

106TH CONGRESS
1ST SESSION

H. R. 3160

To reauthorize and amend the Endangered Species Act of 1973.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 27, 1999

Mr. YOUNG of Alaska (for himself, Mr. POMBO, Mr. TAUZIN, Mr. HANSEN, Mr. CALVERT, Mr. THOMAS, Mr. DOOLITTLE, Mr. RADANOVICH, Mr. BAKER, Mr. SKEEN, Mrs. BONO, Mr. LEWIS of California, Mr. WALDEN of Oregon, Mrs. CUBIN, Mr. SCHAFFER, Mr. TAYLOR of North Carolina, Mr. HASTINGS of Washington, Mr. HUNTER, Mr. GARY MILLER of California, Mr. WATKINS, Mr. TANCREDO, Mr. BACHUS, Mr. SIMPSON, Mr. HERGER, Mr. CUNNINGHAM, Mr. PETERSON of Pennsylvania, Mr. DELAY, Mr. GIBBONS, Mr. LUCAS of Oklahoma, Mr. JOHN, Mr. BONILLA, and Mr. PACKARD) introduced the following bill; which was referred to the Committee on Resources

A BILL

To reauthorize and amend the Endangered Species Act of
1973.

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.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Common Sense Protections for Endangered Species
6 Act”.

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

- Sec. 1. Short title; table of contents.
 Sec. 2. References to Endangered Species Act of 1973.

TITLE I—IMPROVING SCIENTIFIC INTEGRITY OF LISTING
 DECISIONS AND PROCEDURES

- Sec. 101. Improving the validity and credibility of decisions.
 Sec. 102. Peer review.
 Sec. 103. Making data public.
 Sec. 104. Judicial review.
 Sec. 105. State consultation on final determination.
 Sec. 106. Determinations by the Secretary to delist.
 Sec. 107. Cooperation with the States.

TITLE II—COMPLYING WITH ALL FEDERAL LAWS AND MISSIONS

- Sec. 201. Balancing ESA with other laws and missions.
 Sec. 202. Actions not requiring consultation and conferencing.
 Sec. 203. Eliminating the exemption committee.

TITLE III—PERMITTING AND ENFORCEMENT

- Sec. 301. Protecting public health and safety.
 Sec. 302. Intervention in citizen suits.
 Sec. 303. Incidental take permits.
 Sec. 304. Safe harbor agreements.

TITLE IV—RECOVERY PLANNING

- Sec. 401. Recovery planning.

TITLE V—MISCELLANEOUS

- Sec. 501. Authorizing increased appropriations.

3 **SEC. 2. REFERENCES TO ENDANGERED SPECIES ACT OF**
 4 **1973.**

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

1 **TITLE I—IMPROVING SCI-**
2 **ENTIFIC INTEGRITY OF LIST-**
3 **ING DECISIONS AND PROCE-**
4 **DURES**

5 **SEC. 101. IMPROVING THE VALIDITY AND CREDIBILITY OF**
6 **DECISIONS.**

7 (a) BASES LISTINGS; USE OF CREDIBLE SCIENCE.—

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

9 (1) by amending subsection (a)(1)(D) to read
10 as follows:

11 “(D) the inadequacy of existing Federal, State,
12 and local government regulatory mechanisms or
13 other proactive conservation programs or measures,
14 including programs and measures voluntarily under-
15 taken;”;

16 (2) by striking paragraph (3) of subsection (a);
17 and

18 (3) in subsection (b), by amending so much as
19 precedes paragraph (3) to read as follows:

20 “(b) SECRETARIAL DETERMINATIONS.—

21 “(1) BASIS FOR DETERMINATION.—(A) The
22 Secretary shall make determinations required by
23 subsection (a)(1) solely on the basis of the best sci-
24 entific and commercial data available to the Sec-
25 retary after conducting a review of the status of the

1 species and after soliciting and fully considering the
2 best scientific and commercial data available con-
3 cerning the status of a species from any affected
4 State or any interested non-Federal person, and tak-
5 ing into account those efforts being made by any
6 State or foreign nation, any political subdivision of
7 a State or foreign nation, or any non-Federal person
8 or conservation organization, to protect such species,
9 whether by predator control, protection of habitat
10 and food supply, or other conservation practices,
11 within any area under its jurisdiction, or on the high
12 seas, and shall accord greater weight, consideration,
13 and preference to empirical data rather than projec-
14 tions or other extrapolations developed through mod-
15 eling.

16 “(B) In carrying out this section, the Secretary
17 shall give consideration to species which have been—

18 “(i) designated as requiring protection
19 from unrestricted commerce by any foreign na-
20 tion, or pursuant to any international agree-
21 ment; or

22 “(ii) identified as in danger of extinction,
23 or as likely to become so within the foreseeable
24 future, by any State agency or by any agency

1 of a foreign nation that is responsible for the
2 conservation of fish or wildlife or plants.

3 “(C) In making a determination whether a spe-
4 cies is an endangered species or threatened species
5 under this section, the Secretary shall consider the
6 future conservation benefits to be provided to the
7 species under any species conservation plans pre-
8 pared pursuant to section 10 or to any management
9 agreement entered into under section 6 or under any
10 other agreement for the conservation of any species
11 entered into between the Secretary and any other
12 person.

13 “(2) STANDARDS FOR DETERMINING SPE-
14 CIES.—Within 18 months after the date of the en-
15 actment of the Common Sense Protections for En-
16 dangered Species Act, the Secretary shall promul-
17 gate a rule establishing scientifically valid standards
18 for rendering taxonomic determinations of species
19 and subspecies. The standards shall provide that to
20 be eligible for determination as a subspecies under
21 this Act, a subspecies must be reproductively iso-
22 lated from other subspecific population units and
23 constitute an important component in the evolution-
24 ary legacy of the species.”.

25 (b) LISTING AND DELISTING.—

1 (1) RESPONSE TO PETITIONS.—Section 4(b)(3)
2 (16 U.S.C. 1533(b)(3)) is amended to read as fol-
3 lows:

4 “(3) RESPONSE TO PETITIONS.—

5 “(A) ACTION MAY BE WARRANTED.—

6 “(i) IN GENERAL.—Consistent with
7 the ranking system established by the Sec-
8 retary under subsection (h)(3) and to the
9 maximum extent practicable, after receiv-
10 ing the petition of an interested person
11 under section 553(e) of title 5, United
12 States Code, to—

13 “(I) add a species to;

14 “(II) remove a species from; or

15 “(III) change the status of a spe-
16 cies from a previous determination
17 with respect to;

18 either of the lists published under sub-
19 section (c), the Secretary shall immediately
20 publish in the Federal Register a notice of
21 receipt of the petition and shall make a
22 finding as to whether the petition presents
23 substantial scientific or commercial infor-
24 mation indicating that the petitioned ac-
25 tion may be warranted. If a petition is

1 found to present such information, the
2 Secretary shall promptly commence a re-
3 view of the status of the species concerned.
4 The Secretary shall promptly publish each
5 finding made under this subparagraph in
6 the Federal Register.

7 “(ii) MINIMUM DOCUMENTATION.—A
8 finding that the petition presents the infor-
9 mation described in clause (i) shall not be
10 made unless the petition provides—

11 “(I) scientific documentation
12 from a published scientific source that
13 the fish or wildlife or plant that is the
14 subject of the petition is a species;

15 “(II) a description of all available
16 data on the historical and current
17 range, population, and distribution of
18 the species, an explanation of the
19 methodology used to collect the data,
20 and an identification of the location
21 where the data can be reviewed;

22 “(III) scientific evidence that the
23 population of the species is declining
24 or has declined from historic popu-

1 lation levels and beyond normal popu-
2 lation fluctuations for the species;

3 “(IV) an appraisal of the avail-
4 able data on the threats to the species
5 or the causes of its decline;

6 “(V) an identification of the in-
7 formation contained or referred to in
8 the petition that has been peer-re-
9 viewed or field-tested;

10 “(VI) the reason that the peti-
11 tioned action is warranted, based on
12 the factors established under sub-
13 section (a);

14 “(VII) a bibliography of scientific
15 literature on the species, if any, in
16 support of the petition;

17 “(VIII) the qualifications of any
18 person cited in the petition as an ex-
19 pert on the species or the status of
20 the species; and

21 “(IX) at least one study or cred-
22 ible expert opinion, by a person who is
23 not affiliated with the petitioner, to
24 support the action requested in the
25 petition.

1 “(iii) NOTIFICATION TO THE
2 STATES.—

3 “(I) PETITIONED ACTIONS.—If
4 the petition is found to present the in-
5 formation described in clause (i), the
6 Secretary shall notify and provide a
7 copy of the petition to the Governor of
8 each State in which the species is be-
9 lieved to occur and to affected tribes,
10 and shall solicit the advice of each
11 such Governor and tribe as to whether
12 the petitioned action is warranted.
13 Such advice shall be submitted to the
14 Secretary not later than 90 days after
15 the notification.

16 “(II) PEER REVIEW OF CERTAIN
17 DETERMINATIONS.—If the Secretary’s
18 determination that the petitioned ac-
19 tion is warranted is in direct conflict
20 with the information submitted by the
21 Governor or tribe, the finding shall
22 not be final until the Secretary sub-
23 mits the finding to peer review as pro-
24 vided in subsection (f). The peer re-
25 viewers shall have not more than 30

1 days to submit their findings and
2 comments to the Secretary. If the
3 peer reviewers and the Secretary find
4 that the petition is warranted, the
5 Secretary shall prepare a record of de-
6 cision and shall submit the record to
7 the Governor or tribe. Issuance of
8 such record shall be final agency ac-
9 tion for purposes of chapter 7 of title
10 5, United States Code (relating to ju-
11 dicial review).

12 “(B) PETITION TO CHANGE STATUS OR
13 DELIST.—A petition may be submitted to the
14 Secretary under subparagraph (A) to change
15 the status of a species or to remove a species
16 from either of the lists published under sub-
17 section (c) in accordance with subsection (a)(1),
18 if—

19 “(i) the current listing is no longer
20 appropriate because of a change in the fac-
21 tors identified under subsection (a)(1); or

22 “(ii) with respect to a petition to re-
23 move a species from either of the lists—

1 “(I) new data or a reinterpretation
2 tion of prior data indicate that re-
3 moval is appropriate;

4 “(II) the species is extinct;

5 “(III) the recovery goals estab-
6 lished for the species in a recovery
7 plan adopted under section 5 have
8 been achieved; or

9 “(IV) the original listing of the
10 species was not subject to adequate
11 peer review as required by this Act.

12 “(C) DETERMINATION.—Not later than
13 the end of the 1-year period beginning on the
14 date the Secretary receives a petition that is
15 found under subparagraph (A)(i) to present
16 substantial information indicating that the peti-
17 tioned action may be warranted, the Secretary
18 shall make one of the following findings:

19 “(i) NOT WARRANTED.—The peti-
20 tioned action is not warranted, in which
21 case the Secretary shall promptly publish
22 the finding in the Federal Register.

23 “(ii) WARRANTED.—The petitioned
24 action is warranted, in which case the Sec-
25 retary shall, within 45 days after making

1 the determination and before issuing any
2 proposed rule to implement the determina-
3 tion, publish in the Federal Register a no-
4 tice of a review of the status of the species
5 that includes a description of the following:

6 “(I) Any missing data that, if ob-
7 tained, would support the determina-
8 tion.

9 “(II) Data that are necessary to
10 make the determination and that can
11 be collected within the period available
12 for making the determination.

13 “(III) Data that may be nec-
14 essary in the future to ensure the con-
15 tinued validity of the determination,
16 and the deadline or deadlines for col-
17 lecting that data.

18 “(iii) WARRANTED BUT PRE-
19 CLUDED.—The petitioned action is war-
20 ranted, but—

21 “(I) the immediate proposal and
22 timely promulgation of a final regula-
23 tion implementing the petitioned ac-
24 tion in accordance with paragraphs
25 (5) and (6) is precluded by pending

1 proposals to determine whether any
2 species is an endangered species or a
3 threatened species; and

4 “(II) expeditious progress is
5 being made to add qualified species to
6 either of the lists published under
7 subsection (c) and to remove from the
8 lists species for which the protections
9 of this Act are no longer necessary;

10 in which case the Secretary shall promptly
11 publish the finding in the Federal Register,
12 together with a description and evaluation
13 of the reasons and data on which the find-
14 ing is based.

15 “(D) PUBLIC MEETINGS.—If requested by
16 any person within 30 days after the date of
17 publication of a finding under subparagraph
18 (C) regarding a species, the Secretary shall con-
19 duct at least one public meeting on the finding
20 in each State in which the species is believed to
21 occur and a person making such a request re-
22 sides. Public meetings in a State under this
23 clause shall include—

24 “(i) a public meeting at a location
25 that is as centrally located as possible to

1 the areas in the State believed by the Sec-
2 retary to be habitat of the species; and

3 “(ii) at least one public meeting in
4 each rural area of the State that the Gov-
5 ernor of the State determines is affected
6 by the determination.

7 “(E) SUBSEQUENT DETERMINATION.—A
8 petition with respect to which a finding is made
9 under subparagraph (C)(iii) shall be treated as
10 a petition that is resubmitted to the Secretary
11 under subparagraph (A) on the date of the
12 finding and that presents substantial scientific
13 or commercial information that the petitioned
14 action may be warranted.

15 “(F) JUDICIAL REVIEW.—(i) Any negative
16 finding described in subparagraph (A)(i) and
17 any finding described in clause (i) or (iii) of
18 subparagraph (C) shall be subject to judicial re-
19 view. In any suit for review brought under this
20 paragraph, any person may intervene as a mat-
21 ter of right if the person can demonstrate that
22 a determination to list will have a direct eco-
23 nomic impact on such person.

24 “(ii) In any action seeking judicial review
25 of a finding by the Secretary described in sub-

1 paragraph (C)(iii), the court shall give great
2 weight to the finding.

3 “(G) MONITORING.—The Secretary shall
4 implement a system to monitor effectively the
5 status of each species with respect to which a
6 finding is made under subparagraph (C)(iii)
7 and shall make prompt use of the authority
8 under paragraph (7) to prevent a significant
9 risk to the well-being of the species.

10 “(H) DATA SOLICITATION.—(i) The Sec-
11 retary shall, in the one-year period referred to
12 in subparagraph (C)—

13 “(I) solicit, through publication in the
14 Federal Register, information regarding
15 the status of the species that may be the
16 subject of a proposed rule, including cur-
17 rent population, population trends, current
18 habitat, other State or local governmental
19 conservation efforts, Federal conservation
20 lands that could provide habitat for the
21 species, food sources, predators, breeding
22 habits, captive breeding efforts, commer-
23 cial, nonprofit, avocational, or voluntary
24 conservation activities, or other pertinent
25 information that may assist in making the

1 determination referred to in subsection
2 (a)(1); and

3 “(II) collect and consider the data
4 identified and described pursuant to sub-
5 clause (I).

6 “(ii) The solicitation shall establish a time
7 period within which to submit the information,
8 that shall be not less than 180 days. The period
9 shall be extended for an additional 60 days at
10 the request of any person who submits a re-
11 quest for such extension that includes a state-
12 ment of the reasons for the request. In making
13 the determination referred to in subsection
14 (a)(1), the Secretary shall give equal weight to
15 the information submitted in accordance with
16 this subparagraph.”.

17 (2) CONFORMING AMENDMENT.—Section
18 6(d)(1) (16 U.S.C. 1535(d)(1)) is amended in the
19 first sentence by striking “subparagraph (C)” and
20 inserting “subparagraph (G)”.

21 (c) PROPOSED REGULATIONS.—Section 4(b)(5) (16
22 U.S.C. 1533(b)(5)) is amended to read as follows:

23 “(5) PROPOSED REGULATIONS AND REVIEW.—
24 With respect to any regulation proposed by the Sec-
25 retary to implement a determination referred to in

1 subsection (a)(1) of this section, the Secretary shall
2 perform the following:

3 “(A) Not later than 12 months before pub-
4 lishing the proposed regulation, the Secretary
5 shall—

6 “(i) notify the Governor of each State
7 in which the species is believed to occur
8 and each affected tribe; and

9 “(ii) solicit submission by each such
10 Governor and tribe, by not later than 90
11 days after the notification, of advice as to
12 whether the determination is warranted.

13 “(B) Before publication of the proposed
14 regulation, the Secretary shall consider advice
15 received from State Governors and tribes under
16 subparagraph (A)(ii). If a Governor or tribe
17 provides scientific evidence pursuant to sub-
18 paragraph (A)(ii) that the determination is not
19 warranted, the Secretary may not make the de-
20 termination with respect to that State or on the
21 lands of that tribe, respectively, unless the Sec-
22 retary shows by a preponderance of scientific
23 evidence that the information submitted by the
24 Governor or tribe is incorrect and that the de-
25 termination is warranted.

1 “(C) Not less than 90 days before the ef-
2 fective date of the regulation—

3 “(i) publish a general notice and the
4 complete text of the proposed regulation in
5 the Federal Register as provided in para-
6 graph (8); and

7 “(ii) give actual notice of the proposed
8 regulation (including the complete text of
9 the regulation) to the Governor of each
10 State in which the species is believed to
11 occur, and invite the determination of such
12 State as to whether the action is warranted
13 and if the Governor notifies the Secretary
14 that the action is not warranted, the Sec-
15 retary must provide to the Governor a
16 record of decision for such determination,
17 including information made available to
18 the Secretary which did not support the
19 determination, and the written reasons for
20 the determination.

21 “(D) In cooperation with the Secretary of
22 State, give notice of the proposed regulation to
23 each foreign nation in which the species is be-
24 lieved to occur or whose citizens harvest the

1 species on the high seas, and consult with such
2 nation thereon.

3 “(E) Give notice of the proposed regulation
4 to any person who requests such notice, any
5 person who has submitted additional data, each
6 State and local government within which the
7 species is believed to occur or which is likely to
8 experience any effects of any measures to pro-
9 tect the species under this Act, and such profes-
10 sional scientific organizations as the Secretary
11 deems appropriate.

12 “(F) Publish a summary of the proposed
13 regulation in a newspaper of general circulation
14 in each area of the United States in which the
15 species is believed to occur.

16 “(G) At the request of any person made
17 not later than 45 days after the date of publica-
18 tion of general notice, promptly hold at least
19 one public meeting in each State that would be
20 affected by the proposed regulation (including
21 at least one public meeting in an affected rural
22 area, if any) except that the Secretary shall not
23 be required to hold more than five public meet-
24 ings under this subparagraph.

1 “(H) Identify and include with the pro-
2 posed rule a description of—

3 “(i) all data that are to be considered
4 in making the determination under sub-
5 section (a)(1) to which the proposed rule
6 relates and that have yet to be collected or
7 field verified;

8 “(ii) any data that have not been col-
9 lected and considered in the determination
10 under subsection (a)(1) to which the rule
11 relates and that are necessary to ensure
12 the continued scientific integrity of the de-
13 termination;

14 “(iii) deadlines by which the Secretary
15 shall collect and consider the data in ac-
16 cordance with subparagraph (I);

17 “(iv) a description of additional sci-
18 entific and commercial data that would as-
19 sist in the preparation of a recovery plan
20 for the species to which the rule relates;

21 “(v) a list of known threats to the
22 species and a description of the types of
23 activities that may be affected by the de-
24 termination under subsection (a)(1) and

1 any restriction on use of property that may
2 result from the determination; and

3 “(vi) other State, local, or Federal
4 regulatory or conservation measures that
5 may either at present or in the future con-
6 tribute to the conservation of the species.

7 “(I) Not later than the deadline published
8 by the Secretary pursuant to subparagraph
9 (H)(iii), the Secretary shall—

10 “(i) collect the data;

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

13 “(iii) consider the data after that re-
14 view and comment; and

15 “(iv) publish in the Federal Register
16 the results of that consideration and a de-
17 scription of and schedule for any actions
18 warranted by the data.”.

19 (d) FINAL REGULATIONS.—

20 (1) SCHEDULE.—Section 4(b)(6) (16 U.S.C.
21 1533(b)(6)) is amended by striking “(6)(A)” and all
22 that follows through the end of subparagraph (A)
23 and inserting the following:

24 “(6) FINAL REGULATIONS.—

1 “(A) IN GENERAL.—Within the 1-year pe-
2 riod beginning on the date on which general no-
3 tice is published in accordance with paragraph
4 (5)(A)(i) regarding a proposed regulation, the
5 Secretary shall publish in the Federal
6 Register—

7 “(i) a final regulation to implement
8 the determination;

9 “(ii) notice that the 1-year period is
10 being extended under subparagraph (B)(i);
11 or

12 “(iii) notice that the proposed regula-
13 tion is being withdrawn under subpara-
14 graph (B)(ii), together with the finding on
15 which the withdrawal is based.”.

16 (2) CONFORMING AMENDMENTS.—Section
17 4(b)(6) (16 U.S.C. 1533(b)(6)) is amended—

18 (A) in subparagraph (B)(i), by striking “or
19 revision”;

20 (B) in subparagraph (B)(iii), by striking
21 “or revision concerned, a finding that the revi-
22 sion should not be made,”; and

23 (C) by striking subparagraph (C).

24 (e) USING BEST DATA.—Section 4(b)(8) (16 U.S.C.
25 1533(b)(8)) is amended—

1 (1) by striking “the data” and inserting “the
2 best scientific and commercial data available”;

3 (2) by striking “regulation; and if such regula-
4 tion designates or revises critical habitat, such sum-
5 mary shall, to the maximum extent practicable, also
6 include a brief description and evaluation of those
7 activities (whether public or private) which, in the
8 opinion of the Secretary, if undertaken may ad-
9 versely modify such habitat, or may be affected by
10 such designation.” and inserting “regulation, and
11 shall provide, to the degree that it is relevant and
12 available, information regarding the status of the af-
13 fected species, including current population, popu-
14 lation trends, current habitat, food sources, preda-
15 tors, breeding habits, captive breeding efforts, gov-
16 ernmental and nongovernmental conservation efforts,
17 or other pertinent information.”; and

18 (3) by adding at the end the following new sen-
19 tence: “Each regulation proposed by the Secretary
20 to implement a determination referred to in sub-
21 section (a)(1) shall be based primarily and substan-
22 tially on peer-reviewed scientific information obtain-
23 able from any source, including governmental and
24 nongovernmental sources, that has been to the max-
25 imum extent feasible verified by field testing. The

1 Secretary shall identify any data that is used as a
2 basis for such a determination and that has not been
3 verified by field testing.”.

4 (f) ANALYSIS OF ECONOMIC AND SOCIAL EF-
5 FECTS.—Section 4(b) (16 U.S.C. 1533(b)) is amended by
6 adding at the end the following new paragraph:

7 “(9) ANALYSIS OF ECONOMIC AND SOCIAL
8 COSTS.—(A) Concurrently with a determination that
9 a species warrants listing as an endangered species
10 or threatened species, the Secretary shall publish in
11 the Federal Register with such determination an
12 analysis of the economic, social, and other public
13 health, safety, and welfare effects the listing may
14 have.

15 “(B) The analysis shall include—

16 “(i) an estimate of the effects the listing
17 may have on Federal, State, and local expendi-
18 tures and revenues;

19 “(ii) the costs and benefits of the listing
20 for the private sector, including lost opportunity
21 costs; and

22 “(iii) an identification of the geographic
23 area that may be affected by the listing.”.

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

1 (1) by amending paragraph (20) to read as fol-
2 lows:

3 “(20) The term ‘threatened species’ means any
4 species that is likely to become an endangered spe-
5 cies within the foreseeable future throughout all or
6 a significant portion of its range, and the population
7 of which is declining or has declined from known
8 historic populations levels and beyond the normal
9 population fluctuations for the species.”; and

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

11 “(22) The term ‘best scientific and commercial
12 data available’ means factual information, including
13 but not limited to peer reviewed scientific informa-
14 tion and genetic data, obtainable from any source,
15 including governmental and nongovernmental
16 sources, which has been to the maximum extent fea-
17 sible verified by field testing.

18 “(23) The term ‘species’ includes any sub-
19 species of fish or wildlife or plants, and any distinct
20 population of any species of vertebrate fish or wild-
21 life which interbreeds when mature, unless such dis-
22 tinct population is determined to be endangered or
23 threatened under the law of the State in which it is
24 found and such law prohibits the unpermitted take
25 of such species.”.

1 **SEC. 102. PEER REVIEW.**

2 Section 4(f) (16 U.S.C. 1533(f)) is amended to read
3 as follows:

4 “(f) PEER REVIEW REQUIREMENT.—

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

6 “(A) The term ‘action’ means—

7 “(i) the determination that a species
8 is an endangered species or a threatened
9 species under subsection (a);

10 “(ii) the determination under sub-
11 section (a) that an endangered species or
12 a threatened species be removed from any
13 list published under subsection (c)(1);

14 “(iii) the designation, or revision of
15 the designation, of critical habitat for an
16 endangered species or a threatened species
17 under section 5(k);

18 “(iv) the determination that a pro-
19 posed action is likely to jeopardize the con-
20 tinued existence of a listed species and the
21 proposal of any reasonable and prudent al-
22 ternatives by the Secretary under section
23 7(b)(3); and

24 “(v) the issuance of any regulation or
25 criteria establishing specific mitigation ob-
26 ligations with respect to a species.

1 “(B) The term ‘qualified individual’ means
2 an individual with expertise in the biological
3 sciences—

4 “(i) who is by virtue of advanced edu-
5 cation, training, or avocational, academic,
6 commercial, research, or other experience
7 competent to review the adequacy of any
8 scientific methodology supporting the ac-
9 tion, the validity of any conclusions drawn
10 from the supporting data, and the com-
11 petency of the individual who conducted
12 the research or prepared the data;

13 “(ii) who is not otherwise employed by
14 or under contract to the Secretary or the
15 State in which the species is located;

16 “(iii) who has not actively participated
17 in the prelisting or listing processes or ad-
18 vocated that a listing decision be made;

19 “(iv) who has not been employed by
20 or under contract to the Secretary or the
21 State in which the species is located for
22 work related to the action or species under
23 consideration; and

24 “(v) who has no direct financial inter-
25 est, and is not employed by any person

1 with a direct financial interest, in opposing
2 the action under consideration.

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

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

1 “(4) DATA PROVIDED TO PEER REVIEWER.—
2 The Secretary shall make available to each person
3 conducting peer review all scientific information
4 available regarding the species which is the subject
5 of the peer review. The Secretary shall not indicate
6 to a peer reviewer the name of any person that sub-
7 mitted a petition for listing or delisting that is re-
8 viewed by the reviewer.

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

16 “(6) PUBLICATION OF PEER REVIEW RE-
17 PORT.—The Secretary shall publish with any final
18 regulation implementing an action a summary of the
19 report of the peer review panel noting points of dis-
20 agreement between peer reviewers, if any, and the
21 response of the Secretary to the report. The report
22 of the peer reviewers shall be included in the official
23 record of the proposed action and shall be available
24 for public review prior to the close of the comment
25 period on the regulation.”.

1 **SEC. 103. MAKING DATA PUBLIC.**

2 (a) PUBLIC DATA.—Section 4(b)(3) (16 U.S.C.
3 1533(b)(3)) is further amended by adding at the end the
4 following new subparagraph:

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

20 “(ii) The Secretary shall not publish or other-
21 wise publicly disclose the location of particular pri-
22 vate property as habitat for a species which is deter-
23 mined to be an endangered species or threatened
24 species or proposed to be determined to be an en-
25 dangered species or threatened species, unless the
26 Secretary first notifies the owner thereof and re-

1 ceives the consent of the owner, or the information
2 is otherwise public information.”.

3 (b) NOTICE OF HEARINGS AND PUBLIC MEET-
4 INGS.—Section 14 is amended to read as follows:

5 **“SEC. 14. PUBLIC HEARINGS AND PUBLIC MEETINGS.**

6 “(a) IN GENERAL.—Except as otherwise provided by
7 this Act, the Secretary shall provide notice of any hearing
8 or public meeting at which public comment is accepted
9 under this Act by publication in the Federal Register and
10 in a newspaper of general circulation in the location of
11 the hearing or public meeting at least 30 days prior to
12 the hearing or public meeting.

13 “(b) PUBLIC MEETINGS.—Each public meeting held
14 pursuant to this Act shall provide an opportunity for the
15 public to make statements and receive information and an-
16 swers, respectively, from the agency regarding all aspects
17 of and questions regarding the petition or other matter
18 that is the subject of the public meeting. To the maximum
19 extent practicable, the Secretary shall ensure that mem-
20 bers of the public are provided with the information
21 sought at the public meeting.”.

22 **SEC. 104. JUDICIAL REVIEW.**

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

1 “(j) JUDICIAL REVIEW OF DETERMINATIONS.—Any
2 final determination that a species is a threatened species
3 or endangered species shall be subject to a de novo judicial
4 review with the court determining whether the decision is
5 supported by a preponderance of the evidence.”.

6 **SEC. 105. STATE CONSULTATION ON FINAL DETERMINA-**
7 **TION.**

8 Section 4(i) (16 U.S.C. 1533(i)) is amended to read
9 as follows:

10 “(i) SUBMISSION TO STATE AGENCY OF JUSTIFICA-
11 TION FOR REGULATIONS INCONSISTENT WITH STATE
12 AGENCY’S COMMENTS OR PETITION.—If, in the case of
13 any regulation proposed by the Secretary under the au-
14 thority of this section, a Governor who consulted with the
15 Secretary in accordance with subsection (b)(5)(A)(ii) files
16 comments disagreeing with all or part of the proposed reg-
17 ulation, the Secretary shall not issue a final regulation
18 that is in conflict with such comments until the Secretary
19 further consults with the President. If the Secretary
20 adopts a final regulation in conflict with comments made
21 by the Governor of a State or fails to adopt a regulation
22 pursuant to an action petitioned by a Governor under sub-
23 section (b)(3), the Secretary shall submit to the Governor
24 a written justification for the failure of the Secretary to

1 adopt regulations consistent with the comments or petition
2 of the Governor.”.

3 **SEC. 106. DETERMINATIONS BY THE SECRETARY TO**
4 **DELIST.**

5 Section 4(c)(2) (16 U.S.C. 1533(c)(2)) is amended
6 to read as follows:

7 “(2) The Secretary shall—

8 “(A) conduct, at least once every 5 years, a re-
9 view of all species included in a list which is pub-
10 lished pursuant to paragraph (1) and which is in ef-
11 fect at the time of such review; and

12 “(B) determine on the basis of such review
13 whether any such species should—

14 “(i) be removed from such list, which shall
15 be proposed within 90 days of the date upon
16 which it is determined that—

17 “(I) new data or a reinterpretation of
18 prior data indicates that the previous de-
19 termination was in error;

20 “(II) the species is extinct; or

21 “(III) the recovery goal established
22 for the species in a recovery plan under
23 section 5(e) has been achieved;

24 “(ii) be changed in status from an endan-
25 gered species to a threatened species; or

1 “(iii) be changed in status from a threat-
2 ened species to an endangered species.

3 Each determination under subparagraph (B) shall be
4 made in accordance with the provisions of subsections (a)
5 and (b) of this section.”.

6 **SEC. 107. COOPERATION WITH THE STATES.**

7 The first sentence of section 4(h) (16 U.S.C.
8 1533(h)) is amended to read as follows: “The Secretary
9 shall develop in cooperation with the States, and publish
10 in the Federal Register, agency guidelines to ensure that
11 cooperation with the States is achieved efficiently and ef-
12 fectively.”.

13 **TITLE II—COMPLYING WITH ALL**
14 **FEDERAL LAWS AND MISSIONS**

15 **SEC. 201. BALANCING ESA WITH OTHER LAWS AND MIS-**
16 **SIONS.**

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

19 (1) by amending the matter preceding sub-
20 section (a)(2) to read as follows:

21 **“SEC. 7. INTERAGENCY COOPERATION.**

22 “(a) FEDERAL AGENCY ACTIONS AND CONSULTA-
23 TIONS.—

24 “(1) PROGRAMS ADMINISTERED BY THE SEC-
25 RETARY OF THE INTERIOR.—The Secretary shall re-

1 view other programs administered by the Secretary
2 and utilize such programs in furtherance of the pur-
3 poses of this Act. Except as provided in section
4 5(k)(2), all other Federal agencies shall, consistent
5 with their primary missions and in consultation with
6 and with the assistance of the Secretary, utilize their
7 authorities in furtherance of the purposes of this Act
8 by carrying out programs for the conservation of en-
9 dangered species and threatened species listed pur-
10 suant to section 4.”; and

11 (2) by adding at the end of subsection (a) the
12 following:

13 “(5) INITIATION OF CONSULTATION.—A Fed-
14 eral agency that receives a request under paragraph
15 (3) shall initiate consultation within 15 days after
16 the date on which the request is received from the
17 permit or license applicant.

18 “(6) DEMONSTRATION BY SECRETARY RE-
19 QUIRED.—If the Secretary asserts the applicability
20 of section 7 to any property, the Secretary shall have
21 the responsibility of demonstrating, based on the
22 best information available at the time any consulta-
23 tion under this subsection is initiated, that—

24 “(A) a threatened species or endangered
25 species or its respective critical habitat is lo-

1 cated in the geographic area that is the subject
2 of the consultation; and

3 “(B) such proposed action will jeopardize
4 the continued existence of a threatened species
5 or endangered species.

6 “(7) PROHIBITION ON OPINIONS BASED ON IN-
7 SUFFICIENT DATA.—The Secretary shall not issue
8 an opinion under subsection (b) that a proposed ac-
9 tion will jeopardize the continued existence of a
10 threatened species or endangered species based on
11 the insufficiency of available data on the impact of
12 a proposed action on such species.

13 “(8) EFFECT OF LISTING ON EXISTING
14 PLANS.—

15 “(A) DEFINITION OF ACTION.—For the
16 purposes of this paragraph, the term ‘action’
17 includes the adoption of land use plans under
18 the Federal Land Policy and Management Act
19 of 1976 (43 U.S.C. 1701 et seq.) and land and
20 resource management plans under the Forest
21 and Rangeland Renewable Resources Planning
22 Act of 1974 (16 U.S.C. 1600 et seq.), as
23 amended by the National Forest Management
24 Act of 1976 (16 U.S.C. 1600 (note)).

1 “(B) REINITIATION OF CONSULTATION.—
2 Whenever a determination to list a species as
3 an endangered species or a threatened species
4 or a designation of critical habitat requires re-
5 initiation of consultation on an already ap-
6 proved action, the consultation shall commence
7 promptly, but not later than 90 days after the
8 date of the determination or designation, and
9 shall be completed not later than 1 year after
10 the date on which the consultation is com-
11 menced. During that 1-year period, the site spe-
12 cific actions referred to in subparagraph (C)
13 may not be enjoined under this Act based on
14 that listing.

15 “(C) SITE-SPECIFIC ACTIONS DURING CON-
16 SULTATION.—Notwithstanding subsection (d),
17 the Federal agency implementing the land use
18 plan or land and resource management plan
19 under subparagraph (B) may authorize, fund,
20 or carry out a site-specific ongoing or previously
21 scheduled action within the scope of the plan on
22 the lands prior to completing consultation on
23 the plan under subparagraph (B) pursuant to
24 the consultation procedures of this section and
25 related regulations, if—

1 “(i) no consultation on the action is
2 required; or

3 “(ii) consultation on the action is re-
4 quired, the Secretary issues or has issued
5 a biological opinion, and the action satis-
6 fies the requirements of this section.

7 “(9) RELATIONSHIP TO DUTIES UNDER OTHER
8 LAWS.—(A) The responsibilities of a Federal agency
9 under this Act shall not supersede and shall be im-
10 plemented in a manner consistent with duties as-
11 signed to the Federal agency by any other laws or
12 by any treaties.

13 “(B)(i) If a Federal agency determines that the
14 responsibilities and duties described in subparagraph
15 (A) are in irreconcilable conflict, the action agency
16 shall request the President to resolve the conflict.

17 “(ii) In determining a resolution to such a con-
18 flict, the President shall consider and choose the
19 course of action that best meets the public interest
20 and, to the extent possible, balances pursuit of the
21 recovery objective or the purposes of the recovery
22 plan with economic and social needs and pursuit of
23 the purposes of the other laws or treaties. The au-
24 thority assigned to the President by this subpara-
25 graph may not be delegated to a member of the ex-

1 executive branch who has not been confirmed by the
2 Senate.”.

3 (b) PROCEDURES FOR CONSULTATION.—Section 7(b)
4 (16 U.S.C. 1536(b)) is amended—

5 (1) by adding at the end of paragraph (1) the
6 following:

7 “(C) If consultation is not concluded and the
8 written statement of the Secretary required under
9 paragraph (3)(A) is not provided to the Federal
10 agency by the applicable deadline established under
11 this paragraph, the requirements of subsection
12 (a)(2) shall be deemed met and the Federal agency
13 may proceed with the agency action.”; and

14 (2) by amending paragraph (2) to read as fol-
15 lows:

16 “(2) OPPORTUNITY TO PARTICIPATE IN CON-
17 SULTATIONS.—(A) In conducting a consultation
18 under subsection (a)(2), the Secretary shall provide
19 any person who has sought authorization or funding
20 from a Federal agency for an action that is the sub-
21 ject of the consultation, the opportunity to—

22 “(i) prior to the development of a draft bi-
23 ological opinion under paragraph (3), submit
24 and discuss with the Secretary and the Federal
25 agency information relevant to the effect of the

1 proposed action on the species and the avail-
2 ability of reasonable and prudent alternatives
3 (if a jeopardy opinion is to be issued) that the
4 Federal agency and the person can take to
5 avoid violation of subsection (a)(2);

6 “(ii) receive information, on request, sub-
7 ject to the exemptions specified in section
8 552(b) of title 5, United States Code, on the
9 status of the species, threats to the species, and
10 conservation measures, used by the Secretary to
11 develop the draft biological opinion and the
12 final biological opinion, including the associated
13 incidental taking statements; and

14 “(iii) receive a copy of the draft biological
15 opinion from the Federal agency and, prior to
16 issuance of the final biological opinion, submit
17 comments on the draft biological opinion and
18 discuss with the Secretary and the Federal
19 agency the basis for any finding in the draft bi-
20 ological opinion.

21 “(B) If reasonable and prudent alternatives are
22 proposed by a person under subparagraph (A) and
23 the Secretary does not include the alternatives in the
24 final biological opinion under paragraph (3), the

1 Secretary shall explain, in writing, to the person why
2 those alternatives were not included in the opinion.

3 “(C) Consultation under subsection (a)(3) shall
4 be concluded within such period as is agreeable to
5 the Secretary, the Federal agency, and the applicant
6 concerned.”.

7 (c) REASONABLE AND PRUDENT ALTERNATIVES.—
8 Section 7(b)(3) (16 U.S.C. 1536(b)(3)) is amended by
9 adding at the end the following:

10 “(C) In the development of an opinion under
11 this paragraph with respect to public lands, the Sec-
12 retary shall solicit and utilize information and advice
13 regarding those lands from the Governor of each
14 State in which the lands are located. With respect
15 to nonpublic lands, the Secretary shall solicit such
16 advice only upon the request of the affected land-
17 owner.

18 “(D) Unless required by law other than sub-
19 sections (a) through (d), the Secretary, in any opin-
20 ion or statement under this subsection concerning an
21 agency action (including any reasonable and prudent
22 alternative suggested under subparagraph (A) or
23 any reasonable and prudent measure specified under
24 clause (ii) of paragraph (4)), and the head of the
25 Federal agency proposing the agency action, may

1 not require, provide for, or recommend the imposi-
2 tion of any restriction or obligation on the activity
3 of any person that is not authorized, funded, carried
4 out, or otherwise subject to regulation by the Fed-
5 eral agency.”.

6 (d) DEFINITIONS.—Section 3 (16 U.S.C. 1532) is
7 further amended by adding at the end the following:

8 “(24) The term ‘reasonable and prudent alter-
9 native’ means an alternative to an agency action
10 that—

11 “(A) can be implemented in a manner con-
12 sistent with the intended purpose of the agency
13 action or the activity of a non-Federal person
14 under section 10;

15 “(B) can be implemented consistent with
16 the scope of the legal authority and jurisdiction
17 of the Federal agency;

18 “(C) is economically and technologically
19 feasible for the applicant or non-Federal person
20 to undertake;

21 “(D) the Secretary believes would avoid
22 being likely to jeopardize the continued exist-
23 ence of the species;

1 “(E) does not exceed in nature, scope, and
2 extent the effect of the proposed activity that is
3 the subject of the consultation; and

4 “(F) both prevents the agency action con-
5 cerned from jeopardizing the continued exist-
6 ence of the species and imposes the least social
7 and economic cost possible.

8 “(25) The term ‘likely to jeopardize the contin-
9 ued existence of’, with respect to an action or activ-
10 ity affecting an endangered species or a threatened
11 species, means an action or activity that significantly
12 diminishes the likelihood of the survival of the spe-
13 cies by significantly reducing the numbers or dis-
14 tribution of the entire species.”.

15 (e) RESTRICTION ON NEW OR ADDITIONAL REQUIRE-
16 MENTS.—Section 7(b) (16 U.S.C. 1536(b)) is amended by
17 adding at the end the following:

18 “(5) The Secretary shall provide to each applicant for
19 a permit or license that is subject to consultation under
20 this section a written statement that shall guarantee that,
21 so long as the project at issue is carried out consistent
22 with the statement issued under paragraph (4), the appli-
23 cant shall not be subject to new or additional requirements
24 for the specific protection of any species identified in the
25 statement beyond the requirements set forth in the state-

1 ment. All Federal entities shall be bound by the Sec-
2 retary's guarantee.

3 “(6)(A) The Secretary shall not refuse to provide an
4 incidental take statement under paragraph (4), unless the
5 Secretary has provided to the agency and the permit
6 applicant—

7 “(i) all conditions for issuance of the statement,
8 in writing; and

9 “(ii) an opportunity for the agency and the per-
10 mit applicant to provide a written response to the
11 conditions.

12 “(B) Any refusal to provide an incidental take state-
13 ment without first providing the written conditions there-
14 fore and providing an opportunity to respond in accord-
15 ance with subparagraph (A), is deemed to be arbitrary and
16 capricious.

17 “(7) The Secretary may not require any measures
18 under subsection (b)(4) that exceed in nature, scope, or
19 effect the impact of the taking for which the statement
20 is issued.”.

21 **SEC. 202. ACTIONS NOT REQUIRING CONSULTATION AND**
22 **CONFERENCING.**

23 Section 7 is amended by adding at the end the fol-
24 lowing:

1 “(q) ACTIONS NOT REQUIRING CONSULTATION AND
2 CONFERENCING.—

3 “(1) IN GENERAL.—Consultation and confer-
4 encing under paragraphs (2) and (4) of subsection
5 (a) shall not be required for any agency action
6 that—

7 “(A) is consistent with the provisions of a
8 final recovery plan under section 5;

9 “(B) is consistent with a cooperative man-
10 agement agreement under section 6 or an inci-
11 dental taking permit under section 10; or

12 “(C) consists of routine operation, mainte-
13 nance, rehabilitation, repair, or replacement to
14 a Federal or non-Federal project or facility, in-
15 cluding operation of a project or facility in ac-
16 cordance with a previously issued Federal li-
17 cense, permit, or other authorization.

18 “(2) EMERGENCY CONSULTATIONS.—In re-
19 sponse to, or to prevent or minimize damage from,
20 a natural event or other emergency, consultation
21 under subsection (a)(2) may be waived by a Federal
22 agency for the repair or maintenance of a natural
23 gas pipeline, hazardous liquid pipeline, flood control
24 facility, or electrical distribution transmission, or
25 substation facility, if the repair or maintenance is

1 necessary to address a probable imminent threat to
2 human lives or a probable and significant threat to
3 the environment. If a consultation is required by the
4 Secretary for such repair or maintenance, it shall be
5 completed within 10 days of any request by the ap-
6 plicant for consultation. Any measure required to be
7 taken to avoid take for an activity that is the subject
8 of such a waiver may not exceed in nature, scope,
9 and extent the effect of the activity and shall not be
10 required prior to the completion of the repair or
11 maintenance action.

12 “(3) ACTIONS NOT PROHIBITED.—An agency
13 action shall not constitute a taking of a species pro-
14 hibited by this Act or any regulation issued under
15 this Act if the action is consistent with—

16 “(A) the actions provided for in a final re-
17 covery plan under section 5;

18 “(B) a cooperative management agreement
19 or an incidental take permit; or

20 “(C) the terms and conditions specified in
21 a written statement provided under subsection
22 (b)(3) of this section.”.

23 **SEC. 203. ELIMINATING THE EXEMPTION COMMITTEE.**

24 (a) CONFORMING AMENDMENTS.—Section 7(c) (16
25 U.S.C. 1536(c)) is amended—

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

3 (2) by striking paragraph (2).

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

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

8 “(1) the Secretary shall grant an exemption
9 from this Act for any activity if the Secretary of De-
10 fense determines that the exemption of the activity
11 is necessary for reasons of national security; and

12 “(2) the President may grant an exemption
13 from this Act for any area that the President has
14 declared to be a major disaster area under The Rob-
15 ert T. Stafford Disaster Relief and Emergency As-
16 sistance Act (42 U.S.C. 5121 et seq.) for any project
17 for the repair or replacement of a public facility sub-
18 stantially as the facility existed prior to the disaster
19 under section 405 or 406 of that Act (42 U.S.C.
20 5171 and 5172), if the President determines that
21 the project—

22 “(A) is necessary to prevent the recurrence
23 of such a natural disaster or to reduce the po-
24 tential loss of human life; and

1 “(B) involves an emergency situation that
2 makes the application of the procedures of this
3 Act (other than this subsection) impractical.”.

4 (c) REPEAL.—Section 7 (16 U.S.C. 1536) is further
5 amended—

6 (1) by striking subsections (f) through (n) and
7 subsection (p);

8 (2) in subsection (o)—

9 (A) by striking the heading and inserting
10 the following: “EXCEPTION FOR TAKING IN AC-
11 CORDANCE WITH STATEMENT.—”; and

12 (B) by striking “such section—” and all
13 that follows through “(2) any taking” and in-
14 serting “such section, any taking”; and

15 (3) by redesignating subsection (o) as sub-
16 section (f).

17 **TITLE III—PERMITTING AND**
18 **ENFORCEMENT**

19 **SEC. 301. PROTECTING PUBLIC HEALTH AND SAFETY.**

20 (a) IN GENERAL.—Section 9(a) (16 U.S.C. 1538(a))
21 is amended by adding at the end the following:

22 “(3) PROTECTING PUBLIC HEALTH AND SAFE-
23 TY.—An activity of a non-Federal person is not a
24 taking of a species for purposes of paragraph (1) if
25 the activity—

1 “(A) addresses a critical, probable threat
2 to public health or safety or a catastrophic nat-
3 ural event, or is mandated by any Federal,
4 State, or local government agency for public
5 health or safety purposes; or

6 “(B) is incidental to, and not the purpose
7 of, the carrying out of an otherwise lawful ac-
8 tivity that consists of—

9 “(i) ongoing maintenance, routine op-
10 eration or use, and emergency repair of ex-
11 isting pipelines, flood control facilities or
12 projects, fire breaks, transmission and dis-
13 tribution lines, groundwater recharge fa-
14 cilities and areas, water storage and recy-
15 cling facilities, water drainage or water
16 conveyance structures and channels, and
17 appurtenant facilities;

18 “(ii) road and right-of-away mainte-
19 nance, use, and repair; or

20 “(iii) emergency repair or restoration
21 of any property or non-Federal facility to
22 the condition in which it existed or oper-
23 ated immediately before an emergency or
24 disaster, meeting current standards.”.

1 **SEC. 302. INTERVENTION IN CITIZEN SUITS.**

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

3 (1) by amending so much as precedes para-
4 graph (1)(B) to read as follows:

5 “(g) CITIZEN SUITS.—

6 “(1) IN GENERAL.—Except as provided in para-
7 graph (2), a civil suit may be commenced by any
8 person on his or her own behalf, who satisfies the
9 requirements of the Constitution and who has suf-
10 fered or is threatened with economic or other injury
11 resulting from the violation, regulation, application,
12 nonapplication, or failure to act—

13 “(A) to enjoin the United States or any
14 agency or official of the United States who is
15 alleged to be in violation of any provision of this
16 Act or regulation issued under the authority
17 thereof, if the violation poses immediate and ir-
18 reparable harm to a threatened species or en-
19 dangered species;” and

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

21 “(6) INTERVENTION.—Any person may inter-
22 vene as a matter of right in any civil suit brought
23 under this subsection if such suit presents a reason-
24 able threat of economic injury to such person. Any
25 intervenor under this paragraph shall have the same

1 right to present argument and to accept or reject po-
2 tential settlements as do the parties to the suit.”.

3 **SEC. 303. INCIDENTAL TAKE PERMITS.**

4 (a) SPECIES CONSERVATION PLANS.—Section
5 10(a)(2) (16 U.S.C. 1539(a)(2)) is amended to read as
6 follows:

7 “(2) SPECIES CONSERVATION PLANS.—(A) No
8 permit may be issued by the Secretary authorizing
9 any taking referred to in paragraph (1)(B) unless
10 the applicant therefor submits to the Secretary a
11 species conservation plan that specifies—

12 “(i) the impact on the species which will be
13 the likely result of the taking to be permitted;

14 “(ii) what steps the applicant can reason-
15 ably and economically take consistent with the
16 purposes and objectives of the taking to mini-
17 mize and mitigate such impacts, and the fund-
18 ing that will be available to implement such
19 steps; and

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

23 “(B) If the Secretary finds, after opportunity
24 for public comment, with respect to a permit appli-

1 cation and the related species conservation plan
2 that—

3 “(i) the taking will be incidental;

4 “(ii) the applicant will, to the extent rea-
5 sonable and economically practicable, minimize
6 the impacts of such taking;

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

9 “(iv) the taking will not appreciably reduce
10 the likelihood of the survival and recovery of the
11 species; and

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

14 and the Secretary has received such other assur-
15 ances as the Secretary may require that the plan will
16 be implemented, the Secretary shall issue the permit.

17 The permit shall contain such reasonable and eco-
18 nomically practicable terms and conditions con-
19 sistent with the purposes and objectives of the activ-
20 ity as the Secretary deems necessary to carry out
21 the purposes of this paragraph, including, but not
22 limited to, such reporting requirements as the Sec-
23 retary deems necessary for determining whether
24 such terms and conditions are being complied with.

25 The Secretary shall include those terms and condi-

1 tions that accomplish the goals of this section for
2 the least cost to the permit applicant.

3 “(C) The Secretary may not require the appli-
4 cant, as a condition of processing the application or
5 issuing the permit—

6 “(i) to expand the application to include
7 land, an interest in land, a right to use or re-
8 ceive water, or a proprietary water right not
9 owned by the applicant or to address a species
10 other than the species for which the application
11 is made;

12 “(ii) to carry out mitigation that exceeds
13 in nature, scope, or effect the impacts of the
14 taking for which the permit is issued;

15 “(iii) to minimize and mitigate for loss of
16 habitat resulting from activities under the per-
17 mit, in an area of land greater than the area
18 of land that is subject to impacts for which the
19 mitigation is required; or

20 “(iv) to expend an aggregate amount
21 greater than the cost of fencing and preserving
22 current conditions of the land on which activi-
23 ties are conducted under the permit.

24 “(D)(i) The Secretary shall complete the proc-
25 essing of, and approve or deny, any application for

1 a permit under paragraph (1)(B) within 90 days of
2 the date of submission of the application or within
3 such other period of time after such date of submis-
4 sion to which the Secretary and the permit applicant
5 mutually agree.

6 “(ii) The preparation and approval of a species
7 conservation plan and issuance of a permit with re-
8 spect to nonpublicly owned lands under paragraph
9 (1)(B) shall not be subject to section 102(2) of the
10 National Environmental Policy Act of 1969 (42
11 U.S.C. 4332(2)).

12 “(iii) If the Secretary considers a plan sub-
13 mitted under subparagraph (A) to be insufficient or
14 incomplete, the Secretary shall respond in writing to
15 the applicant within 30 days after receiving the ap-
16 plication, stating why the application is incomplete
17 or insufficient and stating any additional conditions
18 that must be met for the issuance of the permit. Any
19 denial of a permit under paragraph (1)(B) without
20 first providing such conditions in writing is deemed
21 to be arbitrary and capricious.

22 “(iv) If the application is resubmitted after the
23 Secretary responds under clause (iii), the Secretary
24 shall, within 60 days after receiving the resubmitted
25 application—

1 “(I) issue the permit;

2 “(II) at the request of the permit appli-
3 cant, provide written reasons for refusal to
4 complete consideration of the application; or

5 “(III) formally deny the permit, in writing,
6 stating the reasons for the denial.

7 “(E) No consultation is required under section
8 7 for—

9 “(i) any action by a permittee under this
10 section that is authorized by the terms and con-
11 ditions of the permit;

12 “(ii) any action by the Secretary in imple-
13 menting, enforcing, or monitoring compliance
14 with a permit under this section; or

15 “(iii) the issuance, amendment, or renewal
16 of any permit under this section, if the Sec-
17 retary determines that the issuance, amend-
18 ment, or renewal, respectively, will not appre-
19 ciably reduce the likelihood of the survival and
20 recovery of any species that is authorized to be
21 taken under the permit.

22 “(F) No additional measures to minimize and
23 mitigate impacts on a species that is a subject of a
24 permit issued under paragraph (1)(B) shall be re-
25 quired of a permittee that is in compliance with the

1 permit. With respect to any species that is a subject
2 of such a permit, under no circumstance shall a per-
3 mittee in compliance with the permit be required to
4 make any additional payment for any purpose, or ac-
5 cept any additional restriction on any parcel of land
6 available for development or land management or
7 any water or water-related right under the permit,
8 without the consent of the permittee.

9 “(G) After providing a permittee notice and an
10 opportunity to make appropriate corrections, the
11 Secretary shall revoke a permit issued under this
12 paragraph if the Secretary finds that the permittee
13 is not complying with the terms and conditions of
14 the permit or the species conservation plan required
15 for the permit.

16 “(H) Notwithstanding any other provision of
17 law, a person may not commence any action or pro-
18 ceeding to challenge the approval of a permit under
19 this section unless suit is filed within 45 days after
20 publication in the Federal Register of notice of
21 issuance of the permit.”

22 (b) LIMITATION ON MITIGATION REQUIRED FOR IN-
23 CIDENTAL TAKE PERMITS.—Section 10 of the Endan-
24 gered Species Act of 1973 (16 U.S.C. 1539) is amended
25 by adding at the end the following:

1 “(k) LIMITATION ON REQUIRED MITIGATION.—

2 “(1) IN GENERAL.—Subsection (a)(2) does not
3 require, and the Secretary may not require as a
4 term or condition of a permit under subsection
5 (a)(1)(B), that a permittee for a public project take
6 any measures to minimize or mitigate impacts of a
7 taking under the permit—

8 “(A) if the costs of implementing such
9 measures will exceed 10 percent of the total
10 project costs of the public project; or

11 “(B) for any activity that occurred prior to
12 the date of the issuance of the permit.

13 “(2) DEFINITIONS.—In this subsection—

14 “(A) the term ‘public project’ means any
15 construction project that is carried out or fund-
16 ed (in whole or in part) by a Federal, State, or
17 local agency; and

18 “(B) the term ‘total project costs’ means
19 the aggregate costs of acquiring land and car-
20 rying out construction.”.

21 **SEC. 304. SAFE HARBOR AGREEMENTS.**

22 Section 10 (16 U.S.C. 1539) is further amended by
23 adding at the end the following:

24 “(l) SAFE HARBOR AGREEMENTS.—

25 “(1) AGREEMENTS.—

1 “(A) IN GENERAL.—The Secretary may
2 enter into agreements with non-Federal persons
3 to benefit the conservation of endangered spe-
4 cies or threatened species by creating, restoring,
5 or improving habitat or by maintaining cur-
6 rently unoccupied habitat for endangered spe-
7 cies or threatened species. Under an agreement,
8 the Secretary shall permit the person to take
9 endangered species or threatened species in-
10 cluded under the agreement on lands or waters
11 that are subject to the agreement if the taking
12 is incidental to, and not the purpose of, car-
13 rying out of an otherwise lawful activity, and
14 does not violate the baseline requirement estab-
15 lished under subparagraph (B).

16 “(B) BASELINE REQUIREMENT.—For each
17 agreement under this subsection, the Secretary
18 shall establish a baseline requirement that is
19 mutually agreed upon by the applicant and the
20 Secretary at the time of the agreement that
21 will, at a minimum, maintain existing condi-
22 tions for the species covered by the agreement
23 on lands and waters that are subject to the
24 agreement. The baseline requirement may be
25 expressed in terms of the abundance or dis-

1 tribution of endangered species or threatened
2 species, quantity or quality of habitat, or such
3 other indicators as appropriate.

4 “(2) STANDARDS AND GUIDELINES.—The Sec-
5 retary shall issue standards and guidelines for the
6 development and approval of safe harbor agreements
7 in accordance with this subsection.

8 “(3) FINANCIAL ASSISTANCE.—

9 “(A) IN GENERAL.—In cooperation with
10 the States and subject to the availability of ap-
11 propriations to carry out this section, the Sec-
12 retary may provide a grant of up to \$10,000 to
13 any individual private landowner to assist the
14 landowner in carrying out a safe harbor agree-
15 ment under this subsection.

16 “(B) PROHIBITION ON ASSISTANCE FOR
17 REQUIRED ACTIVITIES.—The Secretary may not
18 provide assistance under this paragraph for any
19 action that is required by a permit issued under
20 this Act or that is otherwise required under this
21 Act or other Federal law.”.

22 **TITLE IV—RECOVERY PLANNING**

23 **SEC. 401. RECOVERY PLANNING.**

24 (a) REDESIGNATION.—Section 5 (16 U.S.C. 1534) is
25 redesignated as section 5A.

1 (b) RECOVERY PLANS.—The Act is amended by in-
2 serting before section 5A (as redesignated by subsection
3 (a)) the following:

4 “RECOVERY PLANS

5 “SEC. 5. (a) IN GENERAL.—The Secretary, in co-
6 operation with the States, and on the basis of the best
7 scientific and commercial data available, shall develop and
8 implement plans (referred to in this Act as ‘recovery
9 plans’) for the conservation and recovery of endangered
10 species and threatened species that are indigenous to the
11 United States or in waters with respect to which the
12 United States exercises sovereign rights or jurisdiction, in
13 accordance with the requirements and schedules described
14 in this section, unless the Secretary finds, after notice and
15 opportunity for public comment, that a plan will not pro-
16 mote the conservation of the species or because an existing
17 plan or strategy to conserve the species already serves as
18 the functional equivalent to a recovery plan.

19 “(b) PRIORITIES.—To the maximum extent prac-
20 ticable, the Secretary, in developing recovery plans, shall
21 give priority, without regard to taxonomic classification,
22 to recovery plans that—

23 “(1) address significant and immediate threats
24 to the survival of an endangered species or a threat-
25 ened species, have the greatest likelihood of achiev-
26 ing recovery of the endangered species or the threat-

1 ened species, and will benefit species that are more
2 taxonomically distinct;

3 “(2) address multiple species including (A) en-
4 dangered species, (B) threatened species, or (C) spe-
5 cies that the Secretary has identified as candidates
6 or proposed for listing under section 4 and that are
7 dependent on the same habitat as the endangered
8 species or threatened species covered by the plan;

9 “(3) reduce conflicts with construction, develop-
10 ment projects, jobs, agriculture, private property, or
11 other economic activities; and

12 “(4) reduce conflicts with military training and
13 operations.

14 “(c) SCHEDULE.—For each species determined to be
15 an endangered species or a threatened species after the
16 date of enactment of this subsection for which the Sec-
17 retary is required to develop a recovery plan under sub-
18 section (a), the Secretary shall publish—

19 “(1) not later than 18 months after the date of
20 the publication under section 4 of the final regula-
21 tion containing the listing determination, a draft re-
22 covery plan; and

23 “(2) not later than 30 months after the date of
24 publication under section 4 of the final regulation

1 containing the listing determination, a final recovery
2 plan.

3 “(d) APPOINTMENT AND ROLE OF RECOVERY
4 TEAM.—

5 “(1) IN GENERAL.—(A) Not later than 60 days
6 after the date of the publication under section 4 of
7 the final regulation containing the listing determina-
8 tion for a species, the Secretary, in cooperation with
9 the affected States, shall either—

10 “(i) appoint a recovery team to develop a
11 recovery plan for the species; or

12 “(ii) provide to each affected State and
13 publish a notice that a recovery team will not
14 be appointed, stating the reasons for not ap-
15 pointing a recovery team; and

16 “(B) Upon request by the Governor of any
17 State in which the species occurs made after publica-
18 tion of notice under subparagraph (A)(ii), the Sec-
19 retary shall, as requested by the Governor—

20 “(i) appoint a recovery team to develop a
21 recovery plan under this section; or

22 “(ii) delegate to the Governor, under sub-
23 section (1), the authority of the Secretary to de-
24 velop a recovery plan for the species for that
25 State.

1 “(2) APPOINTMENT OF RECOVERY TEAM.—(A)

2 The recovery team shall consist of—

3 “(i) experts in biology or pertinent sci-
4 entific fields, economics, property law and regu-
5 lation, and other appropriate disciplines, includ-
6 ing from the private sector;

7 “(ii) a representative nominated by the
8 Governor of each affected State;

9 “(iii) representatives nominated by each
10 affected local government, if the local govern-
11 ment agrees to the appointment of a represent-
12 ative; and

13 “(iv) representatives of persons who may
14 be directly, economically impacted by the con-
15 servation plan.

16 “(B) The chairman of the team shall be se-
17 lected by the team from among its members who are
18 representatives of States or local governments.

19 “(3) DUTIES OF THE RECOVERY TEAM.—(A)

20 Each recovery team shall prepare and submit to the
21 Secretary the draft recovery plan, which shall in-
22 clude recovery strategies recommended by the team
23 and alternatives, if any, to meet the recovery goal
24 under subsection (e)(1). The recovery team may also
25 be called on by the Secretary to assist in the imple-

1 mentation, review, and revision of recovery plans.
2 The recovery team shall also advise the Secretary
3 concerning the designation of critical habitat, if any.

4 “(B) The recovery team shall assess the direct,
5 indirect, and cumulative economic and social impacts
6 on the public and private sectors, including local
7 governments, that may result from the listing deter-
8 mination or from potential recovery strategies rec-
9 ommended under subparagraph (A), including—

10 “(i) impacts on the cost of governmental
11 actions, tax and other revenues, employment,
12 the use and value of property, and other social,
13 cultural, and community values; and

14 “(ii) commercial activity that might result
15 in a net benefit to the conservation of the spe-
16 cies.

17 “(C) The recovery team shall recommend to the
18 Secretary measures to balance the achievement of
19 the recovery goal for a species under subsection (e)
20 with protecting the economic well-being of the area
21 affected by implementation of the recovery plan for
22 the species.

23 “(4) TRAVEL EXPENSES.—The Secretary may
24 provide travel expenses (including per diem in lieu of
25 subsistence at the same level as authorized by sec-

1 tion 5703 of title 5, United States Code) to recovery
2 team members.

3 “(5) FEDERAL ADVISORY COMMITTEE ACT.—
4 The Federal Advisory Committee Act (5 U.S.C.
5 App.) shall not apply to the selection or activities of
6 a recovery team appointed pursuant to this sub-
7 section, except that meetings of the recovery team
8 shall be open to the public as provided in that Act
9 for meetings of advisory committees.

10 “(e) CONTENTS OF RECOVERY PLANS AND DRAFT
11 RECOVERY PLANS.—

12 “(1) BIOLOGICAL RECOVERY GOAL.—Not later
13 than 180 days after the appointment of a recovery
14 team under this section, the recovery team shall es-
15 tablish and submit to the Secretary a recommended
16 biological recovery goal to conserve and recover the
17 species that, when met, would result in the deter-
18 mination, in accordance with section 4, that the spe-
19 cies be removed from the list. The recovery goal
20 shall be expressed as objective and measurable popu-
21 lation criteria. When the goal is met, the Secretary
22 shall initiate the procedures under this Act to re-
23 move the species from the list. The recovery team
24 shall also report to the Secretary the scientific feasi-

1 bility of full recovery of the species and the time
2 frame in which recovery is likely to occur.

3 “(2) CONTENTS OF DRAFT PLAN.—

4 “(A) IN GENERAL.—Each draft recovery
5 plan shall contain the following:

6 “(i) Recommendations for Federal
7 agency compliance with section 7(a)(1) and
8 7(a)(2).

9 “(ii) Recommendations for avoiding a
10 taking of a listed species prohibited under
11 section 9(a)(1) and a list of specific activi-
12 ties that would constitute a take under sec-
13 tion 9.

14 “(iii) Alternative strategies to achieve
15 the recovery goal for the listed species,
16 that range from a strategy requiring the
17 least possible Federal management to
18 achieve the recovery goal to a strategy in-
19 volving more intensive Federal manage-
20 ment to achieve the goal.

21 “(iv) A description of economic and
22 social impacts identified under subsection
23 (d)(3)(B).

24 “(B) REQUIREMENTS FOR ALTERNATIVE
25 STRATEGIES.—The alternative strategies under

1 subparagraph (A)(iii) must achieve an appro-
2 priate balance among the following factors:

3 “(i) The effectiveness of the measures
4 in meeting the recovery goal.

5 “(ii) The length of time in which the
6 recovery goal is likely to be achieved if the
7 time period within which the recovery goal
8 is to be achieved will not pose a significant
9 risk to recovery of the species.

10 “(iii) Minimizing the economic and so-
11 cial impacts on the public and private sec-
12 tors, including the impact on employment,
13 the cost of government actions, tax and
14 other revenues, the use and value of prop-
15 erty, and other social, cultural, and com-
16 munity values.

17 “(3) BENCHMARKS.—The recovery plan shall
18 include objective, measurable benchmarks expected
19 to be achieved over the course of the recovery plan
20 to determine whether progress is being made toward
21 the recovery goal. To the extent possible, current
22 and historical population estimates, along with other
23 relevant factors, should be considered in determining
24 whether progress is being made toward meeting the
25 recovery goal.

1 “(4) **EQUITABLE TREATMENT OF AFFECTED**
2 **STATES AND OTHER NON-FEDERAL PERSONS.**—Each
3 recovery plan under this section shall—

4 (A) provide equitable treatment of each af-
5 fected State and all other non-Federal persons
6 affected by the plan; and

7 “(B) seek to minimize and fairly distribute
8 the social and economic costs that may result
9 from implementation of the plan.

10 “(f) **PUBLIC NOTICE AND COMMENT.**—

11 “(1) **IN GENERAL.**—If the Secretary makes a
12 preliminary determination that the draft recovery
13 plan meets the requirements of this section, the Sec-
14 retary shall publish in the Federal Register, and a
15 newspaper of general circulation in areas in each af-
16 fected State that are located as close to the affected
17 area as possible, a notice of availability and a sum-
18 mary of, and a request for public comment on, the
19 draft recovery plan. The notice shall include a de-
20 scription of the activities that will require a permit
21 under section 10, a description of the economic and
22 social impacts referred to in subsection (d)(3)(B),
23 and the recommendations of the recovery team on
24 the recovery goal under subsection (e)(1).

1 “(2) HEARINGS.—At the request of any person,
2 the Secretary shall hold at least 1 public meeting on
3 each draft recovery plan in each State to which the
4 plan would apply (including at least 1 public meet-
5 ing in an affected rural area, if any), except that the
6 Secretary may not be required to hold more than 5
7 public meetings under this paragraph.

8 “(g) REVIEW AND SELECTION BY THE SEC-
9 RETARY.—

10 “(1) REVIEW AND APPROVAL.—The Secretary
11 shall review each plan submitted by a recovery team
12 to determine whether the plan was developed in ac-
13 cordance with the requirements of this section. If
14 the Secretary determines that the plan does not sat-
15 isfy such requirements, the Secretary shall notify the
16 recovery team and give the team an opportunity to
17 address the concerns of the Secretary and resubmit
18 a plan that satisfies the requirements of this section.
19 After notice and opportunity for public comment on
20 the recommendations of the recovery team, the Sec-
21 retary shall adopt a final recovery plan that is con-
22 sistent with the requirements of this section.

23 “(2) SELECTION OF RECOVERY STRATEGIES.—
24 In each final plan the Secretary shall select recovery
25 strategies that achieve the recovery goal and the

1 benchmarks while achieving an appropriate balance
2 among the factors described in subsection (e)(2)(B),
3 except that the Secretary shall select the recovery
4 strategy that would impose the least costs and result
5 in the least socioeconomic impacts in achieving the
6 recovery goal.

7 “(3) STRATEGIES RECOMMENDED BY RECOV-
8 ERY TEAM.—If the Secretary selects strategies other
9 than those recommended by the recovery team, the
10 Secretary shall publish with the final plan an expla-
11 nation of why the strategies recommended by the re-
12 covery team were not selected for the final recovery
13 plan.

14 “(4) PUBLICATION OF NOTICE ON FINAL
15 PLAN.—The Secretary shall publish in the Federal
16 Register a notice of availability, and a summary, of
17 the final recovery plan, and include in the final re-
18 covery plan a response to significant comments that
19 the Secretary received on the draft recovery plan.

20 “(h) REVIEW.—

21 “(1) EXISTING PLANS.—Not later than five
22 years after date of enactment of this subsection, the
23 Secretary shall review recovery plans published prior
24 to that date of enactment.

1 “(2) SUBSEQUENT PLANS.—The Secretary shall
2 review each recovery plan first approved or revised
3 under this section after the date of enactment of this
4 subsection, not later than 5 years after the date of
5 approval or revision of the plan and every 5 years
6 thereafter.

7 “(i) REVISION OF RECOVERY PLANS.—Notwith-
8 standing any other provision of this section, the Secretary
9 shall revise a recovery plan if the Secretary finds, based
10 on the best scientific and commercial data available, that
11 substantial new information, which may include failure to
12 meet the benchmarks included in the plan, indicates that
13 the recovery goal contained in the recovery plan will not
14 achieve the conservation and recovery of the endangered
15 species or threatened species covered by the plan. The Sec-
16 retary shall convene a recovery team to develop the revi-
17 sions required by this subsection, unless the Secretary has
18 published a notice that a recovery team shall not be ap-
19 pointed pursuant to subsection (d)(3).

20 “(j) EXISTING PLANS.—Except as provided in sub-
21 section (i), nothing in this section shall require the modi-
22 fication of—

23 “(1) a recovery plan approved before the date
24 of the enactment of the Common Sense Protections
25 for Endangered Species Act; or

1 “(2) a recovery plan on which public notice and
2 comment has been initiated before that date of en-
3 actment.

4 “(k) CRITICAL HABITAT DESIGNATION.—

5 “(1) RECOMMENDATION OF THE RECOVERY
6 TEAM.—Concurrent with the submission of the draft
7 recovery plan for a species to the Secretary, the re-
8 covery team appointed for the species shall provide
9 the Secretary with a description of any habitat of
10 the species that is recommended for designation as
11 critical habitat pursuant to this subsection and any
12 recommendations for special management consider-
13 ations or protection that are specific to the habitat.

14 “(2) DESIGNATION BY THE SECRETARY.—

15 “(A) IN GENERAL.—The Secretary, to the
16 maximum extent prudent and determinable,
17 may by regulation designate or revise an exist-
18 ing designation of critical habitat of each en-
19 dangered species or threatened species that is
20 indigenous to the United States or to waters
21 with respect to which the United States exer-
22 cises sovereign rights or jurisdiction.

23 “(B) EMERGENCY AUTHORITY.—The Sec-
24 retary may publish a regulation designating
25 critical habitat for an endangered species or a

1 threatened species concurrently with the final
2 regulation implementing the determination that
3 the species is endangered or threatened if the
4 Secretary determines that designation of such
5 habitat at the time of listing is essential to
6 avoid the imminent extinction of the species.

7 “(3) FACTORS TO BE CONSIDERED.—The des-
8 ignation of critical habitat shall be made on the
9 basis of the best scientific and commercial data
10 available and after taking into consideration the eco-
11 nomic impact, impacts to military training and oper-
12 ations, and any other relevant impact, of specifying
13 any particular area as critical habitat. The Secretary
14 shall describe the economic impacts and other rel-
15 evant impacts that are to be considered under this
16 subsection in the publication of any proposed regula-
17 tion designating critical habitat.

18 “(4) PROPOSED AND FINAL REGULATIONS.—
19 Any regulation to designate critical habitat or imple-
20 ment a requested revision shall be proposed and pro-
21 mulgated in the same manner as a regulation to im-
22 plement a determination with respect to listing a
23 species.

24 “(5) ECONOMIC IMPACTS DEFINED.—In this
25 subsection, the term ‘economic impact’ means the

1 cumulative economic effects (including costs) result-
2 ing from the listing of a species and the designation
3 of critical habitat of the species, for communities
4 and industries that are located in the area des-
5 ignated as critical habitat or that receive revenue
6 from use of the area.

7 “(1) STATE AUTHORITY FOR RECOVERY PLAN-
8 NING.—

9 “(1) IN GENERAL.—At the request of the Gov-
10 ernor of a State, or the Governors of several States
11 in cooperation, the Secretary may delegate to the
12 State agency, or to the State agencies of such States
13 acting jointly, respectively, the authority of the Sec-
14 retary to develop and implement the recovery plan
15 for an endangered species or a threatened species in
16 accordance with the requirements and schedules of
17 subsections (c), (d)(1), (d)(2), and (e) and this sub-
18 section, if the Secretary finds that—

19 “(A) the State agency (or agencies, jointly)
20 has entered into a cooperative agreement with
21 the Secretary pursuant to section 6(c); and

22 “(B) the State agency (or agencies, jointly)
23 has submitted a statement to the Secretary
24 demonstrating adequate authority and capa-
25 bility to carry out the requirements and sched-

1 ules of subsections (c), (d)(1), (d)(2), and (e)
2 and this subsection.

3 “(2) RESPONSE TO CONCERNS OF SEC-
4 RETARY.—If the Secretary finds that a State agency
5 lacks any authority or capability required under
6 paragraph (1)(B), the Secretary shall notify the
7 State agency and provide the State agency with an
8 opportunity to address the concerns of the Sec-
9 retary.

10 “(3) STANDARDS AND GUIDELINES.—The Sec-
11 retary, in cooperation with the States, shall publish
12 standards and guidelines for the development of re-
13 covery plans by State agencies under this subsection,
14 including standards and guidelines for interstate co-
15 operation and for the grant and withdrawal of au-
16 thorization by the Secretary under this subsection.

17 “(4) DUTIES OF RECOVERY TEAM.—The recov-
18 ery team shall prepare a draft recovery plan in ac-
19 cordance with this section and shall transmit the
20 draft plan to the Secretary through the State agency
21 authorized to develop the recovery plan.

22 “(5) REVIEW OF DRAFT PLANS.—Prior to pub-
23 lication of a notice of availability of a draft recovery
24 plan, the Secretary shall review each draft recovery
25 plan developed pursuant to this subsection to deter-

1 mine whether the plan meets the requirements of
2 this section and shall give the State an opportunity
3 to address any deficiencies in the plan. Thereafter,
4 if the Secretary determines that the plan does not
5 meet such requirements, the Secretary shall notify
6 the State agency and, in cooperation with the State
7 agency, develop a recovery plan in accordance with
8 this section.

9 “(6) REVIEW AND APPROVAL OF FINAL
10 PLANS.—On receipt of a draft recovery plan trans-
11 mitted by a State agency, the Secretary shall review
12 and adopt the plan in accordance with subsection
13 (g).

14 “(7) WITHDRAWAL OF AUTHORITY.—(A) The
15 Secretary may withdraw the authority from a State
16 that has been delegated authority to develop a recov-
17 ery plan pursuant to this subsection if the actions of
18 the State agency are not in accordance with the sub-
19 stantive and procedural requirements of subsections
20 (c), (d)(1), (d)(2), and (e) and this subsection. The
21 Secretary shall give the State agency an opportunity
22 to correct any deficiencies identified by the Secretary
23 and may withdraw the authority from the State un-
24 less the State agency within 60 days has corrected
25 the deficiencies identified by the Secretary.

1 “(B) Following withdrawal of authority dele-
2 gated to a State pursuant to this subsection, the
3 Secretary shall, in accordance with this section—

4 “(i) within 18 months after the date of
5 that withdrawal, publish a draft recovery plan
6 for the State; and

7 “(ii) within 12 months after publication of
8 the draft recovery plan, publish a final recovery
9 plan for the State.

10 “(8) DEFINITION OF STATE AGENCY.—For pur-
11 poses of this subsection, the term ‘State agency’
12 means—

13 “(A) a State agency (as defined in section
14 3) of each State entering into a cooperative re-
15 quest under paragraph (1); and

16 “(B) for fish and wildlife, including related
17 spawning grounds and habitat, on the Columbia
18 River and its tributaries, the Pacific Northwest
19 Electric Power and Conservation Planning
20 Council established under the Pacific Northwest
21 Electric Power Planning and Conservation Act
22 (16 U.S.C. 839 et seq.).

23 “(m) OFFICE OF RECOVERY PLANNING.—

24 “(1) ESTABLISHMENT.—Not later than 6
25 months after the date of the enactment of the Com-

1 mon Sense Protections for Endangered Species Act,
2 the Secretary shall establish in the United States
3 Fish and Wildlife Service a separate office, to be
4 known as the Office of Species Recovery.

5 “(2) AUTHORITIES.—The Secretary, subject to
6 subsection (1), shall delegate to the head of the Of-
7 fice of Species Recovery authority of the Secretary
8 under this Act to—

9 “(A) provide support services to recovery
10 teams to develop, or where a recovery team can-
11 not be appointed to develop, implement recovery
12 plans under this section;

13 “(B) otherwise seek the recovery of all spe-
14 cies listed under section 4(c) as endangered
15 species or threatened species;

16 “(C) make all determinations to remove a
17 species from such a list; and

18 “(D) assist in the designation of critical
19 habitat.”.

20 **TITLE V—MISCELLANEOUS**

21 **SEC. 501. AUTHORIZING INCREASED APPROPRIATIONS.**

22 Section 15 (16 U.S.C. 1542) is amended to read as
23 follows:

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

2 “(a) IN GENERAL.—There are authorized to be
3 appropriated—

4 “(1) to the Department of the Interior to carry
5 out the duties of the Secretary of the Interior under
6 this Act \$130,000,000 for fiscal year 2001,
7 \$140,000,000 for fiscal year 2002, \$150,000,000 for
8 fiscal year 2003, and \$160,000,000 for fiscal year
9 2004;

10 “(2) to the Department of Commerce to carry
11 out the duties of the Secretary of Commerce under
12 this Act \$30,000,000 for fiscal year 2001,
13 \$35,000,000 for fiscal year 2002, \$40,000,000 for
14 fiscal year 2003, and \$45,000,000 for fiscal year
15 2004; and

16 “(3) to the Department of Agriculture to carry
17 out the duties of the Secretary of Agriculture under
18 this Act \$4,000,000 for each of fiscal years 2001
19 through 2004.

20 “(b) CONVENTION IMPLEMENTATION.—In addition
21 to the other amounts authorized by this section, there are
22 authorized to be appropriated to the Secretary of the Inte-
23 rior to carry out section 8A \$1,000,000 for each of fiscal
24 years 2001 through 2004, to remain available until ex-
25 pended.

1 “(c) SAFE HARBOR AGREEMENTS.—In addition to
2 the other amounts authorized by this section, there are
3 authorized to be appropriated to the Secretary to carry
4 out section 10(1) \$10,000,000 for each of fiscal years 2001
5 through 2004, to remain available until expended.”.

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