

103^D CONGRESS
2^D SESSION

H. R. 1490

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1993

Mr. TAUZIN (for himself, Mr. FIELDS of Texas, Mr. LAUGHLIN, Mr. YOUNG of Alaska, Mr. ORTIZ, Mr. DOOLEY, Mr. STENHOLM, Mr. PARKER, Mr. ROWLAND, Mr. BREWSTER, Mr. MONTGOMERY, Mr. HALL of Texas, Mr. EDWARDS of Texas, Mr. PAXON, Mrs. VUCANOVICH, Mr. SAM JOHNSON of Texas, Mr. SARPALIUS, Mr. LEWIS of California, Mr. HAYES, Mr. SMITH of Texas, Mr. BONILLA, Mr. CUNNINGHAM, Mr. HANSEN, Mr. COLLINS of Georgia, and Mr. BROOKS) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

MAY 20, 1993

Additional sponsors: Mr. HERGER, Mr. EMERSON, Mr. CRAPO, Mr. POMBO, Mr. DOOLITTLE, Mr. COMBEST, Mr. CONDIT, Mr. BARCIA, Mr. SMITH of Oregon, Mr. COBLE, Mr. THOMAS of California, Mr. DORNAN, Mr. BAKER of Louisiana, Mr. THOMAS of Wyoming, Mr. BOEHNER, Mr. PENNY, Mr. BARTON of Texas, Mr. STUMP, and Mr. CALLAHAN

JULY 23, 1993

Additional sponsors: Mr. WILSON, Mr. TAYLOR of Mississippi, Mr. MCHUGH, Mr. MCCRERY, Mr. LIVINGSTON, Ms. LONG, Mr. SUNDQUIST, Mr. ARMEY, Mr. DUNCAN, Mr. BARTLETT of Maryland, Mr. MYERS of Indiana, Mr. NUSSLE, Mr. SKEEN, Mr. MCKEON, Mr. QUILLEN, Mr. TAYLOR of North Carolina, Mr. TEJEDA, Mr. BARLOW, Mr. FIELDS of Louisiana, Mr. BURTON of Indiana, Mr. BISHOP, Mr. CALVERT, Mr. BATEMAN, Mr. BLILEY, Mr. DELAY, Mr. HUNTER, Mr. INHOFE, Mr. OXLEY, Mr. PACKARD, Mr. ROBERTS, Mr. ROYCE, Mr. ALLARD, and Mr. MOORHEAD

FEBRUARY 16, 1994

Additional sponsors: Mr. HUTCHINSON, Mr. MCCANDLESS, Mr. DICKEY, Mr.

HEFLEY, Mr. GALLEGLY, Mr. MCINNIS, Mr. ROGERS, Mr. KYL, Mr. CLYBURN, Mr. HOUGHTON, Mr. CANADY, Mr. SCHAEFER, Mr. BACHUS of Alabama, Mr. CAMP, Mr. SOLOMON, Mr. CRANE, Mr. LIGHTFOOT, and Mr. BARRETT of Nebraska

Deleted sponsor: Mr. FIELDS of Louisiana (added June 28, 1993; deleted September 13, 1993)

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Endangered Species
 5 Act Procedural Reform Amendments of 1993”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The contents of this Act are as follows:

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

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

- Sec. 101. Peer review.
- Sec. 102. Consideration of State, local, and foreign government activities.
- Sec. 103. Priority for species conservation.

- Sec. 104. Improving data collection and analysis.
- Sec. 105. Economic impacts of designating critical habitat.
- Sec. 106. Equal access to judicial review.
- Sec. 107. Consultation and cooperation.
- Sec. 108. Establishing consultation procedures with respect to private actions.

TITLE II—PROVIDING SIGNIFICANCE TO THE RECOVERY
PLANNING PROCESS

- Sec. 201. Ensuring preparation and use of timely, comprehensive, and effective recovery plans.
- Sec. 202. Conforming amendments.

TITLE III—ENSURING THAT THE COMPLIANCE PROCEDURES
AND STANDARDS FOR NON-FEDERAL PERSONS ARE NOT MORE
BURDENSOME THAN THOSE APPLICABLE TO FEDERAL AGEN-
CIES

- Sec. 301. Defining the take prohibition in accordance with the intent of Congress.
- Sec. 302. Clarifying the application of take prohibitions.
- Sec. 303. Providing for exemptions of private actions and relieving payment requirements.
- Sec. 304. Authorizing issuance of general permits.
- Sec. 305. Improving the conservation planning process.
- Sec. 306. Compensating property owners for diminished value.

TITLE IV—PROVIDING FOR HABITAT CONSERVATION INCENTIVE
PROGRAMS

- Sec. 401. Cooperative Management Agreements.
- Sec. 402. Habitat reserve grants.
- Sec. 403. Conforming amendments.

TITLE V—REAUTHORIZATION AND OTHER AMENDMENTS

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

1 **SEC. 3. AMENDMENT OF ENDANGERED SPECIES ACT OF**
2 **1973.**

3 Except as otherwise expressly provided, whenever in
4 this Act an amendment or repeal is expressed in terms
5 of an amendment to, or repeal of, a section or other provi-
6 sion, the reference shall be considered to be made to a

1 section or other provision of the Endangered Species Act
2 of 1973 (16 U.S.C. 1531 et seq.).

3 **TITLE I—ENSURING THE INTEG-**
4 **RITY OF THE LISTING, CRITI-**
5 **CAL HABITAT DESIGNATION,**
6 **AND CONSULTATION PROC-**
7 **ESSES**

8 **SEC. 101. PEER REVIEW.**

9 Section 4 (16 U.S.C. 1533) is amended by adding
10 at the end the following:

11 “(j) PEER REVIEW REQUIREMENT.—

12 “(1) REQUIREMENT.—If an interested person
13 submits, in accordance with paragraph (2), a request
14 for peer review of an action described in paragraph
15 (3), the Secretary or the Secretary of Commerce
16 shall—

17 “(A) appoint, from among individuals rec-
18 ommended by the National Academy of
19 Sciences, 3 qualified individuals who shall re-
20 view all scientific and commercial data on which
21 the action is based, and all analyses of that
22 data performed for the purposes of that action;
23 and

24 “(B) consider and weigh carefully the re-
25 sults of that review.

1 “(2) REQUEST FOR PEER REVIEW.—Any inter-
2 ested person may request the Secretary to conduct
3 peer review under paragraph (1)(A) with respect to
4 an action described in paragraph (3) by submitting
5 the request to the Secretary in the 90-day period be-
6 ginning on the date of publication of notice of pro-
7 posed rulemaking for the action.

8 “(3) COVERED ACTIONS.—The actions referred
9 to in paragraphs (1) and (2) are the following:

10 “(A) Determination that a species is an
11 endangered species or threatened species under
12 subsection (a).

13 “(B) Designation, or revision of designa-
14 tion, of critical habitat for an endangered spe-
15 cies or threatened species under subsection (a).

16 “(4) PUBLICATION WITH FINAL RULE.—The
17 Secretary shall publish with any final rule imple-
18 menting an activity described in paragraph (3) a
19 summary of the results of the peer review conducted
20 under this subsection with respect to that rule and
21 the response of the Secretary to those results.

22 “(5) QUALIFIED PERSON DEFINED.—For pur-
23 poses of this section, the term ‘qualified person’
24 means an individual with appropriate knowledge,
25 training, or experience who is not employed by,

1 under contract to, or receiving or using a grant or
2 other financial assistance from the Secretary or the
3 Secretary of Commerce.”.

4 **SEC. 102. CONSIDERATION OF STATE, LOCAL, AND FOREIGN**
5 **GOVERNMENT ACTIVITIES.**

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

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

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

12 “(f) PRIORITIES IN DETERMINING AND CONSIDER-
13 ING ENDANGERED SPECIES AND THREATENED SPE-
14 CIES.—The Secretary may determine and conserve endan-
15 gered species and threatened species under this Act in the
16 following order of priority:

17 “(1) Single species genus.

18 “(2) Species.

19 “(3) Subspecies.

20 “(4) Distinct population segment.”.

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

22 Section 4(b) (16 U.S.C. 1533(b)) is amended by add-
23 ing at the end of the subsection the following:

24 “(9)(A) The best scientific and commercial data
25 available required by paragraph (1) or paragraph (2)

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

3 “(B) The Secretary shall identify and publish in
4 the Federal Register with a proposed rule under
5 subsection (a)(1) or subsection (a)(3) a description
6 of—

7 “(i) any gaps in the data to be considered
8 in making the determination under the sub-
9 section to which the proposed rule relates;

10 “(ii) data that are necessary to make the
11 determination and that can be collected within
12 the period available for making the determina-
13 tion; and

14 “(iii) data that are necessary to ensure the
15 continued viability of the determination, and
16 the deadline or deadlines for collecting that
17 data.

18 “(C) In making a determination pursuant to
19 subsection (a)(1) or subsection (a)(3), the Secretary
20 shall collect and consider the data identified and de-
21 scribed pursuant to subparagraph (B)(ii).

22 “(D) The Secretary shall identify and include
23 with a final rule published under subsection (a)(1)
24 or subsection (a)(3) a description of—

1 “(i) any data that have not been collected
2 and considered in the determination to which
3 the rule relates and that are necessary to en-
4 sure the continued scientific integrity of the de-
5 termination;

6 “(ii) deadlines by which the Secretary shall
7 collect and consider the data in accordance with
8 subparagraph (E).

9 “(E) Not later than the deadline published by
10 the Secretary pursuant to subparagraph (D)(ii), the
11 Secretary shall—

12 “(i) collect the data;

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

15 “(iii) consider the data after that review
16 and comment; and

17 “(iv) publish in the Federal Register the
18 results of that consideration and a description
19 of and schedule for any actions warranted by
20 the data.”.

21 **SEC. 105. ECONOMIC IMPACTS OF DESIGNATING CRITICAL**
22 **HABITAT.**

23 Section 4(b) (16 U.S.C. 1533(b)), as amended by this
24 Act, is further amended—

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

3 “(2)(A) The Secretary shall designate critical
4 habitat, and make revisions thereto, under sub-
5 section (a)(3)—

6 “(i) on the basis of the best scientific and
7 commercial data available; and

8 “(ii) after taking into consideration the cu-
9 mulative economic impact and any other rel-
10 evant impact of designating any particular area
11 as critical habitat and the determination pursu-
12 ant to subsection (a)(1).

13 “(B) The Secretary shall exclude any area from
14 designation as critical habitat if the Secretary deter-
15 mines that the benefits of such exclusion outweigh
16 the benefits of designating the area as critical habi-
17 tat, unless the Secretary determines, based on the
18 best scientific and commercial data available, that
19 the failure to designate the area as critical habitat
20 will result in the extinction of the species con-
21 cerned.”; and

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

23 “(10) The proposed regulation relating to any des-
24 ignation pursuant to subsection (a)(3) shall describe in de-
25 tail the economic impacts and other relevant impacts that

1 are to be considered, and the benefits that are to be
2 weighed, in designating an area as critical habitat. The
3 description and documentation shall be submitted to the
4 Bureau of Labor Statistics of the Department of Com-
5 merce. The Bureau shall submit written comments during
6 the comment period on the proposed regulation. The Sec-
7 retary shall respond separately and fully to each comment
8 in the final regulation.”.

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

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

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

14 **SEC. 107. CONSULTATION AND COOPERATION.**

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

17 (1) in subsection (a)(2) in the first sentence by
18 striking “or result in the destruction or adverse
19 modification of habitat of such species which is de-
20 termined by the Secretary, after consultation as ap-
21 propriate with affected States, to be critical,” and
22 inserting “or destroy or adversely modify any habi-
23 tat that is designated by the Secretary as critical
24 habitat of such a species in a manner that is likely

1 to jeopardize the continued existence of the spe-
2 cies,”;

3 (2) in subsection (a)(4) by striking “or result in
4 the destruction or adverse modification of critical
5 habitat proposed to be designated for such species”
6 and inserting “or to destroy or adversely modify any
7 habitat that is proposed to be designated by the Sec-
8 retary as critical habitat of such a species in a man-
9 ner that is likely to jeopardize the continued exist-
10 ence of the species”;

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

13 “(5) Consultation and conferencing under para-
14 graphs (2) and (4) are not required for any agency
15 action that is consistent with—

16 “(A) actions provided for in a final recov-
17 ery plan developed under section 5; or

18 “(B) requirements in a Cooperative Man-
19 agement Agreement in effect under section
20 6(b).

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

24 “(A) actions provided for in a final recov-
25 ery plan developed under section 5; or

1 “(B) requirements in a Cooperative Man-
2 agement Agreement in effect under section
3 6(b).”; and

4 (4) in subsection (b)(3)(A) by striking the sec-
5 ond sentence and inserting the following: “If jeop-
6 ardy is found the Secretary shall suggest reasonable
7 and prudent alternatives (considering those reason-
8 able and prudent alternatives undertaken by other
9 Federal agencies) that are consistent with subsection
10 (a)(2) and that impose the least socioeconomic
11 costs.”.

12 (b) SCOPE OF CONSULTATION FOR CERTAIN FED-
13 ERAL AGENCY ACTIONS.—Section 7(a) (16 U.S.C.
14 1536(a)) is further amended by adding after paragraph
15 (6) (as added by subsection (a) of this section) the follow-
16 ing:

17 “(7)(A) Consultation under paragraphs (2) and (3)
18 regarding an agency action described in subparagraph (B)
19 shall be limited to consideration of the direct effects that
20 result from the maintenance or modification that com-
21 prises the action.

22 “(B) A Federal agency action referred to in subpara-
23 graph (A) is a Federal agency action that consists solely
24 of—

1 “(i) routine maintenance to an existing Federal,
2 State, or private project or facility; or

3 “(ii) a modification required by any Federal,
4 State, or local government agency for safety pur-
5 poses.”.

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

9 (1) in paragraph (2) in the second sentence by
10 inserting before the period the following: “, and
11 shall, in addition to considering other obligations
12 and responsibilities under statutes, treaties, inter-
13 state compacts, and contractual agreements, con-
14 sider the opinion and any reasonable and prudent al-
15 ternatives developed pursuant to subsection (b)(3)”;
16 and

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

19 “(8) If the head of a Federal agency determines that
20 compliance with paragraph (2) is not consistent with other
21 obligations and responsibilities of the agency under stat-
22 utes, treaties, interstate compacts, and contractual agree-
23 ments, the agency head shall—

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

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

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

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

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

12 (1) in subsection (a)(3) by inserting “with the
13 involvement of,” after “at the request of,”;

14 (2) in subsection (a)(4) by inserting after “con-
15 fer with the Secretary” the following: “and any pro-
16 spective permit or license applicant”; and

17 (3) in subsection (b)(1) by adding at the end
18 the following:

19 “(C) In any agency action involving a prospective per-
20 mit or license applicant, the prospective applicant shall
21 have the right to participate fully in any consultation
22 under this section regarding the action.

23 “(D) A person that is a party to a written contract
24 with a Federal agency to purchase a product or service
25 that is provided as a result of a Federal agency action

1 is entitled to participate in any consultation or conference
2 under this paragraph with respect to the agency action.”.

3 **SEC. 108. ESTABLISHING CONSULTATION PROCEDURES**
4 **WITH RESPECT TO PRIVATE ACTIONS.**

5 (a) ESTABLISHMENT OF PROCEDURES.—Section 7
6 (16 U.S.C. 1536) is amended by adding at the end the
7 following:

8 “(q) CONSULTATIONS REGARDING PRIVATE AC-
9 TIONS.—

10 “(1) INITIATION OF CONSULTATION.—A non-
11 Federal person may initiate a consultation with the
12 Secretary concerning any action of the person that
13 may affect a species that is determined by the Sec-
14 retary under section 4 to be an endangered species
15 or threatened species.

16 “(2) CONSULTATION.—If a person initiates a
17 consultation under this subsection, the Secretary
18 shall—

19 “(A) consult with the person; and

20 “(B) conclude the consultation not later
21 than 90 days after the date on which it is initi-
22 ated by the person, or on another date on which
23 the Secretary and the person agree.

24 “(3) WRITTEN OPINION.—Upon the conclusion
25 of a consultation under this subsection, the Sec-

1 retary shall promptly provide to the person that ini-
2 tiated the consultation a written opinion that de-
3 scribes in detail—

4 “(A) whether the action that is the subject
5 of the consultation affects endangered species
6 and threatened species, including a description
7 of the impact of any taking of the species that
8 is incidental to the action; and

9 “(B) a summary of the information on
10 which the opinion is based.

11 “(4) REASONABLE AND PRUDENT ALTER-
12 NATIVES; TERMS AND CONDITIONS FOR ACTION.—

13 “(A) A written opinion of the Secretary
14 under paragraph (3) shall set forth the matters
15 described in subparagraph (B) if the Secretary
16 determines through consultation under this sub-
17 section that an action of a person is likely to—

18 “(i) jeopardize the continued existence
19 of any endangered species or threatened
20 species;

21 “(ii) destroy or adversely modify any
22 habitat that is designated by the Secretary
23 as critical habitat of such a species in a
24 manner that is likely to jeopardize the con-
25 tinued existence of the species; or

1 “(iii) adversely affect activities under
2 a habitat conservation plan under section
3 10.

4 “(B) The matters referred to in subpara-
5 graph (A) are the following:

6 “(i) Reasonable and prudent alter-
7 natives that the Secretary believes would
8 not violate this Act and are necessary to
9 minimize the impact of the action on en-
10 dangered species and threatened species.

11 “(ii) Terms and conditions with which
12 the person shall comply in implementing
13 the measures specified in clause (i).

14 “(5) TREATMENT OF TAKING IN ACCORDANCE
15 WITH WRITTEN OPINION.—Notwithstanding sections
16 4(d) and 9(a)(1) (B) and (C) of this Act, sections
17 101 and 102 of the Marine Mammal Protection Act
18 of 1972, or any regulation promulgated to imple-
19 ment any of those sections, a taking of a species in
20 the course of an action of a person that is the sub-
21 ject of a written opinion provided to the person by
22 the Secretary under paragraph (3) shall not be con-
23 sidered to be a prohibited taking if the taking—

1 “(A) results from the person implementing
2 an alternative included in the opinion pursuant
3 to paragraph (4)(B)(i); or

4 “(B) is in compliance with the terms and
5 conditions included in the opinion pursuant to
6 paragraph (4)(B)(ii).”.

7 (b) NON-FEDERAL PERSON DEFINED.—Section 3
8 (16 U.S.C. 1532) is amended by inserting after paragraph
9 (10) the following:

10 “(11) The term ‘non-Federal person’ means a
11 person other than an officer, employee, agent, de-
12 partment, or instrumentality of—

13 “(A) the Federal Government; or

14 “(B) a foreign government.”.

15 **TITLE II—PROVIDING SIGNIFI-**
16 **CANCE TO THE RECOVERY**
17 **PLANNING PROCESS**

18 **SEC. 201. ENSURING PREPARATION AND USE OF TIMELY,**
19 **COMPREHENSIVE, AND EFFECTIVE RECOV-**
20 **ERY PLANS.**

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

22 (1) in section 3 (16 U.S.C. 1532) by redesign-
23 nating paragraphs (15) through (21) as paragraphs
24 (16) through (22), respectively, and by inserting
25 after paragraph (14) the following:

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

3 (2) in section 4(h)(4) (16 U.S.C. 1533(h)(4))
4 by striking “subsection (f) of this section” and in-
5 serting “section 5”;

6 (3) by redesignating section 5 (16 U.S.C. 1534)
7 as section 5A; and

8 (4) by inserting after section 4 the following:

9 “RECOVERY PLANS

10 “SEC. 5. (a) IN GENERAL.—The Secretary shall de-
11 velop and implement a plan for the conservation and sur-
12 vival of each species determined to be an endangered spe-
13 cies or a threatened species pursuant to section 4, unless
14 the Secretary finds upon completion of assessments re-
15 quired by this section that a plan is not necessary to pro-
16 mote the conservation and survival of the species. If the
17 Secretary finds that a recovery plan is not necessary, the
18 Secretary shall prepare and publish in the Federal Reg-
19 ister findings stating the basis upon which the determina-
20 tion is made.

21 “(b) PRIORITY.—In the development and implemen-
22 tation of a recovery plan for a species, the Secretary shall,
23 to the maximum extent practicable, give priority to—

24 “(1) the development of an integrated recovery
25 plan for two or more endangered species or threat-
26 ened species that are likely to benefit from an inte-

1 grated recovery plan, that addresses the conservation
2 and survival needs of those species;

3 “(2) those geographic areas where conflicts be-
4 tween the conservation of species and development
5 projects or other forms of economic activity exist or
6 are likely to exist; and

7 “(3) the implementation of recovery measures
8 that have the least socioeconomic costs.

9 “(c) RECOVERY TEAM.—For each recovery plan the
10 Secretary shall—

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

12 “(A) appropriate biologists, economists,
13 and land use specialists from the department of
14 the Secretary, other Federal agencies, and the
15 private sector;

16 “(B) a representative from each affected
17 State nominated by the Governor of the State;
18 and

19 “(C) representatives nominated by affected
20 local governments; and

21 “(2) provide technical assistance to the recovery
22 team.

23 “(d) RECOVERY TEAM ASSESSMENTS.—A recovery
24 team shall make the following assessments with respect
25 to development of a recovery plan for a species:

1 “(1) BIOLOGICAL.—An assessment of—

2 “(A) the biological considerations nec-
3 essary to achieve the purposes of this Act;

4 “(B) the biological significance of the spe-
5 cies;

6 “(C) the species’ precise geographical
7 range;

8 “(D) the species’ current population;

9 “(E) the species’ population trend;

10 “(F) the technical practicality of recover-
11 ing the species;

12 “(G) potential conservation measures de-
13 signed to recover the species or to reduce risks
14 to survival of the species;

15 “(H) any captive breeding programs that
16 would contribute to the goals of conservation of
17 the species; and

18 “(I) whether conservation measures will re-
19 quire any releases of experimental populations
20 outside the current range of the species and, if
21 so, identification of candidate geographical
22 areas for the releases.

23 “(2) ECONOMIC.—An assessment of—

24 “(A) the socioeconomic impacts that may
25 result from the listing of the species and poten-

1 tial conservation measures identified pursuant
2 to this subsection, including a description of the
3 direct and indirect costs to the public and pri-
4 vate sectors;

5 “(B) the effects on employment; and

6 “(C) the impacts on the use and value of
7 property.

8 “(3) INTERGOVERNMENTAL.—An assessment of
9 the impact of the listing of the species and potential
10 conservation measures identified pursuant to this
11 subsection on State and local land use laws, con-
12 servation measures, and water allocation policy of
13 affected States.

14 “(e) RECOVERY TEAM REPORTS.—A recovery team
15 shall report its assessments under subsection (d) to the
16 Secretary. The Secretary shall use the assessments as a
17 baseline in the formation and development of a recovery
18 plan, including alternatives developed pursuant to sub-
19 section (f).

20 “(f) ALTERNATIVES.—The Secretary, based on the
21 assessments under subsection (d), shall include in each
22 draft recovery plan alternative strategies for the recovery
23 and survival of the species. Alternative strategies shall
24 range from strategies that do not require Federal manage-
25 ment to strategies that may require intensive Federal

1 management. Each alternative strategy shall recommend
2 a balance of goals and requirements pursuant to this Act,
3 and shall contain—

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

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

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

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

15 “(5) a description of site-specific management
16 actions necessary to achieve the goals of the alter-
17 native;

18 “(6) a description of any captive breeding pro-
19 gram that would contribute to the goals of the alter-
20 native;

21 “(7) a discussion of whether the alternative
22 would require any releases of experimental popu-
23 lations outside the current range of the species and,
24 if so, identification of candidate geographical areas
25 for the releases;

1 “(8) a clear differentiation between—

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

5 “(B) those actions recommended for Fed-
6 eral agency actions that are the subject of con-
7 sultation pursuant to section 7(a)(2), and

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

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

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

20 “(g) PROCEDURES.—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), for each species for which the Secretary
23 is required to develop a recovery plan under sub-
24 section (a), the Secretary shall—

1 “(A) publish a draft recovery plan by not
2 later than one year after the date of the publi-
3 cation under section 4(b)(6) of the final regula-
4 tion to implement that determination; and

5 “(B) issue a final recovery plan by not
6 later than 18 months after that date of publica-
7 tion.

8 “(2) EXPEDITED ISSUANCE.—For any species
9 that was determined by the Secretary under section
10 4 to be an endangered species or threatened species
11 before January 1, 1993, and for which a final recov-
12 ery plan was not published before that date, the Sec-
13 retary shall—

14 “(A)(i) publish a draft recovery plan by
15 not later than 18 months after the date of the
16 enactment of the Endangered Species Act Pro-
17 cedural Reform Amendments of 1993; and

18 “(ii) publish a final recovery plan by not
19 later than 2 years after the date of enactment;
20 or

21 “(B) publish in the Federal Register a de-
22 termination that a recovery plan is not required
23 under this section, by not later than 18 months
24 after that date of enactment.

1 “(3) PUBLICATION AND PUBLIC COMMENT.—

2 The Secretary shall—

3 “(A) publish in the Federal Register—

4 “(i) each draft recovery plan;

5 “(ii) each final recovery plan; and

6 “(iii) each revision proposed to be
7 made to a draft recovery plan or final re-
8 covery plan;

9 “(B) publish with each draft recovery plan,
10 final recovery plan, and proposed revision a re-
11 quest for the submission of comments on the
12 plan or revision; and

13 “(C) publish a summary of each draft and
14 final recovery plan in a newspaper of general
15 circulation in each affected county or parish.

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

20 “(5) SECRETARY’S CONSIDERATION OF COM-
21 MENTS.—Prior to any decision to adopt a final re-
22 covery plan, the Secretary shall consider and weigh
23 carefully all information presented during each hear-
24 ing held pursuant to paragraph (4) or received in re-

1 sponse to requests for comments published under
2 section (3)(B) with respect to the plan.

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

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

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

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

15 “(i) ADDITIONAL SERVICES.—The Secretary, in de-
16 veloping and implementing recovery plans, may use the
17 services of appropriate public and private agencies and in-
18 stitutions and of other qualified persons.

19 “(j) RELATIONSHIP TO OTHER LAW.—The Federal
20 Advisory Committee Act does not apply to recovery teams
21 under this section.

22 “(k) REPORT.—The Secretary shall report every 2
23 years to the Committee on Environment and Public Works
24 of the Senate and the Committee on Merchant Marine and
25 Fisheries of the House of Representatives on the status

1 of efforts to develop and implement recovery plans for all
2 species included in a list that is published pursuant to sec-
3 tion 4(c)(1) and on the status of all species for which such
4 plans have been developed.

5 “(l) REVIEW OF RECOVERY PLANS.—The Secretary
6 shall—

7 “(1) review each recovery plan before the end of
8 every 5-year period after the publication of the re-
9 covery plan; and

10 “(2) determine whether the plan satisfies the
11 purposes of this section.”.

12 (b) EXISTING RECOVERY PLANS.—

13 (1) IN GENERAL.—Except as provided in para-
14 graphs (2), (3), and (4) a final recovery plan issued
15 under section 4(f) of the Endangered Species Act of
16 1973 Act before January 1, 1993, shall continue in
17 effect as if this section were not enacted.

18 (2) REVISIONS.—The amendment made by sub-
19 section (a) shall apply to a revision to a recovery
20 plan referred to in paragraph (1).

21 (3) REVIEWS.—A final recovery plan issued be-
22 fore the date of the enactment of this Act shall be
23 reviewed under section 5(l) of the Endangered Spe-
24 cies Act of 1973 (as added by subsection (a)) on the

1 day the plan would have been required to be re-
2 viewed if—

3 (A) section 5(l) was in effect on the day
4 the plan was issued; and

5 (B) the plan was reviewed at the end of
6 each 5-year period under section 5(l).

7 (4) PLANS.—A final recovery plan issued by the
8 National Marine Fisheries Service before January 1,
9 1993, shall be reissued in accordance with section 5
10 of the Endangered Species Act of 1973 (as added by
11 subsection (a)).

12 **SEC. 202. CONFORMING AMENDMENTS.**

13 “(a) SECTION HEADING.—Section 5 (16 U.S.C.
14 1534) is further amended by amending the section head-
15 ing to read as follows: “RECOVERY PLANS”.

16 “(b) TABLE OF CONTENTS.—The table of contents
17 for the Act is amended by amending the entry for section
18 5 to read as follows:

“Sec. 5. Recovery plans.”.

1 **TITLE III—ENSURING THAT THE**
2 **COMPLIANCE PROCEDURES**
3 **AND STANDARDS FOR NON-**
4 **FEDERAL PERSONS ARE NOT**
5 **MORE BURDENSOME THAN**
6 **THOSE APPLICABLE TO FED-**
7 **ERAL AGENCIES**

8 **SEC. 301. DEFINING THE TAKE PROHIBITION IN ACCORD-**
9 **ANCE WITH THE INTENT OF CONGRESS.**

10 Section 3(20), as redesignated by section 201(a)(1)
11 of this Act, is amended to read as follows:

12 “(20) The term ‘take’ means—

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

15 “(B) to attempt to commit an act de-
16 scribed in subparagraph (A); or

17 “(C) to harass or harm a member of a spe-
18 cies to which section 9(a)(1)(B) or (C) ap-
19 plies—

20 “(i) in a manner that causes injury to
21 that member; or

22 “(ii) in an attempt to cause the in-
23 jury.”.

1 **SEC. 302. CLARIFYING THE APPLICATION OF TAKE PROHI-**
2 **BITIONS.**

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

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

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

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

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

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

16 **SEC. 303. PROVIDING FOR EXEMPTIONS OF PRIVATE AC-**
17 **TIONS AND RELIEVING PAYMENT REQUIRE-**
18 **MENTS.**

19 (a) EXEMPTION OF NON-FEDERAL PERSONS.—Sec-
20 tion 7 (16 U.S.C. 1536), as amended by this Act, is fur-
21 ther amended—

22 (1) by adding after subsection (q) (as added by
23 section 108) the following:

24 “(r) EXEMPTION FOR NON-FEDERAL PERSONS.—

25 “(1) APPLICATION FOR EXEMPTION.—A non-
26 Federal person (other than an officer, employee,

1 agent, department, or instrumentality of a State,
2 municipality, or political subdivision of a State, and
3 a State, municipality, or subdivision of a State) may
4 apply to the Secretary for an exemption by the Com-
5 mittee of an action of the person if the person—

6 “(A)(i) receives a written opinion of the
7 Secretary under subsection (q)(3) with respect
8 to the action, that includes alternatives and
9 terms and conditions described in subsections
10 (q)(4)(B) (i) and (ii), respectively, and

11 “(ii) does not accept those alternatives and
12 terms and conditions;

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

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

17 “(2) CONSIDERATION OF APPLICATION.—The
18 Secretary may accept or deny an exemption applica-
19 tion, and the Committee may grant or deny an ex-
20 emption, in accordance with the relevant or applica-
21 ble provisions of subsections (g), (h), and (l) and
22 with regulations promulgated by the Secretary.

23 “(3) TREATMENT OF TAKING PURSUANT TO AN
24 EXEMPTION.—Notwithstanding sections 4(d) and
25 9(a)(1) (B) and (C) of this Act, sections 101 and

1 102 of the Marine Mammal Protection Act of 1972,
2 or any regulation promulgated to implement any of
3 those sections, any action for which an exemption is
4 granted under this subsection shall not be consid-
5 ered to be a taking of any endangered species or
6 threatened species with respect to any activity which
7 is necessary to carry out that action.”;

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

14 (3) in subsection (n) by inserting “or activity of
15 a person” after “agency action” each place it ap-
16 pears.

17 (b) PAYMENT OF COSTS OF COMPLYING WITH EN-
18 DANGERED SPECIES COMMITTEE ORDERS.—Section 7(l)
19 (16 U.S.C. 1536(l)) is amended—

20 (1) in paragraph (1) by striking “and paid for”;
21 and

22 (2) in paragraph (2)—

23 (A) in the second sentence by striking
24 “Notwithstanding the preceding sentence the
25 costs” and inserting “The costs”; and

1 (B) by striking the fourth sentence.

2 **SEC. 304. AUTHORIZING ISSUANCE OF GENERAL PERMITS.**

3 Section 10(a) (16 U.S.C. 1539(a)), as amended by
4 this Act, is further amended by adding at the end the fol-
5 lowing:

6 “(4)(A) After providing notice and opportunity for
7 public hearings, the Secretary may issue general permits
8 pursuant to paragraph (1)(B) on a county, State, regional,
9 or nationwide basis for any category of activities that may
10 affect a species which is included on a list published pursu-
11 ant to section 4(c)(1) if the Secretary determines that the
12 activities in that category are similar in nature, will cause
13 only minimal adverse effects on the species when per-
14 formed separately, and will have only minimal cumulative
15 diverse effects on the species generally. A general permit
16 issued under this paragraph shall set forth the require-
17 ments and standards that apply to an activity authorized
18 by the general permit.

19 “(B) A general permit issued pursuant to subpara-
20 graph (A) is effective for a period to be specified by the
21 Secretary, which may not exceed 5 years after the date
22 of its issuance. The Secretary may revoke or modify a gen-
23 eral permit if, after providing an opportunity for public
24 hearing, the Secretary determines that the activities au-
25 thorized by the general permit have a greater than mini-

1 mal adverse effect on a species that is included on a list
2 published pursuant to section 4(c)(1) or the activities are
3 more appropriately authorized by individual permits pur-
4 suant to paragraph (2) or (3).”.

5 **SEC. 305. IMPROVING THE CONSERVATION PLANNING**
6 **PROCESS.**

7 (a) FEDERAL SHARE OF COSTS; INTERIM PER-
8 MITS.—Section 10(a)(2) (16 U.S.C. 1539(a)(2)) is
9 amended by—

10 (1) redesignating subparagraph (C) as subpara-
11 graph (G); and

12 “(2) inserting after subparagraph (B) the fol-
13 lowing:

14 “(C) The Secretary shall pay 50 percent of the direct
15 and indirect cost to implement the terms and conditions
16 of the permit to the maximum extent practicable.

17 “(D) For those activities that the Secretary deter-
18 mines will not appreciably reduce the chances of survival
19 of a species, the Secretary may issue an interim permit
20 to any applicant that—

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

22 “(ii) provides evidence of appropriate interim
23 species conservation activities that—

24 “(I) are associated with the activity pro-
25 posed for permitting, and

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

4 “(E) An interim permit under subparagraph (D)—

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

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

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

12 “(iv) may be revoked by the Secretary upon 60
13 days notice for any failure to comply with the terms
14 of the interim permit.”.

15 (b) MULTIPLE SPECIES CONSERVATION PLANS.—
16 Section 10 (16 U.S.C. 1539) is further amended by adding
17 at the end the following:

18 “(k) MULTIPLE SPECIES CONSERVATION PLANS.—

19 “(1) ASSISTANCE.—The Secretary may assist a
20 non-Federal person in the development of a plan (to
21 be known as a ‘multiple species conservation plan’)
22 for the conservation of—

23 “(A) any species with respect to which a
24 finding is made under section 4(b)(3)(A); and

25 “(B) any other species that—

1 “(i) inhabits the area covered by the
2 plan; and

3 “(ii) is designated in the plan for con-
4 servation.

5 “(2) PERMIT.—

6 “(A) The Secretary may issue a permit
7 under this paragraph authorizing any taking
8 described in subsection (a)(1)(B) of a species
9 for which a multiple species conservation plan is
10 developed under this subsection, if the Sec-
11 retary, after the opportunity for public com-
12 ment on the plan—

13 “(i) finds that the plan specifies the
14 information described in subsection
15 (a)(2)(A);

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

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

22 “(B) A permit issued under this paragraph
23 with respect to a multiple species conservation
24 plan shall be treated as a permit issued under

1 subsection (a)(1)(B) for species for which the
2 plan is developed.”.

3 **SEC. 306. COMPENSATING PROPERTY OWNERS FOR SUB-**
4 **STANTIALLY DIMINISHED VALUE.**

5 (a) AMENDMENT TO ACT.—The Act is amended by
6 inserting after section 10 (16 U.S.C. 1539) the following:

7 “COMPENSATION FOR LANDOWNERS

8 “SEC. 10A. (a) ELIGIBILITY.—A property owner
9 that, as a consequence of a final decision of the Secretary
10 pursuant to section 7(a), section 7(q), or section 10(a),
11 is substantially deprived of the economically viable use of
12 property owned or held by the property owner is entitled
13 to receive compensation in accordance with this section.

14 “(b) DEADLINE.—Within 90 days after receipt of a
15 final decision of the Secretary under section 7(a), section
16 7(q), or section 10(a) that substantially deprives a property
17 owner of the economically viable use of property owned
18 or held by the property owner, the property owner may
19 submit in writing a request to the Secretary for compensa-
20 tion in accordance with subsection (c).

21 “(c) SECRETARY’S OFFER.—The Secretary, within
22 180 days after the receipt of a request for compensation,
23 shall provide to the property owner—

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

1 “(2) an offer to compensate the property owner
2 for the difference between the fair market value of
3 the property without those restrictions and the fair
4 market value of the property with those restrictions.

5 “(d) PROPERTY OWNER’S RESPONSE.—A property
6 owner shall have 60 days after the date of receipt of the
7 Secretary’s offers under subsection (c) to accept one of
8 the offers or to reject both offers. If the property owner
9 rejects both offers, the property owner may submit the
10 matter for arbitration to an arbitrator appointed by the
11 Secretary from a list of arbitrators submitted to the Sec-
12 retary by the American Arbitration Association. The arbi-
13 tration shall be conducted in accordance with the real es-
14 tate valuation arbitration rules of that association. For
15 purposes of this section, an arbitration shall be binding
16 on the Secretary and a property owner as to the amount,
17 if any, of compensation owed to the property owner and
18 whether for purposes of this section the property owner
19 has been substantially deprived of the economically viable
20 use of the affected property.

21 “(e) OTHER REMEDIES NOT AFFECTED.—Nothing
22 in this section shall affect the right of a property owner
23 to pursue any other remedy available at law.

24 “(f) JUDGMENT.—A final decision of the Secretary
25 pursuant to section 7(a), section 7(q), or section 10(a)

1 that substantially deprives a property owner of the eco-
2 nomically viable use of the property owned or held by the
3 property owner is deemed, at the option of the property
4 owner to be a taking under the Constitution of the United
5 States and a judgment against the United States if the
6 property owner—

7 “(1) accepts an offer by the Secretary under
8 subsection (d); or

9 “(2) submits to arbitration under subsection
10 (d).

11 “(g) PAYMENT.—The Secretary shall pay a property
12 owner any compensation required under the terms of an
13 offer of the Secretary that is accepted by the property
14 owner in accordance with subsection (d), or under a deci-
15 sion of an arbiter under that subsection, by not later than
16 60 days after the date of the acceptance or the date the
17 issuance of the decision, respectively.

18 “(h) DEFINITIONS.—In this section the following
19 definitions apply:

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

21 “(A) land;

22 “(B) any interest in land; and

23 “(C) any proprietary water right.

24 “(2) PROPERTY OWNER.—The term ‘property
25 owner’ means a non-Federal person (other than an

1 officer, employee, agent, department, or instrumen-
2 tality of a State, municipality, or political subdivi-
3 sion of a State, or a State, municipality, or subdivi-
4 sion of a State) that—

5 “(A) owns property referred to in para-
6 graph (1) (A) or (B); or

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

9 (b) CONFORMING AMENDMENT.—The table of con-
10 tents for the Act is amended by inserting after the entry
11 for section 10 the following:

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

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

15 **SEC. 401. COOPERATIVE MANAGEMENT AGREEMENTS.**

16 Section 6(b) (16 U.S.C. 1535(b)) is amended to read
17 as follows:

18 “(b) COOPERATIVE MANAGEMENT AGREEMENTS.—

19 “(1) IN GENERAL.—The Secretary may enter
20 into an agreement with any non-Federal person hav-
21 ing authority, control, or ownership over the area af-
22 fected by any listing, proposed listing, or candidacy
23 for listing of a species pursuant to section 4(a)(1),
24 any designation of critical habitat pursuant to sec-
25 tion 4(a)(3), or any listing of a species subject to

1 section 4(b)(3)(B)(iii). The agreement shall be
2 known as a ‘Cooperative Management Agreement’
3 and shall govern the administration and manage-
4 ment of an area or areas that the Secretary identi-
5 fies as habitat for that species.

6 “(2) INITIATION OR REQUEST FOR AGREE-
7 MENT.—The Secretary may initiate, or a non-Fed-
8 eral person may submit to the Secretary a request
9 to enter into, a Cooperative Management Agreement.
10 A person shall submit with the request a proposed
11 Cooperative Management Agreement.

12 “(3) PUBLICATION AND COMMENT.—The Sec-
13 retary shall publish in the Federal Register—

14 “(A) a notice of availability of, and a re-
15 quest for public comment on, a proposed Coop-
16 erative Management Agreement; and

17 “(B) each Cooperative Management Agree-
18 ment entered into by the Secretary.

19 “(4) HEARINGS.—The Secretary shall hold a
20 public hearing on a proposed Cooperative Manage-
21 ment Agreement in each county or parish to which
22 the proposed agreement applies.

23 “(5) CONSIDERATION OF INFORMATION.—

1 “(A) Before entering into a Cooperative
2 Management Agreement, the Secretary shall
3 consider and weigh carefully all information—

4 “(i) received in response to the re-
5 quest for comments published under para-
6 graph (3); or

7 “(ii) presented as testimony in any
8 hearing held under paragraph (4).

9 “(B) The Secretary shall publish under
10 paragraph (3)(B) with a Cooperative Manage-
11 ment Agreement the response of the Secretary
12 to all information referred to in subparagraph
13 (A) that is received or presented with respect to
14 the agreement.

15 “(6) APPROVAL OF PROPOSED AGREEMENT.—

16 “(A) Within 120 days after the submission
17 of a proposed Cooperative Management Agree-
18 ment in accordance with paragraph (2), the
19 Secretary shall determine whether the proposed
20 agreement—

21 “(i) is in accordance with this sub-
22 section; and

23 “(ii) will promote conservation of the
24 species to which the proposed agreement
25 applies.

1 “(B) The Secretary shall approve and
2 enter into a proposed Cooperative Management
3 Agreement with the person that submits the
4 proposed agreement if the Secretary finds
5 that—

6 “(i) the person has sufficient author-
7 ity under law to implement and abide by
8 the terms of the agreement;

9 “(ii) the agreement defines an area or
10 areas that serve as habitat for the species
11 to which it applies;

12 “(iii) the agreement provides for the
13 administration and management of the
14 area or areas and adequately regulates ac-
15 tivities occurring therein which may not
16 otherwise promote conservation of the spe-
17 cies to which it applies;

18 “(iv) the agreement promotes the con-
19 servation of the species to which it applies
20 by committing non-Federal or Federal ef-
21 forts to that conservation; and

22 “(v) the agreement is adequately
23 funded to carry out its purposes.

24 “(7) EFFECT OF AGREEMENT.—

1 “(A) Sections 4(a)(1), 4(a)(3), 5, and 7
2 shall not apply to activities of a person con-
3 ducted in accordance with a Cooperative Man-
4 agement Agreement.

5 “(B) Notwithstanding subparagraph (A),
6 an intentional or knowing violation of a Cooper-
7 ative Management Agreement or a statute or
8 regulation implementing a Cooperative Manage-
9 ment Agreement, that has the effect of jeopard-
10 izing the continued existence of a species to
11 which the agreement applies shall be considered
12 to be a violation of this Act.

13 “(8) RESCISSION OF AGREEMENT.—

14 “(A) If the Secretary determines after
15 public hearing and opportunity for comment
16 that a person that is a party to a Cooperative
17 Management Agreement is not administering or
18 acting in accordance with the agreement, the
19 Secretary shall notify the person.

20 “(B) If a person that is notified under
21 subparagraph (A) fails to take appropriate cor-
22 rective action within a period of time deter-
23 mined by the Secretary to be reasonable (not to
24 exceed 90 days after the date of the notifica-
25 tion)—

1 “(i) the Secretary shall rescind the
2 Cooperative Management Agreement that
3 is the subject of the notification; and

4 “(ii) on and after the date of that re-
5 scission—

6 “(I) the agreement shall not be
7 effective; and

8 “(II) sections 4(a)(1), 4(a)(3), 5,
9 and 7 shall apply to activities of the
10 person.”.

11 **SEC. 402. HABITAT RESERVE GRANTS.**

12 Section 6(b) (16 U.S.C. 1535(b)), as amended by sec-
13 tion 401, is further amended by adding at the end the
14 following:

15 “(9) HABITAT RESERVE GRANTS.—

16 “(A) The Secretary may provide grants to
17 a non-Federal person (other than an officer,
18 employee, agent, department, or instrumentality
19 of a State, municipality, or political subdivision
20 of a State, and a State, municipality, or sub-
21 division of a State) for the purpose of preserv-
22 ing habitat for any species that is determined
23 under section 4 to be an endangered species or
24 threatened species.

1 “(B) The Secretary may annually provide
2 grants under this paragraph if the Secretary
3 determines that—

4 “(i) the property for which the grant
5 is provided contains habitat that signifi-
6 cantly contributes to enhancement of the
7 population of the species;

8 “(ii) that property has been dedicated
9 to species conservation for a sufficient pe-
10 riod of time to significantly contribute to
11 enhancement of the population of the spe-
12 cies; and

13 “(iii) the preservation of that habitat
14 advances the interest of species conserva-
15 tion.

16 “(C) A grant under this paragraph is
17 transferable to subsequent owners of the prop-
18 erty for which the grant is provided.”.

19 **SEC. 403. CONFORMING AMENDMENTS.**

20 (a) SECTION HEADING.—Section 6 (16 U.S.C. 1535)
21 is further amended by amending the section heading to
22 read as follows: “COOPERATION WITH NON-FEDERAL PER-
23 SONS”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 the Act is amended by amending the entry for section 6
3 to read as follows:

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

4 **TITLE V—REAUTHORIZATION**
5 **AND OTHER AMENDMENTS**

6 **SEC. 501. GUIDANCE FOR THE RELEASE OF EXPERIMENTAL**
7 **POPULATIONS.**

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

9 (1) in paragraph (2)(B), by inserting—

10 (A) “and the precise boundaries of the geo-
11 graphical areas for the release” after “popu-
12 lation” the second place it appears; and

13 (B) “whether the release is in the public
14 interest and” after “information,”;

15 (2) in paragraph (2)(C), by striking “and” in
16 clause (i), redesignating clause (ii) as clause (iii),
17 and inserting after clause (i) the following:

18 “(ii) for purposes of section 4(d) and
19 9(a)(1)(B), any member of an experi-
20 mental population found outside the geo-
21 graphical area in which the population is
22 released shall not be treated as a threat-
23 ened species if it poses a threat to the well
24 being of the public;”;

1 (3) by redesignating paragraph (3) as para-
2 graph (4) and inserting after paragraph (2) the fol-
3 lowing:

4 “(3) In authorizing releases of populations under
5 paragraph (2), the Secretary shall require that—

6 “(A) to the extent possible, the releases shall
7 occur only in units of the National Park System or
8 the National Wildlife Refuge System;

9 “(B) releases outside those units occur only in
10 such areas which have been identified as candidate
11 sites for release in the recovery plans for the species
12 of such populations pursuant to section 5;

13 “(C) for any releases outside those units, meas-
14 ures to protect the safety and welfare of the public
15 and domestic animals and the funding therefore are
16 identified in the regulations authorizing the releases
17 and are implemented;

18 “(D) the regulations authorizing the releases
19 shall identify precisely the geographical areas for re-
20 lease;

21 “(E) releases on non-Federal lands shall occur
22 only with the written consent of the owners thereof;
23 and

24 “(F) the regulations authorizing the releases
25 shall include measurable reintroduction goals to re-

1 store viable populations only within the specific geo-
2 graphic areas identified for release in such regula-
3 tions.”.

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

6 Section 13 (87 Stat. 901; relating to conforming
7 amendments) is amended to read as follows:

8 “RECOGNITION OF CAPTIVE PROPAGATION AS MEANS OF
9 RECOVERY

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

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

22 **SEC. 503. CLARIFYING THE APPLICATION OF PROHIBI-**
23 **TIONS TO THREATENED SPECIES.**

24 Section 4(d) (16 U.S.C. 1533(d)) is amended by
25 striking the first sentence and inserting the following:
26 “When a species is listed as a threatened species pursuant

1 to subsection (c), the Secretary shall issue, concurrently
2 with or subsequent to the regulation that provides for the
3 listing of the species, regulations the Secretary considers
4 necessary and advisable to provide for the conservation of
5 the species.”.

6 **SEC. 504. CITIZEN SUITS.**

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

8 (1) in paragraph (1)(A), by striking “any per-
9 son, including the United States and any other gov-
10 ernmental instrumentality or agency (to the extent
11 permitted by the eleventh amendment to the Con-
12 stitution,” and inserting “the United States or any
13 agency or official thereof”;

14 (2) in the first sentence following subparagraph
15 (C) of paragraph (1), by striking “or the citizenship
16 of the parties”; and

17 (3) in paragraph (3), by striking “(A)” and
18 subparagraph (B).

19 (b) Section 11(g) (16 U.S.C. 1540(g)) is further
20 amended by adding at the end the following:

21 “(6) A non-Federal person (including a person that
22 sustains actual or imminent economic injury as a direct
23 or indirect result of a violation of this Act or a regulation
24 issued under this Act by the United States or any agency
25 or official thereof) may commence a civil suit on his or

1 her own behalf and may intervene as a matter of right
2 in any suit brought under this Act related to that injury.”.

3 **SEC. 505. INCREASED AUTHORIZATIONS OF APPROPRIA-**
4 **TIONS.**

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

7 “AUTHORIZATIONS OF APPROPRIATIONS

8 “SEC. 15. (a) IN GENERAL.—Except as provided in
9 subsections (b) and (c), there are authorized to be appro-
10 priated—

11 “(1) to the Secretary of the Interior,
12 \$59,000,000 for fiscal year 1994, \$67,000,000 for
13 fiscal year 1995, \$76,000,000 for fiscal year 1996,
14 \$87,000,000 for fiscal year 1997, and \$100,000,000
15 for fiscal year 1998 to carry out this Act;

16 “(2) to the Secretary of Commerce,
17 \$13,500,000 for fiscal year 1994, \$15,000,000 for
18 fiscal year 1995, \$16,500,000 for fiscal year 1996,
19 \$18,000,000 for fiscal year 1997, and \$20,000,000
20 for fiscal year 1998 to carry out this Act; and

21 “(3) to the Secretary of Agriculture,
22 \$3,000,000 for fiscal year 1994, \$3,300,000 for fis-
23 cal year 1995, \$3,600,000 for fiscal year 1996,
24 \$4,000,000 for fiscal year 1997, and \$4,300,000 for
25 fiscal year 1998 to carry out functions and respon-
26 sibilities of the Secretary of Agriculture with respect

1 to the enforcement of this Act and the Convention
 2 which pertain to the importation or exportation of
 3 plants.

4 “(b) EXEMPTIONS FROM ACT.—There are authorized
 5 to be appropriated to the Secretary to enable the Secretary
 6 and the Endangered Species Committee to carry out their
 7 functions under sections 7 (e), (g), (h), and (r) \$625,000
 8 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.

9 “(c) CONVENTION IMPLEMENTATION.—There are au-
 10 thorized to be appropriated to the Secretary of the Interior
 11 for carrying out section 8A(e) \$600,000 for each of fiscal
 12 years 1994, 1995, and 1996, and \$700,000 for each of
 13 fiscal years 1997 and 1998. Amounts appropriated under
 14 this subsection shall remain available until expended.”.

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