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107TH CONGRESS
1ST SESSION

S. 911

To reauthorize the Endangered Species Act of 1973.

IN THE SENATE OF THE UNITED STATES

MAY 17, 2001

Mr. SMITH of Oregon (for himself and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To reauthorize the Endangered Species Act of 1973.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Endangered Species Recovery Act of 2001''.

(b) TABLE OF CONTENTS.—The table of contents of this 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.

SEC. 2. LISTING AND DELISTING SPECIES.

(a) BEST SCIENTIFIC AND COMMERCIAL DATA AVAILABLE.—Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended—

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

"DEFINITIONS AND GENERAL PROVISIONS";

(2) by striking "For the purposes of this Act—" and inserting the following:

"(a) DEFINITIONS.—In this Act:"; and

(3) by adding at the end the following:

"(b) GENERAL PROVISIONS.—

"(1) BEST SCIENTIFIC AND COMMERCIAL DATA AVAILABLE.—Where this Act requires the Secretary to use the best scientific and commercial data available, the Secretary, when evaluating comparable data, shall give greater weight to scientific or commercial data that is empirical or has been field-tested or peer-reviewed.".

(b) CONFORMING AMENDMENT.—The table of contents in the first section of the Endangered Species Act of 1973 (16 U.S.C. prec. 1531) is amended by striking the item relating to section 3 and inserting the following:

"Sec. 3. Definitions and general provisions.".

(c) LISTING AND DELISTING.—

(1) FACTORS CONSIDERED FOR LISTING.—Section 4(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1533(a)(1)) is amended—

(A) in subparagraph (C), by inserting ''introduced species, competition,'' before ''disease or predation''; and

(B) in subparagraph (D), by inserting ''Federal, State, and local government and international'' before ''regulatory mechanisms''.

(2) CRITICAL HABITAT.—Section 4(a) of the Endangered Species Act of 1973 (16 U.S.C. 1533(a)) is amended by striking paragraph (3).

(3) DELISTING.—Section 4(b)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(2)) is amended to read as follows:

''(2) DELISTING.—The Secretary shall, in accordance with section 5 and on a determination that the goals of the recovery plan for a species have been met, initiate the procedures for determining, in accordance with subsection (a)(1), whether to remove the species from a list published under subsection (c).''

(4) RESPONSE TO PETITIONS.—

(A) IN GENERAL.—Section 4(b)(3) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(3)) is amended to read as follows:

''(3) RESPONSE TO PETITIONS.—

''(A) ACTION MAY BE WARRANTED.—

''(i) IN GENERAL.—To the maximum extent practicable, not later than 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to—

''(I) add a species to;

''(II) remove a species from; or

''(III) change the status of a species from a previous determination with respect to;

either of the lists published under subsection (c), the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned. The Secretary shall promptly publish each

finding made under this subparagraph in the Federal Register.

"(ii) MINIMUM DOCUMENTATION.—A finding that the petition presents the information described in clause (i) shall not be made unless the petition provides—

"(I) documentation that the fish, wildlife, or plant that is the subject of the petition is a species;

"(II) a description of the available data on the historical and current range and distribution of the species;

"(III) an appraisal of the available data on the status and trends of populations of the species;

"(IV) an appraisal of the available data on the threats to the species; and

"(V) an identification of the information contained or referred to in the petition that has been peer-reviewed or field-tested.

"(iii) NOTIFICATION TO THE STATES.—

"(I) PETITIONED ACTIONS.—If the petition is found to present the information described in clause (i), the Secretary shall notify and provide a copy of the petition to the State agency in each State in which the species is believed to occur and solicit the assessment of the agency, to be submitted to the Secretary not later than 90 days after the notification, as to whether the petitioned action is warranted.

"(II) OTHER ACTIONS.—If the Secretary has not received a petition for a species and the Secretary is considering proposing to list the species as either threatened or endangered under subsection (a), the Secretary shall notify the State agency in each State in which the species is believed to occur and solicit the assessment of the agency, to be submitted to the Secretary not later than 90 days after the notification, as to whether the list-

ing would be in accordance with subsection (a).

"(III) CONSIDERATION OF STATE ASSESSMENTS.—Before publication of a determination that a petitioned action is warranted or the issuance of a proposed regulation, the Secretary shall consider any State assessments submitted within the comment period established by subclause (I) or (II).

"(B) PETITION TO CHANGE STATUS OR DELIST.—A petition may be submitted to the Secretary under subparagraph (A) to change the status of a species or to remove a species from either of the lists published under subsection (c) in accordance with subsection (a)(1), if—

"(i) the current listing is no longer appropriate because of a change in the factors identified under subsection (a)(1); or

"(ii) with respect to a petition to remove a species from either of the lists—

"(I) new data or a reinterpretation of prior data indicate that removal is appropriate;

"(II) the species is extinct; or

"(III) the recovery goals established for the species in a recovery plan approved under section 5(h) have been achieved.

"(C) DETERMINATION.—Not later than 1 year after receiving a petition that is found under subparagraph (A)(i) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make 1 of the following findings:

"(i) NOT WARRANTED.—The petitioned action is not warranted, in which case the Secretary shall promptly publish the finding in the Federal Register.

"(ii) WARRANTED.—The petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement the action in accordance with paragraph (5).

"(iii) WARRANTED BUT PRECLUDED.—The petitioned action is warranted, but—

"(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species; and

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

in which case the Secretary shall promptly publish the finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

"(D) SUBSEQUENT DETERMINATION.—A petition with respect to which a finding is made under subparagraph (C)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of the finding and that presents substantial scientific

or commercial information that the petitioned action may be warranted.

"(E) JUDICIAL REVIEW.—Any negative finding described in subparagraph (A)(i) and any finding described in clause (i) or (iii) of subparagraph (C) shall be subject to judicial review.

"(F) MONITORING AND EMERGENCY LISTING.—The Secretary shall implement a system to monitor effectively the status of each species with respect to which a finding is made under subparagraph (C)(iii) and shall make prompt use of the authority under paragraph (7) to prevent a significant risk to the well-being of the species.".

(B) CONFORMING AMENDMENT.—Section 6(d)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1535(d)(1)) is amended in the first sentence by striking "subparagraph (C)" and inserting "subparagraph (F)".

(5) PROPOSED REGULATIONS.—Section 4(b)(5) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(5)) is amended—

(A) by striking "(5) With respect to any regulation" and inserting the following:

"(5) PROPOSED REGULATIONS AND REVIEW.—With respect to any regulation";

(B) by striking "a determination, designation, or revision" and inserting "a determination or change in status";

(C) by striking "(a)(1) or (3)," and inserting "(a)(1),";

(D) by striking "in the Federal Register," and inserting "in the Federal Register as provided by paragraph (8),"; and

(E) by striking subparagraph (E) and inserting the following:

"(E) at the request of any person not later than 45 days after the date of publication of general notice, promptly hold at least 1 public hearing in each State that would be affected by the proposed regulation (including at least 1 hearing in an affected rural area, if any) except that the Secretary shall not be required to hold more than 5 hearings under this subparagraph.".

(6) FINAL REGULATIONS.—

(A) SCHEDULE.—Section 4(b)(6) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(6)) is amended by striking "(6)(A)"

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

"(6) FINAL REGULATIONS.—

"(A) IN GENERAL.—Within the 1-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register—

"(i) a final regulation to implement the determination;

"(ii) notice that the 1-year period is being extended under subparagraph (B)(i); or

"(iii) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which the withdrawal is based.".

(B) CONFORMING AMENDMENTS.—Section 4(b)(6) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(6)) is amended—

(i) in subparagraph (B)(i), by striking "or revision";

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

(iii) by striking subparagraph (C).

(7) PUBLICATION OF DATA AND INFORMATION.—Section 4(b)(8) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(8)) is amended—

(A) by striking ''a summary by the Secretary of the data'' and inserting ''a summary by the Secretary of the best scientific and commercial data available'';

(B) by striking ''is based and shall'' and inserting ''is based, shall''; and

(C) by striking ''regulation; and if such regulation designates or revises critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation.'' and inserting ''regulation, and shall provide, to the degree that it is relevant and available, information regarding the status of the affected species, including current population, popu-

lation trends, current habitat, food sources, predators, breeding habits, captive breeding efforts, governmental and nongovernmental conservation efforts, or other pertinent information.''.

(8) SOUND SCIENCE.—Section 4(b) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)) is amended by adding at the end the following:

''(9) ADDITIONAL DATA.—

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

''(i) invite any person to submit the data to the Secretary; and

''(ii) describe the steps that the Secretary plans to take for acquiring additional data.

''(B) RECOVERY PLANNING.—Data identified and obtained under subparagraph (A) shall be considered by the recovery team and the Sec-

retary in the preparation of the recovery plan in accordance with section 5.

"(C) NO DELAY AUTHORIZED.—Nothing in this paragraph waives or extends any deadline for publishing a final rule to implement a determination (except for the extension provided in paragraph (6)(B)(i)) or any deadline under section 5.

"(10) INDEPENDENT SCIENTIFIC REVIEW.—

"(A) IN GENERAL.—In the case of a regulation proposed by the Secretary to implement a determination under subsection (a)(1) that any species is an endangered species or a threatened species or that any species currently listed as an endangered species or a threatened species should be removed from any list published pursuant to subsection (c), the Secretary shall provide for independent scientific peer review by—

"(i) selecting independent referees pursuant to subparagraph (B); and

"(ii) requesting the referees to conduct the review, considering all relevant information, and make a recommendation to the Secretary in accordance with this para-

graph not later than 150 days after the general notice is published pursuant to paragraph (5)(A)(i).

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

"(i) through publication of peer-reviewed scientific literature or other means, have demonstrated scientific expertise on the species or a similar species or other scientific expertise relevant to the decision of the Secretary under subsection (a);

"(ii) do not have, or represent any person with, a conflict of interest with respect to the determination that is the subject of the review; and

"(iii) are not participants in a petition to list, change the status of, or remove the species under paragraph (3)(A)(i), the assessment of a State for the species under paragraph (3)(A)(iii), or the proposed or final determination of the Secretary.

"(C) FINAL DETERMINATION.—The Secretary shall take 1 of the actions under paragraph (6)(A) not later than 1 year after the date of publication of the general notice of the proposed determination. If the referees have made a recommendation in accordance with subparagraph (A)(ii), the Secretary shall evaluate and consider the information that results from the independent scientific review and include in the final determination—

"(i) a summary of the results of the independent scientific review; and

"(ii) in a case in which the recommendation of a majority of the referees who conducted the independent scientific review under subparagraph (A) is not followed, an explanation as to why the recommendation was not followed.

"(D) FEDERAL ADVISORY COMMITTEE ACT.—The selection and activities of referees selected pursuant to this Act shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).".

(9) LISTS.—Section 4(c)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1533(c)(1)) is amended—

(A) in the second sentence, by inserting ''designated'' before ''critical habitat''; and

(B) in the third sentence, by striking ''determinations, designations, and revisions'' and inserting ''determinations''.

(10) PROTECTIVE REGULATION.—Section 4(d) of the Endangered Species Act of 1973 (16 U.S.C. 1533(d)) is amended—

(A) by striking ''Whenever any species is listed'' and inserting the following:

''(1) IN GENERAL.—Whenever any species is listed''; and

(B) by adding at the end the following:

''(2) NEW LISTINGS.—With respect to each species listed as a threatened species after the date of enactment of this paragraph, regulations applicable under paragraph (1) to the species shall be specific to that species by the date on which the Secretary is required to approve a recovery plan for the species pursuant to section 5(c) and may be subsequently revised.''.

(11) RECOVERY PLANS.—

(A) IN GENERAL.—Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended by striking subsection (f) and redesignating subsections (g) through (i) as subsections (f) through (h), respectively.

(B) CONFORMING AMENDMENT.—Section 4(g) of the Endangered Species Act of 1973 (as redesignated by subparagraph (A)) is amended in paragraph (4) by striking ''subsection (f) of this section'' and inserting ''section 5''.

(12) STATE CONSERVATION AGREEMENTS.—Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) (as amended by paragraph (11)) is amended by adding at the end the following:

''(i) STATE CONSERVATION AGREEMENTS.—The Secretary may enter into a conservation agreement with 1 or more States for a species that has been proposed for listing, is a candidate species, or is likely to become a candidate species in the near future within the State. The Secretary may approve an agreement if, after notice and opportunity for public comment, the Secretary finds that—

''(1) for species covered by the agreement, the actions taken under the agreement, if undertaken by all States within the range of the species, would

produce a conservation benefit that would be likely to eliminate the need to list the species as threatened or endangered under this section for the duration of the agreement;

''(2) the actions taken under the agreement will not adversely affect an endangered species or a threatened species;

''(3) the agreement contains such other measures as the Secretary may require as being necessary or appropriate for the purposes of the agreement;

''(4) the State will ensure adequate funding and enforcement to implement the agreement; and

''(5) the agreement includes such monitoring and reporting requirements as the Secretary considers necessary for determining whether the terms and conditions of the agreement are being complied with.''.

(d) PUBLIC AVAILABILITY OF DATA.—Section 3(b) of the Endangered Species Act of 1973 (as amended by subsection (a)) is amended by adding at the end the following:

''(2) FREEDOM OF INFORMATION ACT EXEMPTION.—The Secretary, and the head of any other Federal agency on the recommendation of the Secretary, may withhold or limit the availability of data

requested to be released pursuant to section 552 of title 5, United States Code, if the data describe or identify the location of an endangered species, a threatened species, or a species that has been proposed to be listed as threatened or endangered, and release of the data would be likely to result in an increased taking of the species, except that data shall not be withheld pursuant to this paragraph in response to a request regarding the presence of those species on private land by the owner of that land.''.

SEC. 3. ENHANCED RECOVERY PLANNING.

(a) REDESIGNATION.—Section 5 of the Endangered Species Act of 1973 (16 U.S.C. 1534) is redesignated as section 5A.

(b) RECOVERY PLANS.—The Act is amended by inserting before section 5A (as redesignated by subsection (a)) the following:

''RECOVERY PLANS

''SEC. 5. (a) IN GENERAL.—The Secretary, in cooperation with the States, and on the basis of the best scientific and commercial data available, shall develop and implement plans (referred to in this Act as 'recovery plans') for the conservation and recovery of endangered species and threatened species that are indigenous to the United States or in waters with respect to which the United States exercises sovereign rights or jurisdiction, in

accordance with the requirements and schedules described in this section, unless the Secretary finds, after notice and opportunity for public comment, that a plan will not promote the conservation of the species or because an existing plan or strategy to conserve the species already serves as the functional equivalent to a recovery plan. The Secretary may authorize a State agency to develop recovery plans pursuant to subsection (m).

"(b) PRIORITIES.—

"(1) CRITERIA.—To the maximum extent practicable, the Secretary, in developing recovery plans, shall give priority, without regard to taxonomic classification, to recovery plans that—

"(A) address significant and immediate threats to the survival of an endangered species or a threatened species, have the greatest likelihood of achieving recovery of the endangered species or the threatened species, and will benefit species that are more taxonomically distinct;

"(B) address multiple species including (i) endangered species, (ii) threatened species, or (iii) species that the Secretary has identified as candidates or proposed for listing under section 4 and that are dependent on the same habitat

as the endangered species or threatened species covered by the plan;

"(C) reduce conflicts with construction, development projects, jobs, private property, or other economic activities; and

"(D) reduce conflicts with military training and operations.

"(2) PRIORITY SYSTEM.—To carry out subsection (c) of this section and section 3(e) of the Endangered Species Recovery Act of 2001 in the most efficient and effective manner practicable, the Secretary shall develop and implement a priority ranking system for the preparation of recovery plans based on all of the factors described in subparagraphs (A) through (D) of paragraph (1).

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

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

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

"(d) APPOINTMENT AND ROLE OF RECOVERY TEAM.—

"(1) IN GENERAL.—Not later than 60 days after the date of the publication under section 4 of the final regulation containing the listing determination for a species, the Secretary, in cooperation with the affected States, shall either appoint a recovery team to develop a recovery plan for the species or publish a notice pursuant to paragraph (3) that a recovery team shall not be appointed. Recovery teams shall include the Secretary and at least 1 representative from the State agency of each of the affected States choosing to participate and be broadly representative of the constituencies with an interest in the species and its recovery and in the economic or social impacts of recovery including representatives of Federal agencies, tribal governments, local governments, academic institutions, private individuals and organizations, and commercial enterprises. The recovery team members shall be selected for their knowledge of the species or for their expertise

in the elements of the recovery plan or its implementation.

"(2) DUTIES OF THE RECOVERY TEAM.—Each recovery team shall prepare and submit to the Secretary the draft recovery plan that shall include recovery measures recommended by the team and alternatives, if any, to meet the recovery goal under subsection (e)(1). The recovery team may also be called on by the Secretary to assist in the implementation, review, and revision of recovery plans. The recovery team shall also advise the Secretary concerning the designation of critical habitat, if any.

"(3) EXCEPTION.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), the Secretary may, after notice and opportunity for public comment, establish criteria to identify species for which the appointment of a recovery team would not be required under this subsection, taking into account the availability of resources for recovery planning, the extent and complexity of the expected recovery activities, and the degree of scientific uncertainty associated with the threats to the species.

"(B) STATE OPTION.—If the Secretary elects not to appoint a recovery team, the Sec-

retary shall provide notice to each affected State and shall provide the affected States the opportunity to appoint a recovery team and develop a recovery plan, in accordance with subsection (m).

"(C) SECRETARIAL DUTY.—If a recovery team is not appointed, the Secretary shall perform all duties of the recovery team required by this section.

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

"(5) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the selection or activities of a recovery team appointed pursuant to this subsection or subsection (m).

"(e) CONTENTS OF RECOVERY PLANS.—Each recovery plan shall contain:

"(1) BIOLOGICAL RECOVERY GOAL.—

"(A) IN GENERAL.—Not later than 180 days after the appointment of a recovery team under this section, those members of the recov-

ery team with relevant scientific expertise shall establish and submit to the Secretary a recommended biological recovery goal to conserve and recover the species that, when met, would result in the determination, in accordance with section 4, that the species be removed from the list. The goal shall be based solely on the best scientific and commercial data available. The recovery goal shall be expressed as objective and measurable biological criteria. When the goal is met, the Secretary shall initiate the procedures for determining whether, in accordance with section 4(a)(1), to remove the species from the list.

"(B) PEER REVIEW.—The recovery team shall promptly obtain independent scientific review of the recommended biological recovery goal.

"(2) RECOVERY MEASURES.—The recovery plan shall incorporate recovery measures that will meet the recovery goal.

"(A) MEASURES.—The recovery measures may incorporate general and site-specific measures for the conservation and recovery of the species such as—

"(i) actions to protect and restore habitat;

"(ii) research;

"(iii) establishment of refugia, captive breeding, and releases of experimental populations;

"(iv) actions that may be taken by Federal agencies, including actions that use, to the maximum extent practicable, Federal land; and

"(v) opportunities to cooperate with State and local governments and other persons to recover species, including through the development and implementation of conservation plans under section 10.

"(B) DRAFT RECOVERY PLANS.—

"(i) IN GENERAL.—In developing a draft recovery plan, the recovery team or, if there is no recovery team, the Secretary, shall consider alternative measures and recommend measures to meet the recovery goal and the benchmarks. The recovery measures shall achieve an appropriate balance among the following factors—

"(I) the effectiveness of the measures in meeting the recovery goal;

"(II) the period of time in which the recovery goal is likely to be achieved, provided that the time period within which the recovery goal is to be achieved will not pose a significant risk to recovery of the species; and

"(III) the social and economic impacts (both quantitative and qualitative) of the measures and the distribution of the impacts across regions and industries.

"(ii) DESCRIPTION OF ALTERNATIVES.—The draft plan shall include a description of any alternative recovery measures considered, but not included in the recommended measures, and an explanation of how any such measures considered were assessed and the reasons for their selection or rejection.

"(iii) DESCRIPTION OF ECONOMIC EFFECTS.—If the recommended recovery

measures identified in clause (i) would impose significant costs on a municipality, county, region, or industry, the recovery team shall prepare a description of the overall economic effects on the public and private sectors including, as appropriate, effects on employment, public revenues, and value of property as a result of the implementation of the recovery plan.

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

"(4) FEDERAL AGENCIES.—Each recovery plan for an endangered species or a threatened species shall identify Federal agencies that authorize, fund, or carry out actions that are likely to have a significant impact on recovery of the species.

"(f) PUBLIC NOTICE AND COMMENT.—

"(1) IN GENERAL.—If the Secretary makes a preliminary determination that the draft recovery plan meets the requirements of this section, the Secretary shall publish in the Federal Register and a newspaper of general circulation in each affected State a notice of availability and a summary of, and a request for public comment on, the draft recovery plan including a description of the economic effects prepared under subsection (e)(2)(B)(iii) and the recommendations of the independent referees on the recovery goal.

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

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

"(h) REVIEW AND SELECTION BY THE SECRETARY.—

"(1) REVIEW AND APPROVAL.—The Secretary shall review each plan submitted by a recovery team, including a recovery team appointed by a State pursuant to the authority of subsection (m), to determine whether the plan was developed in accordance with the requirements of this section. If the Secretary determines that the plan does not satisfy such requirements, the Secretary shall notify the recovery team and give the team an opportunity to address the concerns of the Secretary and resubmit a plan that satisfies the requirements of this section. After notice and opportunity for public comment on the recommendations of the recovery team, the Secretary shall adopt a final recovery plan that is consistent with the requirements of this section.

"(2) SELECTION OF RECOVERY MEASURES.—In each final plan the Secretary shall select recovery measures that meet the recovery goal and the benchmarks. The recovery measures shall achieve an appropriate balance among the factors described in subclauses (I) through (III) of subsection (e)(2)(B)(i).

"(3) MEASURES RECOMMENDED BY RECOVERY TEAM.—If the Secretary selects measures other than the measures recommended by the recovery team,

the Secretary shall publish with the final plan an explanation of why the measures recommended by the recovery team were not selected for the final recovery plan.

"(4) PUBLICATION OF NOTICE ON FINAL PLANS.—The Secretary shall publish in the Federal Register a notice of availability, and a summary, of the final recovery plan, and include in the final recovery plan a response to significant comments that the Secretary received on the draft recovery plan.

"(i) REVIEW.—

"(1) EXISTING PLANS.—Not later than 5 years after the date of enactment of this subsection, the Secretary shall review recovery plans published before that date.

"(2) SUBSEQUENT PLANS.—The Secretary shall review each recovery plan first approved or revised under this section after the date of enactment of this subsection, not later than 10 years after the date of approval or revision of the plan and every 10 years thereafter.

"(j) REVISION OF RECOVERY PLANS.—Notwithstanding any other provision of this section, the Secretary shall revise a recovery plan if the Secretary finds that substantial new information, which may include failure to

meet the benchmarks included in the plan, based on the best scientific and commercial data available, indicates that the recovery goal contained in the recovery plan will not achieve the conservation and recovery of the endangered species or threatened species covered by the plan. The Secretary shall convene a recovery team to develop the revisions required by this subsection, unless the Secretary has established an exception for the species pursuant to subsection (d)(3).

"(k) EXISTING PLANS.—Nothing in this section shall require the modification of—

"(1) a recovery plan approved;

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

"(3) a draft recovery plan on which significant progress has been made;

before the date of enactment of this subsection until the recovery plan is revised by the Secretary in accordance with this section.

"(l) IMPLEMENTATION OF RECOVERY PLANS.—

"(1) IMPLEMENTATION AGREEMENTS.—The Secretary is authorized to enter into agreements with Federal agencies, affected States, Indian tribes, local governments, private landowners, and organizations to implement specified conservation measures

identified by an approved recovery plan that promote the recovery of the species with respect to land or water owned by, or within the jurisdiction of, each such party. The Secretary may enter into such agreements, if the Secretary, after notice and opportunity for public comment, determines that—

"(A) each non-Federal party to the agreement has the legal authority and capability to carry out the agreement;

"(B) the agreement will be reviewed and revised as necessary on a regular basis (which shall be not less often than every 5 years) by the parties to the agreement to ensure that it meets the requirements of this section; and

"(C) the agreement establishes a mechanism for the Secretary to monitor and evaluate implementation of the agreement.

"(2) DUTY OF FEDERAL AGENCIES.—Each Federal agency identified under subsection (e)(4) shall enter into an implementation agreement with the Secretary not later than 2 years after the date on which the Secretary approves the recovery plan for the species. For the purposes of satisfying this section, the substantive provisions of the agreement shall be within the sole discretion of the Secretary

and the head of the Federal agency entering into the agreement.

"(3) OTHER REQUIREMENTS.—

"(A) AGENCY ACTIONS.—Any action authorized, funded, or carried out by a Federal agency that is specified in a recovery plan implementation agreement between the Federal agency and the Secretary to promote the recovery of the species and for which the agreement provides sufficient information on the nature, scope, and duration of the action to determine the effect of the action on any endangered species, threatened species, or critical habitat shall not be subject to the requirements of section 7(a)(2) for that species, if the action is to be carried out during the term of the agreement and the Federal agency is in compliance with the agreement.

"(B) COMPREHENSIVE AGREEMENTS.—If a non-Federal person proposes to include in an implementation agreement a site-specific action that the Secretary determines meets the requirements of subparagraph (A) and that action would require authorization or funding by 1 or more Federal agencies, the agencies authorizing

or funding the action shall participate in the development of the agreement and shall identify, at that time, all measures for the species that would be required under this Act as a condition of the authorization or funding.

"(4) FINANCIAL ASSISTANCE.—

"(A) IN GENERAL.—In cooperation with the States and subject to the availability of appropriations under section 15(f), the Secretary may provide a grant of up to $25,000 to a private landowner to assist the landowner in carrying out a recovery plan implementation agreement under this subsection.

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

"(C) OTHER PAYMENTS.—A grant provided to an individual private landowner under this paragraph shall be in addition to, and not affect, the total amount of payments the landowner is otherwise eligible to receive under the conservation reserve program established under

subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.), the wetlands reserve program established under subchapter C of that chapter (16 U.S.C. 3837 et seq.), or the Wildlife Habitat Incentives Program established under section 387 of the Federal Agriculture Improvement and Reform Act of 1996 (16 U.S.C. 3836a).

"(m) STATE AUTHORITY FOR RECOVERY PLANNING.—

"(1) IN GENERAL.—At the request of the Governor of a State, or the Governors of several States in cooperation, the Secretary may authorize the respective State agency to develop the recovery plan for an endangered species or a threatened species in accordance with the requirements and schedules of subsections (c), (d)(1), (d)(2), and (e) and this subsection if the Secretary finds that—

"(A) the State or States have entered into a cooperative agreement with the Secretary pursuant to section 6(c); and

"(B) the State agency has submitted a statement to the Secretary demonstrating adequate authority and capability to carry out the

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

"(2) STANDARDS AND GUIDELINES.—The Secretary, in cooperation with the States, shall publish standards and guidelines for the development of recovery plans by a State agency under this subsection, including standards and guidelines for interstate cooperation and for the grant and withdrawal of authorization by the Secretary under this subsection.

"(3) DUTIES OF RECOVERY TEAM.—The recovery team shall prepare a draft recovery plan in accordance with this section and shall transmit the draft plan to the Secretary through the State agency authorized to develop the recovery plan.

"(4) REVIEW OF DRAFT PLANS.—Before publication of a notice of availability of a draft recovery plan, the Secretary shall review each draft recovery plan developed pursuant to this subsection to determine whether the plan meets the requirements of this section. If the Secretary determines that the plan does not meet such requirements, the Secretary shall notify the State agency and, in cooperation with the State agency, develop a recovery plan in accordance with this section.

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

"(6) WITHDRAWAL OF AUTHORITY.—

"(A) IN GENERAL.—The Secretary may withdraw the authority from a State that has been authorized to develop a recovery plan pursuant to this subsection if the actions of the State agency are not in accordance with the substantive and procedural requirements of subsections (c), (d)(1), (d)(2), and (e) and this subsection. The Secretary shall give the State agency an opportunity to correct any deficiencies identified by the Secretary and shall withdraw the authority from the State unless the State agency within 60 days has corrected the deficiencies identified by the Secretary. On withdrawal of State authority pursuant to this subsection, the Secretary shall have an additional 18 months to publish a draft recovery plan and an additional 1 year to publish a final recovery plan under subsection 5(c).

"(B) PETITIONS TO WITHDRAW.—Any person may submit a petition requesting the Secretary to withdraw the authority from a State on the basis that the actions of the State agency are not in accordance with the substantive and procedural requirements described in subparagraph (A). If the Secretary has not acted on the petition pursuant to subparagraph (A) within 90 days after the date of submission of the petition, the petition shall be deemed to be denied and the denial shall be a final agency action for the purposes of judicial review.

"(7) DEFINITION OF STATE AGENCY.—In this subsection, the term 'State agency' means—

"(A) a State agency (as defined in section 3) of each State entering into a cooperative request under paragraph (1); and

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

"(n) CRITICAL HABITAT DESIGNATION.—

"(1) RECOMMENDATION OF THE RECOVERY TEAM.—Not later than 270 days after the date of publication under section 4 of a final regulation containing a listing determination for a species, the recovery team appointed for the species shall provide the Secretary with a description of any habitat of the species that is recommended for designation as critical habitat pursuant to this subsection and any recommendations for special management considerations or protection that are specific to the habitat.

"(2) DESIGNATION BY THE SECRETARY.—The Secretary, to the maximum extent prudent and determinable, shall by regulation designate any habitat that is considered to be critical habitat of an endangered species or a threatened species that is indigenous to the United States or waters with respect to which the United States exercises sovereign rights or jurisdiction.

"(A) DESIGNATION.—

"(i) PROPOSAL.—Not later than 18 months after the date on which a final listing determination is made under section 4 for a species, the Secretary, after consultation and in cooperation with the recovery team, shall publish in the Federal Register

a proposed regulation designating critical habitat for the species.

"(ii) PROMULGATION.—The Secretary shall, after consultation and in cooperation with the recovery team, publish a final regulation designating critical habitat for a species not later than 30 months after the date on which a final listing determination is made under section 4 for the species.

"(B) OTHER DESIGNATIONS.—If a recovery plan is not developed under this section for an endangered species or a threatened species, the Secretary shall publish a final critical habitat determination for the endangered species or threatened species not later than 3 years after making a determination that the species is an endangered species or a threatened species.

"(C) ADDITIONAL AUTHORITY.—The Secretary may publish a regulation designating critical habitat for an endangered species or a threatened species concurrently with the final regulation implementing the determination that the species is endangered or threatened if the Secretary determines that designation of critical

habitat at the time of listing is essential to avoid the imminent extinction of the species.

"(3) FACTORS TO BE CONSIDERED.—The designation of critical habitat shall be made on the basis of the best scientific and commercial data available and after taking into consideration the economic impact, impacts to military training and operations, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary shall describe the economic impacts and other relevant impacts that are to be considered under this subsection in the publication of any proposed regulation designating critical habitat.

"(4) EXCLUSIONS.—The Secretary may exclude any area from critical habitat for a species if the Secretary determines that the benefits of the exclusion outweigh the benefits of designating the area as part of the critical habitat, unless the Secretary determines that the failure to designate the area as critical habitat will result in the extinction of the species.

"(5) REVISIONS.—The Secretary may, from time-to-time and as appropriate, revise a designation. Each area designated as critical habitat before the date of enactment of this subsection shall con-

tinue to be considered so designated, until the designation is revised in accordance with this subsection.

"(6) PETITIONS.—

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

"(B) NOTICE OF PROPOSED ACTION.—Not later than 1 year after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how to proceed with the requested revision, and shall promptly publish notice of the intention in the Federal Register.

"(7) PROPOSED AND FINAL REGULATIONS.—Any regulation to designate critical habitat or imple-

ment a requested revision shall be proposed and promulgated in accordance with paragraphs (4), (5), and (6) of section 4(b) in the same manner as a regulation to implement a determination with respect to listing a species.

''(o) REPORTS.—The Secretary shall report every 2 years to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to section 4 and on the status of all species for which the plans have been developed.''.

(c) CITIZEN SUITS.—Section 11(g)(1)(C) of the Endangered Species Act of 1973 (16 U.S.C. 1540(g)(1)(C)) is amended by inserting ''or section 5'' after ''section 4''.

(d) CONFORMING AMENDMENTS FOR RECOVERY PLANNING.—

(1) Section 6(d)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1535(d)(1)) is amended in the first sentence by striking ''section 4(g)'' and inserting ''section 4(f)''.

(2) Section 10(f)(5) of the Endangered Species Act of 1973 (16 U.S.C. 1539(f)(5)) is amended by striking the last sentence.

(3) Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–9) is amended in the undesignated paragraph relating to the National Wildlife Refuge System by striking ''section 5(a)'' and inserting ''section 5A(a)''.

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

(5) Section 104(c)(4)(A)(ii)(I) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1347(c)(4)(A)(ii)(I)) is amended by striking ''section 4(f)'' and inserting ''section 5''.

(6) Section 115(b)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1383(b)(2)) is amended by striking ''section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f))'' and inserting ''section 5 of the Endangered Species Act of 1973''.

(7) Section 118(f)(11) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1387(f)(11)) is amended by striking ''section 4'' and inserting ''section 5''.

(8) The table of contents in the first section of the Endangered Species Act of 1973 (16 U.S.C. prec. 1531) is amended—

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

"Sec. 5. Recovery plans.
"Sec. 5A. Land acquisition.";

and

(B) by adding at the end the following:

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

(e) PLANS FOR PREVIOUSLY LISTED SPECIES.—In the case of species included in the list published under section 4(c) of the Endangered Species Act of 1973 before the date of enactment of this Act, and for which no recovery plan was developed before that date, the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall develop a final recovery plan in accordance with the requirements of section 5 of the Endangered Species Act of 1973 (as amended by this section) (including the priorities of section 5(b) of that Act) for not less than one-half of the species not later than 3 years after the date of enactment of this Act and for all species not later than 5 years after that date.

SEC. 4. INTERAGENCY CONSULTATION AND COOPERATION.

(a) REASONABLE AND PRUDENT ALTERNATIVES.—

(1) DEFINITION.—Subsection (a) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) (as amended by section 2(a)(2)) is amended by inserting the following after the paragraph defining the term ''plant'' and redesignating the subsequent paragraphs accordingly:

''(15) REASONABLE AND PRUDENT ALTERNATIVES.—The term 'reasonable and prudent alternatives' means alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the legal authority and jurisdiction of the Federal agency, that are economically and technologically feasible, and that the Secretary believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.''.

(2) CONFORMING AMENDMENT.—Section 7(n) of the Endangered Species Act of 1973 (16 U.S.C. 1536(n)) is amended in the first sentence by striking '', as defined by section 3(13) of this Act,''.

(b) INVENTORY OF SPECIES ON FEDERAL LAND.—Section 7(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(1)) is amended—

(1) by striking ''CONSULTATIONS.—(1) The'' and inserting:''CONSULTATIONS.—

''(1) IN GENERAL.—

''(A) OTHER PROGRAMS.—The''; and

(2) by adding at the end the following:

''(B) INVENTORY OF SPECIES ON FEDERAL LAND.—The head of each Federal agency that is responsible for the management of land and water—

''(i) shall, to the maximum extent practicable, by not later than December 31, 2008, prepare and provide to the Secretary an inventory of the presence or occurrence of endangered species, threatened species, species that have been proposed for listing, and species that the Secretary has identified as candidates for listing under section 4, that are located on land or water owned or under the control of the agency; and

''(ii) shall, at least once every 10 years thereafter, update the inventory required by clause (i) including newly listed species, species proposed for listing, and candidate species.''.

(c) CONSULTATION.—Section 7(a)(3) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(3)) is amended to read as follows:

"(3) CONSULTATION.—

"(A) NOTIFICATION OF ACTIONS.—Before commencing any action, each Federal agency shall notify the Secretary if the agency determines that the action may affect an endangered species or a threatened species, or critical habitat.

"(B) AGENCY DETERMINATION.—

"(i) IN GENERAL.—Each Federal agency shall consult with the Secretary as required by paragraph (2) on each action for which notification is required under subparagraph (A) unless—

"(I) the Federal agency makes a determination based on the opinion of a qualified biologist that the action is not likely to adversely affect an endangered species, a threatened species, or critical habitat;

"(II) the Federal agency notifies the Secretary that it has determined that the action is not likely to ad-

versely affect any listed species or critical habitat and provides the Secretary, along with the notice, a copy of the information on which the agency based the determination; and

"(III) the Secretary does not object in writing to the agency's determination within 60 days after the date on which the notice is received.

"(ii) PUBLIC ACCESS TO INFORMATION.—The Secretary shall maintain a list of notices received from Federal agencies under clause (i)(II) and shall make available to the public the list and, on request (subject to the exemptions specified in section 552(b) of title 5, United States Code), the information received by the Secretary on which the agency based its determination.

"(iii) ACTIONS EXCLUDED.—The Secretary may by regulation identify categories of actions with respect to specific endangered species or threatened species that the Secretary determines are likely to have an adverse effect on the species or its

critical habitat and, for which, the procedures of clause (i) shall not apply.

"(iv) BASIS FOR OBJECTION.—The Secretary shall object to a determination made by a Federal agency pursuant to clause (i), if—

"(I) the Secretary determines that the action may have an adverse effect on an endangered species, a threatened species or critical habitat;

"(II) the Secretary finds that there is insufficient information in the documentation accompanying the determination to evaluate the impact of the proposed action on endangered species, threatened species, or critical habitat; or

"(III) the Secretary finds that, because of the nature of the action and its potential impact on an endangered species, a threatened species, or critical habitat, review cannot be completed in 60 days.

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

biennially with respect to the implementation of this subparagraph including in the report information on the circumstances that resulted in the Secretary making any objection to a determination made by a Federal agency under clause (i) and the availability of resources to carry out this section.

"(C) CONSULTATION AT REQUEST OF APPLICANT.—Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by the applicant's project and that implementation of the action will likely affect the species.".

(d) GAO REPORT.—The Comptroller General of the United States shall report to the Committee on Environment and Public Works of the Senate and to the Committee on Resources of the House of Representatives not later than 3 years after the date of enactment of this Act, and 2 years thereafter, on the cost of formal consultation

to Federal agencies and other persons carrying out actions subject to the requirements of section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536), including the costs of reasonable and prudent measures imposed.

(e) NEW LISTINGS.—Section 7(a) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)) is amended by adding at the end the following:

"(5) EFFECT OF LISTING ON EXISTING PLANS.—

"(A) DEFINITION OF ACTION.—For the purposes of paragraph (2) and this paragraph, the term 'action' includes land use plans under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and land and resource management plans under the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 note).

"(B) REINITIATION OF CONSULTATION.—Whenever a determination to list a species as an endangered species or a threatened species or designation of critical habitat requires re-initiation of consultation under paragraph (2) on an already approved action as defined under

subparagraph (A), the consultation shall commence promptly, but not later than 90 days after the date of the determination or designation, and shall be completed not later than 1 year after the date on which the consultation is commenced.

"(C) SITE-SPECIFIC ACTIONS DURING CONSULTATION.—Notwithstanding subsection (d), the Federal agency implementing the land use plan or land and resource management plan under subparagraph (B) may authorize, fund, or carry out a site-specific ongoing or previously scheduled action within the scope of the plan on the land before completing consultation on the plan under subparagraph (B) pursuant to the consultation procedures of this section and related regulations, if—

"(i) no consultation on the action is required; or

"(ii) consultation on the action is required, the Secretary issues a biological opinion and the action satisfies the requirements of this section.".

(f) IMPROVED FEDERAL AGENCY COORDINATION.—Section 7(a) of the Endangered Species Act of 1973 (16

U.S.C. 1536(a)) (as amended by subsection (e)) is amended by adding at the end the following:

"(6) CONSOLIDATION OF CONSULTATION AND CONFERENCING.—

"(A) CONSULTATION WITH A SINGLE AGENCY.—Consultation and conferencing under this subsection between the Secretary and a Federal agency may, with the approval of the Secretary, encompass a number of related or similar actions by the agency to be carried out within a particular geographic area.

"(B) CONSULTATION WITH SEVERAL AGENCIES.—The Secretary may consolidate requests for consultation or conferencing from various Federal agencies the proposed actions of which may affect the same endangered species, threatened species, or species that have been proposed for listing under section 4, within a particular geographic area.".

(g) USE OF INFORMATION PROVIDED BY STATES.—Section 7(b)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1536(b)(1)) is amended by adding at the end the following:

"(C) USE OF STATE INFORMATION.—In conducting a consultation under subsection

(a)(2), the Secretary shall actively solicit and consider information from the State agency in each affected State.''.

(h) OPPORTUNITY TO PARTICIPATE IN CONSULTATIONS.—Section 7(b)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1536(b)(1)) (as amended by subsection (g)) is amended by adding at the end the following:

''(D) OPPORTUNITY TO PARTICIPATE IN CONSULTATIONS.—

''(i) IN GENERAL.—In conducting a consultation under subsection (a)(2), the Secretary shall provide any person who has sought authorization or funding from a Federal agency for an action that is the subject of the consultation, the opportunity to—

''(I) before the development of a draft biological opinion, submit and discuss with the Secretary and the Federal agency information relevant to the effect of the proposed action on the species and the availability of reasonable and prudent alternatives (if a jeopardy opinion is to be issued) that the Federal agency and the person

can take to avoid violation of subsection (a)(2);

"(II) receive information, on request, subject to the exemptions specified in section 552(b) of title 5, United States Code, on the status of the species, threats to the species, and conservation measures, used by the Secretary to develop the draft biological opinion and the final biological opinion, including the associated incidental taking statements; and

"(III) receive a copy of the draft biological opinion from the Federal agency and, before issuance of the final biological opinion, submit comments on the draft biological opinion and discuss with the Secretary and the Federal agency the basis for any finding in the draft biological opinion.

"(ii) EXPLANATION.—If reasonable and prudent alternatives are proposed by a person under clause (i) and the Secretary does not include the alternatives in the final biological opinion, the Secretary shall

explain to the person why those alternatives were not included in the opinion.

"(iii) PUBLIC ACCESS TO INFORMATION.—Comments and other information submitted to, or received from, any person (pursuant to clause (i)) who seeks authorization or funding for an action shall be maintained in a file for that action by the Secretary and shall be made available to the public (subject to the exemptions specified in section 552(b) of title 5, United States Code).".

(i) INCIDENTAL TAKING STANDARDS FOR FEDERAL AGENCIES.—Section 7(b)(4) of the Endangered Species Act of 1973 (16 U.S.C. 1536(b)(4)) is amended—

(1) in clause (ii), by inserting "and mitigate" after "to minimize"; and

(2) by adding at the end the following: "For the purposes of this subsection, reasonable and prudent measures shall be related both in nature and extent to the effect of the proposed activity that is the subject of the consultation.".

(j) EMERGENCY CONSULTATIONS.—Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended by adding the following:

"(q) EMERGENCY CONSULTATIONS.—In response to a natural disaster or other emergency, consultation under subsection (a)(2) may be deferred by a Federal agency for the emergency repair of a natural gas pipeline, hazardous liquid pipeline, or electrical transmission facility, if the repair is necessary to address an imminent threat to human lives or an imminent and significant threat to the environment. Consultation shall be initiated as soon as practicable after the threat to human lives or the environment has abated.".

(k) REVISION OF REGULATIONS.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Commerce shall promulgate modifications to part 402 of title 50, Code of Federal Regulations, to implement this section and the amendments made by this section.

SEC. 5. CONSERVATION PLANS.

(a) PERMIT FOR TAKING ON THE HIGH SEAS.—Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)(B)) is amended by striking "section 9(a)(1)(B)" and inserting "subparagraph (B) or (C) of section 9(a)(1)".

(b) MONITORING.—Section 10(a)(2)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)(B))

is amended in the last sentence by striking ''reporting'' and inserting ''monitoring and reporting''.

(c) OTHER PLANS.—Section 10(a) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)) is amended by striking paragraph (2)(C) and inserting the following:

''(3) MULTIPLE SPECIES CONSERVATION PLANS.—

''(A) IN GENERAL.—In addition to 1 or more listed species, a conservation plan developed under paragraph (2) may, at the request of the applicant, include species proposed for listing under section 4(c), candidate species, or other species found on land or waters owned or within the jurisdiction of the applicant covered by the plan.

''(B) APPROVAL CRITERIA.—The Secretary shall approve an application for a permit under paragraph (1)(B) that includes species other than species listed as endangered species or threatened species if, after notice and opportunity for public comment, the Secretary finds that the permit application and the related conservation plan satisfy the criteria of subparagraphs (A) and (B) of paragraph (2) with re-

spect to listed species, and that the permit application and the related conservation plan with respect to other species satisfy the following requirements—

"(i) the impact on non-listed species included in the plan will be incidental;

"(ii) the applicant will, to the maximum extent practicable, minimize and mitigate such impacts;

"(iii) the actions taken by the applicant with respect to species proposed for listing or candidates for listing included in the plan, if undertaken by all similarly situated persons within the range of the species, are likely to eliminate the need to list the species as an endangered species or a threatened species for the duration of the agreement as a result of the activities conducted by those persons;

"(iv) the actions taken by the applicant with respect to other non-listed species included in the plan, if undertaken by all similarly situated persons within the range of the species, would not be likely to contribute to a determination to list the

species as an endangered species or a threatened species for the duration of the agreement; and

"(v) the criteria of subparagraphs (A)(iv), (B)(iii), and (B)(v) of paragraph (2);

and the Secretary has received such other assurances as the Secretary may require that the plan will be implemented. The permit shall contain such terms and conditions as the Secretary determines to be necessary or appropriate to carry out the purposes of this paragraph, including such monitoring and reporting requirements as the Secretary determines to be necessary for determining whether the terms and conditions are being complied with.

"(C) TECHNICAL ASSISTANCE AND GUIDANCE.—To the maximum extent practicable, the Secretary and the heads of other Federal agencies, in cooperation with the States, are authorized and encouraged to provide technical assistance or guidance to any State or person that is developing a multiple species conservation plan under this paragraph. In providing technical assistance or guidance, priority shall

be given to landowners that might otherwise encounter difficulty in developing such a plan.

"(D) DEADLINES.—A conservation plan developed under this paragraph shall be reviewed and approved or disapproved by the Secretary not later than 1 year after the date of submission, or within such other period of time as is mutually agreeable to the Secretary and the applicant.

"(E) STATE AND LOCAL LAW.—

"(i) OTHER SPECIES.—Nothing in this paragraph shall limit the authority of a State or local government with respect to fish, wildlife, or plants that have not been listed as an endangered species or a threatened species under section 4.

"(ii) COMPLIANCE.—An action by the Secretary, the Attorney General, or a person under section 11(g) to ensure compliance with a multiple species conservation plan and permit under this paragraph may be brought only against a permittee or the Secretary.

"(F) EFFECTIVE DATE OF PERMIT FOR NON-LISTED SPECIES.—In the case of any spe-

cies not listed as an endangered species or a threatened species, but covered by an approved multiple species conservation plan, the permit issued under paragraph (1)(B) shall take effect without further action by the Secretary at the time the species is listed pursuant to section 4(c), and to the extent that the taking is otherwise prohibited by subparagraph (B) or (C) of section 9(a)(1).

"(4) LOW EFFECT ACTIVITIES.—

"(A) IN GENERAL.—Notwithstanding paragraph (2)(A), the Secretary may issue a permit for a low effect activity authorizing any taking referred to in paragraph (1)(B), if the Secretary determines that the activity will have no more than a negligible effect, both individually and cumulatively, on the species, any taking associated with the activity will be incidental, and the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The permit shall require, to the extent appropriate, actions to be taken by the permittee to offset the effects of the activity on the species.

"(B) APPLICATIONS.—The Secretary shall minimize the costs of permitting to the applicant by developing, in cooperation with the States, model permit applications that will constitute conservation plans for low effect activities.

"(C) PUBLIC COMMENT; EFFECTIVE DATE.—On receipt of a permit application for an activity that meets the requirements of subparagraph (A), the Secretary shall provide notice in a newspaper of general circulation in the area of the activity not later than 30 days after receipt and provide an opportunity for comment on the permit. If the Secretary does not receive significant adverse comment by the date that is 30 days after the notice is published, the permit shall take effect without further action by the Secretary 60 days after the notice is published.

"(5) NO SURPRISES.—

"(A) IN GENERAL.—Each conservation plan developed under this subsection shall include a no surprises provision, as described in this paragraph.

"(B) NO SURPRISES.—A person who has entered into, and is in compliance with, a con-

servation plan under this subsection may not be required to undertake any additional mitigation measures for species covered by the plan if such measures would require the payment of additional money, or the adoption of additional use, development, or management restrictions on any land, waters, or water-related rights that would otherwise be available under the terms of the plan without the consent of the permittee. The Secretary and the applicant, by the terms of the conservation plan, shall identify—

"(i) other modifications to the plan; or

"(ii) other additional measures;

if any, that the Secretary may require under extraordinary circumstances.

"(6) PERMIT REVOCATION.—After notice and an opportunity for correction, as appropriate, the Secretary shall revoke a permit issued under this subsection if the Secretary finds that the permittee is not complying with the terms and conditions of the permit or the conservation plan.".

(d) CANDIDATE CONSERVATION AGREEMENTS.—

(1) PERMITS.—Section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) is amended—

(A) by striking ''or'' at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting ''; or''; and

(C) by adding at the end the following:

''(C) any taking incidental to, and not the purpose of, the carrying out of an otherwise lawful activity pursuant to a candidate conservation agreement entered into under subsection (k).''.

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

''(k) CANDIDATE CONSERVATION AGREEMENTS.—

''(1) IN GENERAL.—At the request of any non-Federal person, the Secretary may enter into a candidate conservation agreement with the person for a species that has been proposed for listing under section 4(c)(1), is a candidate species, or is likely to become a candidate species in the near future on property owned or under the jurisdiction of the person requesting such an agreement.

"(2) REVIEW BY THE SECRETARY.—

"(A) SUBMISSION TO THE SECRETARY.—A non-Federal person may submit a candidate conservation agreement developed under paragraph (1) to the Secretary for review at any time before the listing described in section 4(c)(1) of a species that is the subject of the agreement.

"(B) CRITERIA FOR APPROVAL.—The Secretary may approve an agreement and issue a permit under subsection (a)(1)(C) for the agreement if, after notice and opportunity for public comment, the Secretary finds that—

"(i) for species proposed for listing, candidates for listing, or species that are likely to become a candidate species in the near future, that are included in the agreement, the actions taken under the agreement, if undertaken by all similarly situated persons, would produce a conservation benefit that would be likely to eliminate the need to list the species under section 4(c) as a result of the activities of those persons during the duration of the agreement;

"(ii) the actions taken under the agreement will not adversely affect an endangered species or a threatened species;

"(iii) the agreement contains such other measures that the Secretary may require as being necessary or appropriate for the purposes of the agreement;

"(iv) the person will ensure adequate funding to implement the agreement; and

"(v) the agreement includes such monitoring and reporting requirements as the Secretary determines to be necessary for determining whether the terms and conditions of the agreement are being complied with.

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

"(4) ASSURANCES.—A person who has entered into a candidate conservation agreement under this subsection, and is in compliance with the agreement, may not be required to undertake any additional measures for species covered by the agreement if the

measures would require the payment of additional money, or the adoption of additional use, development, or management restrictions on any land, waters, or water-related rights that would otherwise be available under the terms of the agreement without the consent of the person entering into the agreement. The Secretary and the person entering into a candidate conservation agreement, by the terms of the agreement, shall identify—

"(A) other modifications to the agreement; or

"(B) other additional measures;

if any, that the Secretary may require under extraordinary circumstances.".

(e) PUBLIC NOTICE.—Section 10(c) of the Endangered Species Act of 1973 (16 U.S.C. 1539(c)) is amended—

(1) by striking "thirty" each place that it appears and inserting "60"; and

(2) by inserting before the final sentence the following: "The Secretary may, with approval of the applicant, provide an opportunity, as early as practicable, for public participation in the development of a multiple species conservation plan and permit application. If a multiple species conservation plan and

permit application have been developed without an opportunity for public participation, the Secretary shall extend the public comment period for an additional 30 days for interested parties to submit written data, views, or arguments on the plan and application.''.

(f) SAFE HARBOR AGREEMENTS.—Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) (as amended by subsection (d)(2)) is amended by adding at the end the following:

''(l) SAFE HARBOR AGREEMENTS.—

''(1) AGREEMENTS.—

''(A) IN GENERAL.—The Secretary may enter into agreements with non-Federal persons to benefit the conservation of endangered species or threatened species by creating, restoring, or improving habitat or by maintaining currently unoccupied habitat for endangered species or threatened species. Under an agreement, the Secretary shall permit the person to take endangered species or threatened species included under the agreement on land or waters that are subject to the agreement if the taking is incidental to, and not the purpose of, carrying out of an otherwise lawful activity, except

that the Secretary may not permit through an agreement any incidental taking below the baseline requirement specified pursuant to subparagraph (B).

"(B) BASELINE.—For each agreement under this subsection, the Secretary shall establish a baseline requirement that is mutually agreed on by the applicant and the Secretary at the time of the agreement that will, at a minimum, maintain existing conditions for the species covered by the agreement on land and waters that are subject to the agreement. The baseline may be expressed in terms of the abundance or distribution of endangered or threatened species, quantity or quality of habitat, or such other indicators as appropriate.

"(2) STANDARDS AND GUIDELINES.—The Secretary shall issue standards and guidelines for the development and approval of safe harbor agreements in accordance with this subsection.

"(3) FINANCIAL ASSISTANCE.—

"(A) IN GENERAL.—In cooperation with the States and subject to the availability of appropriations under section 15(d), the Secretary may provide a grant of up to $10,000 to any

individual private landowner to assist the landowner in carrying out a safe harbor agreement under this subsection.

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

"(C) OTHER PAYMENTS.—A grant provided to an individual private landowner under this paragraph shall be in addition to, and not affect, the total amount of payments that the landowner is otherwise eligible to receive under the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.), the wetlands reserve program established under subchapter C of that chapter (16 U.S.C. 3837 et seq.), or the Wildlife Habitat Incentives Program established under section 387 of the Federal Agriculture Improvement and Reform Act of 1996 (16 U.S.C. 3836a).".

(g) HABITAT RESERVE AGREEMENTS.—Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) (as amended by subsection (f)) is amended by adding at the end the following:

"(m) HABITAT RESERVE AGREEMENTS.—

"(1) PROGRAM.—The Secretary shall establish a habitat reserve program to be implemented through contracts or easements of a mutually agreed on duration to assist non-Federal property owners to preserve and manage suitable habitat for endangered species and threatened species.

"(2) AGREEMENTS.—The Secretary may enter into a habitat reserve agreement with a non-Federal property owner to protect, manage, or enhance suitable habitat on private property for the benefit of endangered species or threatened species. Under an agreement, the Secretary shall make payments in an agreed-on amount to the property owner for carrying out the terms of the habitat reserve agreement, if the activities undertaken pursuant to the agreement are not otherwise required by this Act.

"(3) STANDARDS AND GUIDELINES.—The Secretary shall issue standards and guidelines for the development and approval of habitat reserve agreements in accordance with this subsection. Agree-

ments shall, at a minimum, specify the management measures, if any, that the property owner will implement for the benefit of endangered species or threatened species, the conditions under which the property may be used, the nature and schedule for any payments agreed on by the parties to the agreement, and the duration of the agreement.

''(4) PAYMENTS.—Any payment received by a property owner under a habitat reserve agreement shall be in addition to and shall not affect the total amount of payments that the property owner is otherwise entitled to receive under the Agricultural Market Transition Act (7 U.S.C. 7201 et seq.) or the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.).

''(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the Interior $27,500,000 and the Secretary of Commerce $13,333,333 for each of fiscal years 2003 through 2008 to assist non-Federal property owners in carrying out the terms of habitat reserve programs under this subsection.''.

(h) HABITAT CONSERVATION PLANNING LOAN PROGRAM.—Section 10(a) of the Endangered Species Act of

1973 (16 U.S.C. 1539(a)) (as amended by subsection (c)) is amended by adding at the end the following:

"(7) HABITAT CONSERVATION PLANNING LOAN PROGRAM.—

"(A) ESTABLISHMENT.—There is established a 'Habitat Conservation Planning Loan Program' (referred to in this paragraph as the 'Program') under which the Secretary may make no-interest loans to assist in the development of a conservation plan under this section.

"(B) ELIGIBILITY.—Any State, county, municipality, or other political subdivision of a State shall be eligible to receive a loan under the Program.

"(C) LOAN LIMITS.—The amount of any loan may not exceed the total financial contribution of the other parties participating in the development of the plan.

"(D) CRITERIA.—In determining whether to make a loan, the Secretary shall consider—

"(i) the number of species covered by the plan;

"(ii) the extent to which there is a commitment to participate in the planning process from a diversity of interests (in-

cluding local governmental, business, environmental, and landowner interests);

"(iii) the likely benefits of the plan; and

"(iv) such other factors as the Secretary considers appropriate.

"(E) TERM OF THE LOAN.—

"(i) IN GENERAL.—Except as provided in clause (ii), a loan made under this paragraph shall be for a term of 10 years.

"(ii) ADVANCED REPAYMENTS.—If no conservation plan is developed within 3 years after the date of the loan, the loan shall be for a term of 4 years. If no permit is issued under paragraph (1)(B) with respect to the conservation plan within 4 years after the date of the loan, the loan shall be for a term of 5 years.".

(i) EFFECT ON PERMITS AND PROPOSED PLANS.—No amendment made by this section requires the modification of—

(1) a permit issued under section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539); or

(2) a conservation plan submitted for approval pursuant to that section;

before the date of enactment of this Act.

(j) RULEMAKING.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Commerce shall, after consultation with the States and notice and opportunity for public comment, publish final regulations implementing the provisions of section 10(a) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)), as amended by this section.

(k) NAS REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Commerce shall enter into appropriate arrangements with the National Academy of Sciences to conduct a review of and prepare a report on the development and implementation of conservation plans under section 10(a) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)). The report shall assess the extent to which those plans comply with the requirements of that Act, the role of multiple species conservation plans in preventing the need to list species covered by those plans, and the relationship of conservation plans for listed species to implementation of recovery plans. The report shall be transmitted to the Congress not later than 5 years after the date of enactment of this Act.

(l) SCIENTIFIC PERMITS.—Section 10(d) of the Endangered Species Act of 1973 (16 U.S.C. 1539(d)) is amended—

(1) by striking ''POLICY.—The'' and inserting ''POLICY.—

''(1) IN GENERAL.—The''; and

(2) by adding at the end the following:

''(2) SCIENTIFIC PERMITS.—In granting permits for scientific purposes or to enhance the propagation or survival of an endangered species or a threatened species listed under section 4(c), the Secretary may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time. In issuing or modifying such a permit, the Secretary shall take into consideration the expertise and facilities of the permit applicant and, consistent with the conservation of the affected species, maximize the efficiency of the permitting process.''.

(m) HABITAT CONSERVATION INSURANCE PROGRAM.—Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) (as amended by subsection (g)) is amended by adding at the end the following:

''(n) HABITAT CONSERVATION INSURANCE PROGRAM.—

"(1) ESTABLISHMENT.—There is established a Habitat Conservation Insurance Program.

"(2) USE.—The Program shall be used to pay the cost of additional mitigation measures not otherwise required under an existing conservation plan under subsection (a) or a candidate conservation agreement under subsection (k) to minimize or mitigate adverse effects to a species covered by the plan or agreement, to the extent that the adverse effects were not anticipated and addressed at the time the plan or agreement was approved by the Secretary.

"(3) GRANTS.—In carrying out the Program, the Secretary may make grants to any person who is a party to a conservation plan under subsection (a) or a candidate conservation agreement under subsection (k).".

SEC. 6. ENFORCEMENT.

(a) ENFORCEMENT FOR INCIDENTAL TAKING.—Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended by adding after subsection (g) the following new subsection and redesignating the subsequent subsection accordingly:

"(h) INCIDENTAL TAKING.—In any action under subsection (a), (b), or (e)(6) against any person for an alleged taking incidental to the carrying out of an otherwise lawful

activity, the Secretary or the Attorney General must establish, using pertinent evidence based on scientifically valid principles, that the acts of the person have caused, or will cause, the taking, of—

"(1) an endangered species; or

"(2) a threatened species the taking of which is prohibited pursuant to a regulation issued under section 4(d).".

(b) CITIZEN SUIT FOR INCIDENTAL TAKING.—Section 11(g) of the Endangered Species Act of 1973 (16 U.S.C. 1540(g)) is amended by adding the following new paragraph after paragraph (2) and redesignating the subsequent paragraphs accordingly:

"(3) INCIDENTAL TAKING.—In any action under this subsection against any person for an alleged taking incidental to the carrying out of an otherwise lawful activity, the person commencing the action must establish, using pertinent evidence based on scientifically valid principles, that the acts of the person alleged to be in violation of section 9(a)(1) have caused, or will cause, the taking, of—

"(A) an endangered species; or

"(B) a threatened species the taking of which is prohibited pursuant to a regulation issued under section 4(d).".

SEC. 7. EDUCATION AND TECHNICAL ASSISTANCE.

(a) IN GENERAL.—Section 13 of the Endangered Species Act of 1973 is amended to read as follows:

"PRIVATE PROPERTY OWNERS EDUCATION AND TECHNICAL ASSISTANCE PROGRAM

"SEC. 13. (a) IN GENERAL.—In cooperation with the States and other Federal agencies, the Secretary shall develop and implement a private property owners education and technical assistance program to—

"(1) inform the public about this Act;

"(2) respond to requests for technical assistance from the private property owners interested in conserving species listed or proposed for listing under section 4(c)(1) and candidate species on the property of the property owners; and

"(3) recognize exemplary efforts to conserve species on private land.

"(b) ELEMENTS OF THE PROGRAM.—Under the program, the Secretary shall—

"(1) publish educational materials and conduct workshops for private property owners and other members of the public on the role of this Act in conserving endangered species and threatened species, the principal mechanisms of this Act for achieving species recovery, and potential sources of technical and financial assistance;

"(2) assist field offices in providing timely advice to property owners on how to comply with this Act;

"(3) provide technical assistance to State and local governments and private property owners interested in developing and implementing recovery plan implementation agreements, conservation plans, and safe harbor agreements;

"(4) serve as a focal point for questions, requests, and suggestions from property owners and local governments concerning policies and actions of the Secretary in the implementation of this Act;

"(5) provide training for Federal personnel responsible for implementing this Act on concerns of private property owners, to avoid unnecessary conflicts, and improving implementation of this Act on private property; and

"(6) nominate for national recognition by the Secretary property owners that are exemplary managers of land for the benefit of species listed or proposed for listing under section 4(c)(1) or candidate species.".

(b) CONFORMING AMENDMENT.—The table of contents in the first section of the Endangered Species Act of 1973 (16 U.S.C. prec. 1531) is amended by striking

the item relating to section 13 and inserting the following:

"Sec. 13. Private property owners education and technical assistance program.".

(c) EFFECT ON PRIOR AMENDMENTS.—Nothing in this section or the amendments made by this section affects the amendments made by section 13 of the Endangered Species Act of 1973 (87 Stat. 902), as in effect on the day before the date of enactment of this Act.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 15(a) of the Endangered Species Act of 1973 (16 U.S.C. 1542(a)) is amended—

(1) in paragraph (1), by striking "and $41,500,000 for fiscal year 1992" and inserting "$41,500,000 for fiscal year 1992, $90,000,000 for fiscal year 2003, $120,000,000 for fiscal year 2004, $140,000,000 for fiscal year 2005, $160,000,000 for fiscal year 2006, $165,000,000 for fiscal year 2007, and $165,000,000 for fiscal year 2008";

(2) in paragraph (2)—

(A) by striking "and $6,750,000" and inserting "$6,750,000"; and

(B) by inserting after "and 1992" the following: ", $35,000,000 for fiscal year 2003, $50,000,000 for fiscal year 2004, $60,000,000 for fiscal year 2005, $65,000,000 for fiscal year 2006, $65,000,000 for fiscal year 2007, and $70,000,000 for fiscal year 2008"; and

(3) in paragraph (3)—

(A) by striking ''and $2,600,000'' and inserting ''$2,600,000''; and

(B) by inserting '', and $4,000,000 for each of fiscal years 2003 through 2008'' after ''and 1992''.

(b) EXEMPTIONS FROM ACT.—Section 15(b) of the Endangered Species Act of 1973 (16 U.S.C. 1542(b)) is amended by inserting ''and $625,000 for each of fiscal years 2003 through 2008'' after ''and 1992''.

(c) CONVENTION IMPLEMENTATION.—Section 15(c) of the Endangered Species Act of 1973 (16 U.S.C. 1542(c)) is amended—

(1) by striking ''and $500,000'' and inserting ''$500,000,''; and

(2) by inserting ''and $1,000,000 for each fiscal year 2003 through 2008'' after ''and 1992,''.

(d) ADDITIONAL AUTHORIZATIONS.—Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended by adding at the end the following:

''(d) FINANCIAL ASSISTANCE FOR SAFE HARBOR AGREEMENTS.—There are authorized to be appropriated to the Secretary of the Interior $10,000,000 and the Secretary of Commerce $5,000,000 for each of fiscal years 2003 through 2008 to carry out section 10(l).

"(e) HABITAT CONSERVATION PLANNING LOAN PROGRAM.—There are authorized to be appropriated to the Habitat Conservation Planning Loan Program established by section 10(a)(7) $10,000,000 for each of fiscal years 2003 through 2005 and $5,000,000 for each of fiscal years 2006 and 2007 to assist in the development of conservation plans.

"(f) FINANCIAL ASSISTANCE FOR RECOVERY PLAN IMPLEMENTATION.—There are authorized to be appropriated to the Secretary of the Interior $30,000,000 and the Secretary of Commerce $15,000,000 for each of fiscal years 2003 through 2008 to carry out section 5(l)(4).

"(g) HABITAT CONSERVATION INSURANCE PROGRAM.—

"(1) IN GENERAL.—Of the amounts appropriated for a fiscal year under subsections (d), (e), and (f), 5 percent shall be available for the Habitat Conservation Insurance Program established under section 10(n).

"(2) LIMITATION.—If, at the end of any fiscal year, the balance allocated for the Habitat Conservation Insurance Program exceeds $10,000,000, paragraph (1) shall not apply during the subsequent fiscal year.

"(h) AVAILABILITY.—Amounts made available under this section shall remain available until expended.

"(i) LIMITATION ON USE OF FUNDS.—Of the funds made available to carry out section 5 for any fiscal year, not less than $32,000,000 shall be available to the Secretary of the Interior and not less than $13,500,000 to the Secretary of Commerce to implement actions to recover listed species. Of the funds made available to the Secretary of the Interior and the Secretary of Commerce in each fiscal year to list species, the Secretary of the Interior and the Secretary of Commerce shall use not less than 10 percent of those funds in each fiscal year for delisting species. If any of the funds made available by the previous sentence are not needed in that fiscal year for delisting eligible species, those funds shall be available for listing.

"(j) ACCOUNTING AND STRATEGIC MANAGEMENT PLAN.—Not later than November 30, 2003, the Secretary of the Interior and the Secretary of Commerce shall each submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives—

"(1) an accounting for fiscal year 2003 of funds expended by the Department of the Interior and the Department of Commerce, respectively, to

carry out the Department's functions and responsibilities under this Act; and

"(2) a management plan describing the projected future uses by the respective Department of authorized funds for fiscal years 2004 through 2008.".

(e) ASSISTANCE TO STATES FOR CONSERVATION ACTIVITIES.—Section 6(i) of the Endangered Species Act of 1973 (16 U.S.C. 1535(i)) is amended by adding at the end the following:

"(3) ASSISTANCE TO STATES FOR CONSERVATION ACTIVITIES.—There are authorized to be appropriated to the Secretary such sums as are necessary for each of fiscal years 2003 through 2008 to provide financial assistance to State agencies to carry out conservation activities under other sections of this Act, including the provision of technical assistance for the development and implementation of recovery plans.".

SEC. 9. OTHER AMENDMENTS.

(a) DEFINITIONS.—

(1) CANDIDATE SPECIES.—Subsection (a) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) (as amended by section 2(a)(2)) is amended by redesignating paragraphs (2) through

(10) as paragraphs (3) through (11), respectively, and inserting the following after paragraph (1):

"(2) CANDIDATE SPECIES.—The term 'candidate species' means a species for which the Secretary has on file sufficient information on biological vulnerability and threats to support a proposal to list the species as an endangered species or a threatened species, but for which listing is precluded because of pending proposals to list species that are of a higher priority. This paragraph shall not apply to any species defined as a candidate species by the Secretary of Commerce before the date of enactment of this sentence.".

(2) IN COOPERATION WITH THE STATES.—Subsection (a) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) (as amended by sections 2(a)(2) and 4(a)(1) and this subsection) is amended by inserting the following after the paragraph defining the term "import" and redesignating the subsequent paragraphs accordingly:

"(12) IN COOPERATION WITH THE STATES.—The term 'in cooperation with the States' means a process under which—

"(A) the State agency in each of the affected States, or the representative of the State

agency, is given an opportunity to participate in a meaningful and timely manner in the development of the standards, guidelines, and regulations to implement the applicable provisions of this Act; and

"(B) the Secretary carefully considers all substantive concerns raised by the State agency, or the representative of the State agency, and, to the maximum extent practicable consistent with this Act, incorporates their suggestions and recommendations, while retaining final decision making authority.".

(3) RURAL AREA.—Subsection (a) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) (as amended by sections 2(a)(2) and 4(a)(1) and this subsection) is amended by inserting the following after the paragraph defining the term "reasonable and prudent alternatives" and redesignating the subsequent paragraphs accordingly:

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

(4) COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—Subsection (a)(20) of section 3 of

the Endangered Species Act of 1973 (16 U.S.C. 1532) (as amended by sections 2(a)(2) and 4(a)(1) and this subsection) is amended by striking ''Trust Territories of the Pacific Islands'' and inserting ''Commonwealth of the Northern Mariana Islands''.

(5) TERRITORIAL SEA.—Subsection (a) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) (as amended by sections 2(a)(2) and 4(a)(1) and this subsection) is amended by inserting the following after the paragraph defining the term ''take'' and redesignating the subsequent paragraphs accordingly:

''(23) TERRITORIAL SEA.—The term 'territorial sea' means the 12-nautical-mile maritime zone set forth in Presidential Proclamation 5928, dated December 27, 1988.''.

(b) FINDINGS, PURPOSES, AND POLICY.—

(1) COMMERCIAL VALUE.—Section 2(a)(3) of the Endangered Species Act of 1973 (16 U.S.C. 1531(a)(3)) is amended by inserting ''commercial,'' after ''recreational,''.

(2) AGENCY COORDINATION.—Section 2(c) of the Endangered Species Act of 1973 (16 U.S.C. 1531(c)) is amended by adding at the end the following:

"(3) AGENCY COORDINATION.—Federal agencies are encouraged to coordinate and collaborate to further the conservation of endangered species and threatened species.".

(c) NO TAKING AGREEMENTS.—Section 9 of the Endangered Species Act of 1973 (16 U.S.C. 1538) is amended by adding at the end the following:

"(h) NO TAKING AGREEMENTS.—The Secretary and a non-Federal property owner may, at the request of the property owner, enter into an agreement identifying activities of the property owner that, based on a determination of the Secretary, will not result in a violation of the prohibitions of paragraphs (1)(B), (1)(C), and (2)(B) of subsection (a). The Secretary shall respond to a request for an agreement submitted by a property owner within 90 days after receipt of the request. Nothing in this subsection prevents the Secretary, the Attorney General, or any other person from commencing an enforcement action under section 11.".

(d) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The section heading of section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended to read as follows:

"CONSERVATION MEASURES AND EXCEPTIONS".

(2) TABLE OF CONTENTS.—The table of contents in the first section of the Endangered Species

1 Act of 1973 (16 U.S.C. prec. 1531) is amended by
2 striking the item relating to section 10 and inserting
3 the following:

"Sec. 10. Conservation measures and exceptions.".

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