

104TH CONGRESS
1ST SESSION

S. 1364

To reauthorize and amend the Endangered Species Act of 1973, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 1995

Mr. KEMPTHORNE (for himself, Mr. WARNER, Mr. FAIRCLOTH, Mr. INHOFE, Mr. THOMAS, Mr. McCONNELL, Mr. CRAIG, Mr. BENNETT, Mr. BURNS, and Mr. COCHRAN) 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, 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,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; REF-**
4 **ERENCES.**

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

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

- Sec. 1. Short title; table of contents; references.
- Sec. 2. Findings, purposes, and policy.
- Sec. 3. Definitions.

- Sec. 4. Determination of endangered species and threatened species.
- Sec. 5. Coordination of species conservation efforts; species conservation plans.
- Sec. 6. Land acquisition.
- Sec. 7. Cooperation with non-Federal persons.
- Sec. 8. Interagency cooperation.
- Sec. 9. International cooperation.
- Sec. 10. Convention implementation.
- Sec. 11. Prohibited acts.
- Sec. 12. Exceptions and incentives.
- Sec. 13. Penalties and enforcement.
- Sec. 14. Endangered plants.
- Sec. 15. Endangered Species Commission.
- Sec. 16. Notice of hearings.
- Sec. 17. Minimization of impact of conservation measures on private property.
- Sec. 18. Alternative dispute resolution.
- Sec. 19. Federal cost-sharing requirements for conservation obligations.
- Sec. 20. Right to compensation.
- Sec. 21. Authorization of appropriations.
- Sec. 22. Transition provisions.

1 (c) REFERENCES TO ENDANGERED SPECIES ACT OF
 2 1973.—Except as otherwise expressly provided, whenever
 3 in this Act an amendment or repeal is expressed in terms
 4 of an amendment to, or repeal of, a section or other provi-
 5 sion, the reference shall be considered to be made to a
 6 section or other provision of the Endangered Species Act
 7 of 1973 (16 U.S.C. 1531 et seq.).

8 **SEC. 2. FINDINGS, PURPOSES, AND POLICY.**

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

10 (1) in subsection (a)—

11 (A) by striking paragraph (1) and insert-
 12 ing the following:

13 “(1) various species of fish, wildlife, and plants
 14 have become extinct as a consequence of a variety of
 15 factors, both natural and resulting from human ac-
 16 tivity;”;

1 (B) in paragraph (3), by striking “these
2 species of fish, wildlife, and plants are” and in-
3 serting “certain of these species of fish, wildlife,
4 and plants are necessary for maintaining
5 biodiversity, important to future generations of
6 Americans, or”;

7 (C) in paragraph (4)—

8 (i) in subparagraph (F), by striking
9 “and” at the end;

10 (ii) by redesignating subparagraph
11 (G) as subparagraph (H); and

12 (iii) by inserting after subparagraph
13 (F) the following:

14 “(G) the Treaty Between the United
15 States and Canada Concerning Pacific Salmon,
16 signed at Ottawa on January 28, 1985 (TIAS
17 11091); and”;

18 (D) in paragraph (5)—

19 (i) by striking “encouraging the
20 States” and inserting “it is in the best in-
21 terest of the species and all affected par-
22 ties to encourage States, local govern-
23 ments, private landowners,”;

24 (ii) by inserting “, market-based pro-
25 grams,” after “assistance”;

1 (iii) by inserting “that will encourage
2 the conservation of habitat needed for spe-
3 cies of fish, wildlife, and plants for the
4 benefit of future generations, and” after
5 “conservation programs”; and

6 (iv) by striking “is a key” and insert-
7 ing “, as a key”;

8 (2) in subsection (b)—

9 (A) by striking “to provide a means where-
10 by the ecosystems upon which endangered spe-
11 cies and threatened species depend may be con-
12 served,” and inserting “to conserve endangered
13 species and threatened species,”; and

14 (B) by striking “such endangered” and in-
15 serting “endangered”; and

16 (3) in subsection (c)—

17 (A) in paragraph (1), by striking “species
18 and shall utilize their authorities” and inserting
19 “species, shall equally consider the conservation
20 of listed species, preservation of economic
21 growth, maintenance of a strong tax base, and
22 protection against the diminishment of the use
23 and value of private property, and shall use
24 their authorities to prevent the diminishment of
25 the use and value of private property and”; and

1 (B) by adding at the end the following:

2 “(3) RECOGNITION OF IMPORTANCE OF GENET-
3 ICS.—It is further declared to be the policy of Con-
4 gress that the conservation of endangered species
5 and threatened species should focus on genetic re-
6 sources as a measure of biological diversity.

7 “(4) CONSIDERATION OF STATE AUTHORITY.—
8 It is further declared to be the policy of Congress
9 that this Act be carried out in a manner that—

10 “(A) recognizes the broad trustee and po-
11 lice powers of each State with respect to the
12 management and conservation of fish and wild-
13 life within the borders of the State;

14 “(B) affirms the concurrent jurisdiction of
15 States in the conservation and management of
16 endangered species and threatened species
17 under this Act; and

18 “(C) fully utilizes the authorities, exper-
19 tise, and working relationships of States with
20 local governments and holders of real property
21 rights.

22 “(5) CONSIDERATION OF STATE AND PRIVATE
23 EFFORTS.—It is further declared to be the policy of
24 Congress that Federal agencies shall encourage
25 State, local, and private entities to initiate efforts,

1 such as cooperative management agreements, land
2 acquisition, multiple species non-Federal conserva-
3 tion plans, and the use of mitigation banks, to con-
4 serve endangered species and threatened species and
5 habitat areas important to the survival and recovery
6 of endangered species and threatened species.”.

7 **SEC. 3. DEFINITIONS.**

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

9 (1) by redesignating paragraphs (2) through
10 (21) as paragraphs (3), (5), (7), (9), (10), (11),
11 (12), (13), (16), (23), (24), (25), (28), (29), (30),
12 (31), (32), (33), and (34), respectively;

13 (2) by inserting after paragraph (1) the follow-
14 ing:

15 “(2) CANDIDATE SPECIES.—The term ‘can-
16 didate species’ means a species found to be war-
17 ranted to be listed as an endangered species or a
18 threatened species, but precluded from the listing
19 because of pending proposals to list that are of a
20 higher priority under section 4(b)(2)(B)(iii)(I).”;

21 (3) in the proviso of paragraph (3) (as redesi-
22 gnated by paragraph (1)), by striking “by museums”
23 and inserting “or species by exhibitors licensed
24 under section 3 of the Animal Welfare Act (7 U.S.C.
25 2133), museums,”;

1 (4) by inserting after paragraph (3) (as so re-
2 designated) the following:

3 “(4) COMMISSION.—The term ‘Commission’
4 means the Endangered Species Commission estab-
5 lished under section 13.”;

6 (5) by striking paragraph (5) (as redesignated
7 by paragraph (1)) and inserting the following:

8 “(5) CONSERVATION OBJECTIVE; CONSERVA-
9 TION PLAN.—The terms ‘conservation objective’ and
10 ‘conservation plan’ (unless modified by ‘non-Fed-
11 eral’) mean a conservation objective and a conserva-
12 tion plan (including a revision of a conservation
13 plan), respectively, developed under section 5.

14 “(6) CONSERVE.—The term ‘conserve’ means to
15 use all methods and procedures to attain the con-
16 servation objective and to implement the conserva-
17 tion plan.”;

18 (6) by inserting after paragraph (7) (as redesign-
19 ated by paragraph (1)) the following:

20 “(8) COOPERATIVE MANAGEMENT AGREE-
21 MENT.—The term ‘cooperative management agree-
22 ment’ means a voluntary agreement entered into
23 under section 6(b).”;

24 (7) in paragraph (9)(A) (as redesignated by
25 paragraph (1)), by striking “(9)(A)” and all that

1 follows through the end of subparagraph (A) and in-
2 sserting the following:

3 “(9) CRITICAL HABITAT.—

4 “(A) IN GENERAL.—The term ‘critical
5 habitat’, with respect to an endangered species
6 or a threatened species, means the specific
7 areas within the geographic area occupied by
8 the species, at the time the species is listed
9 under section 4(c)(1), that contain such phys-
10 ical or biological features as—

11 “(i) are essential to the conservation
12 of the species and the persistence of the
13 species for at least 7 human generations;
14 and

15 “(ii) may require special management
16 considerations or protection.”;

17 (8) by striking paragraph (10) (as redesignated
18 by paragraph (1)) and inserting the following:

19 “(10) ENDANGERED SPECIES.—The term ‘en-
20 dangered species’ means any species that, if no ac-
21 tion were taken under this Act, would be placed on
22 an irreversible course to extinction within 2 human
23 generations, other than a species determined by the
24 Secretary to constitute a pest whose protection

1 under this Act would present an overwhelming and
2 overriding risk to man.”;

3 (9) by inserting after paragraph (13) (as redesi-
4 gnated by paragraph (1)) the following:

5 “(14) FOREIGN SPECIES.—The term ‘foreign
6 species’—

7 “(A) means a species naturally occurring
8 outside the territory of the United States; but

9 “(B) does not include any marine species,
10 any species having a significant population oc-
11 curring in the wild within the United States, or
12 any migratory species whose migration route in-
13 cludes territory of the United States.

14 “(15) HUMAN GENERATION.—The term ‘human
15 generation’ means 20 years.”;

16 (10) by inserting after paragraph (16) (as re-
17 designated by paragraph (1)) the following:

18 “(17) INCIDENTAL TAKING PERMIT.—The term
19 ‘incidental taking permit’ means a permit issued
20 under section 10(a)(1)(B).

21 “(18) IN COOPERATION WITH THE STATES.—
22 The term ‘in cooperation with the States’, with re-
23 spect to the development of standards, guidelines,
24 and regulations to implement this Act, means the
25 use of a rulemaking process established by the Sec-

1 retary (including notice and comment on the stand-
2 ards, guidelines, and regulations) in which—

3 “(A) the States as administrative and reg-
4 ulatory partners, participate in a meaningful
5 and timely manner in the development of the
6 standards, guidelines, and regulations, which
7 development shall include the integration of rec-
8 ommendations, field practices, and programs of
9 the States; and

10 “(B) the Secretary engages in a good faith
11 effort to reach consensus while retaining final
12 decisionmaking authority.

13 “(19) JEOPARDY.—The terms ‘jeopardy’ and
14 ‘likely to jeopardize the continued existence of’, with
15 respect to an action affecting an endangered species
16 or a threatened species, refer to an action that sig-
17 nificantly diminishes the likelihood of the survival of
18 the species in the wild by significantly reducing the
19 numbers or distribution of the entire species.

20 “(20) LOCAL GOVERNMENT.—The term ‘local
21 government’ means a unit of general purpose local
22 government, a school district, or any other special
23 district established under State law.

24 “(21) MITIGATION BANK.—The term ‘mitiga-
25 tion bank’ means a project carried out by an entity

1 under section 10(n) for the purpose of providing
2 credits to offset adverse impacts to endangered spe-
3 cies or threatened species or habitat of the species.

4 “(22) NON-FEDERAL PERSON.—The term ‘non-
5 Federal person’ means a person other than an offi-
6 cer, employee, agent, department, or instrumentality
7 of the Federal Government or a foreign government
8 acting in the official capacity of the person.”;

9 (11) by striking paragraph (23) (as redesign-
10 nated by paragraph (1)) and inserting the following:

11 “(23) PERMIT OR LICENSE APPLICANT.—The
12 term ‘permit or license applicant’ means a person
13 who requires authorization or funding from a Fed-
14 eral agency, including a party to a written lease, a
15 license, or a contract to purchase or provide a good
16 or service, and whose authorization or funding re-
17 quires an action from the agency to obtain the bene-
18 fit of the activity.”;

19 (12) by inserting after paragraph (25) (as re-
20 designated by paragraph (1)) the following:

21 “(26) REASONABLE AND PRUDENT ALTER-
22 NATIVE.—The term ‘reasonable and prudent alter-
23 native’ means an alternative action that is deter-
24 mined by the Secretary to avoid jeopardy to an en-
25 tire species.

1 “(27) RURAL AREA.—The term ‘rural area’
2 means county that has no city or town that has a
3 population of more than 10,000 inhabitants.”;

4 (13) in paragraph (28) (as redesignated by
5 paragraph (1)), by striking “Interior or the Sec-
6 retary of Commerce as program responsibilities are
7 vested pursuant to the provisions of Reorganization
8 Plan Numbered 4 of 1970;” and inserting “Inte-
9 rior,”;

10 (14) by striking paragraph (29) (as redesi-
11 gnated by paragraph (1)) and inserting the following:

12 “(29) SPECIES.—The term ‘species’—

13 “(A) means a biological species; and

14 “(B) includes any subspecies of naturally
15 occurring fish or wildlife or plants, and any ge-
16 netically distinct population segment of any spe-
17 cies of vertebrate fish or wildlife, only if it can
18 be demonstrated that there exists a complete
19 lack of gene flow into occupied habitat of the
20 subspecies or distinct population segment.”;

21 (15) in paragraph (30) (as redesignated by
22 paragraph (1)), by inserting “the Commonwealth of
23 the Northern Mariana Islands,” after “Guam,”; and

1 (16) by striking paragraphs (32) and (33) (as
2 redesignated by paragraph (1)) and inserting the
3 following:

4 “(32) TAKE.—The term ‘take’, with respect to
5 a species listed as endangered or threatened under
6 section 4(c)(1)—

7 “(A) means to proximately and foreseeably
8 physically injure, kill, or reduce to possession
9 an identifiable member of the species; and

10 “(B) includes proximately and foreseeably
11 modifying habitat of the species so as to affect
12 a member of the species in the manner de-
13 scribed in subparagraph (A).

14 “(33) THREATENED SPECIES.—The term
15 ‘threatened species’ means any species that, if no ac-
16 tion were taken under this Act, would become an en-
17 dangered species within 5 human generations.”.

18 **SEC. 4. DETERMINATION OF ENDANGERED SPECIES AND**
19 **THREATENED SPECIES.**

20 (a) IN GENERAL.—Section 4(a) (16 U.S.C. 1533(a))
21 is amended—

22 (1) by striking “(a) GENERAL.—(1) The” and
23 inserting “(a) IN GENERAL.—The”;

24 (2) by striking paragraphs (2) and (3);

1 (3) by redesignating subparagraphs (A) through
2 (E) as paragraphs (1) through (5), respectively;

3 (4) in paragraph (1) (as so redesignated), by
4 striking “present or threatened”;

5 (5) in paragraph (3) (as so redesignated), by
6 inserting “, competition, parasitism,” after “dis-
7 ease”; and

8 (6) in paragraph (4) (as so redesignated), by
9 inserting “Federal, State, local government, and
10 international” after “existing”.

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

13 (1) in paragraph (1)—

14 (A) in subparagraph (A)—

15 (i) by striking “(a)(1)” and inserting
16 “(a)”; and

17 (ii) by striking “to him” and all that
18 follows through the period at the end and
19 inserting “in accordance with paragraph
20 (9) and after requesting the Commission to
21 conduct a scientific review.”; and

22 (B) in subparagraph (B)—

23 (i) by striking “consideration to spe-
24 cies” and inserting “priority to species the
25 conservation of which is most likely to re-

1 duce the need to list other species depend-
2 ent on the same habitat, and shall give
3 consideration to species”;

4 (ii) in clause (i), by striking “or” at
5 the end;

6 (iii) in clause (ii), by striking the pe-
7 riod at the end and inserting “; or”; and

8 (iv) by adding at the end the follow-
9 ing:

10 “(iii) identified as a known source of
11 pharmaceutical or agricultural
12 biochemicals.”;

13 (2) by striking paragraph (2);

14 (3) by redesignating paragraph (3) as para-
15 graph (2);

16 (4) in paragraph (2) (as so redesignated)—

17 (A) in subparagraph (A)—

18 (i) in the first sentence, by inserting
19 “new” before “scientific or commercial”;

20 (ii) by inserting after the first sen-
21 tence the following: “The information shall
22 include data documenting the biological
23 vulnerability of, and threats to, the species
24 or the habitat of the species. Failure to so
25 document the information shall result in a

1 presumption that the petition is inad-
2 equate.”; and

3 (iii) by striking the last 2 sentences
4 and inserting the following: “If such a pe-
5 tition is found to present the information,
6 the Secretary shall—

7 “(i) provide a copy of the petition to the State
8 having jurisdiction over the area in which the species
9 is believed to occur and invite the determination of
10 the State as to whether the petitioned action is war-
11 ranted;

12 “(ii) promptly request the Commission to con-
13 duct a scientific review of any new information pre-
14 sented by the petition with respect to the status of
15 the species; and

16 “(iii) promptly publish each finding made under
17 this subparagraph in the Federal Register.”;

18 (B) in subparagraph (C), by striking
19 clause (ii) and inserting the following:

20 “(ii) JUDICIAL REVIEW.—Any finding
21 described in this section shall be subject to
22 judicial review.”; and

23 (C) by striking subparagraph (D) and in-
24 serting the following:

1 “(D) OVERRIDING DECISION BY THE SEC-
2 RETARY.—If the Secretary finds under subpara-
3 graph (B) that a petitioned action is warranted
4 but a State to which the petition was provided
5 under subparagraph (A) determines in accord-
6 ance with this subsection that the petitioned ac-
7 tion is not warranted under this Act, the Sec-
8 retary, notwithstanding the determination, after
9 considering fully any recommendation by each
10 State to which the petition was provided, may
11 find by a preponderance of the evidence that
12 the petitioned action is warranted. If the Sec-
13 retary so finds, the Secretary shall provide to
14 the State a record of decision on the informa-
15 tion used in making the finding, the informa-
16 tion available to the Secretary that did not sup-
17 port the finding, and written justification for
18 the finding.”;

19 (5) by inserting after paragraph (2) (as redesign-
20 nated by paragraph (3)) the following:

21 “(3) FOREIGN SPECIES.—

22 “(A) IN GENERAL.—The Secretary shall
23 not determine that a foreign species that is list-
24 ed under the Convention is an endangered spe-

1 cies or a threatened species under subsection
2 (a) unless the Secretary—

3 “(i) makes an adequate finding, sup-
4 ported by substantial evidence, that the
5 Convention does not adequately protect the
6 species; and

7 “(ii) complies with the requirements
8 of this paragraph.

9 “(B) TRANSMISSION OF LISTING TO FOR-
10 EIGN WILDLIFE AUTHORITY.—Prior to publish-
11 ing a proposed determination in the Federal
12 Register that a foreign species is an endangered
13 species or a threatened species, the Secretary
14 shall—

15 “(i) transmit the full text and a com-
16 plete description of the proposed deter-
17 mination (including the information de-
18 scribed in subparagraph (C)) directly to
19 the appropriate wildlife management au-
20 thority of each nation in which the species
21 naturally occurs, in an official language of
22 the nation; and

23 “(ii) provide to each authority a pe-
24 riod of not less than 180 days (beginning
25 on the date of receipt by the authority of

1 the materials described in clause (i)) for
2 review and comment on the proposed de-
3 termination.

4 “(C) ANALYSES.—Materials transmitted
5 under subparagraph (B) shall include—

6 “(i) a readily understandable, non-
7 technical explanation of the objective cri-
8 teria for and purpose of the proposed list-
9 ing;

10 “(ii) an analysis of the anticipated
11 beneficial or detrimental impacts of the
12 listing on—

13 “(I) the economic, social, and
14 cultural utilization of the species by
15 the nation, if any; and

16 “(II) the resource management
17 and conservation programs of the na-
18 tion; and

19 “(iii) a summary of—

20 “(I) the literature reviewed and
21 experts consulted by the Secretary
22 with respect to the species; and

23 “(II) the findings of the Sec-
24 retary based on the review and con-
25 sultation.

1 “(D) DISCUSSIONS WITH FOREIGN OFFI-
2 CIALS.—The Secretary shall enter into discus-
3 sions with the officials of each wildlife manage-
4 ment authority to which materials are transmit-
5 ted under subparagraph (B). If the officials de-
6 termine that further studies of the species
7 should be conducted, the Secretary shall assist
8 the officials in obtaining funds for the studies
9 and in carrying out the studies.

10 “(E) CONCURRENCE OF FOREIGN OFFI-
11 CIALS.—Prior to publishing a proposed deter-
12 mination in the Federal Register that a foreign
13 species is an endangered species or a threatened
14 species, the Secretary shall make every effort to
15 obtain the written concurrence in the deter-
16 mination of each wildlife management authority
17 to which materials are transmitted under sub-
18 paragraph (B). If the concurrence is not ob-
19 tained, the Secretary may not publish the pro-
20 posed determination without first submitting
21 the determination to and obtaining the approval
22 of the President.”;

23 (6) in paragraph (5)—

24 (A) by striking “(5) With” and inserting
25 the following:

1 “(5) NOTICE OF REGULATIONS AND REVIEW BY
2 STATES.—

3 “(A) NOTICE OF REGULATIONS.—With”;

4 (B) by striking “determination, designa-
5 tion, or revision referred to in subsection (a)(1)
6 or (3)” and inserting “determination referred to
7 in subsection (a)”;

8 (C) by striking “(A) not” and inserting the
9 following:

10 “(i) not”;

11 (D) by striking “(i) publish” and inserting
12 the following:

13 “(I) publish”;

14 (E) in subparagraph (A)(i)(I) (as so redes-
15 ignated), by striking “, and” and inserting the
16 following: “, including—

17 “(aa) a readily understand-
18 able, nontechnical explanation of
19 the reasons for and purpose of
20 the proposed regulation;

21 “(bb) an analysis concluding
22 that the conservation benefit of
23 the regulation outweighs any neg-
24 ative conservation impact of the
25 regulation; and

1 “(cc) a summary of the find-
2 ings of the assessment team
3 based on the review under section
4 13(c)(3)(A)(i); and”;

5 (F) by striking “(ii) give” and inserting
6 the following:

7 “(II) give”;

8 (G) in subparagraph (A)(i)(II) (as so re-
9 designated), by inserting “by registered mail, or
10 other certifiable method,” after “regulation”;

11 (H) by striking “(B) insofar” and insert-
12 ing the following:

13 “(ii) insofar”;

14 (I) by striking “(C) give notice” and in-
15 serting the following:

16 “(iii) give notice”;

17 (J) in subparagraph (A)(iii) (as so redesign-
18 ated), by striking “as he deems” and inserting
19 “as the Secretary determines”;

20 (K) by striking “(D) publish” and insert-
21 ing the following:

22 “(iv) publish”;

23 (L) by striking “(E) promptly” and insert-
24 ing the following:

25 “(v) promptly”;

1 (M) in subparagraph (A)(v) (as so redesignig-
2 nated)—

3 (i) by striking “one public hearing”
4 and inserting “1 or more public hearings”;
5 and

6 (ii) by inserting before the period at
7 the end the following: “(including at least
8 1 hearing in an affected rural area if 1 or
9 more rural areas are affected by the deter-
10 mination)”; and

11 (N) by adding at the end the following:

12 “(B) REVIEW BY STATES.—

13 “(i) NOTICE.—In the case of any reg-
14 ulation proposed by the Secretary to imple-
15 ment a determination referred to in sub-
16 section (a) with respect to a species for
17 which a petition has not been received
18 under paragraph (2), the Secretary shall,
19 not earlier than 1 year before the date on
20 which the regulation is proposed, give ac-
21 tual notice that the Secretary is consider-
22 ing the action (including any relevant in-
23 formation) to the State having jurisdiction
24 over the area in which the species is be-
25 lieved to occur and invite the determina-

1 tion of the State as to whether the action
2 is warranted.

3 “(ii) SCIENTIFIC REVIEW OF CON-
4 FLICTS.—If within 9 months after receiv-
5 ing notice under clause (i), the State deter-
6 mines in accordance with this subsection
7 that the proposed action is not warranted
8 under this Act and provides the Secretary
9 with the basis for the determination, the
10 Secretary shall—

11 “(I) request the Commission to
12 conduct a scientific review of the pro-
13 posed action, consider all pertinent
14 data and information, and make a
15 recommendation in accordance with
16 this subsection; and

17 “(II)(aa) fully consider any rec-
18 ommendation by the State, which
19 shall be given great weight; and

20 “(bb) not later than 1 year after
21 giving notice under clause (i), deter-
22 mine whether to propose a regulation
23 for the species.

24 “(iii) OVERRIDING DECISION BY THE
25 SECRETARY.—In any case in which the

1 recommendation resulting from the sci-
2 entific review under clause (ii) supports the
3 determination by the State, the Secretary,
4 notwithstanding the recommendation and
5 determination, may find by a preponder-
6 ance of the evidence that the proposed ac-
7 tion is warranted. If the Secretary so
8 finds, the Secretary shall provide to the
9 State a record of decision on the informa-
10 tion used in making the finding, the infor-
11 mation available to the Secretary that did
12 not support the finding, and written jus-
13 tification for the finding.

14 “(C) PROPOSALS TO LIST INITIATED BY
15 THE SECRETARY.—In the case of a regulation
16 to implement a determination referred to in
17 subsection (a) for which a scientific review has
18 not been undertaken under this subsection, if
19 any person files within 30 days after the date
20 of publication of general notice under subpara-
21 graph (A)(i)(I) a written request detailing a
22 substantial scientific basis for questioning the
23 sufficiency or accuracy of the available data rel-
24 evant to the determination, the Secretary shall
25 request the Commission to conduct a scientific

1 review of the petitioned action, consider all per-
2 tinent data and information, and make a rec-
3 ommendation in accordance with this sub-
4 section.”;

5 (7) in paragraph (6)—

6 (A) in subparagraph (A)—

7 (i) by striking “(5)(A)(i) regarding”
8 and all that follows through “(i) if” and
9 inserting: “(5)(A)(i)(I) regarding a pro-
10 posed regulation, the Secretary shall pub-
11 lish in the Federal Register, if”;

12 (ii) by striking “, or a revision of crit-
13 ical habitat,”;

14 (iii) by striking clause (ii);

15 (iv) by striking “(I) a” and inserting
16 the following:

17 “(i) a”;

18 (v) by striking subclause (II);

19 (vi) by striking “(III) notice” and in-
20 sserting the following:

21 “(ii) notice”;

22 (vii) by striking “(IV) notice” and in-
23 sserting the following:

24 “(iii) notice”; and

- 1 (viii) in clause (iii) (as so redesignig-
2 nated), by striking “based; or” and insert-
3 ing “based.”;
- 4 (B) in subparagraph (B)—
- 5 (i) by striking “(A)(i)” each place it
6 appears and inserting “(A)”;
- 7 (ii) in clause (i), by striking “or revi-
8 sion concerned”; and
- 9 (iii) in clause (iii), by striking “or re-
10 vision concerned, a finding that the revi-
11 sion should not be made,”; and
- 12 (C) by striking subparagraph (C);
- 13 (8) in the first sentence of paragraph (7), by
14 striking “posing a significant risk to the well-being”
15 and inserting “that poses an imminent threat to the
16 continued existence”;
- 17 (9) in paragraph (8), by striking “regulation;
18 and if” and all that follows through the period at
19 the end and inserting “regulation.”; and
- 20 (10) by adding at the end the following:
- 21 “(9) VERIFICATION OF DATA.—
- 22 “(A) IN GENERAL.—For the purposes of
23 paragraph (1) and section 5(i), the best sci-
24 entific and commercial data available shall be,

1 to the maximum extent feasible, data that are
2 verified by field testing.

3 “(B) PUBLICATION WITH RESPECT TO
4 PROPOSED RULES.—The Secretary shall iden-
5 tify and publish in the Federal Register with
6 each proposed rule promulgated under para-
7 graph (1) or section 5(i) a brief summary of—

8 “(i) all data that are to be considered
9 in making the determination under the
10 subsection to which the proposed rule re-
11 lates and that have yet to be collected or
12 field verified;

13 “(ii) data that are necessary to make
14 the determination and that can be collected
15 within the period available for making the
16 determination; and

17 “(iii) data that are necessary to en-
18 sure the scientific validity of the deter-
19 mination, and each deadline for collecting
20 the data.

21 “(C) CONSIDERATION OF DATA.—In mak-
22 ing a determination under paragraph (1) or sec-
23 tion 5(i), the Secretary shall collect and con-
24 sider the data identified and described under
25 subparagraph (B)(ii).

1 “(D) PUBLICATION WITH RESPECT TO
2 FINAL RULES.—The Secretary shall identify
3 and publish in the Federal Register with each
4 final rule promulgated under paragraph (1) or
5 section 5(i)—

6 “(i) a description of any data that
7 have not been collected and considered in
8 the determination to which the rule relates
9 and that are necessary to ensure the sci-
10 entific validity of the determination; and

11 “(ii) each deadline by which the Sec-
12 retary shall collect and consider the data in
13 accordance with subparagraph (E).

14 “(E) FURTHER CONSIDERATION OF
15 DATA.—Not later than the deadline published
16 by the Secretary under subparagraph (D)(ii),
17 the Secretary shall—

18 “(i) collect the data referred to in the
19 subparagraph;

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

22 “(iii) reconsider the data after full
23 consideration of the public review and com-
24 ment; and

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

5 (c) LISTS.—Section 4(c) (16 U.S.C. 1533(c)) is
6 amended—

7 (1) in paragraph (1)—

8 (A) in the first sentence, by striking “by
9 him or the Secretary of Commerce” each place
10 it appears;

11 (B) by inserting after the first sentence
12 the following: “Each list shall be separately
13 published and maintained by the Secretary.”;
14 and

15 (C) in the last sentence, by striking “deter-
16 minations, designations, and revisions made in
17 accordance with subsections (a) and (b)” and
18 inserting “determinations made in accordance
19 with subsections (a) and (b) and designations
20 and revisions made in accordance with section
21 5(i)”; and

22 (2) by striking paragraph (2) and inserting the
23 following:

24 “(2) REVIEW OF LISTS.—

1 “(A) IN GENERAL.—The Commission
2 shall—

3 “(i) conduct, at least once every 5
4 years, a review of all species included in a
5 list that is published under paragraph (1)
6 and that is in effect at the time of the re-
7 view; and

8 “(ii) promptly report the results of
9 the review to the Secretary.

10 “(B) CHANGE IN SPECIES STATUS.—If, on
11 completion of a review under subparagraph (A),
12 the Secretary finds that the criteria in the con-
13 servation plan for a change in status have been
14 met or exceeded, the Secretary shall, not later
15 than 90 days after completion of the review,
16 publish notice of the change of status of the
17 species, from an endangered species to a threat-
18 ened species, in the Federal Register.

19 “(C) REMOVAL FROM LISTS.—If, on com-
20 pletion of a review under subparagraph (A), the
21 Secretary finds that the criteria in a conserva-
22 tion plan for the removal of a species from any
23 list published under paragraph (1) have been
24 met or exceeded, the Secretary shall, not later
25 than 90 days after completion of the review,

1 propose a regulation to implement the deter-
2 mination in accordance with this section.

3 “(D) SPECIES NOT HAVING A CONSERVA-
4 TION PLAN.—With respect to any species for
5 which no conservation plan that specifies cri-
6 teria for a change in status or removal from a
7 list exists, the Secretary shall, by regulation
8 promulgated in accordance with subsection (b),
9 determine whether the species is no longer an
10 endangered species or a threatened species be-
11 cause of a change in the factors identified in
12 subsection (a).”.

13 (d) PROTECTIVE REGULATIONS.—Section 4(d) (16
14 U.S.C. 1533(d)) is amended—

15 (1) in the first sentence—

16 (A) by inserting “, in cooperation with the
17 States having jurisdiction over an area in which
18 the species is believed to occur,” after “Sec-
19 retary”; and

20 (B) by striking “as he deems necessary
21 and advisable to provide for” and inserting
22 “that, in the discretion of the Secretary, are
23 consistent with”; and

1 (2) in the second sentence, by striking “by reg-
2 ulation prohibit with respect to any” and inserting
3 “in the regulations prohibit with respect to that”.

4 (e) TRANSFER OF PLANNING AUTHORITY.—

5 (1) IN GENERAL.—Section 4 (16 U.S.C. 1533)
6 is amended—

7 (A) by striking subsection (f); and

8 (B) by redesignating subsections (g)
9 through (i) as subsections (f) through (h), re-
10 spectively.

11 (2) CONFORMING AMENDMENTS.—

12 (A) Section 6(d)(1) (16 U.S.C.
13 1535(d)(1)) is amended by striking “section
14 4(g)” and inserting “section 4(f)”.

15 (B) Section 10(f)(5) (16 U.S.C.
16 1539(f)(5)) is amended by striking the last sen-
17 tence.

18 (C) Section 101(a)(5)(E)(i)(II) of the Ma-
19 rine Mammal Protection Act of 1972 (16
20 U.S.C. 1371(a)(5)(E)(i)(II)) is amended by
21 striking “a recovery plan has been developed or
22 is being developed for such species or stock pur-
23 suant to the” and inserting “a conservation
24 plan has been developed or is being developed

1 for the species or stock pursuant to section 5
2 of the”.

3 (D) Section 104(c)(4) of the Marine Mam-
4 mal Protection Act of 1972 (16 U.S.C.
5 1374(c)(4)) is amended—

6 (i) in subparagraph (A)(ii)—

7 (I) in subclause (I), by striking
8 “any recovery plan developed under
9 section 4(f)” and inserting “any con-
10 servation plan developed under section
11 5”; and

12 (II) in subclause (II)—

13 (aa) by striking “or recov-
14 ery”; and

15 (bb) by striking “or a recov-
16 ery plan”; and

17 (ii) in subparagraph (B)(iii), by strik-
18 ing “recovery plan” and inserting “con-
19 servation plan”.

20 (E) Section 115(b)(2) of the Marine Mam-
21 mal Protection Act of 1972 (16 U.S.C.
22 1383b(b)(2)) is amended by striking “recovery
23 plans required under section 4(f) of the Endan-
24 gered Species Act of 1973 (16 U.S.C. 1533(f))”
25 and inserting “conservation plans required

1 under section 5 of the Endangered Species Act
2 of 1973”.

3 (F) Section 118(f)(11) of the Marine
4 Mammal Protection Act of 1972 (16 U.S.C.
5 1387(f)(11)) is amended by striking “recovery
6 plan developed for such species or stock under
7 section 4” and inserting “conservation plan de-
8 veloped for the species or stock under section
9 5”.

10 (f) MONITORING.—Section 4(f) (as redesignated by
11 subsection (e)(1)(B)) is amended—

12 (1) in paragraph (1)—

13 (A) by striking “in cooperation with the
14 States” and inserting “, after consultation and
15 in cooperation with the States and local govern-
16 ments having jurisdiction over an area in which
17 a species described in this paragraph is believed
18 to occur,”; and

19 (B) by striking “recovered to the point at
20 which the measures provided pursuant to this
21 Act are no longer necessary” and inserting
22 “met the objectives of the conservation plan for
23 the species”; and

24 (2) in paragraph (2), by striking “recovered”.

1 (g) AGENCY GUIDELINES.—Section 4(g) (as redesignig-
2 nated by subsection (e)(1)(B)) is amended—

3 (1) in the first sentence, by inserting “, in co-
4 operation with the States having jurisdiction over an
5 area in which a species subject to this section is be-
6 lieved to occur,” after “Secretary”; and

7 (2) in paragraph (4) of the second sentence, by
8 striking “recovery plans under subsection (f) of this
9 section” and inserting “conservation objectives and
10 conservation plans”.

11 (h) OBSERVANCE OF DEADLINES.—Section 4 (as
12 amended by subsection (e)(1)(B)) is further amended by
13 adding at the end the following:

14 “(i) OBSERVANCE OF DEADLINES.—If any deadline
15 for action specified in this section with respect to a pro-
16 posal to list a species as an endangered species or a threat-
17 ened species is not met, the proposed action is terminated
18 automatically by operation of law.”.

19 **SEC. 5. COORDINATION OF SPECIES CONSERVATION EF-**
20 **FORTS; SPECIES CONSERVATION PLANS.**

21 (a) IN GENERAL.—The Act is amended—

22 (1) by redesignating section 5 (16 U.S.C. 1534)
23 as section 5A; and

24 (2) by inserting after section 4 (16 U.S.C.
25 1533) the following:

1 “COORDINATION OF SPECIES CONSERVATION EFFORTS;
2 SPECIES CONSERVATION PLANS

3 “SEC. 5. (a) DEVELOPMENT OF CONSERVATION
4 PLANS.—

5 “(1) IN GENERAL.—In accordance with this
6 section, the Secretary, in cooperation with the States
7 having jurisdiction over areas in which endangered
8 species or threatened species listed under section
9 4(c)(1) are believed to occur, on the basis of the best
10 scientific and commercial data available in accord-
11 ance with section 4(b)(9) and considering the op-
12 tions presented by the Commission under section
13 13(b)(2), shall develop and implement conservation
14 plans to provide for the conservation of the species
15 and the habitats on which the species depend (as
16 identified in the conservation plan), unless the Sec-
17 retary establishes a conservation objective that is de-
18 scribed in subsection (b)(4).

19 “(2) FOREIGN SPECIES.—In developing a con-
20 servation objective and a conservation plan under
21 this section for a foreign species, the Secretary
22 shall—

23 “(A) act in a manner consistent with the
24 Convention; and

1 “(B) cooperate with, and support any con-
2 servation strategy adopted for the species by,
3 each foreign nation in which the species occurs.

4 “(3) ADVERSE CONSEQUENCES.—The Sec-
5 retary, Federal agencies, and the States shall, in a
6 manner consistent with paragraph (1), minimize ad-
7 verse social and economic consequences, and impacts
8 on private property, that may result from the imple-
9 mentation of conservation plans.

10 “(b) ESTABLISHMENT OF CONSERVATION OBJEC-
11 TIVE AND DETERMINATION OF WHETHER TO PREPARE
12 CONSERVATION PLAN.—

13 “(1) REQUEST FOR OPTIONS.—After the final
14 regulation to implement a determination that a spe-
15 cies is an endangered species or a threatened species
16 has been published under section 4(b)(6)(A)(i), the
17 Secretary shall promptly request the Commission to
18 propose options for a conservation objective and pre-
19 pare a report under section 13(b)(2)(C).

20 “(2) PUBLICATION.—After considering the re-
21 port transmitted under section 13(b)(2)(C), the Sec-
22 retary shall publish in the Federal Register, not
23 later than 30 days after the date of receipt of the
24 report, a conservation objective for the affected spe-

1 cies, together with a statement of findings on which
2 the conservation objective was established.

3 “(3) RANGE OF CONSERVATION OBJECTIVES.—
4 The conservation objective, which the Secretary shall
5 establish within the discretion of the Secretary but
6 subject to paragraph (6), may be—

7 “(A) recovery of the affected species;

8 “(B) such level of conservation of the spe-
9 cies and any critical habitat to be designated as
10 the Secretary considers practicable and reason-
11 able to the extent that the benefits of the con-
12 servation measures justify the human and eco-
13 nomic costs of implementation for the Federal
14 Government, State and local governments, the
15 private sector (including any permit or license
16 applicants), and affected private individuals and
17 organizations;

18 “(C) no Federal action other than enforce-
19 ment against any person whose activity vio-
20 lates—

21 “(i) in the case of an endangered spe-
22 cies, the prohibitions specified in section
23 9(a); or

1 “(ii) in the case of a threatened spe-
2 cies, the prohibitions provided by regula-
3 tion under section 4(d);

4 including any activity that results in a taking of
5 the species, unless the taking is incidental to,
6 and not the purpose of, the carrying out of an
7 otherwise lawful activity; or

8 “(D) such other objective as the Secretary
9 may determine that provides a greater level of
10 protection than the level described in subpara-
11 graph (C).

12 “(4) NO CONSERVATION PLAN.—If the con-
13 servation objective established by the Secretary is
14 the objective provided in paragraph (3)(C), the Sec-
15 retary shall not prepare a conservation plan under
16 subsection (c).

17 “(5) DISTINCT POPULATION SEGMENTS.—The
18 Secretary may establish a conservation objective,
19 other than the objective provided in paragraph
20 (3)(C), for a distinct population segment designated
21 under section 4(a) after the date of enactment of
22 this paragraph only if the Secretary makes a clear
23 showing that the objective is in the national interest
24 based on biological, social, or economic consider-
25 ations, or any combination of the considerations.

1 “(6) GUIDELINES IN ESTABLISHMENT OF OB-
2 JECTIVE.—In carrying out this subsection, the Sec-
3 retary shall establish a conservation objective for a
4 species that provides a level of protection—

5 “(A) not less than the level described in
6 subparagraph (A) or (B) of paragraph (3), in-
7 cluding an objective provided for in paragraph
8 (3)(D) that provides not less than that level of
9 protection, if—

10 “(i) the threat of extinction of the
11 species is severe;

12 “(ii) the contribution of the species to
13 genetic diversity is high; and

14 “(iii) the biological potential for con-
15 serving the species is high; or

16 “(B) less than the level described in para-
17 graph (3)(B) if the species has been listed be-
18 cause of circumstances that make conservation
19 unlikely without extraordinary efforts, includ-
20 ing—

21 “(i) introduced predators, competi-
22 tors, pathogens, or parasites; and

23 “(ii) specific, immediate conflicts be-
24 tween the conservation of species and the
25 use of habitat by humans.

1 “(c) SCHEDULE FOR CONSERVATION PLAN PREPA-
2 RATION.—Except as provided in subsection (b)(4), on the
3 basis of the report transmitted under section 13(b)(2)(C),
4 the Secretary shall—

5 “(1) promptly request the Commission to pre-
6 pare alternatives for a proposed conservation plan
7 based on the conservation objective established by
8 the Secretary under subsection (b);

9 “(2) not later than 1 year after the date of
10 publication of the final regulation to implement the
11 determination that the affected species is an endan-
12 gered species or a threatened species, publish—

13 “(A) a proposed conservation plan for the
14 affected species; and

15 “(B) a proposed regulation to designate
16 any habitat of the species as critical habitat
17 under subsection (i), unless the Secretary deter-
18 mines that such a designation is not prudent or
19 determinable, which regulation shall include—

20 “(i) a readily understandable, non-
21 technical explanation of the reasons for
22 and purpose of the proposed regulation;
23 and

24 “(ii) an analysis concluding that the
25 conservation benefit of the regulation out-

1 weighs any negative conservation impact of
2 the regulation; and

3 “(3) not later than 18 months after the date of
4 publication of the final regulation to implement the
5 determination that the affected species is an endan-
6 gered species or a threatened species, publish—

7 “(A) a final conservation plan for the af-
8 fected species; and

9 “(B) a final regulation to designate any
10 habitat of the species as critical habitat under
11 subsection (i), unless the Secretary determines
12 that such a designation is not prudent or deter-
13 minable.

14 “(d) PRIORITIES OF CONSERVATION PLAN.—In the
15 development and implementation of a conservation plan
16 under this section, the Secretary shall accord priority to—

17 “(1) the development of an integrated plan for
18 2 or more endangered species or threatened species
19 that are likely to benefit from an integrated 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 conservation meas-
25 ures that have the least economic and social costs.

1 “(e) ALTERNATIVE STRATEGIES.—

2 “(1) INCLUSION IN PLANS.—On the basis of the
3 report transmitted under section 13(c)(3)(A)(iii), the
4 Commission shall recommend to the Secretary, for
5 inclusion in each proposed conservation plan, alter-
6 native strategies to achieve the conservation objec-
7 tive for the affected species.

8 “(2) RANGE OF STRATEGIES.—The alternative
9 strategies shall range from a strategy requiring in-
10 tensive Federal management to achieve the con-
11 servation objective to a strategy involving the least
12 practicable Federal management to achieve the con-
13 servation objective.

14 “(3) CONTENTS.—Each alternative strategy
15 shall contain—

16 “(A) an estimate of the risks to the sur-
17 vival and recovery of the species that the alter-
18 native would entail;

19 “(B) a description of any site-specific man-
20 agement measures recommended for the alter-
21 native, including the use of mitigation banks;

22 “(C) an analysis of the relationship of any
23 habitat of the species proposed for designation
24 as critical habitat to the site-specific measures;

25 “(D) a description of—

1 “(i) the impacts that implementation
2 of the plan may have on other species; and

3 “(ii) such measures as are necessary
4 to avoid or minimize the impacts;

5 “(E) a description of the direct and indi-
6 rect costs to the public and private sectors, in-
7 cluding effects on employment, any multi-State
8 region, or any segment of the national economy,
9 that may result from the alternative;

10 “(F) a description of any social dislocation
11 that may result from the alternative;

12 “(G) an analysis of any impacts that the
13 alternative would have on the use and value of
14 property;

15 “(H) a description of any captive breeding
16 program recommended for the alternative;

17 “(I) an analysis of whether the alternative
18 would include any release of an experimental
19 population outside the current range of the spe-
20 cies and, if the release would be required, an
21 identification of candidate geographic areas for
22 the release;

23 “(J) a clear differentiation between—

1 “(i) any matters recommended gen-
2 erally for Federal agencies to conserve the
3 species under section 7(a)(1);

4 “(ii) any matters recommended for
5 Federal agency actions to avoid being like-
6 ly to jeopardize the continued existence of
7 the species as determined under section
8 7(a)(2); and

9 “(iii) any matters recommended for
10 any person to avoid a taking of the species
11 prohibited under section 4(d) or 9(a)(1);

12 “(K) objective and measurable criteria for
13 achieving the conservation objective, including,
14 if the conservation objective is recovery, a popu-
15 lation level target, that, if met, would result in
16 a determination under section 4 that the species
17 be removed from a list published under section
18 4(c)(1);

19 “(L) estimates of the time and costs re-
20 quired to carry out the actions needed to
21 achieve the conservation objective and to
22 achieve intermediate steps toward the objective;
23 and

24 “(M) a description of the role of each af-
25 fected State, with respect to areas within the

1 borders of the State, in achieving the conserva-
2 tion objective.

3 “(f) PROCEDURES.—

4 “(1) CONSULTATION WITH STATES.—During
5 the preparation of each proposed and final conserva-
6 tion plan, the Secretary shall consult with the Gov-
7 ernor of each State having jurisdiction over the area
8 in which the affected species is located.

9 “(2) PUBLICATION AND PUBLIC COMMENT.—
10 The Secretary shall publish in the Federal Register
11 and a newspaper of general circulation in each af-
12 fected county—

13 “(A) a notice of the availability, and a
14 summary, of each proposed conservation plan
15 and each proposed regulation designating any
16 critical habitat; and

17 “(B) a request for the submission of com-
18 ments on the proposed conservation plan and
19 the proposed regulation.

20 “(3) HEARINGS.—The Secretary shall hold at
21 least 2 hearings on each proposed conservation plan
22 in each State to which the plan would apply (includ-
23 ing at least 1 hearing in an affected rural area if 1
24 or more rural areas are affected by the determina-
25 tion).

1 “(4) CONSIDERATION OF COMMENTS BY THE
2 SECRETARY.—Prior to any decision to adopt a final
3 conservation plan, the Secretary shall consider and
4 weigh carefully all information presented during
5 each hearing held under paragraph (3) or received
6 in response to a request for comments published
7 under paragraph (2)(B).

8 “(g) PUBLICATION OF FINAL CONSERVATION
9 PLAN.—Not later than the date of publication of a final
10 conservation plan under subsection (c)(2), the Secretary
11 shall publish in the Federal Register a notice of the avail-
12 ability, and a summary, of a final conservation plan. The
13 notice shall include a detailed description of—

14 “(1) the reasons for the selection of the final
15 conservation plan;

16 “(2) the reasons for not selecting each of the
17 other alternatives included in the proposed conserva-
18 tion plan under subsection (e);

19 “(3) the effect of the priorities specified in sub-
20 section (d) on the selection; and

21 “(4) the response of the Secretary to the infor-
22 mation referred to in subsection (f)(4).

23 “(h) PARTICIPATION BY OTHER PERSONS.—In devel-
24 oping and implementing conservation plans, the Secretary

1 may use the services of appropriate public and private
2 agencies and institutions and other qualified persons.

3 “(i) CRITICAL HABITAT DESIGNATION.—

4 “(1) DESIGNATION.—

5 “(A) IN GENERAL.—The Secretary shall,
6 by regulation under subsection (c) and this sub-
7 section and to the maximum extent prudent and
8 determinable—

9 “(i) designate any habitat of the af-
10 fected species that is considered to be criti-
11 cal habitat and that supports the conserva-
12 tion objective of the Secretary for the spe-
13 cies; and

14 “(ii) revise a critical habitat designa-
15 tion in accordance with paragraph (5).

16 “(B) DETERMINATION NOT TO DES-
17 IGNATE.—If the Secretary determines that the
18 designation of critical habitat of the affected
19 species is not prudent or is not determinable,
20 the Secretary may elect not to designate any
21 critical habitat for the species.

22 “(2) BASIS FOR DESIGNATION.—The designa-
23 tion of critical habitat, and any revision of the des-
24 igation, shall be made on the basis of the best sci-

1 entific and commercial data available after taking
2 into consideration—

3 “(A) the availability of substitute habitat
4 in mitigation banks or from other sources; and

5 “(B) the economic impact, and any other
6 relevant impact, of designating any particular
7 area as critical habitat and of the determina-
8 tions made under section 4(a).

9 “(3) ECONOMIC IMPACTS.—

10 “(A) DESCRIPTION.—In issuing any pro-
11 posed regulation designating critical habitat of
12 an endangered species or a threatened species,
13 or proposed revision of the designation, the Sec-
14 retary shall describe in detail the economic im-
15 pacts and other relevant impacts that are to be
16 considered under paragraph (2), and the bene-
17 fits that are to be weighed under paragraph
18 (4), in designating an area as critical habitat.

19 “(B) SUBMISSION TO BUREAU OF LABOR
20 STATISTICS.—The Secretary shall submit the
21 description, and the documentation supporting
22 the description, to the Bureau of Labor Statis-
23 tics of the Department of Labor. The Commis-
24 sioner of Labor Statistics shall submit written
25 comments during the comment period on the

1 proposed regulation. In issuing any final regula-
2 tion designating critical habitat, the Secretary
3 shall respond separately and fully to each com-
4 ment.

5 “(4) CONSIDERATION OF COSTS AND BENE-
6 FITS.—The Secretary shall exclude any area from
7 critical habitat for which the Secretary determines
8 that the benefits of the exclusion outweigh the bene-
9 fits of designating the area as part of the critical
10 habitat, unless the Secretary determines, on the
11 basis of the best scientific and commercial data
12 available, that the failure to designate the area as
13 critical habitat will result in the extinction of the
14 species for which the habitat is designated.

15 “(5) REVISION OF CRITICAL HABITAT DESIGNA-
16 TION.—

17 “(A) DETERMINATION BY THE SEC-
18 RETARY.—The Secretary, by regulation under
19 subsection (c) and this subsection and to the
20 maximum extent prudent and determinable,
21 may revise a critical habitat designation on a
22 finding that the critical habitat designation
23 does not support the conservation objective of
24 the Secretary.

25 “(B) PETITIONS.—

1 “(i) FINDING BY THE SECRETARY.—

2 To the maximum extent practicable, not
3 later than 90 days after receiving the peti-
4 tion of an interested person under section
5 553(e) of title 5, United States Code, to
6 revise a critical habitat designation, the
7 Secretary shall make a finding as to
8 whether the petition presents substantial
9 new scientific information indicating that
10 the revision may be warranted. The Sec-
11 retary shall promptly publish the finding in
12 the Federal Register.

13 “(ii) REVIEW BY STATES.—Not later
14 than 1 year after receiving a petition that
15 is found under clause (i) to present sub-
16 stantial new scientific information indicat-
17 ing that the requested revision may be
18 warranted, the Secretary shall—

19 “(I) provide a copy of the peti-
20 tion to the State having jurisdiction
21 over the area in which the species is
22 believed to occur and invite the deter-
23 mination of the State as to whether
24 the petitioned action is warranted;

1 “(II) request the Commission to
2 conduct a scientific review of any new
3 information presented by the petition
4 with respect to the status of the spe-
5 cies;

6 “(III) make a finding as to
7 whether the petition will be granted;
8 and

9 “(IV) publish each finding made
10 under this clause in the Federal Reg-
11 ister.

12 “(iii) SCIENTIFIC REVIEW OF CON-
13 FLICTS.—If the Secretary finds under
14 clause (ii)(III) that a petitioned action is
15 warranted but a State to which the peti-
16 tion was provided under clause (ii)(I) de-
17 termines in accordance with this subsection
18 that the petitioned action is not warranted
19 under this Act, the Secretary shall follow
20 the procedures described in section 4(b)(3)
21 with respect to the petition.

22 “(j) EFFECTS OF ACTIONS CONSISTENT WITH THE
23 CONSERVATION OBJECTIVE AND PLAN.—If a conserva-
24 tion plan is prepared under subsection (c) or if a conserva-

1 tion objective is established that is described in subsection
2 (b)(4)—

3 “(1) any Federal agency that determines that
4 the actions of the agency are consistent with the
5 guidance provided in the conservation plan under
6 subsection (e)(3)(J)(i) or the conservation objective
7 (in the case of a conservation objective described in
8 subsection (b)(4)) shall be considered to comply with
9 section 7(a)(1) for the affected species;

10 “(2) any agency action that the Federal agency
11 determines is consistent with applicable guidance
12 provided in the conservation plan under subsection
13 (e)(3)(J)(ii) or the conservation objective described
14 in subsection (b)(4) shall not be subject to section
15 7(a)(2) for the species, except that a Federal agen-
16 cy—

17 “(A) may initiate consultation under sec-
18 tion 7(a)(2) if the agency desires guidance from
19 the Secretary on the consistency of the action
20 of the agency with the conservation plan or con-
21 servation objective; and

22 “(B) shall initiate consultation under sec-
23 tion 7(a)(2) on any action that the agency de-
24 termines is inconsistent with the conservation
25 plan or conservation objective; and

1 “(3) any action of any person that is consistent
2 with applicable guidance provided in the conserva-
3 tion plan under subsection (e)(3)(J)(iii) or a con-
4 servation objective described in subsection (b)(4)
5 shall not constitute a violation concerning the spe-
6 cies of any applicable prohibition under section 4(d)
7 or 9(a), except that the person may initiate consulta-
8 tion under section 10(a)(3) if the person desires
9 guidance from the Secretary on—

10 “(A) the consistency of the action with the
11 conservation plan or conservation objective; or

12 “(B) whether an action that is inconsistent
13 with the conservation plan or conservation ob-
14 jective would be likely to jeopardize the contin-
15 ued existence of the species.

16 “(k) ALTERNATIVE SPECIES PROTECTION.—

17 “(1) IN GENERAL.—On publication under sec-
18 tion 4(b)(6) of the final regulation to implement the
19 determination that a species is an endangered spe-
20 cies or a threatened species, the Secretary shall, on
21 application, issue 1 or more permits for the affected
22 species in accordance with section 10(a), enter into
23 1 or more cooperative management agreements for
24 the species, or both issue the permits and enter into
25 the agreements to the extent that the applications

1 meet such requirements as the Secretary shall estab-
2 lish.

3 “(2) APPLICABILITY.—

4 “(A) FEWER THAN ALL KNOWN MEMBERS
5 OF SPECIES.—A proposed incidental taking per-
6 mit or cooperative management agreement
7 under paragraph (1) need not apply to all
8 known members of the affected species. In the
9 case of any member of the affected species to
10 which any combination of proposed incidental
11 taking permits and cooperative management
12 agreements does not apply, the Secretary shall
13 publish a conservation objective under this sec-
14 tion.

15 “(B) ALL KNOWN MEMBERS OF SPE-
16 CIES.—If any combination of incidental taking
17 permits and cooperative management agree-
18 ments proposed prior to the date of publication
19 of a conservation objective or a conservation
20 plan for the affected species under this section
21 would apply to all known members of the af-
22 fected species, the Secretary shall not publish
23 the objective or plan unless—

24 “(i) the Secretary denies such a per-
25 mit or agreement; or

1 “(ii) the combination of permits and
2 agreements as issued or entered into ap-
3 plies to fewer than all known members of
4 the affected species.

5 “(l) INTERIM MANAGEMENT.—

6 “(1) IN GENERAL.—Prior to the publication of
7 a final conservation plan under subsection (c)(2) or
8 a conservation objective described in subsection
9 (b)(4), the entering into of a cooperative manage-
10 ment agreement, or the issuance of an incidental
11 taking permit, with respect to an endangered species
12 or a threatened species—

13 “(A) the prohibitions of section 9(a) shall
14 apply to any person, except in the case of a tak-
15 ing by a person that is incidental to, and not
16 the purpose of, the carrying out of an otherwise
17 lawful activity, which incidental taking activity
18 may include the routine operation of any struc-
19 ture, building, road, dam, airport, or irrigation,
20 construction, or other facility that is in oper-
21 ation prior to the publication of the final regu-
22 lation under section 4(b)(6) to implement the
23 determination that the species is an endangered
24 species or a threatened species; and

1 “(B) no Federal agency shall be required
2 to comply with section 7(a)(1) and no consulta-
3 tion shall be required on any agency action
4 under section 7(a)(2), but the agency shall be
5 required to confer on the agency action under
6 section 7(a)(4).

7 “(2) EMERGENCY PERIODS.—

8 “(A) IN GENERAL.—Notwithstanding para-
9 graph (1) and subject to subparagraph (B),
10 paragraphs (1) and (2) of section 7(a) and sec-
11 tion 9(a) shall apply fully to the affected species
12 during a period in which an emergency rule-
13 making is in effect under section 4(b)(7) or if
14 the Secretary declares that there exists an im-
15 minent threat to the existence of the species.

16 “(B) TIME LIMIT FOR DECLARATION.—
17 Any declaration of the Secretary described in
18 subparagraph (A) made prior to—

19 “(i) the date of publication of a con-
20 servation objective may not continue past
21 the deadline for the publication established
22 under subsection (b)(2); or

23 “(ii) the date of publication of a final
24 conservation plan, but after the date de-
25 scribed in clause (i), may not continue past

1 the deadline for the publication established
2 under subsection (c)(3).

3 “(m) SUSPENSION OF CONSERVATION PLAN OR OB-
4 JECTIVE.—If, at any time after the date of publication of
5 a final conservation plan under subsection (c)(3) or a con-
6 servation objective described in subsection (b)(4), the Sec-
7 retary issues an incidental taking permit or enters into
8 a cooperative management agreement, the Secretary, by
9 publication of notice in the Federal Register, shall suspend
10 the conservation plan or conservation objective with re-
11 spect to the portion of the species to which the permit
12 or agreement applies.

13 “(n) REPORT.—Not later than 5 years after the date
14 of enactment of this subsection and biennially thereafter,
15 the Secretary shall report to the Committee on Environ-
16 ment and Public Works of the Senate and the Committee
17 on Resources of the House of Representatives on the sta-
18 tus of efforts to develop and implement conservation plans
19 for all species included in a list published under section
20 4(c)(1) and on the status of all species for which the plans
21 have been developed.

22 “(o) STANDARD OF REVIEW.—The standard for judi-
23 cial review of any decision of the Secretary or a Federal
24 agency under this section shall be whether the decision

1 is arbitrary, capricious, an abuse of discretion, or other-
2 wise not in accordance with law.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) The table of contents in the first section (16
5 U.S.C. prec. 1531) is amended by striking the item
6 relating to section 5 and inserting the following:

“Sec. 5. Coordination of species conservation efforts; species conservation plans.
“Sec. 5A. Land acquisition.”.

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

11 (3) Section 5(b) of Public Law 103-64 (16
12 U.S.C. 460iii-4) is amended by striking “section
13 5(b) of the Endangered Species Act of 1973 (16
14 U.S.C. 1534(b))” and inserting “section 5A(b) of
15 the Endangered Species Act of 1973”.

16 **SEC. 6. LAND ACQUISITION.**

17 Section 5A (as redesignated by section 5(a)(1)) is
18 amended by adding at the end the following:

19 “(c) EXCHANGES.—

20 “(1) IN GENERAL.—The Secretary of the Inte-
21 rior and the Secretary of Agriculture shall encourage
22 persons to apply to exchange lands, waters, or inter-
23 ests in land or water under the jurisdiction of each
24 Secretary (other than units of the National Park

1 System, the National Wilderness Preservation Sys-
2 tem, the National Wildlife Refuge System, the Na-
3 tional Wild and Scenic Rivers System, and the Na-
4 tional Trails System) for lands, waters, or interests
5 in land or water that are not in Federal ownership
6 and that are affected by this Act.

7 “(2) DETERMINATION OF EQUAL VALUE.—

8 “(A) IN GENERAL.—An exchange under
9 this subsection may be made if the Secretary of
10 the Interior or the Secretary of Agriculture de-
11 termines that the lands to be exchanged are of
12 approximately equal value.

13 “(B) APPRAISALS.—In carrying out sub-
14 paragraph (A), the Secretary of the Interior
15 and the Secretary of Agriculture shall not be
16 required to obtain an appraisal that is in con-
17 formance with the Uniform Appraisal Stand-
18 ards for Federal Land Acquisitions or with sec-
19 tion 206 of the Federal Land Policy and Man-
20 agement Act of 1976 (43 U.S.C. 1716).

21 “(3) ENVIRONMENTAL ASSESSMENT.—An envi-
22 ronmental assessment shall be the only document
23 under section 102(2) of the National Environmental
24 Policy Act of 1969 (16 U.S.C. 4332(2)) that shall

1 be prepared with respect to any exchange under this
2 subsection.

3 “(4) EXPEDITIOUS EXCHANGE DECISIONS.—An
4 exchange under this subsection shall be processed,
5 and a final decision on the exchange shall be made,
6 by the Secretary of the Interior or the Secretary of
7 Agriculture not later than 1 year after the date on
8 which the application for the exchange is submitted.

9 “(5) APPLICABLE LAW.—The Secretary of the
10 Interior and the Secretary of Agriculture shall proc-
11 ess exchanges under this subsection in accordance
12 with applicable laws that are consistent with this
13 subsection.

14 “(d) VALUATION.—Any land, water, or interest in
15 land or water to be acquired by the Secretary or the Sec-
16 retary of Agriculture by purchase, exchange, donation, or
17 otherwise under this section shall be valued as if the land,
18 water, or interest were not subject to any restriction on
19 use under this Act imposed after the date of acquisition.”.

20 **SEC. 7. COOPERATION WITH NON-FEDERAL PERSONS.**

21 (a) IN GENERAL.—Section 6 (16 U.S.C. 1535) is
22 amended—

23 (1) by striking the section heading and sub-
24 sections (a) and (b) and inserting the following:

1 “COOPERATION WITH NON-FEDERAL PERSONS

2 “SEC. 6. (a) IN GENERAL.—In carrying out this Act,
3 the Secretary shall cooperate to the maximum extent prac-
4 ticable with the States and other non-Federal persons.
5 The cooperation shall include consultation with the appro-
6 priate States and other non-Federal persons before the
7 Secretary seeks to acquire any land or water, or interest
8 in land or water, for the purpose of conserving any endan-
9 gered species or threatened species.

10 “(b) COOPERATIVE MANAGEMENT AGREEMENTS.—

11 “(1) IN GENERAL.—The Secretary may enter
12 into a cooperative management agreement with any
13 State or group of States, political subdivision of a
14 State, local government, or other non-Federal person
15 for the management of a species or group of species
16 listed as endangered species or threatened species
17 under section 4(c)(1), a species or group of species
18 proposed to be listed under section 4(c)(1), or a can-
19 didate species or group of candidate species.

20 “(2) SCOPE OF COOPERATIVE MANAGEMENT
21 AGREEMENTS.—

22 “(A) IN GENERAL.—A cooperative man-
23 agement agreement may provide for the man-
24 agement of a species or group of species on
25 both public and private lands that are under

1 the authority, control, or ownership of a State
2 or group of States, political subdivision of a
3 State, local government, or other non-Federal
4 person and that are affected by a listing deter-
5 mination, proposed determination, or proposed
6 candidacy for determination.

7 “(B) ACTIVITIES ON PRIVATE PROP-
8 ERTY.—A cooperative management agreement
9 may not restrict activity on private property un-
10 less the individual property owner gives written
11 consent to the restriction to the Secretary or
12 the State, political subdivision, local govern-
13 ment, or other non-Federal person that is a
14 party to the agreement.

15 “(C) ACTIVITIES ON FEDERALLY OWNED
16 LANDS.—The Secretary may grant to the non-
17 Federal party to the agreement the authority to
18 undertake programs to enhance the population
19 or habitat of a species on federally owned lands,
20 except that the authority shall not conflict with
21 other uses of the land that are approved by the
22 Federal agency having jurisdiction over the land
23 or authorized by Congress.

24 “(3) NOTIFICATION.—Not later than 30 days
25 after submission of a request to enter into a cooper-

1 ative management agreement, the party submitting
2 the request shall provide notice of the request to any
3 non-Federal person or Federal power marketing ad-
4 ministration that would be subject to the proposed
5 cooperative management agreement.

6 “(4) DEVELOPMENT OF PROPOSED AGREE-
7 MENT.—

8 “(A) IN GENERAL.—The requesting party
9 shall develop and submit to the Secretary a pro-
10 posed cooperative management agreement.

11 “(B) NOTICE AND COMMENT.—The Sec-
12 retary shall—

13 “(i) publish in the Federal Register a
14 notice of availability and a request for pub-
15 lic comment on any proposed cooperative
16 management agreement between the Sec-
17 retary and any governmental entity; and

18 “(ii) hold a public hearing on such a
19 proposed cooperative management agree-
20 ment in each county in which the proposed
21 agreement would be in effect.

22 “(C) CONSIDERATION OF COMMENTS.—Be-
23 fore entering into a cooperative management
24 agreement with a governmental entity, the Sec-
25 retary shall consider and weigh carefully all in-

1 formation received in response to the request
2 for comment published under subparagraph
3 (B)(i) and the testimony presented in each
4 hearing held under subparagraph (B)(ii).

5 “(5) APPROVAL OF AGREEMENT.—

6 “(A) IN GENERAL.—Not later than 120
7 days after the submission of a proposed cooper-
8 ative management agreement under paragraph
9 (4), the Secretary shall determine whether the
10 proposed agreement is in accordance with this
11 subsection and will promote the conservation of
12 the species to which the proposed agreement
13 applies.

14 “(B) CRITERIA FOR APPROVAL.—The Sec-
15 retary shall approve and enter into a proposed
16 cooperative management agreement if the Sec-
17 retary determines that—

18 “(i) the requesting party has suffi-
19 cient authority under law to implement
20 and carry out the terms of the agreement;

21 “(ii) the agreement identifies an area
22 that serves as habitat for the species or
23 group of species to which the agreement
24 applies;

1 “(iii) the agreement adequately pro-
2 vides for the administration and manage-
3 ment of the identified area;

4 “(iv) the agreement promotes the con-
5 servation of the species to which the agree-
6 ment applies by committing Federal or
7 non-Federal efforts to the conservation;

8 “(v) the term of the agreement is of
9 sufficient duration to accomplish the agree-
10 ment; and

11 “(vi) the agreement is adequately
12 funded to carry out the agreement.

13 “(C) NOTICE OF AVAILABILITY OF
14 TERMS.—Not later than 30 days after entering
15 into a cooperative management agreement with
16 a governmental entity, the Secretary shall pub-
17 lish in the Federal Register a notice of avail-
18 ability of the terms of the agreement and the
19 response of the Secretary to all information re-
20 ceived or presented with respect to the agree-
21 ment under paragraph (4)(B).

22 “(6) VOLUNTEER STATUS.—The Secretary may
23 designate any non-Federal person participating or
24 assisting in the implementation of a cooperative
25 management agreement as a volunteer under section

1 7(c) of the Fish and Wildlife Act of 1956 (16 U.S.C.
2 742f(c)).

3 “(7) TECHNICAL ASSISTANCE.—The Secretary
4 shall provide technical assistance for the develop-
5 ment and implementation of a cooperative manage-
6 ment agreement with a non-Federal person.

7 “(8) ENVIRONMENTAL ASSESSMENTS.—The
8 preparation, approval, and entering into of a cooper-
9 ative management agreement shall not be subject to
10 section 7(a)(2) of this Act or section 102(2) of the
11 National Environmental Policy Act of 1969 (42
12 U.S.C. 4332(2)).

13 “(9) NO SURPRISES.—

14 “(A) IN GENERAL.—Except under extraor-
15 dinary circumstances determined under sub-
16 paragraph (B), no additional measures to mini-
17 mize and mitigate impacts on a species that is
18 a subject of a cooperative management agree-
19 ment shall be required of a non-Federal party
20 to the agreement that is in compliance with the
21 agreement. With respect to any species that is
22 a subject of such a cooperative management
23 agreement, under no circumstance shall a non-
24 Federal party in compliance with the coopera-
25 tive management agreement be required to

1 make any additional payment for any purpose,
2 or accept any additional restriction on any par-
3 cel of land available for development or land
4 management under the cooperative management
5 agreement, without the consent of the non-Fed-
6 eral party.

7 “(B) EXTRAORDINARY CIRCUMSTANCES.—

8 “(i) IN GENERAL.—The Secretary
9 shall have the burden of demonstrating
10 and clearly documenting that an extraor-
11 dinary circumstance under subparagraph
12 (A) exists.

13 “(ii) DATA.—In making the deter-
14 mination whether an extraordinary cir-
15 cumstance under subparagraph (A) exists,
16 the Secretary shall use the best scientific
17 and commercial data available.

18 “(iii) FACTORS.—The Secretary shall
19 establish, by regulation, the factors to be
20 considered in making the determination
21 whether an extraordinary circumstance
22 under subparagraph (A) exists.

23 “(10) EFFECT OF LISTING OF SPECIES.—A co-
24 operative management agreement shall remain in ef-
25 fect and shall not be required to be amended if a

1 species to which the agreement does not apply is de-
2 termined to be an endangered species or a threat-
3 ened species under section 4.

4 “(11) APPLICABILITY OF CERTAIN PROVI-
5 SIONS.—Sections 5, 7, and 9 shall not apply to such
6 activities of a party to a cooperative management
7 agreement as are conducted in accordance with the
8 agreement.

9 “(12) VIOLATIONS OF AGREEMENTS.—

10 “(A) NOTIFICATION.—If the Secretary de-
11 termines that a party to a cooperative manage-
12 ment agreement is not administering or acting
13 in accordance with the agreement, the Secretary
14 shall notify the party.

15 “(B) EFFECTS OF VIOLATIONS.—If a
16 party that is notified under subparagraph (A)
17 fails to take appropriate corrective action within
18 a period of time determined by the Secretary to
19 be reasonable (not to exceed 90 days after the
20 date of notification)—

21 “(i) the Secretary shall rescind the
22 entire cooperative management agreement
23 or the applicability of the agreement to the
24 party that is the subject of the notification;
25 and

1 “(ii) beginning on the date of rescis-
2 sion—

3 “(I) the entire agreement shall
4 not be effective, or the agreement
5 shall not be effective with respect to
6 the party, whichever is appropriate;
7 and

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

10 (2) in the first sentence of subsection (d)(1), by
11 striking “subparagraph (C) of section 4(b)(3)” and
12 inserting “section 4(b)(2)(C)(iii)”;

13 (3) in subsection (f)—

14 (A) in the first sentence, by redesignating
15 paragraphs (1) and (2) as subparagraphs (A)
16 and (B), respectively;

17 (B) by striking “LAWS.—Any State” and
18 inserting the following: “LAWS.—

19 “(1) FISH AND WILDLIFE.—Any State”; and

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

21 “(2) WATER.—

22 “(A) IN GENERAL.—

23 “(i) REQUIREMENTS GOVERNING AC-
24 QUISITION.—Subject to subparagraph (B),
25 if the Secretary determines that water is

1 required for a goal, purpose, or objective of
2 this Act with respect to a species, the
3 water shall be acquired in accordance with
4 the substantive and procedural require-
5 ments of the State in which the species is
6 located.

7 “(ii) MINIMUM QUANTITY REQUIRED
8 TO AVOID JEOPARDY.—Subject to subpara-
9 graph (B), in a case in which a specified
10 flow condition or lake level is found by the
11 Secretary to be the minimum quantity of
12 water necessary to avoid jeopardy to a spe-
13 cies listed as endangered or threatened
14 under section 4(c)(1) after the implemen-
15 tation of all reasonable and prudent alter-
16 natives or measures that do not involve
17 water, the Secretary may request that a
18 permit or license applicant implement such
19 measures as would avoid jeopardy to the
20 listed species or the critical habitat of the
21 species without causing—

22 “(I) a reduction in the quantity
23 of water that would otherwise be le-
24 gally available for use by the appli-
25 cant; or

1 “(II) a material increase in the
2 cost of the water legally available for
3 use by the applicant.

4 “(B) STATUTORY CONSTRUCTION.—An ex-
5 ercise of authority pursuant to or in further-
6 ance of this Act shall not—

7 “(i) create, expressly or by implica-
8 tion, a Federal reserved water right;

9 “(ii) supersede, abrogate, injure, or
10 otherwise impair any right to the use of
11 any quantity of water that has been estab-
12 lished in any adjudication that is in con-
13 formance with subsections (a) through (c)
14 of section 208 of the Department of Jus-
15 tice Appropriation Act, 1953 (43 U.S.C.
16 666);

17 “(iii) supersede, modify, or amend any
18 water allocation established under an inter-
19 state compact or a decision of the United
20 States Supreme Court;

21 “(iv) require a change in the nature of
22 use, or the transfer of, water or any right
23 to use water, or create a limitation on the
24 exercise of any right to use water;

1 “(v) constitute a cause for modifying
2 the delivery, diversion, nondiversion, or
3 storage of any water to be delivered by
4 contract; or

5 “(vi) provide a basis for any limitation
6 or restriction on any land use or manage-
7 ment activity as a result of any restriction
8 or limitation on the use of water under
9 subparagraph (A)(ii).

10 “(C) FEDERAL RECLAMATION PROJECTS
11 AND CONTRACTS.—

12 “(i) PROJECTS.—In carrying out this
13 Act, the Secretary shall continue the use of
14 each water or power project constructed or
15 to be constructed under Federal reclama-
16 tion law (the Act of June 17, 1902 (32
17 Stat. 388, chapter 1093), and Acts supple-
18 mental to and amendatory of that Act (43
19 U.S.C. 371 et seq.)), in accordance with
20 the authorization for the project.

21 “(ii) CONTRACTS.—Nothing in this
22 Act shall adversely affect any right under
23 a water storage or use contract or any allo-
24 cation of an available supply to the fulfill-
25 ment of such a contract.

1 “(D) WATER QUALITY STANDARD.—If a
2 State water quality standard established under
3 the Federal Water Pollution Control Act (33
4 U.S.C. 1251 et seq.) is adopted by a State for
5 the purpose of protecting, conserving, or recov-
6 ering any proposed or listed aquatic species, the
7 standard shall be deemed to achieve the pur-
8 poses of this Act and to meet all requirements
9 and objectives of this Act relating to water
10 quality and the aquatic habitat requirements of
11 the aquatic species.”;

12 (4) in subsection (g)—

13 (A) by striking “TRANSITION.—(1) For
14 purposes” and all that follows through “(2)
15 The” and inserting “TRANSITION.—The”;

16 (B) by striking “any State—” and all that
17 follows through “which is then” and inserting
18 “any State that is at the time of the taking”;

19 (C) by striking “section 6(c) of this Act”
20 and inserting “subsection (c)”; and

21 (D) by striking “State); or” and all that
22 follows through the period at the end and in-
23 serting “State).”;

24 (5) by redesignating subsections (h) and (i) as
25 subsections (k) and (l), respectively; and

1 (6) by inserting after subsection (g) the follow-
2 ing:

3 “(h) HABITAT CONSERVATION GRANTS.—

4 “(1) IN GENERAL.—The Secretary may, from
5 funds appropriated under section 21, provide a grant
6 to a non-Federal person (other than an officer, em-
7 ployee, or agent (acting in an official capacity) or a
8 department or instrumentality of a State, municipal-
9 ity, or political subdivision of a State or municipal-
10 ity) for the purpose of conserving, preserving, or im-
11 proving habitat for any species that is determined
12 under section 4 to be an endangered species or a
13 threatened species.

14 “(2) CRITERIA.—The Secretary may provide a
15 grant under this subsection if the Secretary deter-
16 mines that—

17 “(A) the property for which the grant is
18 provided contains habitat that significantly con-
19 tributes to the protection of the population of
20 the species;

21 “(B) the property will be managed for spe-
22 cies protection for a period of time that is suffi-
23 cient to significantly contribute to the protec-
24 tion of the population of the species; and

1 “(C) the management of the habitat ad-
2 vances the interest of species protection.

3 “(3) TRANSFERABILITY.—A grant made under
4 this subsection shall be transferable to subsequent
5 owners of the property for which the grant is pro-
6 vided.

7 “(i) SAFE HARBOR AGREEMENTS.—

8 “(1) IN GENERAL.—The Secretary may enter
9 into safe harbor agreements with non-Federal per-
10 sons who own real property for the purpose of en-
11 couraging the voluntary management, restoration, or
12 enhancement of non-Federal lands or waters owned
13 by the non-Federal persons to conserve species listed
14 as endangered species or threatened species under
15 section 4(c)(1) and candidate species.

16 “(2) CONTENTS.—A safe harbor agreement en-
17 tered into under paragraph (1) shall—

18 “(A) describe the non-Federal land or
19 water that is owned by the non-Federal person
20 and is subject to the agreement;

21 “(B) identify the technical or other assist-
22 ance that will be provided to the non-Federal
23 person by the Secretary;

24 “(C) describe for the land or water that is
25 subject to the agreement, the baseline popu-

1 lation size (as of the date of the agreement) of
2 each species that is subject to the agreement;

3 “(D) designate the participating non-Fed-
4 eral person and any other non-Federal person
5 assisting in the implementation of the agree-
6 ment as a volunteer under section 7(c) of the
7 Fish and Wildlife Improvement Act of 1956 (16
8 U.S.C. 742f(c));

9 “(E) specify a term of years agreed to by
10 the Secretary and the non-Federal person that
11 is of sufficient duration to enhance the con-
12 servation of each species that is subject to the
13 agreement;

14 “(F) provide that the agreement is rev-
15 ocable at the end of the term of years estab-
16 lished under subparagraph (E) by the non-Fed-
17 eral person on written notice to the Secretary;

18 “(G) describe any measures necessary to
19 further the conservation of the species that is
20 subject to the agreement through management,
21 restoration, or creation of habitat on which the
22 species depends; and

23 “(H) authorize the taking of a species that
24 is subject to the agreement that is incidental to,
25 and not the purpose of, the carrying out of any

1 otherwise lawful activity on the land or water
2 that is subject to the agreement, except that the
3 taking may not reduce the baseline population
4 size of the species below the level described
5 under subparagraph (C).

6 “(j) DELEGATION OF AUTHORITY TO STATES.—

7 “(1) IN GENERAL.—At the request of a State,
8 the Secretary shall delegate to the State the author-
9 ity to develop and implement a conservation plan for
10 a species or group of species listed as endangered or
11 threatened under section 4(c)(1), unless the Sec-
12 retary determines that the State lacks authority and
13 capability to carry out the requirements of this Act.
14 If the Secretary determines that the State lacks the
15 authority and capability, the Secretary shall—

16 “(A) notify the Governor of the State of
17 the specific concerns of the Secretary and speci-
18 fy such measures as are necessary to address
19 the concerns; and

20 “(B) provide the Governor with the oppor-
21 tunity to take the measures.

22 “(2) MONITORING BY THE SECRETARY.—The
23 Secretary shall monitor the actions of States in de-
24 veloping and implementing conservation plans under
25 this subsection.

1 “(3) COORDINATION BETWEEN STATES.—The
2 Secretary shall assist States in coordinating actions
3 under this subsection with the actions of other af-
4 fected States in which the affected species may
5 occur.

6 “(4) RESUMPTION OF FEDERAL AUTHORITY.—
7 If the Secretary determines that a State to which
8 authority has been delegated under this subsection is
9 not developing or implementing a conservation plan
10 in compliance with this Act and the conservation ob-
11 jective for the species, the Secretary shall so notify
12 the State and shall specify the nature of the non-
13 compliance. If the State fails to adequately respond
14 or to come into compliance by the date that is 60
15 days after the date of the notification, the Secretary
16 may resume responsibility for the development and
17 implementation of the conservation plan.”.

18 (b) CONFORMING AMENDMENT.—The table of con-
19 tents in the first section (16 U.S.C. prec. 1531) is amend-
20 ed by striking the item relating to section 6 and inserting
21 the following:

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

22 **SEC. 8. INTERAGENCY COOPERATION.**

23 Section 7 (16 U.S.C. 1536) is amended—

24 (1) in subsection (a)—

1 (A) in the second sentence of paragraph
2 (1), by striking “All” and inserting “Except as
3 provided in subsections (b)(4), (j)(1), and
4 (l)(1)(B) of section 5, all”;

5 (B) by striking paragraph (2) and insert-
6 ing the following:

7 “(2) CONSULTATION.—

8 “(A) IN GENERAL.—Except as provided in
9 subsections (b)(4), (j)(2), and (l)(1)(B) of sec-
10 tion 5, each Federal agency shall ensure that
11 any action authorized, funded, or carried out by
12 the agency (referred to in this section as an
13 ‘agency action’) that affects any endangered
14 species or threatened species or designated crit-
15 ical habitat of the species is not likely to jeop-
16 ardize the continued existence of the species.

17 “(B) ACTIONS LIKELY TO SIGNIFICANTLY
18 AND ADVERSELY AFFECT SPECIES.—In the case
19 of an agency action that is subject to this para-
20 graph and that is likely to significantly and ad-
21 versely affect an endangered species or a
22 threatened species, the Federal agency shall ful-
23 fill the requirements of this paragraph in con-
24 sultation with and with the assistance of the
25 Secretary.

1 “(C) OTHER CONSULTATION.—Subject to
2 section 5(j)(2), a Federal agency may initiate
3 consultation with the Secretary to receive guid-
4 ance from the Secretary on the consistency of
5 an agency action with—

6 “(i) the conservation plan or conserva-
7 tion objective for the species;

8 “(ii) an incidental taking permit for
9 the species; or

10 “(iii) a cooperative management
11 agreement concerning the species.

12 “(D) CONSIDERATION OF INFORMATION
13 AND OTHER LAW.—In fulfilling the require-
14 ments of this paragraph, each agency shall—

15 “(i) use the best scientific and com-
16 mercial data available;

17 “(ii) consider any opinion and any
18 reasonable and prudent alternatives devel-
19 oped under subsection (b)(3); and

20 “(iii) render the decision of the agen-
21 cy in a manner consistent with the obliga-
22 tions and responsibilities of the agency
23 under each applicable statute, treaty, inter-
24 state compact, and contractual agree-
25 ment.”;

1 (C) in paragraph (3)—

2 (i) by inserting “with the involvement
3 of,” after “at the request of,”; and

4 (ii) by striking “his project” and in-
5 serting “the project of the applicant, that
6 the project is inconsistent with the con-
7 servation plan or conservation objective, an
8 incidental taking permit, or a cooperative
9 management agreement, for the species,”;

10 (D) in the first sentence of paragraph (4),
11 by striking “or result in the destruction or ad-
12 verse modification of critical habitat proposed
13 to be designated for such species” and inserting
14 “or to destroy or adversely modify any habitat
15 that is proposed to be designated by the Sec-
16 retary as critical habitat of such a species in a
17 manner that is likely to jeopardize the contin-
18 ued existence of the species”; and

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

20 “(5) ACTIONS EXEMPT FROM CONSULTATION
21 AND CONFERENCING.—Consultation and conferenc-
22 ing under paragraphs (2) and (4) shall not be re-
23 quired for any agency action that—

24 “(A) is consistent with the guidance pro-
25 vided in a final conservation plan described in

1 section 5(j) or a conservation objective de-
2 scribed in section 5(b)(4);

3 “(B) is consistent with a cooperative man-
4 agement agreement or an incidental taking per-
5 mit;

6 “(C) addresses a critical, imminent threat
7 to public health or safety, or a catastrophic nat-
8 ural event; or

9 “(D) is considered routine operation, main-
10 tenance, or repair to a Federal or non-Federal
11 project or facility, including operation of a
12 project or facility in accordance with a pre-
13 viously issued Federal license or permit.

14 “(6) ACTIONS NOT CONSTITUTING TAKINGS.—
15 An agency action shall not constitute a taking of a
16 species prohibited by this Act (including any regula-
17 tion issued under this Act) if the action is—

18 “(A) described in paragraph (1) or (2) of
19 section 5(j); or

20 “(B) consistent with a cooperative manage-
21 ment agreement or an incidental taking permit.

22 “(7) RELATIONSHIP TO DUTIES UNDER OTHER
23 LAWS.—

24 “(A) IN GENERAL.—The responsibilities of
25 a Federal agency under this Act shall not su-

1 persede duties assigned to the Federal agency
2 by any other law or by any treaty or interstate
3 compact.

4 “(B) RESOLUTION OF CONFLICTS.—

5 “(i) REQUEST BY THE AGENCY.—If a
6 Federal agency determines that the re-
7 sponsibilities and duties described in sub-
8 paragraph (A) are in irreconcilable conflict,
9 the agency shall request the President to
10 resolve the conflict.

11 “(ii) DECISION BY THE PRESIDENT.—

12 In resolving a conflict under clause (i), the
13 President shall consider and choose the
14 course of action that best meets the public
15 interest and, to the extent practicable, bal-
16 ances pursuit of the conservation objective
17 or the purposes of the conservation plan
18 with pursuit of the purposes of the other
19 law, treaty, or interstate compact.

20 “(8) MODIFICATION OF PROJECTS AND FACILI-
21 TIES.—Any consultation and conferencing required
22 under paragraphs (2) and (4) for an agency action
23 that consists solely of a modification of a project or
24 facility shall be limited to the consideration of the

1 effects that result from the modification that com-
2 prises the agency action.”;

3 (2) in subsection (b)—

4 (A) in paragraph (1)—

5 (i) in subparagraph (A), by striking
6 “initiated or, subject to subparagraph (B),
7 within such other period of time as is mu-
8 tually agreeable to the Secretary and the
9 Federal agency.” and inserting “initiated
10 by the Federal agency. The period may be
11 extended by not more than 45 days by the
12 Secretary or head of the Federal agency by
13 publication of notice in the Federal Reg-
14 ister that sets forth the reasons for the ex-
15 tension. Consultation on an agency action
16 involving a permit or license applicant shall
17 be concluded not later than the earlier of—

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

20 “(ii) the end of the period established under
21 subparagraph (B).”;

22 (ii) in subparagraph (B)—

23 (I) in the first sentence—

1 (aa) by striking “In” and
2 inserting “Subject to subpara-
3 graph (A), in”; and

4 (bb) in clause (ii), by strik-
5 ing “150 or more days” and in-
6 sserting “on or after the 150th
7 day but before the 210th day”;
8 and

9 (II) by striking the second sen-
10 tence; and

11 (iii) by adding at the end the follow-
12 ing:

13 “(C) EFFECT OF FAILURE TO TIMELY
14 CONCLUDE CONSULTATION.—If consultation is
15 not concluded and the written statement of the
16 Secretary required under paragraph (3)(A) is
17 not provided to the Federal agency by the appli-
18 cable deadline established under this paragraph,
19 the requirements of subsection (a)(2) shall be
20 deemed to be met and the Federal agency may
21 proceed with the agency action.

22 “(D) PARTICIPATION BY APPLICANT.—A
23 permit or license applicant shall be entitled to
24 participate fully in any consultation or con-
25 ferencing under this section with respect to any

1 agency action required for the granting of an
2 authorization or provision of funding to the ap-
3 plicant.”;

4 (B) in paragraph (3)(A)—

5 (i) by striking “(3)(A) Promptly” and
6 inserting the following:

7 “(3) WRITTEN OPINION OF SECRETARY.—

8 “(A) ISSUANCE.—

9 “(i) IN GENERAL.—Promptly”;

10 (ii) in clause (i) (as so designated)—

11 (I) in the first sentence, by in-
12 serting after “detailing” the following:
13 “whether the agency action is consist-
14 ent with the conservation plan or con-
15 servation objective, an incidental tak-
16 ing permit, or a cooperative manage-
17 ment agreement and”; and

18 (II) by striking the second sen-
19 tence and inserting the following: “If
20 the Secretary determines that the ac-
21 tion is likely to jeopardize the contin-
22 ued existence of the species under
23 subsection (a)(2), the Secretary shall
24 suggest reasonable and prudent alter-
25 natives (considering any reasonable

1 and prudent alternatives undertaken
2 by other Federal agencies and the use
3 of mitigation banks) that are consist-
4 ent with subsection (a)(2) and that
5 impose the least social and economic
6 costs. Each reasonable and prudent
7 alternative shall be reasonable, pru-
8 dent, economically and technologically
9 feasible (including feasible for an ap-
10 plicant, if any), and consistent with
11 the legal authority and jurisdiction of
12 the agency.”; and

13 (iii) by adding at the end the follow-
14 ing:

15 “(ii) SCOPE.—Unless required by law
16 other than subsections (a) through (d), the
17 Secretary, in any opinion or statement con-
18 cerning an agency action made under this
19 subsection (including any reasonable and
20 prudent alternative suggested under clause
21 (i) or any reasonable and prudent measure
22 specified under clause (ii) of paragraph
23 (4)), and the head of the Federal agency
24 proposing the agency action, may not re-
25 quire, provide for, or recommend the impo-

1 sition of any restriction or obligation on
2 the activity of any person that is not au-
3 thorized, funded, carried out, or otherwise
4 subject to regulation by the Federal agen-
5 cy. Nothing in this clause prevents the
6 Secretary from pursuing any appropriate
7 remedy under section 11 for any activity
8 prohibited by section 4(d) or 9.”;

9 (C) in clause (ii) of paragraph (4), by in-
10 serting “, including the use of mitigation
11 banks,” after “measures”; and

12 (D) by adding at the end the following:

13 “(5) USE OF MITIGATION BANKS.—With the
14 approval of the Secretary, a Federal agency may
15 apply credits obtained from a mitigation bank to
16 satisfy a requirement to implement any reasonable
17 and prudent alternative under paragraph (3) or rea-
18 sonable and prudent measure under paragraph (4).

19 “(6) RISK ASSESSMENT.—

20 “(A) IN GENERAL.—Any opinion of the
21 Secretary provided under this subsection shall
22 include a clear and concise statement that—

23 “(i) describes and, to the extent prac-
24 ticable, quantifies the risks to endangered
25 species, threatened species, or critical habi-

1 tat to be addressed by the opinion and any
2 reasonable and prudent measures, reason-
3 able and prudent alternatives, or other
4 terms specified in the opinion and rec-
5 ommended for the Federal agency or appli-
6 cant to follow;

7 “(ii) estimates—

8 “(I) the costs to the Federal
9 Government, State and local govern-
10 ments, the applicant, and the private
11 sector of implementing and complying
12 with the elements of the opinion de-
13 scribed in clause (i); and

14 “(II) the benefits of the elements
15 of the opinion described in clause (i);
16 including both quantifiable measures of
17 costs and benefits, to the fullest extent
18 that the costs and benefits can be esti-
19 mated, and qualitative measures that are
20 difficult to quantify; and

21 “(iii) contains a certification by the
22 Secretary that—

23 “(I) the analyses performed
24 under clauses (i) and (ii) are based on

1 the best scientific and commercial
2 data available;

3 “(II) the elements of the opinion
4 described in clause (i) are likely to
5 significantly reduce the risks to the
6 endangered species, threatened spe-
7 cies, or critical habitat addressed by
8 the opinion;

9 “(III) there is no regulatory or
10 administrative alternative that is al-
11 lowed by this Act that would achieve
12 an equivalent reduction in risk in a
13 more cost-effective manner, along with
14 a brief explanation of why the regu-
15 latory or administrative alternatives
16 that were considered by the Secretary
17 were found to be less cost-effective;
18 and

19 “(IV) the elements of the opinion
20 described in clause (i) are likely to
21 produce benefits to endangered spe-
22 cies, threatened species, or critical
23 habitat that will justify the costs to
24 the Federal Government, State and
25 local governments, any applicant, and

1 the private sector of implementing
2 and complying with the elements.

3 “(B) NO EFFECT ON OTHER LAW OR AC-
4 TION.—Nothing in this paragraph—

5 “(i) affects any other Federal law;

6 “(ii) changes the factors that the Sec-
7 retary shall consider under this subsection
8 in issuing the opinion; or

9 “(iii) shall delay any action required
10 to meet a deadline imposed by law or a
11 court.

12 “(C) NO EFFECT ON RIGHTS.—

13 “(i) IN GENERAL.—Nothing in this
14 paragraph creates any right to judicial or
15 administrative review, or creates any right
16 or benefit, substantive or procedural, en-
17 forceable at law or equity by a party
18 against the United States, an agency, in-
19 strumentality, officer, or employee of the
20 United States, or any other person.

21 “(ii) USE IN OTHER REVIEW.—If the
22 elements of the opinion described in sub-
23 paragraph (A)(i) are subject to judicial or
24 administrative review under any other law,
25 the adequacy of the certification prepared

1 under subparagraph (A)(iii), and any al-
2 leged failure to comply with this para-
3 graph, may not be used as grounds for af-
4 fecting or invalidating the opinion, al-
5 though the statements and information
6 prepared under this paragraph, including
7 statements contained in the certification,
8 may be considered as part of the record for
9 judicial or administrative review conducted
10 under the other law.”;

11 (3) in subsection (c)—

12 (A) by striking “(1)”; and

13 (B) by striking paragraph (2);

14 (4) in subsection (d)—

15 (A) by striking “RESOURCES.—After”; and

16 inserting the following: “RESOURCES.—

17 “(1) IN GENERAL.—Except as provided in para-
18 graph (2), after”; and

19 (B) by adding at the end the following:

20 “(2) RELATIONSHIP TO LAND MANAGEMENT

21 PLANNING REQUIREMENTS.—If the listing of a spe-

22 cies, or other procedure or decision related to a spe-

23 cies listed under section 4(c)(1), requires consulta-

24 tion under subsection (a)(2) on a land use plan or

25 land or resource management plan (or an amend-

1 ment to or revision of the plan) prepared under sec-
2 tion 202 of the Federal Land Policy and Manage-
3 ment Act of 1976 (43 U.S.C. 1712) or section 6 of
4 the Forest and Rangeland Renewable Resources
5 Planning Act of 1974 (16 U.S.C. 1604), an agency
6 action that is consistent with the plan may (subject
7 to subparagraph (B)(ii)) be undertaken prior to the
8 completion of the consultation, if, under the proce-
9 dures established by this section, the head of the
10 land management agency responsible for the action
11 determines or has determined that the action—

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

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

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

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

24 (5) by striking subsection (e) and inserting the
25 following:

1 “(e) EXEMPTIONS.—Notwithstanding any other pro-
2 vision of this Act—

3 “(1) the Secretary shall grant an exemption
4 from this Act for any activity if the Secretary of De-
5 fense determines that the exemption of the activity
6 is necessary for reasons of national security; and

7 “(2) the President may grant an exemption
8 from this Act for any area that the President has
9 declared to be a major disaster area under the Rob-
10 ert T. Stafford Disaster Relief and Emergency As-
11 sistance Act (42 U.S.C. 5121 et seq.) for any project
12 for the repair or replacement of a public facility sub-
13 stantially as the facility existed prior to the disaster
14 under section 405 or 406 of the Act (42 U.S.C.
15 5171 and 5172), if the President determines that
16 the project—

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

20 “(B) involves an emergency situation that
21 does not allow the procedures of this Act (other
22 than this subsection) to apply.”; and

23 (6) by striking subsections (f) through (p) and
24 inserting the following:

1 “(f) WRITTEN STATEMENTS PROVIDED AFTER CON-
2 SULTATION.—Notwithstanding section 4(d) and subpara-
3 graphs (B) and (C) of section 9(a)(1) of this Act and sec-
4 tions 101 and 102 of the Marine Mammal Protection Act
5 of 1972 (16 U.S.C. 1371 and 1372), any taking that is
6 in compliance with the terms and conditions set forth in
7 a written statement provided under clause (iv) of sub-
8 section (b)(4) shall not be considered to be a prohibited
9 taking of the species that is the subject of the statement.”.

10 **SEC. 9. INTERNATIONAL COOPERATION.**

11 Section 8(b) (16 U.S.C. 1537) is amended—

12 (1) by striking “PROGRAMS.—In” and inserting
13 the following: “PROGRAMS.—

14 “(1) IN GENERAL.—In”;

15 (2) by striking “(1) foreign” and all that fol-
16 lows through “section 4 of this Act;”;

17 (3) by striking “(2) the entering” and inserting
18 the following:

19 “(A) the entering”;

20 (4) by striking “(3) foreign” and inserting the
21 following:

22 “(B) foreign”; and

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

24 “(2) COOPERATION WITH FOREIGN NATIONS.—

25 “(A) FINDINGS.—Congress finds that—

1 “(i) along with the United States,
2 other nations have pledged to conserve
3 wildlife as sovereign states in the inter-
4 national community and as parties to the
5 Convention; and

6 “(ii) many of these nations are in the
7 best position to know and to conserve the
8 wildlife that occurs in the nations.

9 “(B) COOPERATION.—In conserving for-
10 foreign species under this Act, the Secretary and
11 the Secretary of State shall act cooperatively
12 with nations described in subparagraph (A). To
13 the extent that the conservation programs of
14 the nations are consistent with the Convention,
15 the Secretary and the Secretary of State shall
16 not take any action under this Act that ob-
17 structs the programs unless the Secretary dem-
18 onstrates good cause for the action based on
19 adequate findings supported by substantial evi-
20 dence.”.

21 **SEC. 10. CONVENTION IMPLEMENTATION.**

22 Section 8A (16 U.S.C. 1537a) is amended by adding
23 at the end the following:

24 “(f) NONDUPLICATION OF FINDINGS.—In making
25 the finding required by paragraph 3(a) of Article III of

1 the Convention, the Secretary shall limit the finding to
2 the purpose of the importation, and shall not duplicate the
3 findings required to be made by the exporting nation that
4 is a party to the Convention except for good cause based
5 on adequate findings supported by substantial evidence.

6 “(g) RELATIONSHIP OF PROTECTIVE REGULATIONS
7 TO THE CONVENTION.—

8 “(1) IN GENERAL.—In issuing protective regu-
9 lations under section 4(d) with respect to a foreign
10 species, the Secretary—

11 “(A) shall not prohibit any act that is per-
12 mitted under the Convention, notwithstanding
13 Article XIV of the Convention; and

14 “(B) prior to publishing the proposed pro-
15 tective regulations in the Federal Register,
16 shall—

17 “(i) transmit the full text and a com-
18 plete description of the proposed regula-
19 tions (including the information described
20 in paragraph (2)) directly to the appro-
21 priate wildlife management authority of
22 each nation in which the species naturally
23 occurs, in an official language of the na-
24 tion; and

1 “(ii) provide to each authority a pe-
2 riod of not less than 180 days (beginning
3 on the date of receipt by the authority of
4 the materials described in clause (i)) for
5 review and comment on the proposed regu-
6 lations.

7 “(2) ANALYSES.—Materials transmitted under
8 paragraph (1)(B)(i) shall include—

9 “(A) a readily understandable, nontech-
10 nical explanation of the reasons for and purpose
11 of the proposed regulations;

12 “(B) an analysis of the anticipated bene-
13 ficial or detrimental impacts of the regulation
14 on—

15 “(i) the economic, social, and cultural
16 utilization of the species by the nation, if
17 any; and

18 “(ii) the resource management and
19 conservation programs of the nation; and

20 “(C) a summary of—

21 “(i) the literature reviewed and ex-
22 perts consulted by the Secretary with re-
23 spect to the species; and

24 “(ii) the findings of the Secretary
25 based on the review and consultation.

1 “(3) DISCUSSIONS WITH FOREIGN OFFICIALS.—
2 The Secretary shall enter into discussions with the
3 officials of each wildlife management authority to
4 which materials are transmitted under paragraph
5 (1)(B)(i). If the officials determine that further
6 studies of the species should be conducted, the Sec-
7 retary shall assist the officials in obtaining funds for
8 the studies and in carrying out the studies.

9 “(4) CONCURRENCE OF FOREIGN OFFICIALS.—
10 Prior to publishing proposed protective regulations
11 in the Federal Register under section 4(d), the Sec-
12 retary shall make every effort to obtain the written
13 concurrence to the regulations of each wildlife man-
14 agement authority to which materials are transmit-
15 ted under paragraph (1)(B)(i). If the concurrence is
16 not obtained, the Secretary may not issue the pro-
17 posed regulations without first submitting the regu-
18 lations to and obtaining the approval of the Presi-
19 dent.”.

20 **SEC. 11. PROHIBITED ACTS.**

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

22 (1) in paragraph (1), by striking “sections
23 6(g)(2) and 10 of this Act” and inserting “para-
24 graph (3), subsections (j)(3) and (l) of section 5,
25 and sections 6(g) and 10”;

1 (2) in paragraph (2), by striking “sections
2 6(g)(2) and 10 of this Act” and inserting “sub-
3 sections (j)(3) and (l) of section 5, and sections 6(g)
4 and 10”; and

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

6 “(3) PERMITTED TAKINGS.—An activity of a
7 non-Federal person shall be deemed not to constitute
8 a taking of a species if the activity—

9 “(A) is consistent with the applicable guid-
10 ance of a conservation plan or conservation ob-
11 jective;

12 “(B) complies with the terms and condi-
13 tions of an incidental taking permit or a cooper-
14 ative management agreement; or

15 “(C) addresses a critical, imminent threat
16 to public health or safety or a catastrophic nat-
17 ural event.

18 “(4) INHERENTLY LIMITED USE.—The provi-
19 sions of subsection (a) prohibiting importation shall
20 not apply to a member of a threatened species—

21 “(A) taken for scientific collection, live ex-
22 port for captive breeding, sport hunting, or fal-
23 conry in accordance with the laws of a foreign
24 nation that is a party to the Convention; and

1 “(B) accompanied by an export permit is-
2 sued by the nation or an equivalent document.”.

3 **SEC. 12. EXCEPTIONS AND INCENTIVES.**

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

6 (1) in the section heading, by inserting “AND
7 INCENTIVES” after “EXCEPTIONS”;

8 (2) in subsection (a)—

9 (A) in paragraph (1)—

10 (i) by inserting “reasonable” after
11 “under such”; and

12 (ii) in subparagraph (A)—

13 (I) by striking “to, acts” and in-
14 serting the following: “to—

15 “(i) acts”;

16 (II) in clause (i) (as so des-
17 ignated), by striking “or” at the end;
18 and

19 (III) by adding at the end the
20 following:

21 “(ii) the public display or exhibition of liv-
22 ing wildlife in a manner designed to educate, or
23 that otherwise contributes to the education of,
24 the public about the ecological role and con-
25 servation needs of the affected species;

1 “(iii) in the case of foreign species, acts
2 that are consistent with the Convention and
3 with conservation strategies adopted by the for-
4 eign nations responsible for the conservation of
5 the species; and

6 “(iv) acts necessary for research concern-
7 ing, and the carrying out of, captive propaga-
8 tion programs; or”;

9 (B) in paragraph (2)—

10 (i) in subparagraph (A)—

11 (I) by striking “No” and insert-
12 ing “Except as provided in paragraph
13 (3), no”;

14 (II) by inserting “non-Federal”
15 before “conservation plan”;

16 (III) in clause (i), by striking
17 “such taking” and inserting “the ac-
18 tivities to be permitted”; and

19 (IV) in clause (ii), by inserting
20 “including the use of mitigation
21 banks,” after “impacts,”;

22 (ii) in subparagraph (B)—

23 (I) in the first sentence, by in-
24 serting “non-Federal” before “con-
25 servation plan”; and

1 (II) by adding at the end the fol-
2 lowing: “Notwithstanding the preced-
3 ing sentence, the terms and conditions
4 of the permit shall relate only to the
5 removal of factors that actually pre-
6 vent the achievement and maintenance
7 of populations of the species, in the
8 area in which the proposed activity is
9 to be carried out, at the level specified
10 in the conservation plan in quan-
11 titative biological terms.”; and

12 (iii) by striking subparagraph (C) and
13 inserting the following:

14 “(C) USE OF MITIGATION BANKS.—With
15 the approval of the Secretary, credits obtained
16 from a mitigation bank may be used to satisfy,
17 in whole or in part, the requirement for a non-
18 Federal conservation plan under this para-
19 graph.

20 “(D) SCOPE OF PERMIT.—The Secretary
21 may not require the applicant, as a condition of
22 processing the application or issuing the permit,
23 to expand the application to include land, an in-
24 terest in land, or a proprietary water right not
25 owned by the applicant or to address a species

1 other than the species for which the application
2 is made, unless the Secretary determines that
3 the requirement will not appreciably increase
4 the time or cost of processing the application or
5 the cost of implementing the permit.

6 “(E) ENVIRONMENTAL ASSESSMENTS.—
7 The preparation and approval of a non-Federal
8 conservation plan and issuance of a permit
9 under paragraph (1)(B) shall not be subject to
10 section 7 of this Act or section 102(2) of the
11 National Environmental Policy Act of 1969 (42
12 U.S.C. 4332(2)).

13 “(F) NO SURPRISES.—

14 “(i) IN GENERAL.—Except under ex-
15 traordinary circumstances determined
16 under clause (ii), no additional measures to
17 minimize and mitigate impacts on a species
18 that is a subject of a permit issued under
19 paragraph (1)(B) shall be required of a
20 permittee that is in compliance with the
21 permit. With respect to any species that is
22 a subject of such a permit, under no cir-
23 cumstance shall a permittee in compliance
24 with the permit be required to make any
25 additional payment for any purpose, or ac-

1 cept any additional restriction on any par-
2 cel of land available for development or
3 land management under the permit, with-
4 out the consent of the permittee.

5 “(ii) EXTRAORDINARY CIR-
6 CUMSTANCES.—

7 “(I) IN GENERAL.—The Sec-
8 retary shall have the burden of dem-
9 onstrating and clearly documenting
10 that an extraordinary circumstance
11 under clause (i) exists.

12 “(II) DATA.—In making the de-
13 termination whether an extraordinary
14 circumstance under clause (i) exists,
15 the Secretary shall use the best sci-
16 entific and commercial data available.

17 “(III) FACTORS.—The Secretary
18 shall establish, by regulation, the fac-
19 tors to be considered in making the
20 determination whether an extraor-
21 dinary circumstance under clause (i)
22 exists.

23 “(G) INTERIM PERMIT.—

24 “(i) IN GENERAL.—For such activities
25 as the Secretary determines will not appre-

1 ciably reduce the chances of survival of a
2 species, the Secretary may issue an interim
3 permit to any applicant for a permit under
4 this section that provides evidence of ap-
5 propriate interim measures that—

6 “(I) will minimize and mitigate
7 any impacts of any incidental taking
8 that may be associated with the activ-
9 ity proposed for permitting; and

10 “(II) are to be performed while
11 the underlying permit application is
12 being considered under this section.

13 “(ii) CONTENTS.—An interim permit
14 issued under clause (i)—

15 “(I) shall specifically state the
16 types of activities that are authorized
17 to be carried out under the interim
18 permit;

19 “(II) shall not create any right to
20 the issuance of a permit under this
21 section;

22 “(III) shall expire on the date of
23 the granting or denial of the underly-
24 ing permit application; and

1 “(IV) may be revoked by the Sec-
2 retary upon the termination of a 60-
3 day period following notice to the ap-
4 plicant for any failure to comply with
5 any term of the interim permit.

6 “(H) REVOCATION OF PERMIT.—The Sec-
7 retary shall revoke a permit issued under this
8 paragraph if the Secretary determines that the
9 permittee is not complying with the terms and
10 conditions of the permit.”; and

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

12 “(3) VOLUNTARY CONSULTATION BY NON-FED-
13 ERAL PERSONS.—

14 “(A) IN GENERAL.—Subject to such regu-
15 lations as the Secretary may issue, any non-
16 Federal person may initiate consultation with
17 the Secretary on any prospective activity of the
18 person—

19 “(i) to determine whether the activity
20 is consistent or inconsistent with a con-
21 servation plan or conservation objective; or

22 “(ii) if the person determines that the
23 activity is inconsistent, to determine
24 whether the activity is likely to jeopardize
25 the continued existence of an endangered

1 species or a threatened species, or to de-
2 stroy or adversely modify the designated
3 critical habitat of the species in a manner
4 that is likely to jeopardize the continued
5 existence of the species.

6 “(B) PROCEDURES AND REQUIREMENTS.—

7 The voluntary consultation process for non-Fed-
8 eral persons authorized by subparagraph (A)
9 shall be conducted in accordance with the pro-
10 cedures and requirements for consultation on
11 agency actions specified in section 7, except
12 that—

13 “(i) the period for completion of the
14 consultation shall end 90 days after the
15 date on which the consultation is initiated,
16 or not later than such other date as is mu-
17 tually agreeable to the Secretary and the
18 person initiating the consultation;

19 “(ii) the person initiating the con-
20 sultation shall not be required to prepare
21 a biological assessment or equivalent docu-
22 ment;

23 “(iii) neither the activity for which the
24 consultation process is sought nor the con-
25 sultation process shall be deemed to be a

1 Federal action for the purpose of compli-
2 ance with section 102(2) of the National
3 Environmental Policy Act of 1969 (42
4 U.S.C. 4332(2)) or an agency action for
5 the purpose of compliance with the con-
6 sultation requirement of section 7(a)(2);

7 “(iv) the Secretary shall provide the
8 person initiating the consultation with a
9 written opinion only, unless the person re-
10 quests an incidental taking permit and
11 meets the requirements of clause (v); and

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

15 “(I) consistency under subpara-
16 graph (A)(i);

17 “(II) no jeopardy under subpara-
18 graph (A)(ii); or

19 “(III) jeopardy under subpara-
20 graph (A)(ii), but offers a reasonable
21 and prudent alternative that the per-
22 son initiating the consultation accepts.

23 “(4) GENERAL PERMITS.—

24 “(A) IN GENERAL.—After providing notice
25 and opportunity for public hearing, the Sec-

1 retary may issue a general permit under para-
2 graph (1)(B) on a county, State, regional, or
3 nationwide basis for any category of activities
4 that may affect a species that is included in a
5 list published under section 4(c)(1) if the Sec-
6 retary determines that the activities in the cat-
7 egory are similar in nature, will cause only
8 minimal adverse effects on the species if per-
9 formed separately, and will have only minimal
10 cumulative adverse effects on the species gen-
11 erally. A general permit issued under this para-
12 graph shall specify the requirements and stand-
13 ards that apply to an activity authorized by the
14 general permit.

15 “(B) DURATION.—A general permit issued
16 under this paragraph shall be effective for a pe-
17 riod to be specified by the Secretary, but not to
18 exceed the 5-year period that begins on the date
19 of issuance of the permit.

20 “(C) REVOCATION OR MODIFICATION.—
21 The Secretary may revoke or modify a general
22 permit if, after providing notice and oppor-
23 tunity for public hearing, the Secretary deter-
24 mines that the activities authorized by the gen-
25 eral permit have a greater than minimal ad-

1 verse effect on a species that is included in a
2 list published under section 4(c)(1) or that the
3 activities are more appropriately authorized by
4 individual permits issued under paragraph (1)
5 or (3).

6 “(D) REPORTS.—The Secretary may re-
7 quire an annual report on the activities author-
8 ized by a general permit, but may not require
9 reports more frequently than annually.

10 “(5) EDUCATIONAL AND PROPAGATION PER-
11 MITS.—

12 “(A) CONDITIONS OF ISSUANCE.—A per-
13 mit referred to in clause (ii) or (iv) of para-
14 graph (1)(A) shall be issued if—

15 “(i) in the case of a permit referred to
16 in paragraph (1)(A)(ii)—

17 “(I) the applicant holds a current
18 and valid license as an exhibitor under
19 section 3 of the Animal Welfare Act
20 (7 U.S.C. 2133);

21 “(II) the applicant maintains a
22 public display or exhibition of living
23 wildlife described in paragraph
24 (1)(A)(ii); and

1 “(III) viewing of the public dis-
2 play or exhibition is not limited or re-
3 stricted other than by charging an ad-
4 mission fee; and

5 “(ii) in the case of a permit referred
6 to in paragraph (1)(A)(iv), the applicant
7 has demonstrated the ability to use propa-
8 gation techniques that result in increases
9 in the populations of species held in cap-
10 tivity for the purpose of—

11 “(I) eventual release into the
12 wild;

13 “(II) maintenance of live speci-
14 mens; or

15 “(III) falconry.

16 “(B) DEADLINES FOR ISSUANCE OF PER-
17 MITS TO EXPERIENCED PERSONS.—

18 “(i) CURRENT PERMIT HOLDERS.—
19 Not later than 30 days after the date of
20 enactment of this paragraph, the Secretary
21 shall issue a permit under subparagraph
22 (A) to any qualified organization or person
23 that holds a permit issued under this Act
24 or a law referred to in subparagraph (E)
25 and that—

1 “(I) has demonstrated the ability
2 to handle or recover species for a min-
3 imum of 15 years; or

4 “(II) has been issued at least 10
5 such permits in the aggregate and has
6 not violated any term or condition of
7 such a permit.

8 “(ii) PERSONS NOT HOLDING PER-
9 MITS.—The Secretary shall issue a permit
10 under subparagraph (A) not later than 90
11 days after the date of receipt of a com-
12 pleted application from any qualified orga-
13 nization or person that, as of the date of
14 receipt, does not hold any permit issued
15 under this Act or a law referred to in sub-
16 paragraph (E) but—

17 “(I) has demonstrated the ability
18 to handle or recover species for at
19 least 15 years; or

20 “(II) has been issued at least 10
21 such permits in the aggregate and has
22 not violated any term or condition of
23 such a permit.

24 “(C) OTHER TERMS OF EDUCATIONAL
25 PERMITS.—

1 “(i) TERM.—A permit referred to in
2 paragraph (1)(A)(ii) shall be for a term of
3 not less than 6 years.

4 “(ii) ADDITIONAL AUTHORITY.—A
5 permit referred to in paragraph (1)(A)(ii)
6 shall also authorize the permittee to im-
7 port, export, sell, purchase, or otherwise
8 transfer possession of the affected species.

9 “(iii) REVOCATION.—The Secretary
10 shall revoke a permit referred to in para-
11 graph (1)(A)(ii) if the Secretary deter-
12 mines that the permittee—

13 “(I) no longer meets the require-
14 ments of subparagraph (A) and is not
15 reasonably likely to meet the require-
16 ments in the near future;

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

19 “(III) is engaging in an activity
20 likely to jeopardize the continued ex-
21 istence of the species subject to the
22 permit.

23 “(D) SCOPE OF PERMITS.—A permit de-
24 scribed in subparagraph (A)—

1 “(i) shall be the only permit required
2 for the activities authorized by the permit;
3 and

4 “(ii) may cover activities for 1 or
5 more species or taxa simultaneously.

6 “(E) CONSOLIDATION OF PERMITS.—Not-
7 withstanding any other law, the Secretary shall
8 consolidate the authorizations for any activities
9 permitted under—

10 “(i) a permit described in subpara-
11 graph (A);

12 “(ii) the Act of June 8, 1940 (54
13 Stat. 250, chapter 278; 16 U.S.C. 668 et
14 seq.) (commonly known as the ‘Bald Eagle
15 Protection Act’);

16 “(iii) the Migratory Bird Treaty Act
17 (16 U.S.C. 703 et seq.);

18 “(iv) the Migratory Bird Conservation
19 Act (16 U.S.C. 715 et seq.);

20 “(v) the Marine Mammal Protection
21 Act of 1972 (16 U.S.C. 1361 et seq.);

22 “(vi) the Fish and Wildlife Conserva-
23 tion Act of 1980 (16 U.S.C. 2901 et seq.);

24 “(vii) the Lacey Act Amendments of
25 1981 (16 U.S.C. 3371 et seq.);

1 “(viii) the Wild Bird Conservation Act
2 of 1992 (16 U.S.C. 4901 et seq.); or

3 “(ix) section 42 of title 18, United
4 States Code;

5 into a single consolidated permit to cover all
6 such authorized activities.”.

7 “(6) TAKING OF SPECIES FOR INHERENTLY
8 LIMITED USES.—

9 “(A) REBUTTABLE PRESUMPTION.—In the
10 case of a determination whether to issue a per-
11 mit under this subsection with respect to a spe-
12 cies, there shall be a rebuttable presumption
13 that the survival of the species is enhanced by
14 the ordinary benefit occurring from the taking
15 of a member of the species for scientific collec-
16 tion, live export for captive breeding, sport
17 hunting, or falconry in accordance with the
18 wildlife management laws of the nation in
19 which the species occurs.

20 “(B) PREREQUISITE TO LIMITATIONS BY
21 THE SECRETARY.—The Secretary may not
22 refuse to issue a permit for a purpose described
23 in subparagraph (A) for a member of a species
24 and may not limit the number of the members
25 that may be imported unless the Secretary—

1 “(i) issues regulations containing the
2 limitation; and

3 “(ii) prior to the issuance of the regu-
4 lations, makes and publishes in the Fed-
5 eral Register a finding that there is sub-
6 stantial evidence that the detriment result-
7 ing from the taking of the members out-
8 weighs the benefit derived from the taking.

9 “(C) TRANSMISSION TO FOREIGN WILD-
10 LIFE AUTHORITY.—In the case of a limitation
11 on imports, the Secretary shall—

12 “(i) transmit the full text and a com-
13 plete description of the proposed regula-
14 tions referred to in subparagraph (B) di-
15 rectly to the appropriate wildlife manage-
16 ment authority of each nation from which
17 the species is exported, in an official lan-
18 guage of the nation; and

19 “(ii) provide to each authority a pe-
20 riod of not less than 180 days (beginning
21 on the date of receipt by the authority of
22 the materials described in clause (i)) for
23 review and comment on the proposed regu-
24 lations.”;

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

4 (4) in subsection (j)(2)—

5 (A) in subparagraph (B)—

6 (i) by striking “(B) Before” and in-
7 serting the following:

8 “(B) REQUIREMENTS FOR EXPERIMENTAL
9 POPULATION RELEASES.—

10 “(i) IDENTIFICATIONS.—Before”;

11 (ii) by inserting “and the precise
12 boundaries of the geographic area for the
13 release” after “the population”;

14 (iii) by inserting “whether the release
15 is in the public interest and” after “infor-
16 mation,”; and

17 (iv) by adding at the end the follow-
18 ing:

19 “(ii) OTHER REQUIREMENTS.—In au-
20 thorizing the release of a population under
21 subparagraph (A), the Secretary shall re-
22 quire that—

23 “(I) to the extent practicable, the
24 release occur only in a unit of the Na-

1 tional Park System or the National
2 Wildlife Refuge System;

3 “(II) a release outside such a
4 unit occur only in an area that has
5 been identified as a candidate site for
6 release of the population in a con-
7 servation plan for the species;

8 “(III) in the case of a release
9 outside such a unit, measures to pro-
10 tect the safety and welfare of the pub-
11 lic and domestic animals and the
12 funding for the measures are identi-
13 fied in the regulations authorizing the
14 release and are implemented;

15 “(IV) a release on non-Federal
16 land occur only with the written con-
17 sent of the owner of the land; and

18 “(V) the regulations authorizing
19 the release include measurable re-
20 introduction goals to restore viable
21 populations only within the specific
22 geographic area identified for release
23 in the regulations.”; and

24 (B) in subparagraph (C)—

1 (i) in clause (i), by striking “and” at
2 the end;

3 (ii) by redesignating clause (ii) as
4 clause (iii); and

5 (iii) by inserting after clause (i) the
6 following:

7 “(ii) for the purposes of sections 4(d) and
8 9(a)(1)(B), any member of an experimental popu-
9 lation found outside the geographic area in which
10 the population is released shall not be treated as a
11 threatened species if the member poses a threat to
12 the welfare of property or the public; and”;

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

14 “(k) MULTIPLE SPECIES NON-FEDERAL CONSERVA-
15 TION PLANS.—

16 “(1) INCLUSION IN A NON-FEDERAL CONSERVA-
17 TION PLAN.—An applicant for an incidental taking
18 permit may include in the non-Federal conservation
19 plan prepared under subsection (a)(2)(A), in addi-
20 tion to the endangered species for which the permit
21 is applied—

22 “(A) any threatened species that inhabits
23 the area covered by the plan; and

24 “(B) any other species that inhabits the
25 area covered by the plan.

1 “(2) PERMIT CONDITIONS AND RECOMMENDA-
2 TIONS.—The Secretary shall include in any inciden-
3 tal taking permit issued with respect to a non-Fed-
4 eral conservation plan that includes multiple species
5 as provided in paragraph (1)—

6 “(A) permission for the incidental taking
7 of any threatened species under section 4(d);
8 and

9 “(B) recommended terms and conditions to
10 address species included in the plan that have
11 not been determined to be endangered species
12 or threatened species, which recommendations
13 shall become terms and conditions of the per-
14 mit.

15 “(3) EFFECT OF LISTING OF SPECIES.—A mul-
16 tiple species non-Federal conservation plan developed
17 under this subsection and a permit issued with re-
18 spect to the plan shall remain in effect and shall not
19 be required to be amended if a species to which the
20 plan and permit apply is determined to be an endan-
21 gered species or a threatened species under section
22 4.

23 “(l) WILDLIFE BRED IN CAPTIVITY.—

24 “(1) IN GENERAL.—In this Act (including any
25 regulation issued under this Act), the terms ‘bred in

1 captivity’ and ‘captive-bred’, with respect to fish or
2 wildlife, mean fish or wildlife progeny, including
3 eggs, born or otherwise produced in captivity from
4 parents that—

5 “(A) in the case of sexual reproduction,
6 mated or otherwise transferred gametes in cap-
7 tivity; or

8 “(B) in the case of asexual reproduction,
9 were in captivity when development of the prog-
10 eny began.

11 “(2) TREATMENT OF PROGENY.—Fish or wild-
12 life progeny described in paragraph (1) shall be con-
13 sidered to be domestic fish or wildlife for all pur-
14 poses and shall not be subject to this Act and the
15 laws referred to in subsection (a)(5)(E) unless the
16 progeny are intentionally and permanently released
17 into the wild.

18 “(3) RECORDKEEPING.—

19 “(A) IN GENERAL.—A person holding any
20 fish or wildlife progeny that the person desires
21 to be subject to this subsection shall—

22 “(i) be able to demonstrate that the
23 progeny do, in fact, meet the requirements
24 of paragraph (1); and

1 “(ii) maintain and submit to the Sec-
2 retary, on request, such inventories, docu-
3 mentation, and records as the Secretary
4 may require by regulation in accordance
5 with subparagraph (B).

6 “(B) REQUIREMENTS OF REGULATIONS.—
7 The recordkeeping requirements issued under
8 subparagraph (A)(ii)—

9 “(i) shall be reasonable and appro-
10 priate to carry out this subsection; and

11 “(ii) shall not unnecessarily duplicate
12 the requirements of other regulations is-
13 sued by the Secretary.

14 “(m) RECOGNIZING CAPTIVE PROPAGATION AS A
15 MEANS OF RECOVERY.—

16 “(1) IN GENERAL.—In carrying out this Act,
17 the Secretary shall recognize, and may utilize, cap-
18 tive propagation as a means of protecting or con-
19 serving an endangered species or a threatened spe-
20 cies.

21 “(2) CAPTIVE PROPAGATION GRANTS.—The
22 Secretary may provide annual grants to non-Federal
23 persons to fund captive propagation programs for
24 the purpose of protecting or conserving any species
25 that is determined under section 4 to be an endan-

1 gered species or a threatened species, if the Sec-
2 retary determines that—

3 “(A) such a program contributes to en-
4 hancement of the population of the species;

5 “(B) techniques for release to the wild
6 exist that will ensure survival of the species;
7 and

8 “(C) suitable unoccupied habitat of the
9 species exists at the time the captive reared
10 members of the species become available for re-
11 lease.

12 “(n) MITIGATION BANKS.—

13 “(1) IN GENERAL.—Not later than 180 days
14 after the date of enactment of this subsection, the
15 Secretary shall issue regulations in accordance with
16 paragraph (3) providing criteria for the establish-
17 ment, use, maintenance, and oversight of mitigation
18 banks to promote the conservation of endangered
19 species or threatened species and habitat of the spe-
20 cies.

21 “(2) USE OF BANKS.—A mitigation bank that
22 meets the criteria established by the regulations may
23 be used to obtain—

24 “(A) regulatory credits that may be used
25 to offset adverse impacts to endangered species

1 or threatened species or habitat of the species;
2 or

3 “(B) other forms of relief from the re-
4 quirements of this Act.

5 “(3) CRITERIA.—The regulations issued under
6 paragraph (1) shall ensure that each mitigation
7 bank—

8 “(A) to the extent practicable and environ-
9 mentally desirable, provides in-kind replacement
10 of lost habitat functions, and contains habitat
11 located in proximity to the adversely affected
12 habitat for which the habitat in the mitigation
13 bank is an offset;

14 “(B) is owned and operated by an entity
15 that has the financial ability to meet the re-
16 quirements of this subsection;

17 “(C) requires the deposit by the entity of
18 a performance bond or other appropriate dem-
19 onstration of financial responsibility to support
20 the long-term maintenance of the mitigation
21 bank;

22 “(D) requires the entity to provide for the
23 long-term security of ownership interests of the
24 habitat in the mitigation bank to protect the es-

1 sential biological and ecological functions asso-
2 ciated with the mitigation bank;

3 “(E) specifies responsibilities for long-term
4 monitoring, maintenance, and protection of the
5 habitat in the mitigation bank;

6 “(F) employs consistent and scientifically
7 sound methods to—

8 “(i) determine debits by evaluating
9 the habitat functions, adverse impacts, and
10 the duration of each impact at each site of
11 a proposed activity or agency action that
12 affects endangered species or threatened
13 species; and

14 “(ii) determine credits based on the
15 habitat functions of the habitat contained
16 in the mitigation bank;

17 “(G) provides—

18 “(i) for the transfer of credits for
19 mitigation that has been performed and for
20 mitigation that will be performed within a
21 designated period in the future; and

22 “(ii) for the posting of financial bonds
23 in sufficient amount to ensure that the fu-
24 ture mitigation will be performed in the
25 case of default; and

1 “(H) provides opportunity for public notice
2 of, and comment on, proposals for a mitigation
3 bank and applications for the use of credits
4 from a mitigation bank.

5 “(4) REPORTS.—Not later than 1 year after the
6 date of enactment of this subsection, and annually
7 thereafter, the Secretary shall submit a report to the
8 Committee on Environment and Public Works of the
9 Senate and the Committee on Resources of the
10 House of Representatives describing Federal actions
11 taken to encourage non-Federal parties to establish
12 mitigation banks, and providing information on the
13 performance of the mitigation banks that have been
14 established.”.

15 (b) CONFORMING AMENDMENT.—The table of con-
16 tents in the first section (16 U.S.C. prec. 1531) is amend-
17 ed by striking the item relating to section 10 and inserting
18 the following:

 “Sec. 10. Exceptions and incentives.”.

19 **SEC. 13. PENALTIES AND ENFORCEMENT.**

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

21 (1) in subsection (d)—

22 (A) in paragraph (2) of the first sentence,
23 by inserting “endangered or threatened” after
24 “temporary care for any”; and

1 (B) in the last sentence, by striking “sec-
2 tion 6(i) of this Act” and inserting “section
3 6(l)”;

4 (2) in subsection (e)—

5 (A) in the fourth sentence of paragraph
6 (3), by striking “fish, wildlife,” and inserting
7 “endangered or threatened fish or wildlife,”;

8 (B) in paragraph (4)—

9 (i) in subparagraph (A), by inserting
10 “endangered or threatened” before “fish”;

11 and

12 (ii) in subparagraph (B), by inserting
13 “endangered or threatened” before “fish”;

14 (C) by redesignating paragraphs (5) and
15 (6) as paragraphs (7) and (8), respectively; and

16 (D) by inserting after paragraph (4) the
17 following:

18 “(5) IDENTIFICATION OF SPECIMENS.—

19 “(A) BURDEN OF PROOF.—In carrying out
20 this section, the burden of proof shall be on the
21 Secretary to demonstrate that a specimen be-
22 longs to a species that has been determined to
23 be an endangered species or a threatened spe-
24 cies under this Act, or is included in an Appen-
25 dix to the Convention.

1 “(B) LIMITATION ON DETAINING SPECI-
2 MENS.—The Secretary may not detain a speci-
3 men for a period of longer than 30 days for the
4 purpose of identification, unless the specimen
5 has been substantially changed from the natural
6 appearance of the specimen, in which case the
7 specimen may be retained for an additional 30
8 days for identification. If the specimen cannot
9 be identified within that period, the specimen
10 shall be released.

11 “(6) BASIS OF ACTIONS.—No refusal of entry,
12 seizure of evidence, or other enforcement action may
13 take place under this Act if the action is based solely
14 on a notification under the Convention or on a reso-
15 lution of the Conference of the Parties to the Con-
16 vention.”;

17 (3) in subsection (f)—

18 (A) by striking “REGULATIONS.—The”
19 and inserting the following: “REGULATIONS.—
20 “(1) ENFORCEMENT AND FEES.—The”;

21 (B) in the first sentence of paragraph (1)
22 (as so designated), by inserting “endangered or
23 threatened” before “fish”; and

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

1 “(2) REQUIREMENT OF OTHER REGULA-
2 TIONS.—An interpretation, policy, guideline, finding,
3 or other informal determination may not be relied on
4 by the Secretary in the enforcement of this Act un-
5 less a regulation has been issued containing the de-
6 termination, after notice and opportunity for com-
7 ment for a period of not less than 60 days. A pro-
8 posed regulation under this paragraph shall in-
9 clude—

10 “(A) a readily understandable, nontech-
11 nical explanation of the reasons for and the
12 purpose of the proposed regulation;

13 “(B) an analysis showing that compliance
14 with the regulation is reasonably within the
15 means of each nation that is a party to the
16 Convention; and

17 “(C) a summary of—

18 “(i) the literature reviewed and ex-
19 perts consulted by the Secretary with re-
20 spect to the regulation; and

21 “(ii) the findings of the Secretary
22 based on the review and consultation.”;
23 and

24 (4) in subsection (g)—

25 (A) in paragraph (1)—

- 1 (i) in the first sentence—
- 2 (I) in subparagraph (A)—
- 3 (aa) by striking “any per-
- 4 son, including the United States”
- 5 and inserting “the United States
- 6 or any agency or official of the
- 7 United States”; and
- 8 (bb) by striking “thereof;”
- 9 and inserting “of this Act, if the
- 10 violation poses immediate and ir-
- 11 reparable harm to an endangered
- 12 species or a threatened species;”;
- 13 (II) by striking subparagraph
- 14 (B); and
- 15 (III) by redesignating subpara-
- 16 graph (C) as subparagraph (B);
- 17 (ii) in the second sentence, by striking
- 18 “without regard to the amount in con-
- 19 troversy or the citizenship of the parties,”;
- 20 and
- 21 (iii) by striking the last sentence;
- 22 (B) in paragraph (2)—
- 23 (i) by striking subparagraph (B);
- 24 (ii) by redesignating subparagraph
- 25 (C) as subparagraph (B); and

1 (iii) in subparagraph (B) (as so reded-
2 ignated)—

3 (I) by striking “subparagraph
4 (1)(C) of this section” and inserting
5 “paragraph (1)(B)”; and

6 (II) by inserting before the pe-
7 riod at the end the following: “in-
8 cluded in a list published under sec-
9 tion 4(c)(1)”;

10 (C) in paragraph (3)—

11 (i) by striking “(3)(A) Any” and in-
12 serting the following:

13 “(3) VENUE.—Any”; and

14 (ii) by striking subparagraph (B); and

15 (D) by adding at the end the following:

16 “(6) ACTIONS TO REMEDY ECONOMIC IN-
17 JURY.—Any person (including a person that sustains
18 actual or imminent economic injury as a direct or in-
19 direct result of the implementation of, or a violation
20 of, this Act or a regulation issued under this Act by
21 the United States or any agency or official of the
22 United States) may—

23 “(A) to the full extent permitted by the
24 Constitution without regard to any prudential

1 limitations, commence a civil suit as authorized
2 by this subsection to—

3 “(i) remedy any violation of this Act
4 or a regulation issued under this Act by
5 the United States or any agency or official
6 of the United States; or

7 “(ii) challenge this Act or a regulation
8 issued under this Act or the implementa-
9 tion of this Act or the regulation; and

10 “(B) intervene as a matter of right in any
11 suit brought under this Act that threatens to
12 cause injury to the person or relates to any in-
13 jury sustained by the person, which intervener
14 shall have the same right to present argument
15 and to accept or reject potential settlements as
16 do the parties to the suit.”.

17 **SEC. 14. ENDANGERED PLANTS.**

18 Section 12 (16 U.S.C. 1541) is amended to read as
19 follows:

20 “ENDANGERED PLANTS

21 “SEC. 12. The Commission, in cooperation with the
22 Secretary of the Smithsonian Institution and the heads
23 of other affected agencies, shall—

24 “(1) review species of plants that, as of the
25 date of enactment of this paragraph—

1 “(A) are or may become endangered or
2 threatened within any State; and

3 “(B) are known to produce pharmaceutical
4 or agricultural biochemicals; and

5 “(2) not later than 1 year after the date of en-
6 actment of this paragraph, report to the Secretary
7 on the results of the review.”.

8 **SEC. 15. ENDANGERED SPECIES COMMISSION.**

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

11 “ENDANGERED SPECIES COMMISSION

12 “SEC. 13. (a) ESTABLISHMENT.—

13 “(1) IN GENERAL.—There is established an ad-
14 visory committee to the Secretary to be known as
15 the ‘Endangered Species Commission’.

16 “(2) MEMBERSHIP.—

17 “(A) IN GENERAL.—The Commission shall
18 be composed of 5 members who shall be ap-
19 pointed by the President, by and with the ad-
20 vice and consent of the Senate, from a list of
21 individuals submitted under subparagraph (B).
22 Each field described in subparagraph (B) shall
23 be represented by 1 member of the Commission.

24 “(B) LIST.—Not later than 100 days after
25 the date of enactment of this paragraph, and as
26 required thereafter, the Secretary, after obtain-

1 ing recommendations from the Governors of the
2 States, the Secretary of the Smithsonian Insti-
3 tution, the Director of the National Science
4 Foundation, and the Chairman of the National
5 Academy of Sciences, shall submit to the Presi-
6 dent a list of individuals who are recognized au-
7 thorities in the fields of botany, zoology, ecol-
8 ogy, resource management, and economics.

9 “(C) PROHIBITION ON EMPLOYMENT BY
10 THE FEDERAL GOVERNMENT.—A member of
11 the Commission may not, during the period of
12 service of the member on the Commission, hold
13 any other position as an officer or employee of
14 the Federal Government, except as a retired of-
15 ficer of the Armed Forces.

16 “(D) TERMS.—

17 “(i) IN GENERAL.—Except as pro-
18 vided in clause (ii), the term of office of a
19 member of the Commission shall be 3
20 years.

21 “(ii) INITIAL TERMS.—Of the mem-
22 bers initially appointed to the Commission,
23 the term of 1 member shall be 1 year, the
24 term of 1 member shall be 2 years, and the
25 term of 1 member shall be 3 years.

1 “(iii) REAPPOINTMENT.—A member
2 shall not be eligible for reappointment, ex-
3 cept that any member appointed to fill a
4 vacancy occurring before the expiration of
5 the term for which the predecessor of the
6 member was appointed—

7 “(I) shall be appointed for the re-
8 mainder of the term; and

9 “(II) shall be eligible for re-
10 appointment for 1 full term.

11 “(iv) EXTENDED SERVICE.—A mem-
12 ber may serve after the expiration of the
13 term of the member until a successor has
14 taken office.

15 “(E) CHAIRPERSON.—The President shall
16 designate a chairperson of the Commission (re-
17 ferred to in this section as the ‘Chairperson’)
18 from among the members of the Commission.

19 “(F) COMPENSATION AND EXPENSES.—

20 “(i) COMPENSATION.—Each member
21 of the Commission shall be compensated at
22 a rate equal to the daily equivalent of the
23 annual rate of basic pay prescribed for
24 level IV of the Executive Schedule under
25 section 5315 of title 5, United States

1 Code, for each day or portion of a day (in-
2 cluding travel time) during which the
3 member is engaged in the actual perform-
4 ance of the duties of the Commission.

5 “(ii) TRAVEL EXPENSES.—A member
6 of the Commission shall be allowed travel
7 expenses, including per diem in lieu of sub-
8 sistence, as authorized by section 5703 of
9 title 5, United States Code, for persons
10 serving intermittently in the Government
11 service.

12 “(iii) OFFICE EXPENSES.—Each
13 member of the Commission shall be reim-
14 bursed for reasonable office expenses at
15 the office location preferred by the mem-
16 ber, except that the expense of office space
17 may not be reimbursed.

18 “(3) EXECUTIVE DIRECTOR.—

19 “(A) IN GENERAL.—The Commission shall
20 have an Executive Director who shall be ap-
21 pointed (without regard to the provisions of
22 title 5, United States Code, governing appoint-
23 ments in the competitive service) by the Chair-
24 person with the approval of the Commission.

1 “(B) COMPENSATION.—The Executive Di-
2 rector shall be compensated at a rate not in ex-
3 cess of the annual rate of basic pay prescribed
4 for level IV of the Executive Schedule under
5 section 5315 of title 5, United States Code.

6 “(C) DUTIES.—The Executive Director
7 shall have such duties as the Chairperson may
8 assign.

9 “(b) DUTIES OF COMMISSION.—

10 “(1) IN GENERAL.—The Commission shall—

11 “(A) study the activities of the United
12 States under laws and international conventions
13 relating to endangered species and threatened
14 species, including the Convention and this Act;

15 “(B) make recommendations to, and con-
16 sult with, the Secretary and other Federal offi-
17 cials concerning such measures as the Commis-
18 sion considers necessary or desirable for the
19 protection and conservation of endangered spe-
20 cies and threatened species, including a range
21 of options; and

22 “(C) conduct such scientific reviews and
23 analyses as the Secretary requests or as are
24 otherwise required to be conducted under this
25 Act.

1 “(2) ASSESSMENTS.—

2 “(A) IN GENERAL.—Upon receipt of a re-
3 quest from the Secretary for a scientific review
4 or assessment with respect to a species under
5 section 4(b) or 5, the Commission, in accord-
6 ance with subsection (c), shall establish an as-
7 sessment and planning team, which shall—

8 “(i) conduct a review of all reasonably
9 available information on the species, which
10 review shall include—

11 “(I) soliciting and fully consider-
12 ing all available scientific and com-
13 mercial data from each appropriate
14 State or foreign nation, if any; and

15 “(II) taking into account such ef-
16 forts, if any, as are being made by—

17 “(aa) any State or foreign
18 nation, or any political subdivi-
19 sion of the State or foreign na-
20 tion, to protect the species, by
21 any means, including predator
22 control, protection of habitat and
23 food supply, the use of mitigation
24 banks, or other conservation
25 practices, within any area under

1 the jurisdiction of the State or
2 foreign nation, or on the high
3 seas; and

4 “(bb) any private entity to
5 protect the species, by any
6 means, including the means de-
7 scribed in item (aa); and

8 “(ii) submit to the Commission a full
9 report of available information—

10 “(I) identifying such data as
11 were peer reviewed and such data as
12 the team finds valid even though the
13 data were not peer reviewed; and

14 “(II) providing options (including
15 such options, if any, as were rec-
16 ommended by a minority of the mem-
17 bers of the team) for the decisions
18 that the Secretary is required to make
19 under section 4(b) or 5, respectively.

20 “(B) LISTING DECISIONS.—Not later than
21 210 days after the receipt of a request of the
22 Secretary for a scientific review under section
23 4(b), the Commission shall transmit the report
24 of the assessment team prepared under sub-
25 paragraph (A) to the Secretary (including such

1 reports by a minority of the members of the
2 team as may exist). The assessment team shall
3 make an assessment of, and identify and de-
4 scribe in the report—

5 “(i) the taxonomy of the species;

6 “(ii) the biological significance of the
7 species and the habitat occupied by the
8 species;

9 “(iii) the geographic range and occu-
10 pied habitat of the species;

11 “(iv) the best current estimate of the
12 population of the species;

13 “(v) the population trend of the spe-
14 cies;

15 “(vi) the technical practicality of re-
16 covering the species; and

17 “(vii) the limiting factors that prevent
18 the growth of the numbers, or the expan-
19 sion of the range, of the species (expressed
20 quantitatively).

21 “(C) CONSERVATION DECISIONS.—Not
22 later than 210 days after the receipt of a re-
23 quest of the Secretary for a scientific review or
24 assessment under section 5, the Commission
25 shall transmit the report of the assessment

1 team prepared under subparagraph (A) to the
2 Secretary (including such reports by a minority
3 of the members of the team as may exist). The
4 report shall contain the following assessments
5 with respect to the affected species:

6 “(i) BIOLOGICAL ASSESSMENT.—The
7 assessment team shall make an assessment
8 of, and identify and describe in the re-
9 port—

10 “(I) the taxonomy of the species;

11 “(II) the biological significance of
12 the species and the habitat occupied
13 by the species;

14 “(III) the geographic range and
15 occupied habitat of the species;

16 “(IV) the best current estimate
17 of the population of the species;

18 “(V) the population trend of the
19 species;

20 “(VI) the technical practicality of
21 recovering the species;

22 “(VII) the limiting factors that
23 prevent the growth of the numbers, or
24 the expansion of the range, of the spe-
25 cies (expressed quantitatively);

1 “(VIII) the potential for captive
2 breeding programs for the species;

3 “(IX) whether any management
4 measure might include release of an
5 experimental population of the species
6 outside the current range of the spe-
7 cies and, if the release is required, an
8 identification of each likely geographic
9 area for the release;

10 “(X) objective, measurable cri-
11 teria and recovery objectives, based on
12 the best scientific and commercial
13 data available, that, when the criteria
14 are met, would result in a determina-
15 tion, in accordance with section
16 4(c)(2), that the species be removed
17 from a list published under section
18 4(c)(1) or changed in status;

19 “(XI) site-specific management
20 actions, including—

21 “(aa) to the extent prac-
22 ticable, such range of options
23 available as may be necessary to
24 achieve the goal of the conserva-

1 tion plan for the conservation
2 and survival of the species; and

3 “(bb) actions to maintain or
4 restore ecosystems on which the
5 species depends;

6 “(XII) estimates of the time and
7 costs required to carry out such meas-
8 ures as are necessary to achieve the
9 goals of the conservation plan and to
10 achieve intermediate steps toward the
11 goals;

12 “(XIII) the actions that will be
13 taken to minimize and fairly distrib-
14 ute adverse social or economic impacts
15 that may result from implementation
16 of the conservation plan;

17 “(XIV) to the maximum extent
18 prudent and determinable, a designa-
19 tion of the critical habitat of the spe-
20 cies if the designation would contrib-
21 ute to the conservation of the species;

22 “(XV) strategies that utilize Fed-
23 eral lands, to the extent that the lands
24 are available, to promote the conserva-
25 tion and recovery of the species;

1 “(XVI) measures taken by all
2 parties that would contribute to the
3 conservation of the species;

4 “(XVII) any specific areas or cir-
5 cumstances in which the development
6 and implementation of non-Federal
7 conservation plans under section
8 10(a)(2) would contribute to or be
9 consistent with the conservation of the
10 species;

11 “(XVIII) any specific activities
12 and geographic areas that should be
13 exempt from any prohibition of sec-
14 tion 9 relating to the taking of a spe-
15 cies covered by the plan;

16 “(XIX) any opportunities for
17 entry into safe harbor agreements
18 with non-Federal persons under sec-
19 tion 6(i) that would promote the con-
20 servation of the species;

21 “(XX) opportunities to cooperate
22 with municipalities, political subdivi-
23 sions of a State, and other persons in
24 carrying out actions that would con-
25 tribute to the conservation of the spe-

1 cies under section 4(c)(1), including
2 the development of cooperative man-
3 agement agreements;

4 “(XXI) the situations in which
5 the regulated taking of the species
6 promotes the conservation of the spe-
7 cies; and

8 “(XXII) clearly prohibited acts
9 under section 9(a).

10 “(ii) ECONOMIC ASSESSMENT.—The
11 Commission shall make an assessment of,
12 and identify and describe in the report, the
13 direct and indirect economic and social im-
14 pacts on both the public and private sec-
15 tors that may result from the listing of the
16 species under section 4(c)(1), including
17 any impacts on any multi-State region or
18 any segment of the national economy and
19 any impacts from the potential manage-
20 ment measures identified under clause (i),
21 including—

22 “(I) the cost of the listing for
23 Federal, State, and local governments
24 and the impacts on tax and other rev-
25 enues expected from the listing;

1 “(II) the direct and indirect im-
2 pacts on employment as a result of
3 the listing;

4 “(III) the impacts on the use and
5 value of property from the listing; and

6 “(IV) the impacts on other social,
7 cultural and community values from
8 the listing.

9 “(iii) INTERGOVERNMENTAL ASSESS-
10 MENT.—The team shall make an assess-
11 ment of, and identify and describe in the
12 report, the impacts that may result from
13 the listing of the species under section
14 4(c)(1) and the potential management
15 measures identified under clause (i) on
16 State and local land use laws, conservation
17 measures, and water allocation policies.

18 “(3) REVIEW REQUIREMENT.—

19 “(A) DEFINITION OF ACTION.—In this
20 paragraph, the term ‘action’ means—

21 “(i) the determination that a species
22 is an endangered species or a threatened
23 species under section 4(a);

24 “(ii) the determination under section
25 4(a) that an endangered species or a

1 threatened species be removed from any
2 list published under section 4(c)(1); and

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

7 “(B) REQUEST FOR REVIEW.—If the Sec-
8 retary depends on or otherwise bases an action
9 on data or a study or report that was not re-
10 viewed by the Commission, an interested person
11 may request that the data, study, or report be
12 reviewed by the Commission. As soon as prac-
13 ticable after the date of receipt of such a re-
14 quest, the Commission shall report to the Sec-
15 retary on the scientific validity of the data,
16 study, or report and recommend any changes to
17 the action that are warranted by the review of
18 the data, study, or report.

19 “(C) PUBLICATION OF RESULTS OF RE-
20 VIEW.—The Secretary shall publish in the Fed-
21 eral Register, with any final regulation imple-
22 menting an action, a summary of any report of
23 the Commission described in subparagraph (B)
24 and the response of the Secretary to the report.

1 “(4) AVAILABILITY OF RECOMMENDATIONS AND
2 REPORTS FOR PUBLIC INSPECTION.—The rec-
3 ommendations and reports of the Commission shall
4 be matters of public record and shall be available to
5 the public at reasonable times. All other activities of
6 the Commission shall be matters of public record
7 and available to the public in accordance with sec-
8 tion 552 of title 5, United States Code.

9 “(5) INCORPORATION OF STATE COMMENTS.—
10 The Commission shall transmit to the Secretary all
11 options, recommendations, and reports submitted to
12 the Commission by any State or local government
13 that is affected by a listing determination, or a con-
14 servation plan for a species listed as an endangered
15 species or a threatened species, under section
16 4(c)(1).

17 “(6) RESPONSE TO COMMISSION RECOMMENDA-
18 TIONS.—Not later than 120 days after receiving op-
19 tions for action by the Secretary from the Commis-
20 sion under paragraph (1), the Secretary shall select
21 an option or propose a new option and publish the
22 option in the Federal Register. If the Secretary does
23 not adopt an option presented by the Commission,
24 the Secretary shall submit to the Commission and
25 publish in the Federal Register a detailed expla-

1 nation of the reasons why an option proposed by the
2 Commission was not followed or adopted.

3 “(c) ASSESSMENT AND PLANNING TEAMS.—

4 “(1) ESTABLISHMENT.—Not later than 30 days
5 after the receipt of a request of the Secretary for a
6 scientific review with respect to a species, the Com-
7 mission shall establish, and arrange for the provision
8 of technical assistance to, an assessment and plan-
9 ning team (referred to in this subsection as an ‘as-
10 sessment team’) to assist the Commission in making
11 the assessments required under section 4(b) or 5
12 with respect to the species by providing the Commis-
13 sion with the best scientific and commercial data
14 available and, to the maximum extent feasible, data
15 that have been peer reviewed and verified by field
16 testing.

17 “(2) MEMBERSHIP.—

18 “(A) IN GENERAL.—An assessment team
19 shall consist of—

20 “(i) in the case of a request of the
21 Secretary under section 4(b), 9 scientists
22 knowledgeable in the fields of botany, zool-
23 ogy, genetics, or taxonomy who are ap-
24 pointed from a list submitted by the Na-
25 tional Academy of Sciences, after consulta-

1 tion with appropriate professional societies;
2 and

3 “(ii) in the case of a request of the
4 Secretary under section 5—

5 “(I) 4 scientists knowledgeable in
6 the fields of botany, zoology, ecology,
7 or resource management who are ap-
8 pointed by the Commission from a list
9 submitted by the National Academy of
10 Sciences after consultation with ap-
11 propriate professional societies; and

12 “(II) 7 individuals knowledgeable
13 in the fields of botany, zoology, ecol-
14 ogy, economics, or resource manage-
15 ment, or who have specific experience
16 or knowledge of State and local con-
17 servation or management efforts for
18 the species that is the subject of the
19 request, who are appointed by the af-
20 fected State and local governments,
21 except that, if the affected State and
22 local governments are unable to agree
23 on all such appointments, the Com-
24 mission shall appoint individuals to
25 the remaining positions from a list

1 compiled from recommendations sub-
2 mitted by the affected State and local
3 governments.

4 “(B) COMPENSATION AND TRAVEL EX-
5 PENSES.—

6 “(i) COMPENSATION.—

7 “(I) IN GENERAL.—Each mem-
8 ber of an assessment team who is not
9 an officer or employee of the Federal
10 Government or a State government
11 shall be compensated at a rate equal
12 to the daily equivalent of the annual
13 rate of basic pay prescribed for level
14 GS-13 of the General Schedule under
15 section 5104 of title 5, United States
16 Code, for each day or portion of a day
17 (including travel time) during which
18 the member is engaged in the actual
19 performance of the duties of the as-
20 sessment team.

21 “(II) GOVERNMENT EMPLOY-
22 EES.—Each member of an assessment
23 team who is an officer or employee of
24 the Federal Government or a State
25 government shall serve without com-

1 pensation in addition to the com-
2 pensation received for the services of
3 the member as an officer or employee
4 of the Federal Government or State
5 government.

6 “(ii) TRAVEL EXPENSES.—A member
7 of an assessment team shall be allowed
8 travel expenses, including per diem in lieu
9 of subsistence, as authorized by section
10 5703 of title 5, United States Code, for
11 persons serving intermittently in the Gov-
12 ernment service.

13 “(3) DUTIES.—

14 “(A) STUDIES AND RECOMMENDATIONS.—
15 Upon request of the Secretary, an assessment
16 team shall undertake all studies and reports
17 concerning the species with respect to which the
18 assessment team was appointed, including—

19 “(i) the scientific review of a species
20 under section 4(b) and subsection
21 (b)(2)(B) for an assessment prior to a list-
22 ing determination for the species;

23 “(ii) the review of a species under sec-
24 tion 5(b) and subsection (b)(2)(C) for a bi-
25 ological, economic, and intergovernmental

1 assessment prior to the establishment of a
2 conservation objective for the species; and

3 “(iii) the development and rec-
4 ommendation of alternative strategies to
5 conserve a species under section 5(e).

6 “(B) CONSULTATION.—The Commission
7 shall consult with an assessment team, and the
8 assessment team shall provide responsive rec-
9 ommendations, on—

10 “(i) any study or recommendation
11 that the Commission proposes to make or
12 has made concerning the species;

13 “(ii) each research program proposed
14 to be conducted or conducted under this
15 Act that significantly affects the species;
16 and

17 “(iii) each application for a permit for
18 scientific research that significantly affects
19 the species.

20 “(C) RESPONSE TO ASSESSMENT TEAM
21 RECOMMENDATIONS.—If the Commission does
22 not adopt a recommendation of an assessment
23 team or a member of the assessment team, the
24 Commission shall transmit the recommendation
25 to the appropriate Federal agency and to the

1 appropriate committees of Congress with a de-
2 tailed explanation of the reasons why the rec-
3 ommendation was not accepted.

4 “(d) REPORTS.—Not later than January 31 of each
5 year, the Commission shall submit to Congress a report
6 that includes—

7 “(1) a description of the activities and accom-
8 plishments of the Commission during the preceding
9 year; and

10 “(2) each finding and recommendation made by
11 and to the Commission under subsections (b) and
12 (c)(3) and the response to each recommendation.

13 “(e) COORDINATION WITH OTHER FEDERAL AGEN-
14 CIES.—

15 “(1) INFORMATION.—The Commission shall
16 have access to all studies and data compiled by Fed-
17 eral agencies regarding endangered species and
18 threatened species.

19 “(2) FACILITIES AND SERVICES.—With the
20 consent of the appropriate Secretary or agency head,
21 the Commission may use the facilities or services of
22 a Federal agency.

23 “(3) AVOIDANCE OF DUPLICATION.—The Com-
24 mission shall take every feasible measure to avoid

1 duplication of research in carrying out this Act, es-
2 pecially duplication of research performed by States.

3 “(f) POWERS.—To the extent consistent with and
4 reasonably required to perform the duties of the Commis-
5 sion under this section, the Commission may—

6 “(1) employ and fix the compensation of em-
7 ployees (but not fewer than 11 employees at any
8 time);

9 “(2) acquire, furnish, and equip office space;

10 “(3) enter into contracts or agreements with, or
11 provide grants to, public and private organizations;

12 “(4) procure the services of experts or consult-
13 ants or an organization of experts or consultants as
14 authorized under section 3109 of title 5, United
15 States Code, but at rates for individuals not to ex-
16 ceed \$100 per diem; and

17 “(5) incur necessary expenses and exercise
18 other appropriate powers.

19 “(g) FINANCIAL AND ADMINISTRATIVE SERVICES.—
20 The Administrator of General Services shall provide finan-
21 cial and administrative services (including services related
22 to budgeting, accounting, financial reporting, personnel,
23 and procurement) to the Commission. Payment for the
24 services shall be made in advance or by reimbursement
25 from funds of the Commission in such amounts as may

1 be agreed on by the Chairperson and the Administrator
2 of General Services.

3 “(h) INAPPLICABILITY OF FEDERAL ADVISORY COM-
4 MITTEE ACT.—The Federal Advisory Committee Act (5
5 U.S.C. App.) shall not apply to the Commission or to any
6 assessment and planning team established under sub-
7 section (c).”.

8 (b) CONFORMING AMENDMENT.—The table of con-
9 tents in the first section (16 U.S.C. prec. 1531) is amend-
10 ed by striking the item relating to section 13 and inserting
11 the following:

“Sec. 13. Endangered Species Commission.”.

12 (c) EFFECT ON PRIOR AMENDMENTS.—Nothing in
13 this section or the amendment made by this section affects
14 the amendments made by section 13 of the Endangered
15 Species Act of 1973 (87 Stat. 902), as in effect on the
16 day before the date of enactment of this Act.

17 **SEC. 16. NOTICE OF HEARINGS.**

18 (a) IN GENERAL.—Section 14 (87 Stat. 903) is
19 amended to read as follows:

20 “NOTICE OF HEARINGS

21 “SEC. 14. Except as otherwise provided by this Act,
22 the Secretary shall provide notice of any hearing or other
23 public meeting at which public comment is accepted under
24 this Act by publication in the Federal Register and in a
25 newspaper of general circulation in the location of the

1 hearing or meeting at least 30 days prior to the hearing
2 or meeting.”.

3 (b) CONFORMING AMENDMENT.—The table of con-
4 tents in the first section (16 U.S.C. prec. 1531) is amend-
5 ed by striking the item relating to section 14 and inserting
6 the following:

“Sec. 14. Notice of hearings.”.

7 (c) EFFECT ON PRIOR REPEAL.—Nothing in this sec-
8 tion or the amendment made by this section affects the
9 repeal made by section 14 of the Endangered Species Act
10 of 1973 (87 Stat. 903), as in effect on the day before the
11 date of enactment of this Act.

12 **SEC. 17. MINIMIZATION OF IMPACT OF CONSERVATION**
13 **MEASURES ON PRIVATE PROPERTY.**

14 (a) IN GENERAL.—The Act (16 U.S.C. 1531 et seq.)
15 is amended—

16 (1) by redesignating section 15 as section 21
17 and moving the section to appear after section 18;
18 and

19 (2) by inserting after section 14 the following:

20 “MINIMIZATION OF IMPACT OF CONSERVATION MEASURES
21 ON PRIVATE PROPERTY

22 “SEC. 15. In carrying out sections 5 and 7—

23 “(1) the Secretary shall balance the objectives
24 of—

1 “(A) achieving the conservation objective
2 for the species; and

3 “(B) ensuring continuing economic growth,
4 providing essential infrastructure, maintaining
5 strong State and local tax bases, and protecting
6 against the diminishment of the use and value
7 of private property; and

8 “(2) the Secretary, the heads of all other Fed-
9 eral agencies, and other officials of the Federal Gov-
10 ernment shall seek to minimize the adverse impacts
11 on the use and value of private property resulting
12 from any requirements imposed on the property
13 under the sections.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) The table of contents in the first section (16
16 U.S.C. prec. 1531) is further amended—

17 (A) by striking the item relating to section
18 15 and inserting the following:

“Sec. 15. Minimization of impact of conservation measures on private prop-
erty.”;

19 and

20 (B) by adding at the end the following:

“Sec. 18. Annual cost analysis by the Fish and Wildlife Service.

“Sec. 21. Authorization of appropriations.”.

21 (2) The last sentence of section 8(a) (16 U.S.C.
22 1537(a)) is amended by striking “section 15 of this
23 Act” and inserting “section 21”.

1 **SEC. 18. ALTERNATIVE DISPUTE RESOLUTION.**

2 (a) IN GENERAL.—Section 16 (16 U.S.C. 1531 note)
3 is amended to read as follows:

4 “ALTERNATIVE DISPUTE RESOLUTION

5 “SEC. 16. (a) IN GENERAL.—Not later than 1 year
6 after the date of enactment of this subsection, the Sec-
7 retary, in consultation with affected persons and experts
8 in dispute resolution, shall—

9 “(1) identify methods of alternative dispute res-
10 olution as described in subsection (b) that may be
11 used for—

12 “(A) rulemaking to develop standards,
13 rules, and guidelines for—

14 “(i) the listing or monitoring of spe-
15 cies under section 4;

16 “(ii) conservation planning under sec-
17 tion 5;

18 “(iii) safe harbor agreements with
19 non-Federal persons under section 6(i);

20 “(iv) consultation and conferencing
21 under section 7;

22 “(v) exemptions under section 10; and

23 “(vi) the development of non-Federal
24 conservation plans under section 10(a)(2));

1 “(B) the resolution of disputes resulting
2 from public comment on all matters before the
3 Secretary related to this Act; and

4 “(C) implementation of the standards,
5 rules, and guidelines described in subparagraph
6 (A); and

7 “(2) develop and implement a pilot program for
8 alternative dispute resolution to be used for the pur-
9 poses described in paragraph (1) that is consistent
10 with—

11 “(A) subchapter III of chapter 5 of title 5,
12 United States Code (commonly known as the
13 ‘Negotiated Rulemaking Act of 1990’); and

14 “(B) subchapter IV of chapter 5 of title 5,
15 United States Code (commonly known as the
16 ‘Administrative Dispute Resolution Act’).

17 “(b) METHODS OF ALTERNATIVE DISPUTE RESOLU-
18 TION.—The methods of alternative dispute resolution re-
19 ferred to in subsections (a) and (c) include—

20 “(1) negotiation, conciliation, facilitation, medi-
21 ation, factfinding, minitrials, and arbitration, and
22 any combination of these methods; and

23 “(2) other collaborative problem-solving proc-
24 esses for resolving conflicts that are used prior to

1 opportunity for judicial review under chapter 7 of
2 title 5, United States Code.

3 “(c) TRAINING.—The Secretary shall provide train-
4 ing on a regular basis for all employees involved in devel-
5 oping and implementing the program established under
6 this section. The training shall encompass the theory and
7 practice of conflict analysis and resolution and methods
8 of alternative dispute resolution described in subsection
9 (b).

10 “(d) REPORT.—Not later than 2 years after the date
11 of enactment of this subsection, the Secretary shall—

12 “(1) evaluate the program established under
13 this section; and

14 “(2) submit a report on the evaluation, includ-
15 ing recommendations for a permanent program, to—

16 “(A) Congress; and

17 “(B) the Administrative Conference of the
18 United States established under subchapter V
19 of chapter 5 of title 5, United States Code, or
20 a successor organization, if established.”.

21 (b) CONFORMING AMENDMENTS.—

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

“Sec. 16. Alternative dispute resolution.”.

1 “(1) CONSERVATION PLANS.—In the case of
2 any non-Federal person or Federal power marketing
3 administration, the Secretary shall pay 50 percent of
4 the direct costs that result from the compliance by
5 the person or administration with a species con-
6 servation measure—

7 “(A) required by a conservation plan; or

8 “(B) that provides protection to a species
9 listed under section 4(c)(1) as an endangered
10 species or a threatened species under a plan de-
11 veloped under the Pacific Northwest Electric
12 Power Planning and Conservation Act (16
13 U.S.C. 839 et seq.), including a plan that pro-
14 vides protection to a larger population unit of
15 the listed species.

16 “(2) CONSULTATION REQUIREMENTS.—In the
17 case of any non-Federal person or Federal power
18 marketing administration, the Secretary shall pay 50
19 percent of the direct costs that result solely from re-
20 quired species conservation measures imposed by the
21 Secretary on the person or marketing administration
22 under section 7.

23 “(3) INCIDENTAL TAKING PERMITS.—In the
24 case of any non-Federal person that is issued an in-
25 cidental taking permit, the Secretary shall pay 50

1 percent of the direct costs of preparing the applica-
2 tion for the permit and implementing the terms and
3 conditions of the permit.

4 “(4) COOPERATIVE MANAGEMENT AGREE-
5 MENTS.—The Secretary shall pay 50 percent of—

6 “(A) the direct costs of preparing and im-
7 plementing the terms and conditions of a coop-
8 erative management agreement incurred by a
9 party to the agreement; and

10 “(B) any direct costs incurred by any
11 other non-Federal person or Federal power
12 marketing administration subject to the terms
13 of the agreement.

14 “(c) METHOD OF COST SHARING.—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), the Secretary may make a Federal con-
17 tribution required under subsection (b) by—

18 “(A) providing a habitat conservation
19 grant under section 6(h);

20 “(B) acquiring, from or for the party to
21 the cost-share, land or an interest in land as
22 provided in section 5A; or

23 “(C) providing appropriated funds.

24 “(2) COST-SHARE PAYMENT FOR FEDERAL
25 POWER MARKETING ADMINISTRATIONS AND STATE

1 OR LOCAL GOVERNMENTAL ENTITIES.—The Sec-
2 retary shall make a Federal contribution under sub-
3 section (b) to a Federal power marketing adminis-
4 tration or any State or local governmental entity by
5 providing appropriated funds directly to the adminis-
6 tration or governmental entity.

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

12 “(4) LOANS.—The Secretary may not consider
13 a loan to the party to the cost-share as a Federal
14 contribution or portion of a Federal contribution re-
15 quired under subsection (b).

16 “(5) RECOVERED COSTS.—The Secretary may
17 not consider as a portion of the Federal contribution
18 required under subsection (b) any costs to the Fed-
19 eral Government that are recovered through rates
20 for the sale or transmission of power or water.

21 “(6) EFFECT OF FEDERAL NONPAYMENT.—If
22 the Secretary fails to make the Federal contribution
23 required under subsection (b), the application of the
24 applicable provision of the conservation plan, plan
25 developed under the Pacific Northwest Electric

1 Power Planning and Conservation Act (16 U.S.C.
2 839 et seq.), requirement under section 7, term or
3 condition of the incidental taking permit, or term or
4 condition of the cooperative management agreement
5 shall be suspended until such time as the full Fed-
6 eral contribution is made. If the suspended provi-
7 sion, requirement, term, or condition includes a con-
8 servation easement or other instrument restricting
9 title to the property of the non-Federal person,
10 nonpayment of the full Federal contribution shall re-
11 sult in the nullification of the restriction on title.

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

17 “(8) COSTS PAID BY THE SECRETARY.—Com-
18 pensation from the Federal Government made avail-
19 able under section 20 may not cover costs incurred
20 by a non-Federal person that are paid by the Sec-
21 retary under subsection (b).

22 “(d) EXISTING COST-SHARING AGREEMENTS.—Any
23 cost-sharing agreement with a non-Federal person pro-
24 vided in any recovery plan or other agreement under this
25 Act in existence prior to the date of enactment of this sec-

1 tion shall remain in effect unless the non-Federal person
 2 requests that the cost-sharing agreement be reconsidered
 3 and the Secretary grants the request.

4 “(e) ADJUSTMENTS TO FEDERAL COST-SHARING
 5 PERCENTAGE.—At the request of a non-Federal person,
 6 the Secretary may adjust the percentage of the Federal
 7 contribution under this section to a higher share.”.

8 (b) CONFORMING AMENDMENT.—The table of con-
 9 tents in the first section (16 U.S.C. prec. 1531) is amend-
 10 ed by inserting after the item relating to section 18 the
 11 following:

“Sec. 19. Federal cost-sharing requirements for conservation obligations.”.

12 **SEC. 20. RIGHT TO COMPENSATION.**

13 (a) IN GENERAL.—The Act is amended by inserting
 14 after section 19 (as added by section 19(a)) the following:

15 “RIGHT TO COMPENSATION

16 “SEC. 20. (a) DEFINITIONS.—In this section:

17 “(1) AGENCY.—The term ‘agency’ has the
 18 meaning provided in section 551 of title 5, United
 19 States Code.

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

22 “(A) subject to subparagraph (B), has the
 23 meaning provided in section 551 of title 5,
 24 United States Code; and

25 “(B) includes—

1 “(i) a restriction imposed on non-Fed-
2 eral property as part of a conservation
3 plan;

4 “(ii) a designation under section 5(i)
5 of non-Federal property as critical habitat;

6 “(iii) an agreement under section 6 to
7 set aside property for habitat under the
8 terms of an easement or other contract;

9 “(iv) an agency action under a biologi-
10 cal opinion under section 7 that would
11 cause an agency to restrict the use of non-
12 Federal property;

13 “(v) the denial of a permit under sec-
14 tion 10 that restricts the use of non-Fed-
15 eral property;

16 “(vi) the loss of use of property to
17 avoid prosecution under section 11;

18 “(vii) any other action taken under
19 this Act that restricts a legal right to use
20 non-Federal property, including the right
21 to alter habitat; and

22 “(viii) the imposition of a condition on
23 a grant of land or money to a public au-
24 thority or a private entity that would con-
25 stitute an agency action under this sub-

1 paragraph if required directly by the agen-
2 cy.

3 “(3) FAIR MARKET VALUE.—The term ‘fair
4 market value’ means the most probable price at
5 which property would change hands, in a competitive
6 and open market under all conditions requisite to
7 fair sale, between a willing buyer and willing seller,
8 neither of whom is under any compulsion to buy or
9 sell and both of whom have reasonable knowledge of
10 relevant facts.

11 “(4) LIMITATION ON USE.—The term ‘limita-
12 tion on use’ means a limitation on a use of non-Fed-
13 eral property that is otherwise permissible under ap-
14 plicable State law (including law of a political sub-
15 division of a State) concerning property or
16 nuisances.

17 “(5) NON-FEDERAL PROPERTY.—The term
18 ‘non-Federal property’ means property that is owned
19 by a person other than an agency, department, or
20 instrumentality of the Federal Government.

21 “(6) PROPERTY.—The term ‘property’ means
22 land, an interest in land, the right to use or receive
23 water, and personal property.

24 “(b) ELIGIBILITY.—A non-Federal property owner
25 shall be entitled to receive compensation in accordance

1 with this section if an agency takes an agency action under
2 this Act that results in a diminishment of value of any
3 portion of the non-Federal property of the owner.

4 “(c) COMPENSATION FOR DIMINISHMENT IN
5 VALUE.—An agency that takes an agency action described
6 in subsection (b) shall compensate the non-Federal prop-
7 erty owner in the amount of the diminishment of value
8 of the portion of the property by making an offer in ac-
9 cordance with subsection (f).

10 “(d) DUTY OF NOTICE TO OWNERS.—If an agency
11 takes an agency action described in subsection (b), the
12 agency shall give appropriate notice to each owner of the
13 property directly affected explaining the rights of the
14 owner under this section and the procedures for obtaining
15 any compensation that may be due to the owner under
16 this section.

17 “(e) REQUEST OF OWNER.—Not later than 1 year
18 after an owner receives actual notice under subsection (d)
19 that an agency action described in subsection (b) has di-
20 minished the value of non-Federal property owned by the
21 property owner, the owner may submit a written request
22 to the head of the agency for compensation. The request
23 shall, at a minimum, identify the affected portion of the
24 property, the nature of the use or limitation on use of the

1 non-Federal property resulting from the agency action,
2 and the amount of compensation claimed.

3 “(f) OFFER BY THE SECRETARY.—Not later than 90
4 days after the receipt of a request for compensation under
5 subsection (e), the head of the agency shall transmit to
6 the property owner—

7 “(1) an offer to purchase the affected property
8 of the property owner at the fair market value that
9 would apply if the property were not subject to the
10 agency action described in subsection (b); and

11 “(2) an offer to compensate the property owner
12 for the difference between—

13 “(A) the fair market value of the property
14 that applies as of the date of the offer; and

15 “(B) the fair market value of the property
16 that would apply if the property were not sub-
17 ject to the agency action described in subsection
18 (b).

19 “(g) RESPONSE BY THE PROPERTY OWNER.—Not
20 later than 180 days after the date of receipt of the offers
21 under subsection (f), the non-Federal property owner shall
22 accept 1 of the offers or reject both offers. If the property
23 owner rejects both offers, the property owner may submit
24 the matter for arbitration under subsection (h) or bring
25 a civil action.

1 “(h) ARBITRATION.—The procedures that govern the
2 arbitration shall, as nearly as practicable, be the proce-
3 dures established under title 9, United States Code, for
4 arbitration proceedings to which the title applies. An
5 award made in the arbitration shall include a reasonable
6 attorney’s fee and other arbitration costs, including ap-
7 praisal fees. The agency shall promptly pay any award
8 made to the owner.

9 “(i) CIVIL ACTION.—Subject to subsection (k), an
10 owner who prevails in a civil action against an agency
11 under this section shall be entitled to, and the agency shall
12 be liable for, the amount of compensation awarded plus
13 a reasonable attorney’s fee and other litigation costs, in-
14 cluding appraisal fees. The court shall award interest on
15 the amount of any compensation from the date of the im-
16 position of the use or limitation on use of the non-Federal
17 property resulting from the agency action.

18 “(j) SOURCE OF PAYMENTS.—

19 “(1) IN GENERAL.—Any payment made under
20 this section to an owner, and any judgment obtained
21 by an owner in a civil action under this section,
22 shall, notwithstanding any other law, be made from
23 the annual appropriation of the agency that took the
24 agency action under this Act.

1 “(2) REIMBURSEMENT.—If the agency action
2 resulted from a requirement imposed by another
3 agency, the agency making the payment or satisfy-
4 ing the judgment may seek partial or complete reim-
5 bursement from the appropriated funds of the other
6 agency.

7 “(3) TRANSFER OF FUNDS.—For the purpose
8 of this subsection, the head of the agency concerned
9 may transfer or reprogram any appropriated funds
10 available to the agency.

11 “(4) INSUFFICIENT FUNDS.—If insufficient
12 funds exist for the payment or to satisfy the judg-
13 ment, the head of the agency shall seek the appro-
14 priation of the funds for the next fiscal year.

15 “(k) AVAILABILITY OF APPROPRIATIONS.—Notwith-
16 standing any other law, any obligation of the United
17 States to make a payment under this section shall be sub-
18 ject to the availability of appropriations.

19 “(l) ADMINISTRATION.—

20 “(1) OTHER RIGHTS PRESERVED.—Nothing in
21 this Act limits any right to compensation that exists
22 under the Constitution or under other laws.

23 “(2) EXTENT OF FEDERAL AUTHORITY.—Pay-
24 ment of compensation under this section (other than
25 when property is purchased by the Federal Govern-

1 ment at the option of the owner) shall not confer
2 any right on the Federal Government other than the
3 imposition of the use or limitation on use resulting
4 from the agency action under this Act for so long as
5 the agency action achieves the species conservation
6 purposes of this Act.”.

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 19 (as
10 added by section 19(b)) the following:

“Sec. 20. Right to compensation.”.

11 **SEC. 21. AUTHORIZATION OF APPROPRIATIONS.**

12 Section 21 (as redesignated by section 17(a)) is
13 amended to read as follows:

14 “AUTHORIZATION OF APPROPRIATIONS

15 “SEC. 21. (a) IN GENERAL.—In addition to the
16 amounts authorized to be appropriated under section 6(i)
17 and subsections (b) through (f), there are authorized to
18 be appropriated—

19 “(1) to the Department of the Interior to carry
20 out the duties of the Secretary of the Interior under
21 this Act \$110,000,000 for fiscal year 1996,
22 \$120,000,000 for fiscal year 1997, \$130,000,000 for
23 fiscal year 1998, \$140,000,000 for fiscal year 1999,
24 \$150,000,000 for fiscal year 2000, and
25 \$160,000,000 for fiscal year 2001; and

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

5 “(b) CONVENTION IMPLEMENTATION.—There are
6 authorized to be appropriated to the Department of the
7 Interior to carry out section 8A(e) \$1,000,000 for each
8 of fiscal years 1996 through 2001, to remain available
9 until expended.

10 “(c) ENDANGERED SPECIES COMMISSION.—There
11 are authorized to be appropriated to the Commission such
12 sums as are necessary to carry out the duties of the Com-
13 mission under this Act.

14 “(d) REVENUE STUDY.—

15 “(1) STUDY.—The Secretary shall conduct a
16 study to determine potential revenue sources for a
17 biodiversity trust fund to be used both for domestic
18 endangered species and domestic threatened species
19 protected under this Act and for foreign species sub-
20 ject to the Convention. Any such trust fund—

21 “(A) shall be managed and accounted for
22 separately from any trust fund established
23 under—

24 “(i) the Act entitled ‘An Act to pro-
25 vide that the United States shall aid the

1 States in wildlife-restoration projects, and
2 for other purposes', approved September 2,
3 1937 (16 U.S.C. 669 et seq.); and

4 “(ii) the Act entitled ‘An Act to pro-
5 vide that the United States shall aid the
6 States in fish restoration and management
7 projects, and for other purposes’, approved
8 August 9, 1950 (16 U.S.C. 777 et seq.);
9 and

10 “(B) shall be subject to a prohibition on
11 the transfer, commingling, or other use of the
12 funds of any trust fund described in subpara-
13 graph (A).

14 “(2) REPORT.—Not later than 2 years after the
15 date of enactment of this subsection, the Secretary
16 shall report to the Committee on Environment and
17 Public Works of the Senate and the Committee on
18 Resources of the House of Representatives on the
19 results of the study.”.

20 **SEC. 22. TRANSITION PROVISIONS.**

21 (a) LISTED SPECIES WITHOUT RECOVERY PLANS.—

22 (1) PRIORITY FOR DEVELOPMENT OF CON-
23 SERVATION PLANS.—

24 (A) PUBLICATION OF LIST.—Not later
25 than 30 days after the date of enactment of

1 this Act, the Secretary (as defined in section 3
2 of the Endangered Species Act of 1973 (re-
3 ferred to in this section as “the Act”) (16
4 U.S.C. 1532)) shall publish a list of all species
5 that were determined to be endangered species
6 or threatened species under section 4 of the Act
7 (16 U.S.C. 1533), for which no final recovery
8 plans were issued under section 4(f) of the Act
9 (16 U.S.C. 1533(f)) (as in effect on the day be-
10 fore the date of enactment of this Act) divided
11 equally into 3 tiers of priority for the develop-
12 ment of conservation objectives and conserva-
13 tion plans under section 5 of the Act.

14 (B) MULTIPLE STATES.—Any species that
15 is listed as an endangered species or a threat-
16 ened species in more than 1 State shall be
17 placed in the first tier of priority.

18 (2) SCHEDULE FOR ADOPTION OF PLANS.—

19 (A) IN GENERAL.—For each species within
20 each tier of priority identified under paragraph
21 (1), except as provided in subparagraph (B),
22 the Secretary (as defined in section 3 of the Act
23 (16 U.S.C. 1532)) shall publish under section 5
24 of the Act a conservation objective, proposed
25 conservation plan, and final conservation plan

1 not later than the following period after the
2 date of enactment of this Act:

3 (i) Conservation objective:

4 (I) First tier, 120 days.

5 (II) Second tier, 1 year.

6 (III) Third tier, 2 years.

7 (ii) Proposed conservation plan:

8 (I) First tier, 180 days.

9 (II) Second tier, 18 months.

10 (III) Third tier, 20 months.

11 (iii) Final conservation plan:

12 (I) First tier, 1 year.

13 (II) Second tier, 2 year.

14 (III) Third tier, 3 year.

15 (B) NO CONSERVATION PLAN.—If a con-
16 servation objective for a species is published
17 that is described in section 5(b)(4) of the Act,
18 a conservation plan for the species shall not be
19 required under subparagraph (A).

20 (b) LISTED SPECIES WITH RECOVERY PLANS.—

21 (1) PRIORITY FOR REVISION OF EXISTING
22 PLANS.—

23 (A) CONTINUING EFFECT.—Except as pro-
24 vided in paragraph (2)(B), a final recovery plan
25 issued under section 4(f) of the Act (16 U.S.C.

1 1533(f)) (as in effect on the day before the date
2 of enactment of this Act) shall continue in ef-
3 fect until the expiration of the deadline estab-
4 lished under this paragraph for revision of the
5 plan.

6 (B) PUBLICATION OF LIST.—Not later
7 than 90 days after the date of enactment of
8 this Act, the Secretary (as defined in section 3
9 of the Act (16 U.S.C. 1532)) shall publish a list
10 of all species that were determined to be endan-
11 gered species or threatened species under sec-
12 tion 4 of the Act (16 U.S.C. 1533) and for
13 which final recovery plans were issued under
14 section 4(f) of the Act (16 U.S.C. 1533(f)) (as
15 in effect on the day before the date of enact-
16 ment of this Act) divided equally into 3 tiers of
17 priority for the development of conservation ob-
18 jectives under section 5 of the Act and revisions
19 of the recovery plans consistent with the re-
20 quirements for conservation plans under section
21 5 of the Act.

22 (C) MULTIPLE STATES.—Any species that
23 is listed as an endangered species or a threat-
24 ened species in more than 1 State shall be
25 placed in the first tier of priority.

1 (2) SCHEDULE FOR REVISION OF PLANS.—

2 (A) IN GENERAL.—For each species within
3 each tier of priority identified under paragraph
4 (1), except as provided in subparagraph (B),
5 the Secretary (as defined in section 3 of the Act
6 (16 U.S.C. 1532)) shall publish under section 5
7 of the Act a conservation objective, proposed re-
8 vision of the existing recovery plan, and final
9 revision of the existing recovery plan not later
10 than the following period after the date of en-
11 actment of this Act:

12 (i) Conservation objective:

13 (I) First tier, 120 days.

14 (II) Second tier, 18 months.

15 (III) Third tier, 30 months.

16 (ii) Proposed revised recovery plan:

17 (I) First tier, 1 year.

18 (II) Second tier, 2 years.

19 (III) Third tier, 3 years.

20 (iii) Final revised recovery plan:

21 (I) First tier, 18 months.

22 (II) Second tier, 30 months.

23 (III) Third tier, 42 months.

24 (B) NO CONSERVATION PLAN.—If a con-
25 servation objective for a species is published

1 that is described in section 5(b)(4) of the Act,
2 the final recovery plan applicable to the species
3 shall be rescinded.

4 (c) PROHIBITION ON ADDITIONAL REQUIRE-
5 MENTS.—The Secretary (as defined in section 3 of the Act
6 (16 U.S.C. 1532)) or the head of any other Federal agen-
7 cy may not require any increase in any measurable cri-
8 terion contained in, or any site specific management action
9 in addition to the criteria provided in, a final recovery plan
10 issued under section 4(f) of the Act (16 U.S.C. 1533(f))
11 (as in effect on the day before the date of enactment of
12 this Act) until such time as a conservation plan, or a con-
13 servation objective under section 5(b)(4) of the Act, has
14 been published under section 5 of the Act.

15 (d) EXISTING BIOLOGICAL OPINIONS.—In conjunc-
16 tion with the issuance of a conservation plan, or, under
17 section 5(b)(4) of the Act, a conservation objective under
18 subsection (a) or (b), the Secretary (as defined in section
19 3 of the Act (16 U.S.C. 1532)) shall review and reissue,
20 in accordance with section 7 of the Act, any written opin-
21 ion of the Secretary that relates to the affected species
22 and was issued after January 1, 1995, under section
23 7(b)(3) of the Act (16 U.S.C. 1536(b)(3)) (as in effect
24 on the day before the date of enactment of this Act).

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