of conservation*  
23                        *measures that have the least economic and social*  
24                        *costs;*

1           “(E) nonregulatory, incentive-based con-  
2           servation measures and commercial activities  
3           that provide a net benefit to the conservation of  
4           the species; and

5           “(F) plans in which States or private orga-  
6           nizations or persons are the primary  
7           implementors.

8           “(2) PUBLICATION OF DRAFT PLAN.—Not later  
9           than 12 months after the date of a determination that  
10          a species is an endangered species or a threatened  
11          species, the assessment and planning team for the spe-  
12          cies shall publish a draft conservation plan for the  
13          species which is based on the assessments made pursu-  
14          ant to subsection (b)(2) and designed to achieve the  
15          conservation objective established pursuant to sub-  
16          section (b)(3).

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

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

21                 “(B) recommendations for avoiding a tak-  
22                 ing of a listed species prohibited under section  
23                 9(a)(1) and a list of specific activities that  
24                 would constitute a take under section 9;

1           “(C) *alternative strategies to achieve the*  
2 *conservation objective for the listed species which*  
3 *range from a strategy requiring the least possible*  
4 *Federal management to achieve the conservation*  
5 *objective to a strategy involving more intensive*  
6 *Federal management to achieve the objective,*  
7 *each of which contains—*

8                   “(i) *an estimate of the risks to the sur-*  
9 *vival and recovery of the species that the al-*  
10 *ternative would entail;*

11                   “(ii) *a description of any site-specific*  
12 *management measures recommended for the*  
13 *alternative;*

14                   “(iii) *an analysis of the relationship of*  
15 *any habitat of the species proposed for des-*  
16 *ignation as critical habitat to the rec-*  
17 *ommended management measures;*

18                   “(iv) *a description of the direct, indi-*  
19 *rect, and cumulative economic and social*  
20 *impacts on the public and private sectors*  
21 *including impacts on employment, the cost*  
22 *of government actions, tax and other reve-*  
23  *nues, the use and value of property, and*  
24 *other social, cultural, and community val-*  
25 *ues;*

1           “(v) a description of any captive  
2           breeding program recommended for the al-  
3           ternative;

4           “(vi) an analysis of whether the alter-  
5           native would include any release of an ex-  
6           perimental population outside the current  
7           range of the species and an identification of  
8           candidate geographic areas for the release;

9           “(vii) objective and measurable cri-  
10          teria, including a population level target,  
11          that, if met, would result in a determina-  
12          tion under section 4 that the species is no  
13          longer an endangered species or threatened  
14          species;

15          “(viii) estimates of the time and costs  
16          required to carry out the management  
17          measures, including any intermediate steps;  
18          and

19          “(ix) a description of the role of each  
20          affected State, if any, in achieving the con-  
21          servation objective.

22               “(4) PLAN PREPARATION PROCEDURES.—(A)  
23               The Secretary shall consult with the Governor of each  
24               State in which the affected species is located during  
25               the preparation of each draft and final conservation

1        *plan. Each plan shall provide for equitable treatment*  
2        *of affected States and other non-Federal persons.*

3                *“(B) The Secretary shall publish in the Federal*  
4        *Register and a newspaper of general circulation in*  
5        *each affected county and parish a notice of the avail-*  
6        *ability and a summary of, and a request for the sub-*  
7        *mission of comments on, each draft conservation plan.*

8                *“(C) The Secretary shall hold at least 1 hearing*  
9        *on each draft conservation plan in each State to*  
10        *which the plan would apply in a location that is as*  
11        *close as possible to the center of the habitat of the af-*  
12        *ected species in such State.*

13                *“(D) Prior to any decision to adopt a final con-*  
14        *servation plan, the Secretary shall consider and weigh*  
15        *carefully all information presented during each hear-*  
16        *ing held under subparagraph (C) or received in re-*  
17        *sponse to a request for comments published under sub-*  
18        *paragraph (B).*

19                *“(5) PUBLICATION OF FINAL PLAN.—Not later*  
20        *than 18 months from the date of a determination that*  
21        *a species is an endangered species or a threatened*  
22        *species, the Secretary shall publish in the Federal*  
23        *Register a notice of the availability, and a summary,*  
24        *of a final conservation plan for the species. The notice*  
25        *shall include a detailed description of—*

1           “(A) the reasons for the selection of the final  
2           conservation plan;

3           “(B) the reasons for not selecting each of the  
4           other alternatives included in the draft conserva-  
5           tion plan, including, if any alternative is se-  
6           lected other than the alternative that would im-  
7           pose the least total costs on the public and pri-  
8           vate sectors, the reasons for such selection;

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

11          “(D) the response of the Secretary to the in-  
12          formation referred to in paragraph (4).

13          “(6) *PARTICIPATION BY OTHER PERSONS.*—In  
14          developing and implementing conservation plans, the  
15          Secretary may use the services of appropriate public  
16          and private agencies and institutions and other  
17          qualified persons.

18          “(7) *PLAN REVISION OR AMENDMENT.*—Any re-  
19          vision of or amendment to a conservation plan shall  
20          be made in accordance with the procedures and re-  
21          quirements of subsection (b) and this subsection, ex-  
22          cept that the Secretary by regulation may provide for  
23          other procedures and requirements for any amend-  
24          ment that does not increase the direct or indirect cost

1       of implementation of the plan or enlarge the area to  
2       which the plan applies.

3       “(d) *NO FURTHER PROCEDURES OR REQUIREMENTS*  
4 *FOR ACTIONS CONSISTENT WITH THE CONSERVATION*  
5 *PLAN.—If a conservation plan is prepared under subsection*  
6 *(c) or if a conservation objective is established under sub-*  
7 *section (b)(3)(C)—*

8               “(1) *any Federal agency that determines that the*  
9 *actions of the agency are consistent with the provi-*  
10 *sions of the conservation plan or conservation objec-*  
11 *tive shall be considered to comply with section 7(a)(1)*  
12 *for the affected species;*

13               “(2) *any agency action that the Federal agency*  
14 *determines is consistent with the provisions of the*  
15 *conservation plan or conservation objective shall not*  
16 *be subject to section 7(a)(2) for the affected species, ex-*  
17 *cept that a Federal agency may initiate consultation*  
18 *under section 7(a)(2) if the agency desires guidance*  
19 *from the Secretary on the consistency of the action of*  
20 *the agency with the conservation plan or conservation*  
21 *objective; and*

22               “(3) *any action of any person that is consistent*  
23 *with the provisions of the conservation plan or con-*  
24 *servation objective shall not constitute a violation*  
25 *concerning the affected species of any applicable pro-*

1        *hibition under section 9(a) or 4(d), except that a non-*  
 2        *Federal person may initiate consultation under sec-*  
 3        *tion 10(a)(2)—*

4                *“(A) if the person desires guidance from the*  
 5                *Secretary on the consistency of the action with*  
 6                *the plan or objective; or*

7                *“(B) in order to determine whether to apply*  
 8                *for a permit under section 10 for any action that*  
 9                *is inconsistent with the plan or objective.”.*

10        *(b) CONSERVATION OBJECTIVE AND CONSERVATION*  
 11        *RULE DEFINED.—Section 3(4) (16 U.S.C. 1532), as reded-*  
 12        *ignated by section 102(a) of this Act, is amended to read*  
 13        *as follows:*

14                *“(4) The terms ‘conservation objective’ and ‘con-*  
 15                *servation plan’ (except when modified by ‘non-Fed-*  
 16                *eral’) mean a conservation objective and a conserva-*  
 17                *tion plan, respectively, developed under section 5.”.*

18        **SEC. 503. INTERIM MEASURES.**

19        *Section 5, as added by section 501 of this Act and as*  
 20        *amended by section 502 of this Act, is amended by adding*  
 21        *at the end the following new subsections:*

22                *“(e) MANAGEMENT PRIOR TO PUBLICATION OF CON-*  
 23        *SERVATION PLAN.—*

24                *“(1) IN GENERAL.—After a listing determination*  
 25        *and before the publication of a final conservation*

1        *plan, or, if no plan is required pursuant to subsection*  
2        *(b)(3)(C), a conservation objective, for the species—*

3                *“(A) the prohibitions of section 9(a) shall*  
4                *apply to any person, except in the case of a tak-*  
5                *ing of a member of the species that is incidental*  
6                *to, and not the purpose of, the carrying out of*  
7                *an otherwise lawful activity which incidental*  
8                *taking activity may include but is not limited to*  
9                *the routine operation, maintenance, rehabilita-*  
10               *tion, replacement, or repair of any structure,*  
11               *building, road, dam, airport, or any irrigation*  
12               *or other facility which is in operation prior to*  
13               *the publication of the determination under sec-*  
14               *tion 4(b)(6); and*

15               *“(B) no Federal agency shall be required to*  
16               *comply with section 7(a)(1) and no consultation*  
17               *shall be required on any agency action under*  
18               *section 7(a)(2), except that the species shall con-*  
19               *tinue to be treated as a species proposed for list-*  
20               *ing under section 4 solely for purposes of section*  
21               *7(a)(4).*

22               *“(2) EMERGENCY RULEMAKING PROTECTIONS.—*  
23               *Notwithstanding paragraph (1), sections 7(a) and*  
24               *9(a) shall apply fully to the listed species during a*  
25               *period in which an emergency rulemaking is in effect*

1       pursuant to section 4(b)(7) or if the President de-  
2       clares, and advises the Secretary, that there exists an  
3       imminent threat to the existence of the species. Such  
4       declaration of the President expires upon the deadline  
5       for publication of a final conservation plan for the  
6       species pursuant to subsection (c)(5) or the publica-  
7       tion of a conservation objective for the species pro-  
8       vided in subsection (b)(3) or if no conservation plan  
9       is required pursuant to subsection (b)(3)(C).

10       “(f) *SUSPENSION OF CONSERVATION PLAN OR OBJEC-*  
11 *TIVE.*—If the Secretary issues an incidental take permit or  
12 enters into a cooperative management agreement under sec-  
13 tion 6, the Secretary, by publication of notice in the *Federal*  
14 *Register*, shall suspend the conservation objective or con-  
15 servation plan with respect to the geographic area or action  
16 applicable to the species to which the permit or agreement  
17 applies.

18       “(g) *NONDELEGATION OF DUTIES.*—The Secretary  
19 may not delegate the authority to make the final decision  
20 to select a conservation objective, issue a conservation plan,  
21 or designate critical habitat under this section.

22       “(h) *REVIEW OF CONSERVATION PLANS.*—

23               “(1) *DEADLINES.*—The Secretary shall review  
24 each conservation plan and the conservation objective  
25 on which it is based before the end of the 5-year pe-

1        *riod that begins on the date of publication of the con-*  
2        *servation plan, and before the end of each 5- year pe-*  
3        *riod thereafter.*

4                *“(2) REVISIONS.—The Secretary shall revise a*  
5        *conservation plan or the conservation objective on*  
6        *which it is based if the Secretary determines—*

7                *“(A) through a 5-year review under para-*  
8        *graph (1), that the conservation plan or con-*  
9        *servation objective does not meet the require-*  
10        *ments of this section; or*

11                *“(B) at any time—*

12                *“(i) that funding is not available for*  
13        *the implementation of a specific conserva-*  
14        *tion measure that is integral to the con-*  
15        *servation plan or that a more cost-effective*  
16        *alternative exists for a specific conservation*  
17        *measure that is integral to the conservation*  
18        *plan; or*

19                *“(ii) on the basis of scientific or com-*  
20        *mercial data that were not available during*  
21        *the development of the conservation objective*  
22        *or conservation plan, that the conservation*  
23        *objective is not achievable or the conserva-*  
24        *tion plan will not achieve the conservation*  
25        *objective.*

1           “(3) *NO REOPENING OF CONSULTATIONS.*—*Sec-*  
2           *tion 7 consultations shall not be reopened as a result*  
3           *of modifications to a conservation plan under para-*  
4           *graph (2).”.*

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

6           *(a) CRITICAL HABITAT DESIGNATION.*—*Section 5, as*  
7           *added by section 501 of this Act and as amended by sections*  
8           *502 and 503 of this Act, is amended by adding at the end*  
9           *the following new subsections:*

10           “(i) *CRITICAL HABITAT DESIGNATION.*—

11           “(1) *DESIGNATION.*—*The Secretary—*

12           “(A) *may, by regulation and to the extent*  
13           *prudent and determinable, designate critical*  
14           *habitat of a species determined to be an endan-*  
15           *gered species or threatened species that meets the*  
16           *requirements of paragraph (3) utilizing the Na-*  
17           *tional Biodiversity Reserve established under sec-*  
18           *tion 5A(a) as a first priority;*

19           “(B) *may by regulation and to the extent*  
20           *prudent and determinable, revise a critical habi-*  
21           *tat designation on determining that the critical*  
22           *habitat does not meet the requirements of para-*  
23           *graph (3); and*

24           “(C) *shall, by regulation and upon receiv-*  
25           *ing a written request from a non-Federal person*

1           *requesting a review of the critical habitat des-*  
2           *ignation on such person's private property, re-*  
3           *vising a critical habitat designation on such pri-*  
4           *vate property on determining that the critical*  
5           *habitat does not meet the requirements of para-*  
6           *graph (3).*

7           *Designation or revision of critical habitat shall not*  
8           *result in reopening or reinitiation of consultations on*  
9           *Federal actions pursuant to section 7.*

10           “(2) *DEADLINES FOR DESIGNATION.*—*Any pro-*  
11           *posed regulation and any final regulation to des-*  
12           *ignate or revise critical habitat shall be published not*  
13           *later than 12 months and 18 months, respectively,*  
14           *after the date on which the affected species is deter-*  
15           *mined to be an endangered species or a threatened*  
16           *species, or on which the Secretary receives a written*  
17           *request to review a critical habitat designation under*  
18           *paragraph (1)(C).*

19           “(3) *BASIS FOR DESIGNATION.*—*The designation*  
20           *of critical habitat, and any revision of the designa-*  
21           *tion, shall be made on the basis of the best available*  
22           *scientific and commercial data after taking into con-*  
23           *sideration the economic impact, and any other rel-*  
24           *evant impact, of designating any particular area as*  
25           *critical habitat and of the determination that the af-*

1 *ected species is an endangered species or threatened*  
2 *species. The Secretary shall exclude any area from*  
3 *critical habitat—*

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

6 *“(B) which is not necessary to achieve the*  
7 *conservation objective for the affected species es-*  
8 *tablished pursuant to subsection (b);*

9 *“(C) for which the Secretary determines*  
10 *that the benefits of the exclusion of the area from*  
11 *designation as critical habitat outweigh the bene-*  
12 *fits of designation, unless the Secretary deter-*  
13 *mines, on the basis of the best available scientific*  
14 *and commercial data, that the failure to des-*  
15 *ignate the area as critical habitat will result in*  
16 *the extinction of the affected species; or*

17 *“(D) in the case of property owned by a*  
18 *non-Federal person, where the owner thereof has*  
19 *not given written consent to the designation, has*  
20 *withdrawn such consent in writing, or has not*  
21 *been compensated as provided in section 19.*

22 *“(4) PROCEDURE FOR DESIGNATION.—In the*  
23 *Federal Register notice containing the proposed regu-*  
24 *lation to designate critical habitat, the Secretary shall*  
25 *describe the economic impacts and other relevant im-*

1        *pacts that are to be considered, and the benefits that*  
2        *are to be weighed, under paragraph (3) in designat-*  
3        *ing an area as critical habitat, along with maps*  
4        *showing the location of the area to be designated as*  
5        *critical habitat. The Secretary shall submit the de-*  
6        *scription, and the documentation supporting the de-*  
7        *scription, to the Bureau of Labor Statistics of the De-*  
8        *partment of Labor. The Commissioner of Labor Sta-*  
9        *tistics shall submit written comments during the com-*  
10       *ment period on the proposed regulation. The Sec-*  
11       *retary shall hold at least one public hearing in each*  
12       *State on the proposed rule in which critical habitat*  
13       *is designated for a species. In issuing any final regu-*  
14       *lation designating critical habitat, the Secretary shall*  
15       *respond separately and fully to each comment.*

16            *“(5) JUDICIAL REVIEW OF CRITICAL HABITAT*  
17        *DESIGNATION.—The decision whether to designate*  
18        *critical habitat shall be subject to a de novo judicial*  
19        *review with the court determining whether the deci-*  
20        *sion is supported by a preponderance of the evidence.*

21            *“(j) JUDICIAL REVIEW OF CONSERVATION OBJECTIVE*  
22        *OR PLAN.—The standard for judicial review of any decision*  
23        *of the Secretary, or a Federal agency pursuant to this sec-*  
24        *tion shall be whether the decision is arbitrary, capricious,*

1 *an abuse of discretion, or otherwise not in accordance with*  
2 *law.*

3       “(k) *CONSERVATION PLANS FOR FOREIGN SPECIES.*—  
4 *In developing conservation objectives and conservation*  
5 *plans under this section, the Secretary shall, in regard to*  
6 *foreign species—*

7               “(1) *act consistently with the Convention; and*

8               “(2) *cooperate and support the conservation*  
9 *strategy adopted for that species by any foreign na-*  
10 *tion in which the species occurs.”.*

11       “(b) *CONFORMING AMENDMENTS.*—*Section 4(b)(6) (16*  
12 *U.S.C. 1533(b)(6)) is amended—*

13               “(1) *in subparagraph (B)(i) by striking “or revi-*  
14 *sion concerned”;*

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

18               “(3) *by striking subparagraph (C).*

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

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

1           “(7)(A) *The term ‘critical habitat’ for an endan-*  
2           *gered species or a threatened species means the spe-*  
3           *cific areas which are within the geographic area*  
4           *found to be occupied by a species at the time the spe-*  
5           *cies is determined to be an endangered species or a*  
6           *threatened species in accordance with section 4 and*  
7           *which contain such physical or biological features*  
8           *as—*

9                     “(i) *are essential to the persistence of the*  
10            *species over the 50-year period beginning on the*  
11            *date the regulation designating the critical habi-*  
12            *tat, or any revision of the regulation, is promul-*  
13            *gated; and*

14                     “(ii) *require special management consider-*  
15            *ations or protection.*

16           “(B) *Except in those circumstances determined*  
17            *by the Secretary, critical habitat shall not include the*  
18            *entire geographical area occupied by the threatened*  
19            *species or endangered species.”.*

20 **SEC. 505. RECOGNITION OF CAPTIVE PROPAGATION AS**  
21                     **MEANS OF RECOVERY.**

22           *Section 5, as added by section 501 of this Act and as*  
23            *amended by sections 502, 503, and 504 of this Act, is*  
24            *amended by adding at the end the following new subsection:*

1       “(l) *RECOGNITION OF CAPTIVE PROPAGATION AS*  
2 *MEANS OF CONSERVATION.*—

3               “(1) *IN GENERAL.*—*In carrying out this Act, the*  
4 *Secretary shall recognize to the maximum extent*  
5 *practicable, and may utilize, captive propagation as*  
6 *a means of protecting or conserving an endangered*  
7 *species or a threatened species.*

8               “(2) *CAPTIVE PROPAGATION GRANTS.*—*The Sec-*  
9 *retary may, subject to appropriations therefor, pro-*  
10 *vide annual grants to non-Federal persons to fund*  
11 *captive propagation programs for the purpose of pro-*  
12 *tecting or conserving any species that is determined*  
13 *under section 4 to be an endangered species or a*  
14 *threatened species, if the Secretary determines that*  
15 *such a program contributes to enhancement of the*  
16 *population of the species.”.*

17 **SEC. 506. INTRODUCTION OF SPECIES.**

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

19               (1) by amending paragraph (2)(B) to read as  
20 follows:

21               “(B) Before authorizing the release of any population  
22 under subparagraph (A), the Secretary shall by regula-  
23 tion—

24               “(i) identify the population and the precise  
25 boundaries of the geographic area for the release and

1 *determine, on the basis of the best available informa-*  
2 *tion, whether the release is in the public interest,*  
3 *whether or not such population is essential to the con-*  
4 *tinued existence of an endangered species or a threat-*  
5 *ened species; and*

6 *“(ii) in the case of a release of a species of pred-*  
7 *atory mammal in a unit of the National Park System*  
8 *or the National Wildlife Refuge System—*

9 *“(I) require that if the species enters private*  
10 *property, measures shall be taken to remove the*  
11 *species from the property and protect the safety*  
12 *and welfare of the public and domestic animals,*  
13 *including livestock; and*

14 *“(II) provide funding for such measures, in-*  
15 *cluding compensation for diminution of property*  
16 *values pursuant to section 19 of this Act.”;*

17 *(2) in paragraph (2)(C)—*

18 *(A) in clause (i) by striking “and” after the*  
19 *semicolon; and*

20 *(B) by striking clause (ii) and inserting the*  
21 *following:*

22 *“(ii) for the purposes of sections 4(d) and*  
23 *9(a)(1)(B), any member of an experimental popu-*  
24 *lation found outside the geographic area in which the*  
25 *population is released shall not be treated as a threat-*

1        *ened species if the member poses a threat to the wel-*  
2        *fare of the public; and*

3            *“(iii) critical habitat shall not be designated*  
4        *under this Act or if designated prior to the Endan-*  
5        *gered Species Conservation and Management Act of*  
6        *1995, shall be removed from any non-Federal land,*  
7        *for any experimental population determined under*  
8        *subparagraph (B) to be not essential to the continued*  
9        *existence of a species.”;*

10           *(3) by adding at the end of paragraph (2) the*  
11        *following new subparagraph:*

12           *“(D) The Secretary shall determine under subpara-*  
13        *graph (B) that a population is not essential to the contin-*  
14        *ued existence of an endangered species or threatened species,*  
15        *unless the Secretary determines on the basis of the best*  
16        *available scientific and commercial data that the loss of one*  
17        *or more of the members of the population will result in the*  
18        *extinction of the species.”;*

19           *(4) by redesignating paragraph (3) as para-*  
20        *graph (6); and*

21           *(5) by inserting after paragraph (2) the follow-*  
22        *ing new paragraphs:*

23           *“(3) REQUIREMENTS FOR RELEASES.—In au-*  
24        *thorizing the release of a population under paragraph*  
25        *(2), the Secretary shall require that—*

1           “(A) to the maximum extent practicable, the  
2 release occurs only in a unit of the National  
3 Park System or the National Wildlife Refuge  
4 System;

5           “(B) a release outside a unit occurs only in  
6 an area that has been identified as a candidate  
7 site for release of the population in a conserva-  
8 tion plan for the species;

9           “(C) in the case of a release outside a unit,  
10 measures to protect the safety and welfare of the  
11 public and domestic animals and the funding for  
12 the measures are identified in the regulations au-  
13 thorizing the release and are implemented;

14           “(D) the regulations authorizing the release  
15 identify precisely the geographic area for the re-  
16 lease;

17           “(E) a release on non-Federal land occurs  
18 only with the written consent of the owner of the  
19 land;

20           “(F) the regulations authorizing the release  
21 include measurable reintroduction goals to re-  
22 store viable populations only within the specific  
23 geographic area identified for release in the regu-  
24 lations;

1           “(G) the regulations authorizing the release  
2           obligate the Secretary to remove members of the  
3           population from non-Federal land at the written  
4           request of the landowner and within a reasonable  
5           period of time after receiving such a request, not  
6           to exceed 90 days; and

7           “(H) the regulations authorizing the release  
8           of a population that is determined under this  
9           paragraph to not be essential to the survival of  
10          a species shall provide that, notwithstanding any  
11          other provision of this Act, a taking of a member  
12          of such population shall not be treated as a tak-  
13          ing if it is—

14                   “(i) not knowing,

15                   “(ii) not willful, or

16                   “(iii) incidental to, and not the pur-  
17                   pose of, otherwise lawful activity.

18           “(4) COMPLIANCE WITH STATE LAW.—In author-  
19           izing any release under paragraph (2), the Secretary  
20           shall ensure that the release does not conflict with the  
21           laws of affected States relating to the species to be re-  
22           leased.

23           “(5) DETERMINATION REGARDING POPULATIONS  
24           AUTHORIZED BEFORE EFFECTIVE DATE OF ENDAN-  
25           GERED SPECIES CONSERVATION AND MANAGEMENT

1     *ACT OF 1995.—(A) For each population of a species*  
2     *that the Secretary, before the effective date of the En-*  
3     *dangered Species Conservation and Management Act*  
4     *of 1995, authorized the release of in a geographical*  
5     *area separate from the other populations of the spe-*  
6     *cies, the Secretary shall determine by regulation*  
7     *whether or not the population is essential to the con-*  
8     *tinued existence of the species.*

9             *“(B) If the Secretary receives a written request*  
10     *for the issuance of a regulation under subparagraph*  
11     *(A) for a population for which the Secretary has not*  
12     *issued such a regulation, the Secretary shall promptly*  
13     *issue such a regulation by not later than 180 days*  
14     *after receiving the request.”.*

15     **SEC. 507. CONSERVING THREATENED SPECIES.**

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

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

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

11 (b) CONFORMING AMENDMENTS.—Section 4 (16 U.S.C.  
12 1533) is amended—

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

14 (2) by redesignating subsections (g), (h), and (i)  
15 in order as subsections (f), (g), and (h).

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

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

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

3       **SEC. 508. DELEGATION OF AUTHORITY TO STATES.**

4       Section 5 is further amended by adding at the end the  
5       following new subsection:

6       “(n) *DELEGATION TO STATE.*—(1) *At the request of*  
7       *a State, the Secretary shall delegate either under a coopera-*  
8       *tive management plan or a delegation agreement as pro-*  
9       *vided in section 6, to the State the authority to develop and*  
10       *implement conservation objectives and plans for a species*  
11       *or group of species determined to be endangered species or*  
12       *threatened species, unless the Secretary determines that the*  
13       *State lacks authority and capability to carry out the re-*  
14       *quirements of this Act. If the Secretary determines that the*  
15       *State lacks authority and capability, the Secretary shall no-*  
16       *tify the Governor of the State of the specific concerns and*  
17       *specify measures necessary to address those concerns and*  
18       *provide the Governor with the opportunity to take the ac-*  
19       *tions necessary to address those concerns.*

20       “(2) *The Secretary shall monitor the actions of the*  
21       *State to develop and implement a conservation objective*  
22       *and conservation plan. The Secretary shall assist the States*  
23       *in coordinating their actions with other affected States*  
24       *where the species may occur.*

1       “(3) If the Secretary determines that the State is not  
2 in compliance with this Act, the cooperative management  
3 agreement, or the delegation agreement, the Secretary shall  
4 so notify the State and shall specify the areas of noncompli-  
5 ance. The States shall have 60 days in which to respond  
6 and in which to come into compliance. If the State fails  
7 to adequately respond or to come into compliance, the Sec-  
8 retary is authorized to resume responsibility for the develop-  
9 ment and implementation of the conservation objective and  
10 plan.”.

## 11                   **TITLE VI—HABITAT** 12                   **PROTECTIONS**

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

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

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

17       “(a) *ESTABLISHMENT OF NATIONAL BIOLOGICAL DI-*  
18 *VERSITY RESERVE.—*

19               “(1) *IN GENERAL.—*There is hereby established a  
20 *National Biological Diversity Reserve (hereinafter in*  
21 *this Act referred to as the ‘Reserve’). The Reserve shall*  
22 *be composed of units of Federal and State lands des-*  
23 *ignated in accordance with paragraph (2) and man-*  
24 *aged in accordance with paragraph (3).*

1           “(2) *DESIGNATION OF RESERVE UNITS.*—(A) *Not*  
2           *later than 18 months after the date of enactment of*  
3           *the Endangered Species Conservation and Manage-*  
4           *ment Act of 1995, the Secretary of the Interior and*  
5           *the Secretary of Agriculture shall designate to the Re-*  
6           *serve by regulation those units of the national con-*  
7           *servation systems which are within the jurisdiction of*  
8           *the Secretary concerned and which the Secretary de-*  
9           *termines would contribute to biological diversity in*  
10           *accordance with the provisions of this Act. The term*  
11           *‘national conservation systems’ means wholly feder-*  
12           *ally owned lands within the National Park System,*  
13           *the National Wildlife Refuge System, or the National*  
14           *Wilderness Preservation System, and wild segments of*  
15           *rivers within the National Wild and Scenic Rivers*  
16           *System.*

17           “(B) *The Secretary of the Interior shall—*

18           “(i) *designate to the Reserve by regulation*  
19           *a unit of State-owned lands if such unit is nomi-*  
20           *nated for designation by the Governor of the*  
21           *State and is managed under State law in ac-*  
22           *cordance with paragraph (3);*

23           “(ii) *designate to the Reserve by regulation*  
24           *privately owned land that is nominated for des-*  
25           *ignation by the owner of the land, and shall re-*

1           *move such land from the Reserve if the owner re-*  
2           *quests removal;*

3           *“(iii) remove from the Reserve by regulation*  
4           *any unit designated pursuant to clause (i) which*  
5           *the Secretary finds is not managed under State*  
6           *law in accordance with paragraph (3); and*

7           *“(iv) remove from the Reserve any State-*  
8           *owned lands at the request of the Governor of*  
9           *that State.*

10          *“(C) Designation of a Reserve unit shall not af-*  
11          *fect any valid existing permit, contract, license, right,*  
12          *right-of-way, access, interest in land, right to use or*  
13          *receive water, or property right.*

14          *“(3) MANAGEMENT OF THE RESERVE.—(A) Each*  
15          *unit of the Reserve may have as a goal the conserva-*  
16          *tion of biological diversity. Such goal shall be supple-*  
17          *mentary and secondary to other purposes established*  
18          *for such unit by or pursuant to any provision of law*  
19          *applicable to such unit. Management for biological di-*  
20          *versity shall not be inconsistent with or diminish*  
21          *other unit purposes, other provisions of law applica-*  
22          *ble to such unit, and activities which occur or are au-*  
23          *thorized to occur on such unit.*

24          *“(B) The manager of each Reserve unit should*  
25          *consistent with paragraph (4) utilize his authority to*

1 *use active management and recovery measures, in-*  
2 *cluding those specified in section 5(b)(2)(A)(vi), and*  
3 *shall conduct a survey to determine the populations*  
4 *of species within the Reserve.*

5 *“(C) Nothing in this section shall—*

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

10 *“(ii) affect the laws, rules, and regulations*  
11 *pertaining to hunting, fishing, and other lawful*  
12 *wildlife harvest under existing State and Federal*  
13 *laws and Indian treaties.*

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

20 *“(4) OTHER FEDERAL LANDS.—Nothing in this*  
21 *Act shall be construed as limiting the authority of the*  
22 *Secretary of the Interior or the Secretary of Agri-*  
23 *culture to take such actions as are necessary and au-*  
24 *thorized by other law to protect, maintain, and en-*  
25 *hance biological diversity on other Federal lands not*

1       *designated to the Reserve except that, before taking*  
2       *any such action, the Secretary concerned shall make*  
3       *a finding based on the best available scientific and*  
4       *commercial data, that the biological diversity for*  
5       *which such action is proposed is not protected, main-*  
6       *tained, or enhanced in whole or substantial part on*  
7       *any unit of the Reserve. Such finding shall be pub-*  
8       *lished, along with the reasons therefor in the Federal*  
9       *Register.”.*

10 **SEC. 602. LAND ACQUISITION.**

11       *Section 5A, as redesignated by section 501 of this Act*  
12       *and as amended by section 601 of this Act, is amended by*  
13       *adding at the end the following new subsection:*

14       “(b) *LAND ACQUISITION.—*

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

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

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

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

9           “(2) *AVAILABILITY OF FUNDS FOR ACQUISITION*  
10          *OF LANDS, WATER, ETC.—Funds made available pur-*  
11          *suant to the Land and Water Conservation Fund Act*  
12          *of 1965 (16 U.S.C. 4601–4 et seq.) and funds made*  
13          *available under section 13(c)(4) may be used for the*  
14          *purpose of acquiring or leasing lands, waters, or in-*  
15          *terests therein under this subsection.”.*

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

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

21          “(c) *EXCHANGES.—*

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

1       *jurisdiction of each Secretary (other than units of the*  
2       *National Park System and units of the National Wil-*  
3       *derness Preservation System) for lands, waters, or in-*  
4       *terests in land or water that are not in Federal own-*  
5       *ership and that are affected by this Act.*

6               “(2) *TIMING OF EXCHANGES.*—*An exchange*  
7       *under this subsection may be made if the Secretary*  
8       *of the Interior or the Secretary of Agriculture deter-*  
9       *mines, without a formal appraisal, that the lands to*  
10       *be exchanged are of approximately equal value after*  
11       *allowing the State in which the land being exchanged*  
12       *is located 30 days in which to comment on the ex-*  
13       *change.*

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

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

1           “(5) *APPLICABLE LAW.*—*The Secretary of the In-*  
2           *terior and the Secretary of Agriculture shall process*  
3           *exchanges under this subsection in accordance with*  
4           *applicable laws that are consistent with this sub-*  
5           *section.*

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

14          “(e) *IMPACTS ON ADJACENT PROPERTIES.*—*For any*  
15          *land or water acquired by the Secretary or the Secretary*  
16          *of Agriculture by purchase, exchange, lease, donation or oth-*  
17          *erwise under this section, the Secretary or Secretary of Ag-*  
18          *riculture shall ensure that such purchase, exchange, lease,*  
19          *donation, or other transfer shall not supersede, abrogate, or*  
20          *otherwise impair existing easements, rights-of-way, fencing,*  
21          *water sources, water delivery lines or ditches, and current*  
22          *uses of adjacent land.”.*

1 **TITLE VII—STATE AUTHORITY**  
2 **TO PROTECT ENDANGERED**  
3 **AND THREATENED SPECIES**

4 **SEC. 701. STATE AUTHORITY.**

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

8 “(c) *STATE AUTHORITY TO PROTECT ENDANGERED*  
9 *AND THREATENED SPECIES.*—

10 “(1) *DELEGATION OF AUTHORITY.*—In further-  
11 *ance of the purposes of this Act, the Secretary may*  
12 *delegate to a State which establishes and maintains*  
13 *an adequate program for the conservation of endan-*  
14 *gered species and threatened species the authority con-*  
15 *tained in this Act with respect to species that are*  
16 *residents in the State. Within 120 days after the Sec-*  
17 *retary receives a certified copy of such a proposed*  
18 *State program, the Secretary shall make a determina-*  
19 *tion whether such program will be adequate to pro-*  
20 *vide protections to endangered species and threatened*  
21 *species in such State. In order for a State program*  
22 *to be determined to be an adequate program for the*  
23 *conservation of endangered species and threatened*  
24 *species, the Secretary must find that under the State*  
25 *program—*

1           “(A)(i) authority resides in the State agen-  
2           cy to conserve resident species that are deter-  
3           mined by the State agency or the Secretary to be  
4           endangered species or threatened species;

5           “(ii) the State agency has established ac-  
6           ceptable conservation programs, consistent with  
7           the purposes and policies of this Act, for all resi-  
8           dent species in the State which are determined  
9           by the Secretary to be endangered species or  
10          threatened species or for those species or taxo-  
11          nomic groups of species which the State proposes  
12          to cover under its program, and has furnished a  
13          copy of such plan and program together with all  
14          pertinent details, information, requested to the  
15          Secretary;

16          “(iii) the State agency is authorized to con-  
17          duct investigations to determine the status and  
18          requirements for survival of resident endangered  
19          species and threatened species;

20          “(iv) an agency of the State is authorized to  
21          establish programs, including the acquisition of  
22          land or aquatic habitat or interests therein, for  
23          the conservation of resident endangered species or  
24          threatened species;

1           “(v) provision is made for public participa-  
2           tion in designating resident species as endan-  
3           gered species or threatened species; and

4           “(vi) the State agency has initiated or en-  
5           couraged voluntary or incentive based programs  
6           to further the conservation objectives for the spe-  
7           cies; or

8           “(B)(i) the requirements set forth in clauses  
9           (iii), (iv), and (v) of subparagraph (A) are com-  
10          plied with, and

11          “(ii) plans are included under which imme-  
12          diate attention will be given to those resident  
13          species which are determined by the Secretary or  
14          the State agency to be endangered species or  
15          threatened species and which the Secretary and  
16          the State agency agree are most urgently in need  
17          of conservation programs.

18          “(2) *PROHIBITIONS NOT AFFECTED.*—A delega-  
19          tion to a State whose program is determined adequate  
20          under paragraph (1) shall not affect the applicability  
21          of prohibitions set forth in or authorized pursuant to  
22          section 4(d) or section 9(a)(1) or (2) with respect to  
23          the taking of any resident endangered species or  
24          threatened species in the State.

25          “(d) *ALLOCATION OF FUNDS.*—

1           “(1) *FINANCIAL ASSISTANCE.*—(A) *The Secretary*  
2           *may provide financial assistance to any State,*  
3           *through its respective State agency, which has entered*  
4           *into a cooperative management agreement under sub-*  
5           *section (b) or received authority under a delegation*  
6           *pursuant to subsection (c) of this section to assist in*  
7           *development of programs for the conservation of en-*  
8           *dangered species and threatened species or to assist in*  
9           *monitoring the status of candidate species pursuant*  
10           *to subparagraph (C) of section 4(b)(3) and recovered*  
11           *species pursuant to section 4(f). The Secretary shall*  
12           *allocate each annual appropriation made in accord-*  
13           *ance with subsection (i) to such States based on con-*  
14           *sideration of—*

15                   “(i) *the international commitments of the*  
16                   *United States to protect endangered species or*  
17                   *threatened species;*

18                   “(ii) *the readiness of a State to proceed*  
19                   *with a conservation program consistent with the*  
20                   *objectives and purposes of this Act;*

21                   “(iii) *the number of endangered species and*  
22                   *threatened species within a State;*

23                   “(iv) *the potential for restoring endangered*  
24                   *species and threatened species within a State;*

1           “(v) the relative urgency to initiate a pro-  
2           gram to restore and protect an endangered spe-  
3           cies or threatened species in terms of survival of  
4           the species;

5           “(vi) the importance of monitoring the sta-  
6           tus of candidate species within a State to pre-  
7           vent a significant risk to the well-being of any  
8           such species; and

9           “(vii) the importance of monitoring the sta-  
10          tus of recovered species within a State to assure  
11          that such species do not return to the point at  
12          which the measures provided pursuant to this  
13          Act are again necessary.

14          “(B) So much of the annual appropriation made  
15          in accordance with subsection (i) allocated for obliga-  
16          tion to any State for any fiscal year as remains un-  
17          obligated at the close thereof may be made available  
18          to that State until the close of the succeeding fiscal  
19          year. Any amount allocated to any State which is un-  
20          obligated at the end of the period during which it is  
21          available for expenditure may be made available for  
22          expenditure by the Secretary in conducting programs  
23          under this section.

24          “(2) CONTENTS OF DELEGATION AGREEMENT.—  
25          Such delegation shall provide for—

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

3           “(B) the benefits that are expected to be de-  
4           rived in connection with the conservation of en-  
5           dangered species or threatened species;

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

7           “(D) the share of such costs to be borne by  
8           the Federal Government and by the States; ex-  
9           cept that—

10           “(i) the Federal share of such program  
11           costs shall not exceed 75 percent of the esti-  
12           mated program cost stated in the agree-  
13           ment; and

14           “(ii) the Federal share may be in-  
15           creased to 90 percent whenever two or more  
16           States having a common interest in one or  
17           more endangered species or threatened spe-  
18           cies, the conservation of which may be en-  
19           hanced by cooperation of such States, enter  
20           jointly into an agreement with the Sec-  
21           retary.

22           The Secretary may, in the Secretary’s discretion, and  
23           under such rules and regulations as he may prescribe,  
24           advance funds to the State for financing the United  
25           States pro rata share agreed upon in the cooperative

1       *agreement. For the purposes of this section, the non-*  
2       *Federal share may, in the discretion of the Secretary,*  
3       *be in the form of money or real property, the value*  
4       *of which will be determined by the Secretary, whose*  
5       *decision shall be final.*

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

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

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

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

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

1        *or regulation which is intended to conserve migratory,*  
 2        *resident, or introduced fish or wildlife, or to permit*  
 3        *or prohibit sale of such fish or wildlife. Any State law*  
 4        *or regulation respecting the taking of an endangered*  
 5        *species or threatened species may be more restrictive*  
 6        *than the exemptions or permits provided for in this*  
 7        *Act or in any regulation which implements this Act.”.*

8        *(b) CONFORMING AMENDMENT.—Section 6(g)(2)(A)*  
 9        *(16 U.S.C. 1535(g)(2)(A)) is amended to read as follows:*

10            *“(A) to which the Secretary has delegated au-*  
 11            *thority under subsection (c); or”.*

12        *(c) FACA.—Section 6 (16 U.S.C. 1535), as amended*  
 13        *by sections 103 and 105 of this Act, is further amended*  
 14        *by adding at the end the following new subsection:*

15            *“(l) FACA.—Consultation with States regarding this*  
 16        *section shall not be subject to the Federal Advisory Commit-*  
 17        *tee Act (5 U.S.C. App.).”.*

18        **SEC. 702. STATE PROGRAMS AFFECTED BY THE CONVEN-**  
 19            **TION.**

20        *Section 8A (16 U.S.C. 1537a), as amended by section*  
 21        *207(b) of this Act, is amended by adding at the end the*  
 22        *following new subsection:*

23            *“(h) ISSUANCE OF PERMITS FOR EXPORT.—*

24            *“(1) COMPLIANCE WITH STATE RECOMMENDA-*  
 25            *TION.—In any instance in which a State has a pro-*

1 *gram for management of a native species which is the*  
2 *subject of a request for an export permit under the*  
3 *Convention, the Secretary shall act in accordance*  
4 *with the recommendation of the State unless the Sec-*  
5 *retary makes a finding and publishes a notice in the*  
6 *Federal Register that scientific evidence justifies a*  
7 *conclusion contrary to the advice of the State.*

8 *“(2) APPEAL.—The State which is the subject to*  
9 *such a finding, or any person in that State directly*  
10 *affected because of inability to obtain a permit, may*  
11 *appeal the finding to an Administrative Law Judge*  
12 *or a court. The burden shall be on the Secretary to*  
13 *show that the evidence supports a finding contrary to*  
14 *the recommendation of the State.”.*

15 **SEC. 703. COLLABORATIVE RULEMAKING WITH THE STATES.**

16 *Section 6(h) (16 U.S.C. 1535(h)) is amended to read*  
17 *as follows:*

18 *“(h) RULEMAKING AUTHORITY AND PROCEDURES.—*  
19 *The Secretary is authorized to promulgate such regulations*  
20 *as may be appropriate to carry out the provisions of this*  
21 *subsection, subject to the following requirements:*

22 *“(1) The Secretary shall not propose a rule,*  
23 *under the authority of this Act, that has application*  
24 *in a State, until the Secretary and the State have*  
25 *consulted and the State has been given a meaningful*

1        *opportunity to assist in the development of the rule,*  
2        *and shall seek to integrate into the proposed rule the*  
3        *recommendations of the State, including recommenda-*  
4        *tions with regard to field practices.*

5            *“(2) The Secretary shall establish procedures for*  
6        *rulemaking that include the applicable State within*  
7        *60 days after the effective date of the Endangered*  
8        *Species Conservation and Management Act of 1995. If*  
9        *the rule will affect more than 1 State, the rule shall*  
10       *provide a means by which the States or their rep-*  
11       *resentatives may participate in the rulemaking.*

12           *“(3) Where the term ‘in cooperation with the*  
13        *States’ is used in this Act, the requirements of this*  
14        *subsection shall apply.”.*

15            **TITLE VIII—FUNDING OF**  
16            **CONSERVATION MEASURES**

17        **SEC. 801. AUTHORIZING INCREASED APPROPRIATIONS.**

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

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

21           *“(a) IN GENERAL.—In addition to the amounts au-*  
22        *thorized to be appropriated under section 6(i) and sub-*  
23        *sections (b) through (e), there are authorized to be appro-*  
24        *priated—*

1           “(1) to the Department of the Interior to carry  
2           out the duties of the Secretary of the Interior under  
3           this Act \$110,000,000 for fiscal year 1996,  
4           \$120,000,000 for fiscal year 1997, \$130,000,000 for  
5           fiscal year 1998, \$140,000,000 for fiscal year 1999,  
6           \$150,000,000 for fiscal year 2000, and \$160,000,000  
7           for fiscal year 2001;

8           “(2) to the Department of Commerce to carry out  
9           the duties of the Secretary of Commerce under this  
10          Act \$15,000,000 for fiscal year 1996, \$20,000,000 for  
11          fiscal year 1997, \$25,000,000 for fiscal year 1998,  
12          \$30,000,000 for fiscal year 1999, \$35,000,000 for fis-  
13          cal year 2000, and \$40,000,000 for fiscal year 2001;  
14          and

15          “(3) to the Department of Agriculture to carry  
16          out the duties of the Secretary of Agriculture under  
17          this Act \$4,000,000 for each of fiscal years 1996  
18          through 2001.

19          “(b) COOPERATIVE MANAGEMENT AGREEMENTS.—  
20          There are authorized to be appropriated to the Department  
21          of the Interior to carry out section 16(b)(4), \$20,000,000  
22          for each of fiscal years 1996 through 2001, to remain avail-  
23          able until expended.

24          “(c) CONVENTION IMPLEMENTATION.—There are au-  
25          thorized to be appropriated to the Department of the Inte-

1 rior to carry out section 8A(e) \$1,000,000 for each of fiscal  
 2 years 1996 through 2001, to remain available until ex-  
 3 pended.

4 “(d) *NON-FEDERAL CONSERVATION PLANNING.*—  
 5 There are authorized to be appropriated to the Department  
 6 of the Interior to carry out section 16(b)(3) \$20,000,000 for  
 7 each of fiscal years 1996 through 2001, to remain available  
 8 until expended.

9 “(e) *HABITAT CONSERVATION GRANTS.*—There are au-  
 10 thorized to be appropriated to the Department of the Inte-  
 11 rior to provide habitat conservation grants under section  
 12 6(k) \$20,000,000 for each of fiscal years 1996 though 2001,  
 13 to remain available until expended.”.

14 **SEC. 802. FUNDING OF FEDERAL MANDATES.**

15 Section 16 is amended to read as follows:

16 **“SEC. 16. FEDERAL COST-SHARING REQUIREMENTS FOR**  
 17 **CONSERVATION OBLIGATIONS.**

18 “(a) *DIRECT COSTS DEFINED.*—In this section, the  
 19 term ‘direct costs’ means—

20 “(1) expenditures on labor, material, facilities,  
 21 utilities, equipment, supplies and other resources  
 22 which are necessary to undertake a specific conserva-  
 23 tion measure;

24 “(2) increased purchase power costs and lost rev-  
 25 enues caused by changes in the operation of a hydro-

1 *power system from which the non-Federal person or*  
2 *Federal power marketing administration markets*  
3 *power to meet a specific conservation measure; and*

4 *“(3) other reimbursable costs specifically identi-*  
5 *fied by the Secretary as directly related to the per-*  
6 *formance of a specific conservation measure.*

7 *“(b) COST-SHARING.—*

8 *“(1) CONSERVATION PLANS.—For any non-Fed-*  
9 *eral person or Federal power marketing administra-*  
10 *tion, the Secretary shall pay 50 percent of any direct*  
11 *costs that result from the compliance by the person or*  
12 *administration mandated by a conservation plan is-*  
13 *ssued under section 5 or any conservation measure*  
14 *that provides protection to a listed species under a*  
15 *plan developed under the Pacific Northwest Electric*  
16 *Power Planning and Conservation Act (16 U.S.C.*  
17 *839 et seq.) including a plan that provides protection*  
18 *to a larger population unit of the same listed species.*

19 *“(2) CONSULTATION REQUIREMENTS.—For any*  
20 *non-Federal person or Federal power marketing ad-*  
21 *ministration, the Secretary shall pay 50 percent of*  
22 *direct costs that result solely from requirements im-*  
23 *posed by the Secretary on the person or marketing ad-*  
24 *ministration under section 7.*

1           “(3) *INCIDENTAL TAKE PERMITS.*—*For any non-*  
2 *Federal person issued an incidental take permit*  
3 *under section 10, the Secretary shall pay to such per-*  
4 *son 50 percent of the direct costs of preparing the ap-*  
5 *plication for the permit and implementing the terms*  
6 *and conditions of the permit.*

7           “(4) *COOPERATIVE MANAGEMENT AGREE-*  
8 *MENTS.*—*The Secretary shall pay 50 percent of the*  
9 *direct costs of preparing and implementing the terms*  
10 *and conditions of a cooperative management agree-*  
11 *ment under section 6(b) incurred by a party to the*  
12 *agreement and any costs incurred by any other non-*  
13 *Federal person or Federal power marketing adminis-*  
14 *tration subject to the terms of such agreement.*

15           “(c) *METHOD OF COST-SHARING.*—

16           “(1) *IN GENERAL.*—*Except as provided in para-*  
17 *graph (2), the Secretary may make a contribution re-*  
18 *quired under subsection (b) by—*

19                   “(A) *providing a habitat reserve grant*  
20 *under section 6(b)(14);*

21                   “(B) *acquiring, from or for the party to the*  
22 *cost-share, land or an interest in land as pro-*  
23 *vided in section 5A; or*

24                   “(C) *providing appropriated funds.*

1           “(2) *COST-SHARE PAYMENT FOR FEDERAL*  
2           *POWER MARKETING ADMINISTRATIONS AND OTHER*  
3           *STATE OR LOCAL GOVERNMENTAL ENTITIES.*—*The*  
4           *Secretary shall make a contribution under subsection*  
5           *(b) to a Federal power marketing administration or*  
6           *any other State or local governmental entity by pro-*  
7           *viding appropriated funds directly to the administra-*  
8           *tion or governmental entity.*

9           “(3) *APPROPRIATED FUNDS.*—*To the maximum*  
10           *extent practicable, any appropriated funds paid by*  
11           *the Secretary under paragraphs (1) and (2) shall be*  
12           *paid directly (in lieu of reimbursement) to the party,*  
13           *person, or administration.*

14           “(4) *LOANS.*—*The Secretary may not consider a*  
15           *loan to the party to the cost-share as a contribution*  
16           *or portion of a contribution under subsection (b).*

17           “(5) *RECOVERED COSTS.*—*The Secretary may*  
18           *not claim as a portion of the Federal share under*  
19           *subsection (b) any costs to the Federal Government*  
20           *that are recovered through rates for the sale or trans-*  
21           *mission of power or water.*

22           “(6) *EFFECT OF FEDERAL NONPAYMENT.*—*If the*  
23           *Secretary fails to make the contribution required*  
24           *under subsection (b), the application of the applicable*  
25           *provision of the conservation plan, requirement under*

1        *section 7, term under the incidental take permit, or*  
2        *provision of the cooperative management agreement*  
3        *shall be suspended until such time as the full con-*  
4        *tribution is made. If the suspended provision or re-*  
5        *quirement includes a conservation easement or other*  
6        *instrument restricting title to the property of the non-*  
7        *Federal person, nonpayment of the full contribution*  
8        *shall result in the nullification of the previously*  
9        *granted restriction on title.*

10            *“(7) IN-KIND CONTRIBUTIONS.—A non-Federal*  
11            *person or Federal power marketing administration*  
12            *may include in-kind contributions in calculating the*  
13            *appropriate share of the costs of the person or admin-*  
14            *istration under this section.*

15            *“(8) COSTS PAID BY THE SECRETARY.—Com-*  
16            *penetration from the Federal Government under section*  
17            *19 may not cover costs incurred by a non-Federal*  
18            *person that were otherwise paid by the Secretary*  
19            *under subsection (b).*

20            *“(d) EXISTING COST-SHARING AGREEMENTS.—Any*  
21            *cost-sharing agreement with a non-Federal person provided*  
22            *in any recovery plan or other agreement in existence prior*  
23            *to the date of enactment of this subsection shall remain in*  
24            *effect unless the non-Federal person requests that the cost-*  
25            *sharing percentage be reconsidered.*

1       “(e) *ADJUSTMENTS TO COST-SHARING PERCENT-*  
 2 *AGE.—At the request of the non-Federal person, the Sec-*  
 3 *retary may adjust the percentage of the Federal contribu-*  
 4 *tion to a higher share.”.*

5 **SEC. 803. NATIONAL ENDOWMENT FOR FISH AND WILDLIFE.**

6       *Section 13 is amended to read as follows:*

7 **“SEC. 13. NATIONAL ENDOWMENT FOR FISH AND WILDLIFE**  
 8 **TRUST FUND.**

9       “(a) *ESTABLISHMENT.—There is established in the*  
 10 *general fund of the Treasury a separate account which shall*  
 11 *be known as the ‘National Endowment for Fish and Wild-*  
 12 *life Trust Fund’ (in this section referred to as the ‘Fund’).*

13       “(b) *CONTENTS.—The Fund shall consist of the follow-*  
 14 *ing:*

15               “(1) *Amounts received as gifts, bequests, and de-*  
 16 *vises under subsection (d).*

17               “(2) *Other amounts appropriated to or otherwise*  
 18 *deposited in the Fund.*

19       “(c) *USE.—Amounts in the fund shall be available to*  
 20 *the Secretary, subject to appropriations, for the following:*

21               “(1) *Payment of compensation under section 19.*

22               “(2) *Habitat conservation grants under section*  
 23 *6(k).*

24               “(3) *Payment of cost sharing under section 16.*

1           “(4) *Acquisition or leasing of lands, waters, or*  
2 *interests therein under section 5A(b).*”

3           “(d) *GIFTS, BEQUESTS, AND DEVISES.—*

4           “(1) *IN GENERAL.—The Secretary may accept,*  
5 *use, and dispose of gifts, bequests, or devises of serv-*  
6 *ices or property, both real and personal, for the pur-*  
7 *pose of carrying out this Act.*”

8           “(2) *DEPOSIT INTO FUND.—Gifts, bequests, or*  
9 *devises of money, and proceeds from sales of other*  
10 *property received as gifts, bequests, or devises, shall be*  
11 *deposited in the Fund and shall be available for dis-*  
12 *bursement upon order of the Secretary.”.*

13           ***TITLE IX—MISCELLANEOUS***  
14           ***PROVISIONS***

15           ***SEC. 901. AMENDMENTS TO DEFINITIONS.***

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

17           (1) *by adding after paragraph (16) (as added by*  
18 *section 401(e)(1) of this Act) the following new para-*  
19 *graph:*

20           “(17) *The term ‘non-Federal person’ means a*  
21 *person other than an officer, employee, agent, depart-*  
22 *ment, or instrumentality of the Federal Government*  
23 *or a foreign government, acting in the official capac-*  
24 *ity of the person.”; and*

1           (2) by amending paragraph (3) (as redesignated  
2           by section 102(a)(1) of this Act) to read as follows:

3           “(3) The term ‘commercial activity’ means all  
4           activities of industry and trade, including, but not  
5           limited to, the buying or selling of commodities and  
6           activities conducted for the purpose of facilitating  
7           such buying and selling, except that it does not in-  
8           clude exhibition of commodities or species by exhibi-  
9           tors licensed under the Animal Welfare Act (7 U.S.C.  
10          2131 et seq.), museums, or similar cultural or histori-  
11          cal organizations.”.

12 **SEC. 902. REVIEW OF SPECIES OF NATIONAL INTEREST.**

13          No later than 60 days after the date of the enactment  
14          of this Act, the Secretary (as that term is defined in section  
15          3 of the Endangered Species Act of 1973, as amended by  
16          this Act) shall identify those species which are listed under  
17          section 4 of that Act as a result of being determined to be  
18          a population segment. No later than one year after the date  
19          of the enactment of this Act, the Secretary shall review and  
20          determine whether or not it is in the national interest to  
21          continue to list each such population segment. Those popu-  
22          lation segments which the Secretary recommends for contin-  
23          ued listing in the national interest shall be submitted to  
24          the Congress for approval. Any population segment which

1 *is not determined to be in the national interest shall be*  
2 *delisted within 180 days after that determination.*

3 **SEC. 903. PREPARATION OF CONSERVATION PLANS FOR**  
4 **SPECIES LISTED BEFORE ENACTMENT OF**  
5 **THIS ACT.**

6 *(a) LISTED SPECIES WITHOUT RECOVERY PLANS.—*

7 *(1) PRIORITY FOR DEVELOPMENT OF CONSERVA-*  
8 *TION PLANS.—Not later than 30 days after the date*  
9 *of enactment of this Act, the Secretary (as defined in*  
10 *section 3 of the Endangered Species Act of 1973, as*  
11 *amended by this Act) shall publish a list of all species*  
12 *that were determined to be endangered species or*  
13 *threatened species under section 4 of the Act (16*  
14 *U.S.C. 1533) for which no final recovery plans were*  
15 *issued under section 4(f) of the Act (16 U.S.C.*  
16 *1533(f)) (as in effect on the day before the date of en-*  
17 *actment of this Act) divided equally into three tiers*  
18 *of priority for preparation of conservation objectives*  
19 *and conservation plans therefor pursuant to section 5*  
20 *of the Act. Any species which is listed as an endan-*  
21 *gered species or threatened species in more than one*  
22 *State shall be placed in the first tier of priority.*

23 *(2) SCHEDULE FOR ADOPTION OF PLANS.—The*  
24 *Secretary shall publish pursuant to section 5 of the*  
25 *Endangered Species Act of 1973 a conservation objec-*

1 *tive, draft conservation plan, and final conservation*  
2 *plan (except when a conservation objective is pub-*  
3 *lished pursuant to section 5(b)(3)(C) of such Act) for*  
4 *each species within each tier of priority identified*  
5 *pursuant to paragraph (1) within the following peri-*  
6 *ods after the date of enactment of this Act:*

7 (A) *Conservation objective: First tier, 120*  
8 *days; second tier, 12 months; and third tier, 24*  
9 *months.*

10 (B) *Draft conservation plan: First tier, 6*  
11 *months; second tier, 18 months; and third tier,*  
12 *30 months.*

13 (C) *Final conservation plan: First tier, 12*  
14 *months; second tier, 24 months; and third tier,*  
15 *36 months.*

16 (b) *LISTED SPECIES WITH RECOVERY PLANS.—*

17 (1) *PRIORITY FOR REVISION OF EXISTING*  
18 *PLANS.—Except as provided in paragraph (3), a*  
19 *final recovery plan issued under section 4(f) of the*  
20 *Endangered Species Act of 1973 (16 U.S.C. 1533(f))*  
21 *(as in effect on the day before the date of enactment*  
22 *of this Act) shall continue in effect until the expira-*  
23 *tion of the deadline for revision thereof established*  
24 *under this paragraph. Within 90 days after the date*  
25 *of enactment of this Act, the Secretary shall publish*

1        *a list of all species that were determined to be endan-*  
2        *gered species or threatened species under section 4 of*  
3        *such Act (16 U.S.C. 1533) and for which final recov-*  
4        *ery plans were issued under section 4(f) of such Act*  
5        *(16 U.S.C. 1533(f)) (as in effect on the day before the*  
6        *date of enactment of this Act) divided equally into*  
7        *three tiers of priority for preparation of conservation*  
8        *objectives pursuant to section 5(b) of such Act and re-*  
9        *visions of the recovery plans consistent with the re-*  
10       *quirements for conservation plans set forth in section*  
11       *5(c) of such Act. Any species which is listed as an en-*  
12       *dangered species or threatened species in more than*  
13       *one State shall be placed in the first tier of priority.*

14                (2) *SCHEDULE FOR REVISION OF PLANS.—The*  
15        *Secretary shall publish pursuant to section 5 of the*  
16        *Endangered Species Act of 1973 a conservation objec-*  
17        *tive, draft revision of the existing recovery plan, and*  
18        *final revision of the existing recovery plan (except*  
19        *when a conservation objective is published pursuant*  
20        *to section 5(b)(3)(C) of such Act) for each species*  
21        *within each tier of priority identified pursuant to*  
22        *paragraph (1) within the following periods after the*  
23        *date of enactment of this Act:*

1           (A) *Conservation objective: First tier, 180*  
2           *days; second tier, 18 months; and third tier, 30*  
3           *months.*

4           (B) *Draft revised recovery plan: First tier,*  
5           *12 months; second tier, 24 months; and third*  
6           *tier, 36 months.*

7           (C) *Final revised recovery plan: First tier,*  
8           *18 months; second tier, 30 months; and third*  
9           *tier, 42 months.*

10          (3) *SPECIES FOR WHICH NO CONSERVATION PLAN*  
11          *IS REQUIRED.—If the Secretary publishes a conserva-*  
12          *tion objective for which no conservation plan is re-*  
13          *quired pursuant to section 5(b)(3)(C) of the Endan-*  
14          *gered Species Act of 1973 for any species subject to*  
15          *this subsection, the final recovery plan applicable to*  
16          *the species shall be rescinded.*

17          (c) *PROHIBITION ON ADDITIONAL REQUIREMENTS.—*  
18          *The Secretary or any other Federal agency may not require*  
19          *any increase in any measurable criterion contained in, or*  
20          *any site specific management action in addition to those*  
21          *provided in, a final recovery plan issued under section 4(f)*  
22          *of the Endangered Species Act of 1973 (16 U.S.C. 1533(f))*  
23          *(as in effect on the day before the date of enactment of this*  
24          *Act) until such time as a conservation plan, or, pursuant*

1 to section 5(b)(3)(C) of such Act, a conservation objective,  
2 has been published under section 5 of such Act.

3 (d) *EXISTING BIOLOGICAL OPINIONS.*—In conjunction  
4 with the issuance of a conservation plan, or, pursuant to  
5 section 5(b)(3)(C) of the Endangered Species Act of 1973,  
6 a conservation objective under subsection (a) or (b), the Sec-  
7 retary (as defined in section 3 of such Act (16 U.S.C. 1532))  
8 shall review and reissue, in accordance with section 7 of  
9 such Act, any written opinion of the Secretary that relates  
10 to the affected species and was issued after January 1, 1995,  
11 under section 7(b)(3) of such Act (16 U.S.C. 1536(b)(3))  
12 (as in effect on the day before the date of enactment of this  
13 Act).

14 **SEC. 904. APPLICATION OF CONSERVATION PLANS FOR SIN-**  
15 **GLE OR MULTIPLE SPECIES TO HABITAT CON-**  
16 **SERVATION PLANS APPROVED PRIOR TO THIS**  
17 **ACT.**

18 *A single or multiple species habitat conservation plan*  
19 *developed and approved under the Endangered Species Act*  
20 *of 1973 by the Secretary (as that term is defined in that*  
21 *Act) before the date of the enactment of this Act and a per-*  
22 *mit issued with respect to such plan shall remain in effect*  
23 *and shall not be required to be amended if a species to*  
24 *which the plan and permit apply is determined to be an*  
25 *endangered species or a threatened species under section 4*

1 *that Act. No further requirements shall be made by the Sec-*  
2 *retary for such plan for any reason. A party who has agreed*  
3 *prior to the effective date of this Act to manage an area*  
4 *under a single or multiple species habitat conservation plan*  
5 *under that Act shall demonstrate conservation of habitat,*  
6 *but shall not be required to relate such conservation specifi-*  
7 *cally to each species with status under section 4 of the En-*  
8 *dangered Species Act of 1973 or to species which are can-*  
9 *didates for listing under that section.*

10 **SEC. 905. WASHINGTON COUNTY, UTAH, DESERT TORTOISE**  
11 **HABITAT CONSERVATION PLAN.**

12 (a) *IN GENERAL.—The document entitled “WASH-*  
13 *INGTON COUNTY, UTAH DESERT TORTOISE INCI-*  
14 *DENTAL TAKE PERMIT APPLICATION/DOCU-*  
15 *MENTS”, dated June 1995, in this section referred to as*  
16 *the “Plan”, is deemed to comply with all requirements ap-*  
17 *plicable to conservation plans under section 10 of the En-*  
18 *dangered Species Act of 1973, as amended by this Act. The*  
19 *Secretary (as that term is defined in that Act) shall*  
20 *promptly issue a permit under section 10(a)(1)(B) of that*  
21 *Act for all activities covered by the Plan.*

22 (b) *EXCHANGES OF LANDS FOR HABITAT RESERVE.—*  
23 (1) *IN GENERAL.—The Secretary shall take all*  
24 *appropriate steps to acquire by exchange for Bureau*  
25 *of Land Management lands, in accordance with the*

1        *Plan, lands of equivalent value that are under State*  
2        *or private ownership and that are offered to the Sec-*  
3        *retary for such exchange by the owner of the lands.*  
4        *Lands acquired by the Secretary under this subsection*  
5        *shall be included in the Mojave Desert habitat reserve*  
6        *provided for in the Plan and shall be managed in ac-*  
7        *cordance with the Plan.*

8                (2) *VALUATION OF LANDS.—For purposes of ex-*  
9        *changes of lands under this subsection, the value of*  
10        *lands shall be determined without regard to the pres-*  
11        *ence on the lands of species that are listed under sec-*  
12        *tion 4(c) of the Endangered Species Act of 1973.*

13        **SEC. 906. TAKING OF SPECIES TO CONSERVE LISTED SPE-**  
14                **CIES.**

15                (a) *IN GENERAL.—Notwithstanding any other provi-*  
16        *sion of law (other than subsection (b)), the taking of a spe-*  
17        *cies for the purpose of conserving any other species that is*  
18        *listed under section 4 of the Endangered Species Act of*  
19        *1973, as amended by this Act, is not prohibited by the En-*  
20        *dangered Species Act of 1973 (as so amended) or any other*  
21        *Federal law.*

22                (b) *LIMITATION.—Subsection (a) does not authorize*  
23        *the taking of any species that is—*

1           (1) *listed as a threatened species or endangered*  
2 *species under the Endangered Species Act of 1973, as*  
3 *amended by this Act;*

4           (2) *depleted; or*

5           (3) *a strategic stock.*

6       (c) *DEFINITIONS.—In this section:*

7           (1) *DEPLETED.—The term “depleted” means a*  
8 *species which the Secretary (as that term is defined*  
9 *in the Endangered Species Act of 1973, as amended*  
10 *by this Act), determines is below its optimum sustain-*  
11 *able population.*

12          (2) *STRATEGIC STOCK.—The term “strategic*  
13 *stock” means a species stock—*

14               (A) *for which the level of direct human-*  
15 *caused mortality exceeds the potential biological*  
16 *removal level; or*

17               (B) *which, based on the best available sci-*  
18 *entific information, is declining and is likely to*  
19 *be listed as a threatened species under the En-*  
20 *dangered Species Act of 1973 within the foresee-*  
21 *able future.*

22          (3) *MISCELLANEOUS TERMS.—Each of the terms*  
23 *“Secretary”, “species”, and “taking” has the meaning*  
24 *that term has in the Endangered Species Act of 1973,*  
25 *as amended by this Act.*

1 **SEC. 907. CONFORMING AMENDMENTS.**

2       *The Endangered Species Act of 1973, is amended by*  
 3 *striking the material that follows the enacting clause and*  
 4 *precedes section 2 and inserting the following:*

5 **“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

6       “(a) *SHORT TITLE.*—*This Act may be cited as the ‘En-*  
 7 *dangered Species Act of 1973’.*

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

“*Sec. 1. Short title; table of contents.*

“*Sec. 2. Findings, purposes, and policy.*

“*Sec. 3. Definitions.*

“*Sec. 4. Determination of endangered species and threatened species.*

“*Sec. 5. Species conservation plans.*

“*Sec. 5A. Protection of habitat.*

“*Sec. 6. Cooperation with non-Federal persons.*

“*Sec. 7. Interagency cooperation.*

“*Sec. 8. International cooperation.*

“*Sec. 8A. Convention implementation.*

“*Sec. 9. Prohibited acts.*

“*Sec. 10. Exceptions.*

“*Sec. 11. Penalties and enforcement.*

“*Sec. 12. Endangered plants.*

“*Sec. 13. National Endowment for Fish and Wildlife Trust Fund.*

“*Sec. 14. Public hearings and public meetings.*

“*Sec. 15. Authorization of appropriations.*

“*Sec. 16. Federal cost-sharing requirements for conservation obligations.*

“*Sec. 17. Marine Mammal Protection Act of 1972.*

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

“*Sec. 19. Right to compensation.*

“*Sec. 20. Recognizing net benefits to aquatic species.”.*

10 **SEC. 908. APPLICATION OF PROVISIONS TO CERTIFIED AP-**  
 11 **PLICATORS OF REGISTERED PESTICIDES.**

12       *Section 1010(a) of the Act to authorize appropriations*  
 13 *to carry out the Endangered Species Act of 1973 during*  
 14 *fiscal years 1988, 1989, 1990, 1991, and 1992, and for other*  
 15 *purposes (7 U.S.C. 136a note) is amended by inserting after*

1 *the first sentence the following: “Nothing in this Act or the*  
2 *Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)*  
3 *shall be construed as prohibiting certified applicators, as*  
4 *that term is defined in section 2(e) of the Federal Insecti-*  
5 *cide, Fungicide, and Rodenticide Act (7 U.S.C. 136(e)), or*  
6 *persons working under their direct supervision, from apply-*  
7 *ing a registered pesticide in or around a commercial facil-*  
8 *ity located within the critical habitat of a listed or endan-*  
9 *gered species for the purpose of preventing, destroying, re-*  
10 *PELLING, or mitigating any pest, including but not limited*  
11 *to rats, mice, ground squirrels, or other rodents that may*  
12 *pose a threat to public health or safety; nor shall anything*  
13 *in this Act or the Endangered Species Act of 1973 (16*  
14 *U.S.C. 1531 et seq.) be construed as requiring or authoriz-*  
15 *ing the Administrator of the Environmental Protection*  
16 *Agency by means of pesticide labeling, regulation, or other-*  
17 *wise from prohibiting certified applicators, as that term is*  
18 *defined in section 2(e) of the Federal Insecticide, Fungicide,*  
19 *and Rodenticide Act (7 U.S.C. 136(e)), or persons working*  
20 *under their direct supervision, from engaging in the activi-*  
21 *ties described in the foregoing clause. The term ‘commercial*  
22 *facility’ as used in the preceding sentence means any struc-*  
23 *ture or other facility that is intended for nonresidential use,*  
24 *including but not limited to food processing plants, food*  
25 *warehouses, grocery stores, feed lots, restaurants, and retail*

1 *shopping malls. Neither this Act nor the Endangered Spe-*  
2 *cies Act of 1973 (15 U.S.C. 1531 et seq.) shall place any*  
3 *additional restrictions on the use of the United States De-*  
4 *partment of Agriculture registered toxicants.”.*