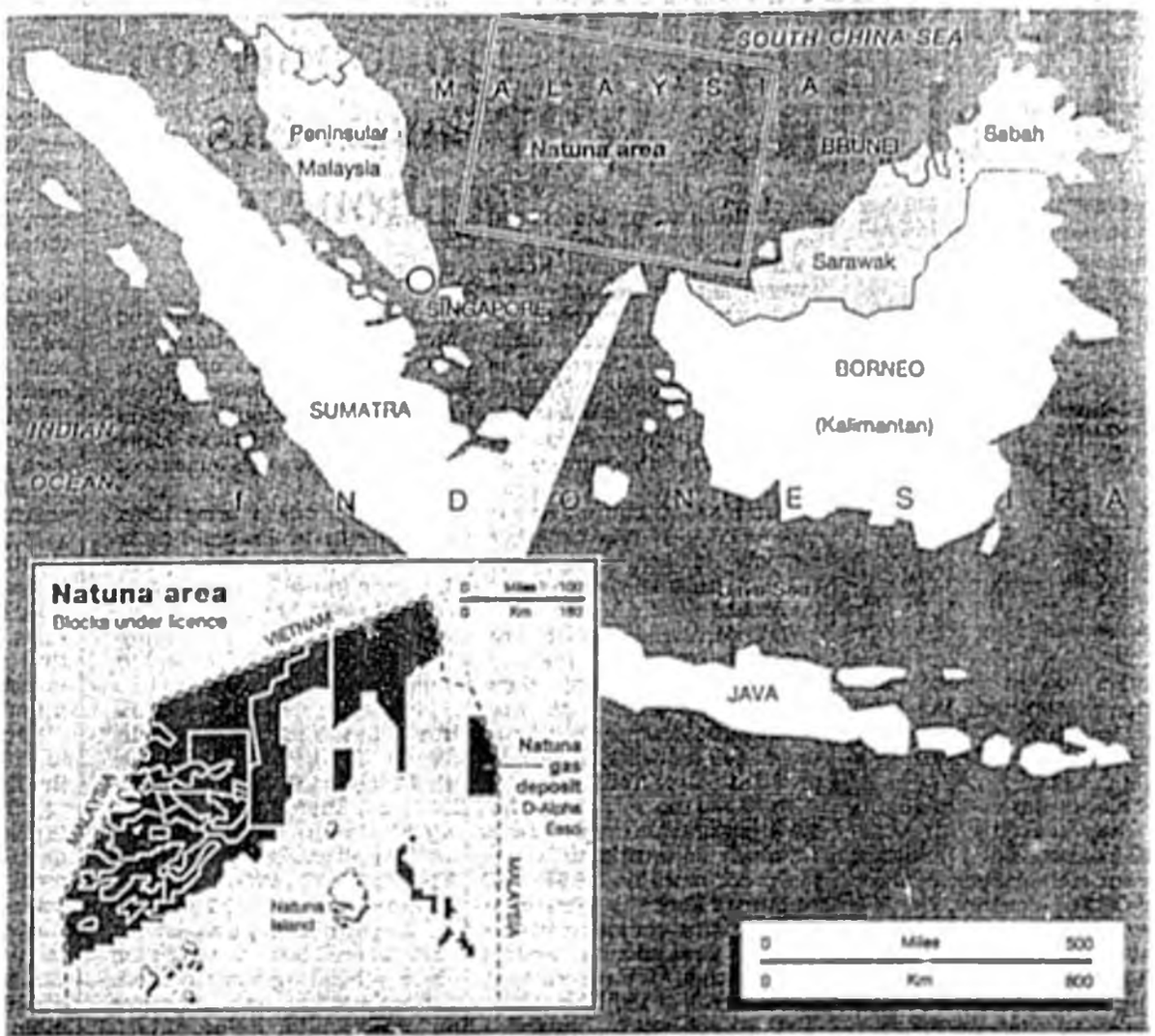
ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672
9022 SENATE RESOURCES

other priority is to agree the y structure for the project. Per- na and Exxon each have a 50 cent stake but are keen to ve others to spread the risk. bil Oil of the US is negotiating 26 per cent share that would out of Pertamina's interest. nese companies are also inter- in part of Pertamina's stake, ugh negotiations will not start agreement has been reached Mobil. The idea is that Pertam- would be left with an 11 per holding in the project.

wever, there is confidence ig those involved in the project issues such as these can be ved. The heavy political com- nent of Jakarta to Natuna is that it is seen as much as a bol of national prestige as a nercial venture. If Indonesia is cure the leading role as a natu- as supplier to Asia, failure is n option.

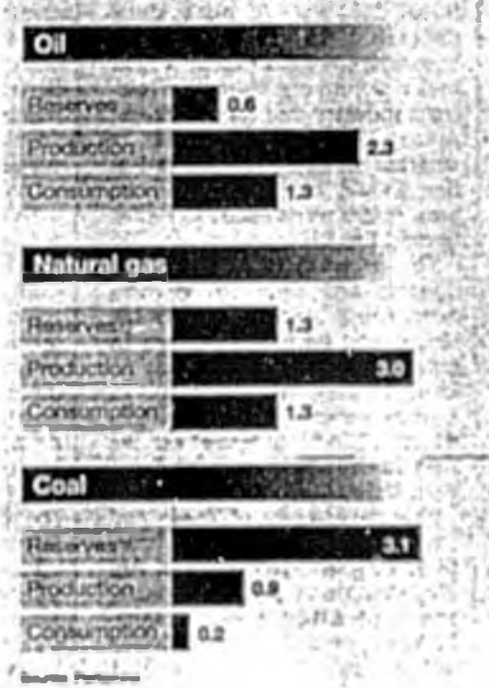
Financial Times
Thursday,
arch 7, 1996

Natuna: a prestige project

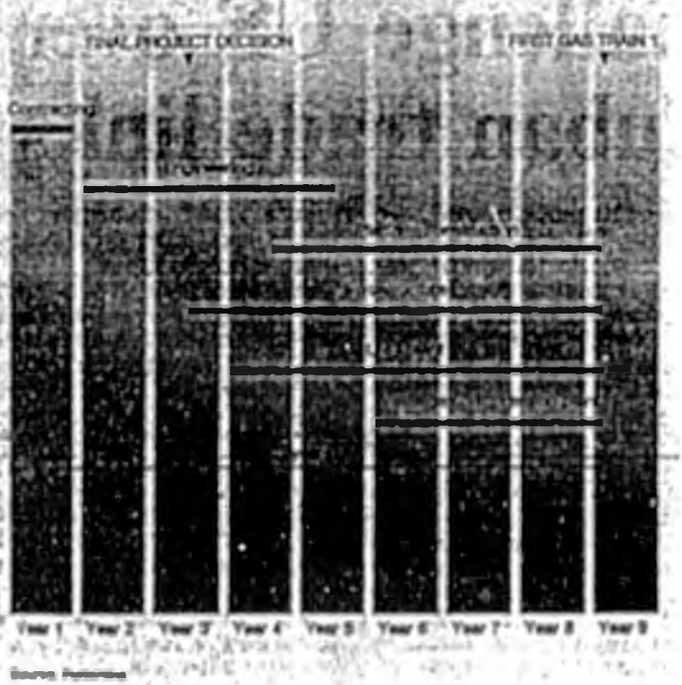


Indonesia: a share of the world

Fossil fuels, 1994



The project schedule



BRISTOL BAY BOROUGH
RESOLUTION NO. 96-11

A RESOLUTION EXPRESSING SUPPORT FOR AN ALASKA NORTH SLOPE (ANS) GAS TRANSMISSION PIPELINE AND URGING THE GOVERNOR OF THE STATE OF ALASKA AND THE ALASKA LEGISLATURE TO SUPPORT AND TAKE ACTION THAT WILL HELP EXPEDITE ITS CONSTRUCTION.

WHEREAS, House Joint Resolution No. 54, a resolution encouraging and supporting the construction of an Alaska North Slope gas transmission pipeline, has been introduced for consideration by the Alaska State Legislature; and

WHEREAS, the vast reserves of proven natural gas in the Prudoe Bay and associated North Slope oil and gas fields, if developed, will provide many new jobs and substantial revenues for the State of Alaska; and

WHEREAS, the Alaska Municipal League's 1996 policy statement strongly encourages all potential participants to immediately convene to develop a unified proposal to present to the Asian LNG buyers so that all Alaskans will directly benefit from this unique opportunity; and

WHEREAS, time is of the essence in securing a market for Alaska North Slope gas because (1) a market window is expected to develop in the Asian Pacific within the next few years, and (2) if gas sale contracts are not signed during this period, it appears that Alaska will not have another opportunity for large volume gas sales for at least another decade; and

NOW, THEREFORE, BE IT RESOLVED that the Bristol Bay Borough Assembly respectfully urges the Governor of the State of Alaska to take steps and support efforts that will help to assure the construction of the Alaska North Slope gas pipeline; and

BE IT FURTHER RESOLVED that the Alaska State Legislature cooperate and offer its assistance to all parties involved in order to help assure and speed the construction of the Alaska North Slope gas pipeline.

ADOPTED by a duly constituted quorum of the Bristol Bay Borough Assembly this 4TH day of MARCH, 1996.

IN WITNESS THEREOF:

Edwin W. Anderson
Mayor

ATTEST:

Betty J. Bonsell
Borough Clerk

BRISTOL BAY BOROUGH
RESOLUTION NO. 96-10

A RESOLUTION IN SUPPORT OF THE FORMATION OF A BRISTOL BAY ALTERNATIVE ENERGY TASK FORCE.

WHEREAS, all Bristol Bay communities are currently dependent upon high-cost diesel-power generated electricity to service area residences, schools and businesses; and

WHEREAS, the recent 15% cut made to the Power Cost Equalization Program in rural Alaska has increased costs for area residents, schools and businesses; and

WHEREAS, reductions in State spending are expected to result in additional cuts in the Power Cost Equalization program; and

WHEREAS, the Bristol Bay Native Asscciation requested that the Governor establish a Bristol Bay Alternative Energy Task Force to develop recommendations on alternative energy sources for Bristol Bay communities;

NOW, THEREFORE, BE IT RESOLVED that the Bristol Bay Borough Assembly supports the establishment of a Bristol Bay Alternative Energy Task Force and recommends that representatives from Bristol Bay businesses, native organizations, local governments and other interested entities meet together to discuss the formation and implementation of such a task force.

ADOPTED by a duly constituted quorum of the Bristol Bay Borough Assembly this 21st day of February, 1996.

IN WITNESS THEREOF:

Mayor

ATTEST:

Borough Clerk

Fax Transmittal Memo

To Representative Kubina — From Jacki Martin, Clerk Haines Borough — Date 3/20/96 — # of Pages 1

Phone # — Fax # (907) 766-2716 — Phone # (907) 766-2711

Per instructions from Bill Thomas attached is a copy of Resolution #393 passed at our regular assembly meeting last night. If you have any questions, please contact me at the above number.

HAINES BOROUGH
RESOLUTION #393

A RESOLUTION OF THE HAINES BOROUGH ASSEMBLY IN SUPPORT OF HOUSE JOINT RESOLUTION NO. 54.

WHEREAS, the Trans Alaska Gasline propoeal project would help fund state government and offset our shrinking oil revenues, and

WHEREAS, with proven natural gas reserves of over 26 trillion cubic feet, Alaska can both utilize and export substantial quantities of this energy source for decades to come, and

WHEREAS, if our state is going to see this enormous project become a reality within the next decade we have to begin the process now as there are other global gas reserves being considered for development that will be competition for our proposed markets.

NOW THEREFORE BE IT RESOLVED that the Haines Borough Assembly goes on record in support of HJR #54 urging the lessees of Alaska's North Slope natural gas reserves to move promptly forward in reaching an agreement to market Alaska's natural gas.

PASSED AND APPROVED by a constituted quorum of the Haines Borough Assembly this 19th day of March 1996.

ATTEST:

Jacki Martin
Jacki Martin, Clerk/Treasurer

Jerry L. Lapp, Mayor

DENALI BOROUGH, ALASKA

RESOLUTION NO. 96-03

A RESOLUTION IN SUPPORT OF HOUSE JOINT RESOLUTION NO. 54.

WHEREAS, Alaska has 26,000,000,000,000 cubic feet of proven natural gas reserves in the Prudhoe Bay and associated North Slope oil and gas fields and perhaps two to three times that amount of potential natural gas reserves; and

WHEREAS, a determination has been made that at least one possible pipeline route is feasible, and action on permits for that route has been completed; and

WHEREAS, the construction of such a pipeline would provide 10,000 temporary construction jobs and over 600 permanent private sector jobs in Alaska; and

AND WHEREAS, a gas pipeline across Alaska will make available environmentally friendly energy along the pipeline route and encourage development that will increase local employment and local tax revenue.

NOW THEREFORE BE IT RESOLVED: The Denali Borough Assembly supports House Joint Resolution 54, a resolution that urges the lessees of Alaska's North Slope natural gas reserves to move promptly forward in reaching an agreement to market Alaska's natural gas.

PASSED and APPROVED by the DENALI BOROUGH ASSEMBLY this 10th day of March, 1996.

John C. Sturgulewski
Mayor

ATTEST: Judy L. Mills
Borough Clerk

ALASKA MUNICIPAL LEAGUE

217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325, Fax (907) 463-5480

February 9, 1996

Representative Norman Rokeburg, Chair
House Oil and Gas Committee
Alaska House of Representatives
Room 110 State Capitol
Juneau, Alaska 99801-1182

Dear Representative Rokeburg:

We are writing to you in support of HJR 54 regarding the North Slope's natural gas reserves to market gas and develop a gas transmission line. Although the Alaskan Municipal League has not taken a specific position on HJR 54, I have attached an excerpt from the League's policy statement regarding municipal support for the development of a North Slope to Valdez Natural Gas Pipeline. The League strongly endorses the construction of natural gas pipeline and associated liquefied natural gas facilities at the earliest date.

Sincerely,

Kevin Ritchie
Executive Director

Enclosures

cc: Paul Fuhs
Legislative Committee, Land Use, Resources, & Economic Development

Post-it® Fax Note 7671	Date 2/9/96	# of pages ▶ 3
To Paul Fuhs	From	
Co./Dept.	Co.	
Phone #	Phone #	
Fax # 790-1990	Fax #	

VALDEZ CHAMBER OF COMMERCE
VALDEZ, ALASKA
RESOLUTION NO. 95-03

A resolution of the board of directors of the Chamber of Commerce of Valdez, Alaska representing its membership of which the majority consists of businesses operating in our community and surrounding areas, supporting the construction of the natural gas pipeline in the corridor established by the existing oil pipeline.

Whereas, the state of Alaska is currently reviewing its financial position and attempting to balance the budget,

Whereas, the timeline for start up operations would be accelerated due to the existing infrastructure and permits in hand,

Whereas, the earlier operations date would bring new revenue dollars into the state coffers through taxation and production that would assist with balancing of the state budget,

Whereas, the economies of more communities would benefit by use of the existing corridor,

Whereas, an ice free port entry for the shipping vessels reduces the potential risk factor,

Whereas, the safety response equipment, levels of expertise already in existence in Valdez is proven, tested, effective and efficient reduces catastrophic state wide impact,

Whereas, this route minimizes the need of any new excavation of land,

Whereas, use of the existing corridor would draw less criticism from environmental and animal activist groups that would impact the tourism industry of our state,

Therefore, let it be resolved the Valdez Chamber of Commerce supports and endorses the construction of a natural gas line in the corridor already established by the oil pipeline constructed for transportation of oil.

PASSES AND APPROVED BY THE BOARD OF DIRECTORS OF THE VALDEZ CHAMBER OF COMMERCE OF VALDEZ, Alaska, this 11th day of July, 1995.

Valdez Chamber of Commerce

David Buck

David Buck, Chairman

ATTEST:

Jean Stewart

Jean Stewart, President

SOUTHWEST ALASKA PILOTS ASSOCIATION

P.O. Box 977
Homer, Alaska 99603
Tel. (907) 235-8783
Fax. (907) 235-6119

February 8, 1996

Representative Norm Rokeberg
Chairman, House Oil and Gas Committee

Dear Chairman Rokeberg:

The Southwest Alaska Pilots Association supports HJR 54, which encourages the legislature and administration to do all they can to help support construction of a trans-Alaska pipeline system to Valdez for the export of Alaska North Slope natural gas.

The Southwest Alaska Pilots currently provide pilotage services to tankers calling on Prince William Sound and Cook Inlet. We view construction of a natural gas transportation system as an important work opportunity for us in safely piloting LNG tankers into Alaskan waters. We currently pilot the LNG ships into the Phillips Petroleum facility in Kenai. LNG is a clean cargo, and in our experience, the ships are well maintained and professionally operated.

This project is also important for all the people of Alaska because of the jobs it would create, the state revenues it would generate, and the positive effects it would have on Alaskan communities near the pipeline corridor which would have access to the gas.

Thank you for your efforts and the efforts of other legislators and administration officials in helping bring this project about.

Sincerely,

Captain A.J. Joslyn by fax

Captain A.J. Joslyn
President, SWAPA

Post-it® Fax Note 7671	Date 2-9	# of pages 8
To Paul Fuhs	From Donna H	
Co./Dept.	Co. CBJ Mgr	
Phone #	Phone # 586-5240	
Fax # 790-1990	Fax #	

Presented by: Mayor & Assembly
Introduced: 02/12/96
Drafted by: J.R.C.

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 1806

A Resolution Encouraging Lessees of North Slope Natural Gas Reserves to Reach a Gas Marketing Agreement, Expressing Support by The City and Borough of Juneau for an Alaska North Slope Gas Transmission Pipeline, and Requesting the President of the United States and the Governor of the State of Alaska to Support and Expedite Construction of Such Pipeline.

WHEREAS, Alaska has 26 trillion cubic feet of proven natural gas reserves in the Prudhoe Bay and associated North Slope oil and gas fields and even more in potential natural gas reserves, and

WHEREAS, by the end of this century, there will be a significant and increasing gap between supply and demand for natural gas in developing countries in the Pacific Rim, and

WHEREAS, market and economic studies indicate favorable conditions for the sale of North Slope gas to these Pacific Rim markets, and

WHEREAS, the sale of Alaska gas to Pacific Rim markets will improve the nation's balance of trade, and

WHEREAS, the design, sourcing, and construction of a gas transmission line connecting the North Slope to southern markets will infuse substantial funds into economies throughout the United States, and

WHEREAS, the construction of such a pipeline would provide thousands of temporary construction jobs and hundreds of permanent private sector jobs in Alaska, and

WHEREAS, income to the State of Alaska from gas sales, which would help fill the state fiscal gap, and

WHEREAS, a gas pipeline across Alaska would provide energy along the pipeline route and encourage development that would increase local employment and local tax revenue, and

WHEREAS, the 1996 policy statement of the Alaska Municipal League states that some Asian buyers have issued letters of intent to purchase Alaska North Slope liquefied natural gas, that others could do so upon receipt of certain commitments from sellers, and that Alaska should take advantage of this window of opportunity before it closes;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. That the Assembly of the City and Borough of Juneau supports efforts by North Slope natural gas lessees to establish satisfactory contractual relationships for transportation and sale of Alaska North Slope gas to Pacific Rim purchasers as soon as possible.

Section 2. That the Assembly of the City and Borough of Juneau respectfully requests the President of the United States to demonstrate national support for an Alaska North Slope gas transmission project.

Section 3. That the Assembly of the City and Borough of Juneau respectfully requests that the Honorable Tony Knowles, Governor of the State of Alaska:

(1) assure Asian buyers of Alaska North Slope liquefied natural gas that the state appreciates the value of continuity and stability in the supply and pricing of North Slope natural gas;

(2) continue support of the Joint Pipeline Office and its efforts to administer an innovative, efficient, and [illegible] effective permitting system; and

(3) meet with all parties to determine how the state can help facilitate the Alaska North Slope gas transmission pipeline.

Section 4. That the Assembly offers its assistance to the parties involved in order to speed completion of an Alaska North Slope gas transmission project.

Section 5. That the Clerk shall distribute copies of this resolution to the Honorable Bill Clinton, President of the United States; the Honorable Tony Knowles, Governor of the State of Alaska; the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators; the Honorable Don Young, U.S. Representative; the Honorable Jim Duncan, State Senator; and the Honorable Kim Elton and the Honorable Caren Robinson, State Representatives.

Section 6. Effective Date. This resolution shall be effective immediately upon adoption.

Adopted this day of 1996.

_____
Mayor

Attest:

_____
Clerk

By: Dan LaSota
Hank Hove
Jay Quakenbush
Karen Parr
Bob Logan
Paul Chizmar
Layne St. John
Cheryl Kilgore
Hank Bartos
Ladd McBride
Larry Hackenmiller
Introduced: 01/25/96
Adopted: 01/25/96

RESOLUTION NO. 96-009

A RESOLUTION SUPPORTING HOUSE JOINT RESOLUTION NO. 54 PENDING IN THE LEGISLATURE OF THE STATE OF ALASKA PERTAINING TO THE DEVELOPMENT OF THE TRANS-ALASKA GAS PIPELINE AND LIQUID NATURAL GAS SALES

. WHEREAS, HJR 54 has been introduced in the Alaska State Legislature and has been referred to three committees; and

WHEREAS, HJR 54 , in part, calls for the Alaska State Legislature to "respectfully request the North Slope natural gas lessees to intensify their efforts to establish satisfactory contractual relationships for transportation and sale of Alaska North Slope Gas to Pacific Rim purchasers as soon as possible"; and

WHEREAS, the Assembly has recently adopted Resolution 95-081 calling for the Legislature to withhold financial incentives from North Slope Oil producers until they make Alaska North Slope Gas available for sale; and

WHEREAS, the Borough believes that development of the Trans-Alaska Gas Pipeline through the existing pipeline corridor is essential to the future economic health of the State of Alaska; and

WHEREAS, the Borough believes that it is also essential that labor for any project, especially of this scope, come from the skilled and ready work force that already exists in the State of Alaska; and

WHEREAS, the language of HJR 54 as it was introduced does not contain references to local hire or specify the desired location of the proposed Trans-Alaska Gas Pipeline.

NOW, THEREFORE, BE IT RESOLVED that the Fairbanks North Star Borough Assembly respectfully urges passage of HJR 54 with appropriate consideration given to Alaska hire and locating the project through the existing pipeline corridor.

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Honorable Tony Knowles, Governor, State of Alaska, the Commissioner of Natural Resources, and members of the Alaska State Legislature.

PASSED AND APPROVED THIS 25TH DAY OF JANUARY, 1996.

Cheryl Kilgore
Presiding Officer

ATTEST:

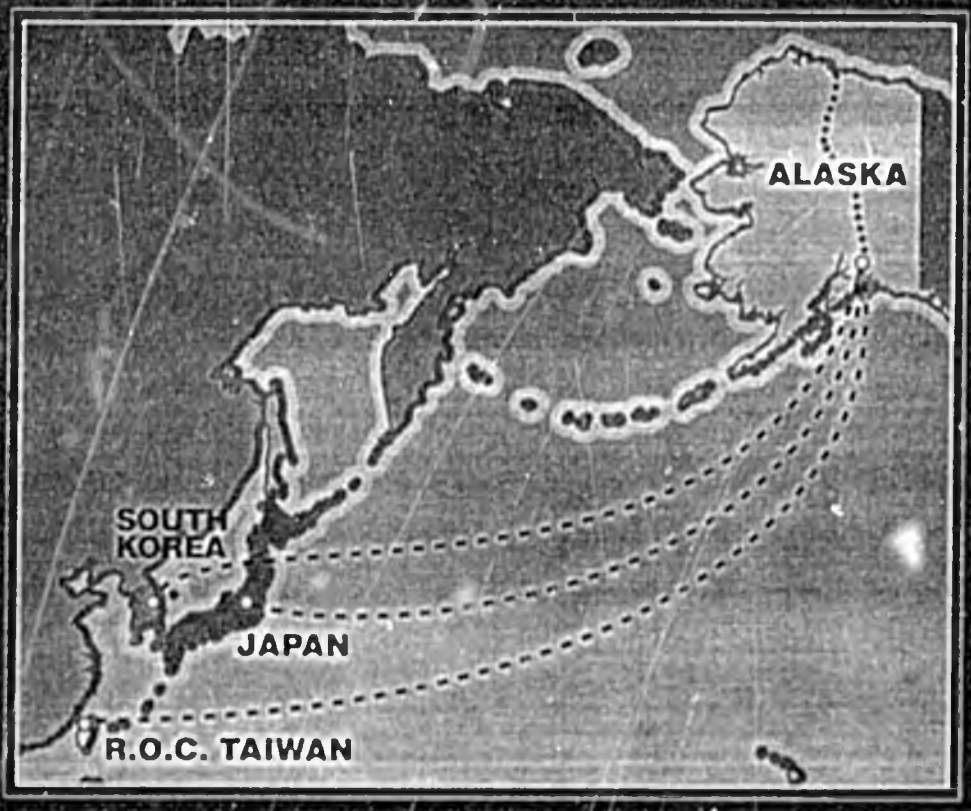
Mona Lisa Drexler, CMC/AAE
Municipal Borough Clerk

Ayes: LaSota, Bartos, Hackenmiller, Parr, Hove, McBride, Logan, St. John, Ouzkanbush, Chizmar and Kilgore
Noes: None

THE FOLLOWING DOCUMENT
HAS NOT BEEN FILMED
BUT IS AVAILABLE IN THE
ORIGINAL FILE

YUKON PACIFIC CORPORATION

TRANS-ALASKA GAS SYSTEM



T A G S

HJR

58

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/18/96 FURTHER:

DATE TURNED INTO OFFICE: 4-1-96

The Resources Committee considered CS FOR HOUSE JOINT RESOLUTION NO. 58(RES)

Relating to reauthorization and reform of the Endangered Species Act.

and recommends:

[ ] be replaced with _____ CS _____(_____)

[ ] adopt previous _____ CS _____(_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR_____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
	✓			✓	
	✓				
	✓				
CHAIR:	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
Legislature	3/21/96	✓	

[ ] **APPROPRIATION -- no fiscal note**

*Include fiscal notes accompanying Governor's bill

Alaska Environmental Lobby, Inc.
P.O. Box 22151 Juneau, Alaska 99802
Phone: 907-463-3366
Fax: 907-463-3312

Alaska Environmental Lobby Amendments to HJR 58

- Delete Page 2, Lines 7-9

The presence of this resolve in HJR 58 does not add to the strength and credibility of this resolution. We recommend deleting these lines because HR 2275 is not a piece of legislation that Alaska's legislature should support. It is under extreme controversy in Congress, having not received support by the majority of the House, and has been opposed by Alaska's Governor. Speaker Newt Gingrich has also indicated that this bill is too extreme. There are alternative House bills that are more favorably viewed, such as the Saxton-Gilchrest bill, but at this time we would advise the committee to refrain from addressing any legislation in HJR 58. It would be to Alaska's advantage to support reauthorization of the Endangered Species Act by offering conceptual changes that address individual problems without having to overhaul the entire existing law.

- Delete Page 2, Lines 22-23

The elimination of the "distinct population segment" from the existing definition of "species" does not result in the desired intention stated in the Alaska Senate and House Issue Paper Endangered Species Act Reauthorization 1995. The concern with distinct population segments in the definition of species could be resolved by establishing an interpretation of the definition similar to the policy supported by the National Marine Fisheries Service. Their specification designates that species must satisfy particular criteria distinguishing the segment of species as reproductively isolated and significant in the evolution of the species. Isolation of species is one of the primary causes that leads to the decrease of genetic diversity and species extinction. Having the ability to micro manage distinct populations with out having to declare the entire population threatened or endangered is essential to the success and recovery of these species. In the past six years only 2% of the listed species were designated as distinct population segments. These species often play essential ecological roles in their ecosystem and this redefining of the "species" definition could also result in additional listing of species in Alaska, such as the grey wolf, the grizzly bear, and the bald eagle.

Official Business

COMMITTEE:
SENATE RESOURCES

DATE: April 1, 1996

Subject of meeting:
HJR 58 REFORM THE ENDANGERED SPECIES ACT

SIGN-IN

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Anthony Ceupl	406 MacInnes St Anchorage 99501	343-3366	Alaska Environmental Lobby	YES

Alaska State Legislature

Representative Joe Green

Sponsor Statement

HJR 58 - Reathorization 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 that 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 Archipeligo 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.

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
Requestor: House Resources Committee

Components: ALL
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
House Resources Committee
Date: 19-FEB-96
Phone: 465-6547
Phone:

PAGE _____ OF _____

H.R.2275

SPONSOR: Rep Young, D. , (introduced 09/07/95)

DIGEST:

(AS INTRODUCED)

TABLE OF CONTENTS:

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.

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 countries most powerful conservation laws - the Endangered Species Act. For the record, my names 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 Eisenhour 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 or 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 eve 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.

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.

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 and actually prevent management options, and to eventually force companies out of business.

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 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

104TH CONGRESS
1ST SESSION

H. R. 2275

To reauthorize and amend the Endangered Species Act of 1973.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 7, 1995

Mr. YOUNG of Alaska (for himself, Mr. POMBO, Mr. TAUZIN, Mr. BREWSTER, Mr. DOOLITTLE, Mr. HANSEN, Mr. DOOLEY, Mr. CALVERT, Mr. CONDIT, Mr. STENHOLM, Mr. STUMP, Mr. SMITH of Texas, Mr. GALLEGLY, Mr. FIELDS of Texas, Mr. KOLBE, Ms. DANNER, Mr. HUTCHINSON, Mr. HAYWORTH, Mr. HASTINGS of Washington, Mr. BONILLA, Mr. MCHUGH, Mr. DORNAN, Mr. HERGER, Mr. EVERETT, Mr. TAYLOR of North Carolina, Mr. PACKARD, Mr. CUNNINGHAM, Mr. THORNBERRY, Mr. HAYES, Mr. ROYCE, Mr. COMBEST, Mr. COOLEY, Mr. SALMON, Mr. BONO, Mr. BAKER of California, Mr. HUNTER, Mr. LEWIS of California, Mrs. CUBIN, Mr. MCKEON, Mr. RADANOVICH, Mr. RIGGS, Mr. ROHRABACHER, Mrs. SEASTRAND, Mr. THOMAS, Mr. ALLARD, Mr. SCHAEFER, Mr. MICA, Mr. CHAMBLISS, Mr. COLLINS of Georgia, Mr. LINDER, Mr. BAKER of Louisiana, Mr. CRAPO, Mr. EWING, Mr. BURTON of Indiana, Mr. HOSTETTLER, Mr. MCINTOSH, Mr. ROBERTS, Mr. LEWIS of Kentucky, Mr. BARTLETT of Maryland, Mr. KNOLLENBERG, Mr. EMERSON, Mr. HANCOCK, Mr. SKEEN, Mr. PAXON, Mr. SOLOMON, Mr. BALLENGER, Mr. JONES, Mr. OXLEY, Mr. COBURN, Mr. LARGENT, Mr. LUCAS, Mr. WATTS of Oklahoma, Mr. BARTON of Texas, Mr. DELAY, Mr. SAM JOHNSON of Texas, Mr. STOCKMAN, Mr. SHADEGG, Mr. CALLAHAN, Mr. LAUGHLIN, Mrs. VUCANOVICH, Mr. TEJEDA, Mr. BACHUS, Mr. COX of California, Mr. FUNDERBURK, Mr. BOEHNER, Mr. CRANE, Mr. DREIER, Mr. EDWARDS, Mr. NETHERCUTT, Mr. PETE GEREN of Texas, Mr. ORTIZ, Mr. HALL of Texas, Mr. DUNCAN, Mr. MCCREERY, 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.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Endangered Species Conservation and Management Act of 1995".

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

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

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

SEC. 3. FINDINGS, PURPOSES, AND POLICY OF ENDANGERED SPECIES ACT OF 1973.

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

(1) by amending paragraph (1) to read as follows:

"(1) various species of fish, wildlife, and plants in the United States have been rendered extinct because of inadequate conservation practices and natural processes;"; and

(2) by striking "and" after the semicolon at the end of paragraph (4)(G), by striking the period at the end of paragraph (5) and inserting "; and", and by adding at the end the following new paragraph:

"(6) the Nation's economic well-being is essential to the ability to maintain a sustainable resource base, therefore economic impacts and private property owners' rights must be considered while encouraging practices that protect species.".

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

"(b) PURPOSES.—The purposes of this Act are the following:

"(1) To provide a feasible and practical means to conserve endangered species and threatened species consistent with protection of the rights of private property owners and ensuring economic stability.

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

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

"(c) POLICY.—

"(1) FEDERAL AUTHORITY.—It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve and manage endangered species and threatened species and shall, consistent with their primary missions, utilize their authorities in furtherance of the purposes of this Act.

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

agencies to resolve water resource issues in concert with conservation of endangered species and consistent with State and local water laws.

"(3) PROTECTION OF PRIVATE PROPERTY RIGHTS.—It is the policy of the Federal Government that agency action taken pursuant to this Act shall not use or limit 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. Each Federal agency, officer, and employee shall exercise authority under this Act to ensure that agency action will not violate the policy established in this paragraph.".

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

SEC. 101. COMPENSATION FOR USE OR TAKING OF PRIVATE PROPERTY.

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

"SEC. 19. RIGHT TO COMPENSATION.

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

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

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

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

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

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

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

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

"(d) NEGOTIATIONS.—The agency may negotiate with that owner to reach agreement on the amount of the compensation and the terms of any agreement for payment. If such an agreement is reached, the agency shall promptly pay the owner the amount agreed upon. An agreement under this section may include a transfer of the title or an agreement to use the property for a limited period of time.

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

"(f) ARBITRATION.—The procedures that govern the arbitration shall, as nearly as practicable, be those established under title 9, United States Code, for arbitration proceedings to which that title applies. An award made in such arbitration shall include a reasonable attorney's fee and other arbitration costs, including appraisal fees. The agency shall promptly pay any award made to the owner.

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

"(h) SOURCE OF PAYMENTS.—Any payment made under this section to an owner, and any judgment obtained by an owner in a civil action under this section shall, notwithstanding any other provision of law, be made from the annual appropriation of the agency that took the agency action. If the agency action resulted from a requirement imposed by another agency, then the agency making the payment or satisfying the judgment may seek partial or complete reimbursement from the appropriated funds of the other agency. For this purpose the head of the agency concerned may transfer or reprogram any appropriated funds available to the agency. If insufficient funds exist for the payment or to satisfy the judgment, it shall be the duty of the head of the agency to seek the appropriation of such funds for the next fiscal year.

"(i) AVAILABILITY OF APPROPRIATIONS.—Notwith-

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

"(j) DUTY OF NOTICE TO OWNERS.—Whenever an agency takes an agency action limiting the use of private property the agency shall give appropriate notice to the owners of that property directly affected explaining their rights under this section and the procedures for obtaining any compensation that may be due to them under this section.

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

"(1) OTHER RIGHTS PRESERVED.—Nothing in this Act shall be construed to limit any right to compensation that exists under the Constitution or under other laws.

"(2) EXTENT OF FEDERAL AUTHORITY.—Payment of compensation under this section (other than when the property is bought by the Federal Government at the option of the owner) shall not confer any rights on the Federal Government other than the use or limitation on use resulting from the agency action for the duration so that the agency action may achieve the species conservation purposes of this Act.

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

"(1) AGENCY.—The term 'agency' has the meaning given that term in section 551 of title 5, United States Code.

"(2) AGENCY ACTION.—The term 'agency action'—

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

"(B) includes—

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

"(ii) a designation pursuant to section 9(i) of privately owned property as critical habitat;

"(iii) the denial of a permit under section 10 that restricts the use of private property;

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

"(v) an agreement under section 6 to set aside property for habitat under the

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

"(vii) any other agency action that restricts a legal right to use that property, including, the right to alter habitat; and

"(viii) the making of a grant of land or money, to a public authority or a private entity as a predicate to an agency action by the recipient that would constitute a limitation if done directly by the agency.

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

"(4) LAW OF THE STATE.—The term 'law of the State' includes the law of a political subdivision of a State.

"(5) LIMITATION ON USE.—The term 'limitation on use' means only a limitation on a use which

is otherwise permissable under applicable State property or nuisance laws.

"(6) PRIVATE PROPERTY, PRIVATELY OWNED PROPERTY, NON-FEDERAL PROPERTY.—The term 'private property', 'privately owned property', or 'non-Federal property' means property which is owned by a person other than any Federal entity of government.

"(7) PROPERTY.—The term 'property' means land, an interest in land, the right to use or receive water, and any personal property that is subject to use by the Federal Government or to a restriction on use.".

SEC. 102. VOLUNTARY COOPERATIVE MANAGEMENT AGREEMENTS.

(a) COOPERATIVE MANAGEMENT AGREEMENT DEFINED.—Section 3 (16 U.S.C. 1532) is amended—

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

(2) by adding after paragraph (5) (as redesignated by paragraph (1) of this section) the following new paragraph:

"(6) The term 'cooperative management agreement' means a voluntary agreement entered into under section 6(b).".

(b) VOLUNTARY COOPERATIVE MANAGEMENT AGREEMENTS.—Section 6 (16 U.S.C. 1535) is amended by striking so much as precedes subsection (e) and inserting the following:

"SEC. 6. COOPERATION WITH NON-FEDERAL PERSONS.

"(a) GENERALLY.—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States and other non-Federal persons. Such cooperation shall include consultation with the States and non-Federal persons concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

"(b) COOPERATIVE MANAGEMENT AGREEMENTS.—

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

"(A) for the management of a species or group of species listed as endangered species or threatened species under section 4, a species or group of species proposed to be listed under

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

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

"(2) SCOPE OF COOPERATIVE MANAGEMENT AGREEMENTS.—(A) A cooperative management agreement entered into under this subsection—

"(i) may provide for the management of a species or group of species on both public and private lands which are under the authority, control or ownership of a State or group of States, political subdivision of a State, local government, or non-Federal person and which are affected by a listing determination, proposed determination, or proposed candidacy for determination; and

"(ii) may include the acquisition or designation of land as habitat for species.

"(B) A cooperative management agreement may not restrict private or non-Federal property unless written consent to such restrictions by the non-Federal owner is given either to the Secretary or the State, political subdivision, local government, or non-

"(C) The Secretary may grant to a party to an agreement the authority to undertake programs to enhance the population or habitat of a species on federally owned lands, except that such authority shall not otherwise conflict with other uses of such land which are approved by the Secretary or authorized by the Congress.

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

"(3) NOTIFICATION.—Not later than 30 days after submission of a request to enter into a cooperative management agreement, the party submitting the request shall provide notice of the request to any non-Federal person or Federal power marketing administration that would be subject to the proposed cooperative management agreement.

"(4) DEVELOPMENT OF PROPOSED AGREEMENT.—(A) The requesting party shall develop and submit to the Secretary a proposed cooperative management agreement.

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

public comment on any proposed cooperative management agreement between the Secretary and any governmental entity and shall hold a public hearing on such a proposed cooperative management agreement in each county or parish in which the proposed agreement would be in effect.

"(C) Before entering into a cooperative management agreement with another governmental entity or a non-Federal person for the management of federally owned land, the Secretary shall consider and weigh carefully all information received in response to the request for comment published under subparagraph (B) and testimony presented in each hearing held under subparagraph (B).

"(5) APPROVAL OF AGREEMENT.—(A) Not later than 120 days after the submission of a proposed cooperative management agreement under paragraph (4), the Secretary shall determine whether the proposed agreement is in accordance with this subsection and will promote the conservation of the species to which the proposed agreement applies.

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

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public comment on any proposed cooperative management agreement between the Secretary and any governmental entity and shall hold a public hearing on such a proposed cooperative management agreement in each county or parish in which the proposed agreement would be in effect.

"(C) Before entering into a cooperative management agreement with another governmental entity or a non-Federal person for the management of federally owned land, the Secretary shall consider and weigh carefully all information received in response to the request for comment published under subparagraph (B) and testimony presented in each hearing held under subparagraph (B).

"(5) APPROVAL OF AGREEMENT.—(A) Not later than 120 days after the submission of a proposed cooperative management agreement under paragraph (4), the Secretary shall determine whether the proposed agreement is in accordance with this subsection and will promote the conservation of the species to which the proposed agreement applies.

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

public comment on any proposed cooperative management agreement between the Secretary and any governmental entity and shall hold a public hearing on such a proposed cooperative management agreement in each county or parish in which the proposed agreement would be in effect.

"(C) Before entering into a cooperative management agreement with another governmental entity or a non-Federal person for the management of federally owned land, the Secretary shall consider and weigh carefully all information received in response to the request for comment published under subparagraph (B) and testimony presented in each hearing held under subparagraph (B).

"(5) APPROVAL OF AGREEMENT.—(A) Not later than 120 days after the submission of a proposed cooperative management agreement under paragraph (4), the Secretary shall determine whether the proposed agreement is in accordance with this subsection and will promote the conservation of the species to which the proposed agreement applies.

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

"(i) the requesting party has sufficient authority under law to implement and carry out the terms of the agreement;

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

"(iii) the agreement adequately provides for the administration and management of the identified management area;

"(iv) the agreement promotes the conservation of the species to which the agreement applies by committing Federal or non-Federal efforts to the conservation;

"(v) the term of the agreement is of sufficient duration to accomplish the provisions of the agreement; and

"(vi) the agreement is adequately funded to carry out the agreement.

"(C) No later than 30 days after entering into a cooperative management agreement with a governmental entity, the Secretary shall publish in the Federal Register a notice of availability of the terms of such agreement and the response of the Secretary to all information received or presented with respect to the agreement pursuant to paragraph (4)(B).

"(6) ENVIRONMENTAL ASSESSMENTS.—Preparation, approval, and entering into a cooperative management agreement under this subsection shall not be subject to section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)).

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

"(A) to make any additional payment for any purpose, or to accept any additional restriction on any parcel of land available for development or land management under the agreement, without consent of the party; or

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

"(8) EFFECT OF LISTING OF SPECIES.—A cooperative management agreement entered into under this subsection shall remain in effect and shall not be required to be amended if a species to which the agreement does not apply is determined to be an en-

"(9) APPLICABILITY OF CERTAIN PROVISIONS.—Sections 5, 7, and 9 shall not apply to those activities of a party to a cooperative management agreement which are conducted in accordance with such agreement.

"(10) VIOLATIONS OF AGREEMENTS.—(A) If the Secretary determines that a party to a cooperative management agreement is not administering or acting in accordance with the agreement, the Secretary shall notify the party.

"(B) If a party that is notified under subparagraph (A) fails to take appropriate corrective action within a period of time determined by the Secretary to be reasonable (not to exceed 90 days after the date of the notification)—

"(i) the Secretary shall rescind the entire cooperative management agreement or the applicability of the agreement to the party that is the subject of the notification; and

"(ii) beginning on the date of the rescission—

"(I) the entire agreement shall not be effective, or the agreement shall not be effective with respect to the party, whichever is appropriate; and

"(II) sections 5, 7, and 9 shall apply to activities of the party.".

SEC. 103. GRANTS FOR IMPROVING AND CONSERVING HABITAT FOR SPECIES.

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

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

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

"(i) the property for which the grant is provided contains habitat that significantly contributes to the protection of the population of

"(ii) the property has been managed for species protection for a period of time that has been sufficient to significantly contribute to the protection of the population of the species; and

"(iii) the management of the habitat advances the interest of species protection.

"(C) A grant made under this paragraph shall be transferable to subsequent owners of the property for which the grant is provided.".

SEC. 104. TECHNICAL ASSISTANCE PROGRAMS.

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

"(m) TECHNICAL ASSISTANCE PROGRAM.—

"(1) IN GENERAL.—The Secretary shall initiate a technical assistance 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 under this section. The technical assistance provided shall include information on habitat needs of species, optimum management of habitat for species, methods for propagation of species, feeding needs and habits, predator controls,

and any other information which a non-Federal person may utilize or request for the purpose of conserving a species determined to be an endangered species or threatened species or proposed to be determined as an endangered species or threatened species.

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

SEC. 105. WATER RIGHTS.

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

"(j) WATER RIGHTS.—Nothing in this Act shall be construed to supersede, abrogate, or otherwise impair any right or authority of a State to allocate or administer quantities of water (including boundary waters). Nothing in this Act shall be implemented, enforced, or construed to allow any officer or agency of the United States to utilize directly or indirectly the authorities established under this Act to impose any requirement not imposed by the State which would supersede, abrogate, condition, restrict,

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

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

SEC. 201. ENFORCEMENT PROCEDURES.

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

(1) in paragraph (1) by amending the matter preceding subparagraph (A) to read as follows: "(1) Except as provided in paragraph (3), section 6(g)(2), subsections (d)(3) and (e) of section 5, section 7(a), and section 10, with respect to any endangered species of fish or wildlife listed pursuant to section 4 it is unlawful for any person subject to the jurisdiction of the United States to—";

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

(d)(3) and (e) of section 5, and section 10, with respect to any endangered species of plants listed pursuant to section 4, it is unlawful for any person subject to the jurisdiction of the United States to—"; and

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

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

"(A) is consistent with the provisions of a final conservation plan or conservation objective;

"(B) complies with the terms and conditions of an incidental take permit or a cooperative management agreement;

"(C) 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

"(D) is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity that occurs within an area of the terri-

by Proclamation Numbered 5030, dated March 10, 1983, that is not designated as critical habitat under section 5(i), and the affected species is not a species of fish.".

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

(1) in subsection (d)(2) by inserting after "temporary care for any" the following: "endangered species or threatened species of";

(2) in subsection (e)(3) in the fourth sentence by striking "Any fish, wildlife," and inserting "Any endangered species or threatened species of fish or wildlife,";

(3) in subsection (e)(4)(A) by inserting "endangered species or threatened species of" after "All";

(4) in subsection (e)(4)(B) by inserting "endangered species or threatened speices of" after "importing of any";

(5) in subsection (f) in the first sentence by inserting "endangered species or threatened species of" after "storage of";

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

"(7) ADOPTION OF REGULATIONS.—(A) No interpretation, policy, guideline, finding, or other in-

formal determination may be relied upon by the Secretary in the implementation and enforcement of this Act unless such determination has been the subject of a proposed rule, subject to review by the public and comment for a period of no less than 60 days. Any proposed rule under this subparagraph must include—

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

"(ii) an analysis of the anticipated impact of the proposed rule;

"(iii) an analysis showing that the restoration benefit of the proposed rule outweighs any negative conservation impact of that proposed rule;

"(iv) an analysis showing that compliance with the proposed rule is reasonably within the means of the State or the range nation concerned; and

"(v) a summary of the literature reviewed and experts consulted in regard to the species involved, and a summary of the Secretary's findings based on that review and consultation.

Act if the action is based solely on a notification under the Convention or on a resolution of the Conference of the Parties to the Convention.

"(C) The burden is on the Secretary to show that a specimen belongs to a species which is determined to be an endangered species or threatened species under this Act or is included in an Appendix to the Convention. The Secretary may not detain a specimen for longer than 30 days for the purpose of identification. If the specimen cannot be positively identified within that time, then it shall be released."; and

(7) by amending subsection (g) to read as follows:

"(g) CITIZEN SUITS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a civil suit may be commenced by any person on his or her own behalf, who satisfies the requirements of the Constitution and who has suffered or is threatened with economic or other injury resulting from the violation, regulation, application, nonapplication, or failure to act—

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

Act or regulation issued under the authority thereof, if the violation poses immediate and irreparable harm to a threatened species or endangered species;

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

"(C) to compel the Secretary to apply, or modify the application of, the provisions of section 10(a); or

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

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

"(2) PREREQUISITE PROCEDURES.—(A) No action may be commenced under paragraph (1)(A)—

"(i) prior to 60 days after written notice of the alleged violation has been given to the Secretary, and to any agency or official of the

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

"(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a); or

"(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress the alleged violation of any such provision or regulation.

"(B) No action may be commenced under paragraph (1)(B) prior to 60 days after written notice has been given to the Secretary setting forth the reasons for applying, or modifying the application of, the prohibitions with respect to the taking of a threatened species.

"(C) No action may be commenced under paragraph (1)(C) prior to 60 days after written notice has been given to the Secretary, except that such action may be brought immediately after such notification in the case of an action under this subsection respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife or plants.