

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

9023 SENATE RESOURCES

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

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

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

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

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

24 Section 3026 (as redesignated by section 102(a)(1))

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **SEC. 304. PERMITTING REQUIREMENTS FOR INCIDENTAL**
17 **TAKES.**

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

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

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

4 **SEC. 10. EXCEPTIONS.**

5 **"(a) PERMITS.—**

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

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

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

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

22 **"(iii)** in the case of foreign species,

23 *note that new consistent with 16 U.S.C. 1539*

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

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

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

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

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

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

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

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

8 “(i) the taking will be incidental;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(B) any other species that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 "(ii) in the case of a permit under para-
22 graph (1)(A)(ii), the applicant maintains a pub-
23 lic display of the animal in a facility that is open to the public.

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

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

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

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

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

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

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

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

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

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

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

22 "(F) The Secretary may require an annual re-

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

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

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

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

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

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

1 "RECOGNIZING NET BENEFITS TO AQUATIC SPECIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(i) IMPORTATION AND EXPORTATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (a) BASING LISTINGS ON CREDIBLE SCIENCE.—

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

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

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

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

5 “(3) Disease or predation.

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

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

10 “(b) SECRETARIAL DETERMINATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (d) EMERGENCY LISTINGS—Section 4(b)(7) (16

15 U.S.C 1533(b)(7)) is amended—

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

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

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

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

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

11 "(9) PUBLICATION IN FEDERAL REGISTER —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 SEC. 302. PEER REVIEW.

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

18 “(i) PEER REVIEW REQUIREMENT.—

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

20 “(A) The term ‘action’ means—

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

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

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

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

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

13 "(B) The term 'qualified individual' means
14 an individual with expertise in the biological
15 sciences—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 a species from either of the lists published under

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(ii) the species is extinct; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 "(b) OPINION OF SECRETARY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (2) by striking paragraph (2).

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

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

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

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

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

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

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

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

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

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

1 "SEC. 5. SPECIES CONSERVATION PLANS.

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

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

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

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

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

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

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

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

10 “(A) The team shall assess—

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

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

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

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

23 “(v) the technical practicality of re-
24 covering the species;

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

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

13 “(B) The team shall assess the direct, indi-
14 rect, and cumulative economic and social im-
15 pacts on the public and private sectors, includ-
16 ing local governments, that may result from the
17 listing determination and any potential manage-
18 ment measures identified under subparagraph
19 (A)(vi), including impacts on the cost of govern-
20 mental actions, tax and other revenues, employ-
21 ment, the use and value of property, other so-
22 cial, cultural, and community values, and an as-

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

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

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

19 “(i) recovery of the listed species;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 “(B) at any time—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (3) by striking subparagraph (C).

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

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

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

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

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

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

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

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

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

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

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