

Calendar No. 242

105TH CONGRESS
1ST Session

S. 1180

[Report No. 105-128]

A BILL

To reauthorize the Endangered Species Act.

OCTOBER 31, 1997

Reported with an amendment and an amendment to the
title

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To reauthorize the Endangered Species Act.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 1997

Mr. KEMPTHORNE (for himself, Mr. CHAFEE, Mr. BAUCUS, Mr. REID, Mr. SMITH of Oregon, Mr. STEVENS, Mr. BENNETT, Mr. COVERDELL, Mr. MURKOWSKI, and Mr. FAIRCLOTH) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

OCTOBER 31, 1997

Reported by Mr. CHAFEE, with an amendment and an amendment to the title
[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To reauthorize the Endangered Species Act.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) ~~SHORT TITLE.—This Act may be cited as the~~
5 ~~“Endangered Species Recovery Act of 1997”.~~

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

- See. 1: Short title; table of contents.
- See. 2: Listing and delisting species.
- See. 3: Enhanced recovery planning.
- See. 4: Interagency consultation and cooperation.
- See. 5: Conservation plans.
- See. 6: Enforcement.
- See. 7: Education and technical assistance.
- See. 8: Authorization of appropriations.
- See. 9: Other amendments.

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

10 **SEC. 2. LISTING AND DELISTING SPECIES.**

11 (a) **BEST SCIENTIFIC AND COMMERCIAL DATA**
12 **AVAILABLE.**—Section 3 of the Act (16 U.S.C. 1532) is
13 amended—

14 (1) by striking the title and inserting the fol-
15 lowing:

16 “DEFINITIONS AND GENERAL PROVISIONS”;

17 (2) by striking “For the purposes of this
18 Act—” and inserting the following:

19 “(a) **DEFINITIONS.**—For purposes of this Act—”;

20 and

1 (3) by adding at the end the following new sub-
2 section:

3 “(b) GENERAL PROVISIONS.—

4 “ (1) BEST SCIENTIFIC AND COMMERCIAL DATA
5 AVAILABLE.—Where this Act requires the Secretary
6 to use the best scientific and commercial data avail-
7 able, the Secretary shall when evaluating comparable
8 data give greater weight to scientific or commercial
9 data that is empirical, field-tested or peer-re-
10 viewed.”.

11 (b) CONFORMING AMENDMENT.—The table of con-
12 tents in the first section (16 U.S.C. 1531) is amended by
13 striking the item relating to section 3 and inserting the
14 following:

“Sec. 3. Definitions and general provisions.”.

15 (c) LISTING AND DELISTING.—

16 (1) FACTORS CONSIDERED FOR LISTING.—Sec-
17 tion 4(a)(1) is amended—

18 (A) in subparagraph (C) by inserting “in-
19 troduced species, competition,” prior to “dis-
20 ease or predation”; and

21 (B) in subparagraph (D) by inserting
22 “Federal, State and local government and inter-
23 national” prior to “regulatory mechanisms”.

24 (2) CRITICAL HABITAT.—Section 4(a) is
25 amended by striking paragraph (3).

1 (3) DELISTING.—Section 4(b)(2) is amended to
2 read as follows:

3 “(2) DELISTING.—The Secretary shall, in ac-
4 cordance with section 5 and upon a determination
5 that the goals of the recovery plan for a species have
6 been met, initiate the procedures for determining, in
7 accordance with subsection (a)(1), whether to re-
8 move a species from a list published under sub-
9 section (c).”

10 (4) RESPONSE TO PETITIONS.—Section 4(b)(3)
11 is amended to read as follows:

12 “(3) RESPONSE TO PETITIONS.—

13 “(A) ACTION MAY BE WARRANTED.—

14 “(i) IN GENERAL.—To the maximum
15 extent practicable, within 90 days after re-
16 ceiving the petition of an interested person
17 under section 553(e) of title 5, United
18 States Code, to—

19 “(I) add a species to;

20 “(II) remove a species from; or

21 “(III) change a species status
22 from a previous determination with
23 respect to

24 either of the lists published under sub-
25 section (c), the Secretary shall make a

1 finding as to whether the petition presents
2 substantial scientific or commercial infor-
3 mation indicating that the petitioned ac-
4 tion may be warranted. If a petition is
5 found to present such information, the
6 Secretary shall promptly commence a re-
7 view of the status of the species concerned
8 the Secretary shall promptly publish each
9 finding made under this subparagraph in
10 the Federal Register.

11 “(ii) MINIMUM DOCUMENTATION.—A
12 finding that the petition presents the infor-
13 mation described in clause (i) shall not be
14 made unless the petition provides—

15 “(I) documentation that the fish,
16 wildlife, or plant that is the subject of
17 the petition is a species as defined in
18 section 3;

19 “(II) a description of the avail-
20 able data on the historical and current
21 range and distribution of the species;

22 “(III) an appraisal of the avail-
23 able data on the status and trends of
24 populations of the species;

1 “(IV) an appraisal of the avail-
2 able data on the threats to the spe-
3 cies; and

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

8 “(iii) NOTIFICATION TO THE
9 STATES.—

10 “(I) PETITIONED ACTIONS.—If
11 the petition is found to present the in-
12 formation described in clause (i), the
13 Secretary shall notify and provide a
14 copy of the petition to the State agen-
15 cy in each State in which the species
16 is believed to occur and solicit the as-
17 sessment of the agency, to be submit-
18 ted to the Secretary within 90 days of
19 notification, as to whether the peti-
20 tioned action is warranted.

21 “(II) OTHER ACTIONS.—If the
22 Secretary has not received a petition
23 for a species and the Secretary is con-
24 sidering proposing to list such species
25 as either threatened or endangered

1 under subsection (a), the Secretary
 2 shall notify the State agency in each
 3 State in which the species is believed
 4 to occur and solicit the assessment of
 5 the agency, to be submitted to the
 6 Secretary within 90 days of the notifi-
 7 cation, as to whether the listing would
 8 be in accordance with the provisions
 9 of subsection (a).

10 “(III) CONSIDERATION OF STATE
 11 ASSESSMENTS.—Prior to publication
 12 of a determination that a petitioned
 13 action is warranted or a proposed reg-
 14 ulation, the Secretary shall consider
 15 any State assessments submitted
 16 within the comment period established
 17 by subelause (I) or (II).

18 “(B) PETITION TO CHANGE STATUS OR
 19 DELIST.—A petition may be submitted to the
 20 Secretary under subparagraph (A) to change
 21 the status of or to remove a species from either
 22 of the lists published under subsection (c) in ac-
 23 cordance with subsection (a)(1), if—

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

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

6 “(I) new data or a reinterpretation
7 of prior data indicates that re-
8 moval is appropriate;

9 “(II) the species is extinct; or

10 “(III) the recovery goals estab-
11 lished

12 for the species in a recovery plan approved
13 under section 5(h) have been achieved.

14 “(C) DETERMINATION.—Within 12 months
15 after receiving a petition that is found under
16 subparagraph (A)(i) to present substantial in-
17 formation indicating that the petitioned action
18 may be warranted, the Secretary shall make
19 one of the following findings:

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

24 “(ii) WARRANTED.—The petitioned
25 action is warranted, in which case the Sec-

1 retary shall promptly publish in the Fed-
2 eral Register a general notice and the com-
3 plete text of a proposed regulation to im-
4 plement the action in accordance with
5 paragraph (5).

6 “(iii) WARRANTED BUT PRE-
7 CLUDED.—The petitioned action is war-
8 ranted, but that—

9 “(I) the immediate proposal and
10 timely promulgation of a final regula-
11 tion implementing the petitioned ac-
12 tion in accordance with paragraphs
13 (5) and (6) is precluded by pending
14 proposals to determine whether any
15 species is an endangered species or a
16 threatened species; and

17 “(II) expeditious progress is
18 being made to add qualified species to
19 either of the lists published under
20 subsection (c) and to remove from the
21 lists species for which the protections
22 of the Act are no longer necessary,
23 in which case the Secretary shall promptly
24 publish the finding in the Federal Register,
25 together with a description and evaluation

1 of the reasons and data on which the find-
2 ing is based.

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

11 “(E) JUDICIAL REVIEW.—Any negative
12 finding described in subparagraph (A)(i) and
13 any finding described in subparagraph (C)(i) or
14 (iii) shall be subject to judicial review.

15 “(F) MONITORING AND EMERGENCY LIST-
16 ING.—The Secretary shall implement a system
17 to monitor effectively the status of all species
18 with respect to which a finding is made under
19 subparagraph (C)(iii) and shall make prompt
20 use of the authority under paragraph (7) to
21 prevent a significant risk to the well-being of
22 any such species.”

23 (5) PROPOSED REGULATIONS.—Section 4(b)(5)
24 is amended by—

1 (A) striking “(5) With respect to any regu-
2 lation” and inserting the following:

3 “~~(5)~~ PROPOSED REGULATIONS AND REVIEW.—

4 With respect to any regulation”;

5 (B) striking “a determination, designation,
6 or revision” and inserting “a determination or
7 change in status”;

8 (C) striking “(a)(1) or (3),” and inserting
9 “(a)(1),”;

10 (D) striking “in the Federal Register,”
11 and inserting “in the Federal Register as pro-
12 vided by paragraph (8),”; and

13 (E) striking subparagraph (E) and insert-
14 ing the following:

15 “(E) at the request of any person within
16 45 days after the date of publication of general
17 notice, promptly hold at least 1 public hearing
18 in each State that would be affected by the pro-
19 posed regulation (including at least 1 hearing in
20 an affected rural area, if any) except that the
21 Secretary may not be required to hold more
22 than 5 hearings under this clause.”.

23 (7) FINAL REGULATIONS.—

24 (A) SCHEDULE.—Section 4(b)(6)(A) is
25 amended to read as follows:

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

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

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

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

16 (B) CONFORMING AMENDMENTS.—Section
17 4(b)(6) is amended—

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

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

23 (iii) by striking subparagraph (C).

24 (8) PUBLICATION OF DATA AND INFORMA-
25 TION.—Section 4(b)(8) is amended by—

1 (A) striking “a summary by the Secretary
2 of the data” and inserting “a summary by the
3 Secretary of the best scientific and commercial
4 data available”;

5 (B) striking “is based and shall” and in-
6 serting “is based, shall”; and

7 (C) striking “regulation; and if such regu-
8 lation designates or revises critical habitat, such
9 summary shall, to the maximum extent prac-
10 ticable, also include a brief description and eval-
11 uation of those activities (whether public or pri-
12 vate) which, in the opinion of the Secretary, if
13 undertaken may adversely modify such habitat,
14 or may be affected by such designation.” and
15 inserting “regulation, and shall provide, to the
16 degree that it is relevant and available, infor-
17 mation regarding the status of the affected spe-
18 cies, including current population, population
19 trends, current habitat, food sources, predators,
20 breeding habits, captive breeding efforts, gov-
21 ernmental and non-governmental conservation
22 efforts, or other pertinent information.”.

23 (9) SOUND SCIENCE.—Section 4(b) is amended
24 by adding at the end the following:

25 “(9) ADDITIONAL DATA.—

1 “(A) IN GENERAL.—The Secretary shall
2 identify and publish in the Federal Register
3 with the notice of a proposed regulation pursu-
4 ant to paragraph (5)(A)(i) a description of ad-
5 ditional scientific and commercial data that
6 would assist in the preparation of a recovery
7 plan and—

8 “(i) invite any person to submit the
9 data to the Secretary; and

10 “(ii) describe the steps that the Sec-
11 retary plans to take for acquiring addi-
12 tional data.

13 “(B) RECOVERY PLANNING.—Data identi-
14 fied and obtained under subparagraph (A) shall
15 be considered by the recovery team and the Sec-
16 retary in the preparation of the recovery plan in
17 accordance with section 5.

18 “(C) NO DELAY AUTHORIZED.—Nothing in
19 this paragraph shall be deemed to waive or ex-
20 tend any deadline for publishing a final rule to
21 implement a determination (except for the ex-
22 tension provided in paragraph (6)(B)(i)) or any
23 deadline under section 5.

24 “(10) INDEPENDENT SCIENTIFIC REVIEW.—

1 “(A) IN GENERAL.—In the case of a regu-
2 lation proposed by the Secretary to implement
3 a determination under subsection (a)(1) that
4 any species is an endangered species or a
5 threatened species or that any species currently
6 listed as an endangered species or a threatened
7 species should be removed from any list pub-
8 lished pursuant to subsection (c), the Secretary
9 shall provide for independent scientific peer re-
10 view by—

11 “(i) selecting independent referees
12 pursuant to subparagraph (B);

13 “(ii) requesting the referees to con-
14 duct the review, considering all relevant in-
15 formation, and make a recommendation to
16 the Secretary in accordance with this para-
17 graph not later than 150 days after the
18 general notice is published pursuant to
19 paragraph (5)(A)(i).

20 “(B) SELECTION OF REFEREES.—For
21 each independent scientific review to be con-
22 ducted pursuant to subparagraph (A), the Sec-
23 retary shall select 3 independent referees from
24 a list provided by the National Academy of
25 Sciences, who—

1 “(i) through publication of peer-re-
2 viewed scientific literature or other means;
3 have demonstrated scientific expertise on
4 the species or a similar species or other
5 scientific expertise relevant to the decision
6 of the Secretary under subsection (a);

7 “(ii) do not have, or represent any
8 person with, a conflict of interest with re-
9 spect to the determination that is the sub-
10 ject of the review; and

11 “(iii) are not participants in a petition
12 to list, change the status of, or remove the
13 species under paragraph (3)(A)(i), the as-
14 sessment of a State for the species under
15 paragraph (3)(A)(iii), or the proposed or
16 final determination of the Secretary.

17 “(C) FINAL DETERMINATION.—The Sec-
18 retary shall take one of the actions under para-
19 graph (6)(A) of this subsection not later than
20 1 year after the date of publication of the gen-
21 eral notice of the proposed determination. If the
22 referees have made a recommendation in ac-
23 cordance with clause (ii) of subparagraph (A),
24 the Secretary shall evaluate and consider the in-
25 formation that results from the independent sci-

1 entific review and include in the final deter-
2 mination—

3 “(i) a summary of the results of the
4 independent scientific review; and

5 “(ii) in cases where the recommenda-
6 tion of a majority of the referees who con-
7 ducted the independent scientific review
8 under subparagraph (A) are not followed,
9 an explanation as to why the recommenda-
10 tion was not followed.

11 “(D) FEDERAL ADVISORY COMMITTEE
12 ACT.—The referees selected pursuant to this
13 paragraph shall not be subject to the Federal
14 Advisory Committee Act (5 U.S.C. App.).”.

15 (10) LISTS.—Section 4(e) is amended by—

16 (A) inserting “designated” before “critical
17 habitat”; and

18 (B) striking “determinations, designations
19 and revisions” and inserting “determinations”.

20 (11) PROTECTIVE REGULATION.—Section 4(d)
21 is amended by—

22 (A) striking “Whenever any species is list-
23 ed” and inserting the following:

24 “(1) IN GENERAL.—Whenever any species is
25 listed”; and

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

2 ~~“(2) NEW LISTINGS.—~~With respect to each spe-
3 cies listed as a threatened species after the date of
4 enactment of the Endangered Species Recovery Act
5 of 1997, regulations applicable under paragraph ~~(1)~~
6 to the species shall be specific to that species by the
7 date on which the Secretary is required to approve
8 a recovery plan for the species pursuant to section
9 ~~5(e)~~ and may be subsequently revised.”.

10 ~~(12) RECOVERY PLANS.—~~Section 4 is amended
11 by striking subsection ~~(f)~~ and redesignating sub-
12 sections ~~(g)~~ through ~~(i)~~ as subsections ~~(f)~~ through
13 ~~(h)~~, respectively.

14 ~~(13) CONFORMING AMENDMENT.—~~Section 4~~(g)~~
15 (as redesignated by paragraph ~~(12)~~) is amended in
16 paragraph ~~(4)~~ by striking “subsection ~~(f)~~ of this sec-
17 tion” and inserting “section 5”.

18 ~~(d) PUBLIC AVAILABILITY OF DATA.—~~Section 3~~(b)~~,
19 as amended by subsection ~~(a)~~, is amended by adding at
20 the end the following:

21 ~~“(2) FREEDOM OF INFORMATION ACT EXEMPTION.—~~
22 The Secretary, and the head of any other Federal agency
23 upon the recommendation of the Secretary, may withhold
24 or limit the availability of data requested to be released
25 pursuant to section 552 of title 5, United States Code,

1 if the data describes or identifies the location of an endan-
 2 gered species, a threatened species, or a species that has
 3 been proposed to be listed as threatened or endangered,
 4 and release of the data would be likely to result in in-
 5 creased take of the species.”.

6 **SEC. 3. ENHANCED RECOVERY PLANNING.**

7 (a) REDESIGNATION.—Section 5 of the Act is redес-
 8 igned as section 5A.

9 (b) RECOVERY PLANS.—The Act is amended by in-
 10 serting prior to section 5A (as redesignated by subsection
 11 (a)) the following:

12 “RECOVERY PLANS

13 “SEC. 5. (a) IN GENERAL.—The Secretary, in co-
 14 operation with the States, and on the basis of the best
 15 scientific and commercial data available, shall develop and
 16 implement plans (referred to in this Act as “recovery
 17 plans”) for the conservation and recovery of endangered
 18 species and threatened species that are indigenous to the
 19 United States or in waters under the jurisdiction of the
 20 United States in accordance with the requirements and
 21 schedules described in this section, unless the Secretary
 22 finds, after notice and opportunity for public comment,
 23 that a plan will not promote the conservation of the spe-
 24 cies or because an existing plan or strategy to conserve
 25 the species already serves as the functional equivalent to
 26 a recovery plan. The Secretary may authorize a State

1 agency to develop recovery plans pursuant to subsection
2 (m).

3 “(b) PRIORITIES.—To the maximum extent prac-
4 ticable, the Secretary, in developing recovery plans, shall
5 give priority, without regard to taxonomic classification,
6 to recovery plans that—

7 “(1) address significant and immediate threats
8 to the survival of an endangered species or a threat-
9 ened species, have the greatest likelihood of achiev-
10 ing recovery of the endangered species or the threat-
11 ened species, and will benefit species that are more
12 taxonomically distinct;

13 “(2) address multiple species including (A) en-
14 dangered species, (B) threatened species, or (C) spe-
15 cies that the Secretary has identified as candidates
16 or proposed for listing under section 4 and that are
17 dependent on the same habitat as the endangered
18 species or threatened species covered by the plan;

19 “(3) reduce conflicts with construction, develop-
20 ment projects, jobs or other economic activities; and

21 “(4) reduce conflicts with military training and
22 operations.

23 “(c) SCHEDULE.—For each species determined to be
24 an endangered species or a threatened species after the
25 date of enactment of the Endangered Species Recovery

1 Act of 1997 for which the Secretary is required to develop
 2 a recovery plan under subsection (a), the Secretary shall
 3 publish—

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

8 “(2) not later than 30 months after the date of
 9 publication under section 4 of the final regulation
 10 containing the listing determination, a final recovery
 11 plan.

12 “(d) APPOINTMENT AND ROLE OF RECOVERY
 13 TEAM.—

14 “(1) IN GENERAL.—Not later than 60 days
 15 after the date of the publication under section 4 of
 16 the final regulation containing the listing determina-
 17 tion for a species, the Secretary, in cooperation with
 18 the affected States, shall either appoint a recovery
 19 team to develop a recovery plan for the species or
 20 publish a notice pursuant to paragraph (3) that a
 21 recovery team shall not be appointed. Recovery
 22 teams shall include the Secretary and at least one
 23 representative from the State agency of each of the
 24 affected States choosing to participate and be broad-
 25 ly representative of the constituencies with an inter-

1 est in the species and its recovery and in the eco-
2 nomic or social impacts of recovery including rep-
3 resentatives of Federal agencies, tribal governments,
4 local governments, academic institutions, private in-
5 dividuals and organizations, and commercial enter-
6 prises. The recovery team members shall be selected
7 for their knowledge of the species or for their exper-
8 tise in the elements of the recovery plan or its imple-
9 mentation.

10 “(2) DUTIES OF THE RECOVERY TEAM.—Each
11 recovery team shall prepare and submit to the Sec-
12 retary the draft recovery plan that shall include the
13 team’s recommended recovery measures and alter-
14 natives, if any, to meet the recovery goal under sub-
15 section (c)(1). The recovery team may also be called
16 upon by the Secretary to assist in the implementa-
17 tion, review and revision of recovery plans. The re-
18 covery team shall also advise the Secretary concern-
19 ing the designation of critical habitat, if any.

20 “(3) EXCEPTION.—

21 “(A) IN GENERAL.—Notwithstanding para-
22 graph (1), the Secretary may, after notice and
23 opportunity for public comment, establish cri-
24 teria to identify species for which the appoint-
25 ment of a recovery team would not be required

1 under this subsection, taking into account the
2 availability of resources for recovery planning;
3 the extent and complexity of the expected recovery
4 activities and the degree of scientific uncertainty
5 associated with the threats to the species.

6 “(B) STATE OPTION.—If the Secretary
7 elects not to appoint a recovery team, the Secretary
8 shall provide notice to each affected
9 State and shall provide the affected States the
10 opportunity to appoint a recovery team and develop
11 a recovery plan, in accordance with the
12 requirements and procedures set out in subsection
13 (m).

14 “(C) SECRETARIAL DUTY.—In the event
15 that a recovery team is not appointed, the Secretary
16 shall perform all duties of the recovery
17 team required by this section.

18 “(4) TRAVEL EXPENSES.—The Secretary is authorized
19 to provide travel expenses (including per diem
20 in lieu of subsistence at the same level as authorized
21 by section 5703 of title 5, United States
22 Code) to recovery team members.

23 “(5) FEDERAL ADVISORY COMMITTEE ACT.—
24 The Federal Advisory Committee Act (5 U.S.C.
25 App.) shall not apply to the selection or activities of

1 a recovery team appointed pursuant to this sub-
2 section or subsection (m):

3 “(e) CONTENTS OF RECOVERY PLANS.—Each recov-
4 ery plan shall contain:

5 “(1) BIOLOGICAL RECOVERY GOAL.—

6 “(A) IN GENERAL.—Not later than 6
7 months after the appointment of a recovery
8 team under this section, those members of the
9 recovery team with relevant scientific expertise
10 shall establish and submit to the Secretary of
11 recommended biological recovery goal to con-
12 serve and recover the species that, when met,
13 would result in the determination, in accordance
14 with the provisions of section 4, that the species
15 be removed from the list. The goal shall be
16 based solely on the best scientific and commer-
17 cial data available. The recovery goal shall be
18 expressed as objective and measurable biological
19 criteria. When the goal is met, the Secretary
20 shall be required to initiate the procedures for
21 determining whether, in accordance with section
22 4(a)(1), to remove the species from the list.

23 “(B) PEER REVIEW.—The recovery team
24 shall promptly obtain independent scientific re-

1 view of the recommended biological recovery
2 goal.

3 ~~“(2) RECOVERY MEASURES.—~~The recovery plan
4 shall incorporate recovery measures that will meet
5 the recovery goal.

6 ~~“(A) MEASURES.—~~The recovery measures
7 may incorporate general and site-specific meas-
8 ures for the conservation and recovery of the
9 species such as—

10 ~~“(i) actions to protect and restore~~
11 ~~habitat;~~

12 ~~“(ii) research;~~

13 ~~“(iii) establishment of refugia, captive~~
14 ~~breeding, releases of experimental popu-~~
15 ~~lations;~~

16 ~~“(iv) actions that may be taken by~~
17 ~~Federal agencies, including actions that~~
18 ~~use, to the maximum extent practicable,~~
19 ~~Federal lands; and~~

20 ~~“(v) opportunities to cooperate with~~
21 ~~State and local governments and other per-~~
22 ~~sons to recover species, including through~~
23 ~~the development and implementation of~~
24 ~~conservation plans under section 10.~~

25 ~~“(B) DRAFT RECOVERY PLANS.—~~

1 “(i) IN GENERAL.—In developing a
2 draft recovery plan, the recovery team or,
3 if there is no recovery team, the Secretary,
4 shall consider alternative measures and
5 recommend measures to meet the recovery
6 goal including the benchmarks. The recov-
7 ery measures shall achieve an appropriate
8 balance among the following factors—

9 “(I) the effectiveness of the
10 measures in meeting the recovery
11 goal;

12 “(II) the period of time in which
13 the recovery goal is likely to be
14 achieved, provided that the time pe-
15 riod within which the recovery goal is
16 to be achieved will not pose a signifi-
17 cant risk to recovery of the species;
18 and

19 “(III) the social and economic
20 impacts (both quantitative and quali-
21 tative) of the measures and their dis-
22 tribution across regions and indus-
23 tries.

24 “(ii) DESCRIPTION OF ALTER-
25 NATIVES.—The draft plan shall include a

1 description of any alternative recovery
2 measures considered, but not included in
3 the recommended measures, and an expla-
4 nation of how any such measures consid-
5 ered were assessed and the reasons for
6 their selection or rejection.

7 “(iii) DESCRIPTION OF ECONOMIC EF-
8 FECTS.—If the recommended recovery
9 measures identified in clause (i) would im-
10 pose significant costs on a municipality,
11 county, region or industry, the recovery
12 team shall prepare a description of the
13 overall economic effects on the public and
14 private sections including, as appropriate,
15 effects on employment public revenues, and
16 value of property as a result of the imple-
17 mentation of the recovery plan.

18 “(3) BENCHMARKS.—The recovery plan shall
19 include objective, measurable benchmarks expected
20 to be achieved over the course of the recovery plan
21 to determine whether progress is being made to-
22 wards the recovery goal.

23 “(4) FEDERAL AGENCIES.—Each recovery plan
24 for an endangered species or a threatened species
25 shall identify Federal agencies that authorize, fund,

1 or carry out actions that are likely to have a signifi-
2 cant impact on the prospects for recovering the spe-
3 cies.

4 “(f) PUBLIC NOTICE AND COMMENT.—

5 “(1) IN GENERAL.—If the Secretary makes a
6 preliminary determination that the draft recovery
7 plan meets the requirements of this section, the Sec-
8 retary shall publish in the Federal Register and a
9 newspaper of general circulation in each affected
10 State a notice of availability and a summary of, and
11 a request for public comment on, the draft recovery
12 plan including a description of the economic effects
13 prepared under subsection (e)(2)(B)(iii) and the rec-
14 ommendations of the independent referees on the re-
15 covery goal.

16 “(2) HEARINGS.—At the request of any person,
17 the Secretary shall hold at least 1 public hearing on
18 each draft recovery plan in each State to which the
19 plan would apply (including at least 1 hearing in an
20 affected rural area, if any), except that the Sec-
21 retary may not be required to hold more than 5
22 hearings under this paragraph.

23 “(g) PROCUREMENT AUTHORITY.—The Secretary, in
24 developing and implementing recovery plans, may procure

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

3 “(h) REVIEW AND SELECTION BY THE SEC-
4 RETARY.—

5 “(1) REVIEW AND APPROVAL.—The Secretary
6 shall review each plan submitted by a recovery team,
7 including a recovery team appointed by a State pur-
8 suant to the authority of subsection (m), to deter-
9 mine whether the plan was developed in accordance
10 with the requirements of this section. If the Sec-
11 retary determines that the plan does not satisfy such
12 requirements, the Secretary shall notify the recovery
13 team and give the team an opportunity to address
14 the concerns of the Secretary and resubmit a plan
15 that satisfies the requirements of this section. After
16 notice and opportunity for public comment on the
17 recommendations of the recovery team, the Sec-
18 retary shall adopt a final recovery plan that is con-
19 sistent with the requirements of this section.

20 “(2) SECTION OF RECOVERY MEASURES.—In
21 each final plan the Secretary shall select recovery
22 measures that meet the recovery goal and the bench-
23 marks. The recovery measures shall achieve an ap-
24 propriate balance among the factors in subclauses
25 (I) through (III) of subsection (e)(2)(B)(i).

1 ~~“(3) MEASURES RECOMMENDED BY RECOVERY~~
2 ~~TEAM.—If the Secretary selects measures other than~~
3 ~~those recommended by the recovery team, the Sec-~~
4 ~~retary shall publish with the final plan an expla-~~
5 ~~nation of why the measures recommended by the re-~~
6 ~~covery team were not selected for the final recovery~~
7 ~~plan.~~

8 ~~“(4) PUBLICATION OF NOTICE ON FINAL~~
9 ~~PLANS.—The Secretary shall publish in the Federal~~
10 ~~Register a notice of availability, and a summary, of~~
11 ~~the final recovery plan, and include in the final re-~~
12 ~~covery plan a response to significant comments that~~
13 ~~the Secretary received on the draft recovery plan.~~

14 ~~“(i) REVIEW.—~~

15 ~~“(1) EXISTING PLANS—Not later than 5 years~~
16 ~~after date of enactment of Endangered Species re-~~
17 ~~covery Act of 1997, the Secretary shall review recov-~~
18 ~~ery plans published prior to such date.~~

19 ~~“(2) SUBSEQUENT PLANS.—The Secretary shall~~
20 ~~review each recovery plan first approved or revised~~
21 ~~under this section subsequent to the enactment of~~
22 ~~the Endangered Species Recovery Act of 1997, not~~
23 ~~later than 10 years after the date of approval or re-~~
24 ~~vision of the plan and every 10 years thereafter.~~

1 “(j) REVISION OF RECOVERY PLANS.—Notwith-
 2 standing any other provisions of this section, the Secretary
 3 shall revise a recovery plan if the Secretary finds that sub-
 4 stantial new information, that may include the failure to
 5 meet the benchmarks included in the plan, based upon the
 6 best scientific and commercial data available, indicates
 7 that the recovery goals contained in the recovery plan will
 8 not achieve the conservation and recovery of the endan-
 9 gered species or threatened species covered by the plan.
 10 The Secretary shall convene a recovery team to develop
 11 the revisions required by this subsection, unless the Sec-
 12 retary has established an exception for the species pursu-
 13 ant to subsection (d)(3).

14 “(k) EXISTING PLANS.—Nothing in this section shall
 15 be interpreted to require the modification of—

16 “(1) a recovery plan approved, or

17 “(2) a recovery plan on which public notice and
 18 comment has been initiated,

19 prior to the date of enactment of the Endangered Species
 20 Recovery Act of 1997 until revised by the Secretary in
 21 accordance with this section.

22 “(l) IMPLEMENTATION OF RECOVERY PLANS.—

23 “(1) IMPLEMENTATION AGREEMENTS.—The
 24 Secretary is authorized to enter into agreements
 25 with Federal agencies, affected States, Indian tribes,

1 local governments, private landowners and organiza-
2 tions to implement specified conservation measures
3 identified by an approved recovery plan that promote
4 the recovery of the species on lands or waters owned
5 by, or within the jurisdiction of, each such party.
6 The Secretary may enter into such agreements, if
7 the Secretary, after notice and opportunity for pub-
8 lic comment, determines that—

9 “(A) each party to the agreement has the
10 legal authority and capability to carry out the
11 agreement;

12 “(B) the agreement shall be reviewed and
13 revised as necessary on a regular basis by the
14 parties to the agreement to ensure that it meets
15 the requirements of this section; and

16 (C) the agreement establishes a mechanism
17 for the Secretary to monitor and evaluate im-
18 plementation of the agreement.

19 “(2) DUTY OF FEDERAL AGENCIES.—Each
20 Federal agency identified under subsection (e)(4)
21 shall enter into an implementation agreement with
22 the Secretary not later than 2 years after the date
23 on which the Secretary approves the recovery plan
24 for the species. For purposes of satisfying this sec-
25 tion, the substantive provisions of the agreement

1 shall be within the sole discretion of the Secretary
2 and the head of the Federal agency entering into the
3 agreement.

4 “(3) OTHER REQUIREMENTS.—

5 “(A) AGENCY ACTIONS.—Any action au-
6 thorized, funded or carried out by a Federal
7 agency that is specified in a recovery plan im-
8 plementation agreement between the Federal
9 agency and the Secretary to promote the recov-
10 ery of the species and for which the agreement
11 provides sufficient information on the nature,
12 scope and duration of the action to determine
13 the effect of the action on any endangered spe-
14 cies, threatened species, or critical habitat shall
15 not be subject to the requirements of section
16 7(a)(2) for that species, provided the action is
17 to be carried out during the term of such agree-
18 ment and the Federal agency is in compliance
19 with the agreement.

20 “(B) COMPREHENSIVE AGREEMENTS.—If
21 a non-Federal person proposes to include in an
22 implementation agreement a site-specific action
23 that the Secretary determines meets the re-
24 quirements of subparagraph (A) and that action
25 would require authorization or funding by one

1 or more Federal agencies, the agencies author-
2 izing or funding the action shall participate in
3 the development of the agreement and shall
4 identify, at that time, all measures for the spe-
5 cies that would be required under this Act as a
6 condition of the authorization or funding.

7 ~~“(4) FINANCIAL ASSISTANCE—~~

8 ~~“(A) IN GENERAL.—In cooperation with~~
9 ~~the States and subject to the availability of ap-~~
10 ~~propriations under section 13(f), the Secretary~~
11 ~~may provide a grant of up to \$25,000 to any~~
12 ~~individual private landowner to assist the land-~~
13 ~~owner in carrying out a recovery plan imple-~~
14 ~~mentation agreement under this subsection.~~

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

21 ~~“(C) OTHER PAYMENTS.—Grants provided~~
22 ~~to an individual private landowner under this~~
23 ~~paragraph shall be in addition to, and not af-~~
24 ~~fect, the total amount of payments the land-~~
25 ~~owner is otherwise eligible to receive under the~~

1 Conservation Reserve Program (16 U.S.C. 3831
2 et seq.); the Wetlands Reserve Program (16
3 U.S.C. 3837 et seq.); or the Wildlife Habitat
4 Incentives Program (16 U.S.C. 3836a).

5 “(m) STATE AUTHORITY FOR RECOVERY PLAN-
6 NING.—

7 “(1) IN GENERAL.—At the request of the Gov-
8 ernor of a State, or the Governors of several States
9 in cooperation, the Secretary may authorize the re-
10 spective State agency to develop the recovery plan
11 for an endangered species or a threatened species
12 in accordance with the requirements and schedules
13 of subsections (c), (d)(1), (d)(2), and (e) and this
14 subsection if the Secretary finds that—

15 “(A) the State or States have entered into
16 a cooperative agreement with the Secretary pur-
17 suant to section 6(e); and

18 “(B) the State agency has submitted a
19 statement to the Secretary demonstrating ade-
20 quate authority and capability to carry out the
21 requirements and schedules of subsections (c),
22 (d)(1), (d)(2), and (e) of this subsection.

23 “(2) STANDARDS AND GUIDELINES.—The Sec-
24 retary, in cooperation with the States, shall publish
25 standards and guidelines for the development of re-

1 recovery plans by a State agency under this sub-
2 section, including standards and guidelines for inter-
3 state cooperation and for the grant and withdrawal
4 of authorization under this subsection by the Sec-
5 retary.

6 “(3) MEMBERS AND DUTIES OF RECOVERY
7 TEAM.—Each recovery team appointed by a State
8 agency under this subsection shall include the Sec-
9 retary. The recovery team shall prepare a draft re-
10 covery plan in accordance with the requirements of
11 this section and shall transmit the draft plan to the
12 Secretary through the State agency authorized to
13 develop the recovery plan.

14 “(4) REVIEW OF DRAFT PLANS.—Prior to pub-
15 lication of a notice of availability of a draft recovery
16 plan, the Secretary shall review each draft recovery
17 plan developed pursuant to this subsection to deter-
18 mine whether it meets the requirements of this sec-
19 tion. If the Secretary determines that the plan does
20 not meet such requirements, the Secretary shall no-
21 tify the State agency and, in cooperation with such
22 State agency, develop a recovery plan in accordance
23 with the requirements of this section.

24 “(5) REVIEW AND APPROVAL OF FINAL
25 PLANS.—Upon receipt of a draft recovery plan

1 transmitted by a State agency, the Secretary shall
2 review and approve the plan in accordance with sub-
3 section (h).

4 “(6) WITHDRAWAL OF AUTHORITY.—

5 “(A) IN GENERAL.—The Secretary may
6 withdraw the authority from a State that has
7 been authorized to develop a recovery plan pur-
8 suant to this subsection if the actions of the
9 State agency are not in accordance with the
10 substantive and procedural requirements of sub-
11 sections (c), (d)(1), (d)(2), and (e) of this sub-
12 section. The Secretary shall give the State
13 agency an opportunity to correct any defi-
14 ciencies identified by the Secretary and shall
15 withdraw the authority from the State unless
16 the State agency within 60 days has corrected
17 the deficiencies identified by the Secretary.
18 Upon withdrawal of State authority pursuant to
19 this subsection, the Secretary shall have an ad-
20 ditional 18 months to publish a draft recovery
21 plan and an additional 12 months to publish a
22 final recovery plan under subsection 5(c).

23 “(B) PETITIONS TO WITHDRAW.—Any per-
24 son may submit a petition requesting the Sec-
25 retary to withdraw the authority from a State

1 on the basis that the actions of the State agen-
 2 ey are not in accordance with the substantive
 3 and procedural requirements identified in sub-
 4 paragraph (A). If the Secretary has not acted
 5 on the petition pursuant to subparagraph (A)
 6 within 90 days, the petition shall be deemed de-
 7 nied and the denial shall be a final agency ac-
 8 tion for the purposes of judicial review.

9 “(7) STATE AGENCY.—For purposes of this
 10 subsection, the term ‘State agency’ includes—

11 “(A) State agencies (as defined in section
 12 3) of the several States submitting a coopera-
 13 tive request under paragraph (1); and

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

21 “(n) CRITICAL HABITAT DESIGNATION.—

22 “(1) RECOMMENDATION OF THE RECOVERY
 23 TEAM.—Not later than 9 months after the date of
 24 publication under section 4 of a final regulation con-
 25 taining a listing determination for a species, the re-

1 every team appointed for the species shall provide
2 the Secretary with a description of any habitat of
3 the species that is recommended for designation as
4 critical habitat pursuant to this subsection and any
5 recommendations for special management consider-
6 ations or protection that are specific to such habitat.

7 “(2) DESIGNATION BY THE SECRETARY.—The
8 Secretary, to the maximum extent prudent and de-
9 terminable, shall be regulation designate any habitat
10 of an endangered species or a threatened species
11 that is indigenous to the United States or waters
12 under the jurisdiction of the United States that is
13 considered to be critical habitat.

14 “(A) DESIGNATION.—

15 “(i) PROPOSAL.—Not later than 18
16 months after the date on which a final list-
17 ing determination is made under section 4
18 for a species, the Secretary, after consulta-
19 tion and in cooperation with the recovery
20 team, shall publish in the Federal Register
21 a proposed regulation designating critical
22 habitat for the species.

23 “(ii) PROMULGATION.—The Secretary
24 shall, after consultation and in cooperation
25 with the recovery team, publish a final reg-

1 ulation designating critical habitat for a
2 species not later than 30 months after the
3 date on which a final listing determination
4 is made under section 4 for the species.

5 “(B) OTHER DESIGNATIONS.—If a recov-
6 ery plan is not developed under this section for
7 an endangered species or a threatened species,
8 the Secretary shall publish a final critical habi-
9 tat determination for that endangered species
10 or threatened species within 36 months after
11 making a determination that the species is an
12 endangered species or a threatened species.

13 “(C) ADDITIONAL AUTHORITY.—The Sec-
14 retary may publish a regulation designating
15 critical habitat for an endangered species or a
16 threatened species concurrently with the final
17 regulation implementing the determination that
18 the species is endangered or threatened if the
19 Secretary determines that designation of such
20 habitat at the time of listing is essential to
21 avoid the imminent extinction of the species.

22 “(3) FACTORS TO BE CONSIDERED.—The des-
23 ignation of critical habitat shall be made on the
24 basis of the best scientific and commercial data
25 available and after taking into consideration the eco-

1 nomic impact, impacts to military training and oper-
2 ations, and any other relevant impact, of specifying
3 any particular area as critical habitat. The Secretary
4 shall describe the economic impacts and other rel-
5 evant impacts that are to be considered under this
6 subsection in the publication of any proposed regula-
7 tion designating critical habitat.

8 “(4) EXCLUSIONS.—The Secretary may exclude
9 any area from critical habitat for a species if the
10 Secretary determines that the benefits of the exclu-
11 sion outweigh the benefits of designating the area as
12 part of the critical habitat, unless the Secretary de-
13 termines that the failure to designate the area as
14 critical habitat will result in the extinction of the
15 species.

16 “(5) REVISIONS.—The Secretary may, from
17 time-to-time and as appropriate, revise a designa-
18 tion. Each area designated as critical habitat before
19 the date of enactment of the Endangered Species
20 Recovery Act of 1997 shall continue to be considered
21 so designated, until the designation is revised in ac-
22 cordance with this subsection.

23 “(6) PETITIONS.—

24 “(A) DETERMINATION THAT REVISION
25 MAY BE WARRANTED.—To the maximum extent

1 practicable, within 90 days after receiving the
2 petition of an interested person under section
3 ~~553~~(e) of title 5, United States Code, to revise
4 a critical habitat designation, the Secretary
5 shall make a finding as to whether the petition
6 presents substantial scientific or commercial in-
7 formation indicating that the revision may be
8 warranted. The Secretary shall promptly pub-
9 lish such finding in the Federal Register.

10 “(B) NOTICE OF PROPOSED ACTION.—

11 Within ~~12~~ months after receiving a petition
12 that is found under subparagraph (A) to
13 present substantial information indicating that
14 the requested revision may be warranted, the
15 Secretary shall determine how to proceed with
16 the requested revision, and shall promptly pub-
17 lish notice of such intention in the Federal Reg-
18 ister.

19 “(7) PROPOSED AND FINAL REGULATIONS.—

20 Any regulation to designate critical habitat or imple-
21 ment a requested revision shall be proposed and pro-
22 mulgated in accordance with paragraphs (4), (5)
23 and (6) of section 4(b) in the same manner as a reg-
24 ulation to implement a determination with respect to
25 listing a species.

1 “(o) REPORTS.—The Secretary shall report every two
 2 years to the Committee on Environment and Public Works
 3 of the Senate and the Committee on Resources of the
 4 House of Representatives on the status of efforts to de-
 5 velop and implement recovery plans for all species listed
 6 pursuant to section 4 and on the status of all species for
 7 which such plans have been developed.”.

8 (e) CITIZEN SUITS.—Section 11(g)(1)(C) of the Act
 9 (16 U.S.C. 1540(g)(1)(C)) is amended by inserting “or
 10 section 5” after “section 4”.

11 (d) CONFORMING AMENDMENTS FOR RECOVERY
 12 PLANNING.—

13 (1) Section 6(d)(1) is amended by striking “sec-
 14 tion 4(g)” and inserting “section 4(f)”.

15 (2) Section 10(f)(5) is amended by striking the
 16 last sentence.

17 (3) Sections 104(e)(4)(A)(ii)(I), 115(b)(2), and
 18 118(f)(11) of the Marine Mammal Protection Act
 19 are amended by striking “section 4(f)” each place it
 20 occurs and inserting “section 5”.

21 (4) The table of contents in the first section (16
 22 U.S.C. 1531) is amended by striking the item relat-
 23 ed to section 5 and inserting the following:

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

1 (e) **PLANS FOR PREVIOUSLY LISTED SPECIES.**—In
2 the case of species included in the list published under
3 section 4(e) before the date of enactment of this Act, and
4 for which no recovery plan was developed before that date,
5 the Secretary shall develop a final recovery plan in accord-
6 ance with the requirements of section 5 (including the pri-
7 orities of section 5(b)) of the Endangered Species Act (16
8 U.S.C. 1531 et seq.), as amended by this Act, for not less
9 than one-half of the species not later than 36 months after
10 the date of enactment of this Act and for all species not
11 later than 60 months after such date.

12 **SEC. 4. INTERAGENCY CONSULTATION AND COOPERATION.**

13 (a) **REASONABLE AND PRUDENT ALTERNATIVES.**—
14 Section 3 (16 U.S.C. 1532) is amended by redesignating
15 paragraphs (15) through (21) as paragraphs (16) through
16 (22), respectively, and inserting the following new para-
17 graph after paragraph (14):

18 “(15) **REASONABLE AND PRUDENT ALTER-**
19 **NATIVES.**—The term ‘reasonable and prudent alternatives’
20 means alternative actions identified during consultation
21 that can be implemented in a manner consistent with the
22 intended purpose of the action; that can be implemented
23 consistent with the scope of the Federal agency’s legal au-
24 thority and jurisdiction; that are economically and techno-
25 logically feasible; and that the Secretary believes would

1 avoid the likelihood of jeopardizing the continued existence
 2 of listed species or resulting in the destruction or adverse
 3 modification of critical habitat.”.

4 (b) INVENTORY OF SPECIES ON FEDERAL LANDS.—
 5 Section 7(a)(1)(16 U.S.C. 1536(a)(1)) is amended by—

6 (1) inserting “(A)” after “(1)”; and

7 (2) adding the following at the end thereof:

8 “(B) INVENTORY OF SPECIES ON FEDERAL
 9 LANDS.—The head of each Federal agency that is
 10 responsible for the management of lands and wa-
 11 ters—

12 “(i) shall by not later than December 31,
 13 2003, prepare and provide to the Secretary an
 14 inventory of the presence or occurrence of en-
 15 dangered species, threatened species, species
 16 that have been proposed for listing, and species
 17 that the Secretary has identified as candidates
 18 for listing under section(4), that are located on
 19 lands or waters owned or under control of the
 20 agency; and

21 “(ii) shall at least once every 5 years
 22 thereafter update the inventory required by
 23 clause (1) including newly listed, proposed and
 24 candidate species.”.

1 (e) CONSULTATION.—Section 7(a)(3) (16 U.S.C.
2 1536(a)(3)) is amended to read as follows:

3 “~~(3)~~ CONSULTATION.—

4 “~~(A)~~ NOTIFICATION OF ACTIONS.—Prior
5 to commencing any action, each Federal agency
6 shall notify the Secretary if the agency deter-
7 mines that the action may affect an endangered
8 species or a threatened species or critical habi-
9 tat.

10 ~~(B)~~ AGENCY DETERMINATION.—

11 “~~(i)~~ IN GENERAL.—Each Federal
12 agency shall consult with the Secretary as
13 required by paragraph ~~(2)~~ on each action
14 for which notification is required under
15 subparagraph ~~(A)~~ unless—

16 “~~(I)~~ the Federal agency makes a
17 determination based on the opinion of
18 a qualified biologist that the action is
19 not likely to adversely affect an en-
20 dangered species, a threatened species
21 or critical habitat;

22 “~~(II)~~ the Federal agency notifies
23 the Secretary that it has determined
24 that the action is not likely to ad-
25 versely affect any listed species or

1 critical habitat and provides the Sec-
2 retary, along with the notice, a copy
3 of the information on which the agen-
4 cy based the determination; and

5 “(III) the Secretary does not ob-
6 ject in writing to the agency’s deter-
7 mination within 60 days from the
8 date such notice is received.

9 “(ii) ACTIONS EXCLUDED.—The Sec-
10 retary may by regulation identify cat-
11 egories of actions with respect to specific
12 endangered species or threatened species
13 that the Secretary determines are likely to
14 have an adverse effect on the species or its
15 critical habitat and, for which, the proce-
16 dures of clause (i) shall not apply.

17 “(iii) BASIS FOR OBJECTION.—The
18 Secretary shall object to a determination
19 made by a Federal agency pursuant to
20 clause (i), if—

21 “(I) the Secretary determines
22 that the action may have an adverse
23 effect on an endangered species, a
24 threatened species or critical habitat;
25 or

1 “(II) the Secretary finds that
2 there is insufficient information in the
3 documentation accompanying the de-
4 termination to evaluate the impact of
5 the proposed action on endangered
6 species, threatened species, or critical
7 habitat; or

8 “(III) the Secretary finds that,
9 because of the nature of the action
10 and its potential impact on an endan-
11 gered species, a threatened species or
12 critical habitat, review cannot be com-
13 pleted in 60 days.

14 “(iv) NAS REVIEW.—Not later than 3
15 years after the date of enactment of this
16 clause, the Secretary shall enter into ap-
17 propriate arrangements with the National
18 Academy of Sciences to conduct a review
19 of and prepare a report on the determina-
20 tions made by Federal agencies pursuant
21 to clause (i). The report shall be transmit-
22 ted to the Congress not later than 5 years
23 after the date of enactment of this clause.

24 “(v) REPORTS.—The Secretary shall
25 report to the Congress not less often than

1 biennially with respect to the implementation
2 of this subparagraph including in the re-
3 port information on the circumstances that
4 resulted in the Secretary making any ob-
5 jection to a determination made by a Fed-
6 eral agency under clause (i) and the avail-
7 ability of resources to carry out the re-
8 quirements of this section.

9 “(C) CONSULTATION AT REQUEST OF AP-
10 PLICANT.—Subject to such guidelines as the
11 Secretary may establish, a Federal agency shall
12 consult with the Secretary on any prospective
13 agency action at the request of, and in coopera-
14 tion with, the prospective permit or license ap-
15 plicant if the applicant has reason to believe
16 that an endangered species or a threatened spe-
17 cies may be present in the area affected by the
18 applicant’s project and that implementation of
19 the action will likely affect the species.”.

20 (d) GAO REPORT.—The Comptroller General of the
21 United States shall report to the Committee on Environ-
22 ment and Public Works of the Senate and to the Commit-
23 tee on Resources of the House of Representatives not later
24 than 3 years after the date of enactment of this Act, and
25 2 years thereafter, on the cost of formal consultation to

1 Federal agencies and other persons carrying out actions
 2 subject to the requirements of section 7 of the Endangered
 3 Species Act (16 U.S.C. 1536), including the cost of rea-
 4 sonable and prudent measures imposed.

5 (e) NEW LISTINGS.—Section 7(a) (16 U.S.C.
 6 1536(a)) is amended by adding at the end the following:

7 “(5) EFFECT OF LISTING ON EXISTING
 8 PLANS.—

9 “(A) ACTIONS.—For the purposes of para-
 10 graph (2), the term ‘action’ includes land use
 11 plans under the Federal Land Policy and Man-
 12 agement Act (43 U.S.C. 1701 et seq.) and re-
 13 source management plans under the Forest and
 14 Rangeland Renewable Resources Planning Act
 15 (16 U.S.C. 1600 et seq.), as amended by the
 16 National Forest Management Act (16 U.S.C.
 17 1600 et seq.).

18 “(B) RE-INITIATION OF CONSULTATION.—
 19 Whenever a determination to list a species as
 20 an endangered species or a threatened species
 21 or designation of critical habitat requires re-
 22 initiation of consultation under section 7(a)(2) on
 23 an already approved action as defined under
 24 subparagraph (A), the consultation shall com-
 25 mence promptly, but no later than 90 days

1 after the date of the determination or designa-
2 tion, and be completed within 12 months of the
3 date on which the consultation is commenced.

4 “(C) ~~SITE-SPECIFIC ACTIONS DURING CON-~~
5 ~~SULTATION.~~—Notwithstanding subsection (d),
6 the Federal agency implementing the land use
7 plan or resource management plan under sub-
8 paragraph (B) may authorize, fund, or carry
9 out a site-specific ongoing or previously sched-
10 uled action with the scope of the plan on such
11 lands prior to completing consultation on the
12 plan under subparagraph (B) pursuant to the
13 consultation procedures of this section and re-
14 lated regulations, if—

15 “(i) no consultation on the action is
16 required; or

17 “(ii) consultation on the action is re-
18 quired and the Secretary issues a biological
19 opinion and the action satisfies the re-
20 quirements of this section.”.

21 (f) ~~IMPROVED FEDERAL AGENCY COORDINATION.~~—

22 Section 7(a) (16 U.S.C. 1536(a)) is amended by adding
23 at the end the following:

24 “(6) ~~CONSOLIDATION OF CONSULTATION AND CON-~~
25 ~~FERENCING.~~—

1 “(A) CONSULTATION WITH A SINGLE AGEN-
2 CY.—Consultation and conferencing under this sub-
3 section between the Secretary and a Federal agency
4 may, with the approval of the Secretary, encompass
5 a number of related or similar actions by the agency
6 to be carried out within a particular geographic
7 area.

8 “(B) CONSULTATION WITH SEVERAL AGEN-
9 CIES.—The Secretary may consolidate requests for
10 consultation or conferencing from various Federal
11 agencies the proposed actions of which may affect
12 the same endangered species, threatened species, or
13 species that have been proposed for listing under
14 section 4, within a particular geographic area.”.

15 (g) USE OF INFORMATION PROVIDED BY STATES.—
16 Section 7(b)(1) (16 U.S.C. 1536(b)(1)) is amended by
17 adding at the end the following:

18 “(C) USE OF STATE INFORMATION.—In conducting
19 a consultation under subsection (a)(2), the Secretary shall
20 actively solicit and consider information from the State
21 agency in each affected State.”.

22 (h) OPPORTUNITY TO PARTICIPATE IN CONSULTA-
23 TIONS.—Section 7(b)(1) (16 U.S.C. 1536(b)(1)) (as
24 amended by subsection (g)) is further amended by adding
25 at the end the following:

1 ~~“(D) OPPORTUNITY TO PARTICIPATE IN CONSULTA-~~
2 ~~TIONS.—~~

3 ~~“(i) IN GENERAL.—~~In conducting a consulta-
4 ~~tion under subsection (a)(2), the Secretary shall pro-~~
5 ~~vide any person who has sought authorization or~~
6 ~~funding for an action from a Federal agency and~~
7 ~~that authorization or funding is the subject of the~~
8 ~~consultation, the opportunity to—~~

9 ~~“(I) prior to the development of a draft bi-~~
10 ~~ological opinion, submit and discuss with the~~
11 ~~Secretary and the Federal agency information~~
12 ~~relevant to the effect of the proposed action on~~
13 ~~the species and the availability of reasonable~~
14 ~~and prudent alternatives (if a jeopardy opinion~~
15 ~~is to be issued) that the Federal agency and the~~
16 ~~person can take to avoid violation of section~~
17 ~~7(a)(2);~~

18 ~~“(II) receive information, upon request~~
19 ~~subject to the exemptions of the Freedom of In-~~
20 ~~formation Act (5 U.S.C. 552(b)) on the status~~
21 ~~of the species, threats to the species, and con-~~
22 ~~servation measures, used by the Secretary to~~
23 ~~develop the draft biological opinion and the~~
24 ~~final biological opinion, including the associated~~
25 ~~incidental take statements; and~~

1 “(III) received a copy of the draft biological
2 eal opinion from the Federal agency and, prior
3 to issuance of the final biological opinion, sub-
4 mit comments on the draft biological opinion
5 and discuss with the Secretary and the Federal
6 agency the basis for any finding in the draft bi-
7 ological opinion.

8 “(ii) EXPLANATION.—If reasonable and pru-
9 dent alternatives are proposed by a person under
10 clause (i) and the Secretary does not include the al-
11 ternatives in the final biological opinion, the Sec-
12 retary shall explain to such person why those alter-
13 natives were not included in the opinion.”.

14 (i) INCIDENTAL TAKING STANDARDS FOR FEDERAL
15 AGENCIES.—Section 7(b)(4) (16 U.S.C. 1536 (b)(4)) is
16 amended—

17 (1) in clause (ii), by inserting “and mitigate”
18 after “to minimize”; and

19 (2) by adding at the end the following: “For
20 purposes of this subsection, reasonable and prudent
21 measures shall be related both in nature and extent
22 to the effect of the proposed activity that is the sub-
23 ject of the consultation.”.

24 (j) REVISION OF REGULATIONS.—Not later than 1
25 year after the date of enactment of the Endangered Spe-

1 cies Recovery Act of 1997, the Secretary shall promulgate
 2 modifications to part 402 of title 50, Code of Federal Reg-
 3 ulations, to implement the provisions of this section.

4 **SEC. 5. CONSERVATION PLANS.**

5 (a) PERMIT FOR TAKE ON THE HIGH SEAS.—Section
 6 10(a)(1)(B) (16 U.S.C. 1539(a)(1)(B)) is amended by
 7 striking “section 9(a)(1)(B)” and inserting in lieu thereof
 8 “subparagraph (B) or (C) of section 9(a)(1)”.

9 (b) MONITORING.—Section 10(a)(2)(B) (16 U.S.C.
 10 1539(a)(2)(B)) is amended by striking “reporting” and
 11 inserting in lieu thereof “monitoring and reporting”.

12 (c) OTHER PLANS.—Section 10(a) (16 U.S.C.
 13 1539(a)) is amended by striking paragraph (2)(C) and in-
 14 serting the following new paragraphs:

15 “(3) MULTIPLE SPECIES CONSERVATION PLANS.—

16 “(A) IN GENERAL.—In addition to one or more
 17 listed species, a conservation plan developed under
 18 paragraph (2) may, at the request of the applicant,
 19 include species proposed for listing under section
 20 4(e), candidate species, or other species found on
 21 lands or waters owned or within the jurisdiction of
 22 the applicant covered by the plan.

23 “(B) APPROVAL CRITERIA.—The Secretary
 24 shall approve an application for a permit under
 25 paragraph (1)(B) that includes species other than

1 species listed as endangered species or threatened
2 species if, after notice and opportunity for public
3 comment, the Secretary finds that the permit appli-
4 cation and the related conservation plan satisfy the
5 criteria of paragraphs (2)(A) and (2)(B) with re-
6 spect to listed species, and that the permit applica-
7 tion and the related conservation plan with respect
8 to other species satisfy the following requirements:

9 “(i) The impact on non-listed species in-
10 cluded in the plan will be incidental;

11 “(ii) The applicant will, to the maximum
12 extent practicable, minimize and mitigate such
13 impacts;

14 “(iii) The actions taken by the applicant
15 with respect to species proposed for listing or
16 candidates for listing included in the plan, if
17 undertaken by all similarly situated persons
18 within the range of such species, are likely to
19 eliminate the need to list the species as an en-
20 dangered species or a threatened species for the
21 duration of the agreement as a result of the ac-
22 tivities conducted by those persons;

23 “(iv) The actions taken by the applicant
24 with respect to other non-listed species included
25 in the plan, if undertaken by all similarly situ-

1 ated persons within the range of such species,
2 would not be likely to contribute to a deter-
3 mination to list the species as an endangered
4 species or a threatened species for the duration
5 of the agreement;

6 “(v) The criteria of paragraphs (2)(A)(iv),
7 (2)(B)(iii) and (2)(B)(v); and

8 the Secretary has received such other assurances as
9 the Secretary may require that the plan will be im-
10 plemented. The permit shall contain such terms and
11 conditions as the Secretary deems necessary or ap-
12 propriate to carry out the purposes of this para-
13 graph, including, but not limited to, such monitoring
14 and reporting requirements as the Secretary deems
15 necessary for determining whether such terms and
16 conditions are being complied with.

17 “(C) TECHNICAL ASSISTANCE AND GUID-
18 ANCE.—To the maximum extent practicable, the
19 Secretary and the heads of other Federal agencies,
20 in cooperation with the States, are authorized and
21 encouraged to provide technical assistance or guid-
22 ance to any State or person that is developing a
23 multiple species conservation plan under this para-
24 graph. In providing technical assistance or guidance,

1 priority shall be given to landowners that might oth-
2 erwise encounter difficulty in developing such a plan.

3 “(D) DEADLINES.—A conservation plan devel-
4 oped pursuant to this paragraph shall be reviewed
5 and approved or disapproved not later than 1 year
6 after the date of submission, or within such other
7 period of time as is mutually agreeable to the Sec-
8 retary and the applicant.

9 “(E) STATE AND LOCAL LAW.—

10 “(i) OTHER SPECIES.—Nothing in this
11 paragraph shall limit the authority of a State or
12 local government with respect to fish, wildlife or
13 plants that have not been listed as an endan-
14 gered species or a threatened species under sec-
15 tion 4.

16 “(ii) COMPLIANCE.—An action by the Sec-
17 retary, the Attorney General, or a person under
18 section 11(g) to ensure compliance with a mul-
19 tiple species conservation plan and permit
20 under this paragraph may only be brought
21 against a permittee or the Secretary.

22 “(F) EFFECTIVE DATE OF PERMIT FOR NON-
23 LISTED SPECIES.—For any species not listed as an
24 endangered species or a threatened species, but cov-
25 ered by an approved multiple species conservation

1 plan, the permit issued under paragraph (1)(B) shall
2 take effect without further action by the Secretary
3 at the time the species is listed pursuant to section
4 4(e), and to the extent that the taking is otherwise
5 prohibited by subparagraphs (B) or (C) of section
6 9(a)(1).

7 “(4) LOW EFFECT ACTIVITIES.—

8 “(A) IN GENERAL.—Notwithstanding para-
9 graph (2)(A), the Secretary may issue a permit for
10 a low effect activity authorizing any taking referred
11 to in paragraph (1)(B), if the Secretary determines
12 that the activity will have no more than a negligible
13 effect, both individually and cumulatively, on the
14 species, any taking associated with the activity will
15 be incidental, and the taking will not appreciably re-
16 duce the likelihood of the survival and recovery of
17 the species in the wild. The permit shall require, to
18 the extent appropriate, actions to be taken by the
19 permittee to offset the effects of the activity on the
20 species.

21 “(B) APPLICATIONS.—The Secretary shall min-
22 imize the costs of permitting to the applicant by de-
23 veloping, in cooperation with the States, model per-
24 mit applications that would constitute conservation
25 plans for low effect activities.

1 “(C) PUBLIC COMMENT; EFFECTIVE DATE.—

2 Upon receipt of a permit application for an activity
3 that meets the requirements of subparagraph (A),
4 the Secretary shall provide notice in a newspaper of
5 general circulation in the area of the activity not
6 later than 30 days after receipt and an opportunity
7 for comment on the permit. If the Secretary does
8 not receive significant adverse comment within 30
9 days of the notice, the permit shall take effect with-
10 out further action by the Secretary 45 days after the
11 notice is published.

12 “(5) NO SURPRISES.—

13 “(A) IN GENERAL.—Each conservation plan de-
14 veloped under this subsection shall include a no sur-
15 prises provision, as described in this paragraph.

16 “(B) NO SURPRISES.—A person who has en-
17 tered into, and is in compliance with, a conservation
18 plan under this subsection may not be required to
19 undertake any additional mitigation measures for
20 species covered by such plan if such measures would
21 require the payment of additional money, or the
22 adoption of additional use, development or manage-
23 ment restrictions on any land, waters or water-relat-
24 ed rights that would otherwise be available under the
25 terms of the plan without the consent of the permit-

1 tee. The Secretary and the applicant, by the terms
2 of the conservation plan, shall identify—

3 “(i) other modifications to the plan; or

4 “(ii) other additional measures,

5 if any, that the Secretary may require under ex-
6 traordinary circumstances.

7 “~~(6) PERMIT REVOCATION.—~~After notice and an op-
8 portunity for correction, as appropriate, the Secretary
9 shall revoke a permit issued under this subsection if the
10 Secretary finds that the permittee is not complying with
11 the terms and conditions of the permit or the conservation
12 plan.”.

13 ~~(d) CANDIDATE CONSERVATION AGREEMENTS.—~~

14 ~~(1) PERMITS.—~~Section 10(a)(1) (16 U.S.C.
15 ~~1539(a)(1))~~ is amended by—

16 (A) deleting “or” at the end of subpara-
17 graph (A);

18 (B) striking the period at the end of sub-
19 paragraph (B) and inserting “; or”; and

20 (C) adding the following subparagraph at
21 the end—

22 “(C) any taking incidental to, and not the
23 purpose of, the carrying out of an otherwise
24 lawful activity pursuant to a candidate con-
25 servation agreement.”.

1 (2) AGREEMENTS.—Section 10 (16 U.S.C.
2 1539) is amended by adding at the end thereof the
3 following:

4 “(k) CANDIDATE CONSERVATION AGREEMENTS.—

5 “(1) IN GENERAL.—At the request of any non-
6 Federal person, the Secretary may enter into a can-
7 didate conservation agreement with that person for
8 a species that has been proposed for listing under
9 section 4(e)(1), is a candidate species, or is likely to
10 become a candidate species in the near future on
11 property owned or under the jurisdiction of the per-
12 son requesting such an agreement.

13 “(2) REVIEW BY THE SECRETARY.—

14 “(A) SUBMISSION TO THE SECRETARY.—A
15 non-Federal person may submit a candidate
16 conservation agreement developed under para-
17 graph (1) to the Secretary for review at any
18 time prior to the listing described in section
19 4(e)(1) of a species that is the subject of the
20 agreement.

21 “(B) CRITERIA FOR APPROVAL.—The Sec-
22 retary may approve an agreement and issue a
23 permit under subsection (a)(1)(C) for the
24 agreement if, after notice and opportunity for
25 public comment, the Secretary finds that—

1 “(i) for species proposed for listing,
2 candidates for listing, or species that are
3 likely to become a candidate species in the
4 near future, that are included in the agree-
5 ment, the actions taken under the agree-
6 ment, if undertaken by all similarly situ-
7 ated persons, would produce a conservation
8 benefit that would be likely to eliminate
9 the need to list the species under section
10 4(c) as a result of the activities of those
11 persons during the duration of the agree-
12 ment;

13 “(ii) the actions taken under the
14 agreement will not adversely affect an en-
15 dangered species or a threatened species;

16 “(iii) the agreement contains such
17 other measures that the Secretary may re-
18 quire as being necessary or appropriate for
19 the purposes of the agreement;

20 “(iv) the person will ensure adequate
21 funding to implement the agreement; and

22 “(v) the agreement includes such
23 monitoring and reporting requirements as
24 the Secretary deems necessary for deter-

1 mining whether the terms and conditions
2 of the agreement are being complied with.

3 ~~“(3) EFFECTIVE DATE OF PERMIT.—~~A permit
4 issued under subsection (a)(1)(C) shall take effect at
5 the time the species is listed pursuant to section
6 4(e), provided that the permittee is in full compli-
7 ance with the terms and conditions of the agree-
8 ment.

9 ~~“(4) ASSURANCES.—~~A person who has entered
10 into a candidate conservation agreement under this
11 subsection, and is in compliance with the agreement,
12 may not be required to undertake any additional
13 measures for species covered by such agreement if
14 such measures would require the payment of addi-
15 tional money, or the adoption of additional use, de-
16 velopment or management restrictions on any land,
17 waters, or water-related rights that would otherwise
18 be available under the terms of the agreement with-
19 out the consent of the person entering into the
20 agreement. The Secretary and the person entering
21 into a candidate conservation agreement, by the
22 terms of the agreement, shall identify—

23 ~~“(A) other modifications to the agree-~~
24 ~~ments; or~~

25 ~~“(B) other additional measures;~~

1 if any, that the Secretary may require under ex-
 2 traordinary circumstance.

3 (e) PUBLIC NOTICE.—Section 10(e) (16 U.S.C.
 4 1539(e)) is amended by—

5 (1) striking “thirty” each place that it appears
 6 and inserting in lieu thereof “60”; and

7 (2) inserting before the final sentence the fol-
 8 lowing: “The Secretary may, with approval of the
 9 applicant, provide an opportunity, as early as prac-
 10 ticable, for public participation in the development of
 11 a multiple species conservation plan and permit ap-
 12 plication. If a multiple species conservation plan and
 13 permit application has been developed without the
 14 opportunity for public participation, the Secretary
 15 shall extend the public comment period for an addi-
 16 tional 30 days for interested parties to submit writ-
 17 ten data, views, or arguments on the plan and appli-
 18 cation.”.

19 (f) SAFE HARBOR AGREEMENTS.—Section 10 (16
 20 U.S.C. 1539) is amended by adding at the end thereof
 21 the following new subsection:

22 “(1) SAFE HARBOR AGREEMENTS.—

23 “(1) AGREEMENTS.—

24 “(A) IN GENERAL.—The Secretary may
 25 enter into agreements with non-Federal persons

1 to benefit the conservation of endangered spe-
2 cies or threatened species by creating, restoring,
3 or improving habitat or by maintaining cur-
4 rently unoccupied habitat for endangered spe-
5 cies or threatened species. Under an agreement,
6 the Secretary shall permit the person to take
7 endangered species or threatened species in-
8 cluded under the agreement on lands or waters
9 that are subject to the agreement if the taking
10 is incidental to, and not the purpose of, carry-
11 ing out of an otherwise lawful activity, provided
12 that the Secretary may not permit through such
13 agreements any incidental take below the base-
14 line requirement specified pursuant to subpara-
15 graph (B).

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

1 ened species, quantity or quality of habitat, or
2 such other indicators as appropriate.

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

7 ~~“(3) FINANCIAL ASSISTANCE.—~~

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

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

21 ~~“(C) OTHER PAYMENTS.—~~Grants provided
22 to an individual private landowner under this
23 paragraph shall be in addition to, and not af-
24 fect, the total amount of payments that the
25 landowner is otherwise eligible to receive under

1 the Conservation Reserve Program (16 U.S.C.
2 3831 et seq.); the Wetlands Reserve Program
3 (16 U.S.C. 3837 et seq.); or the Wildlife Habi-
4 tat Incentives Program (16 U.S.C. 3836a).”.

5 (g) HABITAT RESERVE AGREEMENTS.—Section 10
6 (16 U.S.C. 1539) is amended by adding at the end thereof
7 the following new subsection:

8 “(m) HABITAT RESERVE AGREEMENTS.—

9 “(1) PROGRAM.—The Secretary shall establish
10 a habitat reserve program to be implemented
11 through contracts or easements of a mutually agreed
12 upon duration to assist non-Federal property owners
13 to preserve and manage suitable habitat for endan-
14 gered species and threatened species.

15 “(2) AGREEMENTS.—The Secretary may enter
16 into a habitat reserve agreement with a non-Federal
17 property owner to protect, manage or enhance suit-
18 able habitat on private property for the benefit of
19 endangered species or threatened species. Under an
20 agreement, the Secretary shall make payments in an
21 agreed upon amount to the property owner for ear-
22 rying out the terms of the habitat reserve agree-
23 ment, provided that the activities undertaken pursu-
24 ant to the agreement are not otherwise required by
25 this Act.

1 “~~(3)~~ STANDARDS AND GUIDELINES.—The Sec-
2 retary shall issue standards and guidelines for the
3 development and approval of habitat reserve agree-
4 ments in accordance with this subsection. Agree-
5 ments shall, at a minimum, specify the management
6 measures, if any, that the property owner will imple-
7 ment for the benefit of endangered species or threat-
8 ened species, the conditions under which the prop-
9 erty may be used, the nature and schedule for any
10 payments agreed upon by the parties to the agree-
11 ment, and the duration of the agreement.

12 “~~(4)~~ PAYMENTS.—Any payment received by a
13 property owner under a habitat reserve agreement
14 shall be in addition to and shall not affect the total
15 amount of payments that the property owner is oth-
16 erwise entitled to receive under the Agricultural Act
17 of 1949 (7 U.S.C. 1421 et seq.), as amended by the
18 Federal Agriculture Improvement and Reform Act of
19 1996.

20 “~~(5)~~ AUTHORIZATION OF APPROPRIATIONS.—
21 There are authorized to be appropriated to the Sec-
22 retary of Interior \$10,000,000 and the Secretary of
23 Commerce \$5,000,000 for each of fiscal years 1998
24 through 2003 to assist non-Federal property owners

1 to carry out the terms of habitat reserve programs
2 under this subsection.”.

3 (h) HABITAT CONSERVATION PLANNING FUND.—

4 Section 10(a) (16 U.S.C. 1539(a)) is further amended by
5 adding at the end thereof the following new paragraph:

6 “(7) HABITAT CONSERVATION PLANNING FUND.—

7 “(A) ESTABLISHMENT.—There is established in
8 the Treasury of the United States a revolving fund,
9 to be known as the ‘Habitat Conservation Planning
10 Fund’, to be used in carrying out this subsection
11 (referred to in this paragraph as the ‘Fund’), con-
12 sisting of—

13 “(i) amounts made available under section
14 15(f);

15 “(ii) repayments of advances from the
16 Fund under subparagraph (C); and

17 “(iii) any interest earned on investment of
18 amounts in the Fund under subparagraph (D).

19 “(B) EXPENDITURES FROM FUND.—

20 “(i) IN GENERAL.—On request by the Sec-
21 retary, the Secretary of the Treasury shall
22 transfer from the Fund to the Secretary such
23 amounts as the Secretary determines necessary
24 to make interest-free advances under clause (ii).

1 “(ii) **AUTHORITY TO MAKE GRANTS AND**
2 **ADVANCES.**—The Secretary may make an inter-
3 est-free advance from the Fund to any State,
4 county, municipality, or other political subdivi-
5 sion of a State to assist in the development of
6 a conservation plan under this subsection. The
7 amount of the advance under this clause may
8 not exceed the total financial contribution of the
9 other parties participating in the development
10 of the plan.

11 “(iii) **CRITERIA FOR ADVANCES.**—In deter-
12 mining whether to make an advance from the
13 Fund, the Secretary shall consider—

14 “(I) the number of species covered by
15 the plan;

16 “(II) the extent to which there is a
17 commitment to participate in the planning
18 process from a diversity of interests (in-
19 cluding local governmental, business, envi-
20 ronmental, and landowner interests);

21 “(III) the likely benefits of the plan;

22 “(IV) such other factors as the Sec-
23 retary considers appropriate.

24 “(C) **REPAYMENTS OF ADVANCES FROM THE**
25 **FUND.**—

1 “(i) IN GENERAL.—Except as provided in
2 clause (ii) amounts advanced from the Fund
3 shall be repaid not later than 10 years after the
4 date of the advance.

5 “(ii) ACCELERATED REPAYMENT.—
6 Amounts advanced from the Fund shall be re-
7 paid—

8 “(I) not later than 4 years after the
9 date of the advance if no conservation plan
10 is developed within 3 years of the date of
11 the advance; or

12 “(II) not later than 5 years after the
13 date of the advance if no permit is issued
14 under paragraph (1)(B) with respect to the
15 conservation plan within 4 years of the
16 date of the advance.

17 “(iii) CREDITING OF REPAYMENTS.—
18 Amounts received by the United States as re-
19 payment of advances from the Fund shall be
20 credited to the Fund and made available for
21 further advances in accordance with this para-
22 graph without further appropriation.

23 “(D) INVESTMENT OF FUND BALANCE.—

24 “(i) IN GENERAL.—The Secretary of the
25 Treasury shall invest such portion of the Fund

1 as is not, in the judgment of the Secretary, re-
2 quired to meet current withdrawals. Invest-
3 ments may be made only in interest-bearing ob-
4 ligations of the United States.

5 “(ii) ACQUISITION OF OBLIGATIONS.—For
6 the purpose of investments under clause (i), ob-
7 ligations may be acquired—

8 “(I) on original issue at the issue
9 price; or

10 “(II) by purchase of outstanding obli-
11 gations at the market price.

12 “(iii) SALE OF OBLIGATIONS.—Any obliga-
13 tion acquired by the Fund may be sold by the
14 Secretary of the Treasury at market price.

15 “(iv) CREDITS TO THE FUND.—The inter-
16 est on, and the proceeds from the sale or re-
17 demption of, any obligations held in the Fund
18 shall be credited to and form a part of the
19 Fund.

20 “(E) TRANSFERS OF AMOUNTS.—

21 “(i) IN GENERAL.—The amounts required
22 to be transferred to the Fund under this para-
23 graph shall be transferred at least monthly
24 from the general fund of the Treasury to the

1 Fund on the basis of estimates made by the
2 Secretary of the Treasury.

3 “(ii) ADJUSTMENTS.—Proper adjustments
4 shall be made in amounts subsequently trans-
5 ferred to the extent prior estimates were in ex-
6 cess of or less than the amounts required to be
7 transferred.”

8 (i) EFFECT ON PERMITS AND PROPOSED PLANS.—
9 No amendment made by this section shall be interpreted
10 to require the modification of—

11 (1) a permit issued under section 10 of the En-
12 dangered Species Act (16 U.S.C. 1539); or

13 (2) a conservation plan submitted for approval
14 pursuant to such section prior to the date of enact-
15 ment of this Act.

16 (j) RULE-MAKING.—Not later than 1 year after the
17 date of enactment of this Act, the Secretary shall, after
18 consultation with the States and notice and opportunity
19 for public comment, publish final regulations implement-
20 ing the provisions of section 10(a) of the Endangered Spe-
21 cies Act (16 U.S.C. 1539(a)), as amended by this section.

22 (k) NAS REPORT.—Not later than 2 years after the
23 date of enactment of this Act, the Secretary shall enter
24 into appropriate arrangements with the National Academy
25 of Sciences to conduct a review of and prepare a report

1 on the development and implementation of conservation
2 plans under section 10(a) of the Endangered Species Act
3 (16 U.S.C. 1531 et seq.). The report shall assess the ex-
4 tent to which those plans comply with the requirements
5 of that Act, the role of multiple species conservation plans
6 in preventing the need to list species covered by those
7 plans, and the relationship of conservation plans for listed
8 species to implementation of recovery plans. The report
9 shall be transmitted to the Congress not later than 5 years
10 after the date of enactment of this Act.

11 **SEC. 6. ENFORCEMENT.**

12 (a) **ENFORCEMENT FOR INCIDENTAL TAKE.**—Sec-
13 tion 11 (16 U.S.C. 1540) is amended by adding after sub-
14 section (g) the following new subsection and redesignating
15 the subsequent subsection accordingly:

16 “(h) **INCIDENTAL TAKE.**—In any action under sub-
17 section (a), (b), or (e)(6) of this section against any person
18 for an alleged take incidental to the carrying out of an
19 otherwise lawful activity, the Secretary or the Attorney
20 General must establish, using scientifically valid prin-
21 ciples, that the acts of such person have caused, or will
22 cause, the take, of—

23 “(1) an endangered species, or

1 “(2) a threatened species the take of which is
2 prohibited pursuant to a regulation under section
3 4(d).”.

4 (b) **CITIZEN SUIT FOR INCIDENTAL TAKE.**—Section
5 11(g) (16 U.S.C. 1540(g)) is amended by adding the fol-
6 lowing new paragraph after paragraph (2) and redesignat-
7 ing the subsequent paragraphs accordingly:

8 “(3) **INCIDENTAL TAKE.**—In any suit under this sub-
9 section against any person for an alleged take incidental
10 to the carrying out of an otherwise lawful activity, the per-
11 son commencing the suit must establish, using scientifi-
12 cally valid principles, that the acts of the person alleged
13 to be in violation of section 9(a)(1) have caused, or will
14 cause, the take, of—

15 “(1) an endangered species, or

16 “(2) a threatened species the take of which is
17 prohibited pursuant to a regulation under section
18 4(d).”.

19 **SEC. 7. EDUCATION AND TECHNICAL ASSISTANCE.**

20 (a) **IN GENERAL.**—Section 13 (16 U.S.C. 1542) is
21 amended to read as follows:

22 “**PROPERTY OWNERS EDUCATION AND TECHNICAL**
23 **ASSISTANCE PROGRAM**

24 “**SEC. 13. (a) IN GENERAL.**—In cooperation with the
25 States, the Secretary shall develop and implement a pri-

1 vate landowners education and technical assistance pro-
2 gram to—

3 “(1) inform the public about this Act;

4 “(2) respond to requests for technical assist-
5 ance from property owners interested in conserving
6 species listed or proposed for listing under section
7 4(c)(1) and candidate species on the land of the
8 landowners; and

9 “(3) recognize exemplary efforts to conserve
10 species on private land.

11 “(b) ELEMENTS OF THE PROGRAM.—Under the pro-
12 gram, the Secretary shall—

13 “(1) publish educational materials and conduct
14 workshops for property owners and other members
15 of the public on the role of this Act in conserving
16 endangered species and threatened species; the prin-
17 cipal mechanisms of this Act for achieving species
18 recovery; and potential sources of technical and fi-
19 nancial assistance;

20 “(2) assist field offices in providing timely ad-
21 vice to property owners on how to comply with this
22 Act;

23 “(3) provide technical assistance to State and
24 local governments and property owners interested in
25 developing and implementing recovery plan imple-

1 mentation agreements, conservation plans, and safe
2 harbor agreements;

3 “(4) serve as a focal point for questions, re-
4 quests, and suggestions from property owners and
5 local governments concerning policies and actions of
6 the Secretary in the implementation of this Act;

7 “(5) provide training for Federal personnel re-
8 sponsible for implementing this Act on concerns of
9 property owners, to avoid unnecessary conflicts, and
10 improving implementation of this Act on private
11 land; and

12 “(6) nominate for national recognition by the
13 Secretary property owners that are exemplary man-
14 agers of land for the benefit of species listed or pro-
15 posed for listing under section 4(c)(1) or candidate
16 species.”.

17 (b) CONFORMING AMENDMENT.—The table of con-
18 tents in the first section is amended by striking the item
19 related to section 13 and inserting the following:

“Sec. 13. Private landowners education and technical assistance program.”.

20 (c) EFFECT ON PRIOR AMENDMENTS.—Nothing in
21 this section or the amendments made by this section af-
22 fects the amendments made by section 13 of the Endan-
23 gered Species Act of 1973 (87 Stat. 902), as in effect
24 on the day before the date of enactment of this Act.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) **IN GENERAL.**—Section 15(a) (16 U.S.C.
3 1542(a)) is amended—

4 (1) in paragraph (1), by striking “and
5 \$41,500,000 for fiscal year 1992” and inserting
6 “\$41,500,000 for fiscal year 1992, \$135,000,000 for
7 fiscal year 1998, \$150,000,000 for fiscal year 1999,
8 and \$165,000,000 for each of fiscal years 2000
9 through 2003”;

10 (2) in paragraph (2), by striking “and
11 \$6,750,000” and inserting “\$6,750,000”; and in-
12 serting “,\$50,000,000 for fiscal year 1998,
13 \$60,000,000 for fiscal year 1999, and \$70,000,000
14 for each of fiscal years 2000 through 2003” after
15 “and 1992”; and

16 (3) in paragraph (3), by striking “and
17 \$2,600,000” and inserting “\$2,600,000”; and insert-
18 ing “, and \$4,000,000 for each of fiscal years 1998
19 through 2003” after “and 1992”.

20 (b) **EXEMPTIONS FROM ACT.**—Section 15(b) (16
21 U.S.C. 1542(b)) is amended by inserting “and \$625,000
22 for each of fiscal years 1998 through 2003” after “and
23 1992”.

24 (c) **CONVENTION IMPLEMENTATION.**—Section 15(c)
25 (16 U.S.C. 1542(c)) is amended by striking “and
26 \$500,000” and inserting “\$500,000,” and by inserting

1 “and \$1,000,000 for each fiscal year 1998 through 2003”
2 after “and 1992.”

3 (d) ADDITIONAL AUTHORIZATIONS.—Section 15 (16
4 U.S.C. 1542) is further amended by adding the following
5 at the end:

6 “(d) FINANCIAL ASSISTANCE FOR SAFE HARBOR
7 AGREEMENTS.—There are authorized to be appropriated
8 to the Secretary of the Interior \$10,000,000 and the Sec-
9 retary of Commerce \$5,000,000 for each of fiscal years
10 1998 through 2003 to carry out section 10(1).

11 “(e) HABITAT CONSERVATION PLANNING FUND.—
12 There are authorized to be appropriated to the Habitat
13 Conservation Planning Fund established by section
14 10(a)(7) \$10,000,000 for each of fiscal years 1998
15 through 2000 and \$5,000,000 for each of fiscal years
16 2001 and 2002 to assist in the development of conserva-
17 tion plans.

18 “(f) FINANCIAL ASSISTANCE FOR RECOVERY PLAN
19 IMPLEMENTATION.—There are authorized to be appro-
20 priated to the Secretary of Interior \$30,000,000 and the
21 Secretary of Commerce \$15,000,000 for each of the fiscal
22 years 1998 through 2003 to carry out section 5(1)(4).

23 “(g) AVAILABILITY.—Amounts made available under
24 this section shall remain available until expended.

1 “(h) LIMITATION ON USE OF FUNDS.—Of the funds
2 made available to carry out section 5 for any fiscal year,
3 not less than \$32,000,000 shall be available to the Sec-
4 retary of Interior and not less than \$13,500,000 to the
5 Secretary of Commerce to implement actions to recover
6 listed species. Of the funds made available to the Sec-
7 retary of Interior and the Secretary of Commerce in each
8 fiscal year to list species, the Secretary of Interior and
9 the Secretary of Commerce shall use not less than 10%
10 of those funds in each fiscal year for delisting species. If
11 any of the funds made available by the previous sentence
12 are not needed in that fiscal year for delisting eligible spe-
13 cies, those funds shall be available for listing.”.

14 (e) ASSISTANCE TO STATES FOR CONSERVATION AC-
15 TIVITIES.—Section 6(i) (16 U.S.C. 1535(i)) is amended
16 by adding at the end the following:

17 “(3) ASSISTANCE TO STATES FOR CONSERVATION AC-
18 TIVITIES.—There are authorized to be appropriated to the
19 Secretary such sums as are necessary for each of fiscal
20 years 1998 through 2003 to provide financial assistance
21 to State agencies to carry out conservation activities under
22 other sections of this Act, including the provision of tech-
23 nical assistance for the development and implementation
24 of recovery plans.”.

1 **SEC. 9. OTHER AMENDMENTS.**

2 (a) DEFINITIONS.—

3 (1) CANDIDATE SPECIES.—Section 3 is amend-
4 ed by inserting the following paragraph after para-
5 graph (1) and redesignating the subsequent para-
6 graphs accordingly:

7 “(2) CANDIDATE SPECIES.—The term ‘can-
8 didate species’ means a species for which the Sec-
9 retary has on file sufficient information on biological
10 vulnerability and threats to support a proposal to
11 list the species as an endangered species or a threat-
12 ened species, but for which listing is precluded be-
13 cause of pending proposals to list species that are of
14 a higher priority. This definition shall not apply to
15 any species defined as a ‘candidate species’ by the
16 Secretary of Commerce prior to the date of enact-
17 ment of the Endangered Species Recovery Act of
18 1997.”.

19 (2) IN COOPERATION WITH THE STATES.—Sec-
20 tion 3 (16 U.S.C. 1532) is amended by inserting the
21 following paragraph after paragraph (11) (as redesi-
22 gnated by this subsection):

23 “(12) IN COOPERATION WITH THE STATES.—
24 The term ‘in cooperation with the States’ means a
25 process in which—

1 “(A) the State agency in each of the af-
2 fected States, or the State agency’s representa-
3 tive, is given an opportunity to participate in a
4 meaningful and timely manner in the develop-
5 ment of the standards, guidelines, and regula-
6 tions to implement the applicable provisions of
7 this Act; and

8 “(B) the Secretary carefully considers all
9 substantive concerns raised by the State agen-
10 cy, or the State agency’s representative, and, to
11 the maximum extent practicable consistent with
12 this Act, incorporates their suggestions and rec-
13 ommendations, while retaining final decision
14 making authority.”.

15 (3) RURAL AREA.—Section 3 (16 U.S.C. 1532)
16 is amended by inserting the following new paragraph
17 after paragraph (16) (redesignated by this sub-
18 section and section 4(a)) and redesignating the sub-
19 sequent paragraphs accordingly:

20 “(17) RURAL AREA.—The term ‘rural area’
21 means a county or unincorporated area that has no
22 city or town that has a population of more than
23 10,000 inhabitants.”.

24 (4) COMMONWEALTH OF THE NORTHERN MARI-
25 ANA ISLANDS.—Section 3(20) (16 U.S.C. 1532(18))

1 (as redesignated by this subsection and section 4(a))
2 is amended by striking “Trust Territories of the Pa-
3 cific Islands” and inserting “Commonwealth of the
4 Northern Mariana Islands”.

5 (b) FINDINGS, PURPOSES, AND POLICY.—Section
6 2(a)(3) (16 U.S.C. 1531(a)(3)) is amended by inserting
7 “commercial,” after “recreational.”

8 (c) NO TAKE AGREEMENTS.—Section 9 (16 U.S.C.
9 1538) is amended by adding at the end thereof the follow-
10 ing new subsection:

11 “(h) NO TAKE AGREEMENTS.—The Secretary and a
12 non-Federal property owner may, at the request of the
13 property owner, enter into an agreement identifying activi-
14 ties of the property owner that will not result in a violation
15 of the prohibitions of paragraphs (1)(B), (1)(C), and
16 (2)(B) of section 9(a). The Secretary shall respond to a
17 request for an agreement submitted by a property owner
18 within 90 days of receipt.”

19 (d) CONFORMING AMENDMENTS.—

20 (1) TITLE.—The title of section 10 (16 U.S.C.
21 1539) is amended to read as follows:

22 “CONSERVATION MEASURES AND EXCEPTIONS”.

1 (2) ~~TABLE OF CONTENTS.~~—The table of con-
 2 tents in the first section of the Act is amended with
 3 respect to the item relating to section 10 to read as
 4 follows:

“Sec. 10. Conservation measures and exceptions.”

5 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

6 (a) *SHORT TITLE.*—This Act may be cited as the “En-
 7 dangered Species Recovery Act of 1997”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Listing and delisting species.
Sec. 3. Enhanced recovery planning.
Sec. 4. Interagency consultation and cooperation.
Sec. 5. Conservation plans.
Sec. 6. Enforcement.
Sec. 7. Education and technical assistance.
Sec. 8. Authorization of appropriations.
Sec. 9. Other amendments.

10 (c) *REFERENCES TO ENDANGERED SPECIES ACT OF*
 11 *1973.*—Except as otherwise expressly provided, whenever in
 12 *this Act an amendment or repeal is expressed in terms of*
 13 *an amendment to, or repeal of, a section or other provision,*
 14 *the reference shall be considered to be made to that section*
 15 *or provision of the Endangered Species Act of 1973 (16*
 16 *U.S.C. 1531 et seq.).*

17 **SEC. 2. LISTING AND DELISTING SPECIES.**

18 (a) *BEST SCIENTIFIC AND COMMERCIAL DATA AVAIL-*
 19 *ABLE.*—Section 3 (16 U.S.C. 1532) is amended—

1 (1) *by striking the section heading and inserting*
2 *the following:*

3 “*DEFINITIONS AND GENERAL PROVISIONS*”;

4 (2) *by striking “For the purposes of this*
5 *Act—” and inserting the following:*

6 “(a) *DEFINITIONS.—In this Act:*”; and

7 (3) *by adding at the end the following:*

8 “(b) *GENERAL PROVISIONS.—*

9 “*(1) BEST SCIENTIFIC AND COMMERCIAL DATA*
10 *AVAILABLE.—Where this Act requires the Secretary to*
11 *use the best scientific and commercial data available,*
12 *the Secretary, when evaluating comparable data, shall*
13 *give greater weight to scientific or commercial data*
14 *that is empirical or has been field-tested or peer-re-*
15 *viewed.”.*

16 (b) *CONFORMING AMENDMENT.—The table of contents*
17 *in the first section (16 U.S.C. prec. 1531) is amended by*
18 *striking the item relating to section 3 and inserting the fol-*
19 *lowing:*

 “*Sec. 3. Definitions and general provisions.*”.

20 (c) *LISTING AND DELISTING.—*

21 (1) *FACTORS CONSIDERED FOR LISTING.—Sec-*
22 *tion 4(a)(1) (16 U.S.C. 1533(a)(1)) is amended—*

23 (A) *in subparagraph (C), by inserting “in-*
24 *troduced species, competition,” before “disease or*
25 *predation”; and*

1 (B) in subparagraph (D), by inserting
 2 “Federal, State, and local government and inter-
 3 national” before “regulatory mechanisms”.

4 (2) *CRITICAL HABITAT.*—Section 4(a) (16 U.S.C.
 5 1533(a)) is amended by striking paragraph (3).

6 (3) *DELISTING.*—Section 4(b)(2) (16 U.S.C.
 7 1533(b)(2)) is amended to read as follows:

8 “(2) *DELISTING.*—The Secretary shall, in ac-
 9 cordance with section 5 and on a determination that
 10 the goals of the recovery plan for a species have been
 11 met, initiate the procedures for determining, in ac-
 12 cordance with subsection (a)(1), whether to remove the
 13 species from a list published under subsection (c).”

14 (4) *RESPONSE TO PETITIONS.*—

15 (A) *IN GENERAL.*—Section 4(b)(3) (16
 16 U.S.C. 1533(b)(3)) is amended to read as follows:

17 “(3) *RESPONSE TO PETITIONS.*—

18 (A) *ACTION MAY BE WARRANTED.*—

19 “(i) *IN GENERAL.*—To the maximum
 20 extent practicable, not later than 90 days
 21 after receiving the petition of an interested
 22 person under section 553(e) of title 5, Unit-
 23 ed States Code, to—

24 “(I) add a species to;

25 “(II) remove a species from; or

1 “(III) change the status of a spe-
2 cies from a previous determination
3 with respect to;

4 either of the lists published under subsection
5 (c), the Secretary shall make a finding as to
6 whether the petition presents substantial
7 scientific or commercial information indi-
8 cating that the petitioned action may be
9 warranted. If a petition is found to present
10 such information, the Secretary shall
11 promptly commence a review of the status
12 of the species concerned. The Secretary shall
13 promptly publish each finding made under
14 this subparagraph in the Federal Register.

15 “(ii) *MINIMUM DOCUMENTATION.*—A
16 finding that the petition presents the infor-
17 mation described in clause (i) shall not be
18 made unless the petition provides—

19 “(I) documentation that the fish,
20 wildlife, or plant that is the subject of
21 the petition is a species;

22 “(II) a description of the avail-
23 able data on the historical and current
24 range and distribution of the species;

1 “(III) an appraisal of the avail-
2 able data on the status and trends of
3 populations of the species;

4 “(IV) an appraisal of the avail-
5 able data on the threats to the species;
6 and

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

11 “(iii) NOTIFICATION TO THE
12 STATES.—

13 “(I) PETITIONED ACTIONS.—If the
14 petition is found to present the infor-
15 mation described in clause (i), the Sec-
16 retary shall notify and provide a copy
17 of the petition to the State agency in
18 each State in which the species is be-
19 lieved to occur and solicit the assess-
20 ment of the agency, to be submitted to
21 the Secretary not later than 90 days
22 after the notification, as to whether the
23 petitioned action is warranted.

24 “(II) OTHER ACTIONS.—If the
25 Secretary has not received a petition

1 for a species and the Secretary is con-
2 sidering proposing to list such species
3 as either threatened or endangered
4 under subsection (a), the Secretary
5 shall notify the State agency in each
6 State in which the species is believed to
7 occur and solicit the assessment of the
8 agency, to be submitted to the Sec-
9 retary not later than 90 days after the
10 notification, as to whether the listing
11 would be in accordance with subsection
12 (a).

13 “(III) CONSIDERATION OF STATE
14 ASSESSMENTS.—Prior to publication
15 of a determination that a petitioned
16 action is warranted or the issuance of
17 a proposed regulation, the Secretary
18 shall consider any State assessments
19 submitted within the comment period
20 established by subclause (I) or (II).

21 “(B) PETITION TO CHANGE STATUS OR
22 DELIST.—A petition may be submitted to the
23 Secretary under subparagraph (A) to change the
24 status of a species or to remove a species from

1 *either of the lists published under subsection (c)*
2 *in accordance with subsection (a)(1), if—*

3 “(i) *the current listing is no longer ap-*
4 *propriate because of a change in the factors*
5 *identified under subsection (a)(1); or*

6 “(ii) *with respect to a petition to re-*
7 *move a species from either of the lists—*

8 “(I) *new data or a reinterpretation*
9 *of prior data indicate that re-*
10 *moval is appropriate;*

11 “(II) *the species is extinct; or*

12 “(III) *the recovery goals estab-*
13 *lished for the species in a recovery plan*
14 *approved under section 5(h) have been*
15 *achieved.*

16 “(C) *DETERMINATION.—Not later than one*
17 *year after receiving a petition that is found*
18 *under subparagraph (A)(i) to present substantial*
19 *information indicating that the petitioned action*
20 *may be warranted, the Secretary shall make one*
21 *of the following findings:*

22 “(i) *NOT WARRANTED.—The petitioned*
23 *action is not warranted, in which case the*
24 *Secretary shall promptly publish the find-*
25 *ing in the Federal Register.*

1 “(ii) *WARRANTED.*—*The petitioned ac-*
2 *tion is warranted, in which case the Sec-*
3 *retary shall promptly publish in the Fed-*
4 *eral Register a general notice and the com-*
5 *plete text of a proposed regulation to imple-*
6 *ment the action in accordance with para-*
7 *graph (5).*

8 “(iii) *WARRANTED BUT PRECLUDED.*—
9 *The petitioned action is warranted, but—*

10 “(I) *the immediate proposal and*
11 *timely promulgation of a final regula-*
12 *tion implementing the petitioned ac-*
13 *tion in accordance with paragraphs*
14 *(5) and (6) is precluded by pending*
15 *proposals to determine whether any*
16 *species is an endangered species or a*
17 *threatened species; and*

18 “(II) *expeditious progress is being*
19 *made to add qualified species to either*
20 *of the lists published under subsection*
21 *(c) and to remove from the lists species*
22 *for which the protections of this Act*
23 *are no longer necessary;*

24 *in which case the Secretary shall promptly*
25 *publish the finding in the Federal Register,*

1 *together with a description and evaluation*
2 *of the reasons and data on which the find-*
3 *ing is based.*

4 “(D) *SUBSEQUENT DETERMINATION.*—*A pe-*
5 *tition with respect to which a finding is made*
6 *under subparagraph (C)(iii) shall be treated as*
7 *a petition that is resubmitted to the Secretary*
8 *under subparagraph (A) on the date of the find-*
9 *ing and that presents substantial scientific or*
10 *commercial information that the petitioned ac-*
11 *tion may be warranted.*

12 “(E) *JUDICIAL REVIEW.*—*Any negative*
13 *finding described in subparagraph (A)(i) and*
14 *any finding described in clause (i) or (iii) of*
15 *subparagraph (C) shall be subject to judicial re-*
16 *view.*

17 “(F) *MONITORING AND EMERGENCY LIST-*
18 *ING.*—*The Secretary shall implement a system to*
19 *monitor effectively the status of each species with*
20 *respect to which a finding is made under sub-*
21 *paragraph (C)(iii) and shall make prompt use of*
22 *the authority under paragraph (7) to prevent a*
23 *significant risk to the well-being of the species.”.*

24 “(B) *CONFORMING AMENDMENT.*—*Section*
25 *6(d)(1) (16 U.S.C. 1535(d)(1)) is amended in the*

1 *first sentence by striking “subparagraph (C)”*
2 *and inserting “subparagraph (F)”.*

3 (5) *PROPOSED REGULATIONS.*—Section 4(b)(5)
4 (16 U.S.C. 1533(b)(5)) *is amended—*

5 (A) *by striking “(5) With respect to any*
6 *regulation” and inserting the following:*

7 “*(5) PROPOSED REGULATIONS AND REVIEW.—*
8 *With respect to any regulation”;*

9 (B) *by striking “a determination, designa-*
10 *tion, or revision” and inserting “a determina-*
11 *tion or change in status”;*

12 (C) *by striking “(a)(1) or (3),” and insert-*
13 *ing “(a)(1),”;*

14 (D) *by striking “in the Federal Register,”*
15 *and inserting “in the Federal Register as pro-*
16 *vided by paragraph (8),”; and*

17 (E) *by striking subparagraph (E) and in-*
18 *serting the following:*

19 “*(E) at the request of any person not later*
20 *than 45 days after the date of publication of gen-*
21 *eral notice, promptly hold at least one public*
22 *hearing in each State that would be affected by*
23 *the proposed regulation (including at least one*
24 *hearing in an affected rural area, if any) except*
25 *that the Secretary shall not be required to hold*

1 *more than five hearings under this subpara-*
2 *graph.”.*

3 (6) *FINAL REGULATIONS.—*

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

8 “(6) *FINAL REGULATIONS.—*

9 “(A) *IN GENERAL.—Within the one-year pe-*
10 *riod beginning on the date on which general no-*
11 *tice is published in accordance with paragraph*
12 *(5)(A)(i) regarding a proposed regulation, the*
13 *Secretary shall publish in the Federal Register—*

14 “(i) *a final regulation to implement*
15 *the determination;*

16 “(ii) *notice that the one-year period is*
17 *being extended under subparagraph (B)(i);*
18 *or*

19 “(iii) *notice that the proposed regula-*
20 *tion is being withdrawn under subpara-*
21 *graph (B)(ii), together with the finding on*
22 *which the withdrawal is based.”.*

23 (B) *CONFORMING AMENDMENTS.—Section*
24 *4(b)(6) (16 U.S.C. 1533(b)(6)) is amended—*

1 (i) in subparagraph (B)(i), by striking
2 “or revision”;

3 (ii) in subparagraph (B)(iii), by strik-
4 ing “or revision concerned, a finding that
5 the revision should not be made,”; and

6 (iii) by striking subparagraph (C).

7 (7) PUBLICATION OF DATA AND INFORMATION.—

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

9 (A) by striking “a summary by the Sec-
10 retary of the data” and inserting “a summary
11 by the Secretary of the best scientific and com-
12 mercial data available”;

13 (B) by striking “is based and shall” and in-
14 serting “is based, shall”; and

15 (C) by striking “regulation; and if such reg-
16 ulation designates or revises critical habitat,
17 such summary shall, to the maximum extent
18 practicable, also include a brief description and
19 evaluation of those activities (whether public or
20 private) which, in the opinion of the Secretary,
21 if undertaken may adversely modify such habi-
22 tat, or may be affected by such designation.” and
23 inserting “regulation, and shall provide, to the
24 degree that it is relevant and available, informa-
25 tion regarding the status of the affected species,

1 *including current population, population trends,*
2 *current habitat, food sources, predators, breeding*
3 *habits, captive breeding efforts, governmental*
4 *and nongovernmental conservation efforts, or*
5 *other pertinent information.”.*

6 (8) *SOUND SCIENCE.—Section 4(b) (16 U.S.C.*
7 *1533(b)) is amended by adding at the end the follow-*
8 *ing:*

9 “(9) *ADDITIONAL DATA.—*

10 “(A) *IN GENERAL.—The Secretary shall*
11 *identify and publish in the Federal Register with*
12 *the notice of a proposed regulation pursuant to*
13 *paragraph (5)(A)(i) a description of additional*
14 *scientific and commercial data that would assist*
15 *in the preparation of a recovery plan and—*

16 “(i) *invite any person to submit the*
17 *data to the Secretary; and*

18 “(ii) *describe the steps that the Sec-*
19 *retary plans to take for acquiring addi-*
20 *tional data.*

21 “(B) *RECOVERY PLANNING.—Data identi-*
22 *fied and obtained under subparagraph (A) shall*
23 *be considered by the recovery team and the Sec-*
24 *retary in the preparation of the recovery plan in*
25 *accordance with section 5.*

1 “(C) *NO DELAY AUTHORIZED.*—Nothing in
2 *this paragraph waives or extends any deadline*
3 *for publishing a final rule to implement a deter-*
4 *mination (except for the extension provided in*
5 *paragraph (6)(B)(i)) or any deadline under sec-*
6 *tion 5.*

7 “(10) *INDEPENDENT SCIENTIFIC REVIEW.*—

8 “(A) *IN GENERAL.*—In the case of a regula-
9 *tion proposed by the Secretary to implement a*
10 *determination under subsection (a)(1) that any*
11 *species is an endangered species or a threatened*
12 *species or that any species currently listed as an*
13 *endangered species or a threatened species should*
14 *be removed from any list published pursuant to*
15 *subsection (c), the Secretary shall provide for*
16 *independent scientific peer review by—*

17 “(i) *selecting independent referees pur-*
18 *suant to subparagraph (B); and*

19 “(ii) *requesting the referees to conduct*
20 *the review, considering all relevant informa-*
21 *tion, and make a recommendation to the*
22 *Secretary in accordance with this para-*
23 *graph not later than 150 days after the gen-*
24 *eral notice is published pursuant to para-*
25 *graph (5)(A)(i).*

1 “(B) *SELECTION OF REFEREES.*—For each
2 independent scientific review to be conducted
3 pursuant to subparagraph (A), the Secretary
4 shall select three independent referees from a list
5 provided by the National Academy of Sciences,
6 who—

7 “(i) through publication of peer-re-
8 viewed scientific literature or other means,
9 have demonstrated scientific expertise on the
10 species or a similar species or other sci-
11 entific expertise relevant to the decision of
12 the Secretary under subsection (a);

13 “(ii) do not have, or represent any per-
14 son with, a conflict of interest with respect
15 to the determination that is the subject of
16 the review; and

17 “(iii) are not participants in a peti-
18 tion to list, change the status of, or remove
19 the species under paragraph (3)(A)(i), the
20 assessment of a State for the species under
21 paragraph (3)(A)(iii), or the proposed or
22 final determination of the Secretary.

23 “(C) *FINAL DETERMINATION.*—The Sec-
24 retary shall take one of the actions under para-
25 graph (6)(A) not later than one year after the

1 *date of publication of the general notice of the*
2 *proposed determination. If the referees have*
3 *made a recommendation in accordance with sub-*
4 *paragraph (A)(ii), the Secretary shall evaluate*
5 *and consider the information that results from*
6 *the independent scientific review and include in*
7 *the final determination—*

8 *“(i) a summary of the results of the*
9 *independent scientific review; and*

10 *“(ii) in a case in which the rec-*
11 *ommendation of a majority of the referees*
12 *who conducted the independent scientific re-*
13 *view under subparagraph (A) is not fol-*
14 *lowed, an explanation as to why the rec-*
15 *ommendation was not followed.*

16 *“(D) FEDERAL ADVISORY COMMITTEE*
17 *ACT.—The selection and activities of referees se-*
18 *lected pursuant to this Act shall not be subject to*
19 *the Federal Advisory Committee Act (5 U.S.C.*
20 *App.).”.*

21 (9) *LISTS.—Section 4(c)(1) (16 U.S.C.*
22 *1533(c)(1)) is amended—*

23 *(A) in the second sentence, by inserting*
24 *“designated” before “critical habitat”; and*

1 (B) *in the third sentence, by striking “deter-*
2 *minations, designations, and revisions” and in-*
3 *serting “determinations”.*

4 (10) *PROTECTIVE REGULATION.—Section 4(d)*
5 *(16 U.S.C. 1533(d)) is amended—*

6 (A) *by striking “Whenever any species is*
7 *listed” and inserting the following:*

8 “*(1) IN GENERAL.—Whenever any species is list-*
9 *ed”; and*

10 (B) *by adding at the end the following:*

11 “*(2) NEW LISTINGS.—With respect to each spe-*
12 *cies listed as a threatened species after the date of en-*
13 *actment of this paragraph, regulations applicable*
14 *under paragraph (1) to the species shall be specific to*
15 *that species by the date on which the Secretary is re-*
16 *quired to approve a recovery plan for the species pur-*
17 *suant to section 5(c) and may be subsequently re-*
18 *vised.”.*

19 (11) *RECOVERY PLANS.—Section 4 (16 U.S.C.*
20 *1533) is amended by striking subsection (f) and redesi-*
21 *gnating subsections (g) through (i) as subsections (f)*
22 *through (h), respectively.*

23 (12) *STATE CONSERVATION AGREEMENTS.—Sec-*
24 *tion 4 (16 U.S.C. 1533) (as amended by paragraph*
25 *(11)) is amended by adding at the end the following:*

1 “(i) *STATE CONSERVATION AGREEMENTS.*—*The Sec-*
2 *retary may enter into a conservation agreement with one*
3 *or more States for a species that has been proposed for list-*
4 *ing, is a candidate species, or is likely to become a can-*
5 *didate species in the near future within the State. The Sec-*
6 *retary may approve an agreement if, after notice and op-*
7 *portunity for public comment, the Secretary finds that—*

8 “(1) *for species covered by the agreement, the ac-*
9 *tions taken under the agreement, if undertaken by all*
10 *States within the range of the species, would produce*
11 *a conservation benefit that would be likely to elimi-*
12 *nate the need to list the species as threatened or en-*
13 *dangered under this section for the duration of the*
14 *agreement;*

15 “(2) *the actions taken under the agreement will*
16 *not adversely affect an endangered species or a threat-*
17 *ened species;*

18 “(3) *the agreement contains such other measures*
19 *as the Secretary may require as being necessary or*
20 *appropriate for the purposes of the agreement;*

21 “(4) *the State will ensure adequate funding and*
22 *enforcement to implement the agreement; and*

23 “(5) *the agreement includes such monitoring and*
24 *reporting requirements as the Secretary considers nec-*

1 *essary for determining whether the terms and condi-*
2 *tions of the agreement are being complied with.”.*

3 (13) *CONFORMING AMENDMENT.—Section 4(g)*
4 *(as redesignated by paragraph (11)) is amended in*
5 *paragraph (4) by striking “subsection (f) of this sec-*
6 *tion” and inserting “section 5”.*

7 (d) *PUBLIC AVAILABILITY OF DATA.—Section 3(b) (as*
8 *amended by subsection (a)) is amended by adding at the*
9 *end the following:*

10 “(2) *FREEDOM OF INFORMATION ACT EXEMP-*
11 *TION.—The Secretary, and the head of any other Fed-*
12 *eral agency on the recommendation of the Secretary,*
13 *may withhold or limit the availability of data re-*
14 *quested to be released pursuant to section 552 of title*
15 *5, United States Code, if the data describe or identify*
16 *the location of an endangered species, a threatened*
17 *species, or a species that has been proposed to be list-*
18 *ed as threatened or endangered, and release of the*
19 *data would be likely to result in an increased taking*
20 *of the species, except that data shall not be withheld*
21 *pursuant to this paragraph in response to a request*
22 *regarding the presence of those species on private land*
23 *by the owner of that land.”.*

1 **SEC. 3. ENHANCED RECOVERY PLANNING.**

2 (a) *REDESIGNATION.*—Section 5 (16 U.S.C. 1534) is
3 *redesignated as section 5A.*

4 (b) *RECOVERY PLANS.*—The Act is amended by insert-
5 *ing before section 5A (as redesignated by subsection (a)) the*
6 *following:*

7 “*RECOVERY PLANS*

8 “*SEC. 5. (a) IN GENERAL.*—The Secretary, in coopera-
9 *tion with the States, and on the basis of the best scientific*
10 *and commercial data available, shall develop and imple-*
11 *ment plans (referred to in this Act as ‘recovery plans’) for*
12 *the conservation and recovery of endangered species and*
13 *threatened species that are indigenous to the United States*
14 *or in waters with respect to which the United States exer-*
15 *cises sovereign rights or jurisdiction, in accordance with the*
16 *requirements and schedules described in this section, unless*
17 *the Secretary finds, after notice and opportunity for public*
18 *comment, that a plan will not promote the conservation of*
19 *the species or because an existing plan or strategy to con-*
20 *serve the species already serves as the functional equivalent*
21 *to a recovery plan. The Secretary may authorize a State*
22 *agency to develop recovery plans pursuant to subsection*
23 *(m).*

24 “(b) *PRIORITIES.*—

25 “(1) *CRITERIA.*—To the maximum extent prac-
26 *ticable, the Secretary, in developing recovery plans,*

1 shall give priority, without regard to taxonomic clas-
2 sification, to recovery plans that—

3 “(A) address significant and immediate
4 threats to the survival of an endangered species
5 or a threatened species, have the greatest likeli-
6 hood of achieving recovery of the endangered spe-
7 cies or the threatened species, and will benefit
8 species that are more taxonomically distinct;

9 “(B) address multiple species including (i)
10 endangered species, (ii) threatened species, or
11 (iii) species that the Secretary has identified as
12 candidates or proposed for listing under section
13 4 and that are dependent on the same habitat as
14 the endangered species or threatened species cov-
15 ered by the plan;

16 “(C) reduce conflicts with construction, de-
17 velopment projects, jobs, private property, or
18 other economic activities; and

19 “(D) reduce conflicts with military training
20 and operations.

21 “(2) PRIORITY SYSTEM.—To carry out subsection
22 (c) of this section and section 3(e) of the Endangered
23 Species Recovery Act of 1997 in the most efficient and
24 effective manner practicable, the Secretary shall de-
25 velop and implement a priority ranking system for

1 *the preparation of recovery plans based on all of the*
2 *factors described in subparagraphs (A) through (D) of*
3 *paragraph (1).*

4 *“(c) SCHEDULE.—For each species determined to be*
5 *an endangered species or a threatened species after the date*
6 *of enactment of this subsection for which the Secretary is*
7 *required to develop a recovery plan under subsection (a),*
8 *the Secretary shall publish—*

9 *“(1) not later than 18 months after the date of*
10 *the publication under section 4 of the final regulation*
11 *containing the listing determination, a draft recovery*
12 *plan; and*

13 *“(2) not later than 30 months after the date of*
14 *publication under section 4 of the final regulation*
15 *containing the listing determination, a final recovery*
16 *plan.*

17 *“(d) APPOINTMENT AND ROLE OF RECOVERY TEAM.—*

18 *“(1) IN GENERAL.—Not later than 60 days after*
19 *the date of the publication under section 4 of the final*
20 *regulation containing the listing determination for a*
21 *species, the Secretary, in cooperation with the affected*
22 *States, shall either appoint a recovery team to develop*
23 *a recovery plan for the species or publish a notice*
24 *pursuant to paragraph (3) that a recovery team shall*
25 *not be appointed. Recovery teams shall include the*

1 *Secretary and at least one representative from the*
2 *State agency of each of the affected States choosing to*
3 *participate and be broadly representative of the con-*
4 *stituencies with an interest in the species and its re-*
5 *covery and in the economic or social impacts of recov-*
6 *ery including representatives of Federal agencies,*
7 *tribal governments, local governments, academic insti-*
8 *tutions, private individuals and organizations, and*
9 *commercial enterprises. The recovery team members*
10 *shall be selected for their knowledge of the species or*
11 *for their expertise in the elements of the recovery plan*
12 *or its implementation.*

13 *“(2) DUTIES OF THE RECOVERY TEAM.—Each*
14 *recovery team shall prepare and submit to the Sec-*
15 *retary the draft recovery plan that shall include re-*
16 *covery measures recommended by the team and alter-*
17 *natives, if any, to meet the recovery goal under sub-*
18 *section (e)(1). The recovery team may also be called*
19 *on by the Secretary to assist in the implementation,*
20 *review, and revision of recovery plans. The recovery*
21 *team shall also advise the Secretary concerning the*
22 *designation of critical habitat, if any.*

23 *“(3) EXCEPTION.—*

24 *“(A) IN GENERAL.—Notwithstanding para-*
25 *graph (1), the Secretary may, after notice and*

1 *opportunity for public comment, establish cri-*
2 *teria to identify species for which the appoint-*
3 *ment of a recovery team would not be required*
4 *under this subsection, taking into account the*
5 *availability of resources for recovery planning,*
6 *the extent and complexity of the expected recov-*
7 *ery activities, and the degree of scientific uncer-*
8 *tainty associated with the threats to the species.*

9 “(B) *STATE OPTION.*—*If the Secretary elects*
10 *not to appoint a recovery team, the Secretary*
11 *shall provide notice to each affected State and*
12 *shall provide the affected States the opportunity*
13 *to appoint a recovery team and develop a recov-*
14 *ery plan, in accordance with subsection (m).*

15 “(C) *SECRETARIAL DUTY.*—*If a recovery*
16 *team is not appointed, the Secretary shall per-*
17 *form all duties of the recovery team required by*
18 *this section.*

19 “(4) *TRAVEL EXPENSES.*—*The Secretary is au-*
20 *thorized to provide travel expenses (including per*
21 *diem in lieu of subsistence at the same level as au-*
22 *thorized by section 5703 of title 5, United States*
23 *Code) to recovery team members.*

24 “(5) *FEDERAL ADVISORY COMMITTEE ACT.*—*The*
25 *Federal Advisory Committee Act (5 U.S.C. App.)*

1 *shall not apply to the selection or activities of a re-*
2 *covery team appointed pursuant to this subsection or*
3 *subsection (m).*

4 “(e) *CONTENTS OF RECOVERY PLANS.—Each recovery*
5 *plan shall contain:*

6 “(1) *BIOLOGICAL RECOVERY GOAL.—*

7 “(A) *IN GENERAL.—Not later than 180*
8 *days after the appointment of a recovery team*
9 *under this section, those members of the recovery*
10 *team with relevant scientific expertise shall es-*
11 *tablish and submit to the Secretary a rec-*
12 *ommended biological recovery goal to conserve*
13 *and recover the species that, when met, would re-*
14 *sult in the determination, in accordance with*
15 *section 4, that the species be removed from the*
16 *list. The goal shall be based solely on the best sci-*
17 *entific and commercial data available. The re-*
18 *covery goal shall be expressed as objective and*
19 *measurable biological criteria. When the goal is*
20 *met, the Secretary shall initiate the procedures*
21 *for determining whether, in accordance with sec-*
22 *tion 4(a)(1), to remove the species from the list.*

23 “(B) *PEER REVIEW.—The recovery team*
24 *shall promptly obtain independent scientific re-*
25 *view of the recommended biological recovery goal.*

1 “(2) *RECOVERY MEASURES.*—*The recovery plan*
2 *shall incorporate recovery measures that will meet the*
3 *recovery goal.*

4 “(A) *MEASURES.*—*The recovery measures*
5 *may incorporate general and site-specific meas-*
6 *ures for the conservation and recovery of the spe-*
7 *cies such as—*

8 “(i) *actions to protect and restore habi-*
9 *tat;*

10 “(ii) *research;*

11 “(iii) *establishment of refugia, captive*
12 *breeding, and releases of experimental popu-*
13 *lations;*

14 “(iv) *actions that may be taken by*
15 *Federal agencies, including actions that use,*
16 *to the maximum extent practicable, Federal*
17 *lands; and*

18 “(v) *opportunities to cooperate with*
19 *State and local governments and other per-*
20 *sons to recover species, including through*
21 *the development and implementation of con-*
22 *servation plans under section 10.*

23 “(B) *DRAFT RECOVERY PLANS.*—

24 “(i) *IN GENERAL.*—*In developing a*
25 *draft recovery plan, the recovery team or, if*

1 *there is no recovery team, the Secretary,*
2 *shall consider alternative measures and rec-*
3 *ommend measures to meet the recovery goal*
4 *and the benchmarks. The recovery measures*
5 *shall achieve an appropriate balance among*
6 *the following factors—*

7 “(I) *the effectiveness of the meas-*
8 *ures in meeting the recovery goal;*

9 “(II) *the period of time in which*
10 *the recovery goal is likely to be*
11 *achieved, provided that the time period*
12 *within which the recovery goal is to be*
13 *achieved will not pose a significant*
14 *risk to recovery of the species; and*

15 “(III) *the social and economic im-*
16 *pacts (both quantitative and quali-*
17 *tative) of the measures and the dis-*
18 *tribution of the impacts across regions*
19 *and industries.*

20 “(ii) *DESCRIPTION OF ALTER-*
21 *NATIVES.—The draft plan shall include a*
22 *description of any alternative recovery*
23 *measures considered, but not included in the*
24 *recommended measures, and an explanation*
25 *of how any such measures considered were*

1 *assessed and the reasons for their selection*
2 *or rejection.*

3 “(iii) *DESCRIPTION OF ECONOMIC EF-*
4 *FECTS.—If the recommended recovery meas-*
5 *ures identified in clause (i) would impose*
6 *significant costs on a municipality, county,*
7 *region, or industry, the recovery team shall*
8 *prepare a description of the overall eco-*
9 *nomical effects on the public and private sec-*
10 *tors including, as appropriate, effects on*
11 *employment, public revenues, and value of*
12 *property as a result of the implementation*
13 *of the recovery plan.*

14 “(3) *BENCHMARKS.—The recovery plan shall in-*
15 *clude objective, measurable benchmarks expected to be*
16 *achieved over the course of the recovery plan to deter-*
17 *mine whether progress is being made toward the re-*
18 *covery goal. To the extent possible, current and histor-*
19 *ical population estimates, along with other relevant*
20 *factors, should be considered in determining whether*
21 *progress is being made toward meeting the recovery*
22 *goal.*

23 “(4) *FEDERAL AGENCIES.—Each recovery plan*
24 *for an endangered species or a threatened species shall*
25 *identify Federal agencies that authorize, fund, or*

1 *carry out actions that are likely to have a significant*
2 *impact on recovery of the species.*

3 “(f) *PUBLIC NOTICE AND COMMENT.*—

4 “(1) *IN GENERAL.*—*If the Secretary makes a*
5 *preliminary determination that the draft recovery*
6 *plan meets the requirements of this section, the Sec-*
7 *retary shall publish in the Federal Register and a*
8 *newspaper of general circulation in each affected*
9 *State a notice of availability and a summary of, and*
10 *a request for public comment on, the draft recovery*
11 *plan including a description of the economic effects*
12 *prepared under subsection (e)(2)(B)(iii) and the rec-*
13 *ommendations of the independent referees on the re-*
14 *covery goal.*

15 “(2) *HEARINGS.*—*At the request of any person,*
16 *the Secretary shall hold at least one public hearing on*
17 *each draft recovery plan in each State to which the*
18 *plan would apply (including at least one hearing in*
19 *an affected rural area, if any), except that the Sec-*
20 *retary may not be required to hold more than five*
21 *hearings under this paragraph.*

22 “(g) *PROCUREMENT AUTHORITY.*—*In developing and*
23 *implementing recovery plans, the Secretary may procure*
24 *the services of appropriate public and private agencies and*
25 *institutions and other qualified persons.*

1 “(h) *REVIEW AND SELECTION BY THE SECRETARY.*—

2 “(1) *REVIEW AND APPROVAL.*—*The Secretary*
3 *shall review each plan submitted by a recovery team,*
4 *including a recovery team appointed by a State pur-*
5 *suant to the authority of subsection (m), to determine*
6 *whether the plan was developed in accordance with*
7 *the requirements of this section. If the Secretary deter-*
8 *mines that the plan does not satisfy such require-*
9 *ments, the Secretary shall notify the recovery team*
10 *and give the team an opportunity to address the con-*
11 *cerns of the Secretary and resubmit a plan that satis-*
12 *fies the requirements of this section. After notice and*
13 *opportunity for public comment on the recommenda-*
14 *tions of the recovery team, the Secretary shall adopt*
15 *a final recovery plan that is consistent with the re-*
16 *quirements of this section.*

17 “(2) *SELECTION OF RECOVERY MEASURES.*—*In*
18 *each final plan the Secretary shall select recovery*
19 *measures that meet the recovery goal and the bench-*
20 *marks. The recovery measures shall achieve an appro-*
21 *priate balance among the factors described in sub-*
22 *clauses (I) through (III) of subsection (e)(2)(B)(i).*

23 “(3) *MEASURES RECOMMENDED BY RECOVERY*
24 *TEAM.*—*If the Secretary selects measures other than*
25 *the measures recommended by the recovery team, the*

1 *Secretary shall publish with the final plan an expla-*
2 *nation of why the measures recommended by the re-*
3 *covery team were not selected for the final recovery*
4 *plan.*

5 *“(4) PUBLICATION OF NOTICE ON FINAL*
6 *PLANS.—The Secretary shall publish in the Federal*
7 *Register a notice of availability, and a summary, of*
8 *the final recovery plan, and include in the final re-*
9 *covery plan a response to significant comments that*
10 *the Secretary received on the draft recovery plan.*

11 *“(i) REVIEW.—*

12 *“(1) EXISTING PLANS.—Not later than five years*
13 *after date of enactment of this subsection, the Sec-*
14 *retary shall review recovery plans published prior to*
15 *such date.*

16 *“(2) SUBSEQUENT PLANS.—The Secretary shall*
17 *review each recovery plan first approved or revised*
18 *under this section after the date of enactment of this*
19 *subsection, not later than ten years after the date of*
20 *approval or revision of the plan and every ten years*
21 *thereafter.*

22 *“(j) REVISION OF RECOVERY PLANS.—Notwithstand-*
23 *ing any other provision of this section, the Secretary shall*
24 *revise a recovery plan if the Secretary finds that substantial*
25 *new information, which may include failure to meet the*

1 benchmarks included in the plan, based on the best scientific
2 and commercial data available, indicates that the recovery
3 goal contained in the recovery plan will not achieve the con-
4 servation and recovery of the endangered species or threat-
5 ened species covered by the plan. The Secretary shall con-
6 vene a recovery team to develop the revisions required by
7 this subsection, unless the Secretary has established an ex-
8 ception for the species pursuant to subsection (d)(3).

9 “(k) *EXISTING PLANS.*—Nothing in this section shall
10 require the modification of—

11 “(1) a recovery plan approved;

12 “(2) a recovery plan on which public notice and
13 comment has been initiated; or

14 “(3) a draft recovery plan on which significant
15 progress has been made;

16 prior to the date of enactment of this subsection until the
17 recovery plan is revised by the Secretary in accordance with
18 this section.

19 “(l) *IMPLEMENTATION OF RECOVERY PLANS.*—

20 “(1) *IMPLEMENTATION AGREEMENTS.*—The Sec-
21 retary is authorized to enter into agreements with
22 Federal agencies, affected States, Indian tribes, local
23 governments, private landowners, and organizations
24 to implement specified conservation measures identi-
25 fied by an approved recovery plan that promote the

1 *recovery of the species with respect to land or water*
2 *owned by, or within the jurisdiction of, each such*
3 *party. The Secretary may enter into such agreements,*
4 *if the Secretary, after notice and opportunity for pub-*
5 *lic comment, determines that—*

6 *“(A) each non-Federal party to the agree-*
7 *ment has the legal authority and capability to*
8 *carry out the agreement;*

9 *“(B) the agreement will be reviewed and re-*
10 *vised as necessary on a regular basis (which*
11 *shall be not less often than every five years) by*
12 *the parties to the agreement to ensure that it*
13 *meets the requirements of this section; and*

14 *“(C) the agreement establishes a mechanism*
15 *for the Secretary to monitor and evaluate imple-*
16 *mentation of the agreement.*

17 *“(2) DUTY OF FEDERAL AGENCIES.—Each Fed-*
18 *eral agency identified under subsection (e)(4) shall*
19 *enter into an implementation agreement with the Sec-*
20 *retary not later than two years after the date on*
21 *which the Secretary approves the recovery plan for*
22 *the species. For purposes of satisfying this section, the*
23 *substantive provisions of the agreement shall be with-*
24 *in the sole discretion of the Secretary and the head*
25 *of the Federal agency entering into the agreement.*

1 “(3) *OTHER REQUIREMENTS.*—

2 “(A) *AGENCY ACTIONS.*—*Any action au-*
3 *thorized, funded, or carried out by a Federal*
4 *agency that is specified in a recovery plan im-*
5 *plementation agreement between the Federal*
6 *agency and the Secretary to promote the recovery*
7 *of the species and for which the agreement pro-*
8 *vides sufficient information on the nature, scope,*
9 *and duration of the action to determine the effect*
10 *of the action on any endangered species, threat-*
11 *ened species, or critical habitat shall not be sub-*
12 *ject to the requirements of section 7(a)(2) for*
13 *that species, if the action is to be carried out*
14 *during the term of the agreement and the Fed-*
15 *eral agency is in compliance with the agreement.*

16 “(B) *COMPREHENSIVE AGREEMENTS.*—*If a*
17 *non-Federal person proposes to include in an*
18 *implementation agreement a site-specific action*
19 *that the Secretary determines meets the require-*
20 *ments of subparagraph (A) and that action*
21 *would require authorization or funding by one or*
22 *more Federal agencies, the agencies authorizing*
23 *or funding the action shall participate in the de-*
24 *velopment of the agreement and shall identify, at*
25 *that time, all measures for the species that would*

1 *be required under this Act as a condition of the*
2 *authorization or funding.*

3 “(4) *FINANCIAL ASSISTANCE.*—

4 “(A) *IN GENERAL.*—*In cooperation with the*
5 *States and subject to the availability of appro-*
6 *priations under section 15(f), the Secretary may*
7 *provide a grant of up to \$25,000 to a private*
8 *landowner to assist the landowner in carrying*
9 *out a recovery plan implementation agreement*
10 *under this subsection.*

11 “(B) *PROHIBITION ON ASSISTANCE FOR RE-*
12 *QUIRED ACTIVITIES.*—*The Secretary may not*
13 *provide assistance under this paragraph for any*
14 *action that is required by a permit issued under*
15 *this Act or that is otherwise required under this*
16 *Act or other Federal law.*

17 “(C) *OTHER PAYMENTS.*—*A grant provided*
18 *to an individual private landowner under this*
19 *paragraph shall be in addition to, and not affect,*
20 *the total amount of payments the landowner is*
21 *otherwise eligible to receive under the conserva-*
22 *tion reserve program established under sub-*
23 *chapter B of chapter 1 of subtitle D of title XII*
24 *of the Food Security Act of 1985 (16 U.S.C.*
25 *3831 et seq.), the wetlands reserve program es-*

1 *established under subchapter C of that chapter (16*
2 *U.S.C. 3837 et seq.), or the Wildlife Habitat In-*
3 *centives Program established under section 387*
4 *of the Federal Agriculture Improvement and Re-*
5 *form Act of 1996 (16 U.S.C. 3836a).*

6 “(m) *STATE AUTHORITY FOR RECOVERY PLANNING.*—

7 “(1) *IN GENERAL.*—*At the request of the Gov-*
8 *ernor of a State, or the Governors of several States in*
9 *cooperation, the Secretary may authorize the respec-*
10 *tive State agency to develop the recovery plan for an*
11 *endangered species or a threatened species in accord-*
12 *ance with the requirements and schedules of sub-*
13 *sections (c), (d)(1), (d)(2), and (e) and this subsection*
14 *if the Secretary finds that—*

15 “(A) *the State or States have entered into*
16 *a cooperative agreement with the Secretary pur-*
17 *suant to section 6(c); and*

18 “(B) *the State agency has submitted a*
19 *statement to the Secretary demonstrating ade-*
20 *quate authority and capability to carry out the*
21 *requirements and schedules of subsections (c),*
22 *(d)(1), (d)(2), and (e) and this subsection.*

23 “(2) *STANDARDS AND GUIDELINES.*—*The Sec-*
24 *retary, in cooperation with the States, shall publish*
25 *standards and guidelines for the development of recov-*

1 *ery plans by a State agency under this subsection, in-*
2 *cluding standards and guidelines for interstate co-*
3 *operation and for the grant and withdrawal of au-*
4 *thorization by the Secretary under this subsection.*

5 *“(3) DUTIES OF RECOVERY TEAM.—The recovery*
6 *team shall prepare a draft recovery plan in accord-*
7 *ance with this section and shall transmit the draft*
8 *plan to the Secretary through the State agency au-*
9 *thorized to develop the recovery plan.*

10 *“(4) REVIEW OF DRAFT PLANS.—Prior to publi-*
11 *cation of a notice of availability of a draft recovery*
12 *plan, the Secretary shall review each draft recovery*
13 *plan developed pursuant to this subsection to deter-*
14 *mine whether the plan meets the requirements of this*
15 *section. If the Secretary determines that the plan does*
16 *not meet such requirements, the Secretary shall notify*
17 *the State agency and, in cooperation with the State*
18 *agency, develop a recovery plan in accordance with*
19 *this section.*

20 *“(5) REVIEW AND APPROVAL OF FINAL PLANS.—*
21 *On receipt of a draft recovery plan transmitted by a*
22 *State agency, the Secretary shall review and approve*
23 *the plan in accordance with subsection (h).*

24 *“(6) WITHDRAWAL OF AUTHORITY.—*

1 “(A) *IN GENERAL.*—*The Secretary may*
2 *withdraw the authority from a State that has*
3 *been authorized to develop a recovery plan pur-*
4 *suant to this subsection if the actions of the State*
5 *agency are not in accordance with the sub-*
6 *stantive and procedural requirements of sub-*
7 *sections (c), (d)(1), (d)(2), and (e) and this sub-*
8 *section. The Secretary shall give the State agency*
9 *an opportunity to correct any deficiencies identi-*
10 *fied by the Secretary and shall withdraw the au-*
11 *thority from the State unless the State agency*
12 *within 60 days has corrected the deficiencies*
13 *identified by the Secretary. On withdrawal of*
14 *State authority pursuant to this subsection, the*
15 *Secretary shall have an additional 18 months to*
16 *publish a draft recovery plan and an additional*
17 *12 months to publish a final recovery plan under*
18 *subsection 5(c).*

19 “(B) *PETITIONS TO WITHDRAW.*—*Any per-*
20 *son may submit a petition requesting the Sec-*
21 *retary to withdraw the authority from a State*
22 *on the basis that the actions of the State agency*
23 *are not in accordance with the substantive and*
24 *procedural requirements described in subpara-*
25 *graph (A). If the Secretary has not acted on the*

1 *petition pursuant to subparagraph (A) within*
2 *90 days, the petition shall be deemed to be denied*
3 *and the denial shall be a final agency action for*
4 *the purposes of judicial review.*

5 “(7) *DEFINITION OF STATE AGENCY.*—*For pur-*
6 *poses of this subsection, the term ‘State agency’*
7 *means—*

8 “(A) *a State agency (as defined in section*
9 *3) of each State entering into a cooperative re-*
10 *quest under paragraph (1); and*

11 “(B) *for fish and wildlife, including related*
12 *spawning grounds and habitat, on the Columbia*
13 *River and its tributaries, the Pacific Northwest*
14 *Electric Power and Conservation Planning*
15 *Council established under the Pacific Northwest*
16 *Electric Power Planning and Conservation Act*
17 *(16 U.S.C. 839 et seq.).*

18 “(n) *CRITICAL HABITAT DESIGNATION.*—

19 “(1) *RECOMMENDATION OF THE RECOVERY*
20 *TEAM.*—*Not later than nine months after the date of*
21 *publication under section 4 of a final regulation con-*
22 *taining a listing determination for a species, the re-*
23 *covery team appointed for the species shall provide*
24 *the Secretary with a description of any habitat of the*
25 *species that is recommended for designation as criti-*

1 *cal habitat pursuant to this subsection and any rec-*
2 *ommendations for special management considerations*
3 *or protection that are specific to the habitat.*

4 “(2) *DESIGNATION BY THE SECRETARY.*—*The*
5 *Secretary, to the maximum extent prudent and deter-*
6 *minable, shall by regulation designate any habitat*
7 *that is considered to be critical habitat of an endan-*
8 *gered species or a threatened species that is indige-*
9 *nous to the United States or waters with respect to*
10 *which the United States exercises sovereign rights or*
11 *jurisdiction.*

12 “(A) *DESIGNATION.*—

13 “(i) *PROPOSAL.*—*Not later than 18*
14 *months after the date on which a final list-*
15 *ing determination is made under section 4*
16 *for a species, the Secretary, after consulta-*
17 *tion and in cooperation with the recovery*
18 *team, shall publish in the Federal Register*
19 *a proposed regulation designating critical*
20 *habitat for the species.*

21 “(ii) *PROMULGATION.*—*The Secretary*
22 *shall, after consultation and in cooperation*
23 *with the recovery team, publish a final reg-*
24 *ulation designating critical habitat for a*
25 *species not later than 30 months after the*

1 *date on which a final listing determination*
2 *is made under section 4 for the species.*

3 “(B) *OTHER DESIGNATIONS.*—*If a recovery*
4 *plan is not developed under this section for an*
5 *endangered species or a threatened species, the*
6 *Secretary shall publish a final critical habitat*
7 *determination for the endangered species or*
8 *threatened species not later than three years after*
9 *making a determination that the species is an*
10 *endangered species or a threatened species.*

11 “(C) *ADDITIONAL AUTHORITY.*—*The Sec-*
12 *retary may publish a regulation designating*
13 *critical habitat for an endangered species or a*
14 *threatened species concurrently with the final*
15 *regulation implementing the determination that*
16 *the species is endangered or threatened if the*
17 *Secretary determines that designation of such*
18 *habitat at the time of listing is essential to avoid*
19 *the imminent extinction of the species.*

20 “(3) *FACTORS TO BE CONSIDERED.*—*The des-*
21 *ignation of critical habitat shall be made on the basis*
22 *of the best scientific and commercial data available*
23 *and after taking into consideration the economic im-*
24 *act, impacts to military training and operations,*
25 *and any other relevant impact, of specifying any par-*

1 *ticular area as critical habitat. The Secretary shall*
2 *describe the economic impacts and other relevant im-*
3 *acts that are to be considered under this subsection*
4 *in the publication of any proposed regulation des-*
5 *ignating critical habitat.*

6 “(4) *EXCLUSIONS.*—*The Secretary may exclude*
7 *any area from critical habitat for a species if the Sec-*
8 *retary determines that the benefits of the exclusion*
9 *outweigh the benefits of designating the area as part*
10 *of the critical habitat, unless the Secretary determines*
11 *that the failure to designate the area as critical habi-*
12 *tat will result in the extinction of the species.*

13 “(5) *REVISIONS.*—*The Secretary may, from*
14 *time-to-time and as appropriate, revise a designation.*
15 *Each area designated as critical habitat before the*
16 *date of enactment of this subsection shall continue to*
17 *be considered so designated, until the designation is*
18 *revised in accordance with this subsection.*

19 “(6) *PETITIONS.*—

20 “(A) *DETERMINATION THAT REVISION MAY*
21 *BE WARRANTED.*—*To the maximum extent prac-*
22 *ticable, not later than 90 days after receiving the*
23 *petition of an interested person under section*
24 *553(e) of title 5, United States Code, to revise a*
25 *critical habitat designation, the Secretary shall*

1 *make a finding as to whether the petition pre-*
2 *sents substantial scientific or commercial infor-*
3 *mation indicating that the revision may be war-*
4 *ranted. The Secretary shall promptly publish the*
5 *finding in the Federal Register.*

6 “(B) NOTICE OF PROPOSED ACTION.—*Not*
7 *later than one year after receiving a petition*
8 *that is found under subparagraph (A) to present*
9 *substantial information indicating that the re-*
10 *quested revision may be warranted, the Secretary*
11 *shall determine how to proceed with the requested*
12 *revision, and shall promptly publish notice of the*
13 *intention in the Federal Register.*

14 “(7) PROPOSED AND FINAL REGULATIONS.—*Any*
15 *regulation to designate critical habitat or implement*
16 *a requested revision shall be proposed and promul-*
17 *gated in accordance with paragraphs (4), (5), and (6)*
18 *of section 4(b) in the same manner as a regulation*
19 *to implement a determination with respect to listing*
20 *a species.*

21 “(o) REPORTS.—*The Secretary shall report every two*
22 *years to the Committee on Environment and Public Works*
23 *of the Senate and the Committee on Resources of the House*
24 *of Representatives on the status of efforts to develop and*
25 *implement recovery plans for all species listed pursuant to*

1 *section 4 and on the status of all species for which the plans*
2 *have been developed.”.*

3 (c) *CITIZEN SUITS.*—Section 11(g)(1)(C) (16 U.S.C.
4 1540(g)(1)(C)) is amended by inserting “or section 5” after
5 “section 4”.

6 (d) *CONFORMING AMENDMENTS FOR RECOVERY PLAN-*
7 *NING.*—

8 (1) Section 6(d)(1) (16 U.S.C. 1535(d)(1)) is
9 amended in the first sentence by striking “section
10 4(g)” and inserting “section 4(f)”.

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

13 (3) Section 7(a)(1) of the *Land and Water Con-*
14 *servaion Fund Act of 1965* (16 U.S.C. 460l–9) is
15 amended in the undesignated paragraph relating to
16 the *National Wildlife Refuge System* by striking “sec-
17 tion 5(a)” and inserting “section 5A(a)”.

18 (4) Section 5(b) of *Public Law 103–64* (16
19 U.S.C. 460iii–4(b)) is amended by striking “section
20 5(b) of the *Endangered Species Act of 1973* (16
21 U.S.C. 1534(b))” and inserting “section 5A(b) of the
22 *Endangered Species Act of 1973*”.

23 (5) Section 104(c)(4)(A)(ii)(I) of the *Marine*
24 *Mammal Protection Act of 1972* (16 U.S.C.

1 1347(c)(4)(A)(ii)(I)) is amended by striking “section
2 4(f)” and inserting “section 5”.

3 (6) Section 115(b)(2) of the Marine Mammal
4 Protection Act of 1972 (16 U.S.C. 1383(b)(2)) is
5 amended by striking “section 4(f) of the Endangered
6 Species Act of 1973 (16 U.S.C. 1533(f))” and insert-
7 ing “section 5 of the Endangered Species Act of
8 1973”.

9 (7) Section 118(f)(11) of the Marine Mammal
10 Protection Act of 1972 (16 U.S.C. 1387(f)(11)) is
11 amended by striking “section 4” and inserting “sec-
12 tion 5”.

13 (8) The table of contents in the first section (16
14 U.S.C. prec. 1531) is amended—

15 (A) by striking the item relating to section
16 5 and inserting the following:

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

17 and

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

“Sec. 18. Annual cost analysis by the Fish and Wildlife Service.”.

19 (e) *PLANS FOR PREVIOUSLY LISTED SPECIES.*—In the
20 case of species included in the list published under section
21 4(c) before the date of enactment of this Act, and for which
22 no recovery plan was developed before that date, the Sec-
23 retary of the Interior or the Secretary of Commerce, as ap-

1 *appropriate, shall develop a final recovery plan in accordance*
2 *with the requirements of section 5 (including the priorities*
3 *of section 5(b)) of the Endangered Species Act of 1973 (16*
4 *U.S.C. 1531 et seq.) (as amended by this section) for not*
5 *less than one-half of the species not later than 36 months*
6 *after the date of enactment of this Act and for all species*
7 *not later than 60 months after such date.*

8 **SEC. 4. INTERAGENCY CONSULTATION AND COOPERATION.**

9 *(a) REASONABLE AND PRUDENT ALTERNATIVES.—*

10 *(1) DEFINITION.—Subsection (a) of section 3 (16*
11 *U.S.C. 1532) (as amended by section 2(a)(2)) is*
12 *amended by inserting the following after the para-*
13 *graph defining the term “plant” and redesignating*
14 *the subsequent paragraphs accordingly:*

15 *“(15) REASONABLE AND PRUDENT ALTER-*
16 *NATIVES.—The term ‘reasonable and prudent alter-*
17 *natives’ means alternative actions identified during*
18 *consultation that can be implemented in a manner*
19 *consistent with the intended purpose of the action,*
20 *that can be implemented consistent with the scope of*
21 *the legal authority and jurisdiction of the Federal*
22 *agency, that are economically and technologically fea-*
23 *sible, and that the Secretary believes would avoid the*
24 *likelihood of jeopardizing the continued existence of*

1 *listed species or resulting in the destruction or adverse*
2 *modification of critical habitat.”.*

3 (2) *CONFORMING AMENDMENT.—Section 7(n) (16*
4 *U.S.C. 1536(n)) is amended in the first sentence by*
5 *striking “, as defined by section 3(13) of this Act,”.*

6 (b) *INVENTORY OF SPECIES ON FEDERAL LANDS.—*
7 *Section 7(a)(1) (16 U.S.C. 1536(a)(1)) is amended—*

8 (1) *by striking “CONSULTATIONS.—(1) The” and*
9 *inserting:“CONSULTATIONS.—*

10 *“(1) IN GENERAL.—*

11 *“(A) OTHER PROGRAMS.—The”;* and

12 (2) *by adding at the end the following:*

13 *“(B) INVENTORY OF SPECIES ON FEDERAL*
14 *LANDS.—The head of each Federal agency that is*
15 *responsible for the management of land and*
16 *water—*

17 *“(i) shall, to the maximum extent*
18 *practicable, by not later than December 31,*
19 *2003, prepare and provide to the Secretary*
20 *an inventory of the presence or occurrence*
21 *of endangered species, threatened species,*
22 *species that have been proposed for listing,*
23 *and species that the Secretary has identified*
24 *as candidates for listing under section 4,*

1 *that are located on land or water owned or*
2 *under the control of the agency; and*

3 “(ii) *shall, at least once every ten years*
4 *thereafter, update the inventory required by*
5 *clause (i) including newly listed species,*
6 *species proposed for listing, and candidate*
7 *species.”.*

8 (c) *CONSULTATION.—Section 7(a)(3) (16 U.S.C.*
9 *1536(a)(3)) is amended to read as follows:*

10 “(3) *CONSULTATION.—*

11 “(A) *NOTIFICATION OF ACTIONS.—Prior to*
12 *commencing any action, each Federal agency*
13 *shall notify the Secretary if the agency deter-*
14 *mines that the action may affect an endangered*
15 *species or a threatened species, or critical habi-*
16 *tat.*

17 “(B) *AGENCY DETERMINATION.—*

18 “(i) *IN GENERAL.—Each Federal agen-*
19 *cy shall consult with the Secretary as re-*
20 *quired by paragraph (2) on each action for*
21 *which notification is required under sub-*
22 *paragraph (A) unless—*

23 “(I) *the Federal agency makes a*
24 *determination based on the opinion of*
25 *a qualified biologist that the action is*

1 *not likely to adversely affect an endan-*
2 *gered species, a threatened species, or*
3 *critical habitat;*

4 “(II) *the Federal agency notifies*
5 *the Secretary that it has determined*
6 *that the action is not likely to ad-*
7 *versely affect any listed species or criti-*
8 *cal habitat and provides the Secretary,*
9 *along with the notice, a copy of the in-*
10 *formation on which the agency based*
11 *the determination; and*

12 “(III) *the Secretary does not ob-*
13 *ject in writing to the agency’s deter-*
14 *mination within 60 days after the date*
15 *such notice is received.*

16 “(i) *PUBLIC ACCESS TO INFORMA-*
17 *TION.—The Secretary shall maintain a list*
18 *of notices received from Federal agencies*
19 *under clause (i)(II) and shall make avail-*
20 *able to the public the list and, on request*
21 *(subject to the exemptions specified in sec-*
22 *tion 552(b) of title 5, United States Code),*
23 *the information received by the Secretary on*
24 *which the agency based its determination.*

1 “(iii) *ACTIONS EXCLUDED.*—*The Sec-*
2 *retary may by regulation identify categories*
3 *of actions with respect to specific endan-*
4 *gered species or threatened species that the*
5 *Secretary determines are likely to have an*
6 *adverse effect on the species or its critical*
7 *habitat and, for which, the procedures of*
8 *clause (i) shall not apply.*

9 “(iv) *BASIS FOR OBJECTION.*—*The*
10 *Secretary shall object to a determination*
11 *made by a Federal agency pursuant to*
12 *clause (i), if—*

13 “(I) *the Secretary determines that*
14 *the action may have an adverse effect*
15 *on an endangered species, a threatened*
16 *species or critical habitat;*

17 “(II) *the Secretary finds that*
18 *there is insufficient information in the*
19 *documentation accompanying the de-*
20 *termination to evaluate the impact of*
21 *the proposed action on endangered spe-*
22 *cies, threatened species, or critical*
23 *habitat; or*

24 “(III) *the Secretary finds that, be-*
25 *cause of the nature of the action and*

1 *its potential impact on an endangered*
2 *species, a threatened species, or critical*
3 *habitat, review cannot be completed in*
4 *60 days.*

5 “(v) *REPORTS.—The Secretary shall*
6 *report to the Congress not less often than bi-*
7 *ennially with respect to the implementation*
8 *of this subparagraph including in the re-*
9 *port information on the circumstances that*
10 *resulted in the Secretary making any objec-*
11 *tion to a determination made by a Federal*
12 *agency under clause (i) and the availability*
13 *of resources to carry out this section.*

14 “(C) *CONSULTATION AT REQUEST OF APPLI-*
15 *CANT.—Subject to such guidelines as the Sec-*
16 *retary may establish, a Federal agency shall con-*
17 *sult with the Secretary on any prospective agen-*
18 *cy action at the request of, and in cooperation*
19 *with, the prospective permit or license applicant*
20 *if the applicant has reason to believe that an en-*
21 *dangered species or a threatened species may be*
22 *present in the area affected by the applicant’s*
23 *project and that implementation of the action*
24 *will likely affect the species.”.*

1 (d) *GAO REPORT.*—*The Comptroller General of the*
2 *United States shall report to the Committee on Environ-*
3 *ment and Public Works of the Senate and to the Committee*
4 *on Resources of the House of Representatives not later than*
5 *three years after the date of enactment of this Act, and two*
6 *years thereafter, on the cost of formal consultation to Fed-*
7 *eral agencies and other persons carrying out actions subject*
8 *to the requirements of section 7 of the Endangered Species*
9 *Act of 1973 (16 U.S.C. 1536), including the costs of reason-*
10 *able and prudent measures imposed.*

11 (e) *NEW LISTINGS.*—*Section 7(a) (16 U.S.C. 1536(a))*
12 *is amended by adding at the end the following:*

13 “(5) *EFFECT OF LISTING ON EXISTING PLANS.*—

14 “(A) *DEFINITION OF ACTION.*—*For the pur-*
15 *poses of paragraph (2) and this paragraph, the*
16 *term ‘action’ includes land use plans under the*
17 *Federal Land Policy and Management Act of*
18 *1976 (43 U.S.C. 1701 et seq.) and land and re-*
19 *source management plans under the Forest and*
20 *Rangeland Renewable Resources Planning Act of*
21 *1974 (16 U.S.C. 1600 et seq.), as amended by the*
22 *National Forest Management Act of 1976 (16*
23 *U.S.C. 1600 (note)).*

24 “(B) *REINITIATION OF CONSULTATION.*—

25 *Whenever a determination to list a species as an*

1 *endangered species or a threatened species or des-*
2 *ignation of critical habitat requires reinitiation*
3 *of consultation under paragraph (2) on an al-*
4 *ready approved action as defined under subpara-*
5 *graph (A), the consultation shall commence*
6 *promptly, but not later than 90 days after the*
7 *date of the determination or designation, and*
8 *shall be completed not later than one year after*
9 *the date on which the consultation is commenced.*

10 *“(C) SITE-SPECIFIC ACTIONS DURING CON-*
11 *SULTATION.—Notwithstanding subsection (d), the*
12 *Federal agency implementing the land use plan*
13 *or land and resource management plan under*
14 *subparagraph (B) may authorize, fund, or carry*
15 *out a site-specific ongoing or previously sched-*
16 *uled action within the scope of the plan on the*
17 *lands prior to completing consultation on the*
18 *plan under subparagraph (B) pursuant to the*
19 *consultation procedures of this section and relat-*
20 *ed regulations, if—*

21 *“(i) no consultation on the action is*
22 *required; or*

23 *“(ii) consultation on the action is re-*
24 *quired, the Secretary issues a biological*

1 *opinion and the action satisfies the require-*
2 *ments of this section.”.*

3 (f) *IMPROVED FEDERAL AGENCY COORDINATION.—*
4 *Section 7(a) (16 U.S.C. 1536(a)) (as amended by subsection*
5 *(e)) is amended by adding at the end the following:*

6 “(6) *CONSOLIDATION OF CONSULTATION AND*
7 *CONFERENCING.—*

8 “(A) *CONSULTATION WITH A SINGLE AGEN-*
9 *CY.—Consultation and conferencing under this*
10 *subsection between the Secretary and a Federal*
11 *agency may, with the approval of the Secretary,*
12 *encompass a number of related or similar ac-*
13 *tions by the agency to be carried out within a*
14 *particular geographic area.*

15 “(B) *CONSULTATION WITH SEVERAL AGEN-*
16 *CIES.—The Secretary may consolidate requests*
17 *for consultation or conferencing from various*
18 *Federal agencies the proposed actions of which*
19 *may affect the same endangered species, threat-*
20 *ened species, or species that have been proposed*
21 *for listing under section 4, within a particular*
22 *geographic area.”.*

23 (g) *USE OF INFORMATION PROVIDED BY STATES.—*
24 *Section 7(b)(1) (16 U.S.C. 1536(b)(1)) is amended by add-*
25 *ing at the end the following:*

1 “(C) *USE OF STATE INFORMATION.*—*In con-*
 2 *ducting a consultation under subsection (a)(2),*
 3 *the Secretary shall actively solicit and consider*
 4 *information from the State agency in each af-*
 5 *ected State.”.*

6 (h) *OPPORTUNITY TO PARTICIPATE IN CONSULTA-*
 7 *TIONS.*—*Section 7(b)(1) (16 U.S.C. 1536(b)(1)) (as amend-*
 8 *ed by subsection (g)) is amended by adding at the end the*
 9 *following:*

10 “(D) *OPPORTUNITY TO PARTICIPATE IN*
 11 *CONSULTATIONS.*—

12 “(i) *IN GENERAL.*—*In conducting a*
 13 *consultation under subsection (a)(2), the*
 14 *Secretary shall provide any person who has*
 15 *sought authorization or funding from a*
 16 *Federal agency for an action that is the*
 17 *subject of the consultation, the opportunity*
 18 *to—*

19 “(I) *prior to the development of a*
 20 *draft biological opinion, submit and*
 21 *discuss with the Secretary and the*
 22 *Federal agency information relevant to*
 23 *the effect of the proposed action on the*
 24 *species and the availability of reason-*
 25 *able and prudent alternatives (if a*

1 *jeopardy opinion is to be issued) that*
2 *the Federal agency and the person can*
3 *take to avoid violation of subsection*
4 *(a)(2);*

5 *“(II) receive information, on re-*
6 *quest, subject to the exemptions speci-*
7 *fied in section 552(b) of title 5, United*
8 *States Code, on the status of the spe-*
9 *cies, threats to the species, and con-*
10 *serva-tion measures, used by the Sec-*
11 *retary to develop the draft biological*
12 *opinion and the final biological opin-*
13 *ion, including the associated incidental*
14 *taking statements; and*

15 *“(III) receive a copy of the draft*
16 *biological opinion from the Federal*
17 *agency and, prior to issuance of the*
18 *final biological opinion, submit com-*
19 *ments on the draft biological opinion*
20 *and discuss with the Secretary and the*
21 *Federal agency the basis for any find-*
22 *ing in the draft biological opinion.*

23 *“(ii) EXPLANATION.—If reasonable*
24 *and prudent alternatives are proposed by a*
25 *person under clause (i) and the Secretary*

1 *does not include the alternatives in the final*
2 *biological opinion, the Secretary shall ex-*
3 *plain to the person why those alternatives*
4 *were not included in the opinion.*

5 “(iii) *PUBLIC ACCESS TO INFORMA-*
6 *TION.—Comments and other information*
7 *submitted to, or received from, any person*
8 *(pursuant to clause (i)) who seeks author-*
9 *ization or funding for an action shall be*
10 *maintained in a file for that action by the*
11 *Secretary and shall be made available to the*
12 *public (subject to the exemptions specified*
13 *in section 552(b) of title 5, United States*
14 *Code).”.*

15 *(i) INCIDENTAL TAKING STANDARDS FOR FEDERAL*
16 *AGENCIES.—Section 7(b)(4) (16 U.S.C. 1536(b)(4)) is*
17 *amended—*

18 (1) *in clause (ii), by inserting “and mitigate”*
19 *after “to minimize”; and*

20 (2) *by adding at the end the following: “For pur-*
21 *poses of this subsection, reasonable and prudent meas-*
22 *ures shall be related both in nature and extent to the*
23 *effect of the proposed activity that is the subject of the*
24 *consultation.”.*

1 (j) *EMERGENCY CONSULTATIONS.*—Section 7 (16
2 *U.S.C. 1536*) is amended by adding the following:

3 “(q) *EMERGENCY CONSULTATIONS.*—In response to a
4 *natural disaster or other emergency, consultation under*
5 *subsection (a)(2) may be deferred by a Federal agency for*
6 *the emergency repair of a natural gas pipeline, hazardous*
7 *liquid pipeline, or electrical transmission facility, if the re-*
8 *pair is necessary to address an imminent threat to human*
9 *lives or an imminent and significant threat to the environ-*
10 *ment. Consultation shall be initiated as soon as practicable*
11 *after the threat to human lives or the environment has*
12 *abated.”.*

13 (k) *REVISION OF REGULATIONS.*—Not later than one
14 *year after the date of enactment of this Act, the Secretary*
15 *of the Interior and the Secretary of Commerce shall promul-*
16 *gate modifications to part 402 of title 50, Code of Federal*
17 *Regulations, to implement this section and the amendments*
18 *made by this section.*

19 **SEC. 5. CONSERVATION PLANS.**

20 (a) *PERMIT FOR TAKING ON THE HIGH SEAS.*—Sec-
21 *tion 10(a)(1)(B) (16 U.S.C. 1539(a)(1)(B)) is amended by*
22 *striking “section 9(a)(1)(B)” and inserting “subparagraph*
23 *(B) or (C) of section 9(a)(1)”.*

1 (b) *MONITORING.*—Section 10(a)(2)(B) (16 U.S.C.
2 1539(a)(2)(B)) is amended in the last sentence by striking
3 “reporting” and inserting “monitoring and reporting”.

4 (c) *OTHER PLANS.*—Section 10(a) (16 U.S.C. 1539(a))
5 is amended by striking paragraph (2)(C) and inserting the
6 following:

7 “(3) *MULTIPLE SPECIES CONSERVATION*
8 *PLANS.*—

9 “(A) *IN GENERAL.*—In addition to one or
10 more listed species, a conservation plan devel-
11 oped under paragraph (2) may, at the request of
12 the applicant, include species proposed for listing
13 under section 4(c), candidate species, or other
14 species found on lands or waters owned or with-
15 in the jurisdiction of the applicant covered by
16 the plan.

17 “(B) *APPROVAL CRITERIA.*—The Secretary
18 shall approve an application for a permit under
19 paragraph (1)(B) that includes species other
20 than species listed as endangered species or
21 threatened species if, after notice and oppor-
22 tunity for public comment, the Secretary finds
23 that the permit application and the related con-
24 servation plan satisfy the criteria of subpara-
25 graphs (A) and (B) of paragraph (2) with re-

1 *spect to listed species, and that the permit appli-*
2 *cation and the related conservation plan with re-*
3 *spect to other species satisfy the following re-*
4 *quirements—*

5 *“(i) the impact on non-listed species*
6 *included in the plan will be incidental;*

7 *“(ii) the applicant will, to the maxi-*
8 *mum extent practicable, minimize and*
9 *mitigate such impacts;*

10 *“(iii) the actions taken by the appli-*
11 *cant with respect to species proposed for*
12 *listing or candidates for listing included in*
13 *the plan, if undertaken by all similarly sit-*
14 *uated persons within the range of such spe-*
15 *cies, are likely to eliminate the need to list*
16 *the species as an endangered species or a*
17 *threatened species for the duration of the*
18 *agreement as a result of the activities con-*
19 *ducted by those persons;*

20 *“(iv) the actions taken by the appli-*
21 *cant with respect to other non-listed species*
22 *included in the plan, if undertaken by all*
23 *similarly situated persons within the range*
24 *of such species, would not be likely to con-*
25 *tribute to a determination to list the species*

1 *as an endangered species or a threatened*
2 *species for the duration of the agreement;*
3 *and*

4 “(v) *the criteria of subparagraphs*
5 *(A)(iv), (B)(iii), and (B)(v) of paragraph*
6 *(2);*

7 *and the Secretary has received such other assur-*
8 *ances as the Secretary may require that the plan*
9 *will be implemented. The permit shall contain*
10 *such terms and conditions as the Secretary*
11 *deems necessary or appropriate to carry out the*
12 *purposes of this paragraph, including such mon-*
13 *itoring and reporting requirements as the Sec-*
14 *retary deems necessary for determining whether*
15 *the terms and conditions are being complied*
16 *with.*

17 “(C) *TECHNICAL ASSISTANCE AND GUID-*
18 *ANCE.—To the maximum extent practicable, the*
19 *Secretary and the heads of other Federal agen-*
20 *cies, in cooperation with the States, are author-*
21 *ized and encouraged to provide technical assist-*
22 *ance or guidance to any State or person that is*
23 *developing a multiple species conservation plan*
24 *under this paragraph. In providing technical as-*
25 *istance or guidance, priority shall be given to*

1 *landowners that might otherwise encounter dif-*
2 *ficulty in developing such a plan.*

3 “(D) *DEADLINES.*—*A conservation plan de-*
4 *veloped under this paragraph shall be reviewed*
5 *and approved or disapproved by the Secretary*
6 *not later than one year after the date of submis-*
7 *sion, or within such other period of time as is*
8 *mutually agreeable to the Secretary and the ap-*
9 *plicant.*

10 “(E) *STATE AND LOCAL LAW.*—

11 “(i) *OTHER SPECIES.*—*Nothing in this*
12 *paragraph shall limit the authority of a*
13 *State or local government with respect to*
14 *fish, wildlife, or plants that have not been*
15 *listed as an endangered species or a threat-*
16 *ened species under section 4.*

17 “(ii) *COMPLIANCE.*—*An action by the*
18 *Secretary, the Attorney General, or a person*
19 *under section 11(g) to ensure compliance*
20 *with a multiple species conservation plan*
21 *and permit under this paragraph may be*
22 *brought only against a permittee or the Sec-*
23 *retary.*

24 “(F) *EFFECTIVE DATE OF PERMIT FOR NON-*
25 *LISTED SPECIES.*—*In the case of any species not*

1 *listed as an endangered species or a threatened*
2 *species, but covered by an approved multiple spe-*
3 *cies conservation plan, the permit issued under*
4 *paragraph (1)(B) shall take effect without fur-*
5 *ther action by the Secretary at the time the spe-*
6 *cies is listed pursuant to section 4(c), and to the*
7 *extent that the taking is otherwise prohibited by*
8 *subparagraph (B) or (C) of section 9(a)(1).*

9 “(4) *LOW EFFECT ACTIVITIES.*—

10 “(A) *IN GENERAL.*—*Notwithstanding para-*
11 *graph (2)(A), the Secretary may issue a permit*
12 *for a low effect activity authorizing any taking*
13 *referred to in paragraph (1)(B), if the Secretary*
14 *determines that the activity will have no more*
15 *than a negligible effect, both individually and*
16 *cumulatively, on the species, any taking associ-*
17 *ated with the activity will be incidental, and the*
18 *taking will not appreciably reduce the likelihood*
19 *of the survival and recovery of the species in the*
20 *wild. The permit shall require, to the extent ap-*
21 *propriate, actions to be taken by the permittee to*
22 *offset the effects of the activity on the species.*

23 “(B) *APPLICATIONS.*—*The Secretary shall*
24 *minimize the costs of permitting to the applicant*
25 *by developing, in cooperation with the States,*

1 *model permit applications that will constitute*
2 *conservation plans for low effect activities.*

3 “(C) *PUBLIC COMMENT; EFFECTIVE DATE.*—

4 *On receipt of a permit application for an activ-*
5 *ity that meets the requirements of subparagraph*
6 *(A), the Secretary shall provide notice in a news-*
7 *paper of general circulation in the area of the*
8 *activity not later than 30 days after receipt and*
9 *provide an opportunity for comment on the per-*
10 *mit. If the Secretary does not receive significant*
11 *adverse comment by the date that is 30 days*
12 *after the notice is published, the permit shall*
13 *take effect without further action by the Sec-*
14 *retary 60 days after the notice is published.*

15 “(5) *NO SURPRISES.*—

16 “(A) *IN GENERAL.*—*Each conservation plan*
17 *developed under this subsection shall include a*
18 *no surprises provision, as described in this para-*
19 *graph.*

20 “(B) *NO SURPRISES.*—*A person who has*
21 *entered into, and is in compliance with, a con-*
22 *servation plan under this subsection may not be*
23 *required to undertake any additional mitigation*
24 *measures for species covered by such plan if such*
25 *measures would require the payment of addi-*

1 *tional money, or the adoption of additional use,*
 2 *development, or management restrictions on any*
 3 *land, waters, or water-related rights that would*
 4 *otherwise be available under the terms of the*
 5 *plan without the consent of the permittee. The*
 6 *Secretary and the applicant, by the terms of the*
 7 *conservation plan, shall identify—*

8 *“(i) other modifications to the plan; or*

9 *“(ii) other additional measures;*

10 *if any, that the Secretary may require under ex-*
 11 *traordinary circumstances.*

12 *“(6) PERMIT REVOCATION.—After notice and an*
 13 *opportunity for correction, as appropriate, the Sec-*
 14 *retary shall revoke a permit issued under this sub-*
 15 *section if the Secretary finds that the permittee is not*
 16 *complying with the terms and conditions of the per-*
 17 *mit or the conservation plan.”.*

18 *(d) CANDIDATE CONSERVATION AGREEMENTS.—*

19 *(1) PERMITS.—Section 10(a)(1) (16 U.S.C.*
 20 *1539(a)(1)) is amended—*

21 *(A) by striking “or” at the end of subpara-*
 22 *graph (A);*

23 *(B) by striking the period at the end of sub-*
 24 *paragraph (B) and inserting “; or”; and*

25 *(C) by adding at the end the following:*

1 “(C) any taking incidental to, and not the
2 purpose of, the carrying out of an otherwise law-
3 ful activity pursuant to a candidate conservation
4 agreement entered into under subsection (k).”.

5 (2) AGREEMENTS.—Section 10 (16 U.S.C. 1539)
6 is amended by adding at the end the following:

7 “(k) CANDIDATE CONSERVATION AGREEMENTS.—

8 “(1) IN GENERAL.—At the request of any non-
9 Federal person, the Secretary may enter into a can-
10 didate conservation agreement with the person for a
11 species that has been proposed for listing under sec-
12 tion 4(c)(1), is a candidate species, or is likely to be-
13 come a candidate species in the near future on prop-
14 erty owned or under the jurisdiction of the person re-
15 questing such an agreement.

16 “(2) REVIEW BY THE SECRETARY.—

17 “(A) SUBMISSION TO THE SECRETARY.—A
18 non-Federal person may submit a candidate con-
19 servation agreement developed under paragraph
20 (1) to the Secretary for review at any time prior
21 to the listing described in section 4(c)(1) of a
22 species that is the subject of the agreement.

23 “(B) CRITERIA FOR APPROVAL.—The Sec-
24 retary may approve an agreement and issue a
25 permit under subsection (a)(1)(C) for the agree-

1 *ment if, after notice and opportunity for public*
2 *comment, the Secretary finds that—*

3 “(i) *for species proposed for listing,*
4 *candidates for listing, or species that are*
5 *likely to become a candidate species in the*
6 *near future, that are included in the agree-*
7 *ment, the actions taken under the agree-*
8 *ment, if undertaken by all similarly situ-*
9 *ated persons, would produce a conservation*
10 *benefit that would be likely to eliminate the*
11 *need to list the species under section 4(c) as*
12 *a result of the activities of those persons*
13 *during the duration of the agreement;*

14 “(ii) *the actions taken under the agree-*
15 *ment will not adversely affect an endan-*
16 *gered species or a threatened species;*

17 “(iii) *the agreement contains such*
18 *other measures that the Secretary may re-*
19 *quire as being necessary or appropriate for*
20 *the purposes of the agreement;*

21 “(iv) *the person will ensure adequate*
22 *funding to implement the agreement; and*

23 “(v) *the agreement includes such mon-*
24 *itoring and reporting requirements as the*
25 *Secretary deems necessary for determining*

1 *whether the terms and conditions of the*
2 *agreement are being complied with.*

3 “(3) *EFFECTIVE DATE OF PERMIT.*—*A permit is-*
4 *sued under subsection (a)(1)(C) shall take effect at the*
5 *time the species is listed pursuant to section 4(c), if*
6 *the permittee is in full compliance with the terms and*
7 *conditions of the agreement.*

8 “(4) *ASSURANCES.*—*A person who has entered*
9 *into a candidate conservation agreement under this*
10 *subsection, and is in compliance with the agreement,*
11 *may not be required to undertake any additional*
12 *measures for species covered by such agreement if the*
13 *measures would require the payment of additional*
14 *money, or the adoption of additional use, develop-*
15 *ment, or management restrictions on any land, wa-*
16 *ters, or water-related rights that would otherwise be*
17 *available under the terms of the agreement without*
18 *the consent of the person entering into the agreement.*
19 *The Secretary and the person entering into a can-*
20 *didate conservation agreement, by the terms of the*
21 *agreement, shall identify—*

22 “(A) *other modifications to the agreement;*

23 *or*

24 “(B) *other additional measures;*

1 *if any, that the Secretary may require under extraor-*
2 *dinary circumstances.”*

3 (e) *PUBLIC NOTICE.—Section 10(c) (16 U.S.C.*
4 *1539(c)) is amended—*

5 (1) *by striking “thirty” each place that it ap-*
6 *pears and inserting “60”; and*

7 (2) *by inserting before the final sentence the fol-*
8 *lowing: “The Secretary may, with approval of the ap-*
9 *plicant, provide an opportunity, as early as prac-*
10 *ticable, for public participation in the development of*
11 *a multiple species conservation plan and permit ap-*
12 *plication. If a multiple species conservation plan and*
13 *permit application have been developed without an*
14 *opportunity for public participation, the Secretary*
15 *shall extend the public comment period for an addi-*
16 *tional 30 days for interested parties to submit written*
17 *data, views, or arguments on the plan and applica-*
18 *tion.”.*

19 (f) *SAFE HARBOR AGREEMENTS.—Section 10 (16*
20 *U.S.C. 1539) (as amended by subsection (d)(2)) is amended*
21 *by adding at the end the following:*

22 “(l) *SAFE HARBOR AGREEMENTS.—*

23 *“(1) AGREEMENTS.—*

24 *“(A) IN GENERAL.—The Secretary may*
25 *enter into agreements with non-Federal persons*

1 to benefit the conservation of endangered species
2 or threatened species by creating, restoring, or
3 improving habitat or by maintaining currently
4 unoccupied habitat for endangered species or
5 threatened species. Under an agreement, the Sec-
6 retary shall permit the person to take endangered
7 species or threatened species included under the
8 agreement on lands or waters that are subject to
9 the agreement if the taking is incidental to, and
10 not the purpose of, carrying out of an otherwise
11 lawful activity, except that the Secretary may
12 not permit through an agreement any incidental
13 taking below the baseline requirement specified
14 pursuant to subparagraph (B).

15 “(B) *BASELINE.*—For each agreement
16 under this subsection, the Secretary shall estab-
17 lish a baseline requirement that is mutually
18 agreed on by the applicant and the Secretary at
19 the time of the agreement that will, at a mini-
20 mum, maintain existing conditions for the spe-
21 cies covered by the agreement on lands and wa-
22 ters that are subject to the agreement. The base-
23 line may be expressed in terms of the abundance
24 or distribution of endangered or threatened spe-

1 *cies, quantity or quality of habitat, or such other*
2 *indicators as appropriate.*

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

7 “(3) *FINANCIAL ASSISTANCE.*—

8 “(A) *IN GENERAL.*—*In cooperation with the*
9 *States and subject to the availability of appro-*
10 *priations under section 15(d), the Secretary may*
11 *provide a grant of up to \$10,000 to any individ-*
12 *ual private landowner to assist the landowner in*
13 *carrying out a safe harbor agreement under this*
14 *subsection.*

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

21 “(C) *OTHER PAYMENTS.*—*A grant provided*
22 *to an individual private landowner under this*
23 *paragraph shall be in addition to, and not affect,*
24 *the total amount of payments that the landowner*
25 *is otherwise eligible to receive under the con-*

1 *ervation reserve program established under sub-*
2 *chapter B of chapter 1 of subtitle D of title XII*
3 *of the Food Security Act of 1985 (16 U.S.C.*
4 *3831 et seq.), the wetlands reserve program es-*
5 *tablished under subchapter C of that chapter (16*
6 *U.S.C. 3837 et seq.), or the Wildlife Habitat In-*
7 *centives Program established under section 387*
8 *of the Federal Agriculture Improvement and Re-*
9 *form Act of 1996 (16 U.S.C. 3836a).”.*

10 *(g) HABITAT RESERVE AGREEMENTS.—Section 10 (16*
11 *U.S.C. 1539) (as amended by subsection (f)) is amended*
12 *by adding at the end the following:*

13 *“(m) HABITAT RESERVE AGREEMENTS.—*

14 *“(1) PROGRAM.—The Secretary shall establish a*
15 *habitat reserve program to be implemented through*
16 *contracts or easements of a mutually agreed on dura-*
17 *tion to assist non-Federal property owners to preserve*
18 *and manage suitable habitat for endangered species*
19 *and threatened species.*

20 *“(2) AGREEMENTS.—The Secretary may enter*
21 *into a habitat reserve agreement with a non-Federal*
22 *property owner to protect, manage, or enhance suit-*
23 *able habitat on private property for the benefit of en-*
24 *dangered species or threatened species. Under an*
25 *agreement, the Secretary shall make payments in an*

1 *agreed on amount to the property owner for carrying*
2 *out the terms of the habitat reserve agreement, if the*
3 *activities undertaken pursuant to the agreement are*
4 *not otherwise required by this Act.*

5 “(3) *STANDARDS AND GUIDELINES.*—*The Sec-*
6 *retary shall issue standards and guidelines for the de-*
7 *velopment and approval of habitat reserve agreements*
8 *in accordance with this subsection. Agreements shall,*
9 *at a minimum, specify the management measures, if*
10 *any, that the property owner will implement for the*
11 *benefit of endangered species or threatened species, the*
12 *conditions under which the property may be used, the*
13 *nature and schedule for any payments agreed on by*
14 *the parties to the agreement, and the duration of the*
15 *agreement.*

16 “(4) *PAYMENTS.*—*Any payment received by a*
17 *property owner under a habitat reserve agreement*
18 *shall be in addition to and shall not affect the total*
19 *amount of payments that the property owner is other-*
20 *wise entitled to receive under the Agricultural Market*
21 *Transition Act (7 U.S.C. 7201 et seq.) or the Agricul-*
22 *tural Act of 1949 (7 U.S.C. 1421 et seq.).*

23 “(5) *AUTHORIZATION OF APPROPRIATIONS.*—
24 *There are authorized to be appropriated to the Sec-*
25 *retary of the Interior \$27,500,000 and the Secretary*

1 of Commerce \$13,333,333 for each of fiscal years 1998
2 through 2003 to assist non-Federal property owners to
3 carry out the terms of habitat reserve programs under
4 this subsection.”.

5 (h) *HABITAT CONSERVATION PLANNING LOAN PRO-*
6 *GRAM.*—Section 10(a) (16 U.S.C. 1539(a)) (as amended by
7 subsection (c)) is amended by adding at the end the follow-
8 ing:

9 “(7) *HABITAT CONSERVATION PLANNING LOAN*
10 *PROGRAM.*—

11 “(A) *ESTABLISHMENT.*—There is estab-
12 lished a ‘Habitat Conservation Planning Loan
13 Program’ (referred to in this paragraph as the
14 ‘Program’) under which the Secretary may make
15 no-interest loans to assist in the development of
16 a conservation plan under this section.

17 “(B) *ELIGIBILITY.*—Any State, county, mu-
18 nicipality, or other political subdivision of a
19 State shall be eligible to receive a loan under the
20 Program.

21 “(C) *LOAN LIMITS.*—The amount of any
22 loan may not exceed the total financial contribu-
23 tion of the other parties participating in the de-
24 velopment of the plan.

1 “(D) *CRITERIA.*—*In determining whether to*
2 *make a loan, the Secretary shall consider—*

3 “(i) *the number of species covered by*
4 *the plan;*

5 “(ii) *the extent to which there is a*
6 *commitment to participate in the planning*
7 *process from a diversity of interests (includ-*
8 *ing local governmental, business, environ-*
9 *mental, and landowner interests);*

10 “(iii) *the likely benefits of the plan;*
11 *and*

12 “(iv) *such other factors as the Sec-*
13 *retary considers appropriate.*

14 “(E) *TERM OF THE LOAN.*—

15 “(i) *IN GENERAL.*—*Except as provided*
16 *in clause (ii), a loan made under this para-*
17 *graph shall be for a term of ten years.*

18 “(ii) *ADVANCED REPAYMENTS.*—*If no*
19 *conservation plan is developed within three*
20 *years after the date of the loan, the loan*
21 *shall be for a term of four years. If no per-*
22 *mit is issued under paragraph (1)(B) with*
23 *respect to the conservation plan within four*
24 *years after the date of the loan, the loan*
25 *shall be for a term of five years.”.*

1 (i) *EFFECT ON PERMITS AND PROPOSED PLANS.*—No
2 amendment made by this section requires the modification
3 of—

4 (1) a permit issued under section 10 of the En-
5 dangered Species Act of 1973 (16 U.S.C. 1539); or

6 (2) a conservation plan submitted for approval
7 pursuant to such section;
8 prior to the date of enactment of this Act.

9 (j) *RULEMAKING.*—Not later than 1 year after the date
10 of enactment of this Act, the Secretary of the Interior and
11 the Secretary of Commerce shall, after consultation with the
12 States and notice and opportunity for public comment,
13 publish final regulations implementing the provisions of
14 section 10(a) of the Endangered Species Act of 1973 (16
15 U.S.C. 1539(a)), as amended by this section.

16 (k) *NAS REPORT.*—Not later than two years after the
17 date of enactment of this Act, the Secretary of the Interior
18 and the Secretary of Commerce shall enter into appropriate
19 arrangements with the National Academy of Sciences to
20 conduct a review of and prepare a report on the develop-
21 ment and implementation of conservation plans under sec-
22 tion 10(a) of the Endangered Species Act of 1973 (16 U.S.C.
23 1539(a)). The report shall assess the extent to which those
24 plans comply with the requirements of that Act, the role
25 of multiple species conservation plans in preventing the

1 *need to list species covered by those plans, and the relation-*
2 *ship of conservation plans for listed species to implementa-*
3 *tion of recovery plans. The report shall be transmitted to*
4 *the Congress not later than five years after the date of enact-*
5 *ment of this Act.*

6 (l) *SCIENTIFIC PERMITS.—Section 10(d) (16 U.S.C.*
7 *1539(d)) is amended—*

8 (1) *by striking “POLICY.—The” and inserting*
9 *“POLICY.—*

10 *“(1) IN GENERAL.—The”; and*

11 *(2) by adding at the end the following:*

12 *“(2) SCIENTIFIC PERMITS.—In granting permits*
13 *for scientific purposes or to enhance the propagation*
14 *or survival of an endangered species or a threatened*
15 *species listed under section 4(c), the Secretary may*
16 *authorize a single transaction, a series of trans-*
17 *actions, or a number of activities over a specific pe-*
18 *riod of time. In issuing or modifying such a permit,*
19 *the Secretary shall take into consideration the exper-*
20 *tise and facilities of the permit applicant and, con-*
21 *sistent with the conservation of the affected species,*
22 *maximize the efficiency of the permitting process.”.*

23 (m) *HABITAT CONSERVATION INSURANCE PRO-*
24 *GRAM.—Section 10 (16 U.S.C. 1539) (as amended by sub-*
25 *section (g)) is amended by adding at the end the following:*

1 “(n) *HABITAT CONSERVATION INSURANCE PRO-*
2 *GRAM.*—

3 “(1) *ESTABLISHMENT.*—*There is established a*
4 *Habitat Conservation Insurance Program.*

5 “(2) *USE.*—*The Program shall be used to pay*
6 *the cost of additional mitigation measures not other-*
7 *wise required under an existing conservation plan*
8 *under subsection (a) or a candidate conservation*
9 *agreement under subsection (k) to minimize or miti-*
10 *gate adverse effects to a species covered by the plan*
11 *or agreement, to the extent that the adverse effects*
12 *were not anticipated and addressed at the time the*
13 *plan or agreement was approved by the Secretary.*

14 “(3) *GRANTS.*—*In carrying out the Program, the*
15 *Secretary may make grants to any person who is a*
16 *party to a conservation plan under subsection (a) or*
17 *a candidate conservation agreement under subsection*
18 *(k).”.*

19 **SEC. 6. ENFORCEMENT.**

20 “(a) *ENFORCEMENT FOR INCIDENTAL TAKING.*—*Sec-*
21 *tion 11 (16 U.S.C. 1540) is amended by adding after sub-*
22 *section (g) the following new subsection and redesignating*
23 *the subsequent subsection accordingly:*

24 “(h) *INCIDENTAL TAKING.*—*In any action under sub-*
25 *section (a), (b), or (e)(6) against any person for an alleged*

1 *taking incidental to the carrying out of an otherwise lawful*
 2 *activity, the Secretary or the Attorney General must estab-*
 3 *lish, using pertinent evidence based on scientifically valid*
 4 *principles, that the acts of such person have caused, or will*
 5 *cause, the taking, of—*

6 “(1) *an endangered species; or*

7 “(2) *a threatened species the taking of which is*
 8 *prohibited pursuant to a regulation issued under sec-*
 9 *tion 4(d).”.*

10 **(b) CITIZEN SUIT FOR INCIDENTAL TAKING.**—*Section*
 11 *11(g) (16 U.S.C. 1540(g)) is amended by adding the follow-*
 12 *ing new paragraph after paragraph (2) and redesignating*
 13 *the subsequent paragraphs accordingly:*

14 “(3) **INCIDENTAL TAKING.**—*In any action under*
 15 *this subsection against any person for an alleged tak-*
 16 *ing incidental to the carrying out of an otherwise*
 17 *lawful activity, the person commencing the action*
 18 *must establish, using pertinent evidence based on sci-*
 19 *entifically valid principles, that the acts of the person*
 20 *alleged to be in violation of section 9(a)(1) have*
 21 *caused, or will cause, the taking, of—*

22 “(A) *an endangered species; or*

23 “(B) *a threatened species the taking of*
 24 *which is prohibited pursuant to a regulation is-*
 25 *sued under section 4(d).”.*

1 **SEC. 7. EDUCATION AND TECHNICAL ASSISTANCE.**

2 (a) *IN GENERAL.*—Section 13 is amended to read as
3 follows:

4 “PRIVATE PROPERTY OWNERS EDUCATION AND TECHNICAL
5 ASSISTANCE PROGRAM

6 “SEC. 13. (a) *IN GENERAL.*—In cooperation with the
7 States and other Federal agencies, the Secretary shall de-
8 velop and implement a private property owners education
9 and technical assistance program to—

10 “(1) inform the public about this Act;

11 “(2) respond to requests for technical assistance
12 from the private property owners interested in con-
13 serving species listed or proposed for listing under
14 section 4(c)(1) and candidate species on the property
15 of the property owners; and

16 “(3) recognize exemplary efforts to conserve spe-
17 cies on private land.

18 “(b) *ELEMENTS OF THE PROGRAM.*—Under the pro-
19 gram, the Secretary shall—

20 “(1) publish educational materials and conduct
21 workshops for private property owners and other
22 members of the public on the role of this Act in con-
23 serving endangered species and threatened species, the
24 principal mechanisms of this Act for achieving species
25 recovery, and potential sources of technical and finan-
26 cial assistance;

1 “(2) assist field offices in providing timely ad-
2 vice to property owners on how to comply with this
3 Act;

4 “(3) provide technical assistance to State and
5 local governments and private property owners inter-
6 ested in developing and implementing recovery plan
7 implementation agreements, conservation plans, and
8 safe harbor agreements;

9 “(4) serve as a focal point for questions, requests,
10 and suggestions from property owners and local gov-
11 ernments concerning policies and actions of the Sec-
12 retary in the implementation of this Act;

13 “(5) provide training for Federal personnel re-
14 sponsible for implementing this Act on concerns of
15 private property owners, to avoid unnecessary con-
16 flicts, and improving implementation of this Act on
17 private property; and

18 “(6) nominate for national recognition by the
19 Secretary property owners that are exemplary man-
20 agers of land for the benefit of species listed or pro-
21 posed for listing under section 4(c)(1) or candidate
22 species.”.

23 (b) *CONFORMING AMENDMENT.*—*The table of contents*
24 *in the first section (16 U.S.C. prec. 1531) is amended by*

1 *striking the item related to section 13 and inserting the fol-*
 2 *lowing:*

“Sec. 13. Private property owners education and technical assistance program.”.

3 (c) *EFFECT ON PRIOR AMENDMENTS.—Nothing in this*
 4 *section or the amendments made by this section affects the*
 5 *amendments made by section 13 of the Endangered Species*
 6 *Act of 1973 (87 Stat. 902), as in effect on the day before*
 7 *the date of enactment of this Act.*

8 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

9 (a) *IN GENERAL.—Section 15(a) (16 U.S.C. 1542(a))*
 10 *is amended—*

11 (1) *in paragraph (1), by striking “and*
 12 *\$41,500,000 for fiscal year 1992” and inserting*
 13 *“\$41,500,000 for fiscal year 1992, \$90,000,000 for fis-*
 14 *cal year 1998, \$120,000,000 for fiscal year 1999,*
 15 *\$140,000,000 for fiscal year 2000, \$160,000,000 for*
 16 *fiscal year 2001, \$165,000,000 for fiscal year 2002,*
 17 *and \$165,000,000 for fiscal year 2003”;*

18 (2) *in paragraph (2)—*

19 (A) *by striking “and \$6,750,000” and in-*
 20 *serting “\$6,750,000”; and*

21 (B) *by inserting after “and 1992” the fol-*
 22 *lowing: “, \$35,000,000 for fiscal year 1998,*
 23 *\$50,000,000 for fiscal year 1999, \$60,000,000 for*
 24 *fiscal year 2000, \$65,000,000 for fiscal year*

1 2001, \$65,000,000 for fiscal year 2002, and
2 \$70,000,000 for fiscal year 2003”; and

3 (3) in paragraph (3)—

4 (A) by striking “and \$2,600,000” and in-
5 serting \$2,600,000”; and

6 (B) by inserting “, and \$4,000,000 for each
7 of fiscal years 1998 through 2003” after “and
8 1992”.

9 (b) *EXEMPTIONS FROM ACT.*—Section 15(b) (16
10 *U.S.C. 1542(b)*) is amended by inserting “and \$625,000 for
11 *each of fiscal years 1998 through 2003*” after “and 1992”.

12 (c) *CONVENTION IMPLEMENTATION.*—Section 15(c) (16
13 *U.S.C. 1542(c)*) is amended—

14 (1) by striking “and \$500,000” and inserting
15 “\$500,000,”; and

16 (2) by inserting “and \$1,000,000 for each fiscal
17 year 1998 through 2003” after “and 1992,”.

18 (d) *ADDITIONAL AUTHORIZATIONS.*—Section 15 (16
19 *U.S.C. 1542*) is amended by adding at the end the following:

20 “(d) *FINANCIAL ASSISTANCE FOR SAFE HARBOR*
21 *AGREEMENTS.*—There are authorized to be appropriated to
22 *the Secretary of the Interior \$10,000,000 and the Secretary*
23 *of Commerce \$5,000,000 for each of fiscal years 1998*
24 *through 2003 to carry out section 10(l).*”

1 “(e) *HABITAT CONSERVATION PLANNING LOAN PRO-*
2 *GRAM.—There are authorized to be appropriated to the*
3 *Habitat Conservation Planning Loan Program established*
4 *by section 10(a)(7) \$10,000,000 for each of fiscal years 1998*
5 *through 2000 and \$5,000,000 for each of fiscal years 2001*
6 *and 2002 to assist in the development of conservation plans.*

7 “(f) *FINANCIAL ASSISTANCE FOR RECOVERY PLAN IM-*
8 *PLEMENTATION.—There are authorized to be appropriated*
9 *to the Secretary of the Interior \$30,000,000 and the Sec-*
10 *retary of Commerce \$15,000,000 for each of the fiscal years*
11 *1998 through 2003 to carry out section 5(l)(4).*

12 “(g) *HABITAT CONSERVATION INSURANCE PRO-*
13 *GRAM.—*

14 “(1) *IN GENERAL.—Of the amounts appro-*
15 *priated for a fiscal year under subsections (d), (e),*
16 *and (f), five percent shall be available for the Habitat*
17 *Conservation Insurance Program established under*
18 *section 10(n).*

19 “(2) *LIMITATION.—If, at the end of any fiscal*
20 *year, the balance allocated for the Habitat Conserva-*
21 *tion Insurance Program exceeds \$10,000,000, para-*
22 *graph (1) shall not apply during the subsequent fiscal*
23 *year.*

24 “(h) *AVAILABILITY.—Amounts made available under*
25 *this section shall remain available until expended.*

1 “(i) *LIMITATION ON USE OF FUNDS.*—Of the funds
2 *made available to carry out section 5 for any fiscal year,*
3 *not less than \$32,000,000 shall be available to the Secretary*
4 *of the Interior and not less than \$13,500,000 to the Sec-*
5 *retary of Commerce to implement actions to recover listed*
6 *species. Of the funds made available to the Secretary of the*
7 *Interior and the Secretary of Commerce in each fiscal year*
8 *to list species, the Secretary of the Interior and the Sec-*
9 *retary of Commerce shall use not less than ten percent of*
10 *those funds in each fiscal year for delisting species. If any*
11 *of the funds made available by the previous sentence are*
12 *not needed in that fiscal year for delisting eligible species,*
13 *those funds shall be available for listing.*

14 “(j) *ACCOUNTING AND STRATEGIC MANAGEMENT*
15 *PLAN.*—Not later than November 30, 1998, the Secretary
16 of the Interior and the Secretary of Commerce shall each
17 submit to the Committee on Environment and Public Works
18 of the Senate and the Committee on Resources of the House
19 of Representatives—

20 “(1) *an accounting for fiscal year 1998 of funds*
21 *expended by the Department of the Interior and the*
22 *Department of Commerce, respectively, to carry out*
23 *the Department’s functions and responsibilities under*
24 *this Act; and*

1 “(2) a management plan describing the projected
2 future uses by the respective Department of authorized
3 funds for fiscal years 1999 through 2003.”.

4 (e) ASSISTANCE TO STATES FOR CONSERVATION AC-
5 TIVITIES.—Section 6(i) (16 U.S.C. 1535(i)) is amended by
6 adding at the end the following:

7 “(3) ASSISTANCE TO STATES FOR CONSERVATION
8 ACTIVITIES.—There are authorized to be appropriated
9 to the Secretary such sums as are necessary for each
10 of fiscal years 1998 through 2003 to provide financial
11 assistance to State agencies to carry out conservation
12 activities under other sections of this Act, including
13 the provision of technical assistance for the develop-
14 ment and implementation of recovery plans.”.

15 **SEC. 9. OTHER AMENDMENTS.**

16 (a) DEFINITIONS.—

17 (1) CANDIDATE SPECIES.—Subsection (a) of sec-
18 tion 3 (16 U.S.C. 1532) (as amended by section
19 2(a)(2)) is amended by redesignating paragraphs (2)
20 through (10) as paragraphs (3) through (11), respec-
21 tively, and inserting the following after paragraph
22 (1):

23 “(2) CANDIDATE SPECIES.—The term ‘candidate
24 species’ means a species for which the Secretary has
25 on file sufficient information on biological vulner-

1 *ability and threats to support a proposal to list the*
2 *species as an endangered species or a threatened spe-*
3 *cies, but for which listing is precluded because of*
4 *pending proposals to list species that are of a higher*
5 *priority. This paragraph shall not apply to any spe-*
6 *cies defined as a candidate species by the Secretary*
7 *of Commerce prior to the date of enactment of this*
8 *sentence.”.*

9 (2) *IN COOPERATION WITH THE STATES.—Sub-*
10 *section (a) of section 3 (16 U.S.C. 1532) (as amended*
11 *by sections 2(a)(2) and 4(a)(1) and this subsection)*
12 *is amended by inserting the following after the para-*
13 *graph defining the term “import” and redesignating*
14 *the subsequent paragraphs accordingly:*

15 “(12) *IN COOPERATION WITH THE STATES.—The*
16 *term ‘in cooperation with the States’ means a process*
17 *under which—*

18 “(A) *the State agency in each of the affected*
19 *States, or the representative of the State agency,*
20 *is given an opportunity to participate in a*
21 *meaningful and timely manner in the develop-*
22 *ment of the standards, guidelines, and regula-*
23 *tions to implement the applicable provisions of*
24 *this Act; and*

1 “(B) the Secretary carefully considers all
2 substantive concerns raised by the State agency,
3 or the representative of the State agency, and, to
4 the maximum extent practicable consistent with
5 this Act, incorporates their suggestions and rec-
6 ommendations, while retaining final decision
7 making authority.”.

8 (3) *RURAL AREA*.—Subsection (a) of section 3
9 (16 U.S.C. 1532) (as amended by sections 2(a)(2) and
10 4(a)(1) and this subsection) is amended by inserting
11 the following after the paragraph defining the term
12 “reasonable and prudent alternatives” and redesignig-
13 nating the subsequent paragraphs accordingly:

14 “(17) *RURAL AREA*.—The term ‘rural area’
15 means a county or unincorporated area that has no
16 city or town that has a population of more than
17 10,000 inhabitants.”.

18 (4) *COMMONWEALTH OF THE NORTHERN MARI-*
19 *ANA ISLANDS*.—Subsection (a)(20) of section 3 (16
20 U.S.C. 1532) (as amended by sections 2(a)(2) and
21 4(a)(1) and this subsection) is amended by striking
22 “Trust Territories of the Pacific Islands” and insert-
23 ing “Commonwealth of the Northern Mariana Is-
24 lands”.

1 (5) *TERRITORIAL SEA*.—Subsection (a) of section
2 3 (16 U.S.C. 1532) (as amended by sections 2(a)(2)
3 and 4(a)(1) and this subsection) is amended by in-
4 serting the following after the paragraph defining the
5 term “take” and redesignating the subsequent para-
6 graphs accordingly:

7 “(23) *TERRITORIAL SEA*.—The term ‘territorial
8 sea’ means the 12-nautical-mile maritime zone set
9 forth in Presidential Proclamation 5928, dated De-
10 cember 27, 1988.”.

11 (b) *FINDINGS, PURPOSES, AND POLICY*.—

12 (1) *COMMERCIAL VALUE*.—Section 2(a)(3) (16
13 U.S.C. 1531(a)(3)) is amended by inserting “commer-
14 cial,” after “recreational,”.

15 (2) *AGENCY COORDINATION*.—Section 2(c) (16
16 U.S.C. 1531(c)) is amended by adding at the end the
17 following:

18 “(3) *AGENCY COORDINATION*.—Federal agencies
19 are encouraged to coordinate and collaborate to fur-
20 ther the conservation of endangered species and
21 threatened species.”.

22 (c) *NO TAKING AGREEMENTS*.—Section 9 (16 U.S.C.
23 1538) is amended by adding at the end the following:

24 “(h) *NO TAKING AGREEMENTS*.—The Secretary and a
25 non-Federal property owner may, at the request of the prop-

1 *erty owner, enter into an agreement identifying activities*
2 *of the property owner that, based on a determination of the*
3 *Secretary, will not result in a violation of the prohibitions*
4 *of paragraphs (1)(B), (1)(C), and (2)(B) of subsection (a).*
5 *The Secretary shall respond to a request for an agreement*
6 *submitted by a property owner within 90 days after receipt.*
7 *Nothing in this subsection prevents the Secretary, the Attor-*
8 *ney General, or any other person from commencing an en-*
9 *forcement action under section 11.”.*

10 *(d) CONFORMING AMENDMENTS.—*

11 *(1) SECTION HEADING.—The section heading of*
12 *section 10 (16 U.S.C. 1539) is amended to read as*
13 *follows:*

14 *“CONSERVATION MEASURES AND EXCEPTIONS”.*

15 *(2) TABLE OF CONTENTS.—The table of contents*
16 *in the first section (16 U.S.C. prec. 1531) is amended*
17 *with respect to the item relating to section 10 to read*
18 *as follows:*

“Sec. 10. Conservation measures and exceptions.”.

Amend the title so as to read: “A bill to reauthorize
the Endangered Species Act of 1973.”.