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104TH CONGRESS
1ST SESSION

S. 1364

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 1995

Mr. KEMPTHORNE (for himself, Mr. WARNER, Mr. FAIRCLOTH, Mr. INHOFE, Mr. THOMAS, Mr. MCCONNELL, Mr. CRAIG, Mr. BENNETT, Mr. BURNS, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Endangered Species Conservation Act of 1995''.

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

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

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

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

SEC. 2. FINDINGS, PURPOSES, AND POLICY.

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

(1) in subsection (a)—

(A) by striking paragraph (1) and inserting the following:

''(1) various species of fish, wildlife, and plants have become extinct as a consequence of a variety of factors, both natural and resulting from human activity;'';

(B) in paragraph (3), by striking ''these species of fish, wildlife, and plants are'' and inserting ''certain of these species of fish, wildlife, and plants are necessary for maintaining biodiversity, important to future generations of Americans, or'';

(C) in paragraph (4)—

(i) in subparagraph (F), by striking ''and'' at the end;

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

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

''(G) the Treaty Between the United States and Canada Concerning Pacific Salmon, signed at Ottawa on January 28, 1985 (TIAS 11091); and''; and

(D) in paragraph (5)—

(i) by striking ''encouraging the States'' and inserting ''it is in the best interest of the species and all affected parties to encourage States, local governments, private landowners,'';

(ii) by inserting '', market-based programs,'' after ''assistance'';

(iii) by inserting ''that will encourage the conservation of habitat needed for species of fish, wildlife, and plants for the benefit of future generations, and'' after ''conservation programs''; and

(iv) by striking ''is a key'' and inserting '', as a key'';

(2) in subsection (b)—

(A) by striking ''to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved,'' and inserting ''to conserve endangered species and threatened species,''; and

(B) by striking ''such endangered'' and inserting ''endangered''; and

(3) in subsection (c)—

(A) in paragraph (1), by striking ''species and shall utilize their authorities'' and inserting ''species, shall equally consider the conservation of listed species, preservation of economic growth, maintenance of a strong tax base, and protection against the diminishment of the use and value of private property, and shall use their authorities to prevent the diminishment of the use and value of private property and''; and

(B) by adding at the end the following:

''(3) RECOGNITION OF IMPORTANCE OF GENETICS.—It is further declared to be the policy of Congress that the conservation of endangered species and threatened species should focus on genetic resources as a measure of biological diversity.

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

''(A) recognizes the broad trustee and police powers of each State with respect to the management and conservation of fish and wildlife within the borders of the State;

''(B) affirms the concurrent jurisdiction of States in the conservation and management of endangered species and threatened species under this Act; and

''(C) fully utilizes the authorities, expertise, and working relationships of States with local governments and holders of real property rights.

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

such as cooperative management agreements, land acquisition, multiple species non-Federal conservation plans, and the use of mitigation banks, to conserve endangered species and threatened species and habitat areas important to the survival and recovery of endangered species and threatened species.''.

SEC. 3. DEFINITIONS.

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

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

(2) by inserting after paragraph (1) the following:

''(2) CANDIDATE SPECIES.—The term 'candidate species' means a species found to be warranted to be listed as an endangered species or a threatened species, but precluded from the listing because of pending proposals to list that are of a higher priority under section 4(b)(2)(B)(iii)(I).'';

(3) in the proviso of paragraph (3) (as redesignated by paragraph (1)), by striking ''by museums'' and inserting ''or species by exhibitors licensed under section 3 of the Animal Welfare Act (7 U.S.C. 2133), museums,'';

(4) by inserting after paragraph (3) (as so redesignated) the following:

''(4) COMMISSION.—The term 'Commission' means the Endangered Species Commission established under section 13.'';

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

''(5) CONSERVATION OBJECTIVE; CONSERVATION PLAN.—The terms 'conservation objective' and 'conservation plan' (unless modified by 'non-Federal') mean a conservation objective and a conservation plan (including a revision of a conservation plan), respectively, developed under section 5.

''(6) CONSERVE.—The term 'conserve' means to use all methods and procedures to attain the conservation objective and to implement the conservation plan.'';

(6) by inserting after paragraph (7) (as redesignated by paragraph (1)) the following:

''(8) COOPERATIVE MANAGEMENT AGREEMENT.—The term 'cooperative management agreement' means a voluntary agreement entered into under section 6(b).'';

(7) in paragraph (9)(A) (as redesignated by paragraph (1)), by striking ''(9)(A)'' and all that

follows through the end of subparagraph (A) and inserting the following:

''(9) CRITICAL HABITAT.—

''(A) IN GENERAL.—The term 'critical habitat', with respect to an endangered species or a threatened species, means the specific areas within the geographic area occupied by the species, at the time the species is listed under section 4(c)(1), that contain such physical or biological features as—

''(i) are essential to the conservation of the species and the persistence of the species for at least 7 human generations; and

''(ii) may require special management considerations or protection.'';

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

''(10) ENDANGERED SPECIES.—The term 'endangered species' means any species that, if no action were taken under this Act, would be placed on an irreversible course to extinction within 2 human generations, other than a species determined by the Secretary to constitute a pest whose protection

under this Act would present an overwhelming and overriding risk to man.'';

(9) by inserting after paragraph (13) (as redesignated by paragraph (1)) the following:

''(14) FOREIGN SPECIES.—The term 'foreign species'—

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

''(B) does not include any marine species, any species having a significant population occurring in the wild within the United States, or any migratory species whose migration route includes territory of the United States.

''(15) HUMAN GENERATION.—The term 'human generation' means 20 years.'';

(10) by inserting after paragraph (16) (as redesignated by paragraph (1)) the following:

''(17) INCIDENTAL TAKING PERMIT.—The term 'incidental taking permit' means a permit issued under section 10(a)(1)(B).

''(18) IN COOPERATION WITH THE STATES.—The term 'in cooperation with the States', with respect to the development of standards, guidelines, and regulations to implement this Act, means the use of a rulemaking process established by the Sec-

retary (including notice and comment on the standards, guidelines, and regulations) in which—

''(A) the States as administrative and regulatory partners, participate in a meaningful and timely manner in the development of the standards, guidelines, and regulations, which development shall include the integration of recommendations, field practices, and programs of the States; and

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

''(19) JEOPARDY.—The terms 'jeopardy' and 'likely to jeopardize the continued existence of', with respect to an action affecting an endangered species or a threatened species, refer to an action that significantly diminishes the likelihood of the survival of the species in the wild by significantly reducing the numbers or distribution of the entire species.

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

''(21) MITIGATION BANK.—The term 'mitigation bank' means a project carried out by an entity

under section 10(n) for the purpose of providing credits to offset adverse impacts to endangered species or threatened species or habitat of the species.

''(22) NON-FEDERAL PERSON.—The term 'non-Federal person' means a person other than an officer, employee, agent, department, or instrumentality of the Federal Government or a foreign government acting in the official capacity of the person.'';

(11) by striking paragraph (23) (as redesignated by paragraph (1)) and inserting the following:

''(23) PERMIT OR LICENSE APPLICANT.—The term 'permit or license applicant' means a person who requires authorization or funding from a Federal agency, including a party to a written lease, a license, or a contract to purchase or provide a good or service, and whose authorization or funding requires an action from the agency to obtain the benefit of the activity.'';

(12) by inserting after paragraph (25) (as redesignated by paragraph (1)) the following:

''(26) REASONABLE AND PRUDENT ALTERNATIVE.—The term 'reasonable and prudent alternative' means an alternative action that is determined by the Secretary to avoid jeopardy to an entire species.

''(27) RURAL AREA.—The term 'rural area' means county that has no city or town that has a population of more than 10,000 inhabitants.'';

(13) in paragraph (28) (as redesignated by paragraph (1)), by striking ''Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970;'' and inserting ''Interior,'';

(14) by striking paragraph (29) (as redesignated by paragraph (1)) and inserting the following:

''(29) SPECIES.—The term 'species'—

''(A) means a biological species; and

''(B) includes any subspecies of naturally occurring fish or wildlife or plants, and any genetically distinct population segment of any species of vertebrate fish or wildlife, only if it can be demonstrated that there exists a complete lack of gene flow into occupied habitat of the subspecies or distinct population segment.'';

(15) in paragraph (30) (as redesignated by paragraph (1)), by inserting ''the Commonwealth of the Northern Mariana Islands,'' after ''Guam,''; and

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

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

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

''(B) includes proximately and foreseeably modifying habitat of the species so as to affect a member of the species in the manner described in subparagraph (A).

''(33) THREATENED SPECIES.—The term 'threatened species' means any species that, if no action were taken under this Act, would become an endangered species within 5 human generations.''.

SEC. 4. DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES.

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

(1) by striking ''(a) GENERAL.—(1) The'' and inserting ''(a) IN GENERAL.—The'';

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

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

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

(5) in paragraph (3) (as so redesignated), by inserting '', competition, parasitism,'' after ''disease''; and

(6) in paragraph (4) (as so redesignated), by inserting ''Federal, State, local government, and international'' after ''existing''.

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

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) by striking ''(a)(1)'' and inserting ''(a)''; and

(ii) by striking ''to him'' and all that follows through the period at the end and inserting ''in accordance with paragraph (9) and after requesting the Commission to conduct a scientific review.''; and

(B) in subparagraph (B)—

(i) by striking ''consideration to species'' and inserting ''priority to species the conservation of which is most likely to re-

duce the need to list other species dependent on the same habitat, and shall give consideration to species''; (ii) in clause (i), by striking ''or'' at the end; (iii) in clause (ii), by striking the period at the end and inserting ''; or''; and (iv) by adding at the end the following: ''(iii) identified as a known source of pharmaceutical or agricultural biochemicals.'';

(2) by striking paragraph (2);

(3) by redesignating paragraph (3) as paragraph (2);

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

(A) in subparagraph (A)—

(i) in the first sentence, by inserting ''new'' before ''scientific or commercial'';

(ii) by inserting after the first sentence the following: ''The information shall include data documenting the biological vulnerability of, and threats to, the species or the habitat of the species. Failure to so document the information shall result in a

presumption that the petition is inadequate.''; and

(iii) by striking the last 2 sentences and inserting the following: ''If such a petition is found to present the information, the Secretary shall—

''(i) provide a copy of the petition to the State having jurisdiction over the area in which the species is believed to occur and invite the determination of the State as to whether the petitioned action is warranted;

''(ii) promptly request the Commission to conduct a scientific review of any new information presented by the petition with respect to the status of the species; and

''(iii) promptly publish each finding made under this subparagraph in the Federal Register.'';

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

''(ii) JUDICIAL REVIEW.—Any finding described in this section shall be subject to judicial review.''; and

(C) by striking subparagraph (D) and inserting the following:

"(D) OVERRIDING DECISION BY THE SECRETARY.—If the Secretary finds under subparagraph (B) that a petitioned action is warranted but a State to which the petition was provided under subparagraph (A) determines in accordance with this subsection that the petitioned action is not warranted under this Act, the Secretary, notwithstanding the determination, after considering fully any recommendation by each State to which the petition was provided, may find by a preponderance of the evidence that the petitioned action is warranted. If the Secretary so finds, the Secretary shall provide to the State a record of decision on the information used in making the finding, the information available to the Secretary that did not support the finding, and written justification for the finding.";

(5) by inserting after paragraph (2) (as redesignated by paragraph (3)) the following:

"(3) FOREIGN SPECIES.—

"(A) IN GENERAL.—The Secretary shall not determine that a foreign species that is listed under the Convention is an endangered spe-

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

"(i) makes an adequate finding, supported by substantial evidence, that the Convention does not adequately protect the species; and

"(ii) complies with the requirements of this paragraph.

"(B) TRANSMISSION OF LISTING TO FOREIGN WILDLIFE AUTHORITY.—Prior to publishing a proposed determination in the Federal Register that a foreign species is an endangered species or a threatened species, the Secretary shall—

"(i) transmit the full text and a complete description of the proposed determination (including the information described in subparagraph (C)) directly to the appropriate wildlife management authority of each nation in which the species naturally occurs, in an official language of the nation; and

"(ii) provide to each authority a period of not less than 180 days (beginning on the date of receipt by the authority of

the materials described in clause (i)) for review and comment on the proposed determination.

''(C) ANALYSES.—Materials transmitted under subparagraph (B) shall include—

''(i) a readily understandable, non-technical explanation of the objective criteria for and purpose of the proposed listing;

''(ii) an analysis of the anticipated beneficial or detrimental impacts of the listing on—

''(I) the economic, social, and cultural utilization of the species by the nation, if any; and

''(II) the resource management and conservation programs of the nation; and

''(iii) a summary of—

''(I) the literature reviewed and experts consulted by the Secretary with respect to the species; and

''(II) the findings of the Secretary based on the review and consultation.

"(D) DISCUSSIONS WITH FOREIGN OFFICIALS.—The Secretary shall enter into discussions with the officials of each wildlife management authority to which materials are transmitted under subparagraph (B). If the officials determine that further studies of the species should be conducted, the Secretary shall assist the officials in obtaining funds for the studies and in carrying out the studies.

"(E) CONCURRENCE OF FOREIGN OFFICIALS.—Prior to publishing a proposed determination in the Federal Register that a foreign species is an endangered species or a threatened species, the Secretary shall make every effort to obtain the written concurrence in the determination of each wildlife management authority to which materials are transmitted under subparagraph (B). If the concurrence is not obtained, the Secretary may not publish the proposed determination without first submitting the determination to and obtaining the approval of the President.";

(6) in paragraph (5)—

(A) by striking "(5) With" and inserting the following:

''(5) NOTICE OF REGULATIONS AND REVIEW BY STATES.—

''(A) NOTICE OF REGULATIONS.—With'';

(B) by striking ''determination, designation, or revision referred to in subsection (a)(1) or (3)'' and inserting ''determination referred to in subsection (a)'';

(C) by striking ''(A) not'' and inserting the following:

''(i) not'';

(D) by striking ''(i) publish'' and inserting the following:

''(I) publish'';

(E) in subparagraph (A)(i)(I) (as so redesignated), by striking '', and'' and inserting the following: '', including—

''(aa) a readily understandable, nontechnical explanation of the reasons for and purpose of the proposed regulation;

''(bb) an analysis concluding that the conservation benefit of the regulation outweighs any negative conservation impact of the regulation; and

''(cc) a summary of the findings of the assessment team based on the review under section 13(c)(3)(A)(i); and'';

(F) by striking ''(ii) give'' and inserting the following:

''(II) give'';

(G) in subparagraph (A)(i)(II) (as so redesignated), by inserting ''by registered mail, or other certifiable method,'' after ''regulation)'';

(H) by striking ''(B) insofar'' and inserting the following:

''(ii) insofar'';

(I) by striking ''(C) give notice'' and inserting the following:

''(iii) give notice'';

(J) in subparagraph (A)(iii) (as so redesignated), by striking ''as he deems'' and inserting ''as the Secretary determines'';

(K) by striking ''(D) publish'' and inserting the following:

''(iv) publish'';

(L) by striking ''(E) promptly'' and inserting the following:

''(v) promptly'';

(M) in subparagraph (A)(v) (as so redesignated)—

(i) by striking ''one public hearing'' and inserting ''1 or more public hearings''; and

(ii) by inserting before the period at the end the following: ''(including at least 1 hearing in an affected rural area if 1 or more rural areas are affected by the determination)''; and

(N) by adding at the end the following:

''(B) REVIEW BY STATES.—

''(i) NOTICE.—In the case of any regulation proposed by the Secretary to implement a determination referred to in subsection (a) with respect to a species for which a petition has not been received under paragraph (2), the Secretary shall, not earlier than 1 year before the date on which the regulation is proposed, give actual notice that the Secretary is considering the action (including any relevant information) to the State having jurisdiction over the area in which the species is believed to occur and invite the determina-

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

''(ii) SCIENTIFIC REVIEW OF CONFLICTS.—If within 9 months after receiving notice under clause (i), the State determines in accordance with this subsection that the proposed action is not warranted under this Act and provides the Secretary with the basis for the determination, the Secretary shall—

''(I) request the Commission to conduct a scientific review of the proposed action, consider all pertinent data and information, and make a recommendation in accordance with this subsection; and

''(II)(aa) fully consider any recommendation by the State, which shall be given great weight; and

''(bb) not later than 1 year after giving notice under clause (i), determine whether to propose a regulation for the species.

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

recommendation resulting from the scientific review under clause (ii) supports the determination by the State, the Secretary, notwithstanding the recommendation and determination, may find by a preponderance of the evidence that the proposed action is warranted. If the Secretary so finds, the Secretary shall provide to the State a record of decision on the information used in making the finding, the information available to the Secretary that did not support the finding, and written justification for the finding.

''(C) PROPOSALS TO LIST INITIATED BY THE SECRETARY.—In the case of a regulation to implement a determination referred to in subsection (a) for which a scientific review has not been undertaken under this subsection, if any person files within 30 days after the date of publication of general notice under subparagraph (A)(i)(I) a written request detailing a substantial scientific basis for questioning the sufficiency or accuracy of the available data relevant to the determination, the Secretary shall request the Commission to conduct a scientific

review of the petitioned action, consider all pertinent data and information, and make a recommendation in accordance with this subsection.'';

(7) in paragraph (6)—

(A) in subparagraph (A)—

(i) by striking ''(5)(A)(i) regarding'' and all that follows through ''(i) if'' and inserting: ''(5)(A)(i)(I) regarding a proposed regulation, the Secretary shall publish in the Federal Register, if'';

(ii) by striking '', or a revision of critical habitat,'';

(iii) by striking clause (ii);

(iv) by striking ''(I) a'' and inserting the following:

''(i) a'';

(v) by striking subclause (II);

(vi) by striking ''(III) notice'' and inserting the following:

''(ii) notice'';

(vii) by striking ''(IV) notice'' and inserting the following:

''(iii) notice''; and

(viii) in clause (iii) (as so redesignated), by striking ''based; or'' and inserting ''based.'';

(B) in subparagraph (B)—

(i) by striking ''(A)(i)'' each place it appears and inserting ''(A)'';

(ii) in clause (i), by striking ''or revision concerned''; and

(iii) in clause (iii), by striking ''or revision concerned, a finding that the revision should not be made,''; and

(C) by striking subparagraph (C);

(8) in the first sentence of paragraph (7), by striking ''posing a significant risk to the well-being'' and inserting ''that poses an imminent threat to the continued existence'';

(9) in paragraph (8), by striking ''regulation; and if'' and all that follows through the period at the end and inserting ''regulation.''; and

(10) by adding at the end the following:

''(9) VERIFICATION OF DATA.—

''(A) IN GENERAL.—For the purposes of paragraph (1) and section 5(i), the best scientific and commercial data available shall be,

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

''(B) PUBLICATION WITH RESPECT TO PROPOSED RULES.—The Secretary shall identify and publish in the Federal Register with each proposed rule promulgated under paragraph (1) or section 5(i) a brief summary of—

''(i) all data that are to be considered in making the determination under the subsection to which the proposed rule relates and that have yet to be collected or field verified;

''(ii) data that are necessary to make the determination and that can be collected within the period available for making the determination; and

''(iii) data that are necessary to ensure the scientific validity of the determination, and each deadline for collecting the data.

''(C) CONSIDERATION OF DATA.—In making a determination under paragraph (1) or section 5(i), the Secretary shall collect and consider the data identified and described under subparagraph (B)(ii).

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

"(i) a description of any data that have not been collected and considered in the determination to which the rule relates and that are necessary to ensure the scientific validity of the determination; and

"(ii) each deadline by which the Secretary shall collect and consider the data in accordance with subparagraph (E).

"(E) FURTHER CONSIDERATION OF DATA.—Not later than the deadline published by the Secretary under subparagraph (D)(ii), the Secretary shall—

"(i) collect the data referred to in the subparagraph;

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

"(iii) reconsider the data after full consideration of the public review and comment; and

''(iv) publish in the Federal Register the results of the consideration and a description of and schedule for any actions warranted by the data.''.

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

(1) in paragraph (1)—

(A) in the first sentence, by striking ''by him or the Secretary of Commerce'' each place it appears;

(B) by inserting after the first sentence the following: ''Each list shall be separately published and maintained by the Secretary.''; and

(C) in the last sentence, by striking ''determinations, designations, and revisions made in accordance with subsections (a) and (b)'' and inserting ''determinations made in accordance with subsections (a) and (b) and designations and revisions made in accordance with section 5(i)''; and

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

''(2) REVIEW OF LISTS.—

"(A) IN GENERAL.—The Commission shall—

"(i) conduct, at least once every 5 years, a review of all species included in a list that is published under paragraph (1) and that is in effect at the time of the review; and

"(ii) promptly report the results of the review to the Secretary.

"(B) CHANGE IN SPECIES STATUS.—If, on completion of a review under subparagraph (A), the Secretary finds that the criteria in the conservation plan for a change in status have been met or exceeded, the Secretary shall, not later than 90 days after completion of the review, publish notice of the change of status of the species, from an endangered species to a threatened species, in the Federal Register.

"(C) REMOVAL FROM LISTS.—If, on completion of a review under subparagraph (A), the Secretary finds that the criteria in a conservation plan for the removal of a species from any list published under paragraph (1) have been met or exceeded, the Secretary shall, not later than 90 days after completion of the review,

propose a regulation to implement the determination in accordance with this section.

''(D) SPECIES NOT HAVING A CONSERVATION PLAN.—With respect to any species for which no conservation plan that specifies criteria for a change in status or removal from a list exists, the Secretary shall, by regulation promulgated in accordance with subsection (b), determine whether the species is no longer an endangered species or a threatened species because of a change in the factors identified in subsection (a).''.

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

(1) in the first sentence—

(A) by inserting '', in cooperation with the States having jurisdiction over an area in which the species is believed to occur,'' after ''Secretary''; and

(B) by striking ''as he deems necessary and advisable to provide for'' and inserting ''that, in the discretion of the Secretary, are consistent with''; and

(2) in the second sentence, by striking ''by regulation prohibit with respect to any'' and inserting ''in the regulations prohibit with respect to that''.

(e) TRANSFER OF PLANNING AUTHORITY.—

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

(A) by striking subsection (f); and

(B) by redesignating subsections (g) through (i) as subsections (f) through (h), respectively.

(2) CONFORMING AMENDMENTS.—

(A) Section 6(d)(1) (16 U.S.C. 1535(d)(1)) is amended by striking ''section 4(g)'' and inserting ''section 4(f)''.

(B) Section 10(f)(5) (16 U.S.C. 1539(f)(5)) is amended by striking the last sentence.

(C) Section 101(a)(5)(E)(i)(II) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(5)(E)(i)(II)) is amended by striking ''a recovery plan has been developed or is being developed for such species or stock pursuant to the'' and inserting ''a conservation plan has been developed or is being developed

for the species or stock pursuant to section 5 of the''.

(D) Section 104(c)(4) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)(4)) is amended—

(i) in subparagraph (A)(ii)—

(I) in subclause (I), by striking ''any recovery plan developed under section 4(f)'' and inserting ''any conservation plan developed under section 5''; and

(II) in subclause (II)—

(aa) by striking ''or recovery''; and

(bb) by striking ''or a recovery plan''; and

(ii) in subparagraph (B)(iii), by striking ''recovery plan'' and inserting ''conservation plan''.

(E) Section 115(b)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1383b(b)(2)) is amended by striking ''recovery plans required under section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f))'' and inserting ''conservation plans required

under section 5 of the Endangered Species Act of 1973''.

(F) Section 118(f)(11) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1387(f)(11)) is amended by striking ''recovery plan developed for such species or stock under section 4'' and inserting ''conservation plan developed for the species or stock under section 5''.

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

(1) in paragraph (1)—

(A) by striking ''in cooperation with the States'' and inserting '', after consultation and in cooperation with the States and local governments having jurisdiction over an area in which a species described in this paragraph is believed to occur,''; and

(B) by striking ''recovered to the point at which the measures provided pursuant to this Act are no longer necessary'' and inserting ''met the objectives of the conservation plan for the species''; and

(2) in paragraph (2), by striking ''recovered''.

(g) AGENCY GUIDELINES.—Section 4(g) (as redesignated by subsection (e)(1)(B)) is amended—

(1) in the first sentence, by inserting ‘‘, in cooperation with the States having jurisdiction over an area in which a species subject to this section is believed to occur,’’ after ‘‘Secretary’’; and

(2) in paragraph (4) of the second sentence, by striking ‘‘recovery plans under subsection (f) of this section’’ and inserting ‘‘conservation objectives and conservation plans’’.

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

‘‘(i) OBSERVANCE OF DEADLINES.—If any deadline for action specified in this section with respect to a proposal to list a species as an endangered species or a threatened species is not met, the proposed action is terminated automatically by operation of law.’’.

SEC. 5. COORDINATION OF SPECIES CONSERVATION EFFORTS; SPECIES CONSERVATION PLANS.

(a) IN GENERAL.—The Act is amended—

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

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

"COORDINATION OF SPECIES CONSERVATION EFFORTS; SPECIES CONSERVATION PLANS

"SEC. 5. (a) DEVELOPMENT OF CONSERVATION PLANS.—

"(1) IN GENERAL.—In accordance with this section, the Secretary, in cooperation with the States having jurisdiction over areas in which endangered species or threatened species listed under section 4(c)(1) are believed to occur, on the basis of the best scientific and commercial data available in accordance with section 4(b)(9) and considering the options presented by the Commission under section 13(b)(2), shall develop and implement conservation plans to provide for the conservation of the species and the habitats on which the species depend (as identified in the conservation plan), unless the Secretary establishes a conservation objective that is described in subsection (b)(4).

"(2) FOREIGN SPECIES.—In developing a conservation objective and a conservation plan under this section for a foreign species, the Secretary shall—

"(A) act in a manner consistent with the Convention; and

"(B) cooperate with, and support any conservation strategy adopted for the species by, each foreign nation in which the species occurs.

"(3) ADVERSE CONSEQUENCES.—The Secretary, Federal agencies, and the States shall, in a manner consistent with paragraph (1), minimize adverse social and economic consequences, and impacts on private property, that may result from the implementation of conservation plans.

"(b) ESTABLISHMENT OF CONSERVATION OBJECTIVE AND DETERMINATION OF WHETHER TO PREPARE CONSERVATION PLAN.—

"(1) REQUEST FOR OPTIONS.—After the final regulation to implement a determination that a species is an endangered species or a threatened species has been published under section 4(b)(6)(A)(i), the Secretary shall promptly request the Commission to propose options for a conservation objective and prepare a report under section 13(b)(2)(C).

"(2) PUBLICATION.—After considering the report transmitted under section 13(b)(2)(C), the Secretary shall publish in the Federal Register, not later than 30 days after the date of receipt of the report, a conservation objective for the affected spe-

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

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

''(A) recovery of the affected species;

''(B) such level of conservation of the species and any critical habitat to be designated as the Secretary considers practicable and reasonable to the extent that the benefits of the conservation measures justify the human and economic costs of implementation for the Federal Government, State and local governments, the private sector (including any permit or license applicants), and affected private individuals and organizations;

''(C) no Federal action other than enforcement against any person whose activity violates—

''(i) in the case of an endangered species, the prohibitions specified in section 9(a); or

''(ii) in the case of a threatened species, the prohibitions provided by regulation under section 4(d);

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

''(D) such other objective as the Secretary may determine that provides a greater level of protection than the level described in subparagraph (C).

''(4) NO CONSERVATION PLAN.—If the conservation objective established by the Secretary is the objective provided in paragraph (3)(C), the Secretary shall not prepare a conservation plan under subsection (c).

''(5) DISTINCT POPULATION SEGMENTS.—The Secretary may establish a conservation objective, other than the objective provided in paragraph (3)(C), for a distinct population segment designated under section 4(a) after the date of enactment of this paragraph only if the Secretary makes a clear showing that the objective is in the national interest based on biological, social, or economic considerations, or any combination of the considerations.

"(6) GUIDELINES IN ESTABLISHMENT OF OBJECTIVE.—In carrying out this subsection, the Secretary shall establish a conservation objective for a species that provides a level of protection—

"(A) not less than the level described in subparagraph (A) or (B) of paragraph (3), including an objective provided for in paragraph (3)(D) that provides not less than that level of protection, if—

"(i) the threat of extinction of the species is severe;

"(ii) the contribution of the species to genetic diversity is high; and

"(iii) the biological potential for conserving the species is high; or

"(B) less than the level described in paragraph (3)(B) if the species has been listed because of circumstances that make conservation unlikely without extraordinary efforts, including—

"(i) introduced predators, competitors, pathogens, or parasites; and

"(ii) specific, immediate conflicts between the conservation of species and the use of habitat by humans.

''(c) SCHEDULE FOR CONSERVATION PLAN PREPARATION.—Except as provided in subsection (b)(4), on the basis of the report transmitted under section 13(b)(2)(C), the Secretary shall—

''(1) promptly request the Commission to prepare alternatives for a proposed conservation plan based on the conservation objective established by the Secretary under subsection (b);

''(2) not later than 1 year after the date of publication of the final regulation to implement the determination that the affected species is an endangered species or a threatened species, publish—

''(A) a proposed conservation plan for the affected species; and

''(B) a proposed regulation to designate any habitat of the species as critical habitat under subsection (i), unless the Secretary determines that such a designation is not prudent or determinable, which regulation shall include—

''(i) a readily understandable, nontechnical explanation of the reasons for and purpose of the proposed regulation; and

''(ii) an analysis concluding that the conservation benefit of the regulation out-

weighs any negative conservation impact of the regulation; and

''(3) not later than 18 months after the date of publication of the final regulation to implement the determination that the affected species is an endangered species or a threatened species, publish—

''(A) a final conservation plan for the affected species; and

''(B) a final regulation to designate any habitat of the species as critical habitat under subsection (i), unless the Secretary determines that such a designation is not prudent or determinable.

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

''(1) the development of an integrated plan for 2 or more endangered species or threatened species that are likely to benefit from an integrated plan;

''(2) the geographic areas where conflicts between the conservation of species and development projects or other forms of economic activity exist or are likely to exist; and

''(3) the implementation of conservation measures that have the least economic and social costs.

''(e) ALTERNATIVE STRATEGIES.—

''(1) INCLUSION IN PLANS.—On the basis of the report transmitted under section 13(c)(3)(A)(iii), the Commission shall recommend to the Secretary, for inclusion in each proposed conservation plan, alternative strategies to achieve the conservation objective for the affected species.

''(2) RANGE OF STRATEGIES.—The alternative strategies shall range from a strategy requiring intensive Federal management to achieve the conservation objective to a strategy involving the least practicable Federal management to achieve the conservation objective.

''(3) CONTENTS.—Each alternative strategy shall contain—

''(A) an estimate of the risks to the survival and recovery of the species that the alternative would entail;

''(B) a description of any site-specific management measures recommended for the alternative, including the use of mitigation banks;

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

''(D) a description of—

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

''(ii) such measures as are necessary to avoid or minimize the impacts;

''(E) a description of the direct and indirect costs to the public and private sectors, including effects on employment, any multi-State region, or any segment of the national economy, that may result from the alternative;

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

''(G) an analysis of any impacts that the alternative would have on the use and value of property;

''(H) a description of any captive breeding program recommended for the alternative;

''(I) an analysis of whether the alternative would include any release of an experimental population outside the current range of the species and, if the release would be required, an identification of candidate geographic areas for the release;

''(J) a clear differentiation between—

''(i) any matters recommended generally for Federal agencies to conserve the species under section 7(a)(1);

''(ii) any matters recommended for Federal agency actions to avoid being likely to jeopardize the continued existence of the species as determined under section 7(a)(2); and

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

''(K) objective and measurable criteria for achieving the conservation objective, including, if the conservation objective is recovery, a population level target, that, if met, would result in a determination under section 4 that the species be removed from a list published under section 4(c)(1);

''(L) estimates of the time and costs required to carry out the actions needed to achieve the conservation objective and to achieve intermediate steps toward the objective; and

''(M) a description of the role of each affected State, with respect to areas within the

borders of the State, in achieving the conservation objective.

''(f) PROCEDURES.—

''(1) CONSULTATION WITH STATES.—During the preparation of each proposed and final conservation plan, the Secretary shall consult with the Governor of each State having jurisdiction over the area in which the affected species is located.

''(2) PUBLICATION AND PUBLIC COMMENT.—The Secretary shall publish in the Federal Register and a newspaper of general circulation in each affected county—

''(A) a notice of the availability, and a summary, of each proposed conservation plan and each proposed regulation designating any critical habitat; and

''(B) a request for the submission of comments on the proposed conservation plan and the proposed regulation.

''(3) HEARINGS.—The Secretary shall hold at least 2 hearings on each proposed conservation plan in each State to which the plan would apply (including at least 1 hearing in an affected rural area if 1 or more rural areas are affected by the determination).

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

"(g) PUBLICATION OF FINAL CONSERVATION PLAN.—Not later than the date of publication of a final conservation plan under subsection (c)(2), the Secretary shall publish in the Federal Register a notice of the availability, and a summary, of a final conservation plan. The notice shall include a detailed description of—

"(1) the reasons for the selection of the final conservation plan;

"(2) the reasons for not selecting each of the other alternatives included in the proposed conservation plan under subsection (e);

"(3) the effect of the priorities specified in subsection (d) on the selection; and

"(4) the response of the Secretary to the information referred to in subsection (f)(4).

"(h) PARTICIPATION BY OTHER PERSONS.—In developing and implementing conservation plans, the Secretary

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

''(i) CRITICAL HABITAT DESIGNATION.—

''(1) DESIGNATION.—

''(A) IN GENERAL.—The Secretary shall, by regulation under subsection (c) and this subsection and to the maximum extent prudent and determinable—

''(i) designate any habitat of the affected species that is considered to be critical habitat and that supports the conservation objective of the Secretary for the species; and

''(ii) revise a critical habitat designation in accordance with paragraph (5).

''(B) DETERMINATION NOT TO DESIGNATE.—If the Secretary determines that the designation of critical habitat of the affected species is not prudent or is not determinable, the Secretary may elect not to designate any critical habitat for the species.

''(2) BASIS FOR DESIGNATION.—The designation of critical habitat, and any revision of the designation, shall be made on the basis of the best sci-

entific and commercial data available after taking into consideration—

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

"(B) the economic impact, and any other relevant impact, of designating any particular area as critical habitat and of the determinations made under section 4(a).

"(3) ECONOMIC IMPACTS.—

"(A) DESCRIPTION.—In issuing any proposed regulation designating critical habitat of an endangered species or a threatened species, or proposed revision of the designation, the Secretary shall describe in detail the economic impacts and other relevant impacts that are to be considered under paragraph (2), and the benefits that are to be weighed under paragraph (4), in designating an area as critical habitat.

"(B) SUBMISSION TO BUREAU OF LABOR STATISTICS.—The Secretary shall submit the description, and the documentation supporting the description, to the Bureau of Labor Statistics of the Department of Labor. The Commissioner of Labor Statistics shall submit written comments during the comment period on the

proposed regulation. In issuing any final regulation designating critical habitat, the Secretary shall respond separately and fully to each comment.

''(4) CONSIDERATION OF COSTS AND BENEFITS.—The Secretary shall exclude any area from critical habitat for which the Secretary determines that the benefits of the exclusion outweigh the benefits of designating the area as part of the critical habitat, unless the Secretary determines, on the basis of the best scientific and commercial data available, that the failure to designate the area as critical habitat will result in the extinction of the species for which the habitat is designated.

''(5) REVISION OF CRITICAL HABITAT DESIGNATION.—

''(A) DETERMINATION BY THE SECRETARY.—The Secretary, by regulation under subsection (c) and this subsection and to the maximum extent prudent and determinable, may revise a critical habitat designation on a finding that the critical habitat designation does not support the conservation objective of the Secretary.

''(B) PETITIONS.—

"(i) FINDING BY THE SECRETARY.—To the maximum extent practicable, not later than 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial new scientific information indicating that the revision may be warranted. The Secretary shall promptly publish the finding in the Federal Register.

"(ii) REVIEW BY STATES.—Not later than 1 year after receiving a petition that is found under clause (i) to present substantial new scientific information indicating that the requested revision may be warranted, the Secretary shall—

"(I) provide a copy of the petition to the State having jurisdiction over the area in which the species is believed to occur and invite the determination of the State as to whether the petitioned action is warranted;

"(II) request the Commission to conduct a scientific review of any new information presented by the petition with respect to the status of the species;

"(III) make a finding as to whether the petition will be granted; and

"(IV) publish each finding made under this clause in the Federal Register.

"(iii) SCIENTIFIC REVIEW OF CONFLICTS.—If the Secretary finds under clause (ii)(III) that a petitioned action is warranted but a State to which the petition was provided under clause (ii)(I) determines in accordance with this subsection that the petitioned action is not warranted under this Act, the Secretary shall follow the procedures described in section 4(b)(3) with respect to the petition.

"(j) EFFECTS OF ACTIONS CONSISTENT WITH THE CONSERVATION OBJECTIVE AND PLAN.—If a conservation plan is prepared under subsection (c) or if a conserva-

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

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

''(2) any agency action that the Federal agency determines is consistent with applicable guidance provided in the conservation plan under subsection (e)(3)(J)(ii) or the conservation objective described in subsection (b)(4) shall not be subject to section 7(a)(2) for the species, except that a Federal agency—

''(A) may initiate consultation under section 7(a)(2) if the agency desires guidance from the Secretary on the consistency of the action of the agency with the conservation plan or conservation objective; and

''(B) shall initiate consultation under section 7(a)(2) on any action that the agency determines is inconsistent with the conservation plan or conservation objective; and

''(3) any action of any person that is consistent with applicable guidance provided in the conservation plan under subsection (e)(3)(J)(iii) or a conservation objective described in subsection (b)(4) shall not constitute a violation concerning the species of any applicable prohibition under section 4(d) or 9(a), except that the person may initiate consultation under section 10(a)(3) if the person desires guidance from the Secretary on—

''(A) the consistency of the action with the conservation plan or conservation objective; or

''(B) whether an action that is inconsistent with the conservation plan or conservation objective would be likely to jeopardize the continued existence of the species.

''(k) ALTERNATIVE SPECIES PROTECTION.—

''(1) IN GENERAL.—On publication under section 4(b)(6) of the final regulation to implement the determination that a species is an endangered species or a threatened species, the Secretary shall, on application, issue 1 or more permits for the affected species in accordance with section 10(a), enter into 1 or more cooperative management agreements for the species, or both issue the permits and enter into the agreements to the extent that the applications

meet such requirements as the Secretary shall establish.

"(2) APPLICABILITY.—

"(A) FEWER THAN ALL KNOWN MEMBERS OF SPECIES.—A proposed incidental taking permit or cooperative management agreement under paragraph (1) need not apply to all known members of the affected species. In the case of any member of the affected species to which any combination of proposed incidental taking permits and cooperative management agreements does not apply, the Secretary shall publish a conservation objective under this section.

"(B) ALL KNOWN MEMBERS OF SPECIES.—If any combination of incidental taking permits and cooperative management agreements proposed prior to the date of publication of a conservation objective or a conservation plan for the affected species under this section would apply to all known members of the affected species, the Secretary shall not publish the objective or plan unless—

"(i) the Secretary denies such a permit or agreement; or

"(ii) the combination of permits and agreements as issued or entered into applies to fewer than all known members of the affected species.

"(l) INTERIM MANAGEMENT.—

"(1) IN GENERAL.—Prior to the publication of a final conservation plan under subsection (c)(2) or a conservation objective described in subsection (b)(4), the entering into of a cooperative management agreement, or the issuance of an incidental taking permit, with respect to an endangered species or a threatened species—

"(A) the prohibitions of section 9(a) shall apply to any person, except in the case of a taking by a person that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity, which incidental taking activity may include the routine operation of any structure, building, road, dam, airport, or irrigation, construction, or other facility that is in operation prior to the publication of the final regulation under section 4(b)(6) to implement the determination that the species is an endangered species or a threatened species; and

"(B) no Federal agency shall be required to comply with section 7(a)(1) and no consultation shall be required on any agency action under section 7(a)(2), but the agency shall be required to confer on the agency action under section 7(a)(4).

"(2) EMERGENCY PERIODS.—

"(A) IN GENERAL.—Notwithstanding paragraph (1) and subject to subparagraph (B), paragraphs (1) and (2) of section 7(a) and section 9(a) shall apply fully to the affected species during a period in which an emergency rulemaking is in effect under section 4(b)(7) or if the Secretary declares that there exists an imminent threat to the existence of the species.

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

"(i) the date of publication of a conservation objective may not continue past the deadline for the publication established under subsection (b)(2); or

"(ii) the date of publication of a final conservation plan, but after the date described in clause (i), may not continue past

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

''(m) SUSPENSION OF CONSERVATION PLAN OR OBJECTIVE.—If, at any time after the date of publication of a final conservation plan under subsection (c)(3) or a conservation objective described in subsection (b)(4), the Secretary issues an incidental taking permit or enters into a cooperative management agreement, the Secretary, by publication of notice in the Federal Register, shall suspend the conservation plan or conservation objective with respect to the portion of the species to which the permit or agreement applies.

''(n) REPORT.—Not later than 5 years after the date of enactment of this subsection and biennially thereafter, the Secretary shall report to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives on the status of efforts to develop and implement conservation plans for all species included in a list published under section 4(c)(1) and on the status of all species for which the plans have been developed.

''(o) STANDARD OF REVIEW.—The standard for judicial review of any decision of the Secretary or a Federal agency under this section shall be whether the decision

is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.''.

(b) CONFORMING AMENDMENTS.—

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

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

(2) Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–9(a)(1)) is amended by striking ''section 5(a)'' and inserting ''section 5A(a)''.

(3) Section 5(b) of Public Law 103–64 (16 U.S.C. 460iii–4) is amended by striking ''section 5(b) of the Endangered Species Act of 1973 (16 U.S.C. 1534(b))'' and inserting ''section 5A(b) of the Endangered Species Act of 1973''.

SEC. 6. LAND ACQUISITION.

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

''(c) EXCHANGES.—

''(1) IN GENERAL.—The Secretary of the Interior and the Secretary of Agriculture shall encourage persons to apply to exchange lands, waters, or interests in land or water under the jurisdiction of each Secretary (other than units of the National Park

System, the National Wilderness Preservation System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, and the National Trails System) for lands, waters, or interests in land or water that are not in Federal ownership and that are affected by this Act.

''(2) DETERMINATION OF EQUAL VALUE.—

''(A) IN GENERAL.—An exchange under this subsection may be made if the Secretary of the Interior or the Secretary of Agriculture determines that the lands to be exchanged are of approximately equal value.

''(B) APPRAISALS.—In carrying out subparagraph (A), the Secretary of the Interior and the Secretary of Agriculture shall not be required to obtain an appraisal that is in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions or with section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

''(3) ENVIRONMENTAL ASSESSMENT.—An environmental assessment shall be the only document under section 102(2) of the National Environmental Policy Act of 1969 (16 U.S.C. 4332(2)) that shall

be prepared with respect to any exchange under this subsection.

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

''(5) APPLICABLE LAW.—The Secretary of the Interior and the Secretary of Agriculture shall process exchanges under this subsection in accordance with applicable laws that are consistent with this subsection.

''(d) VALUATION.—Any land, water, or interest in land or water to be acquired by the Secretary or the Secretary of Agriculture by purchase, exchange, donation, or otherwise under this section shall be valued as if the land, water, or interest were not subject to any restriction on use under this Act imposed after the date of acquisition.''.

SEC. 7. COOPERATION WITH NON-FEDERAL PERSONS.

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

(1) by striking the section heading and subsections (a) and (b) and inserting the following:

''COOPERATION WITH NON-FEDERAL PERSONS

''SEC. 6. (a) IN GENERAL.—In carrying out this Act, the Secretary shall cooperate to the maximum extent practicable with the States and other non-Federal persons. The cooperation shall include consultation with the appropriate States and other non-Federal persons before the Secretary seeks to acquire any land or water, or interest in land or water, for the purpose of conserving any endangered species or threatened species.

''(b) COOPERATIVE MANAGEMENT AGREEMENTS.—

''(1) IN GENERAL.—The Secretary may enter into a cooperative management agreement with any State or group of States, political subdivision of a State, local government, or other non-Federal person for the management of a species or group of species listed as endangered species or threatened species under section 4(c)(1), a species or group of species proposed to be listed under section 4(c)(1), or a candidate species or group of candidate species.

''(2) SCOPE OF COOPERATIVE MANAGEMENT AGREEMENTS.—

''(A) IN GENERAL.—A cooperative management agreement may provide for the management of a species or group of species on both public and private lands that are under

the authority, control, or ownership of a State or group of States, political subdivision of a State, local government, or other non-Federal person and that are affected by a listing determination, proposed determination, or proposed candidacy for determination.

''(B) ACTIVITIES ON PRIVATE PROPERTY.—A cooperative management agreement may not restrict activity on private property unless the individual property owner gives written consent to the restriction to the Secretary or the State, political subdivision, local government, or other non-Federal person that is a party to the agreement.

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

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

ative management agreement, the party submitting the request shall provide notice of the request to any non-Federal person or Federal power marketing administration that would be subject to the proposed cooperative management agreement.

''(4) DEVELOPMENT OF PROPOSED AGREEMENT.—

''(A) IN GENERAL.—The requesting party shall develop and submit to the Secretary a proposed cooperative management agreement.

''(B) NOTICE AND COMMENT.—The Secretary shall—

''(i) publish in the Federal Register a notice of availability and a request for public comment on any proposed cooperative management agreement between the Secretary and any governmental entity; and

''(ii) hold a public hearing on such a proposed cooperative management agreement in each county in which the proposed agreement would be in effect.

''(C) CONSIDERATION OF COMMENTS.—Before entering into a cooperative management agreement with a governmental entity, the Secretary shall consider and weigh carefully all in-

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

''(5) APPROVAL OF AGREEMENT.—

''(A) IN GENERAL.—Not later than 120 days after the submission of a proposed cooperative management agreement under paragraph (4), the Secretary shall determine whether the proposed agreement is in accordance with this subsection and will promote the conservation of the species to which the proposed agreement applies.

''(B) CRITERIA FOR APPROVAL.—The Secretary shall approve and enter into a proposed cooperative management agreement if the Secretary determines that—

''(i) the requesting party has sufficient authority under law to implement and carry out the terms of the agreement;

''(ii) the agreement identifies an area that serves as habitat for the species or group of species to which the agreement applies;

''(iii) the agreement adequately provides for the administration and management of the identified area;

''(iv) the agreement promotes the conservation of the species to which the agreement applies by committing Federal or non-Federal efforts to the conservation;

''(v) the term of the agreement is of sufficient duration to accomplish the agreement; and

''(vi) the agreement is adequately funded to carry out the agreement.

''(C) NOTICE OF AVAILABILITY OF TERMS.—Not later than 30 days after entering into a cooperative management agreement with a governmental entity, the Secretary shall publish in the Federal Register a notice of availability of the terms of the agreement and the response of the Secretary to all information received or presented with respect to the agreement under paragraph (4)(B).

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

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

''(7) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance for the development and implementation of a cooperative management agreement with a non-Federal person.

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

''(9) NO SURPRISES.—

''(A) IN GENERAL.—Except under extraordinary circumstances determined under subparagraph (B), no additional measures to minimize and mitigate impacts on a species that is a subject of a cooperative management agreement shall be required of a non-Federal party to the agreement that is in compliance with the agreement. With respect to any species that is a subject of such a cooperative management agreement, under no circumstance shall a non-Federal party in compliance with the cooperative management agreement be required to

make any additional payment for any purpose, or accept any additional restriction on any parcel of land available for development or land management under the cooperative management agreement, without the consent of the non-Federal party.

''(B) EXTRAORDINARY CIRCUMSTANCES.—

''(i) IN GENERAL.—The Secretary shall have the burden of demonstrating and clearly documenting that an extraordinary circumstance under subparagraph (A) exists.

''(ii) DATA.—In making the determination whether an extraordinary circumstance under subparagraph (A) exists, the Secretary shall use the best scientific and commercial data available.

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

''(10) EFFECT OF LISTING OF SPECIES.—A cooperative management agreement shall remain in effect and shall not be required to be amended if a

species to which the agreement does not apply is determined to be an endangered species or a threatened species under section 4.

''(11) APPLICABILITY OF CERTAIN PROVISIONS.—Sections 5, 7, and 9 shall not apply to such activities of a party to a cooperative management agreement as are conducted in accordance with the agreement.

''(12) VIOLATIONS OF AGREEMENTS.—

''(A) NOTIFICATION.—If the Secretary determines that a party to a cooperative management agreement is not administering or acting in accordance with the agreement, the Secretary shall notify the party.

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

''(i) the Secretary shall rescind the entire cooperative management agreement or the applicability of the agreement to the party that is the subject of the notification; and

''(ii) beginning on the date of rescission—

''(I) the entire agreement shall not be effective, or the agreement shall not be effective with respect to the party, whichever is appropriate; and

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

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

(3) in subsection (f)—

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

(B) by striking ''LAWS.—Any State'' and inserting the following: ''LAWS.—

''(1) FISH AND WILDLIFE.—Any State''; and

(C) by adding at the end the following:

''(2) WATER.—

''(A) IN GENERAL.—

''(i) REQUIREMENTS GOVERNING ACQUISITION.—Subject to subparagraph (B), if the Secretary determines that water is

required for a goal, purpose, or objective of this Act with respect to a species, the water shall be acquired in accordance with the substantive and procedural requirements of the State in which the species is located.

''(ii) MINIMUM QUANTITY REQUIRED TO AVOID JEOPARDY.—Subject to subparagraph (B), in a case in which a specified flow condition or lake level is found by the Secretary to be the minimum quantity of water necessary to avoid jeopardy to a species listed as endangered or threatened under section 4(c)(1) after the implementation of all reasonable and prudent alternatives or measures that do not involve water, the Secretary may request that a permit or license applicant implement such measures as would avoid jeopardy to the listed species or the critical habitat of the species without causing—

''(I) a reduction in the quantity of water that would otherwise be legally available for use by the applicant; or

''(II) a material increase in the cost of the water legally available for use by the applicant.

''(B) STATUTORY CONSTRUCTION.—An exercise of authority pursuant to or in furtherance of this Act shall not—

''(i) create, expressly or by implication, a Federal reserved water right;

''(ii) supersede, abrogate, injure, or otherwise impair any right to the use of any quantity of water that has been established in any adjudication that is in conformance with subsections (a) through (c) of section 208 of the Department of Justice Appropriation Act, 1953 (43 U.S.C. 666);

''(iii) supersede, modify, or amend any water allocation established under an interstate compact or a decision of the United States Supreme Court;

''(iv) require a change in the nature of use, or the transfer of, water or any right to use water, or create a limitation on the exercise of any right to use water;

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

''(vi) provide a basis for any limitation or restriction on any land use or management activity as a result of any restriction or limitation on the use of water under subparagraph (A)(ii).

''(C) FEDERAL RECLAMATION PROJECTS AND CONTRACTS.—

''(i) PROJECTS.—In carrying out this Act, the Secretary shall continue the use of each water or power project constructed or to be constructed under Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)), in accordance with the authorization for the project.

''(ii) CONTRACTS.—Nothing in this Act shall adversely affect any right under a water storage or use contract or any allocation of an available supply to the fulfillment of such a contract.

"(D) WATER QUALITY STANDARD.—If a State water quality standard established under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) is adopted by a State for the purpose of protecting, conserving, or recovering any proposed or listed aquatic species, the standard shall be deemed to achieve the purposes of this Act and to meet all requirements and objectives of this Act relating to water quality and the aquatic habitat requirements of the aquatic species.";

(4) in subsection (g)—

(A) by striking "TRANSITION.—(1) For purposes" and all that follows through "(2) The" and inserting "TRANSITION.—The";

(B) by striking "any State—" and all that follows through "which is then" and inserting "any State that is at the time of the taking";

(C) by striking "section 6(c) of this Act" and inserting "subsection (c)"; and

(D) by striking "State); or" and all that follows through the period at the end and inserting "State).";

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

(6) by inserting after subsection (g) the following:

''(h) HABITAT CONSERVATION GRANTS.—

''(1) IN GENERAL.—The Secretary may, from funds appropriated under section 21, provide a grant to a non-Federal person (other than an officer, employee, or agent (acting in an official capacity) or a department or instrumentality of a State, municipality, or political subdivision of a State or municipality) for the purpose of conserving, preserving, or improving habitat for any species that is determined under section 4 to be an endangered species or a threatened species.

''(2) CRITERIA.—The Secretary may provide a grant under this subsection if the Secretary determines that—

''(A) the property for which the grant is provided contains habitat that significantly contributes to the protection of the population of the species;

''(B) the property will be managed for species protection for a period of time that is sufficient to significantly contribute to the protection of the population of the species; and

''(C) the management of the habitat advances the interest of species protection.

''(3) TRANSFERABILITY.—A grant made under this subsection shall be transferable to subsequent owners of the property for which the grant is provided.

''(i) SAFE HARBOR AGREEMENTS.—

''(1) IN GENERAL.—The Secretary may enter into safe harbor agreements with non-Federal persons who own real property for the purpose of encouraging the voluntary management, restoration, or enhancement of non-Federal lands or waters owned by the non-Federal persons to conserve species listed as endangered species or threatened species under section 4(c)(1) and candidate species.

''(2) CONTENTS.—A safe harbor agreement entered into under paragraph (1) shall—

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

''(B) identify the technical or other assistance that will be provided to the non-Federal person by the Secretary;

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

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

''(D) designate the participating non-Federal person and any other non-Federal person assisting in the implementation of the agreement as a volunteer under section 7(c) of the Fish and Wildlife Improvement Act of 1956 (16 U.S.C. 742f(c));

''(E) specify a term of years agreed to by the Secretary and the non-Federal person that is of sufficient duration to enhance the conservation of each species that is subject to the agreement;

''(F) provide that the agreement is revocable at the end of the term of years established under subparagraph (E) by the non-Federal person on written notice to the Secretary;

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

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

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

''(j) DELEGATION OF AUTHORITY TO STATES.—

''(1) IN GENERAL.—At the request of a State, the Secretary shall delegate to the State the authority to develop and implement a conservation plan for a species or group of species listed as endangered or threatened under section 4(c)(1), unless the Secretary determines that the State lacks authority and capability to carry out the requirements of this Act. If the Secretary determines that the State lacks the authority and capability, the Secretary shall—

''(A) notify the Governor of the State of the specific concerns of the Secretary and specify such measures as are necessary to address the concerns; and

''(B) provide the Governor with the opportunity to take the measures.

''(2) MONITORING BY THE SECRETARY.—The Secretary shall monitor the actions of States in developing and implementing conservation plans under this subsection.

"(3) COORDINATION BETWEEN STATES.—The Secretary shall assist States in coordinating actions under this subsection with the actions of other affected States in which the affected species may occur.

"(4) RESUMPTION OF FEDERAL AUTHORITY.—If the Secretary determines that a State to which authority has been delegated under this subsection is not developing or implementing a conservation plan in compliance with this Act and the conservation objective for the species, the Secretary shall so notify the State and shall specify the nature of the noncompliance. If the State fails to adequately respond or to come into compliance by the date that is 60 days after the date of the notification, the Secretary may resume responsibility for the development and implementation of the conservation plan.".

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

"Sec. 6. Cooperation with non-Federal persons.".

SEC. 8. INTERAGENCY COOPERATION.

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

(1) in subsection (a)—

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

(B) by striking paragraph (2) and inserting the following:

''(2) CONSULTATION.—

''(A) IN GENERAL.—Except as provided in subsections (b)(4), (j)(2), and (l)(1)(B) of section 5, each Federal agency shall ensure that any action authorized, funded, or carried out by the agency (referred to in this section as an 'agency action') that affects any endangered species or threatened species or designated critical habitat of the species is not likely to jeopardize the continued existence of the species.

''(B) ACTIONS LIKELY TO SIGNIFICANTLY AND ADVERSELY AFFECT SPECIES.—In the case of an agency action that is subject to this paragraph and that is likely to significantly and adversely affect an endangered species or a threatened species, the Federal agency shall fulfill the requirements of this paragraph in consultation with and with the assistance of the Secretary.

''(C) OTHER CONSULTATION.—Subject to section 5(j)(2), a Federal agency may initiate consultation with the Secretary to receive guidance from the Secretary on the consistency of an agency action with—

''(i) the conservation plan or conservation objective for the species;

''(ii) an incidental taking permit for the species; or

''(iii) a cooperative management agreement concerning the species.

''(D) CONSIDERATION OF INFORMATION AND OTHER LAW.—In fulfilling the requirements of this paragraph, each agency shall—

''(i) use the best scientific and commercial data available;

''(ii) consider any opinion and any reasonable and prudent alternatives developed under subsection (b)(3); and

''(iii) render the decision of the agency in a manner consistent with the obligations and responsibilities of the agency under each applicable statute, treaty, interstate compact, and contractual agreement.'';

(C) in paragraph (3)—

(i) by inserting ''with the involvement of,'' after ''at the request of,''; and

(ii) by striking ''his project'' and inserting ''the project of the applicant, that the project is inconsistent with the conservation plan or conservation objective, an incidental taking permit, or a cooperative management agreement, for the species,'';

(D) in the first sentence of paragraph (4), by striking ''or result in the destruction or adverse modification of critical habitat proposed to be designated for such species'' and inserting ''or to destroy or adversely modify any habitat that is proposed to be designated by the Secretary as critical habitat of such a species in a manner that is likely to jeopardize the continued existence of the species''; and

(E) by adding at the end the following:

''(5) ACTIONS EXEMPT FROM CONSULTATION AND CONFERENCING.—Consultation and conferencing under paragraphs (2) and (4) shall not be required for any agency action that—

''(A) is consistent with the guidance provided in a final conservation plan described in

section 5(j) or a conservation objective described in section 5(b)(4);

''(B) is consistent with a cooperative management agreement or an incidental taking permit;

''(C) addresses a critical, imminent threat to public health or safety, or a catastrophic natural event; or

''(D) is considered routine operation, maintenance, or repair to a Federal or non-Federal project or facility, including operation of a project or facility in accordance with a previously issued Federal license or permit.

''(6) ACTIONS NOT CONSTITUTING TAKINGS.—An agency action shall not constitute a taking of a species prohibited by this Act (including any regulation issued under this Act) if the action is—

''(A) described in paragraph (1) or (2) of section 5(j); or

''(B) consistent with a cooperative management agreement or an incidental taking permit.

''(7) RELATIONSHIP TO DUTIES UNDER OTHER LAWS.—

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

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

''(B) RESOLUTION OF CONFLICTS.—

''(i) REQUEST BY THE AGENCY.—If a Federal agency determines that the responsibilities and duties described in subparagraph (A) are in irreconcilable conflict, the agency shall request the President to resolve the conflict.

''(ii) DECISION BY THE PRESIDENT.—In resolving a conflict under clause (i), the President shall consider and choose the course of action that best meets the public interest and, to the extent practicable, balances pursuit of the conservation objective or the purposes of the conservation plan with pursuit of the purposes of the other law, treaty, or interstate compact.

''(8) MODIFICATION OF PROJECTS AND FACILITIES.—Any consultation and conferencing required under paragraphs (2) and (4) for an agency action that consists solely of a modification of a project or facility shall be limited to the consideration of the

effects that result from the modification that comprises the agency action.'';

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking ''initiated or, subject to subparagraph (B), within such other period of time as is mutually agreeable to the Secretary and the Federal agency.'' and inserting ''initiated by the Federal agency. The period may be extended by not more than 45 days by the Secretary or head of the Federal agency by publication of notice in the Federal Register that sets forth the reasons for the extension. Consultation on an agency action involving a permit or license applicant shall be concluded not later than the earlier of—

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

''(ii) the end of the period established under subparagraph (B).'';

(ii) in subparagraph (B)—

(I) in the first sentence—

(aa) by striking ''In'' and inserting ''Subject to subparagraph (A), in''; and

(bb) in clause (ii), by striking ''150 or more days'' and inserting ''on or after the 150th day but before the 210th day''; and

(II) by striking the second sentence; and

(iii) by adding at the end the following:

''(C) EFFECT OF FAILURE TO TIMELY CONCLUDE CONSULTATION.—If consultation is not concluded and the written statement of the Secretary required under paragraph (3)(A) is not provided to the Federal agency by the applicable deadline established under this paragraph, the requirements of subsection (a)(2) shall be deemed to be met and the Federal agency may proceed with the agency action.

''(D) PARTICIPATION BY APPLICANT.—A permit or license applicant shall be entitled to participate fully in any consultation or conferencing under this section with respect to any

agency action required for the granting of an authorization or provision of funding to the applicant.'';

(B) in paragraph (3)(A)—

(i) by striking ''(3)(A) Promptly'' and inserting the following:

''(3) WRITTEN OPINION OF SECRETARY.—

''(A) ISSUANCE.—

''(i) IN GENERAL.—Promptly'';

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

(I) in the first sentence, by inserting after ''detailing'' the following: ''whether the agency action is consistent with the conservation plan or conservation objective, an incidental taking permit, or a cooperative management agreement and''; and

(II) by striking the second sentence and inserting the following: ''If the Secretary determines that the action is likely to jeopardize the continued existence of the species under subsection (a)(2), the Secretary shall suggest reasonable and prudent alternatives (considering any reasonable

and prudent alternatives undertaken by other Federal agencies and the use of mitigation banks) that are consistent with subsection (a)(2) and that impose the least social and economic costs. Each reasonable and prudent alternative shall be reasonable, prudent, economically and technologically feasible (including feasible for an applicant, if any), and consistent with the legal authority and jurisdiction of the agency.''; and

(iii) by adding at the end the following:

''(ii) SCOPE.—Unless required by law other than subsections (a) through (d), the Secretary, in any opinion or statement concerning an agency action made under this subsection (including any reasonable and prudent alternative suggested under clause (i) or any reasonable and prudent measure specified under clause (ii) of paragraph (4)), and the head of the Federal agency proposing the agency action, may not require, provide for, or recommend the impo-

sition of any restriction or obligation on the activity of any person that is not authorized, funded, carried out, or otherwise subject to regulation by the Federal agency. Nothing in this clause prevents the Secretary from pursuing any appropriate remedy under section 11 for any activity prohibited by section 4(d) or 9.'';

(C) in clause (ii) of paragraph (4), by inserting '', including the use of mitigation banks,'' after ''measures''; and

(D) by adding at the end the following:

''(5) USE OF MITIGATION BANKS.—With the approval of the Secretary, a Federal agency may apply credits obtained from a mitigation bank to satisfy a requirement to implement any reasonable and prudent alternative under paragraph (3) or reasonable and prudent measure under paragraph (4).

''(6) RISK ASSESSMENT.—

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

''(i) describes and, to the extent practicable, quantifies the risks to endangered species, threatened species, or critical habi-

tat to be addressed by the opinion and any reasonable and prudent measures, reasonable and prudent alternatives, or other terms specified in the opinion and recommended for the Federal agency or applicant to follow;

''(ii) estimates—

''(I) the costs to the Federal Government, State and local governments, the applicant, and the private sector of implementing and complying with the elements of the opinion described in clause (i); and

''(II) the benefits of the elements of the opinion described in clause (i); including both quantifiable measures of costs and benefits, to the fullest extent that the costs and benefits can be estimated, and qualitative measures that are difficult to quantify; and

''(iii) contains a certification by the Secretary that—

''(I) the analyses performed under clauses (i) and (ii) are based on

the best scientific and commercial data available;

''(II) the elements of the opinion described in clause (i) are likely to significantly reduce the risks to the endangered species, threatened species, or critical habitat addressed by the opinion;

''(III) there is no regulatory or administrative alternative that is allowed by this Act that would achieve an equivalent reduction in risk in a more cost-effective manner, along with a brief explanation of why the regulatory or administrative alternatives that were considered by the Secretary were found to be less cost-effective; and

''(IV) the elements of the opinion described in clause (i) are likely to produce benefits to endangered species, threatened species, or critical habitat that will justify the costs to the Federal Government, State and local governments, any applicant, and

the private sector of implementing and complying with the elements.

''(B) NO EFFECT ON OTHER LAW OR ACTION.—Nothing in this paragraph—

''(i) affects any other Federal law;

''(ii) changes the factors that the Secretary shall consider under this subsection in issuing the opinion; or

''(iii) shall delay any action required to meet a deadline imposed by law or a court.

''(C) NO EFFECT ON RIGHTS.—

''(i) IN GENERAL.—Nothing in this paragraph creates any right to judicial or administrative review, or creates any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, an agency, instrumentality, officer, or employee of the United States, or any other person.

''(ii) USE IN OTHER REVIEW.—If the elements of the opinion described in subparagraph (A)(i) are subject to judicial or administrative review under any other law, the adequacy of the certification prepared

under subparagraph (A)(iii), and any alleged failure to comply with this paragraph, may not be used as grounds for affecting or invalidating the opinion, although the statements and information prepared under this paragraph, including statements contained in the certification, may be considered as part of the record for judicial or administrative review conducted under the other law.'';

(3) in subsection (c)—

(A) by striking ''(1)''; and

(B) by striking paragraph (2);

(4) in subsection (d)—

(A) by striking ''RESOURCES.—After''; and inserting the following: ''RESOURCES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), after''; and

(B) by adding at the end the following:

''(2) RELATIONSHIP TO LAND MANAGEMENT PLANNING REQUIREMENTS.—If the listing of a species, or other procedure or decision related to a species listed under section 4(c)(1), requires consultation under subsection (a)(2) on a land use plan or land or resource management plan (or an amend-

ment to or revision of the plan) prepared under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) or section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604), an agency action that is consistent with the plan may (subject to subparagraph (B)(ii)) be undertaken prior to the completion of the consultation, if, under the procedures established by this section, the head of the land management agency responsible for the action determines or has determined that the action—

''(A) is not likely to significantly and adversely affect the species; or

''(B) is likely to significantly and adversely affect the species, and the Secretary issues an opinion on the action that finds that the action—

''(i) is not likely to jeopardize the continued existence of the species; or

''(ii) is likely to jeopardize the continued existence of the species, and the agency agrees to a reasonable and prudent alternative.'';

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

''(e) EXEMPTIONS.—Notwithstanding any other provision of this Act—

''(1) the Secretary shall grant an exemption from this Act for any activity if the Secretary of Defense determines that the exemption of the activity is necessary for reasons of national security; and

''(2) the President may grant an exemption from this Act for any area that the President has declared to be a major disaster area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) for any project for the repair or replacement of a public facility substantially as the facility existed prior to the disaster under section 405 or 406 of the Act (42 U.S.C. 5171 and 5172), if the President determines that the project—

''(A) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life; and

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

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

''(f) WRITTEN STATEMENTS PROVIDED AFTER CONSULTATION.—Notwithstanding section 4(d) and subparagraphs (B) and (C) of section 9(a)(1) of this Act and sections 101 and 102 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371 and 1372), any taking that is in compliance with the terms and conditions set forth in a written statement provided under clause (iv) of subsection (b)(4) shall not be considered to be a prohibited taking of the species that is the subject of the statement.''.

SEC. 9. INTERNATIONAL COOPERATION.

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

(1) by striking ''PROGRAMS.—In'' and inserting the following: ''PROGRAMS.—

''(1) IN GENERAL.—In'';

(2) by striking ''(1) foreign'' and all that follows through ''section 4 of this Act;'';

(3) by striking ''(2) the entering'' and inserting the following:

''(A) the entering'';

(4) by striking ''(3) foreign'' and inserting the following:

''(B) foreign''; and

(5) by adding at the end the following:

''(2) COOPERATION WITH FOREIGN NATIONS.—

''(A) FINDINGS.—Congress finds that—

''(i) along with the United States, other nations have pledged to conserve wildlife as sovereign states in the international community and as parties to the Convention; and

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

''(B) COOPERATION.—In conserving foreign species under this Act, the Secretary and the Secretary of State shall act cooperatively with nations described in subparagraph (A). To the extent that the conservation programs of the nations are consistent with the Convention, the Secretary and the Secretary of State shall not take any action under this Act that obstructs the programs unless the Secretary demonstrates good cause for the action based on adequate findings supported by substantial evidence.''.

SEC. 10. CONVENTION IMPLEMENTATION.

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

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

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

''(g) RELATIONSHIP OF PROTECTIVE REGULATIONS TO THE CONVENTION.—

''(1) IN GENERAL.—In issuing protective regulations under section 4(d) with respect to a foreign species, the Secretary—

''(A) shall not prohibit any act that is permitted under the Convention, notwithstanding Article XIV of the Convention; and

''(B) prior to publishing the proposed protective regulations in the Federal Register, shall—

''(i) transmit the full text and a complete description of the proposed regulations (including the information described in paragraph (2)) directly to the appropriate wildlife management authority of each nation in which the species naturally occurs, in an official language of the nation; and

''(ii) provide to each authority a period of not less than 180 days (beginning on the date of receipt by the authority of the materials described in clause (i)) for review and comment on the proposed regulations.

''(2) ANALYSES.—Materials transmitted under paragraph (1)(B)(i) shall include—

''(A) a readily understandable, nontechnical explanation of the reasons for and purpose of the proposed regulations;

''(B) an analysis of the anticipated beneficial or detrimental impacts of the regulation on—

''(i) the economic, social, and cultural utilization of the species by the nation, if any; and

''(ii) the resource management and conservation programs of the nation; and

''(C) a summary of—

''(i) the literature reviewed and experts consulted by the Secretary with respect to the species; and

''(ii) the findings of the Secretary based on the review and consultation.

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

''(4) CONCURRENCE OF FOREIGN OFFICIALS.—Prior to publishing proposed protective regulations in the Federal Register under section 4(d), the Secretary shall make every effort to obtain the written concurrence to the regulations of each wildlife management authority to which materials are transmitted under paragraph (1)(B)(i). If the concurrence is not obtained, the Secretary may not issue the proposed regulations without first submitting the regulations to and obtaining the approval of the President.''.

SEC. 11. PROHIBITED ACTS.

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

(1) in paragraph (1), by striking ''sections 6(g)(2) and 10 of this Act'' and inserting ''paragraph (3), subsections (j)(3) and (l) of section 5, and sections 6(g) and 10'';

(2) in paragraph (2), by striking ''sections 6(g)(2) and 10 of this Act'' and inserting ''subsections (j)(3) and (l) of section 5, and sections 6(g) and 10''; and

(3) by adding at the end the following:

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

''(A) is consistent with the applicable guidance of a conservation plan or conservation objective;

''(B) complies with the terms and conditions of an incidental taking permit or a cooperative management agreement; or

''(C) addresses a critical, imminent threat to public health or safety or a catastrophic natural event.

''(4) INHERENTLY LIMITED USE.—The provisions of subsection (a) prohibiting importation shall not apply to a member of a threatened species—

''(A) taken for scientific collection, live export for captive breeding, sport hunting, or falconry in accordance with the laws of a foreign nation that is a party to the Convention; and

''(B) accompanied by an export permit issued by the nation or an equivalent document.''.

SEC. 12. EXCEPTIONS AND INCENTIVES.

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

(1) in the section heading, by inserting ''AND INCENTIVES'' after ''EXCEPTIONS'';

(2) in subsection (a)—

(A) in paragraph (1)—

(i) by inserting ''reasonable'' after ''under such''; and

(ii) in subparagraph (A)—

(I) by striking ''to, acts'' and inserting the following: ''to—

''(i) acts'';

(II) in clause (i) (as so designated), by striking ''or'' at the end; and

(III) by adding at the end the following:

''(ii) the public display or exhibition of living wildlife in a manner designed to educate, or that otherwise contributes to the education of, the public about the ecological role and conservation needs of the affected species;

''(iii) in the case of foreign species, acts that are consistent with the Convention and with conservation strategies adopted by the foreign nations responsible for the conservation of the species; and

''(iv) acts necessary for research concerning, and the carrying out of, captive propagation programs; or'';

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) by striking ''No'' and inserting ''Except as provided in paragraph (3), no'';

(II) by inserting ''non-Federal'' before ''conservation plan'';

(III) in clause (i), by striking ''such taking'' and inserting ''the activities to be permitted''; and

(IV) in clause (ii), by inserting ''including the use of mitigation banks,'' after ''impacts,'';

(ii) in subparagraph (B)—

(I) in the first sentence, by inserting ''non-Federal'' before ''conservation plan''; and

(II) by adding at the end the following: ''Notwithstanding the preceding sentence, the terms and conditions of the permit shall relate only to the removal of factors that actually prevent the achievement and maintenance of populations of the species, in the area in which the proposed activity is to be carried out, at the level specified in the conservation plan in quantitative biological terms.''; and

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

''(C) USE OF MITIGATION BANKS.—With the approval of the Secretary, credits obtained from a mitigation bank may be used to satisfy, in whole or in part, the requirement for a non-Federal conservation plan under this paragraph.

''(D) SCOPE OF PERMIT.—The Secretary may not require the applicant, as a condition of processing the application or issuing the permit, to expand the application to include land, an interest in land, or a proprietary water right not owned by the applicant or to address a species

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

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

''(F) NO SURPRISES.—

''(i) IN GENERAL.—Except under extraordinary circumstances determined under clause (ii), no additional measures to minimize and mitigate impacts on a species that is a subject of a permit issued under paragraph (1)(B) shall be required of a permittee that is in compliance with the permit. With respect to any species that is a subject of such a permit, under no circumstance shall a permittee in compliance with the permit be required to make any additional payment for any purpose, or ac-

cept any additional restriction on any parcel of land available for development or land management under the permit, without the consent of the permittee.

''(ii) EXTRAORDINARY CIRCUMSTANCES.—

''(I) IN GENERAL.—The Secretary shall have the burden of demonstrating and clearly documenting that an extraordinary circumstance under clause (i) exists.

''(II) DATA.—In making the determination whether an extraordinary circumstance under clause (i) exists, the Secretary shall use the best scientific and commercial data available.

''(III) FACTORS.—The Secretary shall establish, by regulation, the factors to be considered in making the determination whether an extraordinary circumstance under clause (i) exists.

''(G) INTERIM PERMIT.—

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

ciably reduce the chances of survival of a species, the Secretary may issue an interim permit to any applicant for a permit under this section that provides evidence of appropriate interim measures that—

''(I) will minimize and mitigate any impacts of any incidental taking that may be associated with the activity proposed for permitting; and

''(II) are to be performed while the underlying permit application is being considered under this section.

''(ii) CONTENTS.—An interim permit issued under clause (i)—

''(I) shall specifically state the types of activities that are authorized to be carried out under the interim permit;

''(II) shall not create any right to the issuance of a permit under this section;

''(III) shall expire on the date of the granting or denial of the underlying permit application; and

''(IV) may be revoked by the Secretary upon the termination of a 60-day period following notice to the applicant for any failure to comply with any term of the interim permit.

''(H) REVOCATION OF PERMIT.—The Secretary shall revoke a permit issued under this paragraph if the Secretary determines that the permittee is not complying with the terms and conditions of the permit.''; and

(C) by adding at the end the following:

''(3) VOLUNTARY CONSULTATION BY NON-FEDERAL PERSONS.—

''(A) IN GENERAL.—Subject to such regulations as the Secretary may issue, any non-Federal person may initiate consultation with the Secretary on any prospective activity of the person—

''(i) to determine whether the activity is consistent or inconsistent with a conservation plan or conservation objective; or

''(ii) if the person determines that the activity is inconsistent, to determine whether the activity is likely to jeopardize the continued existence of an endangered

species or a threatened species, or to destroy or adversely modify the designated critical habitat of the species in a manner that is likely to jeopardize the continued existence of the species.

''(B) PROCEDURES AND REQUIREMENTS.—The voluntary consultation process for non-Federal persons authorized by subparagraph (A) shall be conducted in accordance with the procedures and requirements for consultation on agency actions specified in section 7, except that—

''(i) the period for completion of the consultation shall end 90 days after the date on which the consultation is initiated, or not later than such other date as is mutually agreeable to the Secretary and the person initiating the consultation;

''(ii) the person initiating the consultation shall not be required to prepare a biological assessment or equivalent document;

''(iii) neither the activity for which the consultation process is sought nor the consultation process shall be deemed to be a

Federal action for the purpose of compliance with section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)) or an agency action for the purpose of compliance with the consultation requirement of section 7(a)(2);

''(iv) the Secretary shall provide the person initiating the consultation with a written opinion only, unless the person requests an incidental taking permit and meets the requirements of clause (v); and

''(v) a permit described in clause (iv) shall be issued if the Secretary makes a finding of—

''(I) consistency under subparagraph (A)(i);

''(II) no jeopardy under subparagraph (A)(ii); or

''(III) jeopardy under subparagraph (A)(ii), but offers a reasonable and prudent alternative that the person initiating the consultation accepts.

''(4) GENERAL PERMITS.—

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

retary may issue a general permit under paragraph (1)(B) on a county, State, regional, or nationwide basis for any category of activities that may affect a species that is included in a list published under section 4(c)(1) if the Secretary determines that the activities in the category are similar in nature, will cause only minimal adverse effects on the species if performed separately, and will have only minimal cumulative adverse effects on the species generally. A general permit issued under this paragraph shall specify the requirements and standards that apply to an activity authorized by the general permit.

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

''(C) REVOCATION OR MODIFICATION.—The Secretary may revoke or modify a general permit if, after providing notice and opportunity for public hearing, the Secretary determines that the activities authorized by the general permit have a greater than minimal ad-

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

''(D) REPORTS.—The Secretary may require an annual report on the activities authorized by a general permit, but may not require reports more frequently than annually.

''(5) EDUCATIONAL AND PROPAGATION PERMITS.—

''(A) CONDITIONS OF ISSUANCE.—A permit referred to in clause (ii) or (iv) of paragraph (1)(A) shall be issued if—

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

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

''(II) the applicant maintains a public display or exhibition of living wildlife described in paragraph (1)(A)(ii); and

''(III) viewing of the public display or exhibition is not limited or restricted other than by charging an admission fee; and

''(ii) in the case of a permit referred to in paragraph (1)(A)(iv), the applicant has demonstrated the ability to use propagation techniques that result in increases in the populations of species held in captivity for the purpose of—

''(I) eventual release into the wild;

''(II) maintenance of live specimens; or

''(III) falconry.

''(B) DEADLINES FOR ISSUANCE OF PERMITS TO EXPERIENCED PERSONS.—

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

"(I) has demonstrated the ability to handle or recover species for a minimum of 15 years; or

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

"(ii) PERSONS NOT HOLDING PERMITS.—The Secretary shall issue a permit under subparagraph (A) not later than 90 days after the date of receipt of a completed application from any qualified organization or person that, as of the date of receipt, does not hold any permit issued under this Act or a law referred to in subparagraph (E) but—

"(I) has demonstrated the ability to handle or recover species for at least 15 years; or

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

"(C) OTHER TERMS OF EDUCATIONAL PERMITS.—

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

"(ii) ADDITIONAL AUTHORITY.—A permit referred to in paragraph (1)(A)(ii) shall also authorize the permittee to import, export, sell, purchase, or otherwise transfer possession of the affected species.

"(iii) REVOCATION.—The Secretary shall revoke a permit referred to in paragraph (1)(A)(ii) if the Secretary determines that the permittee—

"(I) no longer meets the requirements of subparagraph (A) and is not reasonably likely to meet the requirements in the near future;

"(II) is not complying with the terms and conditions of the permit; or

"(III) is engaging in an activity likely to jeopardize the continued existence of the species subject to the permit.

"(D) SCOPE OF PERMITS.—A permit described in subparagraph (A)—

''(i) shall be the only permit required for the activities authorized by the permit; and

''(ii) may cover activities for 1 or more species or taxa simultaneously.

''(E) CONSOLIDATION OF PERMITS.—Notwithstanding any other law, the Secretary shall consolidate the authorizations for any activities permitted under—

''(i) a permit described in subparagraph (A);

''(ii) the Act of June 8, 1940 (54 Stat. 250, chapter 278; 16 U.S.C. 668 et seq.) (commonly known as the 'Bald Eagle Protection Act');

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

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

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

''(vi) the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901 et seq.);

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

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

''(ix) section 42 of title 18, United States Code;

into a single consolidated permit to cover all such authorized activities.''.

''(6) TAKING OF SPECIES FOR INHERENTLY LIMITED USES.—

''(A) REBUTTABLE PRESUMPTION.—In the case of a determination whether to issue a permit under this subsection with respect to a species, there shall be a rebuttable presumption that the survival of the species is enhanced by the ordinary benefit occurring from the taking of a member of the species for scientific collection, live export for captive breeding, sport hunting, or falconry in accordance with the wildlife management laws of the nation in which the species occurs.

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

''(i) issues regulations containing the limitation; and

''(ii) prior to the issuance of the regulations, makes and publishes in the Federal Register a finding that there is substantial evidence that the detriment resulting from the taking of the members outweighs the benefit derived from the taking.

''(C) TRANSMISSION TO FOREIGN WILDLIFE AUTHORITY.—In the case of a limitation on imports, the Secretary shall—

''(i) transmit the full text and a complete description of the proposed regulations referred to in subparagraph (B) directly to the appropriate wildlife management authority of each nation from which the species is exported, in an official language of the nation; and

''(ii) provide to each authority a period of not less than 180 days (beginning on the date of receipt by the authority of the materials described in clause (i)) for review and comment on the proposed regulations.'';

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

(4) in subsection (j)(2)—

(A) in subparagraph (B)—

(i) by striking ''(B) Before'' and inserting the following:

''(B) REQUIREMENTS FOR EXPERIMENTAL POPULATION RELEASES.—

''(i) IDENTIFICATIONS.—Before'';

(ii) by inserting ''and the precise boundaries of the geographic area for the release'' after ''the population'';

(iii) by inserting ''whether the release is in the public interest and'' after ''information,''; and

(iv) by adding at the end the following:

''(ii) OTHER REQUIREMENTS.—In authorizing the release of a population under subparagraph (A), the Secretary shall require that—

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

tional Park System or the National Wildlife Refuge System;

''(II) a release outside such a unit occur only in an area that has been identified as a candidate site for release of the population in a conservation plan for the species;

''(III) in the case of a release outside such a unit, measures to protect the safety and welfare of the public and domestic animals and the funding for the measures are identified in the regulations authorizing the release and are implemented;

''(IV) a release on non-Federal land occur only with the written consent of the owner of the land; and

''(V) the regulations authorizing the release include measurable reintroduction goals to restore viable populations only within the specific geographic area identified for release in the regulations.''; and

(B) in subparagraph (C)—

(i) in clause (i), by striking ''and'' at the end;

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

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

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

(5) by adding at the end the following:

''(k) MULTIPLE SPECIES NON-FEDERAL CONSERVATION PLANS.—

''(1) INCLUSION IN A NON-FEDERAL CONSERVATION PLAN.—An applicant for an incidental taking permit may include in the non-Federal conservation plan prepared under subsection (a)(2)(A), in addition to the endangered species for which the permit is applied—

''(A) any threatened species that inhabits the area covered by the plan; and

''(B) any other species that inhabits the area covered by the plan.

"(2) PERMIT CONDITIONS AND RECOMMENDATIONS.—The Secretary shall include in any incidental taking permit issued with respect to a non-Federal conservation plan that includes multiple species as provided in paragraph (1)—

"(A) permission for the incidental taking of any threatened species under section 4(d); and

"(B) recommended terms and conditions to address species included in the plan that have not been determined to be endangered species or threatened species, which recommendations shall become terms and conditions of the permit.

"(3) EFFECT OF LISTING OF SPECIES.—A multiple species non-Federal conservation plan developed under this subsection and a permit issued with respect to the plan shall remain in effect and shall not be required to be amended if a species to which the plan and permit apply is determined to be an endangered species or a threatened species under section 4.

"(l) WILDLIFE BRED IN CAPTIVITY.—

"(1) IN GENERAL.—In this Act (including any regulation issued under this Act), the terms 'bred in

captivity' and 'captive-bred', with respect to fish or wildlife, mean fish or wildlife progeny, including eggs, born or otherwise produced in captivity from parents that—

''(A) in the case of sexual reproduction, mated or otherwise transferred gametes in captivity; or

''(B) in the case of asexual reproduction, were in captivity when development of the progeny began.

''(2) TREATMENT OF PROGENY.—Fish or wildlife progeny described in paragraph (1) shall be considered to be domestic fish or wildlife for all purposes and shall not be subject to this Act and the laws referred to in subsection (a)(5)(E) unless the progeny are intentionally and permanently released into the wild.

''(3) RECORDKEEPING.—

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

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

"(ii) maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may require by regulation in accordance with subparagraph (B).

"(B) REQUIREMENTS OF REGULATIONS.—The recordkeeping requirements issued under subparagraph (A)(ii)—

"(i) shall be reasonable and appropriate to carry out this subsection; and

"(ii) shall not unnecessarily duplicate the requirements of other regulations issued by the Secretary.

"(m) RECOGNIZING CAPTIVE PROPAGATION AS A MEANS OF RECOVERY.—

"(1) IN GENERAL.—In carrying out this Act, the Secretary shall recognize, and may utilize, captive propagation as a means of protecting or conserving an endangered species or a threatened species.

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

gered species or a threatened species, if the Secretary determines that—

"(A) such a program contributes to enhancement of the population of the species;

"(B) techniques for release to the wild exist that will ensure survival of the species; and

"(C) suitable unoccupied habitat of the species exists at the time the captive reared members of the species become available for release.

"(n) MITIGATION BANKS.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall issue regulations in accordance with paragraph (3) providing criteria for the establishment, use, maintenance, and oversight of mitigation banks to promote the conservation of endangered species or threatened species and habitat of the species.

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

"(A) regulatory credits that may be used to offset adverse impacts to endangered species

or threatened species or habitat of the species; or

''(B) other forms of relief from the requirements of this Act.

''(3) CRITERIA.—The regulations issued under paragraph (1) shall ensure that each mitigation bank—

''(A) to the extent practicable and environmentally desirable, provides in-kind replacement of lost habitat functions, and contains habitat located in proximity to the adversely affected habitat for which the habitat in the mitigation bank is an offset;

''(B) is owned and operated by an entity that has the financial ability to meet the requirements of this subsection;

''(C) requires the deposit by the entity of a performance bond or other appropriate demonstration of financial responsibility to support the long-term maintenance of the mitigation bank;

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

sential biological and ecological functions associated with the mitigation bank;

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

''(F) employs consistent and scientifically sound methods to—

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

''(ii) determine credits based on the habitat functions of the habitat contained in the mitigation bank;

''(G) provides—

''(i) for the transfer of credits for mitigation that has been performed and for mitigation that will be performed within a designated period in the future; and

''(ii) for the posting of financial bonds in sufficient amount to ensure that the future mitigation will be performed in the case of default; and

''(H) provides opportunity for public notice of, and comment on, proposals for a mitigation bank and applications for the use of credits from a mitigation bank.

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

(b) CONFORMING AMENDMENT.—The table of contents in the first section (16 U.S.C. prec. 1531) is amended by striking the item relating to section 10 and inserting the following:

''Sec. 10. Exceptions and incentives.''.

SEC. 13. PENALTIES AND ENFORCEMENT.

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

(1) in subsection (d)—

(A) in paragraph (2) of the first sentence, by inserting ''endangered or threatened'' after ''temporary care for any''; and

(B) in the last sentence, by striking ''section 6(i) of this Act'' and inserting ''section 6(l)'';

(2) in subsection (e)—

(A) in the fourth sentence of paragraph (3), by striking ''fish, wildlife,'' and inserting ''endangered or threatened fish or wildlife,'';

(B) in paragraph (4)—

(i) in subparagraph (A), by inserting ''endangered or threatened'' before ''fish''; and

(ii) in subparagraph (B), by inserting ''endangered or threatened'' before ''fish'';

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

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

''(5) IDENTIFICATION OF SPECIMENS.—

''(A) BURDEN OF PROOF.—In carrying out this section, the burden of proof shall be on the Secretary to demonstrate that a specimen belongs to a species that has been determined to be an endangered species or a threatened species under this Act, or is included in an Appendix to the Convention.

"(B) LIMITATION ON DETAINING SPECIMENS.—The Secretary may not detain a specimen for a period of longer than 30 days for the purpose of identification, unless the specimen has been substantially changed from the natural appearance of the specimen, in which case the specimen may be retained for an additional 30 days for identification. If the specimen cannot be identified within that period, the specimen shall be released.

"(6) BASIS OF ACTIONS.—No refusal of entry, seizure of evidence, or other enforcement action may take place under this Act if the action is based solely on a notification under the Convention or on a resolution of the Conference of the Parties to the Convention.";

(3) in subsection (f)—

(A) by striking "REGULATIONS.—The" and inserting the following: "REGULATIONS.—

"(1) ENFORCEMENT AND FEES.—The";

(B) in the first sentence of paragraph (1) (as so designated), by inserting "endangered or threatened" before "fish"; and

(C) by adding at the end the following:

"(2) REQUIREMENT OF OTHER REGULATIONS.—An interpretation, policy, guideline, finding, or other informal determination may not be relied on by the Secretary in the enforcement of this Act unless a regulation has been issued containing the determination, after notice and opportunity for comment for a period of not less than 60 days. A proposed regulation under this paragraph shall include—

"(A) a readily understandable, nontechnical explanation of the reasons for and the purpose of the proposed regulation;

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

"(C) a summary of—

"(i) the literature reviewed and experts consulted by the Secretary with respect to the regulation; and

"(ii) the findings of the Secretary based on the review and consultation."; and

(4) in subsection (g)—

(A) in paragraph (1)—

(i) in the first sentence—

(I) in subparagraph (A)—

(aa) by striking ''any person, including the United States'' and inserting ''the United States or any agency or official of the United States''; and

(bb) by striking ''thereof;'' and inserting ''of this Act, if the violation poses immediate and irreparable harm to an endangered species or a threatened species;'';

(II) by striking subparagraph (B); and

(III) by redesignating subparagraph (C) as subparagraph (B);

(ii) in the second sentence, by striking ''without regard to the amount in controversy or the citizenship of the parties,''; and

(iii) by striking the last sentence;

(B) in paragraph (2)—

(i) by striking subparagraph (B);

(ii) by redesignating subparagraph (C) as subparagraph (B); and

(iii) in subparagraph (B) (as so redesignated)—

(I) by striking ''subparagraph (1)(C) of this section'' and inserting ''paragraph (1)(B)''; and

(II) by inserting before the period at the end the following: ''included in a list published under section 4(c)(1)'';

(C) in paragraph (3)—

(i) by striking ''(3)(A) Any'' and inserting the following:

''(3) VENUE.—Any''; and

(ii) by striking subparagraph (B); and

(D) by adding at the end the following:

''(6) ACTIONS TO REMEDY ECONOMIC INJURY.—Any person (including a person that sustains actual or imminent economic injury as a direct or indirect result of the implementation of, or a violation of, this Act or a regulation issued under this Act by the United States or any agency or official of the United States) may—

''(A) to the full extent permitted by the Constitution without regard to any prudential

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

''(i) remedy any violation of this Act or a regulation issued under this Act by the United States or any agency or official of the United States; or

''(ii) challenge this Act or a regulation issued under this Act or the implementation of this Act or the regulation; and

''(B) intervene as a matter of right in any suit brought under this Act that threatens to cause injury to the person or relates to any injury sustained by the person, which intervener shall have the same right to present argument and to accept or reject potential settlements as do the parties to the suit.''.

SEC. 14. ENDANGERED PLANTS.

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

''ENDANGERED PLANTS

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

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

''(A) are or may become endangered or threatened within any State; and

''(B) are known to produce pharmaceutical or agricultural biochemicals; and

''(2) not later than 1 year after the date of enactment of this paragraph, report to the Secretary on the results of the review.''.

SEC. 15. ENDANGERED SPECIES COMMISSION.

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

''ENDANGERED SPECIES COMMISSION

''SEC. 13. (a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is established an advisory committee to the Secretary to be known as the 'Endangered Species Commission'.

''(2) MEMBERSHIP.—

''(A) IN GENERAL.—The Commission shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate, from a list of individuals submitted under subparagraph (B). Each field described in subparagraph (B) shall be represented by 1 member of the Commission.

''(B) LIST.—Not later than 100 days after the date of enactment of this paragraph, and as required thereafter, the Secretary, after obtain-

ing recommendations from the Governors of the States, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences, shall submit to the President a list of individuals who are recognized authorities in the fields of botany, zoology, ecology, resource management, and economics.

''(C) PROHIBITION ON EMPLOYMENT BY THE FEDERAL GOVERNMENT.—A member of the Commission may not, during the period of service of the member on the Commission, hold any other position as an officer or employee of the Federal Government, except as a retired officer of the Armed Forces.

''(D) TERMS.—

''(i) IN GENERAL.—Except as provided in clause (ii), the term of office of a member of the Commission shall be 3 years.

''(ii) INITIAL TERMS.—Of the members initially appointed to the Commission, the term of 1 member shall be 1 year, the term of 1 member shall be 2 years, and the term of 1 member shall be 3 years.

"(iii) REAPPOINTMENT.—A member shall not be eligible for reappointment, except that any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the member was appointed—

"(I) shall be appointed for the remainder of the term; and

"(II) shall be eligible for reappointment for 1 full term.

"(iv) EXTENDED SERVICE.—A member may serve after the expiration of the term of the member until a successor has taken office.

"(E) CHAIRPERSON.—The President shall designate a chairperson of the Commission (referred to in this section as the 'Chairperson') from among the members of the Commission.

"(F) COMPENSATION AND EXPENSES.—

"(i) COMPENSATION.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States

Code, for each day or portion of a day (including travel time) during which the member is engaged in the actual performance of the duties of the Commission.

''(ii) TRAVEL EXPENSES.—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons serving intermittently in the Government service.

''(iii) OFFICE EXPENSES.—Each member of the Commission shall be reimbursed for reasonable office expenses at the office location preferred by the member, except that the expense of office space may not be reimbursed.

''(3) EXECUTIVE DIRECTOR.—

''(A) IN GENERAL.—The Commission shall have an Executive Director who shall be appointed (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service) by the Chairperson with the approval of the Commission.

"(B) COMPENSATION.—The Executive Director shall be compensated at a rate not in excess of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(C) DUTIES.—The Executive Director shall have such duties as the Chairperson may assign.

"(b) DUTIES OF COMMISSION.—

"(1) IN GENERAL.—The Commission shall—

"(A) study the activities of the United States under laws and international conventions relating to endangered species and threatened species, including the Convention and this Act;

"(B) make recommendations to, and consult with, the Secretary and other Federal officials concerning such measures as the Commission considers necessary or desirable for the protection and conservation of endangered species and threatened species, including a range of options; and

"(C) conduct such scientific reviews and analyses as the Secretary requests or as are otherwise required to be conducted under this Act.

''(2) ASSESSMENTS.—

''(A) IN GENERAL.—Upon receipt of a request from the Secretary for a scientific review or assessment with respect to a species under section 4(b) or 5, the Commission, in accordance with subsection (c), shall establish an assessment and planning team, which shall—

''(i) conduct a review of all reasonably available information on the species, which review shall include—

''(I) soliciting and fully considering all available scientific and commercial data from each appropriate State or foreign nation, if any; and

''(II) taking into account such efforts, if any, as are being made by—

''(aa) any State or foreign nation, or any political subdivision of the State or foreign nation, to protect the species, by any means, including predator control, protection of habitat and food supply, the use of mitigation banks, or other conservation practices, within any area under

the jurisdiction of the State or foreign nation, or on the high seas; and

''(bb) any private entity to protect the species, by any means, including the means described in item (aa); and

''(ii) submit to the Commission a full report of available information—

''(I) identifying such data as were peer reviewed and such data as the team finds valid even though the data were not peer reviewed; and

''(II) providing options (including such options, if any, as were recommended by a minority of the members of the team) for the decisions that the Secretary is required to make under section 4(b) or 5, respectively.

''(B) LISTING DECISIONS.—Not later than 210 days after the receipt of a request of the Secretary for a scientific review under section 4(b), the Commission shall transmit the report of the assessment team prepared under subparagraph (A) to the Secretary (including such

reports by a minority of the members of the team as may exist). The assessment team shall make an assessment of, and identify and describe in the report—

''(i) the taxonomy of the species;

''(ii) the biological significance of the species and the habitat occupied by the species;

''(iii) the geographic range and occupied habitat of the species;

''(iv) the best current estimate of the population of the species;

''(v) the population trend of the species;

''(vi) the technical practicality of recovering the species; and

''(vii) the limiting factors that prevent the growth of the numbers, or the expansion of the range, of the species (expressed quantitatively).

''(C) CONSERVATION DECISIONS.—Not later than 210 days after the receipt of a request of the Secretary for a scientific review or assessment under section 5, the Commission shall transmit the report of the assessment

team prepared under subparagraph (A) to the Secretary (including such reports by a minority of the members of the team as may exist). The report shall contain the following assessments with respect to the affected species:

''(i) BIOLOGICAL ASSESSMENT.—The assessment team shall make an assessment of, and identify and describe in the report—

''(I) the taxonomy of the species;

''(II) the biological significance of the species and the habitat occupied by the species;

''(III) the geographic range and occupied habitat of the species;

''(IV) the best current estimate of the population of the species;

''(V) the population trend of the species;

''(VI) the technical practicality of recovering the species;

''(VII) the limiting factors that prevent the growth of the numbers, or the expansion of the range, of the species (expressed quantitatively);

''(VIII) the potential for captive breeding programs for the species;

''(IX) whether any management measure might include release of an experimental population of the species outside the current range of the species and, if the release is required, an identification of each likely geographic area for the release;

''(X) objective, measurable criteria and recovery objectives, based on the best scientific and commercial data available, that, when the criteria are met, would result in a determination, in accordance with section 4(c)(2), that the species be removed from a list published under section 4(c)(1) or changed in status;

''(XI) site-specific management actions, including—

''(aa) to the extent practicable, such range of options available as may be necessary to achieve the goal of the conserva-

tion plan for the conservation and survival of the species; and

''(bb) actions to maintain or restore ecosystems on which the species depends;

''(XII) estimates of the time and costs required to carry out such measures as are necessary to achieve the goals of the conservation plan and to achieve intermediate steps toward the goals;

''(XIII) the actions that will be taken to minimize and fairly distribute adverse social or economic impacts that may result from implementation of the conservation plan;

''(XIV) to the maximum extent prudent and determinable, a designation of the critical habitat of the species if the designation would contribute to the conservation of the species;

''(XV) strategies that utilize Federal lands, to the extent that the lands are available, to promote the conservation and recovery of the species;

''(XVI) measures taken by all parties that would contribute to the conservation of the species;

''(XVII) any specific areas or circumstances in which the development and implementation of non-Federal conservation plans under section 10(a)(2) would contribute to or be consistent with the conservation of the species;

''(XVIII) any specific activities and geographic areas that should be exempt from any prohibition of section 9 relating to the taking of a species covered by the plan;

''(XIX) any opportunities for entry into safe harbor agreements with non-Federal persons under section 6(i) that would promote the conservation of the species;

''(XX) opportunities to cooperate with municipalities, political subdivisions of a State, and other persons in carrying out actions that would contribute to the conservation of the spe-

cies under section 4(c)(1), including the development of cooperative management agreements;

''(XXI) the situations in which the regulated taking of the species promotes the conservation of the species; and

''(XXII) clearly prohibited acts under section 9(a).

''(ii) ECONOMIC ASSESSMENT.—The Commission shall make an assessment of, and identify and describe in the report, the direct and indirect economic and social impacts on both the public and private sectors that may result from the listing of the species under section 4(c)(1), including any impacts on any multi-State region or any segment of the national economy and any impacts from the potential management measures identified under clause (i), including—

''(I) the cost of the listing for Federal, State, and local governments and the impacts on tax and other revenues expected from the listing;

''(II) the direct and indirect impacts on employment as a result of the listing;

''(III) the impacts on the use and value of property from the listing; and

''(IV) the impacts on other social, cultural and community values from the listing.

''(iii) INTERGOVERNMENTAL ASSESSMENT.—The team shall make an assessment of, and identify and describe in the report, the impacts that may result from the listing of the species under section 4(c)(1) and the potential management measures identified under clause (i) on State and local land use laws, conservation measures, and water allocation policies.

''(3) REVIEW REQUIREMENT.—

''(A) DEFINITION OF ACTION.—In this paragraph, the term 'action' means—

''(i) the determination that a species is an endangered species or a threatened species under section 4(a);

''(ii) the determination under section 4(a) that an endangered species or a

threatened species be removed from any list published under section 4(c)(1); and

''(iii) the designation, or revision of the designation, of critical habitat for an endangered species or a threatened species under section 5(i).

''(B) REQUEST FOR REVIEW.—If the Secretary depends on or otherwise bases an action on data or a study or report that was not reviewed by the Commission, an interested person may request that the data, study, or report be reviewed by the Commission. As soon as practicable after the date of receipt of such a request, the Commission shall report to the Secretary on the scientific validity of the data, study, or report and recommend any changes to the action that are warranted by the review of the data, study, or report.

''(C) PUBLICATION OF RESULTS OF REVIEW.—The Secretary shall publish in the Federal Register, with any final regulation implementing an action, a summary of any report of the Commission described in subparagraph (B) and the response of the Secretary to the report.

"(4) AVAILABILITY OF RECOMMENDATIONS AND REPORTS FOR PUBLIC INSPECTION.—The recommendations and reports of the Commission shall be matters of public record and shall be available to the public at reasonable times. All other activities of the Commission shall be matters of public record and available to the public in accordance with section 552 of title 5, United States Code.

"(5) INCORPORATION OF STATE COMMENTS.—The Commission shall transmit to the Secretary all options, recommendations, and reports submitted to the Commission by any State or local government that is affected by a listing determination, or a conservation plan for a species listed as an endangered species or a threatened species, under section 4(c)(1).

"(6) RESPONSE TO COMMISSION RECOMMENDATIONS.—Not later than 120 days after receiving options for action by the Secretary from the Commission under paragraph (1), the Secretary shall select an option or propose a new option and publish the option in the Federal Register. If the Secretary does not adopt an option presented by the Commission, the Secretary shall submit to the Commission and publish in the Federal Register a detailed expla-

nation of the reasons why an option proposed by the Commission was not followed or adopted.

''(c) ASSESSMENT AND PLANNING TEAMS.—

''(1) ESTABLISHMENT.—Not later than 30 days after the receipt of a request of the Secretary for a scientific review with respect to a species, the Commission shall establish, and arrange for the provision of technical assistance to, an assessment and planning team (referred to in this subsection as an 'assessment team') to assist the Commission in making the assessments required under section 4(b) or 5 with respect to the species by providing the Commission with the best scientific and commercial data available and, to the maximum extent feasible, data that have been peer reviewed and verified by field testing.

''(2) MEMBERSHIP.—

''(A) IN GENERAL.—An assessment team shall consist of—

''(i) in the case of a request of the Secretary under section 4(b), 9 scientists knowledgeable in the fields of botany, zoology, genetics, or taxonomy who are appointed from a list submitted by the National Academy of Sciences, after consulta-

tion with appropriate professional societies; and

''(ii) in the case of a request of the Secretary under section 5—

''(I) 4 scientists knowledgeable in the fields of botany, zoology, ecology, or resource management who are appointed by the Commission from a list submitted by the National Academy of Sciences after consultation with appropriate professional societies; and

''(II) 7 individuals knowledgeable in the fields of botany, zoology, ecology, economics, or resource management, or who have specific experience or knowledge of State and local conservation or management efforts for the species that is the subject of the request, who are appointed by the affected State and local governments, except that, if the affected State and local governments are unable to agree on all such appointments, the Commission shall appoint individuals to the remaining positions from a list

compiled from recommendations submitted by the affected State and local governments.

''(B) COMPENSATION AND TRAVEL EXPENSES.—

''(i) COMPENSATION.—

''(I) IN GENERAL.—Each member of an assessment team who is not an officer or employee of the Federal Government or a State government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level GS–13 of the General Schedule under section 5104 of title 5, United States Code, for each day or portion of a day (including travel time) during which the member is engaged in the actual performance of the duties of the assessment team.

''(II) GOVERNMENT EMPLOYEES.—Each member of an assessment team who is an officer or employee of the Federal Government or a State government shall serve without com-

pensation in addition to the compensation received for the services of the member as an officer or employee of the Federal Government or State government.

''(ii) TRAVEL EXPENSES.—A member of an assessment team shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons serving intermittently in the Government service.

''(3) DUTIES.—

''(A) STUDIES AND RECOMMENDATIONS.—Upon request of the Secretary, an assessment team shall undertake all studies and reports concerning the species with respect to which the assessment team was appointed, including—

''(i) the scientific review of a species under section 4(b) and subsection (b)(2)(B) for an assessment prior to a listing determination for the species;

''(ii) the review of a species under section 5(b) and subsection (b)(2)(C) for a biological, economic, and intergovernmental

assessment prior to the establishment of a conservation objective for the species; and

''(iii) the development and recommendation of alternative strategies to conserve a species under section 5(e).

''(B) CONSULTATION.—The Commission shall consult with an assessment team, and the assessment team shall provide responsive recommendations, on—

''(i) any study or recommendation that the Commission proposes to make or has made concerning the species;

''(ii) each research program proposed to be conducted or conducted under this Act that significantly affects the species; and

''(iii) each application for a permit for scientific research that significantly affects the species.

''(C) RESPONSE TO ASSESSMENT TEAM RECOMMENDATIONS.—If the Commission does not adopt a recommendation of an assessment team or a member of the assessment team, the Commission shall transmit the recommendation to the appropriate Federal agency and to the

appropriate committees of Congress with a detailed explanation of the reasons why the recommendation was not accepted.

''(d) REPORTS.—Not later than January 31 of each year, the Commission shall submit to Congress a report that includes—

''(1) a description of the activities and accomplishments of the Commission during the preceding year; and

''(2) each finding and recommendation made by and to the Commission under subsections (b) and (c)(3) and the response to each recommendation.

''(e) COORDINATION WITH OTHER FEDERAL AGENCIES.—

''(1) INFORMATION.—The Commission shall have access to all studies and data compiled by Federal agencies regarding endangered species and threatened species.

''(2) FACILITIES AND SERVICES.—With the consent of the appropriate Secretary or agency head, the Commission may use the facilities or services of a Federal agency.

''(3) AVOIDANCE OF DUPLICATION.—The Commission shall take every feasible measure to avoid

duplication of research in carrying out this Act, especially duplication of research performed by States.

''(f) POWERS.—To the extent consistent with and reasonably required to perform the duties of the Commission under this section, the Commission may—

''(1) employ and fix the compensation of employees (but not fewer than 11 employees at any time);

''(2) acquire, furnish, and equip office space;

''(3) enter into contracts or agreements with, or provide grants to, public and private organizations;

''(4) procure the services of experts or consultants or an organization of experts or consultants as authorized under section 3109 of title 5, United States Code, but at rates for individuals not to exceed $100 per diem; and

''(5) incur necessary expenses and exercise other appropriate powers.

''(g) FINANCIAL AND ADMINISTRATIVE SERVICES.—The Administrator of General Services shall provide financial and administrative services (including services related to budgeting, accounting, financial reporting, personnel, and procurement) to the Commission. Payment for the services shall be made in advance or by reimbursement from funds of the Commission in such amounts as may

be agreed on by the Chairperson and the Administrator of General Services.

''(h) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission or to any assessment and planning team established under subsection (c).''.

(b) CONFORMING AMENDMENT.—The table of contents in the first section (16 U.S.C. prec. 1531) is amended by striking the item relating to section 13 and inserting the following:

''Sec. 13. Endangered Species Commission.''.

(c) EFFECT ON PRIOR AMENDMENTS.—Nothing in this section or the amendment made by this section affects the amendments made by section 13 of the Endangered Species Act of 1973 (87 Stat. 902), as in effect on the day before the date of enactment of this Act.

SEC. 16. NOTICE OF HEARINGS.

(a) IN GENERAL.—Section 14 (87 Stat. 903) is amended to read as follows:

''NOTICE OF HEARINGS

''SEC. 14. Except as otherwise provided by this Act, the Secretary shall provide notice of any hearing or other public meeting at which public comment is accepted under this Act by publication in the Federal Register and in a newspaper of general circulation in the location of the

hearing or meeting at least 30 days prior to the hearing or meeting.''.

(b) CONFORMING AMENDMENT.—The table of contents in the first section (16 U.S.C. prec. 1531) is amended by striking the item relating to section 14 and inserting the following:

''Sec. 14. Notice of hearings.''.

(c) EFFECT ON PRIOR REPEAL.—Nothing in this section or the amendment made by this section affects the repeal made by section 14 of the Endangered Species Act of 1973 (87 Stat. 903), as in effect on the day before the date of enactment of this Act.

SEC. 17. MINIMIZATION OF IMPACT OF CONSERVATION MEASURES ON PRIVATE PROPERTY.

(a) IN GENERAL.—The Act (16 U.S.C. 1531 et seq.) is amended—

(1) by redesignating section 15 as section 21 and moving the section to appear after section 18; and

(2) by inserting after section 14 the following:

''MINIMIZATION OF IMPACT OF CONSERVATION MEASURES ON PRIVATE PROPERTY

''SEC. 15. In carrying out sections 5 and 7—

''(1) the Secretary shall balance the objectives of—

''(A) achieving the conservation objective for the species; and

''(B) ensuring continuing economic growth, providing essential infrastructure, maintaining strong State and local tax bases, and protecting against the diminishment of the use and value of private property; and

''(2) the Secretary, the heads of all other Federal agencies, and other officials of the Federal Government shall seek to minimize the adverse impacts on the use and value of private property resulting from any requirements imposed on the property under the sections.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of contents in the first section (16 U.S.C. prec. 1531) is further amended—

(A) by striking the item relating to section 15 and inserting the following:

''Sec. 15. Minimization of impact of conservation measures on private property.'';

and

(B) by adding at the end the following:

''Sec. 18. Annual cost analysis by the Fish and Wildlife Service.
''Sec. 21. Authorization of appropriations.''.

(2) The last sentence of section 8(a) (16 U.S.C. 1537(a)) is amended by striking ''section 15 of this Act'' and inserting ''section 21''.

SEC. 18. ALTERNATIVE DISPUTE RESOLUTION.

(a) IN GENERAL.—Section 16 (16 U.S.C. 1531 note) is amended to read as follows:

"ALTERNATIVE DISPUTE RESOLUTION

"SEC. 16. (a) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary, in consultation with affected persons and experts in dispute resolution, shall—

"(1) identify methods of alternative dispute resolution as described in subsection (b) that may be used for—

"(A) rulemaking to develop standards, rules, and guidelines for—

"(i) the listing or monitoring of species under section 4;

"(ii) conservation planning under section 5;

"(iii) safe harbor agreements with non-Federal persons under section 6(i);

"(iv) consultation and conferencing under section 7;

"(v) exemptions under section 10; and

"(vi) the development of non-Federal conservation plans under section 10(a)(2));

"(B) the resolution of disputes resulting from public comment on all matters before the Secretary related to this Act; and

"(C) implementation of the standards, rules, and guidelines described in subparagraph (A); and

"(2) develop and implement a pilot program for alternative dispute resolution to be used for the purposes described in paragraph (1) that is consistent with—

"(A) subchapter III of chapter 5 of title 5, United States Code (commonly known as the 'Negotiated Rulemaking Act of 1990'); and

"(B) subchapter IV of chapter 5 of title 5, United States Code (commonly known as the 'Administrative Dispute Resolution Act').

"(b) METHODS OF ALTERNATIVE DISPUTE RESOLUTION.—The methods of alternative dispute resolution referred to in subsections (a) and (c) include—

"(1) negotiation, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, and any combination of these methods; and

"(2) other collaborative problem-solving processes for resolving conflicts that are used prior to

opportunity for judicial review under chapter 7 of title 5, United States Code.

''(c) TRAINING.—The Secretary shall provide training on a regular basis for all employees involved in developing and implementing the program established under this section. The training shall encompass the theory and practice of conflict analysis and resolution and methods of alternative dispute resolution described in subsection (b).

''(d) REPORT.—Not later than 2 years after the date of enactment of this subsection, the Secretary shall—

''(1) evaluate the program established under this section; and

''(2) submit a report on the evaluation, including recommendations for a permanent program, to—

''(A) Congress; and

''(B) the Administrative Conference of the United States established under subchapter V of chapter 5 of title 5, United States Code, or a successor organization, if established.''.

(b) CONFORMING AMENDMENTS.—

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

''Sec. 16. Alternative dispute resolution.''.

(2) Section 10(b)(1)(B) (16 U.S.C. 1539(b)(1)(B)) is amended by striking ''the effective date of this Act'' and inserting ''December 28, 1973,''.

SEC. 19. FEDERAL COST-SHARING REQUIREMENTS FOR CONSERVATION OBLIGATIONS.

(a) IN GENERAL.—The Act is amended by inserting after section 18 (16 U.S.C. 1544) the following:

''FEDERAL COST-SHARING REQUIREMENTS FOR CONSERVATION OBLIGATIONS

''SEC. 19. (a) DEFINITION OF DIRECT COSTS.—In this section, the term 'direct costs' means—

''(1) expenditures on labor, material, facilities, utilities, equipment, supplies, and other resources that are necessary to carry out a specific species conservation measure;

''(2) increased purchasing power costs and lost revenues caused by changes in the operation of a hydropower system from which a non-Federal person or Federal power marketing administration markets power to carry out a specific species conservation measure; and

''(3) other reimbursable costs specifically identified by the Secretary as directly related to carrying out a specific species conservation measure.

''(b) COST-SHARING.—

"(1) CONSERVATION PLANS.—In the case of any non-Federal person or Federal power marketing administration, the Secretary shall pay 50 percent of the direct costs that result from the compliance by the person or administration with a species conservation measure—

"(A) required by a conservation plan; or

"(B) that provides protection to a species listed under section 4(c)(1) as an endangered species or a threatened species under a plan developed under the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 et seq.), including a plan that provides protection to a larger population unit of the listed species.

"(2) CONSULTATION REQUIREMENTS.—In the case of any non-Federal person or Federal power marketing administration, the Secretary shall pay 50 percent of the direct costs that result solely from required species conservation measures imposed by the Secretary on the person or marketing administration under section 7.

"(3) INCIDENTAL TAKING PERMITS.—In the case of any non-Federal person that is issued an incidental taking permit, the Secretary shall pay 50

percent of the direct costs of preparing the application for the permit and implementing the terms and conditions of the permit.

''(4) COOPERATIVE MANAGEMENT AGREEMENTS.—The Secretary shall pay 50 percent of—

''(A) the direct costs of preparing and implementing the terms and conditions of a cooperative management agreement incurred by a party to the agreement; and

''(B) any direct costs incurred by any other non-Federal person or Federal power marketing administration subject to the terms of the agreement.

''(c) METHOD OF COST SHARING.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary may make a Federal contribution required under subsection (b) by—

''(A) providing a habitat conservation grant under section 6(h);

''(B) acquiring, from or for the party to the cost-share, land or an interest in land as provided in section 5A; or

''(C) providing appropriated funds.

''(2) COST-SHARE PAYMENT FOR FEDERAL POWER MARKETING ADMINISTRATIONS AND STATE

OR LOCAL GOVERNMENTAL ENTITIES.—The Secretary shall make a Federal contribution under subsection (b) to a Federal power marketing administration or any State or local governmental entity by providing appropriated funds directly to the administration or governmental entity.

''(3) USE OF APPROPRIATED FUNDS.—To the maximum extent practicable, any appropriated funds paid by the Secretary under paragraphs (1) and (2) shall be paid directly (in lieu of reimbursement) to the party, person, or administration.

''(4) LOANS.—The Secretary may not consider a loan to the party to the cost-share as a Federal contribution or portion of a Federal contribution required under subsection (b).

''(5) RECOVERED COSTS.—The Secretary may not consider as a portion of the Federal contribution required under subsection (b) any costs to the Federal Government that are recovered through rates for the sale or transmission of power or water.

''(6) EFFECT OF FEDERAL NONPAYMENT.—If the Secretary fails to make the Federal contribution required under subsection (b), the application of the applicable provision of the conservation plan, plan developed under the Pacific Northwest Electric

Power Planning and Conservation Act (16 U.S.C. 839 et seq.), requirement under section 7, term or condition of the incidental taking permit, or term or condition of the cooperative management agreement shall be suspended until such time as the full Federal contribution is made. If the suspended provision, requirement, term, or condition includes a conservation easement or other instrument restricting title to the property of the non-Federal person, nonpayment of the full Federal contribution shall result in the nullification of the restriction on title.

''(7) IN-KIND CONTRIBUTIONS.—A non-Federal person or Federal power marketing administration may include in-kind contributions in calculating the appropriate share of the direct costs of the person or administration under this section.

''(8) COSTS PAID BY THE SECRETARY.—Compensation from the Federal Government made available under section 20 may not cover costs incurred by a non-Federal person that are paid by the Secretary under subsection (b).

''(d) EXISTING COST-SHARING AGREEMENTS.—Any cost-sharing agreement with a non-Federal person provided in any recovery plan or other agreement under this Act in existence prior to the date of enactment of this sec-

tion shall remain in effect unless the non-Federal person requests that the cost-sharing agreement be reconsidered and the Secretary grants the request.

''(e) ADJUSTMENTS TO FEDERAL COST-SHARING PERCENTAGE.—At the request of a non-Federal person, the Secretary may adjust the percentage of the Federal contribution under this section to a higher share.''.

(b) CONFORMING AMENDMENT.—The table of contents in the first section (16 U.S.C. prec. 1531) is amended by inserting after the item relating to section 18 the following:

''Sec. 19. Federal cost-sharing requirements for conservation obligations.''.

SEC. 20. RIGHT TO COMPENSATION.

(a) IN GENERAL.—The Act is amended by inserting after section 19 (as added by section 19(a)) the following:

''RIGHT TO COMPENSATION

''SEC. 20. (a) DEFINITIONS.—In this section:

''(1) AGENCY.—The term 'agency' has the meaning provided in section 551 of title 5, United States Code.

''(2) AGENCY ACTION.—The term 'agency action'—

''(A) subject to subparagraph (B), has the meaning provided in section 551 of title 5, United States Code; and

''(B) includes—

''(i) a restriction imposed on non-Federal property as part of a conservation plan;

''(ii) a designation under section 5(i) of non-Federal property as critical habitat;

''(iii) an agreement under section 6 to set aside property for habitat under the terms of an easement or other contract;

''(iv) an agency action under a biological opinion under section 7 that would cause an agency to restrict the use of non-Federal property;

''(v) the denial of a permit under section 10 that restricts the use of non-Federal property;

''(vi) the loss of use of property to avoid prosecution under section 11;

''(vii) any other action taken under this Act that restricts a legal right to use non-Federal property, including the right to alter habitat; and

''(viii) the imposition of a condition on a grant of land or money to a public authority or a private entity that would constitute an agency action under this sub-

paragraph if required directly by the agency.

''(3) FAIR MARKET VALUE.—The term 'fair market value' means the most probable price at which property would change hands, in a competitive and open market under all conditions requisite to fair sale, between a willing buyer and willing seller, neither of whom is under any compulsion to buy or sell and both of whom have reasonable knowledge of relevant facts.

''(4) LIMITATION ON USE.—The term 'limitation on use' means a limitation on a use of non-Federal property that is otherwise permissible under applicable State law (including law of a political subdivision of a State) concerning property or nuisances.

''(5) NON-FEDERAL PROPERTY.—The term 'non-Federal property' means property that is owned by a person other than an agency, department, or instrumentality of the Federal Government.

''(6) PROPERTY.—The term 'property' means land, an interest in land, the right to use or receive water, and personal property.

''(b) ELIGIBILITY.—A non-Federal property owner shall be entitled to receive compensation in accordance

with this section if an agency takes an agency action under this Act that results in a diminishment of value of any portion of the non-Federal property of the owner.

''(c) COMPENSATION FOR DIMINISHMENT IN VALUE.—An agency that takes an agency action described in subsection (b) shall compensate the non-Federal property owner in the amount of the diminishment of value of the portion of the property by making an offer in accordance with subsection (f).

''(d) DUTY OF NOTICE TO OWNERS.—If an agency takes an agency action described in subsection (b), the agency shall give appropriate notice to each owner of the property directly affected explaining the rights of the owner under this section and the procedures for obtaining any compensation that may be due to the owner under this section.

''(e) REQUEST OF OWNER.—Not later than 1 year after an owner receives actual notice under subsection (d) that an agency action described in subsection (b) has diminished the value of non-Federal property owned by the property owner, the owner may submit a written request to the head of the agency for compensation. The request shall, at a minimum, identify the affected portion of the property, the nature of the use or limitation on use of the

non-Federal property resulting from the agency action, and the amount of compensation claimed.

''(f) OFFER BY THE SECRETARY.—Not later than 90 days after the receipt of a request for compensation under subsection (e), the head of the agency shall transmit to the property owner—

''(1) an offer to purchase the affected property of the property owner at the fair market value that would apply if the property were not subject to the agency action described in subsection (b); and

''(2) an offer to compensate the property owner for the difference between—

''(A) the fair market value of the property that applies as of the date of the offer; and

''(B) the fair market value of the property that would apply if the property were not subject to the agency action described in subsection (b).

''(g) RESPONSE BY THE PROPERTY OWNER.—Not later than 180 days after the date of receipt of the offers under subsection (f), the non-Federal property owner shall accept 1 of the offers or reject both offers. If the property owner rejects both offers, the property owner may submit the matter for arbitration under subsection (h) or bring a civil action.

''(h) ARBITRATION.—The procedures that govern the arbitration shall, as nearly as practicable, be the procedures established under title 9, United States Code, for arbitration proceedings to which the title applies. An award made in the arbitration shall include a reasonable attorney's fee and other arbitration costs, including appraisal fees. The agency shall promptly pay any award made to the owner.

''(i) CIVIL ACTION.—Subject to subsection (k), an owner who prevails in a civil action against an agency under this section shall be entitled to, and the agency shall be liable for, the amount of compensation awarded plus a reasonable attorney's fee and other litigation costs, including appraisal fees. The court shall award interest on the amount of any compensation from the date of the imposition of the use or limitation on use of the non-Federal property resulting from the agency action.

''(j) SOURCE OF PAYMENTS.—

''(1) IN GENERAL.—Any payment made under this section to an owner, and any judgment obtained by an owner in a civil action under this section, shall, notwithstanding any other law, be made from the annual appropriation of the agency that took the agency action under this Act.

"(2) REIMBURSEMENT.—If the agency action resulted from a requirement imposed by another agency, the agency making the payment or satisfying the judgment may seek partial or complete reimbursement from the appropriated funds of the other agency.

"(3) TRANSFER OF FUNDS.—For the purpose of this subsection, the head of the agency concerned may transfer or reprogram any appropriated funds available to the agency.

"(4) INSUFFICIENT FUNDS.—If insufficient funds exist for the payment or to satisfy the judgment, the head of the agency shall seek the appropriation of the funds for the next fiscal year.

"(k) AVAILABILITY OF APPROPRIATIONS.—Notwithstanding any other law, any obligation of the United States to make a payment under this section shall be subject to the availability of appropriations.

"(l) ADMINISTRATION.—

"(1) OTHER RIGHTS PRESERVED.—Nothing in this Act limits any right to compensation that exists under the Constitution or under other laws.

"(2) EXTENT OF FEDERAL AUTHORITY.—Payment of compensation under this section (other than when property is purchased by the Federal Govern-

ment at the option of the owner) shall not confer any right on the Federal Government other than the imposition of the use or limitation on use resulting from the agency action under this Act for so long as the agency action achieves the species conservation purposes of this Act.''.

(b) CONFORMING AMENDMENT.—The table of contents in the first section (16 U.S.C. prec. 1531) is amended by inserting after the item relating to section 19 (as added by section 19(b)) the following:

''Sec. 20. Right to compensation.''.

SEC. 21. AUTHORIZATION OF APPROPRIATIONS.

Section 21 (as redesignated by section 17(a)) is amended to read as follows:

''AUTHORIZATION OF APPROPRIATIONS

''SEC. 21. (a) IN GENERAL.—In addition to the amounts authorized to be appropriated under section 6(i) and subsections (b) through (f), there are authorized to be appropriated—

''(1) to the Department of the Interior to carry out the duties of the Secretary of the Interior under this Act $110,000,000 for fiscal year 1996, $120,000,000 for fiscal year 1997, $130,000,000 for fiscal year 1998, $140,000,000 for fiscal year 1999, $150,000,000 for fiscal year 2000, and $160,000,000 for fiscal year 2001; and

"(2) to the Department of Agriculture to carry out the duties of the Secretary of Agriculture under this Act $4,000,000 for each of fiscal years 1996 through 2001.

"(b) CONVENTION IMPLEMENTATION.—There are authorized to be appropriated to the Department of the Interior to carry out section 8A(e) $1,000,000 for each of fiscal years 1996 through 2001, to remain available until expended.

"(c) ENDANGERED SPECIES COMMISSION.—There are authorized to be appropriated to the Commission such sums as are necessary to carry out the duties of the Commission under this Act.

"(d) REVENUE STUDY.—

"(1) STUDY.—The Secretary shall conduct a study to determine potential revenue sources for a biodiversity trust fund to be used both for domestic endangered species and domestic threatened species protected under this Act and for foreign species subject to the Convention. Any such trust fund—

"(A) shall be managed and accounted for separately from any trust fund established under—

"(i) the Act entitled 'An Act to provide that the United States shall aid the

States in wildlife-restoration projects, and for other purposes', approved September 2, 1937 (16 U.S.C. 669 et seq.); and

''(ii) the Act entitled 'An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes', approved August 9, 1950 (16 U.S.C. 777 et seq.); and

''(B) shall be subject to a prohibition on the transfer, commingling, or other use of the funds of any trust fund described in subparagraph (A).

''(2) REPORT.—Not later than 2 years after the date of enactment of this subsection, the Secretary shall report to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives on the results of the study.''.

SEC. 22. TRANSITION PROVISIONS.

(a) LISTED SPECIES WITHOUT RECOVERY PLANS.—

(1) PRIORITY FOR DEVELOPMENT OF CONSERVATION PLANS.—

(A) PUBLICATION OF LIST.—Not later than 30 days after the date of enactment of

this Act, the Secretary (as defined in section 3 of the Endangered Species Act of 1973 (referred to in this section as ''the Act'') (16 U.S.C. 1532)) shall publish a list of all species that were determined to be endangered species or threatened species under section 4 of the Act (16 U.S.C. 1533), for which no final recovery plans were issued under section 4(f) of the Act (16 U.S.C. 1533(f)) (as in effect on the day before the date of enactment of this Act) divided equally into 3 tiers of priority for the development of conservation objectives and conservation plans under section 5 of the Act.

(B) MULTIPLE STATES.—Any species that is listed as an endangered species or a threatened species in more than 1 State shall be placed in the first tier of priority.

(2) SCHEDULE FOR ADOPTION OF PLANS.—

(A) IN GENERAL.—For each species within each tier of priority identified under paragraph (1), except as provided in subparagraph (B), the Secretary (as defined in section 3 of the Act (16 U.S.C. 1532)) shall publish under section 5 of the Act a conservation objective, proposed conservation plan, and final conservation plan

not later than the following period after the date of enactment of this Act:

(i) Conservation objective:

(I) First tier, 120 days.

(II) Second tier, 1 year.

(III) Third tier, 2 years.

(ii) Proposed conservation plan:

(I) First tier, 180 days.

(II) Second tier, 18 months.

(III) Third tier, 20 months.

(iii) Final conservation plan:

(I) First tier, 1 year.

(II) Second tier, 2 year.

(III) Third tier, 3 year.

(B) NO CONSERVATION PLAN.—If a conservation objective for a species is published that is described in section 5(b)(4) of the Act, a conservation plan for the species shall not be required under subparagraph (A).

(b) LISTED SPECIES WITH RECOVERY PLANS.—

(1) PRIORITY FOR REVISION OF EXISTING PLANS.—

(A) CONTINUING EFFECT.—Except as provided in paragraph (2)(B), a final recovery plan issued under section 4(f) of the Act (16 U.S.C.

1533(f)) (as in effect on the day before the date of enactment of this Act) shall continue in effect until the expiration of the deadline established under this paragraph for revision of the plan.

(B) PUBLICATION OF LIST.—Not later than 90 days after the date of enactment of this Act, the Secretary (as defined in section 3 of the Act (16 U.S.C. 1532)) shall publish a list of all species that were determined to be endangered species or threatened species under section 4 of the Act (16 U.S.C. 1533) and for which final recovery plans were issued under section 4(f) of the Act (16 U.S.C. 1533(f)) (as in effect on the day before the date of enactment of this Act) divided equally into 3 tiers of priority for the development of conservation objectives under section 5 of the Act and revisions of the recovery plans consistent with the requirements for conservation plans under section 5 of the Act.

(C) MULTIPLE STATES.—Any species that is listed as an endangered species or a threatened species in more than 1 State shall be placed in the first tier of priority.

(2) SCHEDULE FOR REVISION OF PLANS.—

(A) IN GENERAL.—For each species within each tier of priority identified under paragraph (1), except as provided in subparagraph (B), the Secretary (as defined in section 3 of the Act (16 U.S.C. 1532)) shall publish under section 5 of the Act a conservation objective, proposed revision of the existing recovery plan, and final revision of the existing recovery plan not later than the following period after the date of enactment of this Act:

(i) Conservation objective:

(I) First tier, 120 days.

(II) Second tier, 18 months.

(III) Third tier, 30 months.

(ii) Proposed revised recovery plan:

(I) First tier, 1 year.

(II) Second tier, 2 years.

(III) Third tier, 3 years.

(iii) Final revised recovery plan:

(I) First tier, 18 months.

(II) Second tier, 30 months.

(III) Third tier, 42 months.

(B) NO CONSERVATION PLAN.—If a conservation objective for a species is published

that is described in section 5(b)(4) of the Act, the final recovery plan applicable to the species shall be rescinded.

(c) PROHIBITION ON ADDITIONAL REQUIREMENTS.—The Secretary (as defined in section 3 of the Act (16 U.S.C. 1532)) or the head of any other Federal agency may not require any increase in any measurable criterion contained in, or any site specific management action in addition to the criteria provided in, a final recovery plan issued under section 4(f) of the Act (16 U.S.C. 1533(f)) (as in effect on the day before the date of enactment of this Act) until such time as a conservation plan, or a conservation objective under section 5(b)(4) of the Act, has been published under section 5 of the Act.

(d) EXISTING BIOLOGICAL OPINIONS.—In conjunction with the issuance of a conservation plan, or, under section 5(b)(4) of the Act, a conservation objective under subsection (a) or (b), the Secretary (as defined in section 3 of the Act (16 U.S.C. 1532)) shall review and reissue, in accordance with section 7 of the Act, any written opinion of the Secretary that relates to the affected species and was issued after January 1, 1995, under section 7(b)(3) of the Act (16 U.S.C. 1536(b)(3)) (as in effect on the day before the date of enactment of this Act).

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