

103^D CONGRESS
1ST SESSION

S. 1521

To reauthorize and amend the Endangered Species Act of 1973 to improve and protect the integrity of the programs of such Act for the conservation of threatened and endangered species, to ensure balanced consideration of all impacts of decisions implementing such Act, to provide for equitable treatment of non-Federal persons and Federal agencies under such Act, to encourage non-Federal persons to contribute voluntarily to species conservation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 6 (legislative day, SEPTEMBER 27), 1993

Mr. SHELBY (for himself, Mr. GORTON, Mr. MATHEWS Mr. PACKWOOD, Mr. COCHRAN, and Mr. HEFLIN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To reauthorize and amend the Endangered Species Act of 1973 to improve and protect the integrity of the programs of such Act for the conservation of threatened and endangered species, to ensure balanced consideration of all impacts of decisions implementing such Act, to provide for equitable treatment of non-Federal persons and Federal agencies under such Act, to encourage non-Federal persons to contribute voluntarily to species conservation, 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 Act Procedural Reform Amendments of 1993”.

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. References to Endangered Species Act of 1973.

TITLE I—ENSURING THE INTEGRITY OF THE LISTING, CRITICAL
HABITAT DESIGNATION, AND CONSULTATION PROCESSES

- Sec. 101. Peer review.
- Sec. 102. Consideration of State, local, and foreign government activities.
- Sec. 103. Priority for species conservation.
- Sec. 104. Improving data collection and analysis.
- Sec. 105. Providing an open and thorough process for designating critical habi-
t-
tat.
- Sec. 106. Equal access to judicial review.
- Sec. 107. Improving the consultation and conferencing processes for Federal
agency actions.
- Sec. 108. Clarifying the effects of secondary impacts.

TITLE II—PROVIDING SIGNIFICANCE TO THE RECOVERY
PLANNING PROCESS

- Sec. 201. Ensuring preparation and use of timely, comprehensive, and effective
recovery plans.

TITLE III—ENSURING THAT THE COMPLIANCE PROCEDURES
AND STANDARDS FOR NON-FEDERAL PERSONS ARE NOT MORE
BURDENSOME THAN THE PROCEDURES AND STANDARDS AP-
PLICABLE TO FEDERAL AGENCIES

- Sec. 301. Establishing consultation procedures with respect to private actions.
- Sec. 302. Defining the take prohibition in accordance with the intent of Con-
gress.
- Sec. 303. Clarifying the application of take prohibitions.
- Sec. 304. Authorizing the issuance of general permits.
- Sec. 305. Improving the conservation planning process.
- Sec. 306. Providing for exemptions of private actions and relieving payment re-
quirements.
- Sec. 307. Compensating property owners for substantially diminished value.

TITLE IV—PROVIDING FOR HABITAT CONSERVATION INCENTIVE
PROGRAMS

- Sec. 401. Cooperative Management Agreements.
- Sec. 402. Habitat reserve grants.

TITLE V—REAUTHORIZATION AND OTHER AMENDMENTS

- Sec. 501. Providing guidance for the release of experimental populations.
 Sec. 502. Recognition of captive propagation as means of recovery.
 Sec. 503. Clarifying the application of prohibitions to threatened species.
 Sec. 504. Citizen suits.
 Sec. 505. Increased authorization of appropriations.

1 **SEC. 3. REFERENCES TO ENDANGERED SPECIES ACT OF**
 2 **1973.**

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

9 **TITLE I—ENSURING THE INTEG-**
 10 **RITY OF THE LISTING, CRITI-**
 11 **CAL HABITAT DESIGNATION,**
 12 **AND CONSULTATION PROC-**
 13 **ESSES**

14 **SEC. 101. PEER REVIEW.**

15 Section 4 (16 U.S.C. 1533) is amended by adding
 16 at the end the following new subsection:

17 “(j) PEER REVIEW REQUIREMENT.—(1) If an inter-
 18 ested person submits, in accordance with paragraph (2),
 19 a request for a peer review of an action described in para-
 20 graph (3), the Secretary of the Interior or the Secretary
 21 of Commerce shall—

22 “(A) appoint, from among individuals rec-
 23 ommended by the head of the National Academy of

1 Sciences, 3 qualified individuals who shall review all
2 scientific and commercial data on which the action
3 is based, and all analyses of the data performed for
4 the purposes of the action; and

5 “(B) on completion of the review referred to in
6 subparagraph (A), consider and weigh carefully the
7 results of the review.

8 “(2) Any interested person may request the Secretary
9 to conduct a peer review under paragraph (1) with respect
10 to an action described in paragraph (3), by submitting the
11 request to the Secretary not later than 90 days after the
12 date of publication of the notice of proposed rulemaking
13 for the action.

14 “(3) An action referred to in paragraphs (1) and (2)
15 is—

16 “(A) the determination that a species is an en-
17 dangered species or threatened species under sub-
18 section (a)(1); or

19 “(B) the designation, or revision of designation,
20 of critical habitat for an endangered species or
21 threatened species under subsection (a)(3).

22 “(4) The Secretary shall publish with any final rule
23 implementing an action described in paragraph (3) a sum-
24 mary of the results of the peer review conducted under

1 this subsection with respect to the rule and the response
2 of the Secretary to the results.

3 “(5) As used in this section, the term ‘qualified indi-
4 vidual’ means an individual with appropriate knowledge,
5 training, or experience who is not employed by, under con-
6 tract to, or receiving or using a grant or other financial
7 assistance from the Secretary of the Interior or the Sec-
8 retary of Commerce.”.

9 **SEC. 102. CONSIDERATION OF STATE, LOCAL, AND FOREIGN**
10 **GOVERNMENT ACTIVITIES.**

11 Section 4(a)(1)(D) (16 U.S.C. 1533(a)(1)(D)) is
12 amended by inserting after “existing” the following: “Fed-
13 eral, State, and local government and international”.

14 **SEC. 103. PRIORITY FOR SPECIES CONSERVATION.**

15 Subsection (f) of section 4 (16 U.S.C. 1533(f)) is
16 amended to read as follows:

17 “(f) PRIORITIES IN DETERMINING AND CONSIDER-
18 ING ENDANGERED SPECIES AND THREATENED SPE-
19 CIES.—The Secretary may determine and conserve endan-
20 gered species and threatened species under this Act in the
21 following order of priority:

22 “(1) Single species genera.

23 “(2) Species.

24 “(3) Subspecies.

25 “(4) Distinct population segments.”.

1 **SEC. 104. IMPROVING DATA COLLECTION AND ANALYSIS.**

2 (a) STATE PARTICIPATION.—Section 4(b)(1)(A) (16
3 U.S.C. 1533(b)(1)(A)) is amended by inserting “soliciting
4 and fully considering scientific and commercial data con-
5 cerning the status of a species from the appropriate State,
6 if any, and” after “and after”.

7 (b) FEDERAL GOVERNMENT RESPONSIBILITY.—Sec-
8 tion 4(b) (16 U.S.C. 1533(b)) is amended by adding at
9 the end the following new paragraph:

10 “(9)(A) For the purposes of paragraphs (1) and (2),
11 the best scientific and commercial data available shall be,
12 to the maximum extent feasible, data that are verified by
13 field testing.

14 “(B) The Secretary shall identify and publish in the
15 Federal Register with each proposed rule promulgated
16 under paragraph (1) or (3) of subsection (a) a description
17 of—

18 “(i) any gap in the data to be considered in
19 making the determination under the subsection to
20 which the proposed rule relates;

21 “(ii) data that are necessary to make the deter-
22 mination and that can be collected within the period
23 available for making the determination; and

24 “(iii) data that are necessary to ensure the con-
25 tinued viability of the determination, and each dead-
26 line for collecting the data.

1 “(C) In making a determination pursuant to para-
2 graph (1) or (3) of subsection (a), the Secretary shall col-
3 lect and consider the data identified and described pursu-
4 ant to subparagraph (B)(ii).

5 “(D) The Secretary shall identify and publish in the
6 Federal Register with each final rule promulgated under
7 paragraph (1) or (3) of subsection (a)—

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

13 “(ii) each deadline by which the Secretary shall
14 collect and consider the data in accordance with sub-
15 paragraph (E).

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

19 “(i) collect the data referred to in such sub-
20 paragraph;

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

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

1 mentation supporting the description, shall be submitted
2 to the Bureau of Labor Statistics of the Department of
3 Labor. The Commissioner of Labor Statistics shall submit
4 written comments during the comment period on the pro-
5 posed regulation. The Secretary shall respond separately
6 and fully to each comment in the final regulation.”.

7 **SEC. 106. EQUAL ACCESS TO JUDICIAL REVIEW.**

8 Section 4(b)(3)(C) (16 U.S.C. 1533(b)(3)(C)) is
9 amended by striking clause (ii) and inserting the following
10 new clause:

11 “(ii) Any finding described in subparagraph (A) or
12 (B) shall be subject to judicial review.”.

13 **SEC. 107. IMPROVING THE CONSULTATION AND CON-**
14 **FERENCING PROCESSES FOR FEDERAL**
15 **AGENCY ACTIONS.**

16 (a) CONSULTATION STANDARDS AND PROCE-
17 DURES.—Section 7 (16 U.S.C. 1536) is amended—

18 (1) in subsection (a)—

19 (A) in the first sentence of paragraph (2),
20 by striking “or result in the destruction or ad-
21 verse modification of habitat of such species
22 which is determined by the Secretary, after con-
23 sultation as appropriate with affected States, to
24 be critical,” and inserting “or destroy or ad-
25 versely modify any habitat that is designated by

1 the Secretary as critical habitat of such a spe-
2 cies in a manner that is likely to jeopardize the
3 continued existence of the species.”;

4 (B) in paragraph (4), by striking “or re-
5 sult in the destruction or adverse modification
6 of critical habitat proposed to be designated for
7 such species” and inserting “or to destroy or
8 adversely modify any habitat that is proposed
9 to be designated by the Secretary as critical
10 habitat of such a species in a manner that is
11 likely to jeopardize the continued existence of
12 the species”; and

13 (C) by adding at the end the following new
14 paragraphs:

15 “(5) Consultation and conferencing under paragraphs
16 (2) and (4) shall not be required for any agency action
17 that is consistent with—

18 “(A) the actions provided for in a final recovery
19 plan developed under section 5; or

20 “(B) the requirements of a Cooperative Man-
21 agement Agreement in effect under section 6(b).

22 “(6) An agency action shall not be a taking prohib-
23 ited by this Act or any regulation issued under this Act
24 if the action is consistent with—

1 “(A) the actions provided for in a final recovery
2 plan developed under section 5; or

3 “(B) the requirements of a Cooperative Man-
4 agement Agreement in effect under section 6(b).”;
5 and

6 (2) in subsection (b)(3)(A), by striking the sec-
7 ond sentence and inserting the following new sen-
8 tence: “If the Secretary finds that the action is
9 likely to result in jeopardy to the continued existence
10 of the species as described in subsection (a), the
11 Secretary shall suggest reasonable and prudent
12 alternatives (considering the reasonable and prudent
13 alternatives undertaken by other Federal agencies)
14 that are consistent with subsection (a)(2) and that
15 impose the least socioeconomic costs.”.

16 (b) SCOPE OF CONSULTATION FOR CERTAIN FED-
17 ERAL AGENCY ACTIONS.—Section 7(a) (16 U.S.C.
18 1536(a)) is further amended by adding after paragraph
19 (6) (as added by subsection (a)(1)(C)) the following new
20 paragraph:

21 “(7) Consultation and conferencing under paragraphs
22 (2) and (3) regarding an agency action that consists solely
23 of routine maintenance to a Federal, State, or private
24 project or facility in existence at the time of the consulta-
25 tion and conferencing, or a modification to the project or

1 facility required by any Federal, State, or local govern-
2 ment agency for safety purposes, shall be limited to the
3 consideration of the direct effects that result from the
4 maintenance or modification that comprises the agency ac-
5 tion.”.

6 (c) CLARIFICATION OF FEDERAL AGENCY RESPON-
7 SIBILITIES.—Section 7(a) (16 U.S.C. 1536(a)) is further
8 amended—

9 (1) in the second sentence of paragraph (2), by
10 inserting before the period at the end the following:
11 “, and shall, in addition to considering other obliga-
12 tions and responsibilities under each applicable stat-
13 ute, treaty, interstate compact, and contractual
14 agreement, consider the opinion and any reasonable
15 and prudent alternatives developed pursuant to sub-
16 section (b)(3)”;

17 (2) by adding after paragraph (7) (as added by
18 subsection (b)) the following new paragraph:

19 “(8) If the head of a Federal agency determines that
20 compliance with paragraph (2) is not consistent with other
21 obligations and responsibilities of the agency under each
22 applicable statute, treaty, interstate compact, and contrac-
23 tual agreement, the agency head shall—

1 “(A) determine what pending action would have
2 been authorized, funded, or carried out but for sub-
3 section (a)(2); and

4 “(B) provide to the applicant, if any—

5 “(i) a written statement summarizing the
6 information on which the determination is
7 based; and

8 “(ii) a notice of the opportunity for an ex-
9 emption under subsection (e).”.

10 (d) PARTICIPATION IN CONSULTATIONS.—Section 7
11 (16 U.S.C. 1536) is amended—

12 (1) in subsection (a)—

13 (A) in paragraph (3), by inserting “with
14 the involvement of,” after “at the request of,”;
15 and

16 (B) in paragraph (4), by inserting after
17 “confer with the Secretary” the following: “and
18 any prospective permit or license applicant”;
19 and

20 (2) in subsection (b)(1), by adding at the end
21 the following new subparagraphs:

22 “(C) A prospective permit or license applicant shall
23 be entitled to participate fully in any consultation or con-
24 ference under this section with respect to an agency action
25 that involves the applicant.

1 “(D) A person that is a party to a written contract
2 with a Federal agency to purchase a product or service
3 that is provided as a result of an agency action shall be
4 entitled to participate fully in any consultation or con-
5 ference under this section with respect to the agency ac-
6 tion.”.

7 **SEC. 108. CLARIFYING THE EFFECTS OF SECONDARY IM-**
8 **PACTS.**

9 Section 7(b)(3)(A) (16 U.S.C. 1536(b)(3)(A)) is
10 amended—

11 (1) by inserting “(i)” after “(3)(A)”; and

12 (2) by adding at the end the following new
13 clause:

14 “(ii) Unless required by a provision of law other than
15 subsections (a) through (d), the Secretary, in any opinion
16 or statement concerning an agency action made pursuant
17 to this subsection (including any reasonable and prudent
18 alternative suggested under clause (i) or any reasonable
19 and prudent measure specified under clause (ii) of para-
20 graph (4)), and the head of the Federal agency proposing
21 the agency action, may not require, provide for, or rec-
22 ommend the imposition of any restriction or obligation on
23 the activity of any person that is not authorized, funded,
24 carried out, or otherwise subject to regulation by the Fed-
25 eral agency. Nothing in this clause shall prevent the Sec-

1 retary from pursuing any appropriate remedy under sec-
2 tion 11 for any activity prohibited by section 9.”.

3 **TITLE II—PROVIDING SIGNIFI-**
4 **CANCE TO THE RECOVERY**
5 **PLANNING PROCESS**

6 **SEC. 201. ENSURING PREPARATION AND USE OF TIMELY,**
7 **COMPREHENSIVE, AND EFFECTIVE RECOV-**
8 **ERY PLANS.**

9 (a) IN GENERAL.—

10 (1) DEFINITION OF RECOVERY PLAN.—Section
11 3 (16 U.S.C. 1532) is amended—

12 (A) by redesignating paragraphs (15)
13 through (21) as paragraphs (16) through (22),
14 respectively; and

15 (B) by inserting after paragraph (14) the
16 following new paragraph:

17 “(15) The term ‘recovery plan’ means a plan devel-
18 oped under section 5.”.

19 (2) RECOVERY PLANS.—The Act is amended—

20 (A) by redesignating section 5 (16 U.S.C.
21 1534) as section 5A; and

22 (B) by inserting after section 4 (16 U.S.C.
23 1533) the following new section:

1 **“SEC. 5. RECOVERY PLANS.**

2 “(a) IN GENERAL.—The Secretary shall develop and
3 implement a plan for the conservation and survival of each
4 species determined to be an endangered species or a
5 threatened species pursuant to section 4, unless the Sec-
6 retary determines, upon completion of assessments re-
7 quired by this section, that a plan is not necessary to pro-
8 mote the conservation and survival of the species. If the
9 Secretary determines that a recovery plan is not necessary,
10 the Secretary shall prepare and publish in the Federal
11 Register findings stating the basis upon which the deter-
12 mination is made.

13 “(b) PRIORITY.—In the development and implemen-
14 tation of a plan under this section, the Secretary shall,
15 to the maximum extent practicable, give priority to—

16 “(1) the development of an integrated recovery
17 plan for 2 or more endangered species or threatened
18 species that are likely to benefit from an integrated
19 recovery plan;

20 “(2) the geographic areas where conflicts be-
21 tween the conservation of species and development
22 projects or other forms of economic activity exist or
23 are likely to exist; and

24 “(3) the implementation of recovery measures
25 that have the least socioeconomic costs.

1 “(c) RECOVERY TEAM.—For each recovery plan the
2 Secretary shall—

3 “(1) appoint a recovery team consisting of—

4 “(A) appropriate biologists, economists,
5 and land use specialists from the department of
6 the Secretary, other Federal agencies, and the
7 private sector;

8 “(B) representatives from each affected
9 State nominated by the Governor of the State;
10 and

11 “(C) representatives nominated by affected
12 local governments; and

13 “(2) provide technical assistance to the recovery
14 team.

15 “(d) RECOVERY TEAM ASSESSMENTS.—Each recov-
16 ery team shall make the following assessments with re-
17 spect to the development of a recovery plan for a species:

18 “(1) BIOLOGICAL.—An assessment of—

19 “(A) the biological considerations nec-
20 essary to carry out this Act;

21 “(B) the biological significance of the spe-
22 cies;

23 “(C) the precise geographical range of the
24 species;

1 “(D) the then current population of the
2 species;

3 “(E) the population trend of the species;

4 “(F) the technical practicality of recover-
5 ing the species;

6 “(G) the potential conservation measures
7 designed to recover the species or to reduce the
8 risks to survival of the species;

9 “(H) any captive breeding program that
10 would contribute to the goal of the conservation
11 of the species; and

12 “(I) whether conservation measures will re-
13 quire any release of an experimental population
14 outside the then current range of the species
15 and, if the release is required, an identification
16 of candidate geographical areas for the release.

17 “(2) ECONOMIC.—An assessment of—

18 “(A) the socioeconomic impacts that may
19 result from the listing of the species and poten-
20 tial conservation measures identified pursuant
21 to this subsection, including a description of the
22 direct and indirect costs to the public and pri-
23 vate sectors;

24 “(B) the effects on employment; and

1 “(C) the impacts on the use and value of
2 property.

3 “(3) INTERGOVERNMENTAL.—An assessment of
4 the impact of the listing of the species and the po-
5 tential conservation measures identified pursuant to
6 this subsection on State and local land use laws,
7 conservation measures, and the water allocation pol-
8 icy of affected States.

9 “(e) RECOVERY TEAM REPORTS.—Each recovery
10 team shall report the assessments of the team under sub-
11 section (d) to the Secretary. The Secretary shall use the
12 assessments as a baseline in the formation and develop-
13 ment of a recovery plan, including alternatives developed
14 pursuant to subsection (f).

15 “(f) ALTERNATIVES.—The Secretary, on the basis of
16 the assessments under subsection (d), shall include in each
17 draft recovery plan and plan revision alternative strategies
18 for the recovery and survival of the species. The alter-
19 native strategies shall range from strategies that do not
20 require Federal management to strategies that may re-
21 quire intensive Federal management. Each alternative
22 strategy shall recommend a balance of goals and require-
23 ments pursuant to this Act, and shall contain—

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

4 “(2) a description of the direct and indirect
5 costs to the public and private sectors, including ef-
6 fects on employment, that may result from the alter-
7 native;

8 “(3) a description of any social dislocation that
9 may result from the alternative;

10 “(4) an analysis of any impacts that the alter-
11 native would have on the use and value of property;

12 “(5) a description of site-specific management
13 actions necessary to achieve the goals of the alter-
14 native;

15 “(6) a description of any captive breeding pro-
16 gram that would contribute to the goals of the alter-
17 native;

18 “(7) a discussion of whether the alternative
19 would require any release of an experimental popu-
20 lation outside the then current range of the species
21 and, if the release would be required, an identifica-
22 tion of candidate geographical areas for the release;

23 “(8) a clear differentiation between—

1 “(A) the actions recommended generally
2 for Federal agencies to conserve the species
3 pursuant to section 7(a)(1);

4 “(B) the actions recommended with respect
5 to Federal agency actions that are the subject
6 of consultation pursuant to section 7(a)(2); and

7 “(C) the actions recommended to be taken
8 by any person to avoid any take of the species
9 prohibited under section 4(d) or 9(a)(1);

10 “(9) objective, measurable criteria for recovery,
11 including a population level target, that, if met,
12 would result in a determination, pursuant to section
13 4, that the species be removed from a list published
14 pursuant to section 4(c)(1);

15 “(10) estimates of the time and costs required
16 to carry out the actions needed to achieve the goals
17 of the alternative and to achieve intermediate steps
18 to the goals; and

19 “(11) a description of the role of the appro-
20 priate State, if any, in achieving the goals of the al-
21 ternative.

22 “(g) PROCEDURES.—

23 “(1) IN GENERAL.—Except as provided in para-
24 graph (2), for each species for which the Secretary

1 is required to develop a recovery plan under sub-
2 section (a), the Secretary shall—

3 “(A) publish a draft recovery plan not
4 later than 1 year after the date of the publica-
5 tion under section 4(b)(6) of the final regula-
6 tion to implement the determination described
7 in such section; and

8 “(B) issue a final recovery plan not later
9 than 18 months after the date of publication
10 described in subparagraph (A).

11 “(2) EXPEDITED ISSUANCE.—For any species
12 that was determined by the Secretary under section
13 4 to be an endangered species or threatened species
14 before January 1, 1993, and for which a final recov-
15 ery plan was not published before the date, the Sec-
16 retary shall—

17 “(A)(i) publish a draft recovery plan not
18 later than 18 months after the date of enact-
19 ment of this subsection; and

20 “(ii) issue a final recovery plan not later
21 than 2 years after the date of enactment of this
22 subsection; or

23 “(B) publish in the Federal Register a de-
24 termination that a recovery plan is not required

1 under this section, not later than 18 months
2 after the date of enactment of this subsection.

3 “(3) PUBLICATION AND PUBLIC COMMENT.—
4 The Secretary shall publish in the Federal Register
5 and a newspaper of general circulation in each af-
6 fected county and parish—

7 “(A) a notice of availability and a sum-
8 mary of—

9 “(i) each draft recovery plan;

10 “(ii) each final recovery plan; and

11 “(iii) each draft and final revision to
12 a recovery plan; and

13 “(B) a request for the submission of com-
14 ments on the draft plan or revision.

15 “(4) HEARINGS.—The Secretary shall hold a
16 public hearing on each draft recovery plan and plan
17 revision in each county and parish to which the plan
18 applies.

19 “(5) CONSIDERATION OF COMMENTS BY THE
20 SECRETARY.—Prior to any decision to adopt a final
21 recovery plan or plan revision, the Secretary shall
22 consider and weigh carefully all information pre-
23 sented during each hearing held pursuant to para-
24 graph (4) or received in response to a request for
25 comments published under paragraph (3)(B).

1 “(h) PUBLICATION OF REASONS FOR SELECTING AL-
2 TERNATIVES AND RESPONSE TO COMMENTS AND TESTI-
3 MONY.—The Secretary shall publish in the Federal Reg-
4 ister, with the notice of availability and summary of a final
5 recovery plan or plan revision, a detailed discussion of—

6 “(1) the reasons for the selection of the species
7 recovery and survival strategies included in the plan
8 or plan revision;

9 “(2) for each alternative strategy included in a
10 draft recovery plan or plan revision under subsection
11 (f) that is not selected for the final recovery plan or
12 plan revision, the reasons the alternative was not se-
13 lected; and

14 “(3) the response of the Secretary to all infor-
15 mation referred to in subsection (g)(5).

16 “(i) PARTICIPATION BY STATES AND OTHER PER-
17 SONS.—The Secretary, in developing and implementing re-
18 covery plans, may use the services of appropriate public
19 and private agencies and institutions and of other quali-
20 fied persons.

21 “(j) RELATIONSHIP TO OTHER LAW.—The Federal
22 Advisory Committee Act (5 U.S.C. App.) shall not apply
23 to recovery teams appointed under this section.

24 “(k) REPORT.—Not later than 2 years after the date
25 of enactment of this subsection and biennially thereafter,

1 the Secretary shall report to the Committee on Environ-
2 ment and Public Works of the Senate and the Committee
3 on Merchant Marine and Fisheries of the House of Rep-
4 resentatives on the status of efforts to develop and imple-
5 ment recovery plans for all species included in a list pub-
6 lished pursuant to section 4(c)(1) and on the status of
7 all species for which the plans have been developed.

8 “(l) REVIEW OF RECOVERY PLANS.—The Secretary
9 shall—

10 “(1) review each recovery plan before the end of
11 the 5-year period that begins on the date of the pub-
12 lication of the recovery plan, and before the end of
13 each 5-year period thereafter; and

14 “(2) determine whether the plan meets the re-
15 quirements of this section.”.

16 (3) CONFORMING AMENDMENT.—Section
17 4(h)(4) (16 U.S.C. 1533(h)(4)) is amended by strik-
18 ing “subsection (f) of this section” and inserting
19 “section 5”.

20 (b) EXISTING RECOVERY PLANS.—

21 (1) IN GENERAL.—Except as provided in para-
22 graphs (2), (3), and (4), a final recovery plan issued
23 under section 4(f) of the Endangered Species Act of
24 1973 (16 U.S.C. 1533(f)) (as in effect on the day
25 before the date of enactment of this Act) before Jan-

1 uary 1, 1993, shall continue in effect as if this sec-
2 tion had not been enacted.

3 (2) REVISIONS.—The amendments made by
4 subsection (a)(2) shall apply to a revision to a recov-
5 ery plan referred to in paragraph (1).

6 (3) REVIEWS.—A final recovery plan issued be-
7 fore the date of enactment of this Act shall be re-
8 viewed under section 5(l) of the Endangered Species
9 Act of 1973 (as added by subsection (a)) on or be-
10 fore the date the plan would have been required to
11 be reviewed if—

12 (A) such section had been in effect on the
13 date the plan was issued; and

14 (B) the plan had been reviewed at the end
15 of each 5-year period under such section.

16 (4) PLANS.—A final recovery plan issued by the
17 National Marine Fisheries Service under section 4(f)
18 of the Endangered Species Act of 1973 (16 U.S.C.
19 1533(f)) (as in effect on the day before the date of
20 the date of enactment of this Act) before January 1,
21 1993, shall be reissued in accordance with section 5
22 of such Act (as added by subsection (a)).

23 (c) CONFORMING AMENDMENTS.—

24 (1) The table of contents in the first section (16
25 U.S.C. prec. 1531) is amended by striking the item

1 relating to section 5 and inserting the following new
2 items:

“Sec. 5. Recovery plans.
“Sec. 5A. Land acquisition.”.

3 (2) Section 7(a)(1) of the Land and Water
4 Conservation Fund Act of 1965 (16 U.S.C. 460/
5 9(a)(1)) is amended by striking “section 5(a)” and
6 inserting “section 5A(a)”.

7 **TITLE III—ENSURING THAT THE**
8 **COMPLIANCE PROCEDURES**
9 **AND STANDARDS FOR NON-**
10 **FEDERAL PERSONS ARE NOT**
11 **MORE BURDENSOME THAN**
12 **THE PROCEDURES AND**
13 **STANDARDS APPLICABLE TO**
14 **FEDERAL AGENCIES**

15 **SEC. 301. ESTABLISHING CONSULTATION PROCEDURES**
16 **WITH RESPECT TO PRIVATE ACTIONS.**

17 (a) IN GENERAL.—Section 10 (16 U.S.C. 1539) is
18 amended—

19 (1) in subsection (a)—

20 (A) in paragraph (2)(A)—

21 (i) by striking “No permit may be is-
22 sued by the Secretary authorizing any tak-
23 ing referred to in paragraph (1)(B) unless
24 the applicant” and inserting “A permit

1 may be issued by the Secretary pursuant
2 to paragraph (1)(B) if the applicant”; and

3 (ii) in clause (i), by striking “such
4 taking” and inserting “the taking referred
5 to in paragraph (1)(B)””; and

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

8 “(3)(A) Subject to such regulations as the Secretary
9 may issue, any non-Federal person may initiate a con-
10 sultation with the Secretary on any prospective activity of
11 the person to determine whether the activity is or is not
12 likely to jeopardize the continued existence of any endan-
13 gered species or threatened species, or to destroy or ad-
14 versely modify the designated critical habitat of the species
15 in a manner that is likely to jeopardize the continued ex-
16 istence of the species.

17 “(B) A consultation under subparagraph (A) shall
18 conclude not later than 90 days after the date on which
19 the consultation is initiated, or by such other date as is
20 mutually agreeable to the Secretary and the person initiat-
21 ing the consultation.

22 “(C)(i) As soon as practicable after the conclusion of
23 consultation under subparagraph (A), the Secretary shall
24 provide to the person initiating the consultation a written
25 statement setting forth the opinion of the Secretary, and

1 a summary of the information on which the opinion is
2 based, describing in detail how the prospective activity af-
3 fects the species or the critical habitat of the species.

4 “(ii) If the Secretary finds that the activity is not
5 likely to result in jeopardy to the continued existence of
6 the species as described in subparagraph (A), the Sec-
7 retary shall provide to the person initiating the consulta-
8 tion a statement that the proposed activity will not jeop-
9 ardize the continued existence of the species.

10 “(iii) If the Secretary finds that the activity is likely
11 to result in jeopardy to the continued existence of the spe-
12 cies as described in subparagraph (A), the Secretary shall
13 suggest the reasonable and prudent alternatives that the
14 Secretary determines would not violate subparagraph (A)
15 and that can be taken by the person initiating the con-
16 sultation in carrying out the activity of the person.

17 “(D) After the conclusion of consultation under sub-
18 paragraph (A), if the person initiating the consultation so
19 requests, the Secretary shall issue a permit pursuant to
20 paragraph (1)(B) to the person if the Secretary deter-
21 mines that—

22 “(i)(I) the activity of the person initiating the
23 consultation will not violate subparagraph (A); or

1 “(II) the person has accepted a reasonable and
2 prudent alternative offered by the Secretary pursu-
3 ant to subparagraph (C); and

4 “(ii) the taking of an endangered species or
5 threatened species incidental to the activity or alter-
6 native will not result in jeopardy to the continued
7 existence of the species as described in subparagraph
8 (A).

9 “(E) A permit issued pursuant to subparagraph (D)
10 shall—

11 “(i) describe the impact of the incidental taking
12 on the species;

13 “(ii) specify the reasonable and prudent meas-
14 ures that the Secretary considers necessary or ap-
15 propriate to minimize the impact; and

16 “(iii) set forth the terms and conditions that
17 the person initiating the consultation must comply
18 with to implement the measures.

19 “(F) After the initiation of consultation under sub-
20 paragraph (A), the person initiating the consultation may
21 not make any irreversible or irretrievable commitment of
22 resources with respect to the activity that is the subject
23 of the consultation if the commitment has the effect of
24 foreclosing the formulation or implementation of any rea-

1 sonable and prudent alternative or measure that would not
2 violate subparagraph (A).

3 “(G) Any consultation initiated pursuant to subpara-
4 graph (A), and the activity that is the subject of the con-
5 sultation, shall not be subject to section 7(c) of this Act
6 or section 102(2) of the National Environmental Policy
7 Act of 1969 (42 U.S.C. 4332(2)).

8 “(H) Notwithstanding section 4(d) and subpara-
9 graphs (B) and (C) of section 9(a)(1) of this Act and sec-
10 tions 101 and 102 of the Marine Mammal Protection Act
11 of 1972 (16 U.S.C. 1371 and 1372), a taking of a species
12 in the course of an action of a person that is the subject
13 of a written opinion provided to the person by the Sec-
14 retary under this paragraph shall not be considered to be
15 a prohibited taking if—

16 “(i) the Secretary finds that the action is not
17 likely to result in jeopardy to the continued existence
18 of the species pursuant to subparagraph (C)(ii); or

19 “(ii) the taking is in compliance with the terms
20 and conditions of a permit issued pursuant to sub-
21 paragraph (D).

22 “(I) The Secretary shall revoke a permit issued under
23 this paragraph if the Secretary finds that the permittee
24 is not complying with the terms and conditions of the per-
25 mit.”; and

1 (2) in the first sentence of subsection (c), by
2 striking “this section” and inserting “subsections
3 (a)(2) and (b)”.

4 (b) DEFINITION OF NON-FEDERAL PERSON.—Sec-
5 tion 3 (16 U.S.C. 1532) is amended by inserting after
6 paragraph (10) the following new paragraph:

7 “(11) The term ‘non-Federal person’ means a person
8 other than an officer, employee, agent, department, or in-
9 strumentality of—

10 “(A) the Federal Government; or

11 “(B) a foreign government.”.

12 **SEC. 302. DEFINING THE TAKE PROHIBITION IN ACCORD-**
13 **ANCE WITH THE INTENT OF CONGRESS.**

14 Paragraph (20) of section 3 (as redesignated by sec-
15 tion 201(a)(1)(A)) is amended to read as follows:

16 “(20) The term ‘take’ means—

17 “(A) to pursue, hunt, shoot, wound, kill, trap,
18 capture, or collect;

19 “(B) to attempt to commit an act described in
20 subparagraph (A); or

21 “(C) to harass or harm a member of a spe-
22 cies—

23 “(i) in a manner that causes injury to the
24 member; or

25 “(ii) in an attempt to cause the injury.”.

1 **SEC. 303. CLARIFYING THE APPLICATION OF TAKE PROHI-**
2 **BITIONS.**

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

4 (1) in paragraph (1), by striking “Except as
5 provided in sections 6(g)(2) and 10 of this Act,” and
6 inserting “Except as provided in paragraph (3) and
7 sections 6(g)(2) and 10,”; and

8 (2) by adding at the end the following new
9 paragraph:

10 “(3) An activity of a non-Federal person is deemed
11 not to constitute a take of a species if the activity—

12 “(A) is consistent with the requirements of a
13 recovery plan developed under section 5; or

14 “(B) complies with the requirements of a Coop-
15 erative Management Agreement in effect under sec-
16 tion 6(b).”.

17 **SEC. 304. AUTHORIZING THE ISSUANCE OF GENERAL PER-**
18 **MITTS.**

19 Section 10(a) (16 U.S.C. 1539(a)) (as amended by
20 section 301(a)(1)(B)) is further amended by adding at the
21 end the following new paragraph:

22 “(4)(A) After providing notice and opportunity for
23 public hearings, the Secretary may issue a general permit
24 pursuant to paragraph (1)(B) on a county, State, regional,
25 or nationwide basis for any category of activities that may
26 affect a species that is included on a list published pursu-

1 ant to section 4(c)(1) if the Secretary determines that the
2 activities in the category are similar in nature, will cause
3 only minimal adverse effects on the species when per-
4 formed separately, and will have only minimal cumulative
5 diverse effects on the species generally. A general permit
6 issued under this paragraph shall set forth the require-
7 ments and standards that apply to an activity authorized
8 by the general permit.

9 “(B) A general permit issued pursuant to subpara-
10 graph (A) shall be effective for a period to be specified
11 by the Secretary, but not to exceed 5 years after the date
12 of the issuance of the permit. The Secretary may revoke
13 or modify a general permit if, after providing an oppor-
14 tunity for a public hearing, the Secretary determines that
15 the activities authorized by the general permit have a
16 greater than minimal adverse effect on a species that is
17 included on a list published pursuant to section 4(c)(1)
18 or the activities are more appropriately authorized by indi-
19 vidual permits pursuant to paragraph (2) or (3).”.

20 **SEC. 305. IMPROVING THE CONSERVATION PLANNING**
21 **PROCESS.**

22 (a) FEDERAL SHARE OF COSTS; INTERIM PER-
23 MITS.—Section 10(a)(2) (16 U.S.C. 1539(a)(2)) is
24 amended—

1 (1) by redesignating subparagraph (C) as sub-
2 paragraph (G); and

3 (2) by inserting after subparagraph (B) the fol-
4 lowing new subparagraphs:

5 “(C) The Secretary may not require the applicant,
6 as a condition of processing the application or issuing the
7 permit, to expand the application to include land or inter-
8 est in land not owned by the applicant or to address a
9 species other than the species for which the application
10 is made, unless the Secretary determines that the require-
11 ment will not appreciably increase the time or cost of proc-
12 essing the application or the cost of implementing the per-
13 mit.

14 “(D) The Secretary shall pay 50 percent of the direct
15 and indirect cost of implementing the terms and condi-
16 tions of the permit. To the maximum extent practicable,
17 the sums paid by the Secretary shall be paid directly by
18 the Secretary in lieu of reimbursement to the permittee.

19 “(E) For such activities as the Secretary determines
20 will not appreciably reduce the chances of survival of a
21 species, the Secretary may issue an interim permit to any
22 applicant that—

23 “(i) files an application under this section; and

24 “(ii) provides evidence of appropriate interim
25 species conservation activities that—

1 “(I) are associated with the activity pro-
2 posed for permitting; and

3 “(II) are to be performed while the under-
4 lying permit application is being considered
5 under this section.

6 “(F) An interim permit issued under subparagraph
7 (E)—

8 “(i) shall specifically state the types of activities
9 that are authorized to be carried out under the in-
10 terim permit;

11 “(ii) shall not create any right to the issuance
12 of a permit under this section;

13 “(iii) shall expire on the date of the granting or
14 denial of the underlying permit application; and

15 “(iv) may be revoked by the Secretary upon the
16 termination of a 60-day period following notice for
17 any failure to comply with the terms of the interim
18 permit.”.

19 (b) MULTIPLE SPECIES CONSERVATION PLANS.—
20 Section 10 (16 U.S.C. 1539) is amended by adding at the
21 end the following new subsection:

22 “(k) MULTIPLE SPECIES CONSERVATION PLANS.—
23 (1) The Secretary may assist a non-Federal person in the
24 development of a plan (to be known as a ‘multiple species
25 conservation plan’) for the conservation of—

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

4 “(B) any other species that—

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

7 “(ii) is designated in the plan for conserva-
8 tion.

9 “(2)(A) The Secretary may issue a permit under this
10 paragraph authorizing any taking described in subsection
11 (a)(1)(B) of a species for which a multiple species con-
12 servation plan is developed under this subsection, if the
13 Secretary, after the opportunity for public comment on the
14 plan—

15 “(i) finds that the plan specifies the informa-
16 tion described in subsection (a)(2)(A);

17 “(ii) makes the findings described in subsection
18 (a)(2)(B) with respect to the permit application and
19 the plan; and

20 “(iii) receives such assurances as the Secretary
21 may require that the plan will be implemented.

22 “(B) A permit issued under this paragraph with re-
23 spect to a multiple species conservation plan shall be treat-
24 ed in the same manner as a permit issued under sub-

1 section (a)(1)(B) with respect to the species for which the
2 plan is developed.”.

3 **SEC. 306. PROVIDING FOR EXEMPTIONS OF PRIVATE AC-**
4 **TIONS AND RELIEVING PAYMENT REQUIRE-**
5 **MENTS.**

6 (a) EXEMPTION OF NON-FEDERAL PERSONS.—Sec-
7 tion 7 (16 U.S.C. 1536) is amended—

8 (1) in subsection (m), by striking “under sub-
9 section (h) of this section granting an exemption
10 from the requirements of subsection (a)(2) of this
11 section” and inserting “under subsection (h) or (q)
12 granting an exemption for an agency action or an
13 activity of a person”;

14 (2) in the first sentence of subsection (n), by
15 inserting “or activity of a person” after “agency ac-
16 tion” both places it appears; and

17 (3) by adding at the end the following new sub-
18 section:

19 “(q) EXEMPTION FOR NON-FEDERAL PERSONS.—(1)
20 A non-Federal person (other than an officer, employee,
21 agent, department, or instrumentality of a State, munici-
22 pality, or political subdivision of a State, and a State, mu-
23 nicipality, or political subdivision of a State) may apply
24 to the Secretary for an exemption by the Committee of
25 an action of the person if the person—

1 “(A)(i) receives a written opinion of the Sec-
2 retary under section 10(a)(3)(C)(iii) in which the
3 Secretary finds that the action is likely to result in
4 jeopardy to the continued existence of a species; and

5 “(ii) does not accept any reasonable and pru-
6 dent alternative or is otherwise denied a permit
7 under section 10(a)(3)(D);

8 “(B) is denied a permit for the action under
9 section 10(a)(1); or

10 “(C) has a permit revoked under section
11 10(a)(2)(G).

12 “(2) The Secretary may accept or deny an exemption
13 application, and the Committee may grant or deny an ex-
14 emption, in accordance with the relevant or applicable pro-
15 visions of subsections (g), (h), and (l) and with regulations
16 issued by the Secretary.

17 “(3) Notwithstanding section 4(d) and subpara-
18 graphs (B) and (C) of section 9(a)(1) of this Act and sec-
19 tions 101 and 102 of the Marine Mammal Protection Act
20 of 1972 (16 U.S.C. 1371 and 1372), an action for which
21 an exemption is granted under this subsection shall not
22 be considered to be a taking of any endangered species
23 or threatened species with respect to any activity that is
24 necessary to carry out the action.”.

1 (b) PAYMENT OF COSTS OF COMPLYING WITH EN-
2 DANGERED SPECIES COMMITTEE ORDERS.—Section 7(l)
3 (16 U.S.C. 1536(l)) is amended—

4 (1) in paragraph (1), by striking “and paid
5 for”; and

6 (2) in paragraph (2)—

7 (A) in the second sentence, by striking
8 “Notwithstanding the preceding sentence the
9 costs” and inserting “The costs”; and

10 (B) by striking the fourth sentence.

11 **SEC. 307. COMPENSATING PROPERTY OWNERS FOR SUB-**
12 **STANTIALLY DIMINISHED VALUE.**

13 (a) IN GENERAL.—The Act is amended by inserting
14 after section 10 (16 U.S.C. 1539) the following new sec-
15 tion:

16 **“SEC. 10A. COMPENSATION FOR LANDOWNERS.**

17 “(a) ELIGIBILITY.—A property owner that, as a con-
18 sequence of a final decision of the Secretary pursuant to
19 section 7(a) or paragraph (1), (2), or (3) of section 10(a),
20 is substantially deprived of the economically viable use of
21 the property owned or held by the property owner shall
22 be entitled to receive compensation in accordance with this
23 section.

24 “(b) DEADLINE.—Not later than 90 days after the
25 receipt of a final decision of the Secretary under section

1 7(a), or paragraph (1), (2), or (3) of section 10(a), that
2 substantially deprives a property owner of the economi-
3 cally viable use of the property owned or held by the prop-
4 erty owner, the property owner may submit in writing a
5 request to the Secretary for compensation in accordance
6 with subsection (c).

7 “(c) OFFER BY THE SECRETARY.—Not later than
8 180 days after the receipt of a request for compensation
9 under subsection (b), the Secretary shall provide to the
10 property owner—

11 “(1) an offer to purchase the affected property
12 of the property owner at a fair market value assum-
13 ing no use restrictions under this Act; and

14 “(2) an offer to compensate the property owner
15 for the difference between the fair market value of
16 the property without the restrictions and the fair
17 market value of the property with the restrictions.

18 “(d) RESPONSE BY THE PROPERTY OWNER; ARBI-
19 TRATION.—

20 “(1) IN GENERAL.—Not later than 60 days
21 after the date of the receipt of the offers of the Sec-
22 retary under subsection (c), a property owner shall
23 accept 1 of the offers or reject both offers.

24 “(2) SUBMISSION TO ARBITRATION.—If the
25 property owner rejects both offers, the property

1 owner may submit the matter for arbitration to an
2 arbitrator appointed by the Secretary from a list of
3 arbitrators submitted to the Secretary by the Amer-
4 ican Arbitration Association. The arbitration shall be
5 conducted in accordance with the real estate valu-
6 ation arbitration rules of the Association.

7 “(3) EFFECT OF ARBITRATION.—For the pur-
8 poses of this section, an arbitration shall be binding
9 on the Secretary and a property owner as to the
10 amount, if any, of compensation owed to the prop-
11 erty owner and whether for the purposes of this sec-
12 tion the property owner has been substantially de-
13 prived of the economically viable use of the affected
14 property.

15 “(e) POST-ARBITRATION OFFER AND RESPONSE BY
16 THE OWNER.—Not later than 30 days after the comple-
17 tion of the arbitration, the Secretary shall make a deter-
18 mination, and notify the property owner in writing of the
19 determination, as to whether to submit a new offer of pur-
20 chase or compensation that adheres to the results of the
21 arbitration. Not later than 60 days after the date of re-
22 ceipt of the new offer, the property owner may accept or
23 reject the offer.

1 “(f) OTHER REMEDIES NOT AFFECTED.—Nothing
2 in this section shall affect the right of a property owner
3 to pursue any other remedy available at law.

4 “(g) JUDGMENT.—A final decision of the Secretary
5 pursuant to section 7(a) or paragraph (1), (2), or (3) of
6 section 10(a) that substantially deprives a property owner
7 of the economically viable use of the property owned or
8 held by the property owner is deemed to be a judgment
9 against the United States if the property owner accepts
10 an offer by the Secretary under subsection (d) or sub-
11 section (e).

12 “(h) PAYMENT.—The Secretary shall pay a property
13 owner any compensation required under the terms of an
14 offer of the Secretary that is accepted by the property
15 owner in accordance with subsection (d) or subsection (e)
16 not later than 60 days after the date of the acceptance.

17 “(i) DEFINITIONS.—As used in this section:

18 “(1) PROPERTY.—The term ‘property’ means—

19 “(A) land;

20 “(B) any interest in land; and

21 “(C) any proprietary water right.

22 “(2) PROPERTY OWNER.—The term ‘property
23 owner’ means a non-Federal person (other than an
24 officer, employee, agent, department, or instrumen-
25 tality of a State, municipality, or political subdivi-

1 sion of a State, or a State, municipality, or political
2 subdivision of a State) that—

3 “(A) owns property referred to in subpara-
4 graph (A) or (B) of paragraph (1); or

5 “(B) holds property referred to in para-
6 graph (1)(C).”.

7 (b) CONFORMING AMENDMENT.—The table of con-
8 tents in the first section (16 U.S.C. prec. 1531) is amend-
9 ed by inserting after the item relating to section 10 the
10 following new item:

“Sec. 10A. Compensation for property owners.”.

11 **TITLE IV—PROVIDING FOR HABITAT**
12 **CONSERVATION INCEN-**
13 **TIVE PROGRAMS**

14 **SEC. 401. COOPERATIVE MANAGEMENT AGREEMENTS.**

15 (a) IN GENERAL.—Subsection (b) of section 6 (16
16 U.S.C. 1535(b)) is amended to read as follows:

17 “(b) COOPERATIVE MANAGEMENT AGREEMENTS.—

18 (1) The Secretary may enter into an agreement with any
19 non-Federal person having authority, control, or owner-
20 ship over the area affected by any listing, proposed listing,
21 or candidacy for listing of a species pursuant to section
22 4(a)(1), any designation of critical habitat pursuant to
23 section 4(a)(3), or any listing of a species subject to sec-
24 tion 4(b)(3)(B)(iii). The agreement shall be known as a
25 ‘Cooperative Management Agreement’ and shall govern

1 the administration and management of each area that the
2 Secretary identifies as habitat for the species.

3 “(2) The Secretary may initiate, or a non-Federal
4 person may submit to the Secretary a request to enter
5 into, a Cooperative Management Agreement. A person
6 shall submit with the request a proposed Cooperative Man-
7 agement Agreement.

8 “(3) The Secretary shall publish in the Federal Reg-
9 ister—

10 “(A) a notice of availability of, and a request
11 for public comment on, a proposed Cooperative Man-
12 agement Agreement; and

13 “(B) a notice of availability of each Cooperative
14 Management Agreement entered into by the Sec-
15 retary.

16 “(4) The Secretary shall hold a public hearing on a
17 proposed Cooperative Management Agreement in each
18 county to which the proposed Agreement applies.

19 “(5)(A) Before entering into a Cooperative Manage-
20 ment Agreement, the Secretary shall consider and weigh
21 carefully all information—

22 “(i) received in response to the request for com-
23 ment published under paragraph (3); and

24 “(ii) presented as testimony in each hearing
25 held under paragraph (4).

1 “(B) The Secretary shall publish under paragraph
2 (3)(B) with a notice of availability of a Cooperative Man-
3 agement Agreement the response of the Secretary to all
4 information referred to in subparagraph (A) that is re-
5 ceived or presented with respect to the Agreement.

6 “(6)(A) Not later than 120 days after the submission
7 of a proposed Cooperative Management Agreement in ac-
8 cordance with paragraph (2), the Secretary shall deter-
9 mine whether the proposed Agreement—

10 “(i) is in accordance with this subsection; and

11 “(ii) will promote the conservation of the spe-
12 cies to which the proposed Agreement applies.

13 “(B) The Secretary shall approve and enter into a
14 proposed Cooperative Management Agreement with the
15 person that submits the proposed Agreement if the Sec-
16 retary finds that—

17 “(i) the person has sufficient authority under
18 law to implement and carry out the terms of the
19 Agreement;

20 “(ii) the Agreement defines an area that serves
21 as habitat for the species to which the Agreement
22 applies;

23 “(iii) the Agreement provides for the adminis-
24 tration and management of the area and adequately
25 regulates activities occurring in the area that may

1 not otherwise promote the conservation of the spe-
2 cies to which the Agreement applies;

3 “(iv) the Agreement promotes the conservation
4 of the species to which the Agreement applies by
5 committing Federal or non-Federal efforts to the
6 conservation; and

7 “(v) the Agreement is adequately funded to
8 carry out the Agreement.

9 “(7)(A) Paragraphs (1) and (3) of section 4(a), and
10 sections 5 and 7, shall not apply to such activities of a
11 person that is a party to a Cooperative Management
12 Agreement as are conducted in accordance with the Agree-
13 ment.

14 “(B) Notwithstanding subparagraph (A), an inten-
15 tional or knowing violation of a Cooperative Management
16 Agreement, or a statute or regulation implementing a Co-
17 operative Management Agreement, that has the effect of
18 jeopardizing the continued existence of a species to which
19 the Agreement applies shall be considered to be a violation
20 of this Act.

21 “(8)(A) If the Secretary determines after public hear-
22 ing and opportunity for comment that a person that is
23 a party to a Cooperative Management Agreement is not
24 administering or acting in accordance with the Agreement,
25 the Secretary shall notify the person.

1 “(B) If a person that is notified under subparagraph
2 (A) fails to take appropriate corrective action within a pe-
3 riod of time determined by the Secretary to be reasonable
4 (not to exceed 90 days after the date of the notification)—

5 “(i) the Secretary shall rescind the entire Coop-
6 erative Management Agreement that is the subject
7 of the notification or the applicability of the Agree-
8 ment to the person; and

9 “(ii) on and after the date of the rescission—

10 “(I) the entire Agreement shall not be ef-
11 fective, or the Agreement shall not be effective
12 with respect to the person (as appropriate); and

13 “(II) paragraphs (1) and (3) of section
14 4(a), and sections 5 and 7, shall apply to activi-
15 ties of the person.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 6 (16 U.S.C. 1535) is amended by
18 striking the section heading and inserting the follow-
19 ing new section heading: “COOPERATION WITH NON-
20 FEDERAL PERSONS”.

21 (2) The table of contents in the first section (16
22 U.S.C. prec. 1531) is amended by striking the item
23 relating to section 6 and inserting the following new
24 item:

“Sec. 6. Cooperation with non-Federal persons.”.

1 **SEC. 402. HABITAT RESERVE GRANTS.**

2 Section 6(b) (16 U.S.C. 1535(b)) (as amended by
3 section 401(a)) is further amended by adding at the end
4 the following new paragraph:

5 “(9)(A) The Secretary may provide a grant to a non-
6 Federal person (other than an officer, employee, agent, de-
7 partment, or instrumentality of a State, municipality, or
8 political subdivision of a State, and a State, municipality,
9 or political subdivision of a State) for the purpose of pre-
10 serving habitat for any species that is determined under
11 section 4 to be an endangered species or threatened spe-
12 cies.

13 “(B) The Secretary may annually provide a grant
14 under this paragraph if the Secretary determines that—

15 “(i) the property for which the grant is pro-
16 vided contains habitat that significantly contributes
17 to the protection of the population of the species;

18 “(ii) the property has been dedicated to species
19 protection for a period of time that has been suffi-
20 cient to significantly contribute to the protection of
21 the population of the species; and

22 “(iii) the preservation of the habitat advances
23 the interest of species protection.

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

1 **TITLE V—REAUTHORIZATION**
2 **AND OTHER AMENDMENTS**

3 **SEC. 501. PROVIDING GUIDANCE FOR THE RELEASE OF EX-**
4 **PERIMENTAL POPULATIONS.**

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

6 (1) in paragraph (2)—

7 (A) in subparagraph (B)—

8 (i) by inserting “and the precise
9 boundaries of the geographical area for the
10 release” after “the population”; and

11 (ii) by inserting “whether the release
12 is in the public interest and” after “infor-
13 mation,”;

14 (B) in subparagraph (C)—

15 (i) in clause (i), by striking “and” at
16 the end;

17 (ii) by redesignating clause (ii) as
18 clause (iii); and

19 (iii) by inserting after clause (i) the
20 following new clause:

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

1 threatened species if the member poses a threat to
2 the welfare of the public; and”;

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

5 (3) by inserting after paragraph (2) the follow-
6 ing new paragraph:

7 “(3) In authorizing the release of a population under
8 paragraph (2), the Secretary shall require that—

9 “(A) to the extent possible, the release occurs
10 only in a unit of the National Park System or the
11 National Wildlife Refuge System;

12 “(B) a release outside a unit occurs only in an
13 area that has been identified as a candidate site for
14 release in the recovery plan for the species of the
15 population developed under section 5;

16 “(C) for a release outside a unit, measures to
17 protect the safety and welfare of the public and do-
18 mestic animals and the funding for the measures are
19 identified in the regulations authorizing the release
20 and are implemented;

21 “(D) the regulations authorizing the release
22 identify precisely the geographical area for release;

23 “(E) a release on non-Federal land occurs only
24 with the written consent of the owner of the land;
25 and

1 “(F) the regulations authorizing the release in-
2 clude measurable reintroduction goals to restore via-
3 ble populations only within the specific geographic
4 area identified for release in the regulations.”.

5 **SEC. 502. RECOGNITION OF CAPTIVE PROPAGATION AS**
6 **MEANS OF RECOVERY.**

7 (a) IN GENERAL.—Section 13 (87 Stat. 902) is
8 amended to read as follows:

9 **“SEC. 13. RECOGNITION OF CAPTIVE PROPAGATION AS**
10 **MEANS OF RECOVERY.**

11 “(a) IN GENERAL.—In carrying out responsibilities
12 of the Secretary under sections 4, 5, and 7, the Secretary
13 shall recognize to the maximum extent practicable, and
14 may utilize, captive propagation as a means of conserving
15 an endangered species or threatened species.

16 “(b) CAPTIVE PROPAGATION GRANTS.—The Sec-
17 retary may annually provide grants to non-Federal per-
18 sons to fund captive propagation programs for the purpose
19 of preserving any species that is determined under section
20 4 to be an endangered species or threatened species, if
21 the Secretary determines that the program contributes to
22 enhancement of the population of the species.”.

23 (b) EFFECT ON PRIOR AMENDMENTS.—Nothing in
24 this section or the amendment made by this section is in-
25 tended to affect the amendments made by section 13 of

1 the Endangered Species Act of 1973 (87 Stat. 902), as
2 in effect on the day before the date of enactment of this
3 Act.

4 (c) CONFORMING AMENDMENT.—The table of con-
5 tents in the first section (16 U.S.C. prec. 1531) is amend-
6 ed by striking the item relating to section 13 and inserting
7 the following new item:

“Sec. 13. Recognition of captive propagation as means of recovery.”.

8 **SEC. 503. CLARIFYING THE APPLICATION OF PROHIBI-**
9 **TIONS TO THREATENED SPECIES.**

10 Section 4(d) (16 U.S.C. 1533(d)) is amended—

11 (1) in the first sentence, by inserting “, concur-
12 rently with or subsequent to the regulation that pro-
13 vides for the listing of the species,” after “issue”;
14 and

15 (2) in the second sentence, by striking “by reg-
16 ulation prohibit with respect to any” and inserting
17 “in the regulations prohibit with respect to the spe-
18 cific”.

19 **SEC. 504. CITIZEN SUITS.**

20 Section 11(g) (16 U.S.C. 1540(g)) is amended—

21 (1) in paragraph (1)—

22 (A) in the first sentence, in subparagraph
23 (A), by striking “any person, including the
24 United States and any other governmental in-
25 strumentality or agency (to the extent per-

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

2 “(a) IN GENERAL.—In addition to the amounts au-
3 thorized to be appropriated under section 6(i) and sub-
4 sections (b), (c), (d), and (e), there are authorized to be
5 appropriated—

6 “(1) to the Department of the Interior to carry
7 out the duties of the Secretary of the Interior under
8 this Act \$110,000,000 for fiscal year 1994,
9 \$120,000,000 for fiscal year 1995, \$130,000,000 for
10 fiscal year 1996, \$140,000,000 for fiscal year 1997,
11 \$150,000,000 for fiscal year 1998, and
12 \$160,000,000 for fiscal year 1999;

13 “(2) to the Department of Commerce to carry
14 out the duties of the Secretary of Commerce under
15 this Act \$15,000,000 for fiscal year 1994,
16 \$20,000,000 for fiscal year 1995, \$25,000,000 for
17 fiscal year 1996, \$30,000,000 for fiscal year 1997,
18 \$35,000,000 for fiscal year 1998, and \$40,000,000
19 for fiscal year 1999; and

20 “(3) to the Department of Agriculture to carry
21 out the duties of the Secretary of Agriculture under
22 this Act \$4,000,000 for each of fiscal years 1994
23 through 1999.

24 “(b) EXEMPTIONS FROM ACT.—There are authorized
25 to be appropriated to the Department of the Interior to
26 carry out the duties of the Secretary of the Interior and

1 the Endangered Species Committee under subsections (e),
 2 (g), and (h) of section 7 \$625,000 for each of fiscal years
 3 1994 through 1999.

4 “(c) CONVENTION IMPLEMENTATION.—There are au-
 5 thorized to be appropriated to the Department of the Inte-
 6 rior to carry out section 8A(e) \$1,000,000 for each of fis-
 7 cal years 1994 through 1999. Amounts appropriated
 8 under this subsection shall remain available until ex-
 9 pended.

10 “(d) HABITAT CONSERVATION PLANNING.—There
 11 are authorized to be appropriated to the Department of
 12 the Interior to carry out section 10(a)(2)(D) \$20,000,000
 13 for each of fiscal years 1994 through 1999. Amounts ap-
 14 propriated under this subsection shall remain available
 15 until expended.

16 “(e) HABITAT RESERVE GRANTS.—There are au-
 17 thorized to be appropriated to the Department of the Inte-
 18 rior to provide habitat reserve grants under section
 19 6(b)(9) \$20,000,000 for each of fiscal years 1994 through
 20 1999. Amounts appropriated under this subsection shall
 21 remain available until expended.”.

○

S 1521 IS—2

S 1521 IS—3

S 1521 IS—4