

HJR

58

104TH CONGRESS
1ST SESSION

H. R. 2275

To reauthorize and amend the Endangered Species Act of 1973.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 7, 1995

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

A BILL

To reauthorize and amend the Endangered Species Act of 1973.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TITLE V—BETTER MANAGEMENT AND CONSERVATION OF LISTED SPECIES

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

TITLE VI—HABITAT PROTECTIONS

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

TITLE VII—STATE AUTHORITY TO PROTECT ENDANGERED AND THREATENED SPECIES

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

TITLE VIII—FUNDING OF CONSERVATION MEASURES

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

TITLE IX—MISCELLANEOUS PROVISIONS

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

1 SEC. 2. REFERENCES TO ENDANGERED SPECIES ACT OF

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

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

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

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

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

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

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

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

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

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

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

15 “(c) POLICY.—

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

23 “(2) COOPERATION WITH STATES.—It is fur-

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

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

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

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

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

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

20 “(c) REQUEST OF OWNER.—An owner seeking com-
21 pensation under this section shall make a written request
22 for compensation to the agency implementing the agency
23 action. The request shall, at a minimum, identify the af-

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

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

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

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

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

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

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

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

23 “(i) AVAILABILITY OF APPROPRIATIONS.—Notwith-

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

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

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

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

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

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

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

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

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

9 “(B) includes—

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

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

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

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

22 “(v) an agreement under section 6 to
23 set aside property for habitat under the

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

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

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

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

17 “(b) COOPERATIVE MANAGEMENT AGREEMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 “(m) TECHNICAL ASSISTANCE PROGRAM.—

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

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

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

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

8 “(11) **HABITAT CONSERVATION GRANTS.—(A)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 “(D) is incidental to, and not the purpose
23 of, the carrying out of an otherwise lawful ac-
24 tivity that occurs within an area of the terri-

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

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

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

15 “(g) CITIZEN SUITS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(3) VENUE.—ANY SUIT UNDER THIS SUBSECTION
2 may be brought in the judicial district in which the
3 violation occurs.

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

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

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

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

24 Section 3(26) (as redesignated by section 102(a)(1))

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “SEC. 10. EXCEPTIONS.

5 “(a) PERMITS.—

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

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

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

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

22 “(iii) in the case of foreign species,
23 acts that are consistent with the C...

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

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

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

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

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

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

8 “(i) the taking will be incidental;

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

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

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

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

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

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

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

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

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

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

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

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

21 “(k) MULTIPLE SPECIES CONSERVATION PLANS.—

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

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

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

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

22 “(II) are to be performed while the under-

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

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

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

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

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

4 “(B) any other species that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 “(II) in the case of a permit under para-
22 graph (1)(A)(ii), the applicant maintains a pub-

23 lic display on public premises.

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

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

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

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

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

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

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

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

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

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

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

22 “(F) The Secretary may require an annual re-
23 port on the activities authorized by a permit.

1 "RECOGNIZING NET BENEFITS TO AQUATIC SPECIES

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

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

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

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

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

23 The Endangered Species Act of 1973 (16 U.S.C.

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

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

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

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

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

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

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

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

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

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

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

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

21 “(f) NONDUPLICATION OF FINDINGS.—The Sec-
22 retary, in making the findings required in paragraph 3(a)

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

5 “(i) IMPORTATION AND EXPORTATION.—

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

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

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

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

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

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

21 “(5) the Secretary must obtain the written con-
22 currence of all the nations contacted, and if such

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

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

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

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

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

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

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

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

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

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

18 “(m) **INCENTIVES.**—(1) The Secretary shall exempt,
19 under such terms and conditions as the Secretary may
20 prescribe by regulation, any operator of a trawl vessel re-
21 quired to use a turtle excluder device under regulations
22 promulgated under this Act from such requirement if such

23 operator agrees to use a turtle excluder device on all other vessels.

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

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

5 “(3) Disease or predation.

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

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

10 “(b) SECRETARIAL DETERMINATIONS.—

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

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

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

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

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

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

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

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

22 “(a) **GENERALLY.—**The Secretary shall by regulation
23 promulgated in accordance with subsection (b) determine

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 “(E) The Secretary must obtain the written
21 concurrence of all the nations contacted. If such con-
22 currence is not obtained, the Secretary may not

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

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

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

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

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

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

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

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

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

22 “(22) The term ‘Secretary’ means, except as
23 otherwise herein provided, the Secretary of the Inter-

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

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

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

11 "(9) PUBLICATION IN FEDERAL REGISTER.—

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

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

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

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

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

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

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

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

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

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

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

14 **SEC. 302. PEER REVIEW.**

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

18 “(i) PEER REVIEW REQUIREMENT.—

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

20 “(A) The term ‘action’ means—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(4) DATA PROVIDED TO PEER REVIEWER.—

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

11 “(5) OPINION OF PEER REVIEWERS.—The peer

12 reviewer shall give his or her opinion with regard to
13 any technical or scientific deficiencies in the pro-
14 posal, whether the methodology and analysis sup-
15 porting the petition conform to the standards of the
16 academic and scientific community, and whether the
17 proposal is supported by sufficient credible evidence.

18 “(6) PUBLICATION OF PEER REVIEW RE-

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

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

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

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

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

12 **“SEC. 14. NOTICE OF HEARINGS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 "(B) Petitions to add a species to, or to remove

23 a species from either of the lists published under

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(ii) the species is extinct; or

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

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

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

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

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

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

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

1 "SEC. 7. INTERAGENCY COOPERATION.

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

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

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

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

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

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

1 not require a limitation on the commitment of re-
2 sources as described in subsection (d).

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

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

1 “(8) RELATIONSHIP TO DUTIES UNDER OTHER
2 LAWS.—(A) The responsibilities of a Federal agency
3 under this section shall not supersede and shall be
4 implemented in a manner consistent with duties as-
5 signed to the Federal agency by any other laws or
6 by any treaties.

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

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

22 “(9) MODIFICATION OF PROJECTS AND FACILI-
23 TIES.—Any consultation and conferencing required
24 under paragraphs (2) and (4) for an agency action
25 that consists solely of a modification of a Federal

1 State, local government, or private project or facility
2 shall be limited to the consideration of the effects
3 that result from the modification that comprises the
4 agency action.”.

5 (c) PROCEDURES FOR CONSULTATION.—Section 7(b)
6 (16 U.S.C. 1536(b)) is amended by striking so much as
7 precedes paragraph (3)(B) and inserting the following:

8 “(b) OPINION OF SECRETARY.—

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

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

1 “(B) Subject to subparagraph (A), in the case
2 of an agency action involving a permit or license ap-
3 plicant, the Secretary and the Federal agency may
4 not mutually agree to conclude consultation within a
5 period exceeding 90 days unless the Secretary, be-
6 fore the close of the 90th day referred to in subpara-
7 graph (A)—

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

13 “(I) the reasons why a longer period
14 is required,

15 “(II) the information that is required
16 to complete the consultation, and

17 “(III) the estimated date on which
18 consultation will be completed; or

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

24 “(C) If consultation is not concluded and the
25 written statement of the Secretary required under

1 paragraph (3)(A) is not provided to the Federal
2 agency by the applicable deadline established under
3 this paragraph, the requirements of subsection
4 (a)(2) shall be deemed met and the Federal agency
5 may proceed with the agency action.

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

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

16 “(3) WRITTEN OPINION OF SECRETARY.—(A)(i)
17 Promptly after conclusion of consultation under
18 paragraph (2) or (3) of subsection (a), the Secretary
19 shall provide to the Federal agency and the appli-
20 cant, if any, a written statement setting forth the
21 Secretary’s opinion, and a summary of the informa-
22 tion on which the opinion is based, detailing whether
23 the agency action is consistent with the conservation

1 10(a), or a cooperative management agreement exe-
2 cuted pursuant to section 6(b). If the Secretary de-
3 termines that the action is likely to jeopardize the
4 continued existence of the species as described in
5 subsection (a), the Secretary shall suggest reason-
6 able and prudent alternatives (considering any rea-
7 sonable and prudent alternatives undertaken by
8 other Federal agencies) that are consistent with sub-
9 section (a)(2) and that impose the least social and
10 economic costs.

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

1 section 11 for any activity prohibited by section 4(d)
2 or 9.

3 "(iii) The Secretary shall not require a reason-
4 able and prudent alternative that may or will result
5 in a significant adverse impact upon waterfowl popu-
6 lations, waterfowl habitat management, or waterfowl
7 hunting opportunities in a significant waterfowl
8 breeding, staging, or wintering habitat area. In this
9 clause, the term 'significant adverse impact' means
10 any actions, proposed or in effect, which individually
11 or cumulatively are likely to reduce the carrying ca-
12 pacity of habitat for waterfowl by 10 percent or
13 more of its current capability, as determined on a
14 local, regional, statewide or national basis. In this
15 clause, the term 'significant waterfowl breeding,
16 staging, or wintering habitat areas' means those pri-
17 vate or public lands managed primarily for, or pro-
18 viding, waterfowl breeding, staging or wintering
19 habitat including seasonal/permanent marsh lands or
20 land under rice cultivation for three out of the past
21 five years.

22 "(iv) Notwithstanding any other provision of
23 law, if the Secretary renders an opinion or suggests

1 ducting a commercial operation, the Secretary may
2 not promulgate an emergency rule without providing
3 at least 30 days for public comment on the emer-
4 gency rule.

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

8 “(d) LIMITATION ON COMMITMENT OF RE-
9 SOURCES.—

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

19 “(2) RELATIONSHIP TO LAND MANAGEMENT
20 PLANNING REQUIREMENTS.—If the listing of a spe-
21 cies, or other procedure or decision related to a spe-
22 cies listed under section 4(c)(1), requires consulta-
23 tion under subsection (a)(2) on a land use plan or
24 land or resource management plan (or an amend-
25 ment to or revision of the plan) prepared under sec-

1 tion 202 of the Federal Land Policy and Manage-
2 ment Act of 1976 (43 U.S.C. 1712) or section 6 of
3 the Forest and Rangeland Renewable Resources
4 Planning Act of 1974 (16 U.S.C. 1604), the land
5 management agency implementing the plan may au-
6 thorize, fund, or carry out an agency action that is
7 consistent with the plan prior to the completion of
8 the consultation, if, under the procedures established
9 by this section, the head of the land management
10 agency responsible for the action determines or has
11 determined that the action—

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

14 “(B) is likely to significantly and adversely
15 affect the species, and the Secretary issues an
16 opinion on the action that finds that the ac-
17 tion—

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

20 “(ii) is likely to jeopardize the contin-
21 ued existence of the species, and the agen-
22 cy agrees to a reasonable and prudent al-
23 ternative.”.

24 (e) DEFINITIONS.—Section 3 (16 U.S.C. 1532) is
25 amended—

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

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

11 (2) by amending paragraph (18) (as redesign-
12 nated by section 102(a)(1) of this Act) to read as
13 follows:

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

1 (3) by adding after paragraph (20) (as redesignated by section 102(a)(1) of this Act) the following
2 new paragraph:
3

4 “(21) The term ‘reasonable and prudent alternative’ means an alternative action under section
5 7(b)(3) during consultation on an agency action
6 that—
7

8 “(A) can be implemented in a manner consistent with the intended purpose of the agency
9 action or the activity of a non-Federal person
10 under section 10;
11

12 “(B) can be implemented consistent with
13 the scope of the legal authority and jurisdiction
14 of the Federal agency;

15 “(C) is economically and technologically
16 feasible for the applicant or non-Federal person
17 to undertake; and

18 “(D) the Secretary believes would avoid
19 being likely to jeopardize the continued existence
20 of the species.”.

21 **SEC. 402. EXEMPTIONS FROM CONSULTATION AND CON-**
22 **FERENCING.**

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

5 “(A) is consistent with the provisions of a
6 final conservation plan under section 5(c)(5) or
7 a conservation objective described in section
8 5(b)(3);

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

12 “(C) addresses a critical, imminent threat
13 to public health or safety or a catastrophic nat-
14 ural event or compliance with Federal, State, or
15 local safety or public health requirements;

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

22 “(E) permits activities that occur on pri-
23 vate land.

24 “(7) ACTIONS NOT PROHIBITED.—An agency
25 action shall not constitute a taking of a species pro-

1 hibited by this Act or any regulation issued under
2 this Act if the action is consistent with—

3 “(A) the actions provided for in a final
4 conservation plan under section 5(c)(5) or a
5 conservation objective described in section
6 5(b)(3); or

7 “(B) a cooperative management agreement
8 or an incidental take permit.”.

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

11 (a) **CONFORMING AMENDMENTS.**—Section 7(c) (16
12 U.S.C. 1536(e)) 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 pro-
19 vision of this Act—

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

1 declared to be a major disaster area under The Rob-
2 ert T. Stafford Disaster Relief and Emergency As-
3 sistance Act (42 U.S.C. 5121 et seq.) for any project
4 for the repair or replacement of a public facility sub-
5 stantially as the facility existed prior to the disaster
6 under section 405 or 406 of that Act (42 U.S.C.
7 5171 and 5172), if the President determines that
8 the project—

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

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

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

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

20 **SEC. 501. SETTING CONSERVATION OBJECTIVES.**

21 Section 5 (16 U.S.C. 1534) is redesignated as section
22 5A, and the following new section is added after section
23 4:

1 **"SEC. 5. SPECIES CONSERVATION PLANS.**

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

7 “(b) DEVELOPMENT OF CONSERVATION OBJEC-
8 TIVE.—

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

15 “(A) experts in biology or pertinent sci-
16 entific fields, economics, property law and regu-
17 lation, and other appropriate disciplines from
18 the Department of the Secretary, other Federal
19 agencies, and the private sector;

20 “(B) a representative nominated by the
21 Governor of each affected State;

22 “(C) representatives nominated by each af-
23 fected local government, if the local government

1 “(D) representatives of persons who may
2 be directly, economically impacted by the con-
3 servation plan.

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 sessment 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 pied habitat of the species, and the type
17 and amounts of habitat needed, at a mini-
18 mum, to maintain the existence of the spe-
19 cies and, at a maximum, to secure recovery
20 of the species;

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

23 “(v) the technical practicality of re-
24 covering 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
12 the 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 so-
22 cial, cultural, and community values, and an as-

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

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

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

19 “(i) recovery of the listed species;

20 “(ii) such level of conservation of the spe-
21 cies which the Secretary determines practicable
22 and reasonable to the extent that the benefits
23 of the potential conservation measures outweigh
24 the economic and social costs of such measures,

1 including but not limited to maintenance of ex-
2 isting population levels;

3 “(iii) no Federal action other than enforce-
4 ment against any person whose activity violates
5 the prohibitions specified in section 9(a), in-
6 cluding any activity that results in a taking of
7 the species, unless the taking is incidental to,
8 and not the purpose of, the carrying out of an
9 otherwise lawful activity; or

10 “(iv) such other objective as the Secretary
11 may determine that does not provide a lesser
12 level of protection than the level described in
13 clause (iii).

14 “(C) If the conservation objective established by
15 the Secretary is the objective provided in subpara-
16 graph (B)(iii), the Secretary shall not develop a con-
17 servation plan for the affected species under sub-
18 section (c).”.

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

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

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

4 “(A) the development of an integrated plan
5 for 2 or more endangered species or threatened
6 species that are likely to benefit from an inte-
7 grated conservation plan;

8 “(B) the geographic areas where conflicts
9 between the conservation of the affected species
10 and development projects or other forms of eco-
11 nomic activity exist or are likely to exist;

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

15 “(D) the implementation of conservation
16 measures that have the least economic and so-
17 cial costs;

18 “(E) nonregulatory, incentive-based con-
19 servation measures and commercial activities
20 that provide a net benefit to the conservation of
21 the species; and

22 “(F) plans in which States or private orga-
23 nizations or persons are the primary
24 implementors.

1 “(2) PUBLICATION OF DRAFT PLAN.—Not later
2 than 12 months after the date of a determination
3 that a species is an endangered species or a threat-
4 ened species, the assessment and planning team for
5 the species shall publish a draft conservation plan
6 for the species which is based on the assessments
7 made pursuant to subsection (b)(2) and designed to
8 achieve the conservation objective established pursu-
9 ant to subsection (b)(3).

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

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

14 “(B) recommendations for avoiding a tak-
15 ing of a listed species prohibited under section
16 9(a)(1) and a list of specific activities that
17 would constitute a take under section 9;

18 “(C) alternative strategies to achieve the
19 conservation objective for the listed species
20 which range from a strategy requiring the least
21 possible Federal management to achieve the
22 conservation objective to a strategy involving

1 “(i) an estimate of the risks to the
2 survival and recovery of the species that
3 the alternative would entail;

4 “(ii) a description of any site-specific
5 management measures recommended for
6 the alternative;

7 “(iii) an analysis of the relationship of
8 any habitat of the species proposed for
9 designation as critical habitat to the rec-
10 ommended management measures;

11 “(iv) a description of the direct, indi-
12 rect, and cumulative economic and social
13 impacts on the public and private sectors
14 including impacts on employment, the cost
15 of government actions, tax and other reve-
16 nues, the use and value of property, and
17 other social, cultural, and community val-
18 ues;

19 “(v) a description of any captive
20 breeding program recommended for the al-
21 ternative;

22 “(vi) an analysis of whether the alter-
23 native would include any release of an ex-
24 perimental population outside the current
25 range of the species and an identification

1 of candidate geographic areas for the re-
2 lease;

3 “(vii) objective and measurable cri-
4 teria, including a population level target,
5 that, if met, would result in a determina-
6 tion under section 4 that the species is no
7 longer an endangered species or threatened
8 species;

9 “(viii) estimates of the time and costs
10 required to carry out the management
11 measures, including any intermediate
12 steps; and

13 “(ix) a description of the role of each
14 affected State, if any, in achieving the con-
15 servation objective.

16 “(4) PLAN PREPARATION PROCEDURES.—(A)
17 The Secretary shall consult with the Governor of
18 each State in which the affected species is located
19 during the preparation of each draft and final con-
20 servation plan. Each plan shall provide for equitable
21 treatment of affected States and other non-Federal
22 persons.

1 ability and a summary of, and a request for the sub-
2 mission of comments on, each draft conservation
3 plan.

4 “(C) The Secretary shall hold at least 1 hearing
5 on each draft conservation plan in each State to
6 which the plan would apply in a location that is as
7 close as possible to the center of the habitat of the
8 affected species in such State.

9 “(D) Prior to any decision to adopt a final con-
10 servation plan, the Secretary shall consider and
11 weigh carefully all information presented during
12 each hearing held under subparagraph (C) or re-
13 ceived in response to a request for comments pub-
14 lished under subparagraph (B).

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

22 “(A) the reasons for the selection of the
23 final conservation plan;

24 “(B) the reasons for not selecting each of
25 the other alternatives included in the draft con-

1 servation plan, including, if any alternative is
2 selected other than the alternative that would
3 impose the least total costs on the public and
4 private sectors, the reasons for such selection;

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

7 “(D) the response of the Secretary to the
8 information referred to in paragraph (4).

9 “(6) PARTICIPATION BY OTHER PERSONS.—In
10 developing and implementing conservation plans, the
11 Secretary may use the services of appropriate public
12 and private agencies and institutions and other
13 qualified persons.

14 “(7) PLAN REVISION OR AMENDMENT.—Any re-
15 vision of or amendment to a conservation plan shall
16 be made in accordance with the procedures and re-
17 quirements of subsection (b) and this subsection, ex-
18 cept that the Secretary by regulation may provide
19 for other procedures and requirements for any
20 amendment that does not increase the direct or indi-
21 rect cost of implementation of the plan or enlarge
22 the area to which the plan applies.

1 section (c) or if a conservation objective is established
2 under subsection (b)(3)(C)—

3 “(1) any Federal agency that determines that
4 the actions of the agency are consistent with the
5 provisions of the conservation plan or conservation
6 objective shall be considered to comply with section
7 7(a)(1) for the affected species;

8 “(2) any agency action that the Federal agency
9 determines is consistent with the provisions of the
10 conservation plan or conservation objective shall not
11 be subject to section 7(a)(2) for the affected species,
12 except that a Federal agency may initiate consulta-
13 tion under section 7(a)(2) if the agency desires guid-
14 ance from the Secretary on the consistency of the
15 action of the agency with the conservation plan or
16 conservation objective; and

17 “(3) any action of any person that is consistent
18 with the provisions of the conservation plan or con-
19 servation objective shall not constitute a violation
20 concerning the affected species of any applicable
21 prohibition under section 9(a), except that a non-
22 Federal person may initiate consultation under sec-
23 tion 10(a)(2)—

1 “(A) if the person desires guidance from
2 the Secretary on the consistency of the action
3 with the plan or objective; or

4 “(B) in order to determine whether to
5 apply for a permit under section 10 for any ac-
6 tion that is inconsistent with the plan or objec-
7 tive.”.

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

12 “(4) The terms ‘conservation objective’ and
13 ‘conservation plan’ (except when modified by ‘non-
14 Federal’) mean a conservation objective and a con-
15 servation plan, respectively, developed under section
16 5.”.

17 **SEC. 503. INTERIM MEASURES.**

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

22 “(e) MANAGEMENT PRIOR TO PUBLICATION OF CON-

1 tion plan, or, if no plan is required pursuant to sub-
2 section (b)(3)(C), a conservation objective, for the
3 species—

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

16 “(B) no Federal agency shall be required
17 to comply with section 7(a)(1) and no consulta-
18 tion shall be required on any agency action
19 under section 7(a)(2).

20 “(2) EMERGENCY RULEMAKING PROTEC-
21 TIONS.—Notwithstanding paragraph (1), sections
22 7(a) and 9(a) shall apply fully to the listed species
23 during a period in which an emergency rulemaking
24 is in effect pursuant to section 4(b)(7) or if the
25 President declares, and advises the Secretary, that

1 there exists an imminent threat to the existence of
2 the species. Such declaration of the President ex-
3 pires upon the deadline for publication of a final
4 conservation plan for the species pursuant to sub-
5 section (c)(5) or the publication of a conservation
6 objective for the species provided in subsection
7 (b)(3) or if no conservation plan is required pursu-
8 ant to subsection (b)(3)(C).

9 “(f) SUSPENSION OF CONSERVATION PLAN OR OB-
10 JECTIVE.—If the Secretary issues an incidental take per-
11 mit or enters into a cooperative management agreement
12 under section 6, the Secretary, by publication of notice
13 in the Federal Register, shall suspend the conservation ob-
14 jective or conservation plan with respect to the geographic
15 area or action applicable to the species to which the permit
16 or agreement applies.

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

21 “(h) REVIEW OF CONSERVATION PLANS.—

22 “(1) DEADLINES.—The Secretary shall review

1 conservation plan, and before the end of each 5-
2 year period thereafter.

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

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

10 “(B) at any time—

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

18 “(ii) on the basis of scientific or com-
19 mercial data that were not available during
20 the development of the conservation objec-
21 tive or conservation plan, that the con-
22 servation objective is not achievable or the
23 conservation plan will not achieve the con-
24 servation objective.

1 “(3) NO REOPENING OF CONSULTATIONS.—
2 Section 7 consultations shall not be reopened as a
3 result of modifications to a conservation plan under
4 paragraph (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 sec-
8 tions 502 and 503 of this Act, is amended by adding at
9 the end the following new subsections:

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

11 “(1) **DESIGNATION.**—The Secretary may, by
12 regulation and to the extent prudent and determina-
13 ble—

14 “(A) designate critical habitat of a species
15 determined to be an endangered species or
16 threatened species that meets the requirements
17 of paragraph (3) utilizing the National
18 Biodiversity Reserve established under section
19 5A(a) as a first priority; and

20 “(B) revise a critical habitat designation
21 on determining that the critical habitat does
22 not meet the requirements of paragraph (3).

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

7 “(3) BASIS FOR DESIGNATION.—The designa-
8 tion of critical habitat, and any revision of the des-
9 ignation, shall be made on the basis of the best
10 available scientific and commercial data after taking
11 into consideration the economic impact, and any
12 other relevant impact, of designating any particular
13 area as critical habitat and of the determination that
14 the affected species is an endangered species or
15 threatened species. The Secretary shall exclude any
16 area from critical habitat—

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

19 “(B) which is not necessary to achieve the
20 conservation objective for the affected species
21 established pursuant to subsection (b);

22 “(C) for which the Secretary determines
23 that the benefits of the exclusion of the area
24 from designation as critical habitat outweigh
25 the benefits of designation, unless the Secretary

1 determines, on the basis of the best available
2 scientific and commercial data, that the failure
3 to designate the area as critical habitat will re-
4 sult in the extinction of the affected species; or

5 “(D) in the case of property owned by a
6 non-Federal person, where the owner thereof
7 has not given written consent to the designation
8 or has not been compensated as provided in sec-
9 tion 19.

10 “(4) PROCEDURE FOR DESIGNATION.—In the
11 Federal Register notice containing the proposed reg-
12 ulation to designate critical habitat, the Secretary
13 shall describe the economic impacts and other rel-
14 evant impacts that are to be considered, and the
15 benefits that are to be weighed, under paragraph (3)
16 in designating an area as critical habitat, along with
17 maps showing the location of the area to be des-
18 ignated as critical habitat. The Secretary shall sub-
19 mit the description, and the documentation support-
20 ing the description, to the Bureau of Labor Statis-
21 tics of the Department of Labor. The Commissioner
22 of Labor Statistics shall submit written comments
23 during the comment period on the proposed regula-

1 critical habitat is designated for a species. In issuing
2 any final regulation designating critical habitat, the
3 Secretary shall respond separately and fully to each
4 comment.

5 “(5) JUDICIAL REVIEW OF CRITICAL HABITAT
6 DESIGNATION.—The decision whether to designate
7 critical habitat shall be subject to a de novo judicial
8 review with the court determining whether the deci-
9 sion is supported by a preponderance of the evi-
10 dence.

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

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

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

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

1 (b) CONFORMING AMENDMENTS.—Section 4(b)(6)
2 (16 U.S.C. 1533(b)(6)) is amended—

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

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

8 (3) by striking subparagraph (C).

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

13 (d) DEFINITION OF CRITICAL HABITAT.—Section
14 3(7), as redesignated by section 102(a) of this Act, is
15 amended to read as follows:

16 “(7)(A) The term ‘critical habitat’ for an en-
17 dangered species or a threatened species means the
18 specific areas which are within the geographic area
19 found to be occupied by a species at the time the
20 species is determined to be an endangered species or
21 a threatened species in accordance with section 4
22 and which contain such physical or biological fea-

1 date the regulation designating the critical
2 habitat, or any revision of the regulation, is
3 promulgated; and

4 “(ii) require special management consider-
5 ations or protection.

6 “(B) Except in those circumstances determined
7 by the Secretary, critical habitat shall not include
8 the entire geographical area occupied by the threat-
9 ened species or endangered species.”.

10 **SEC. 505. RECOGNITION OF CAPTIVE PROPAGATION AS**
11 **MEANS OF RECOVERY.**

12 Section 5, as added by section 501 of this Act and
13 as amended by sections 502, 503, and 504 of this Act,
14 is amended by adding at the end the following new sub-
15 section:

16 “(1) **RECOGNITION OF CAPTIVE PROPAGATION AS**
17 **MEANS OF CONSERVATION.—**

18 “(1) **IN GENERAL.—**In carrying out this Act,
19 the Secretary shall recognize to the maximum extent
20 practicable, and may utilize, captive propagation as
21 a means of protecting or conserving an endangered
22 species or a threatened species.

23 “(2) **CAPTIVE PROPAGATION GRANTS.—**The
24 Secretary may, subject to appropriations therefor,
25 provide annual grants to non-Federal persons to

1 fund captive propagation programs for the purpose
2 of protecting or conserving any species that is deter-
3 mined under section 4 to be an endangered species
4 or a threatened species, if the Secretary determines
5 that such a program contributes to enhancement of
6 the population of the species.”.

7 **SEC. 506. INTRODUCTION OF SPECIES.**

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

9 (1) by amending paragraph (2)(B) to read as
10 follows:

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

21 (2) in paragraph (2)(C)—

22 (A) in clause (i) by striking “and” after

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

8 “(iii) critical habitat shall not be des-
9 ignated under this Act for any experi-
10 mental population determined under sub-
11 paragraph (B) to be not essential to the
12 continued existence of a species.”;

13 (3) by redesignating paragraph (3) as para-
14 graph (4); and

15 (4) by inserting after paragraph (2) the follow-
16 ing new paragraph:

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

20 “(A) to the maximum extent practicable,
21 the release occurs only in a unit of the National
22 Park System or the National Wildlife Refuge
23 System;

24 “(B) a release outside a unit occurs only in
25 an area that has been identified as a candidate

1 site for release of the population in a conserva-
2 tion plan for the species;

3 “(C) in the case of a release outside a unit,
4 measures to protect the safety and welfare of
5 the public and domestic animals and the fund-
6 ing for the measures are identified in the regu-
7 lations authorizing the release and are imple-
8 mented;

9 “(D) the regulations authorizing the re-
10 lease identify precisely the geographic area for
11 the release;

12 “(E) a release on non-Federal land occurs
13 only with the written consent of the owner of
14 the land; and

15 “(F) the regulations authorizing the re-
16 lease include measurable reintroduction goals to
17 restore viable populations only within the spe-
18 cific geographic area identified for release in
19 the regulations.”.

20 **SEC. 507. CONSERVING THREATENED SPECIES.**

21 (a) **REGULATIONS.**—Section 4(d) (16 U.S.C.
22 1533(d)) is amended to read as follows:

23 “(d) **REGULATIONS TO PROTECT THREATENED SPE-**

1 concurrently with the regulation that provides for the list-
2 ing of the species, such regulations as the Secretary deems
3 necessary and advisable to provide for the conservation of
4 such species. Such regulations may apply to the threat-
5 ened species one or more of the prohibitions under section
6 9(a)(1), in the case of fish and wildlife, or section 9(a)(2)
7 in the case of plants, with respect to endangered species.
8 The prohibition applied to the threatened species shall ad-
9 dress the specific circumstances of such species and may
10 not be as restrictive as such prohibition for endangered
11 species. With respect to the taking of resident species of
12 fish or wildlife, such regulations shall apply in any State
13 which has entered into a cooperative agreement pursuant
14 to section 6(c) only to the extent that such regulations
15 have also been adopted by such State.”.

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

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

19 (2) by redesignating subsections (g), (h), and
20 (i) in order as subsections (f), (g), and (h).

21 (c) CONSERVATION GUIDELINES.—Section 4 is
22 amended in subsection (g), as redesignated by subsection
23 (b)(2) of this section, by amending paragraph (3), as re-
24 designated by section 304(b)(2) of this Act, to read as
25 follows:

1 “(3) a system for developing and implementing,
2 on a priority basis, conservation objectives and con-
3 servation plans. The Secretary shall provide to the
4 public notice of, and opportunity to submit written
5 comments on, any guideline (including any amend-
6 ment thereto) proposed to be established under this
7 subsection.”.

8 **TITLE VI—HABITAT** 9 **PROTECTIONS**

10 **SEC. 601. FEDERAL BIOLOGICAL DIVERSITY RESERVE.**

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

13 **“SEC. 5A. PROTECTION OF HABITAT.**

14 “(a) **ESTABLISHMENT OF NATIONAL BIOLOGICAL**
15 **DIVERSITY RESERVE.—**

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

22 “(2) **DESIGNATION OF RESERVE UNITS.—(A)**
23 Not later than 18 months after the date of enact-
24 ment of the Endangered Species Conservation and
25 Management Act of 1995, the Secretary of the Inte-

1 rior and the Secretary of Agriculture shall designate
2 to the Reserve by regulation those units of the na-
3 tional conservation systems which are within the ju-
4 risdiction of the Secretary concerned and which the
5 Secretary determines would contribute to the protec-
6 tion, maintenance, and enhancement of biological di-
7 versity in accordance with the provisions of this Act.
8 The term 'national conservation systems' means
9 wholly federally owned lands within the National
10 Park System, the National Wildlife Refuge System,
11 or the National Wilderness Preservation System,
12 and wild segments of rivers within the National Wild
13 and Scenic Rivers System.

14 "(B) The Secretary of the Interior shall—

15 "(i) designate to the Reserve by regulation
16 a unit of State-owned lands if such unit is nom-
17 inated for designation by the Governor of the
18 State and is managed under State law in ac-
19 cordance with paragraph (3);

20 "(ii) designate to the Reserve by regulation
21 privately owned land that is nominated for des-
22 ignation by the owner of the land, and shall re-
23 move such land from the Reserve if the owner
24 requests removal;

1 “(iii) remove from the Reserve by regula-
2 tion any unit designated pursuant to clause (i)
3 which the Secretary finds is not managed under
4 State law in accordance with paragraph (3);
5 and

6 “(iv) remove from the Reserve any State-
7 owned lands at the request of the Governor of
8 that State.

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

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

1 “(B) The manager of each Reserve unit should
2 consistent with paragraph (4) utilize his authority to
3 use active management and recovery measures, in-
4 cluding those specified in section 5(b)(2)(A)(vi), and
5 shall conduct a survey to determine the populations
6 of species within the Reserve.

7 “(C) Nothing in this Act shall—

8 “(i) alter, establish, or affect the respective
9 rights of the United States, the States, or any
10 person with respect to any water or water-relat-
11 ed right; or

12 “(ii) affect the laws, rules, and regulations
13 pertaining to hunting, fishing, and other lawful
14 wildlife harvest under existing State and Fed-
15 eral laws and Indian treaties.

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

22 “(4) OTHER FEDERAL LANDS.—Nothing in this
23 Act shall be construed as limiting the authority of
24 the Secretary of the Interior or the Secretary of Ag-
25 riculture to take such actions as are necessary and

1 authorized by other law to protect, maintain, and
2 enhance biological diversity on other Federal lands
3 not designated to the Reserve except that, before
4 taking any such action, the Secretary concerned
5 shall make a finding based on the best available sci-
6 entific and commercial data, that the biological di-
7 versity for which such action is proposed is not pro-
8 tected, maintained, or enhanced in whole or substan-
9 tial part on any unit of the Reserve. Such finding
10 shall be published, along with the reasons therefor in
11 the Federal Register.”.

12 **SEC. 602. LAND ACQUISITION.**

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

16 “(b) LAND ACQUISITION.—

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

1 “(A) shall utilize the land acquisition and
2 other authority under the Fish and Wildlife Act
3 of 1956 (16 U.S.C. 742a et seq.), the Fish and
4 Wildlife Coordination Act (16 U.S.C. 661 et
5 seq.), and the Migratory Bird Conservation Act
6 (16 U.S.C. 715 et seq.), as appropriate; and

7 “(B) is authorized to acquire by purchase,
8 lease, donation, or otherwise, lands, waters, or
9 interest therein, including short- or long-term
10 conservation easements, and such authority
11 shall be in addition to any other land acquisi-
12 tion authority vested in that Secretary.

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

20 **SEC. 603. PROPERTY EXCHANGES.**

21 Section 5A, as redesignated by section 501 of this
22 Act and as amended by sections 601 and 602 of this Act,
23 is amended by adding at the end the following new sub-
24 sections:

25 “(c) EXCHANGES.—

1 “(1) IN GENERAL.—In accordance with sub-
2 section (a), the Secretary of the Interior and the
3 Secretary of Agriculture shall encourage exchanges
4 of lands, waters, or interests in land or water within
5 the jurisdiction of each Secretary (other than units
6 of the National Park System and units of the Na-
7 tional Wilderness Preservation System) for lands,
8 waters, or interests in land or water that are not in
9 Federal ownership and that are affected by this Act.

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

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

21 “(4) EXPEDITIOUS EXCHANGE DECISIONS.—An
22 exchange under this subsection shall be processed as

1 cally provide information to the non-Federal land-
2 owner on the status of the exchange.

3 “(5) APPLICABLE LAW.—The Secretary of the
4 Interior and the Secretary of Agriculture shall proc-
5 ess exchanges under this subsection in accordance
6 with applicable laws that are consistent with this
7 subsection.

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

16 “(e) _____.—For any land or water acquired by the
17 Secretary or the Secretary of Agriculture by purchase, ex-
18 change, lease, donation or otherwise under this section,
19 the Secretary or Secretary of Agriculture shall ensure that
20 such purchase, exchange, lease, donation, or other transfer
21 shall not supersede, abrogate, or otherwise impair existing
22 easements, rights-of-way, fencing, water sources, water de-
23 livery lines or ditches, and current 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
15 contained in this Act with respect to species of fish,
16 wildlife, and plants that are residents in the State.
17 Within 120 days after the Secretary receives a cer-
18 tified copy of such a proposed State program, the
19 Secretary shall make a determination whether such
20 program will be adequate to provide protections to
21 endangered species and threatened species in such
22 State. In order for a State program to be deter-
23 mined to be an adequate program for the conserva-

1 the Secretary must find that under the State pro-
2 gram—

3 “(A)(i) authority resides in the State agen-
4 cy to conserve resident species of fish or wildlife
5 determined by the State agency or the Sec-
6 retary to be endangered species or threatened
7 species;

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

19 “(iii) the State agency is authorized to
20 conduct investigations to determine the status
21 and requirements for survival of resident spe-
22 cies of fish and wildlife;

23 “(iv) an agency of the State is authorized
24 to establish programs, including the acquisition
25 of land or aquatic habitat or interests therein,

1 for the conservation of resident endangered spe-
2 cies or threatened species of fish or wildlife;

3 “(v) provision is made for public participa-
4 tion in designating resident species of fish or
5 wildlife as endangered species or threatened
6 species; and

7 “(vi) the State agency has initiated or en-
8 couraged voluntary or incentive based programs
9 to further the conservation objectives for the
10 species; or

11 “(B)(i) the requirements set forth in
12 clauses (iii), (iv), and (v) of subparagraph (A)
13 are complied with, and

14 “(ii) plans are included under which imme-
15 diate attention will be given to those resident
16 species of fish and wildlife which are deter-
17 mined by the Secretary or the State agency to
18 be endangered species or threatened species and
19 which the Secretary and the State agency agree
20 are most urgently in need of conservation pro-
21 grams.

22 “(2) PROHIBITIONS NOT AFFECTED.—A delega-

1 pursuant to section 4(d) or section 9(a)(1) with re-
2 spect to the taking of any resident endangered spe-
3 cies or threatened species in the State.

4 “(d) ALLOCATION OF FUNDS.—

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

17 “(A) the international commitments of the
18 United States to protect endangered species or
19 threatened species;

20 “(B) the readiness of a State to proceed
21 with a conservation program consistent with the
22 objectives and purposes of this Act;

23 “(C) the number of endangered species
24 and threatened species within a State;

1 “(D) the potential for restoring endan-
2 gered species and threatened species within a
3 State;

4 “(E) the relative urgency to initiate a pro-
5 gram to restore and protect an endangered spe-
6 cies or threatened species in terms of survival
7 of the species;

8 “(F) the importance of monitoring the sta-
9 tus of candidate species within a State to pre-
10 vent a significant risk to the well-being of any
11 such species; and

12 “(G) the importance of monitoring the sta-
13 tus of recovered species within a State to assure
14 that such species do not return to the point at
15 which the measures provided pursuant to this
16 Act are again necessary.

17 So much of the annual appropriation made in ac-
18 cordance with subsection (i) allocated for obligation
19 to any State for any fiscal year as remains unobli-
20 gated at the close thereof may be made available to
21 that State until the close of the succeeding fiscal
22 year. Any amount allocated to any State which is

1 for expenditure by the Secretary in conducting pro-
2 grams under this section.

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

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

7 “(B) the benefits that are expected to be
8 derived in connection with the conservation of
9 endangered species or threatened species;

10 “(C) the estimated cost of these actions;
11 and

12 “(D) the share of such costs to be borne
13 by the Federal Government and by the States;
14 except that—

15 “(i) the Federal share of such pro-
16 gram costs shall not exceed 75 percent of
17 the estimated program cost stated in the
18 agreement; and

19 “(ii) the Federal share may be in-
20 creased to 90 percent whenever two or
21 more States having a common interest in
22 one or more endangered species or threat-
23 ened species, the conservation of which
24 may be enhanced by cooperation of such

1 States, enter jointly into an agreement
2 with the Secretary.

3 The Secretary may, in the Secretary's discretion,
4 and under such rules and regulations as he may pre-
5 scribe, advance funds to the State for financing the
6 United States pro rata share agreed upon in the co-
7 operative agreement. For the purposes of this sec-
8 tion, the non-Federal share may, in the discretion of
9 the Secretary, be in the form of money or real prop-
10 erty, the value of which will be determined by the
11 Secretary, whose decision shall be final.

12 "(3) COMPLIANCE WITH PROCEDURES.—In im-
13 plementing this Act under authority delegated to a
14 State by the Secretary, the State shall comply with
15 all requirements, prohibitions, and procedures set
16 forth by this Act.

17 "(e) REVIEW OF STATE PROGRAMS.—Any action
18 taken by the Secretary under this section shall be subject
19 to his periodic review at no greater than intervals of 5
20 years.

21 "(f) CONFLICTS BETWEEN FEDERAL AND STATE
22 LAWS.—Any State law or regulation which applies with

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

3 “(2) prohibit what is authorized pursuant to an
4 exemption or permit provided for in this Act or in
5 any regulation which implements this Act. This Act
6 shall not otherwise be construed to void any State
7 law or regulation which is intended to conserve mi-
8 gratory, resident, or introduced fish or wildlife, or to
9 permit or prohibit sale of such fish or wildlife. Any
10 State law or regulation respecting the taking of an
11 endangered species or threatened species may be
12 more restrictive than the exemptions or permits pro-
13 vided for in this Act or in any regulation which im-
14 plements this Act.”.

15 (b) CONFORMING AMENDMENT.—Section 6(g)(2)(A)
16 (16 U.S.C. 1535(g)(2)(A)) is amended to read as follows:

17 “(A) to which the Secretary has delegated au-
18 thority under subsection (c); or”.

19 **SEC. 702. STATE PROGRAMS AFFECTED BY THE CONVEN-**
20 **TION.**

21 Section 8A (16 U.S.C. 1537a), as amended by section
22 207(b) of this Act, is amended by adding at the end the
23 following new subsection:

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

1 “(1) COMPLIANCE WITH STATE RECOMMENDA-
2 TION.—In any instance in which a State has a pro-
3 gram for management of a native species which is
4 the subject of a request for an export permit under
5 the Convention, the Secretary shall act in accord-
6 ance with the recommendation of the State unless
7 the Secretary makes a finding and publishes a notice
8 in the Federal Register that scientific evidence justi-
9 fies a conclusion contrary to the advice of the State.

10 “(2) APPEAL.—The State which is the subject
11 to such a finding, or any person in that State di-
12 rectly affected because of inability to obtain a per-
13 mit, may appeal the finding to an Administrative
14 Law Judge or a court. The burden shall be on the
15 Secretary to show that the evidence supports a find-
16 ing contrary to the recommendation of the State.”.

17 **TITLE VIII—FUNDING OF**
18 **CONSERVATION MEASURES**

19 **SEC. 801. AUTHORIZING INCREASED APPROPRIATIONS.**

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

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

1 sections (b) through (e), there are authorized to be appro-
2 priated—

3 “(1) to the Department of the Interior to carry
4 out the duties of the Secretary of the Interior under
5 this Act \$110,000,000 for fiscal year 1996,
6 \$120,000,000 for fiscal year 1997, \$130,000,000 for
7 fiscal year 1998, \$140,000,000 for fiscal year 1999,
8 \$150,000,000 for fiscal year 2000, and
9 \$160,000,000 for fiscal year 2001;

10 “(2) to the Department of Commerce to carry
11 out the duties of the Secretary of Commerce under
12 this Act \$15,000,000 for fiscal year 1996,
13 \$20,000,000 for fiscal year 1997, \$25,000,000 for
14 fiscal year 1998, \$30,000,000 for fiscal year 1999,
15 \$35,000,000 for fiscal year 2000, and \$40,000,000
16 for fiscal year 2001; and

17 “(3) to the Department of Agriculture to carry
18 out the duties of the Secretary of Agriculture under
19 this Act \$4,000,000 for each of fiscal years 1996
20 through 2001.

21 “(b) COOPERATIVE MANAGEMENT AGREEMENTS.—
22 There are authorized to be appropriated to the Depart-
23 ment of the Interior to carry out section 6(b),
24 \$20,000,000 for each of fiscal years 1996 through 2001,
25 to remain available until expended.

1 “(c) CONVENTION IMPLEMENTATION.—There are au-
2 thORIZED to be appropriated to the Department of the Inte-
3 rior to carry out section 8A(e) \$1,000,000 for each of fis-
4 cal years 1996 through 2001, to remain available until ex-
5 pended.

6 “(d) NON-FEDERAL CONSERVATION PLANNING.—
7 There are authorized to be appropriated to the Depart-
8 ment of the Interior to carry out section 10(a)(2)(F)
9 \$20,000,000 for each of fiscal years 1996 through 2001,
10 to remain available until expended.

11 “(e) HABITAT CONSERVATION GRANTS.—There are
12 authorized to be appropriated to the Department of the
13 Interior to provide habitat conservation grants under sec-
14 tion 6(b)(14) \$20,000,000 for each of fiscal years 1996
15 though 2001, to remain available until expended.”.

16 **SEC. 802. FUNDING OF FEDERAL MANDATES.**

17 Section 16 is amended to read as follows:

18 **“SEC. 16. FEDERAL COST-SHARING REQUIREMENTS FOR**
19 **CONSERVATION OBLIGATIONS.**

20 “(a) DIRECT COSTS DEFINED.—In this section, the
21 term ‘direct costs’ means—

22 “(1) expenditures on labor, material, facilities,

1 “(2) increased purchase power costs and lost
2 revenues caused by changes in the operation of a hy-
3 dropower system from which the non-Federal person
4 or Federal power marketing administration markets
5 power to meet a specific conservation measure; and

6 “(3) other reimbursable costs specifically identi-
7 fied by the Secretary as directly related to the per-
8 formance of a specific conservation measure.

9 “(b) COST-SHARING.—

10 “(1) CONSERVATION PLANS.—For any non-
11 Federal person or Federal power marketing adminis-
12 tration, the Secretary shall pay 50 percent of any di-
13 rect costs that result from the compliance by the
14 person or administration mandated by a conserva-
15 tion plan issued under section 5 or any conservation
16 measure that provides protection to a listed species
17 under a plan developed under the Pacific Northwest
18 Electric Power Planning and Conservation Act (16
19 U.S.C. 839 et seq.) including a plan that provides
20 protection to a larger population unit of the same
21 listed species.

22 “(2) CONSULTATION REQUIREMENTS.—For any
23 non-Federal person or Federal power marketing ad-
24 ministration, the Secretary shall pay 50 percent of
25 direct costs that result solely from requirements im-

1 posed by the Secretary on the person or marketing
2 administration under section 7.

3 “(3) INCIDENTAL TAKE PERMITS.—For any
4 non-Federal person issued an incidental take permit
5 under section 10, the Secretary shall pay to such
6 person 50 percent of the direct costs of preparing
7 the application for the permit and implementing the
8 terms and conditions of the permit.

9 “(4) COOPERATIVE MANAGEMENT AGREE-
10 MENTS.—The Secretary shall pay 50 percent of the
11 direct costs of preparing and implementing the
12 terms and conditions of a cooperative management
13 agreement incurred by a party to the agreement and
14 any costs incurred by any other non-Federal person
15 or Federal power marketing administration subject
16 to the terms of such agreement.

17 “(c) METHOD OF COST-SHARING.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), the Secretary may make a contribution
20 required under subsection (b) by—

21 “(A) providing a habitat reserve grant
22 under section 6(b)(14);

1 “(C) providing appropriated funds.

2 “(2) COST-SHARE PAYMENT FOR FEDERAL
3 POWER MARKETING ADMINISTRATIONS AND OTHER
4 STATE OR LOCAL GOVERNMENTAL ENTITIES.—The
5 Secretary shall make a contribution under sub-
6 section (b) to a Federal power marketing adminis-
7 tration or any other State or local governmental en-
8 tity by providing appropriated funds directly to the
9 administration or governmental entity.

10 “(3) APPROPRIATED FUNDS.—To the maximum
11 extent practicable, any appropriated funds paid by
12 the Secretary under paragraphs (1) and (2) shall be
13 paid directly (in lieu of reimbursement) to the party,
14 person, or administration.

15 “(4) LOANS.—The Secretary may not consider
16 a loan to the party to the cost-share as a contribu-
17 tion or portion of a contribution under subsection
18 (b).

19 “(5) RECOVERED COSTS.—The Secretary may
20 not claim as a portion of the Federal share under
21 subsection (b) any costs to the Federal Government
22 that are recovered through rates for the sale or
23 transmission of power or water.

24 “(6) EFFECT OF FEDERAL NONPAYMENT.—If
25 the Secretary fails to make the contribution required

1 under subsection (b), the application of the applica-
2 ble provision of the conservation plan, requirement
3 under section 7, term under the incidental take per-
4 mit, or provision of the cooperative management
5 agreement shall be suspended until such time as the
6 full contribution is made. If the suspended provision
7 or requirement includes a conservation easement or
8 other instrument restricting title to the property of
9 the non-Federal person, nonpayment of the full con-
10 tribution shall result in the nullification of the pre-
11 viously granted restriction on title.

12 “(7) IN-KIND CONTRIBUTIONS.—A non-Federal
13 person or Federal power marketing administration
14 may include in-kind contributions in calculating the
15 appropriate share of the costs of the person or ad-
16 ministration under this section.

17 “(8) COSTS PAID BY THE SECRETARY.—Com-
18 pensation from the Federal Government under sec-
19 tion 19 may not cover costs incurred by a non-Fed-
20 eral person that were otherwise paid by the Sec-
21 retary under subsection (b).

22 “(d) EXISTING COST-SHARING AGREEMENTS.—Any

1 main in effect unless the non-Federal person requests that
2 the cost-sharing percentage be reconsidered.

3 “(e) ADJUSTMENTS TO COST-SHARING PERCENT-
4 AGE.—At the request of the non-Federal person, the Sec-
5 retary may adjust the percentage of the Federal contribu-
6 tion to a higher share.”.

7 **SEC. 803. ENDANGERED SPECIES AND THREATENED SPE-**
8 **CIES CONSERVATION TRUST FUND.**

9 Section 13 is amended to read as follows:

10 **“SEC. 13. ENDANGERED SPECIES AND THREATENED SPE-**
11 **CIES CONSERVATION TRUST FUND.**

12 “(a) ESTABLISHMENT.—There is established in the
13 general fund of the Treasury a separate account which
14 shall be known as the ‘Endangered Species and Threat-
15 ened Species Conservation Trust Fund’ (in this section re-
16 ferred to as the ‘Fund’).

17 “(b) CONTENTS.—The Fund shall consist of the fol-
18 lowing:

19 “(1) Amounts received as gifts, bequests, and
20 devises under subsection (d).

21 “(2) Other amounts appropriated to or other-
22 wise deposited in the Fund.

23 “(c) USE.—Amounts in the fund shall be available
24 to the Secretary, subject to appropriations, for the follow-
25 ing:

1 “(1) Payment of compensation under section
2 19.

3 “(2) Habitat conservation grants under section
4 6(b)(11).

5 “(3) Payment of cost sharing under section 16.

6 “(d) GIFTS, BEQUESTS, AND DEVISES.—

7 “(1) IN GENERAL.—The Secretary may accept,
8 use, and dispose of gifts, bequests, or devises of
9 services or property, both real and personal, for the
10 purpose of carrying out this Act.

11 “(2) DEPOSIT INTO FUND.—Gifts, bequests, or
12 devises of money, and proceeds from sales of other
13 property received as gifts, bequests, or devises, shall
14 be deposited in the Fund and shall be available for
15 disbursement upon order of the Secretary.

16 “(3) TREATMENT.—For purposes of Federal in-
17 come, estate, and gift taxes, property accepted under
18 this subsection shall be considered as a gift, bequest,
19 or devise to the United States.”.

20 **TITLE IX—MISCELLANEOUS**
21 **PROVISIONS**

22 **SEC. 901. AMENDMENTS TO DEFINITIONS.**

1 (1) by adding after paragraph (16) (as added
2 by section 401(e)(1) of this Act) the following new
3 paragraph:

4 “(17) The term ‘non-Federal person’ means a
5 person other than an officer, employee, agent, de-
6 partment, or instrumentality of the Federal Govern-
7 ment or a foreign government, acting in the official
8 capacity of the person.”; and

9 (2) by amending paragraph (3) (as redesign-
10 nated by section 102(a)(1) of this Act) to read as
11 follows:

12 “(3) The term ‘commercial activity’ means all
13 activities of industry and trade, including, but not
14 limited to, the buying or selling of commodities and
15 activities conducted for the purpose of facilitating
16 such buying and selling, except that it does not in-
17 clude exhibition of commodities or species by exhibi-
18 tors licensed under the Animal Welfare Act (7
19 U.S.C. 2131 et seq.), museums, or similar cultural
20 or historical organizations.”.

21 **SEC. 902. REVIEW OF SPECIES OF NATIONAL INTEREST.**

22 No later than 60 days after the date of the enactment
23 of this Act, the Secretary (as that term is defined in sec-
24 tion 3 of the Endangered Species Act of 1973, as amended
25 by this Act) shall identify those species which are listed

1 under section 4 of that Act as a result of being determined
2 to be a population segment. No later than one year after
3 the date of the enactment of this Act, the Secretary shall
4 review and determine whether or not it is in the national
5 interest to continue to list each such population segment.
6 Those population segments which the Secretary rec-
7 ommends for continued listing in the national interest
8 shall be submitted to the Congress for approval. Any pop-
9 ulation segment which is not determined to be in the na-
10 tional interest shall be delisted within 60 days after that
11 determination.

12 **SEC. 903. PREPARATION OF CONSERVATION PLANS FOR**
13 **SPECIES LISTED BEFORE ENACTMENT OF**
14 **THIS ACT.**

15 (a) LISTED SPECIES WITHOUT RECOVERY PLANS.—

16 (1) PRIORITY FOR DEVELOPMENT OF CON-
17 SERVATION PLANS.—Not later than 30 days after
18 the date of enactment of this Act, the Secretary (as
19 defined in section 3 of the Endangered Species Act
20 of 1973, as amended by this Act) shall publish a list
21 of all species that were determined to be endangered
22 species or threatened species under section 4 of the

1 date of enactment of this Act) divided equally into
2 three tiers of priority for preparation of conservation
3 objectives and conservation plans therefor pursuant
4 to section 5 of the Act. Any species which is listed
5 as an endangered species or threatened species in
6 more than one State shall be placed in the first tier
7 of priority.

8 (2) SCHEDULE FOR ADOPTION OF PLANS.—The
9 Secretary shall publish pursuant to section 5 of the
10 Endangered Species Act of 1973 a conservation ob-
11 jective, draft conservation plan, and final conserva-
12 tion plan (except when a conservation objective is
13 published pursuant to section 5(b)(3)(C) of such
14 Act) for each species within each tier of priority
15 identified pursuant to paragraph (1) within the fol-
16 lowing periods after the date of enactment of this
17 Act:

18 (A) Conservation objective: First tier, 120
19 days; second tier, 12 months; and third tier, 24
20 months.

21 (B) Draft conservation plan: First tier, 6
22 months; second tier, 18 months; and third tier,
23 30 months.

1 (C) Final conservation plan: First tier, 12
2 months; second tier, 24 months; and third tier,
3 36 months.

4 (b) LISTED SPECIES WITH RECOVERY PLANS.—

5 (1) PRIORITY FOR REVISION OF EXISTING
6 PLANS.—Except as provided in paragraph (3), a
7 final recovery plan issued under section 4(f) of the
8 Endangered Species Act of 1973 (16 U.S.C.
9 1533(f)) (as in effect on the day before the date of
10 enactment of this Act) shall continue in effect until
11 the expiration of the deadline for revision thereof es-
12 tablished under this paragraph. Within 90 days after
13 the date of enactment of this Act, the Secretary
14 shall publish a list of all species that were deter-
15 mined to be endangered species or threatened spe-
16 cies under section 4 of such Act (16 U.S.C. 1533)
17 and for which final recovery plans were issued under
18 section 4(f) of such Act (16 U.S.C. 1533(f)) (as in
19 effect on the day before the date of enactment of
20 this Act) divided equally into three tiers of priority
21 for preparation of conservation objectives pursuant
22 to section 5(b) of such Act and revisions of the re-

1 species or threatened species in more than one State
2 shall be placed in the first tier of priority.

3 (2) SCHEDULE FOR REVISION OF PLANS.—The
4 Secretary shall publish pursuant to section 5 of the
5 Endangered Species Act of 1973 a conservation ob-
6 jective, draft revision of the existing recovery plan,
7 and final revision of the existing recovery plan (ex-
8 cept when a conservation objective is published pur-
9 suant to section 5(b)(3)(C) of such Act) for each
10 species within each tier of priority identified pursu-
11 ant to paragraph (1) within the following periods
12 after the date of enactment of this Act:

13 (A) Conservation objective: First tier, 180
14 days; second tier, 18 months; and third tier, 30
15 months.

16 (B) Draft revised recovery plan: First tier,
17 12 months; second tier, 24 months; and third
18 tier, 36 months.

19 (C) Final revised recovery plan: First tier,
20 18 months; second tier, 30 months; and third
21 tier, 42 months.

22 (3) SPECIES FOR WHICH NO CONSERVATION
23 PLAN IS REQUIRED.—If the Secretary publishes a
24 conservation objective for which no conservation plan
25 is required pursuant to section 5(b)(3)(C) of the En-

1 dangered Species Act of 1973 for any species subject
2 to this subsection, the final recovery plan applicable
3 to the species shall be rescinded.

4 (c) PROHIBITION ON ADDITIONAL REQUIRE-
5 MENTS.—The Secretary or any other Federal agency may
6 not require any increase in any measurable criterion con-
7 tained in, or any site specific management action in addi-
8 tion to those provided in, a final recovery plan issued
9 under section 4(f) of the Endangered Species Act of 1973
10 (16 U.S.C. 1533(f)) (as in effect on the day before the
11 date of enactment of this Act) until such time as a con-
12 servation plan, or, pursuant to section 5(b)(3)(C) of such
13 Act, a conservation objective, has been published under
14 section 5 of such Act.

15 (d) EXISTING BIOLOGICAL OPINIONS.—In conjunc-
16 tion with the issuance of a conservation plan, or, pursuant
17 to section 5(b)(3)(C) of the Endangered Species Act of
18 1973, a conservation objective under subsection (a) or (b),
19 the Secretary (as defined in section 3 of such Act (16
20 U.S.C. 1532)) shall review and reissue, in accordance with
21 section 7 of such Act, any written opinion of the Secretary
22 that relates to the affected species and was issued after
23 January 1, 1995, under section 7(b)(3) of such Act (16

1 **SEC. 904. CONFORMING AMENDMENT TO TABLE OF CON-**
2 **TENTS.**

3 The table of contents at the end of the first section
4 is amended to read as follows:

5 **"TABLE OF CONTENTS**

- "Sec. 2. Findings, purposes, and policy.
- "Sec. 3. Definitions.
- "Sec. 4. Determination of endangered species and threatened species.
- "Sec. 5. Species conservation plans.
- "Sec. 5A. Protection of habitat.
- "Sec. 6. Cooperation with non-Federal persons.
- "Sec. 7. Interagency cooperation.
- "Sec. 8. International cooperation.
- "Sec. 8A. Convention implementation.
- "Sec. 9. Prohibited acts.
- "Sec. 10. Exceptions.
- "Sec. 11. Penalties and enforcement.
- "Sec. 12. Endangered plants.
- "Sec. 13. Endangered Species and Threatened Species Conservation Trust Fund.
- "Sec. 14. Notice of hearings.
- "Sec. 15. Authorization of appropriations.
- "Sec. 16. Federal cost-sharing requirements for conservation obligations.
- "Sec. 17. Marine Mammal Protection Act of 1972.
- "Sec. 18. Annual cost analysis by the Fish and Wildlife Service.
- "Sec. 19. Right to compensation.
- "Sec. 20. Recognizing net benefits to aquatic species."

ALASKA STATE SENATE AND HOUSE

ISSUE PAPER

ENDANGERED SPECIES ACT REAUTHORIZATION

1995

Updated: 4/19/95

Major Points of Contention

1. Definition of Species

According to the Endangered Species Act (ESA), the term species means "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature."

The present definition of "species" encourages court challenges for listing every semi-isolated population or stock. While the species or subspecies may be, in fact, healthy, the present definition presses for the listing of every existing population segment.

The National Marine Fisheries Service has adopted a formal policy establishing its definition or interpretation of the ESA relating to "distinct populations". This policy is presented in a supporting paper authored by Robin S. Waples which states:

A population will be considered "distinct" (and hence a "species") for purposes of the ESA if it represents an evolutionarily significant unit (ESU) of the biological species. A population must satisfy two criteria to be considered an ESU:

- 1) It must be substantially reproductively isolated from other conspecific population units, and
- 2) It must represent an important component in the evolutionary legacy of the species.

The U.S. Fish and Wildlife Service (FWS) has not adopted a clarification policy for implementation of the ESA. Because of the growing tendency of the FWS to list population segments and its inability to enunciate a standardized interpretive policy, there has been some support for modifying the ESA to formalize the "distinct population" interpretation adopted by NMFS.

One of the primary purposes of the ESA was to "minimize the losses of genetic variations" where "potential cures for cancer or other scourges, present or future, may lie locked up in the structures of plants which may yet be undiscovered, much less analyzed." Another motive involved halting the "irreplaceable loss to aesthetics, science, ecology, and the national heritage should more species disappear." It is not clear that it is necessary to preserve every distinct population segment to accomplish these goals.

Failure to limit ESA protection to genetically distinct and biologically significant units will result in increasing pressure and litigation to strain the application of the ESA as a land use act to preserve old growth forests, prevent grazing and other development. Limiting ESA protection to genetic heritage addressed by Congress will permit land use conflicts to be addressed on their own merits including an ecosystem/biodiversity analysis.

Alaska Legislative Position

We recommend that Congress drop the term "distinct population segment" from the definition.

We recommend that Congress provide a precise definition of the term "species" to be utilized in implementing the Act.

Alaska recommends that the FWS and NMFS cooperate in developing and applying a consistent interpretation of the "species" definition. We recommend that the existing policy adopted by NMFS be used as a starting point.

2. Listing Process

During the last convention of CITES (Convention on International Trade in Endangered Species of Wild Flora and Fauna), a major international effort was made to begin the process of establishing quantitative criteria for listing of species on the appendices. The same scientific effort needs to be implemented for the ESA. It was agreed at CITES that one criteria will not fit all species of plants and animals but it can be structured to fit over 90% of the species with strict criteria for exceptions being included.

Recent agency abuses in the acceptance of petitions for listing points out the need for quantitative criteria for listing. At least, some standards other than "substantial evidence" needs to be incorporated in the Act. The petitioner should be required to demonstrate that the species being petitioned for listing meets some minimum criteria.

Because of continued political manipulation of the listing process, it has become necessary to establish a peer review process for listing. A peer review process should be required which reviews the standards for listing, including criteria, priority and qualifications.

Alaska Legislative Position

Alaska should support a provision in the Act establishing a time-frame for the development of quantitative criteria for listing of species.

The "substantial evidence" requirement for petitioners must be more specific. We recommend that the evidence must show that the species has met some minimum requirements for listing.

A peer review process for listing should be incorporated into the Act.

3. Clearer Distinction Between Endangered and Threatened Listing

An endangered species is defined as "any species which is in danger of extinction throughout all or a significant portion of its range."

A threatened species is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range."

Although the act provides management flexibility to clearly distinguish endangered from threatened species, the agencies have generally treated them identically. It is our contention that this inflexibility destroys a major purpose of the Act which is to identify species prior to listing as endangered and institute less stringent programs designed to promote recovery rather than listing as endangered. Logic would argue in favor of maximum cooperation in developing recovery programs for threatened species before the species reaches a more restrictive listing under the Act.

Because the agencies have not more clearly separated endangered and threatened listings, the general tendency from the private sector and many resource agencies is to fight any listing until the species' status is far below the threshold which should require special research and management attention.

Alaska Legislative Position

Clarification and more flexible interpretation of the taking provisions would more specifically delineate between endangered and threatened species.

It is clear that both agencies have considerable flexibility in distinguishing between the two listings. Lacking more distinct policies separating recovery and management programs for endangered and threatened species, the ESA should be amended to more clearly separate the purposes and restrictions associated with each listing.

Of major concern is the need to continue to allow regulated "taking" of threatened species which is consistent with recovery plans and acceptable conservation practices.

4. Role of States

The ESA indicates that encouraging the states to "develop and maintain conservation programs which meet national and international standards is a key to meeting the nation's international commitments and to better safeguarding, for the benefit of all citizens, the nation's heritage in fish, wildlife, and plants."

To-date, states have been active participants in the implementation of the ESA but, generally, not partners. Many states have their own ESA that are, in some cases, more effective in listing, recovering, and delisting species. If the states are to be effective, however, the Federal agencies must place more emphasis on developing cooperative recovery plans that maximize the flexibility of the Act to accommodate State interests. Public acceptability and support is the key to the ultimate success of the endangered species program. Early identification of species in potential trouble, use of experimental populations to gain public support, utilization of State public relations programs to reduce incidental take of listed species, use of State-corporate fund raising programs to target species recovery and the development of innovative techniques designed to reduce mortalities or harmful harassment are all mechanisms which can be used to make the combined Federal-State effort more effective.

Alaska Legislative Position

The ESA will continue to be exclusively a confrontational conservation law unless the emphasis of the administering agencies shifts from one of Federal control to one of Federal/State/private cooperation. Better cooperative agreements with the states and the private sector plus more flexible management options, especially in dealing with threatened species, would make the ESA more effective.

At present, most of this can be accomplished under the existing statute with minor amendments to clarify taking. Unless there is a philosophical shift in direction within the Federal agencies, these types of positive actions are not likely and will require specific amendments to force implementation.

if the ESA is amended in this area it would be advantageous to require mandatory consultation rather than "as appropriate" in all phases of the implementation process.

5. Adequate Funding

The states have consistently claimed that inadequate section 6 monies are appropriated annually to meet the minimum goals of the ESA. Recoveries are consistently delayed due to inadequate funds to implement recovery plans.

A major complaint is that funds that are available are being conveniently diverted to politically high profile species rather than species most biologically in need of attention.

Another major source of irritation is that the lack of an efficient delisting process forces agencies to spend critically needed funds on species that have technically met recovery thresholds.

The 1988 GAO report severely criticized the Federal agencies for not adhering to their prioritization process for identifying funding targets.

Alaska Legislative Position

The program funding prioritization process of each agency should be adhered to with adequate public input. Less emphasis should be placed on politically popular species and more on species needing priority attention. This could be accomplished through effective policy construction and implementation or an amendment to ESA requiring prioritized expenditures unless otherwise specified in the annual appropriations.

Specific amendments to the ESA are not required, however, to provide a prioritization process. Funding for Section 6 of the ESA will require reauthorization and adequate appropriation, however.

Alaska supports additional funds being appropriated to Section 6 projects for cooperative work with the states.

6. Delisting and Reclassification Processes

Section 4(f)(1)(B)(ii) requires that each recovery plan include "objective measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list." Unfortunately, the agencies have a tendency to ignore the population objectives adopted in the recovery plans.

Current practices within FWS are to frequently delay delisting despite the fact that population objectives have been met. This circumvents the prioritization process and discourages participation in the recovery process.

At present the listing process is supposed to be based on the biological status of the species involved. Although the recovery plans include population objectives, they most frequently do not include automatic delisting thresholds.

Reclassification criteria are not presently required in the ESA recovery plans. Consideration may be given to requiring inclusion of reclassification criteria along with measurable criteria for delisting in the ESA.

Alaska Legislative Position

The Federal agencies have continually demonstrated a political reluctance to delist species. Since population objectives are built into the recovery plans, specific thresholds

for delisting should be required. Conceptually, the threshold would automatically trigger the delisting process.

Alaska is in favor of the delisting process being a biological decision rather than a political one.

It should be required that specific reclassification criteria be included in the recovery plans.

7. Take Provisions

Under the ESA, the term take means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."

One of the most controversial aspects of the ESA relates to the taking of threatened or endangered species. There are significant differences between FWS and NMFS as to the interpretation of the ESA and their policies for implementation. While both agencies generally prohibit the taking of endangered species, FWS has prohibited the taking of threatened species, while NMFS has been more lenient in allowing taking of threatened species, especially under incidental take provisions.

Court interpretations of authorized taking of threatened species has complicated recovery programs and discouraged cooperation from affected states. Most recently, courts have interpreted the "extraordinary case" limitation of the ESA to apply to threatened as well as endangered species.

We are concerned that the present definition of take is being interpreted to include many nonlethal acts that simply represent encounters with listed species, such as visual encounters of most marine mammals from vessels. The purpose of the ESA is to "conserve" listed species and their ecosystems. Mere encounters do not contravene these objectives. Though we concur that encounters that incite life threatening responses should be prohibited, casual or non-life-threatening encounters may in fact be beneficial to the species by promoting better understanding and acceptance of the program by the public. In some cases, nonlethal harassment may be beneficial to the listed species, such as use of underwater sounds to keep marine mammals away from potentially life-threatening areas or areas with conflicts with other listed species. Certainly, significant public support can be solicited and maintained if some discretion is used in allowing the use of nonlethal harassment techniques. It might be advantageous to describe lethal taking and non-lethal encounters separately in the law.

Alaska Legislative Position

The definition of "take" should be modified to eliminate "harass" from the definition. Limitations on harassment should be treated separately to allow for controlled harassment which does not pose any permanent physical danger to the animal or population.

The ESA should allow for managed taking of some species. The "extraordinary case" limitation should apply only to endangered species. The current judicially based definition of "extraordinary case" should not be applied to threatened species when populations are expanding or the species is expanding into areas where they have been absent but are now creating unmanageable social and ecological pressures.

Not allowing the taking of threatened species has made the process so rigid that the states have lost all flexibility to use taking as an aspect of their recovery management program. The ESA should be amended to clarify this aspect of the overall program.

8. Incidental Take Provisions

Under section 7 of the ESA, incidental take permits may be granted for Federal activities that are "not likely to jeopardize the continued existence" of any listed species. Under section 10, incidental take permits may be issued for non-Federal activities when "the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild." However, there appears to be no reason for State governments to be classified with private and other nongovernmental applicants instead of with our counterpart Federal agencies in this permitting process.

For example, it has been noted that, though phrased differently in each section, the exemption standards are effective equivalents. Indeed, State agencies are, in nearly all cases, the only responsible management agency for the listed species and would thereby be best able to evaluate and provide information on whether a limited taking resulting from a State activity would be likely to jeopardize the continued existence of the listed species. Finally, unlike private applicants, states are, along with the Federal government, accountable to their citizen constituents.

Alaska Legislative Position

We are concerned that the flexibility and the mandate is clearly present in Sections 7 and 10 for the secretary to allow "reasonable and timely" incidental take of listed species. It seems most appropriate that the procedure for the State to receive incidental take permits be allowed under Section 7. Section 7(A)(1) needs to be amended to apply to not only Federal agencies but to State agencies as well.

Alaska must examine whether or not it is desirable to have incidental take provisions centralized under one statute. Of particular concern are the implementation problems developed as a result of incidental take regulations under the Marine Mammal Protection Act and the Endangered Species Act.

One possible amendment option would be:

No incidental take permit is needed for threatened species as long as take is "in accordance with provisions of other conservation laws and not likely to cause the

species to become endangered within the foreseeable future throughout all or a significant portion of its range."

9. Use of Experimental Population

Under the ESA, the Secretary may allow for the release of an endangered species as a wholly separated population for experimental purposes. The experimental population is to be treated for administrative purposes as a threatened species and critical habitat shall not be designated.

Some states have argued that a more lenient use of the experimental population option of the Act would encourage states to expand efforts to reestablish some extirpated populations if the rigid standards of an endangered species were not applied. More public support could be solicited if provisions could be adopted which allow for removal of problem animals and if natural expansion of experimental populations didn't jeopardize other established uses and practices.

To make this effective, however, FWS policy of not allowing taking of threatened species would have to be modified.

Alaska Legislative Position

The ESA does not have to be amended to provide for broader interpretations of experimental population applications. However, FWS has continued to take a very restrictive approach to the positive uses of experimental populations. Specific amendments to the Act allowing greater use of experimental populations should be considered.

10. Critical Habitat Designation Objective, Purpose and Need for Clarification

There is uncertainty as to the effect of the critical habitat designation, especially on private and State lands. For instance, from the standpoint of the State of Alaska, the designation of entire ranges of some salmon as critical habitat could have serious and unnecessary impacts. Overlaying and preemptive planning, zoning and permitting authorities could have major economic impacts. This is especially true if all portions of a species habitat are treated identically regardless of the relative value or importance of each area.

The ESA reads, "except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species."

The Act presently requires the designation of critical habitat when recovery plans are adopted. The agencies have consistently ignored this requirement.

Alaska Legislative Position

Congress needs to provide a more succinct and consolidated interpretation of the "critical habitat" provisions of the ESA.

We recommend that the law be amended to identify precise circumstances or criteria under which the Secretary can expand critical habitat designation to the entire range previously occupied by the species. As it is now, this decision is left to the whim of the respective Secretary.

By amendment, we would like to see critical habitat of anadromous fish limited to spawning areas or other designated habitats where all or a substantial portion of the species is subject to significant mortalities.

11. Consideration of Economic Impacts

Some critics of the ESA suggest that economic impacts should be more seriously considered in the initial process of listing as either threatened or endangered. At present, the decision to list or not list a species or population as threatened or endangered is supposed to be based exclusively on its biological status. Economic consideration can only be considered in the development of a recovery plan or in the designation of critical habitat.

Alaska Legislative Position

It is doubtful that any coalition will be able to muster the strength to substantially alter the strict biological basis for listing and delisting species. However, economic considerations could be injected into the process of determining whether a species is listed as threatened versus endangered.

Consideration should be given to simplifying the mechanisms necessary for "God Squad" intervention.

Greater weight should be sought toward evaluating the economic impacts of decisions during the recovery plan development and implementation phases.

12. Citizen Suits

The ESA requires a 60 day notice period before a citizen suit can be brought to enjoin an action threatening a listed species.

This requirement can place the citizen or state in a "catch 22" where the 60 day notice requirement allows for a proposed agency action to be accomplished before the action can be legally challenged in court. This specifically occurred in Alaska where a 60 day notice of intent to sue over a NMFS biological opinion concerning incidental taking of chinook during the summer season essentially placed us at a point beyond the season where any litigation

would be essentially moot. On any action required annually like a biological opinion for incidental taking, there is no effective relief under the current law.

Alaska Legislative Position

States and citizens should be allowed to sue with less than a 60 day notice period if the notice requirement places either the citizen or the state in a position where it is impossible to attain relief through the courts due to the annual time requirements.

13. Private Property Rights

A recent court decision on taking of private property rights by Federal or State agency actions may lead to attempts to clarify the intent of the ESA. It is unclear what impact the ESA has at present on private property rights.

Alaska Legislative Position

Some form of private property rights will probably be considered. Some private property rights amendment will be supported by the Legislature.

14. Creation of Prelisting Category

There are some distinct advantages to establishing some method of identifying species before they reach the biological status requiring listing as either threatened or endangered. The major concern is that this proposal is being utilized to expand the ESA to include an even lower threshold for protective listing under the Act.

Alaska Legislative Position

Alaska opposes the establishment of a prelisting category, at this time, as it would only extend the ESA even further than it does now. Use of the threatened listing should first be made to work properly.

15. Recovery Burden

The listing and recovery plan development process for Columbia River chinook has raised several practical issues involved with the implementation of the ESA. It may be beneficial to modify the ESA to require special emphasis in recovery plans which place the major burden of recovery on those interests which have contributed most heavily to the decline of the listed species.

Alaska Legislative Position

Alaska supports an amendment requiring the burden of recovery being placed proportionally on those activities responsible for the decline of the species.

16. Deviations from Adopted Recovery Plans

The practical implementation of officially adopted recovery plans is apparently subject to considerable administrative discretion. It may be desirable to require that recovery plans be adhered to by the agency and/or any modifications or agency deviations from the plan be subject to the same publication and public notification requirements as the original plan.

Alaska Legislative Position

Deviations from adopted recovery plans should be discouraged but not prohibited. Alaska is proposing that more flexibility be inserted into the process. Prohibiting some agency discretion in modification of recovery plans may not be desirable.

17. Integration of ESA with International Agreements & Treaties

At present, the integration of ESA requirements with International Agreements such as the Convention on International Trade of Endangered Species of Wild Flora and Fauna (CITES) or the Pacific Salmon Treaty (PST) are often inconsistent.

At present, implementation procedures for the ESA do not require the integration of ESA objectives with those associated with equally important International Treaties. It may be beneficial to require that the development of recovery plans be coordinated with international agreement structures so that recovery objectives are closely meshed with those of the international agreements. This type of requirement should not detract from long term recovery efforts but assure that reasonable time frames and intra-governmental allocations and other decisions are consistent and reasonably applied. Without some basic integration requirements, ESA mandates may unnecessarily disadvantage international negotiations by the United States.

Alaska Legislative Position

The ESA should require the integration of species recovery plans with international agreements that have over-lapping goals and objectives.

18. Reauthorization Time-frame

The question will be whether or not to reauthorize the act for three or five years.

Alaska Legislative Position

If the ESA is properly amended, we would agree to a five year reauthorization. With the controversies now revolving around the Pacific salmon issues, it is probably not advantageous to the State to have a long-term reauthorization period unless our concerns are addressed by formal policy changes or amendments to the ESA.

19. Exempt Federal Advisory Committee Act

Strict interpretations of the Federal Advisory Committee Act (FACA) by the Federal agencies have significantly reduced the effective role of the States in many important federal programs, including the Endangered Species Act. It is imperative that the states be exempted from the Federal Advisory Committee Act in the implementation of the ESA if the purpose is to foster cooperative programs to effect recovery of listed species or species at risk.

Under present interpretations of the FACA by most federal agencies, states are treated as another member of the public rather than as cooperating sovereign governmental agencies.

This frequently precludes the type of continuous interchange and consultation which is needed to effectively address the growing problems associated with ecosystem management, biodiversity, endangered species, etc. As a result, states are not effective partners.

Alaska Legislative Position

The state supports either an amendment to the Federal Advisory Committee Act exempting states from the provisions of the Act or, in this case, exempting the ESA from the provisions of the FACA.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HJR 58

Title: Relating to the Endangered Species Act

Dept. Affected Legislature

BRU: ALL

Sponsor: Representative Green

Components: ALL

Requestor: House Resources Committee

Serial # _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
----------------	------------	------------	------------	------------	------------	------------

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
----------------	------------	------------	------------	------------	------------	------------

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0.0	0.0	0.0	0.0	0.0	0.0
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS :

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

see attached analysis

Prepared by: Jeffrey Logan, Legis Ass't

Date: 19-FEB-96

House Resources Committee

Phone: 465-6547

Jeffrey Logan

Phone:

Alaska State Legislature

WHITE PAGES BOX
CAPITOL BUILDING
JUNEAU, ALASKA 99801-0500
(907) 462-4900
(907) 462-4110 FAX

OFFICE ADDRESS:
270 WEST 4TH AVENUE
SITKA, ALASKA 99781
(907) 226-0300
(907) 226-0324 FAX



CHIEF CLERK
LEGISLATIVE COUNSEL
LEGISLATIVE MANAGER
LEGISLATIVE SECRETARY
LEGISLATIVE ASSISTANT
LEGISLATIVE COUNSEL
LEGISLATIVE MANAGER
LEGISLATIVE SECRETARY
LEGISLATIVE ASSISTANT

CHIEF CLERK
LEGISLATIVE COUNSEL
LEGISLATIVE MANAGER
LEGISLATIVE SECRETARY
LEGISLATIVE ASSISTANT

FINANCE SUBCOMMITTEES:
DEPT. OF NATURAL RESOURCES
DEPT. OF COMMERCE & ECONOMIC DEVELOPMENT
DEPT. OF ENVIRONMENTAL CONSERVATION

Representative Joe Green

District 10

Sponsor Statement

HJR 58 - Reauthorization of the Endangered Species Act

HJR 58 supports the efforts of our Congressional delegation, and other states, in reforming the Endangered Species Act (ESA).

The ESA was passed by Congress in 1973 and has been amended several times. Congress has attempted to reauthorize the ESA since 1992. In 1995 Congressman Don Young and 94 cosponsors introduced H.R. 2275 to reform the ESA.

H.R. 2275 amends the ESA in three major areas: 1) consideration of economic impacts of practices that protect species; 2) limit governmental actions to violate private property rights and diminish private property values; 3) improving the scientific integrity upon which listing decisions are based.

Alaska has more to lose in this debate than most states because of our resource-based economy. Examples of the ESA invoked to halt economic activity include a lawsuit filed by Greenpeace to shut down the eastern Gulf of Alaska pollock fishery, and proposals by the U.S. Forest Service to list the Alexander Archipelago Wolf and the Queen Charlotte Goshawk as threatened.

While there may be sections of the bill that Alaskans would like to see amended, we believe H.R. 2275 is a good starting point to begin the dialogue on ESA reform. We believe HJR 58 will be a tool to help our congressional delegation protect Alaska's economy.

TESTIMONY

ALASKA STATE SENATE PRESIDENT DRUE PEARCE

AND

ALASKA STATE HOUSE SPEAKER GAIL PHILLIPS

BEFORE THE

UNITED STATES HOUSE COMMITTEE ON RESOURCES

ENDANGERED SPECIES ACT TASK FORCE

REGARDING

REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

APRIL 24, 1995

Mr. Chairman and members of the Endangered Species Act task force, I want to thank you for this opportunity to testify on one of this country's most powerful conservation laws - the Endangered Species Act. For the record, my name is Drue Pearce, President of the Alaska State Senate. I will be presenting joint testimony on behalf of the Alaska State Senate and for House Speaker Gail Phillips and the Alaska State House.

I fully understand that it is unusual for the leadership of two state legislative bodies to appear before US Senate or House committees to present joint testimony on pending federal issues. The fact that we are here illustrates the importance that we place on the task before you which is the reauthorization and, hopefully, the fine tuning of the Endangered Species Act (ESA).

Since my time is limited, I would ask that our entire testimony and the attached Issue Paper be submitted for the record and use of the task force. We have spent considerable time preparing our comments and offer our assistance in any way possible to support you in this endeavor.

First, Mr. Chairman, I want to make it clear that my reason for being here is not to advocate the dismantling of the ESA. Our reasons for testifying are that we believe the Act is broken, it is not meeting the original intent of Congress and the agencies given

the responsibility for implementing the Act have abused their authorities and have used the Act to further unrelated agency objectives.

Congress, as well as state legislatures, frequently avoid trying to legislate minute details into complicated laws because of the difficulties in anticipating all possible legitimate exceptions which should be considered, the complexities of the issues or the politics associated with those minute decisions. In good faith, we extend authority to the agencies to develop regulations which provide the detail necessary to implement the laws while adhering to the basic intent of the original legislation. The ESA has, quite frankly, suffered from this lack of consideration for detail in the law.

It is unfathomable that Congress intended for the ESA to be used as the legal corner stone of all biodiversity and environmental planning within the federal government. It is also hard to believe that Congress intended for the law to be used as a legal bludgeon or blockade against all legitimate resource development in our country.

From Alaska's perspective, we can point to some definite successes associated with the federal ESA and the state's own Endangered Species Act. Alaska's bald eagles have been used to successfully reestablish populations of our national bird into areas where they have virtually disappeared due primarily to the indiscriminate uses of DDT. Similarly, peregrine falcon populations, both in Alaska and in the contiguous United States have recovered dramatically due to good conservation programs, cooperation between the states and the federal government and the contributions of many private sources throughout the country. The Aleutian Canada goose, a ground nesting goose in the Aleutian islands, are on the road to recovery following the removal of very effective predator foxes and the reintroduction of the species back to its former range. Here again, good cooperation between the citizens of our state, the state agencies and the federal agencies made it all possible. In virtually all of the successes you have seen one key ingredient – cooperation and old fashioned partnerships.

Unfortunately, for every success of the ESA, your task force will find numerous examples of governmental abuse of authorities.

Over the last several years, we have witnessed a significant change for the worse in federal/state cooperation and the creation of true partnerships. The ESA has been effectively used by the federal agencies as a weapon and not a tool of conservation. It is also important to add that the federal courts are equally responsible for the hostility towards the ESA. Rigid interpretations of the law by the federal courts have tied both the hands of the federal and state agencies in trying to craft reasonable solutions to very complex problems. The combination of agency and court interpretations of the law have served to create a conservation program that is phenomenally expensive and practically ineffective. If you want to measure the success of this program, ask how many species have been delisted.

I would like to offer a summary of some specific experiences we have had with the implementation of the ESA and use these to illustrate why we are convinced that the Act needs improving.

Salmon

In 1991, the American Fisheries Society, a professional society of fisheries scientists, published a report that identified 106 Pacific Northwest salmon stocks that were extinct. The report went on to document 214 stocks in the Pacific Northwest that were at risk of extinction or of special concern. That same year, the National Marine Fisheries Service listed Snake River sockeye salmon as endangered under the Endangered Species Act. In 1992, they listed Snake River spring/summer chinook salmon and Snake River fall chinook salmon as threatened. Due to a continuous inflow of petitions since that time to list other salmon stocks under the Endangered Species Act, the National Marine Fisheries Service undertook a comprehensive evaluation of all five species of salmon and steelhead between the Canadian border and Mexico. Many other stocks of salmon will undoubtedly be listed by the time this evaluation is complete.

One might assume on the basis of this information that Pacific salmon species are in serious trouble and may be at threat of extinction. But, let us step back for a moment and look at the big picture. Currently, the North American production of Pacific Salmon is in excess of 200 million fish. Typically, the harvest in Alaska represents about eighty percent of the total, with harvests from Canada representing about fifteen percent and harvests from the Pacific Northwest states representing about five percent.

In Alaska there are no stocks of salmon listed as threatened or endangered. During this same period, Alaska salmon stocks have increased to record levels of production, with an all time record commercial harvest of 194 million salmon in 1994. Spawning escapement levels are healthy as well. Additionally, hundreds of millions of Pacific salmon are caught on the Asian side of the Pacific. World production of Pacific salmon is at an all time high.

So, you may be wondering why are Alaskans concerned over the application of the Endangered Species Act to salmon? One of the reasons is that Alaskans have suffered greatly under the Act as it is being applied, or more appropriately misapplied, to Snake River fall chinook salmon with no measureable benefit to these fish. We also foresee application of this act under current law as needlessly devastating the lives of Alaskans throughout the entire state.

The Snake River is located in Idaho, thousands of miles from Alaska. Never-the-less, provisions within the Act itself coupled with wholly inappropriate discretionary decisions by the National Marine Fisheries Service have needlessly impacted thousands of Alaskan sport and commercial fishermen as well as associated businesses. Following are specific examples of problems Alaskans have with the act as it is being applied to Snake River fall chinook:

- The act has been misapplied to a "stock" of salmon. The fundamental concept behind the Endangered Species Act was to protect a "species" from extinction.

Inappropriately, however, federal law now defines "species" to include "distinct population segments" of species.

What is a distinct population segment of a species? In the case of salmon, which return with great fidelity to their river of origin, the fish in each river or tributary stream can represent a distinct population segment of a species. In Alaska, we have over 20 thousand salmon streams, each of which is inhabited by one to five species of salmon.

Application of the Act to distinct population segments is simply contrary to common sense. At the periphery of a species range, population segments are constantly in a threatened and endangered state. If this were not the case, every species would be found every place on earth. No amount of good intentions, manpower, or money is sufficient to protect every distinct population segment of a species from naturally expanding or contracting. Trying to do so is an attempt to defy the laws of nature.

- **The burden of recovery of Snake River fall chinook has been allocated arbitrarily and capriciously rather than on a scientific, economic, or practical basis.** Sport and commercial fishermen in Southeast Alaska are victims of the act and federal interpretations that have failed to focus recovery efforts on those factors causing the decline of Snake River fall chinook.

Construction of 4 dams on the Columbia River below the Snake River and 12 dams on the mainstem Snake River substantially reduced Snake River salmon distribution and abundance. Ninety-five percent of the human induced mortality is associated with these dams.

Five percent of the mortality is associated with fisheries conducted in the US and Canada. Only about one-quarter of one percent of the mortality is inferred to be associated with fisheries conducted in Alaska that are targeting healthy runs of Alaskan salmon. On average, there is about one Snake River fall chinook mixed in with every 5 thousand other chinook, and millions of coho, chum, pink, and sockeye salmon.

Furthermore, of every four Snake River fall chinook salmon that may be incidentally caught in Alaska, only about one would ever survive to lay eggs due to intervening fisheries in Canada, Washington, and Oregon or the dams on the Columbia and Snake Rivers.

The National Marine Fisheries Service has not taken these factors into account in apportioning the recovery burden. Their efforts to recover this stock are clearly not efficient and will not be effective. In terms of effectively recovering a stock, it would be appropriate for the federal government to begin by apportioning the recovery burden for a listed species proportionally to the cause for the listing. For instance, if dams on the Columbia River and Snake River are responsible for ninety-five

percent of the mortality, they should be responsible for a similar portion of the recovery burden.

- **State/Federal cooperation, while clearly called for within the act, is being ignored in application of the Endangered Species Act for Snake River chinook salmon in Alaska.** Alaska commercial troll fishermen were forced to reduce their fishing season in 1993 to comply with the Endangered Species Act and thereby lost access to many healthy stocks of all five species of salmon. In 1994, the sport and commercial troll chinook salmon quota was reduced by 23 thousand fish. For 1995, officials of the National Marine Fisheries Service have indicated likely reductions of fifty percent for the Southeast Alaska sport and commercial chinook quota. Yet, there has not been one public hearing on this issue held in Alaska in 1993 or 1994. According to the Proposed Recovery Plan for Snake River Salmon, issued by the National Marine Fisheries Service in March, 1995, eight hearings are scheduled for Idaho, Oregon, and Washington States this spring. According to the plan, no hearings were scheduled for Alaska. We have heard, informally, that as an afterthought, two hearings may take place in Alaska after the eight other hearings are held.

The act also calls for development of cooperative agreements with states. In fact, the act specifies requirements, that if met, will result in acceptance of the agreement within 120 days of its receipt. Alaska sent a signed agreement which was received by the National Marine Fisheries Service on February 14, 1994. Fourteen months have elapsed and we are still waiting.

Alaskans are bewildered and angry. Alaskans are left with no explanation for irrational restrictions placed on their fisheries. We are irritated with the failure to conduct any public hearings in Alaska in 1993, 1994, and according to the proposed recovery plan, in 1995. These facts, coupled with illegal delays in responding to attempts to develop a cooperative agreement, lead us to the inescapable conclusion that the federal government is quite willing to needlessly impose debilitating measures on our state but very unwilling to accept local input or allow cooperative efforts or partnerships.

This situation is very problematical for Alaskans and reminds us of the federal attitude during the time that Alaska was a territory. Prior to statehood, the federal government was responsible for salmon management in Alaska. They failed to provide sound management practices needed to sustain Alaskan salmon fisheries. Over-fishing was a major factor in a serious decline of the Alaska salmon fishery that occurred between 1940 and statehood, 1959.

Further, the federal government failed to provide the financial resources needed to manage and research salmon stocks and fisheries such that depressed stocks could be rehabilitated. Salmon stocks and the fishing industry were in such bad shape that President Eisenhower declared Alaska a federal disaster area in 1953.

At the time of statehood, in 1959, statewide harvests totaled only about 25 million salmon, the lowest annual harvest since 1900—a level equivalent to less than twenty percent of current sustainable production. It took almost twenty years of salmon management by the State of Alaska under sound management principles with improved funding for research and management to rebuild salmon runs from the dismal remnants inherited at statehood to the healthy levels experienced today.

The Endangered Species Act should be amended to require mandatory consultation with affected parties in all phases of the implementation process.

- **Citizen suits to remedy misapplication of the act by the federal government are often effectively precluded.** The Endangered Species Act requires a sixty day notice period before a citizen suit can be brought to enjoin an action. In 1994, the National Marine Fisheries Service did not present Alaska with the incidental take permit required to conduct our fishery until June 30. The fishery begins July 1, with the primary availability of fish and the vast majority of the harvest being taken during the month of July. The requirement to file a sixty day notice of intent to sue over provisions of the incidental take permit placed Alaskans at a point beyond the season where any litigation would be essentially moot. On any action required annually, such as issuance of an incidental take permit, there is no effective relief under the current law.

Alexander Archipelago Wolves & Vancouver Island Goshawks

The Alexander Archipelago wolf occupies many of the islands in southeast Alaska and the adjacent mainland. There are six major drainages connecting the interior of British Columbia and coastal southeast Alaska. There is little doubt that scientifically this population is not reproductively or genetically isolated.

The Alexander Archipelago wolf was petitioned for listing under the ESA because the petitioners were concerned about degradation of habitat for Sitka blacktail deer, about excessive hunting mortality due to increased access by logging roads and about inbreeding. The purpose of this petition was clearly an attempt to stop logging activities on those islands within the range of this species.

The Alaska Department of Fish and Game, the agency directly responsible for the management of this big game animal, opposed the petition and the listing of this species under the ESA. The Alaska Department of Fish and Game data indicates that this species has probably survived on these islands since the last ice age. The present population is not threatened and in some cases is expanding. There is no data to indicate that this population of wolves are threatened or even a species of particular concern to the scientific world. Harvest records have consistently shown that the wolf population is healthy and well managed.

The U.S. Fish and Wildlife Service did not reject the petition, however. Instead, the Service continued with the mandatory one year review despite the fact that the

petitioners failed to provide substantial evidence supporting their petition. The Service eventually concluded that the species did not warrant listing under the ESA.

The Vancouver Island goshawk also occupies the islands of southeast Alaska. In the case of the goshawk, however, it is on the very fringe of its range with extremely low densities compared to other populations of this continent wide raptor.

This species was petitioned for listing under the ESA. The justification was primarily linked to the effects of logging on this species primary habitat—old growth forest. There was no evidence to indicate that the species was declining in numbers or that the species was threatened with extinction throughout any portion of its range. The assumption was that logging was going to decrease their numbers.

Again the Alaska Department of Fish and Game, the agency actively conducting research on the species, opposed the petition and questioned whether this population of goshawks even qualified under the Act.

The U.S. Fish and Wildlife Service chose to accept the petition on the goshawk and conducted another year long review of the status of this species. Recently, the regional director for the Service announced that the agency would probably conclude that the Vancouver Island goshawk did not warrant listing under the Act either. Their final decision is due in the next month or so.

The question is why do we make an issue of this process. Let me explain. While the U.S. Fish and Wildlife Service was conducting the year long review, considerable pressure was placed on the U.S. Forest Service to significantly alter its logging plans in the region to avoid the two species being listed under the ESA. As a result of this pressure and for fear of the effects on Forest Service management prerogatives if the species were listed, the Forest Service withdrew over 300,000 acres from its logging plans. The impact of these timber withdrawals on the economies of southeast Alaska have been significant.

The point we are making here is critical. The Forest Service is required to provide for species diversity in its planning process. The Forest Service has Congressional mandated requirements related to forest resource management. The Forest Service also has a complex forest planning process which bends over backwards to include all relevant data submitted by individuals, state agencies or sister federal agencies. It is through this process that the U.S. Fish and Wildlife Service should submit its information concerning species status or concerns for incorporation into the final planning documents. It is also appropriate and desirable for the agencies to develop cooperative planning and research efforts to maximize the use of limited federal funds.

It is not appropriate, however, for the Fish and Wildlife Service to use the petition process as a form of environmental blackmail to force a sister agency to adopt specific modifications in their land management plans. It is our position that a species either qualifies for listing or it does not. If it truly qualifies for listing as a threatened species, whether we like it or not, the U.S. Fish and Wildlife Service is given certain authorities

by Congress which includes considerable direct input on other federal agency land management options. We contend that the U.S. Fish and Wildlife Service was perfectly aware that these two species in these two areas did not qualify for listing but successfully used the threat of listing as leverage against the U.S. Forest Service. We truly believe this was never the intent of Congress.

As you can see in our attached Issue Paper on the Reauthorization of the Endangered Species Act, we propose several changes which will correct this type of problem. We propose that the Act be changed primarily to direct its emphasis to "species". We are opposed to the federal agencies being given the latitude to list "distinct populations" depending on their own political agendas.

We propose that quantifiable criteria for listing be established scientifically for either listing as threatened or endangered.

We recommend that Congress reemphasize the intent to provide a clearer distinction between the listing as threatened and endangered. The agencies should be utilizing the threatened listing as a category which identifies a species in a precipitous and unnatural decline but which can allow for management flexibility during the recovery stages. The agencies have for all practical purposes combined the two listing because it makes their lives simpler and it fits an anti-use agenda being adopted by many of the federal conservation agencies.

We also propose that the Federal Advisory Committee Act be amended to exclude state agencies. We contend that Congress never intended for governmental organizations with statutory or regulatory authority to be included under the Act. The Act is presently being interpreted by the agencies and the courts to treat state agencies exactly the same as any private citizen. It is our belief that the agency involved in the research and management of the two species mentioned above should have been directly involved in the listing decisions. They were excluded, however, except for the opportunity to submit data for review by the Fish and Wildlife Service.

We are also proposing that Congress establish a mandatory peer review within the listing process. Had that been in place during the petitioning and review of the above species, it is our belief that the petition would never have been accepted.

Steller Sea Lions

The Steller sea lion populations in portions of their range in the Gulf of Alaska and Bering Sea have been declining for the last twenty years. Those declines have been well documented and are most notable from Prince William Sound westward and including populations along the Aleutian Chain. Some of the declines have been precipitous in the last decade. At the same time, portions of the Steller sea lion populations have remained relatively stable, especially those in the eastern Gulf of Alaska.

As a result of these declines, the National Marine Fisheries Service has listed the Steller sea lion as threatened, developed a recovery plan and has proposed that the species be listed as endangered. What is causing the declines? Are these normal population fluctuations? Why are some segments of this species remaining stable and others have decreased dramatically? No one knows the answers to these questions it appears and especially the National Marine Fisheries Service – the agency responsible for not only the species involved but the bulk of the commercial fishing industry likely to be impacted if drastic experimental measures are taken to reverse this trend. The economic impacts on our state could be catastrophic.

Our point in using the sea lion as an example here is to illustrate the broad problem being experienced by the states in dealing with federal control and preemption. The Marine Mammal Protection Act passed in 1972 and, as a result, one of the worlds most progressive marine mammals research and management programs initiated by the State of Alaska in 1959 was for all practical purposes eliminated. The National Marine Fisheries Service was given the responsibility for the protection and management of Steller sea lions and other species.

Since the passage of the Marine Mammal Protection Act, the federal government has spent literally millions of dollars producing nothing to help the sea lion. The only reliable data available to document and quantify the decline of this species was produced by the Alaska Department of Fish and Game by a patched together but high quality research program dedicated to producing critical information needed to protect the interests of Alaskan citizens. One has to question the process of prioritization within this large federal agency.

From our perspective, there is some argument to be made that this species would have been better off today had it remained under state management. At least, there would have been some direct incentive for the state to initiate the research work necessary to correct or explain the cause for this species' decline.

This case also serves to illustrate what is in our opinion a growing fiscal policy within the federal agencies responsible for administering the ESA. Listing of species are not avoided because the actual listing process guarantees increased funding by Congress. Whether it is true or not, the perception is that the agencies purposely ignore some species because they cannot get adequate funding from Congress until they have actual listed the species under the ESA. If this is true, it is not good testimony to the conservation ethics of our federal agencies.

Conclusion

On December 21, 1994, Governor Fife Symington of Arizona called for repeal of the Endangered Species Act. Governor Symington said, "It has been a failed and costly experiment." Governor Symington also stated:

"It is clear, however, that the Endangered Species Act has become a fierce and cruel weapon being used by environmental extremists with no regard for the adverse impacts this causes to individuals and whole communities or even to the species they purport to protect. It has been perverted by the cumulative impact of judicial interpretations. It has become a vehicle for attack on private property rights. And it ignores the rightful role of state land and wildlife agencies to address wildlife and habitat problems in a reasonable and systematic way."

"In the meantime, it has become abundantly clear that the ESA in its present form will continue to be used frivolously and maliciously by extremists to pursue their objectives regardless of the economic and environmental chaos this creates for others and for our resources."

Governor Symington has reached almost the identical conclusion that we have reached. Unless some of the major revisions being suggested are incorporated in the reauthorization of the Endangered Species Act to make it more workable, we would have to also advocate letting the ESA sunset.

As stated at the beginning of this testimony, however, that is not our purpose for being here. In our written testimony and attached Issue Paper, we have made constructive suggestions for ways to improve the ESA. Our suggestions will make the Act more effective by encouraging greater participation by the states and the public, providing for recovery and delisting, and discouraging political listings at the expense of biologically justified listings.

Maintaining biological diversity must be a goal for us all not just a selective political mission for the U.S. Fish and Wildlife Service or National Marine Fisheries Service. We wish to express our sincere interests in assisting this task force and Congress in any way we can as you proceed through this reauthorization process.

Thank you Mr. Chairman for providing us the opportunity to testify. We wish you and the task force well in the important job before you.



STATE OF ARIZONA
EXECUTIVE OFFICE

FIFE SYMINGTON
Governor

December 21, 1994

The Honorable John McCain
United States Senator
1839 South Alma School Road, Suite 375
Mesa, AZ 85210

Re: Endangered Species Act

Dear John,

The recent election results send many messages to those of us who serve in government. Chief among these lessons is that the citizens want to exercise greater control over their lives and fortunes. They want government to back off, and to be an instrument of citizen initiative. Unfortunately, the roots of this intrusion upon individual rights are deeply ingrained in our entire structure of government.

I am writing to you about a matter of growing concern to me and to many Arizona citizens. I refer to the extent and manner the Endangered Species Act is being applied to Arizona lands and the severe negative impact it is having on segments of our citizens — particularly in rural Arizona — and to the future management of the natural resources in this state.

Let me make it clear from the outset that I am as concerned as anyone about protecting plants and animals where threats exist. It is clear, however, that the Endangered Species Act has become a fierce and cruel weapon being used by environmental extremists with no regard for the adverse impacts this causes to individuals and whole communities or even to the species they purport to protect. It has been perverted by the cumulative impact of judicial interpretations. It has recently become a vehicle for attack on private property rights. And it ignores the rightful role of state land and wildlife agencies to address wildlife and habitat problems in a reasonable and systematic way.

I speak for a growing number of Arizonans who are now beginning to understand the implications of the ESA and how it is being used to destroy jobs, towns, and the threat it poses to the sustainability of our natural resources. I have attached a list of pending environmental lawsuits that directly affect the State of Arizona and its citizens. Although the list is long, it does not include numerous administrative appeals used by activists to stall timber sales, to actually prevent management reforms, and to eventually force companies out of business.

The Honorable John McCain

December 21, 1994

Page Two

The State of Arizona has tried, within the means available to it, to offset the negative actions of the extremists. We have helped to organize and sponsor at least two major conferences aimed at educating citizens to the issues. We have attempted intervention in lawsuits we believe to be malicious to our citizens and to our resources. We will continue these efforts in the future.

In the meantime, it has become abundantly clear that the ESA in its present form will continue to be used frivolously and maliciously by extremists to pursue their objectives regardless of the economic and environmental chaos this creates for others and for our resources. Listing of the Mexican Spotted Owl and the rash of appeals and complaints by environmental groups have brought forest management, and the management tool of forest-based industries, to a halt in Arizona. The Payson and Flagstaff sawmills have closed permanently; the sawmill at Fredonia will shut down this spring; and the sawmill at Eager is operating at greatly reduced capacity. The Precision Pine mill at Heber is still operating, but for how long?

Because the pulp mill at Snowflake could not depend on chips from sawmills or pulpwood from the national forests, Stone Container has announced conversion of the plant to 100% recycled paper. This represents the loss of a management option for harvesting small trees which are grossly over-abundant in all southwestern forests. These developments are not only devastating to individuals and communities, they are destroying our ability to manage forests in a sustainable way for the well-being of our citizens and for the protection of all species of plant and animals.

Environmentalists have sued to have the Northern Goshawk listed and have served the required 60-day notice that unless the process for considering numerous other species is started, they will file additional lawsuits. It is obvious they wish to stop all activities in the affected area, and to date they have been extremely successful. The logical extension of these actions is that our forests will be devastated by disease or fire, and all the species who make their homes there will suffer.

As an elected federal representative for Arizona citizens, only you can represent the needs of our state in this crisis. I will do everything in my power to support you, but you must take the lead in repealing the ESA and replacing it with a system that delegates this responsibility to states who have the expertise and the sensitivity to ensure that species and habitat protections will be carried out responsibly. The current cooperation of extremist environmental groups and allied judges on the federal bench has been both a practical and constitutional failure.

The Honorable John McCain

December 21, 1994

Page Three

The ESA has ultimately failed in its objective because of its focus on single species, as opposed to dealing with more comprehensive concerns of habitat health for the multitude of species, including humans. Based upon the experiences suffered under the Act over the course of the last 25 years, I have concluded that the Act is probably beyond repair. It has been a failed and costly experiment. While hundreds of species have been listed, only five have been delisted for reasons mostly unrelated to provisions in the Act, while at least six species have become extinct under the shield of its protection. It should be allowed to sunset. Its ambitions to protect individual species should be absorbed within the broader authorities of state and federal land management agencies to plan and provide for the sustainable use of our state and federal public lands.

Reauthorization of the Endangered Species Act is pending in both the House and Senate. I urge you to repeal it, in order that efforts to protect species, habitats, commerce, state authorities, and property rights may be allowed to succeed in a unifying way at the state level. I pledge any and all assistance that I can give to help you accomplish this urgent task.

Sincerely,



Fife Symington
GOVERNOR

FS:slb

enclosure

cc The Honorable Ed Pastor
The Honorable Bob Stump
The Honorable Jon Kyl
The Honorable Jim Kolbe
Congressman-Elect John Shadegg
Congressman-Elect Matt Salmon
Congressman-Elect J.D. Hayworth

H.R.2275

SPONSOR: Rep Young, D. , (introduced 09/07/95)

DIGEST

(AS INTRODUCED)

TABLE OF CONTENTS:

- Title I: Private Property Rights and Voluntary Incentives for Private Property Owners
- Title II: Improving Ability to Comply with the Endangered Species Act of 1973
- Title III: Improving Scientific Integrity of Listing Decisions and Procedures
- Title IV: Recognizing Other Federal Action, Laws, and Missions
- Title V: Better Management and Conservation of Listed Species
- Title VI: Habitat Protections
- Title VII: State Authority to Protect Endangered and Threatened Species
- Title VIII: Funding of Conservation Measures
- Title IX: Miscellaneous Provisions

Endangered Species Conservation and Management Act of 1995 - Amends the Endangered Species Act of 1973 (the Act) to revise: (1) the findings and purposes of the Act to include consideration of economic impacts and property owners' rights while encouraging practices that protect species; and (2) the policy of the Act to prohibit the Federal Government from using or limiting the use of privately owned property when such action diminishes the value of such property without payment of fair market value to the owner of private property.

Title I: Private Property Rights and Voluntary Incentives for Private Property Owners - Amends the Act to prohibit the Government from taking an agency action affecting privately or non-federally owned property under the Act which results in diminishment of value of any portion of that property by 20 percent or more unless compensation is offered in accordance with this title.

Requires the Federal agency that takes an action that exceeds that amount to compensate the private property owner for the otherwise lawful use or limitation on such use in the amount of the diminution in value of the portion of that property resulting from such use or limitation. Specifies that, if the diminution in value of a portion of that property is greater than 50 percent, at the option of the owner, the agency shall buy that portion and pay fair market value based on the value of the property before the use or limitation was imposed. Directs that compensation paid reflect the duration of the use or limitation necessary to achieve the purposes of the Act.

Sets forth provisions regarding: (1) procedures for written requests for compensation by the owner; (2) agency negotiations with that owner to reach agreement; (3) choice of remedies; (4) arbitration; (5) civil actions (an owner who prevails in a civil action against the agency shall be entitled to the amount of compensation awarded plus reasonable attorney's fees and other litigation costs); (6) source of payments; (7) availability of appropriations (any U.S. obligation to make such a payment shall be subject to the availability of appropriations); and (8) duty of notice to owners of agency actions limiting the use of private property and of procedures for obtaining compensation.

(Sec. 102) Requires the Secretary of the Interior (Secretary), in carrying out the program authorized by the Act, to cooperate to the maximum extent practicable with the States and other non-Federal persons, including consultation before acquiring any land or water, or interest therein, for the purpose of conserving any endangered or threatened species.

Authorizes the Secretary to enter into a cooperative management agreement with any State or local government or non-Federal person for the management of a species listed as endangered or threatened, to be listed, or which is a candidate for listing, or for the management or acquisition of an area which provides habitat for a species, subject to specified limitations.

Sets forth provisions regarding: (1) environmental assessments; (2) the effect of listing a species; and (3) violations of such agreements.

(Sec. 103) Authorizes the Secretary to provide grants to certain non-Federal persons for the purpose of conserving, preserving, or improving habitat for any species that is determined to be an endangered or threatened species upon determining that: (1) the property for which the grant is provided contains habitat that significantly contributes to the protection of the population of the species and has been managed for species protection for a sufficient period of time to significantly contribute to the protection of the species population; and (2) the management of the habitat advances the interest of species protection.

(Sec. 104) Directs the Secretary to initiate a program to provide technical advice and assistance to non-Federal persons who wish to participate in achieving the conservation objective for a species for which a conservation goal has been adopted.

(Sec. 105) Specifies that nothing in the Act shall be construed to supersede, abrogate, or otherwise impair any right or authority of a State to allocate or administer quantities of water.

Title II: Improving Ability to Comply With the Endangered Species Act of 1973 - Amends the Act to provide that an activity of a non-Federal person is not a taking of a species if the activity: (1) is consistent with the provisions of a final conservation plan or conservation objective; (2) complies with the terms and conditions of an incidental take permit or a cooperative management agreement; (3) addresses a critical, imminent threat to public health or safety or a catastrophic natural event, or is mandated by any Federal, State, or local government agency for public health or safety purposes; or (4) is incidental to, and not the purpose of, carrying out an otherwise lawful activity that in an area of the territorial sea or exclusive economic zone that is not designated as critical habitat and the affected species is not a species of fish.

Makes enforcement provisions and provisions regarding rewards and incidental expenses paid by the Secretary or the Secretary of the Treasury applicable specifically to endangered or threatened species of fish and wildlife (current law doesn't specify endangered or threatened species).

Specifies that no interpretation, policy, guideline, finding, or other informal determination may be relied upon by the Secretary in the implementation and enforcement of the Act unless such determination has been the subject of a proposed rule, subject to specified requirements. Places the burden on the Secretary to show that a specimen belongs to a species which is determined to be an endangered or threatened species.

Authorizes civil suits by persons who have suffered or are threatened with economic or other injury resulting from actions by Federal officials with respect to enforcement of the Act under specified circumstances.

(Sec. 202) Defines, for purposes of the Act: (1) "take" to mean to harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in that conduct; and (2) "harm" to mean to take a direct action against any member of an endangered species of fish or wildlife that actually injures or kills a member of the species.

(Sec. 203) Authorizes non-Federal persons to initiate consultation with the Secretary on any prospective activity: (1) to determine if the activity is consistent with a conservation plan or objective; or (2) if the person determines that the activity is inconsistent, to determine whether the activity is likely to jeopardize the continued existence of an endangered or threatened species or to destroy or adversely modify the designated critical habitat of the species in a manner that is likely to jeopardize the continued existence of the species.

(Sec. 204) Sets forth or revises provisions regarding: (1) incidental take permit requirements; (2) general, research, and educational permits; (3) maintenance of aquatic habitats for listed species; (4) compliance with international requirements and treaties; and (5) incentives for protection of marine species.

Title III: Improving Scientific Integrity of Listing Decisions and Procedures - Revises provisions of the Act regarding determinations that a species is endangered or threatened to direct the Secretary to make such determinations based on specified factors, including: (1) the present or threatened loss of its habitat; and (2) the inadequacy of existing Federal, State, and local government regulatory mechanisms.

Requires the Secretary to make such determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after soliciting and fully considering the best scientific and commercial data available concerning the status of a species from any affected State or any interested non-Federal person, taking into account other specified factors.

Sets forth or revises provisions regarding: (1) consideration of State recommendations; (2) listing of foreign species; (3) soliciting scientific information; (4) emergency listings; (5) use of the best scientific and commercial data; (6) identifying data used for decisions; (7) judicial review; (8) peer review; (9) making data public; (10) improving the petition and designation processes; (11) greater State involvement; (12) monitoring the status of species; and (13) petitions to delist species.

Title IV: Recognizing Other Federal Action, Laws, and Missions - Amends the Act to direct: (1) the Secretary to review other programs administered by the Secretary and utilize such programs in furtherance of the purposes of the Act; and (2) each Federal agency to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any habitat that is designated by the Secretary as critical habitat of the species in a manner that is likely to jeopardize the continued existence of the species.

Sets forth provisions regarding: (1) involvement of applicants for Federal approvals; (2) conferring on candidate species; (3) limitations on modifications to land management; (4) resolving conflicts between Federal agencies; (5) procedures for consultation; and (6) activities prior to completion of consultation.

(Sec. 402) Sets forth provisions regarding exemptions from consultation and conferencing requirements. Specifies that an agency action shall not constitute a taking of a species prohibited by the Act or any regulation thereunder if the action is consistent with those provided for in a final conservation plan or a conservation objective under this Act, or a cooperative management agreement or an incidental take permit.

(Sec. 403) Eliminates the Endangered Species Committee and related provisions.

Title V: Better Management and Conservation of Listed Species - Amends the Act to direct the Secretary to publish a conservation objective and a conservation plan for each species determined to be an endangered or threatened species.

Requires the Secretary: (1) within 30 days after the listing determination, to appoint an assessment and planning team (which shall report to the Secretary within 180 days the assessment of specified biological, economic, and intergovernmental factors with respect to

the listed species); and (2) within 210 days, to review the report to establish a conservation objective for the species and publish in the Federal Register the conservation objective, along with a statement of findings on which the objective was established.

(Sec. 502) Directs the Secretary, in the development and implementation of a conservation plan, to accord specified priorities, including to: (1) the development of an integrated plan for two or more endangered or threatened species that are likely to benefit from an integrated conservation plan; and (2) nonregulatory, incentive-based conservation measures and commercial activities that provide a net benefit to the conservation of the species.

Sets forth provisions regarding: (1) publication of a draft plans; (2) contents of such plan; (3) plan preparation procedures; (4) publication of a final plan; (5) participation by other persons; (6) plan revision or amendment; and (7) lack of further procedures or requirements for actions consistent with the conservation plan.

(Sec. 503) Delineates procedures regarding: (1) management prior to publication of a conservation plan; (2) emergency rulemaking protections; (3) suspension of conservation plans or objectives; (4) non-delegation of duties; and (5) review of conservation plans.

(Sec. 504) Authorizes the Secretary to: (1) designate critical habitat of a species determined to be an endangered or threatened species that meets specified requirements utilizing the National Biodiversity Reserve (see Title VI) as a first priority; and (2) revise a critical habitat designation on determining that such habitat does not meet such requirements.

Sets forth provisions regarding: (1) deadlines for designation; (2) basis for designation (directs the Secretary to exclude any area from critical habitat which does not meet the definition as set forth in this Act, which is not necessary to achieve the conservation objective for the affected species, for which the Secretary determines that the benefits of exclusion outweigh the benefits of designation (with exceptions), and in the case of property owned by a non-Federal person, where the owner has not given written consent to the designation or has not been compensated); (3) procedure for designation; and (4) judicial review of the critical habitat designation.

Sets forth provisions regarding: (1) the standard for judicial review of decisions regarding conservation objectives or plans; (2) conservation plans for foreign species; and (3) the definition of critical habitat.

(Sec. 505) Authorizes the Secretary to: (1) utilize captive propagation as a means of protecting or conserving an endangered or threatened species; and (2) provide annual grants to non-Federal persons to fund captive propagation programs if the Secretary determines that such a program contributes to enhancement of the population of such a species.

(Sec. 506) Revises provisions regarding experimental populations to require the Secretary, before authorizing the release of a population of endangered or threatened species outside the current range of such species, to identify the precise boundaries of the geographic area for the release and determine whether the release is in the public interest. Provides that: (1) any member of an experimental population found outside the geographic area in which the population is released shall not be treated as a threatened species if the member poses a threat to the welfare of the public; and (2) critical habitat shall not be designated under the Act for any experimental population determined to be not essential to the continued existence of a species.

Sets forth requirements for releases of such populations, including that the Secretary require that: (1) to the maximum extent practicable, the release occurs only in a unit of the National Park System or the National Wildlife Refuge System; (2) the regulations authorizing the release identify precisely the geographic area for the release; and (3) a release on non-Federal land occurs only with the written consent of the owner of the land.

(Sec. 507) Revises provisions regarding regulations to protect threatened species to direct the Secretary to issue, concurrently with the regulation that provides for the listing of the

species, such regulations as the Secretary deems necessary and advisable to provide for the conservation of such species. Specifies that prohibitions applied to the threatened species shall address the specific circumstances of such species and may not be as restrictive as such prohibition for endangered species.

Requires conservation guidelines to include a system for developing and implementing, on a priority basis, conservation objectives and conservation plans. Directs the Secretary to provide to the public notice of, and opportunity to submit written comments on, any guideline proposed to be established.

Title VI: Habitat Protections - Establishes a National Biological Diversity Reserve, composed of units of Federal and State lands designated and managed in accordance with this title.

Directs the Secretary and the Secretary of Agriculture to designate to the Reserve by regulation those units of the national conservation systems which are within the jurisdiction of the Secretary concerned and which the Secretary determines would contribute to the protection, maintenance, and enhancement of biological diversity.

Directs the Secretary to: (1) designate to the Reserve a unit of State-owned lands if such unit is nominated for designation by the Governor of the State and is managed under State law in accordance with this title; (2) designate to the Reserve privately owned land that is nominated for designation by the owner of the land, and remove such land from the Reserve if the owner requests removal; (3) remove from the Reserve a unit designated which the Secretary finds is not managed under State law in accordance with this title; and (4) remove from the Reserve any State-owned lands at the request of the Governor of that State.

Requires: (1) each unit of the Reserve to have as an objective for the management thereof the preservation, maintenance, and enhancement of biological diversity; and (2) within one year of the designation of a unit to the Reserve, the manager of such unit to complete, and the Secretary concerned to make available to the public by notice in the Federal Register, an inventory of the species composing the biological diversity within such unit.

(Sec. 602) Directs the Secretary, and the Secretary of Agriculture with respect to the National Forest System, to establish and implement a program to conserve fish, wildlife, and plants, including those which are determined to be endangered or threatened species. Provides that, to carry out such program, the appropriate Secretary: (1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, the Fish and Wildlife Coordination Act, and the Migratory Bird Conservation Act, as appropriate; and (2) is authorized to acquire lands, waters, or interests therein (lands).

(Sec. 603) Directs the Secretary and the Secretary of Agriculture to encourage exchanges of lands within the jurisdiction of each Secretary (other than units of the National Park System and the National Wilderness Preservation System) for lands that are not in Federal ownership and that are affected by this Act. Sets forth provisions regarding the timing of exchanges, environmental assessment, expeditious exchange decisions, applicable law, and valuation of lands acquired.

Title VII: State Authority to Protect Endangered and Threatened Species - Authorizes the Secretary to delegate to a State which establishes and maintains an adequate program for the conservation of endangered and threatened species the authority contained in this Act with respect to species of fish, wildlife, and plants that are residents in the State. Requires the Secretary, within 120 days after receiving a certified copy of a proposed State program, to determine whether such program will be adequate to provide protections to endangered and threatened species in such State, based on specified guidelines. Sets forth provisions regarding: (1) Federal financial assistance to a State which has received such delegation; (2) contents of a delegation agreement; (3) State compliance with this Act; (4) review of State programs; and (5) conflicts between Federal and State laws.

(Sec. 702) Directs the Secretary, in any instance in which a State has a program for management of a native species which is the subject of a request for an export permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, to act in accordance with the recommendation of the State unless the Secretary makes a finding and publishes a notice in the Federal Register that scientific evidence justifies a conclusion contrary to the advice of the State.

Authorizes the State which is subject to such a finding, or any person in that State directly affected because of inability to obtain a permit, to appeal the finding to an administrative law judge or a court. Places the burden on the Secretary to show that the evidence supports a finding contrary to the recommendation of the State.

Title VIII: Funding of Conservation Measures - Authorizes appropriations to the Departments of the Interior, Commerce, and Agriculture through FY 2001 to carry out the Act, including for cooperative management agreements, Convention implementation, non-Federal conservation planning, and habitat conservation grants.

(Sec. 802) Directs the Secretary, for any non-Federal person or Federal power marketing administration, to pay half of any direct costs that result from the compliance by the person or administration mandated by a conservation plan or measure that provides protection to a listed species under a plan developed under the Pacific Northwest Electric Power Planning and Conservation Act, including a plan that provides protection to a larger population unit of the same listed species.

Sets forth provisions regarding consultation requirements, incidental take permits, cooperative management agreements, method of cost-sharing, existing cost-sharing agreements, and adjustments to the cost-sharing percentage.

(Sec. 803) Establishes in the Treasury an Endangered Species and Threatened Species Conservation Trust Fund.

Title IX: Miscellaneous Provisions - Defines or redefines the terms: (1) "non-Federal person"; and (2) "commercial activity."

(Sec. 902) Directs the Secretary to: (1) identify those species which are listed under the Act as a result of being determined to be a population segment; and (2) review and determine whether or not it is in the national interest to continue to list each such segment. Requires those segments which the Secretary recommends for continued listing to be submitted to the Congress for approval, and that any segment not determined to be in the national interest to be delisted.

(Sec. 903) Requires the Secretary to publish a list of all species that were determined to be endangered or threatened species for which no final recovery plans were issued, divided equally into three tiers of priority for preparation of conservation objectives and plans (with any species listed as an endangered or threatened species in more than one State being placed in the first tier of priority).

Directs the Secretary to publish a conservation objective, draft conservation plan, and final conservation plan for each species within each tier of priority according to a specified timetable.

Sets forth provisions regarding: (1) priority for revision of existing plans (for listed species with recovery plans); (2) a schedule for revision of plans; (3) species for which no conservation plan is required; (4) a prohibition on additional requirements; and (5) existing biological opinions.

FEB 19 1996

Alaska Forest Association, Inc.

111 STEDMAN SUITE 200
KETCHIKAN, ALASKA 99901-8599
Phone 907-225-8114
FAX 907-226-5920

**Testimony of Jack E. Phelps, Executive Director
In Support of HJR 58
Offered to the House Resources Committee
February 19, 1996**

Mr. Chairman:

My name is Jack Phelps, and I am Executive Director of the Alaska Forest Association. The Association represents the forest products industry in Alaska, with more than 250 member companies across the state.

Thank you for introducing HJR 58 supporting the re-authorization of the Endangered Species Act and supporting Congressman Young's effort to bring some balance to this important Act. As you correctly state in your sponsor statement, Alaska has a great deal to lose if the Endangered Species Act is not administered in a fair and balanced manner. The forest products industry, together with the other extractive industries in Alaska, is very concerned about the growing misapplication of the ESA, especially in the western states.

HJR 58 says that "the State of Alaska supports the basic concept embodied in the Act to prevent the extinction of species." The Alaska Forest Association echoes that position. However, we believe it is also important to protect humans and their interests in this world, and that when those interests conflict, some trade-offs may have to occur. We do not, for example, believe that it is acceptable for whole communities to be put out of work merely to provide absolute protection to a particular species in a particular place. In other words, the "distinct population segment" concept should be carefully reviewed.

The Association also believes that the Endangered Species Act should not be used as a means of taking private property without just compensation; a principle embodied in our United States Constitution. This country and this state were founded on the principle that no person should be deprived of life, liberty or the use of private property without due process of law. The authors of our state constitution considered this principle so important that they incorporated it into Article I, Section 7 of the state constitution. It is vital to the health of the forest products industry, not only in Alaska but across the country, that this principle be consistently applied in the implementation of the Endangered Species Act. To that end, I urge you and Congressman Young to continue your efforts to restore some sense of fairness to the national effort to protect endangered animals.

Thank you for the opportunity to testify today on this important matter. I would be happy to answer any questions you or the committee may have.