

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3978

To amend the Endangered Species Act of 1973 to provide for the conservation of threatened species and endangered species, to assure balanced consideration of scientific, economic, and social factors in the implementation of the Act, to provide for scientific peer review of determinations made under the Act, to provide private property protections, to remove obsolete provisions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 1994

Mr. POMBO introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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## A BILL

To amend the Endangered Species Act of 1973 to provide for the conservation of threatened species and endangered species, to assure balanced consideration of scientific, economic, and social factors in the implementation of the Act, to provide for scientific peer review of determinations made under the Act, to provide private property protections, to remove obsolete provisions, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Endangered Species  
3 Management Act of 1994”.

4 **SEC. 2. AMENDMENT OF ENDANGERED SPECIES ACT OF**  
5 **1973.**

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

12 **SEC. 3. FINDINGS AND PURPOSES OF ENDANGERED SPE-**  
13 **CIES ACT OF 1973.**

14 (a) FINDINGS.—Section 2(a)(1) (16 U.S.C.  
15 1531(a)(1)) is amended to read as follows:

16 “(1) various species of fish, wildlife, and plants  
17 in the United States have been rendered extinct be-  
18 cause of inadequate conservation practices and natu-  
19 ral processes;”.

20 (b) PURPOSES.—Section 2(b) (16 U.S.C. 1531(b)) is  
21 amended to read as follows:

22 “(b) PURPOSES.—The purposes of this Act are to  
23 provide a feasible and practical means whereby ecosystems  
24 upon which endangered species and threatened species di-  
25 rectly depend may be conserved, to provide a program for  
26 the conservation of such endangered species and threat-

1 ened species taking into account the economic and social  
2 consequences of such program, and to take such steps as  
3 may be practicable to achieve the purposes of the treaties  
4 and conventions set forth in subsection (a).”.

5 **SEC. 4. DEFINITIONS.**

6 Section 3 (16 U.S.C. 1532) is amended—

7 (1) in paragraph (5) by striking “(5)(A)” and  
8 all that follows through the end of subparagraph (A)  
9 and inserting the following:

10 “(5)(A) The term ‘critical habitat’ for a threat-  
11 ened species or endangered species means the spe-  
12 cific areas within the geographical area occupied by  
13 a species, at the time it is listed in accordance with  
14 section 4, on which are found those physical or bio-  
15 logical features—

16 “(i) essential to the persistence of the spe-  
17 cies over the 50-year period beginning on the  
18 date of that listing or the 5-generation period  
19 beginning on that date, whichever is shorter;  
20 and

21 “(ii) which may require special manage-  
22 ment considerations or protection.”;

23 (2) in paragraph (5)(B) and (C) by striking  
24 “threatened or” each place it occurs;

1           (3) by redesignating paragraphs (7), (8), (9),  
2           (10), (12), (13), (14), (15), (16), (17), (18), (19),  
3           (20), and (21) and any reference thereto as para-  
4           graphs (8), (9), (10), (11), (14), (15), (16), (18),  
5           (19), (20), (21), (22), (24), and (25), respectively;

6           (4) in paragraph (6) by—

7                   (A) inserting “(A)” after “(6)”; and

8                   (B) adding at the end the following:

9                   “(B) The term ‘species of national interest’  
10                   means an endangered species or a threatened species  
11                   that is determined by the Secretary to be in the na-  
12                   tional interest to protect.”;

13           (5) by inserting after paragraph (6) the follow-  
14           ing:

15                   “(7) The term ‘feasible’ means capable of being  
16                   accomplished in a successful manner within a rea-  
17                   sonable period of time, taking into account eco-  
18                   nomic, environmental, social, and technological fac-  
19                   tors.”;

20           (6) by inserting after paragraph (11), as redesi-  
21           gnated by paragraph (2) of this section, the follow-  
22           ing:

23                   “(12) The term ‘interested person’ means a  
24                   person who is able to demonstrate personal and im-

1 mediate harm from a Government action or inaction  
2 affecting the environment.

3 “(13) The term ‘isolated populations’ means  
4 populations which, although few in number in a par-  
5 ticular habitat, are of a species which is not other-  
6 wise threatened or endangered in the United States,  
7 Canada, or Mexico.”;

8 (7) by inserting after paragraph (16), as redesi-  
9 gnated by paragraph (2) of this section, the follow-  
10 ing:

11 “(17) The term ‘public property’ means prop-  
12 erty of any kind which is owned, leased, or held by  
13 permit, license, or easement by any State or local  
14 government or unit thereof.”;

15 (8) by amending paragraph (19), as redesi-  
16 gnated by paragraph (2) of this section, to read as  
17 follows:

18 “(19) The term ‘species’ means the minimum  
19 taxonomic units of fish or wildlife or plants which—

20 “(A) normally reproduce sexually but  
21 are—

22 “(i) biologically incapable of both  
23 interbreeding and producing offspring  
24 which can survive to maturity and repro-  
25 duce under natural conditions, or

1           “(ii) statistically distinguishable at a  
2           percentage of nuclear genetic loci to be de-  
3           termined by the Secretary for each family  
4           of organisms that is not less than 2 per-  
5           cent; or

6           “(B) normally reproduce asexually and are  
7           statistically distinguishable at a percentage of  
8           nuclear genetic loci to be determined by the  
9           Secretary for each family of organisms that is  
10          not less than 2 percent.”; and

11          (9) by inserting after paragraph (22), as reded-  
12          ignated by paragraph (2) of this section, the follow-  
13          ing:

14          “(23) The term ‘taking of private or public  
15          property’ means the foreclosure of any use of private  
16          property or public property that is otherwise allowed  
17          under Federal, State, and local law, that—

18                  “(A) is caused by—

19                          “(i) the inclusion of a species in a list  
20                          published under section 4(c);

21                          “(ii) the designation of critical habitat  
22                          under section 4(a)(3);

23                          “(iii) the implementation of a recovery  
24                          plan under section 4(f); or

1                   “(iv) any other activity that is author-  
2                   ized or required by this Act; and

3                   “(B) by itself or in combination with other  
4                   such foreclosures of use so caused, reduces the  
5                   fair market value of the property by 25 percent  
6                   or more.”.

7 **SEC. 5. ISOLATED POPULATIONS; DESIGNATION OF CRITI-**  
8                   **CAL HABITAT; LISTING OF SPECIES; RECOV-**  
9                   **ERY PLANS.**

10           (a) ISOLATED POPULATIONS.—Section 4(a) (16  
11 U.S.C. 1533(a)) is amended by adding at the end the fol-  
12 lowing:

13                   “(4) ISOLATED POPULATIONS.—The Secretary  
14                   may not determine that an isolated population of a  
15                   species is an endangered species or threatened spe-  
16                   cies, if the species is not otherwise an endangered  
17                   species or threatened species.”.

18           (b) DESIGNATION OF CRITICAL HABITAT.—Section  
19 4(a)(3) (16 U.S.C. 1533(a)(3)) is amended—

20                   (1) in the matter preceding subparagraph (A),  
21                   by striking “and to the maximum extent prudent  
22                   and determinable”;

23                   (2) in subparagraph (A)—

1 (A) by striking “concurrently with” and in-  
2 serting “concurrently with and as a condition  
3 for”; and

4 (B) by striking “and” after the semicolon  
5 at the end;

6 (3) by redesignating subparagraph (B) and any  
7 reference thereto, as subparagraph (C); and

8 (4) by inserting after subparagraph (A) the fol-  
9 lowing:

10 “(B) shall also concurrently with making such  
11 a determination, issue a report delineating all direct  
12 and indirect economic and social impacts of delinea-  
13 tion of proposed critical habitat to the areas affected  
14 and to the Nation; and”.

15 (c) BASIS FOR DETERMINATIONS.—Section 4(b) (16  
16 U.S.C. 1533(b)) is amended—

17 (1) in paragraph (1)(B) by striking the mate-  
18 rial preceding clause (i) and inserting the following:

19 “(B) The Secretary may not list a species as an  
20 endangered species or threatened species pursuant  
21 to subsection (c) unless—

22 “(i) the Secretary has prepared a report  
23 that includes—



1           “(I) the complete file of scientific data  
2           and collection methodology which has been  
3           developed in conjunction with the listing;

4           “(II) details of a recovery plan for the  
5           species, including scientific data and pro-  
6           jected costs; and

7           “(III) the complete file of data and  
8           collection methodology which has been de-  
9           veloped in conjunction with any critical  
10          habitat designation for the species;

11          “(ii) after the report is prepared under  
12          clause (i), scientific data supporting the listing  
13          has been reviewed by a scientific peer review  
14          panel consisting of 3 members appointed by the  
15          Secretary from among 6 nominees submitted by  
16          the President of the National Academy of  
17          Sciences from the Academy’s membership who  
18          have not otherwise participated in the listing  
19          (including research used as the basis for the  
20          listing), and recommendations of the panel are  
21          submitted to the Secretary; and

22          “(iii) after the submittal of the rec-  
23          ommendations under clause (ii), the Secretary  
24          publishes notices of intent to list for 5 consecu-  
25          tive days in a newspaper of general circulation

1 in each area of the United States where the  
2 species is believed to occur, including a state-  
3 ment of justification for the listing and a de-  
4 scription of possible direct and indirect social  
5 and economic impacts of the listing; and

6 “(iv) after the publication of notices in ac-  
7 cordance with clause (iii), the Secretary con-  
8 ducts public hearings on the listing in each area  
9 of the United States where the species is be-  
10 lieved to occur.

11 “(C) The Secretary may not list any species as  
12 an endangered species or threatened species pursu-  
13 ant to subsection (c) if 90 percent or more of its ex-  
14 isting geographic range or its population is outside  
15 the borders of the United States and its territories  
16 and possessions, unless the species has been—”;

17 (2) in clause (ii) of subparagraph (C) (as in-  
18 serted by paragraph (2) of this subsection) by strik-  
19 ing “by any State agency”;

20 (3) in paragraph (2)—

21 (A) in the first sentence by striking “the  
22 economic impact” and inserting “the economic  
23 and social impact”; and

24 (B) in the second sentence by striking “,  
25 unless he determines,” and all that follows

1 through the end of the paragraph and inserting  
2 a period;

3 (4) in paragraph (3)—

4 (A) by striking “(3)(A)” and all that fol-  
5 lows through the end of subparagraph (A) and  
6 inserting the following:

7 “(3)(A) Within 120 days after receiving the pe-  
8 tition of an interested person to add a species to, or  
9 to remove a species from, either of the lists pub-  
10 lished under subsection (c), the Secretary shall—

11 “(i) convene a panel of 3 scientists with  
12 appropriate expertise appointed by the Director  
13 of the United States Fish and Wildlife Service  
14 to evaluate and make recommendations on the  
15 petition;

16 “(ii) conduct at least 1 public hearing in  
17 each area where the species is believed to occur  
18 on information provided in the petition and the  
19 evaluation of that information by the scientific  
20 panel under clause (i), utilizing the criteria in-  
21 dicated in subsection (b)(3)(B)(iv); and

22 “(iii) make a finding regarding whether  
23 the scientific, commercial, economic, and social  
24 information indicates that the action petitioned  
25 for may be warranted.

1 If the Secretary finds that the action petitioned for  
2 may be warranted, the Secretary shall promptly  
3 commence a review of the status of the species con-  
4 cerned in accordance with subsection (b)(1)(B). The  
5 Secretary shall promptly publish each finding made  
6 under this subparagraph in the Federal Register.”;

7 (B) in subparagraph (B)—

8 (i) in the matter preceding clause (i),  
9 by striking “Within 12 months” and in-  
10 sserting “Within 24 months”; and

11 (ii) by striking clause (ii) and all that  
12 follows through the material preceding  
13 subclause (I) of clause (iii), and inserting  
14 the following:

15 “(ii) The petitioned action is tech-  
16 nically warranted under the criteria of this  
17 Act, but it is not in the national interest  
18 to list it because of countervailing social or  
19 economic consequences.

20 “(iii) The petitioned action is war-  
21 ranted and in the national interest, in  
22 which case the Secretary shall promptly  
23 publish in the Federal Register a general  
24 notice and the complete text of a proposed

1 regulation to implement such action in ac-  
2 cordance with paragraph (5).

3 “(iv) The petitioned action is war-  
4 ranted, but that—”;

5 (C) in subparagraph (C), by amending  
6 clause (ii) to read as follows:

7 “(ii) Any negative finding described in sub-  
8 subparagraph (A) and any finding described in  
9 subparagraph (B)(i), (ii), or (iv) shall be sub-  
10 ject to an administrative appeal by any inter-  
11 ested person under procedures which shall be  
12 established by the Secretary. Any judicial re-  
13 view of such a finding may occur only after  
14 such an administrative appeal, and shall be  
15 based solely upon the record of the administra-  
16 tive appeal.”;

17 (D) in subparagraph (D)—

18 (i) in clause (i) by striking “within 90  
19 days” and inserting “within 180 days”;  
20 and

21 (ii) in clause (ii), by striking “Within  
22 12 months” and inserting “Within 24  
23 months”; and

24 (E) by adding at the end the following:

1           “(E) REIMBURSEMENT OF COSTS OF SCI-  
2           ENTIFIC RESEARCH.—The Secretary, subject to  
3           the availability of appropriations, may provide  
4           reimbursement to any interested person for  
5           costs incurred in performing or procuring sci-  
6           entific research the results of which are used by  
7           the Secretary to find, pursuant to a petition  
8           under section 553(e) of title 5, United States  
9           Code, that—

10                   “(i) the addition of a species to a list  
11                   published under subsection (c) is not war-  
12                   ranted; or

13                   “(ii) the removal of a species from a  
14                   list published under subsection (c) is war-  
15                   ranted.”;

16           (5) in paragraph (5)—

17                   (A) in subparagraph (A), by striking “not  
18                   less than 90 days” and inserting “not less than  
19                   120 days”; and

20                   (B) by amending subparagraph (E) to read  
21                   as follows:

22                   “(E) promptly, following publication of  
23                   general notice, hold at least 1 public hearing on  
24                   the proposed regulation in each city and each  
25                   county affected by the regulation, utilizing the

1 criteria indicated in subsection (b)(3)(B)(iv).’;  
2 and

3 (6) in paragraph (6)—

4 (A) in subparagraph (A), by striking  
5 “Within the one-year period” and inserting  
6 “Within the 24-month period”; and

7 (B) by amending subparagraph (C) to read  
8 as follows:

9 “(C) A final regulation designating critical  
10 habitat of an endangered species or a threatened  
11 species shall be published concurrently with the final  
12 regulation adding the species to a list under sub-  
13 section (c).”.

14 (d) LISTING OF SPECIES.—

15 (1) REQUIREMENT FOR LISTING.—Section  
16 4(c)(1) (16 U.S.C. 1533(c)(1)) is amended—

17 (A) by striking “endangered species” and  
18 inserting “endangered species that is a species  
19 of national interest,”;

20 (B) by striking “threatened species” and  
21 inserting “threatened species that is a species  
22 of national interest”; and

23 (C) by adding at the end the following:

24 “(3) SPECIES OF NATIONAL INTEREST.—The  
25 Secretary or Secretary of Commerce, as applicable,

1 shall determine for purposes of this subsection, with-  
2 in the 24-month period applicable under subsection  
3 (b)(6)(A) and based on the best scientific, economic,  
4 social, and commercial data available, whether the  
5 species is a species of national interest.”.

6 (2) REMOVAL OF LISTED SPECIES.—A species  
7 that on the date of the enactment of this Act is on  
8 a list published under section 4(c)(1) of the Endan-  
9 gered Species Act of 1973 may be removed from the  
10 list only in accordance with the procedures and re-  
11 quirements for removal established by the Act, as  
12 amended by this Act.

13 (e) RECOVERY PLANS.—Section 4(f)(1) is amended  
14 in the material preceding subparagraph (A) by inserting  
15 after “promote the conservation of the species” the follow-  
16 ing: “, that the costs associated with such a plan are an  
17 unreasonable allocation of available resources, or that the  
18 social and economic impacts in the area of the United  
19 States in which such a plan would be implemented are  
20 onerous”.

21 **SEC. 6. COMPENSATION FOR TAKINGS AND DEVALUATION**  
22 **OF PROPERTY.**

23 (a) COMPENSATION REQUIRED.—Section 5 (16  
24 U.S.C. 1534) is amended—



1 (1) by amending the section heading to read as  
2 follows:

3 “LAND ACQUISITION; COMPENSATION FOR TAKING OF  
4 PRIVATE OR PUBLIC PROPERTY”; and

5 (2) by adding at the end the following:

6 “(c) COMPENSATION FOR TAKING OF PRIVATE OR  
7 PUBLIC PROPERTY.—The Secretary shall pay just com-  
8 pensation for any taking of private or public property to  
9 the owner of the property, including for damages incurred  
10 by the owner as a result of such taking.”.

11 (b) CLERICAL AMENDMENT.—The table of contents  
12 in the first section is amended by striking the item relating  
13 to section 5 and inserting the following:

“Sec. 5. Land acquisition; compensation for taking of private or public prop-  
erty.”.

14 **SEC. 7. COOPERATION WITH STATES.**

15 (a) GENERAL COOPERATIVE AGREEMENTS.—Section  
16 6(c)(1) (16 U.S.C. 1535(c)(1)) is amended—

17 (1) in the matter preceding subparagraph (A)—

18 (A) by striking “the Secretary is author-  
19 ized to enter” and inserting “the Secretary may  
20 enter”; and

21 (B) by striking “he shall enter” and insert-  
22 ing “the Secretary may enter”;

23 (2) in subparagraph (A), by striking “the State  
24 agency or”;

1 (3) in subparagraph (B), by inserting “and”  
2 after the semicolon at the end;

3 (4) by striking subparagraphs (C) and (E), and  
4 redesignating subparagraph (D) and any reference  
5 thereto as subparagraph (C);

6 (5) in subparagraph (C), (as redesignated by  
7 paragraph (4) of this subsection) by striking “and”  
8 after the semicolon at the end and inserting “or”;  
9 and

10 (6) in the matter following subparagraph (C)  
11 (as redesignated by paragraph (4) of this sub-  
12 section)—

13 (A) by striking “paragraphs (3), (4), and  
14 (5) of this subsection are” and inserting “sub-  
15 paragraph (C) is”; and

16 (B) by striking “or the State agency”.

17 (b) COOPERATIVE AGREEMENTS FOR PLANTS.—Sec-  
18 tion 6(c)(2) (16 U.S.C. 1535(c)(2)) is amended—

19 (1) in the matter preceding subparagraph (A),  
20 in the third sentence, by striking “he shall enter”  
21 and inserting “the Secretary may enter”;

22 (2) in subparagraph (A)—

23 (A) by striking “the State agency or”; and

24 (B) by inserting “and” after the semicolon  
25 at the end;

1           (3) in subparagraph (B), by inserting “or”  
2 after the semicolon at the end;

3           (4) by striking subparagraphs (C) and (D); and

4           (5) in the matter following subparagraph (B)—

5                 (A) by striking “that under the State pro-  
6 gram—” and all that follows through “(ii  
7 plans” and inserting “that under the State pro-  
8 gram plans”;

9                 (B) by striking “or the State agency”; and

10                 (C) by striking “pursuant to clause (i) and  
11 this clause” and inserting “pursuant to this  
12 matter following subparagraph (B)”.

13           (c) ALLOCATION OF FUNDS.—Section 6(d)(1) (16  
14 U.S.C. 1535(d)(1)) is amended—

15                 (1) by striking subparagraphs (C), and (D),  
16 and by redesignating subparagraphs (E), (F), and  
17 (G) and any reference thereto in order as subpara-  
18 graphs (C), (D), and (E); and

19                 (2) in the matter following subparagraph (E)  
20 (as redesignated by paragraph (1) of this sub-  
21 section) by striking “subsection (i)” and inserting  
22 “subsection (h)”.

23           (d) REPEAL OF TRANSITION PROVISIONS.—

24                 (1) REPEAL.—Subsection (g) of section 6 (16  
25 U.S.C. 1535(d)) is repealed.

1           (2) CONFORMING AMENDMENT.—Subsections  
2           (h) and (i) of section 6 (16 U.S.C. 1535(h), (i)) and  
3           any reference thereto are redesignated in order as  
4           subsections (g) and (h).

5 **SEC. 8. INTERAGENCY COOPERATION.**

6           (a) FEDERAL AGENCY ACTIONS.—Section 7(a)(2)  
7           (16 U.S.C. 1536(a)(2)) is amended—

8           (1) in the first sentence by striking “which is  
9           determined by the Secretary, after consultation as  
10          appropriate with affected States,” and inserting  
11          “which has been determined by the Secretary”; and

12          (2) in the second sentence by inserting “, eco-  
13          nomic, social,” after “best scientific”.

14          (b) OPINION OF SECRETARY.—Subsection (b) of sec-  
15          tion 7 (16 U.S.C. 1536(b)) is amended by—

16          (1) striking “(1)(A)” and all that follows  
17          through the end of paragraph (1); and

18          (2) inserting after and below the heading for  
19          the subsection the following:

20                 “(1) IN GENERAL.—

21                         “(A) DEADLINE FOR CONCLUSION OF CON-  
22                         SULTATION.—Consultation under subsection  
23                         (a)(2) with respect to any agency action shall  
24                         be concluded within the 90-day period begin-  
25                         ning on the date on which initiated.

1           “(B) FAILURE TO CONCLUDE CONSULTA-  
2           TION.—If a consultation is not concluded in the  
3           period specified in subparagraph (A), the Sec-  
4           retary is deemed to have—

5                   “(i) issued an opinion under para-  
6                   graph (3) that the action—

7                           “(I) is not likely to jeopardize the  
8                           continued existence of any endangered  
9                           species or threatened species, as appli-  
10                          cable, and

11                           “(II) is not likely to result in the  
12                           destruction or adverse modification of  
13                           critical habitat of such a species; and

14                           “(ii) made the conclusions described  
15                          in subparagraphs (A), (B), and (C) of  
16                          paragraph (4).”.

17           (c) BIOLOGICAL ASSESSMENT.—Section 7(c)(1) (16  
18           U.S.C. 1536(c)(1)) is amended in the first sentence by  
19           striking “has begun on” and inserting “was begun on or  
20           before”.

21           (d) LIMITATION ON COMMITMENT OF RESOURCES.—  
22           Section 7(d) (16 U.S.C. 1536(d)) is amended to read as  
23           follows:

24                   “(d) LIMITATION ON COMMITMENT OF RE-  
25           SOURCES.—The Secretary may not specify as a reasonable

1 and prudent alternative under subsection (b)(4)(C)(ii),  
2 and may not set forth as a term or condition under sub-  
3 section (b)(4)(C)(iii), any action which is likely to result  
4 in a taking of public or private property or substantial  
5 social or economic impact, unless—

6 “(1) a report has been prepared by the Sec-  
7 retary, that includes—

8 “(A) the complete file of scientific data  
9 and collection methodology which have been de-  
10 veloped by the Secretary supporting the action;

11 “(B) a recovery plan for the species con-  
12 cerned, including scientific data and a descrip-  
13 tion of the projected costs of implementing the  
14 recovery plan; and

15 “(C) the complete file of data and collec-  
16 tion methodology which have been developed in  
17 conjunction with any designation of critical  
18 habitat of the species concerned;

19 “(2) scientific data supporting the action have  
20 been reviewed by a scientific peer review panel con-  
21 sisting of 3 members appointed by the Secretary  
22 from among nominees submitted by the President of  
23 the National Academy of Sciences;

24 “(3) the panel submits recommendations on the  
25 action to the Secretary; and

1           “(4) the Secretary conducts public hearings on  
2           the action in each area of the United States in which  
3           the species is believed to occur, after publication of  
4           notices describing the proposed alternative, term or  
5           condition, as applicable (including statements of jus-  
6           tification therefor and a description of possible di-  
7           rect and indirect social and economic impacts), for  
8           5 consecutive days in a newspaper of general circula-  
9           tion in each area of the United States in which the  
10          species is believed to occur.”.

11          (e) COMMUNICATIONS BETWEEN PRESIDENT AND  
12 MEMBERS OF ENDANGERED SPECIES COMMITTEE.—Sec-  
13 tion 7(e)(5) (16 U.S.C. 1536(e)(5)) is amended by adding  
14 at the end the following:

15                   “(E) Communications between the Presi-  
16                   dent and any member of the Committee shall  
17                   not constitute ex parte communications.”.

18          (f) EXEMPTION REGULATIONS.—Section 7(f) (16  
19 U.S.C. 1536(f)) is amended in the first sentence by strik-  
20 ing “Not later” and all that follows through “regulations”  
21 and inserting the following: “The Secretary may, from  
22 time to time, promulgate or amend regulations”.

1 **SEC. 9. CLERICAL AMENDMENT.**

2 Section 8A(e) (16 U.S.C. 1537a(e)) is amended by  
3 striking paragraph (3) and redesignating paragraph (4)  
4 and any reference thereto as paragraph (3).

5 **SEC. 10. LIMITATION ON APPLICATION OF PROHIBITIONS.**

6 Section 9(b)(2) (16 U.S.C. 1538(b)(2)) is amended  
7 by striking “raptor” each place it appears and inserting  
8 “species”.

9 **SEC. 11. HARDSHIP PERMIT EXEMPTIONS.**

10 Section 10(b)(1) (16 U.S.C. 1539(b)(1)) is amend-  
11 ed—

12 (1) in clause (A) by inserting “and” after the  
13 semicolon;

14 (2) by striking clause (B) and any reference  
15 thereto; and

16 (3) by redesignating clause (C) and any ref-  
17 erence thereto as clause (B).

18 **SEC. 12. PENALTIES AND ENFORCEMENT.**

19 (a) EXEMPTION OF STATE AND LOCAL OFFICIALS  
20 FROM PENALTIES.—Section 11 (16 U.S.C. 1540) is  
21 amended—

22 (1) by adding at the end of subsection (a) the  
23 following:

24 “(4) A State or local official shall not be sub-  
25 ject to any penalty under this subsection for any act  
26 of the official in the performance of any duty of the



1 official that is established by, and carried out in ac-  
2 cordance with, State or local law.”; and

3 (2) by adding at the end of subsection (b) the  
4 following:

5 “(4) A State or local official shall not be sub-  
6 ject to any penalty under this subsection for any act  
7 of the official in the performance of any duty of the  
8 official that is established by, and carried out in ac-  
9 cordance with, State or local law.”.

10 (b) CITIZEN SUITS.—Section 11(g) (16 U.S.C.  
11 1540(g)) is amended—

12 (1) in paragraph (1)(A), by striking “or” after  
13 the semicolon;

14 (2) in paragraph (1)(B), by striking “or” after  
15 the semicolon;

16 (3) in paragraph (1)(C), by striking the period  
17 and inserting “; or”;

18 (4) by inserting after paragraph (1)(C) the fol-  
19 lowing:

20 “(D) to challenge any listing of a species  
21 under section 4(c) as a species of national inter-  
22 est, including to protect economic, social, or bi-  
23 ological interests.”; and

24 (5) in paragraph (3), by striking “(A)” and by  
25 striking subparagraph (B).

1 **SEC. 13. REPEAL OF REQUIREMENT THAT SECRETARY OF**  
2 **THE SMITHSONIAN INSTITUTION REVIEW**  
3 **PLANTS AND CONSERVATION MEASURES.**

4 Section 12 (16 U.S.C. 1541) is repealed.

5 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

6 (a) REPEAL OF LIMITATIONS.—Section 15 (16  
7 U.S.C. 1542) is repealed.

8 (b) RULE OF CONSTRUCTION.—Subsection (a) of this  
9 section shall not be construed to limit authority to appro-  
10 priate amounts necessary to carry out the Endangered  
11 Species Act of 1973.

12 **SEC. 15. ANNUAL COST ANALYSES BY UNITED STATES FISH**  
13 **AND WILDLIFE SERVICE.**

14 Section 18 (16 U.S.C. 1544) is amended by striking  
15 “January 15, 1990, and each January 15 thereafter” and  
16 inserting “January 15 of each year”.

17 **SEC. 16. CLERICAL AMENDMENTS.**

18 (a) Sections 13, 14, and 16 are repealed.

19 (b) Sections 17 and 18 (16 U.S.C. 1543 and 1544)  
20 and any reference thereto are redesignated in order as sec-  
21 tions 12 and 13.

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