

美國瀕絕物種法

(1993年修正版)*

*本法之修正經過

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序

在現今這個國際化的社會，各國資訊的流通，已成為一件普遍而重要的事情，然因語文上的障礙，故在吸收國外的資訊與經驗時，國人常常未能完全領會外文之精華，或是閱讀速度太慢，以致未能掌握獲取資訊的最佳時機，殊為可惜！

本中心於八十五年度起，接受行政院農業委員會委託，研擬符合國內現況之野生植物保育策略。為期擬其之保育策略能周延妥適，本中心蒐集了大量的國內外相關資料，其中國外部分，如法規、政策白皮書、植物保育專書等等，均以工作小組集體合作之方式，將資料翻譯成中文，以便讓更多人可快速地運用這些資料。工作小組目前已完成之譯文達數十萬字，並已著手撰寫我國的植物保育策略。

1993年美國瀕絕物種法，即為上述工作小組之譯文之一，該法案係由本中心助理林麗紅翻譯，並請動物生態專家—台大動物系李副教授玲玲及法律專家—海基會法律服務處謝副處長福源，分別予以審訂，全文共計18節，其中第4節，第5節，第9節，第12節及第14節可供我國擬定植物保育相關策略及法規之參考。

茲因每個人翻譯之風格及文字運用之巧妙不一，本中心人員在翻譯時，雖已力求符合「信、達、雅」之境界，惟仍有所疏漏之處，特將譯文及原文合印為一冊，以供讀者對照參閱之用。

本中心在各界關懷及協助下日益成長，在今年七月即將成立滿五週年，本書於此際付梓，意義至為重大。對於林助理麗紅的辛勞翻譯，李副教授玲玲及謝副處長福源在百忙中撥冗審閱，以及工作小組之共同努力，本譯本方得順利出版，仁德敬致謝忱，付梓前夕，謹綴數語，是為之序。

台灣省特有生物研究保育中心

主任

顏仁德 謹識

中華民國八十六年六月

第 2 節 調查結果、目的及政策

(a)調查結果—國會依據調查資料發現以下事實並聲明：

- (1)由於經濟成長與開發行為未結合充足的關心及保育活動，致美國許多的魚類、野生動物及植物已滅絕；
- (2)其他的魚類、野生動物及植物在數量上日益枯竭，目前已瀕臨滅絕或有滅絕的威脅；
- (3)這些魚類、野生動物及植物對我國及全國人民均具有美學、生態、教育、歷史、娛樂及科學等方面的價值；
- (4)美國自許為國際社會中的一個獨立國，有責任依照下列法案儘可能地保育瀕絕魚類、野生動物及植物：
 - (A)與加拿大及墨西哥簽訂之遷徙鳥類協定；
 - (B)與日本簽訂之遷徙及瀕絕鳥類協定(Migratory and Endangered Bird Treaty)；
 - (C)西半球自然保護及野生物保存公約(the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere)；
 - (D)西北大西洋漁業國際協定(the International Convention for the Northwest Atlantic Fisheries)；
 - (E)北太平洋公海漁業國際協定(the International Convention for the High Seas Fisheries of the North Pacific Ocean)；
 - (F)瀕臨絕種野生動植物國際貿易公約(the Convention on International Trade in Endangered Species of Wild Fauna and Flora)；
 - (G)其他國際協定；且
- (5)透過聯邦財政上的支持及獎勵系統，獎勵各州及其他有利害關係的團體，發展並支持符合國內及國際標準的保育計畫，此乃達成美國對國際承諾之關鍵所在，並有利於魚類、野生動物及植物等國家襲產之保護及全民福

址。

(b)目的—

本法的目的是在於提供瀕絕及受威脅物種賴以為生的生態系得以保存的方法，並提出對瀕絕及受威脅物種的保育計畫及採取適當步驟，以利(a)小節中各項條約及國際公約目的之達成。

(c)政策—

(1)進一步聲明國會的政策為：所有聯邦部門及機構對於名單草案所列物種及部長依本法第 4 節認定為候選之瀕絕及受威脅物種等應加強保育，並應運用其職權促成本項政策及本法所定目的之達成。

(2)進一步聲明國會的政策為：聯邦機構都應和各州及地方機構合作解決保育瀕絕物種所涉及之水資源問題。

第 3 節 定義

本法用詞定義如下：

(1)行動的替代方案(alternative courses of action) 一意指所有的替代方案，並不僅限於原始的計畫目標及機構的管轄範圍。

(2)商業活動(commercial activity)一意指所有工業及貿易活動，包括，但不僅限於，買或賣商品或其促銷活動；但如果是博物館或類似的文化或歷史機構的展示則不包括在內。

(3)保育(conserve, conserving, conservation)一意指利用各種方法、程序，以使瀕絕或受威脅物種達到不再需要本法保護的地步。這些方法及程序包括，但不僅限於，所有與科學資源經營管理有關的活動，如研究、調查、執法、棲地取得、維持、繁衍、活捉、移植等，而當某個特定生態系已面臨族群壓力之特殊狀況下，如不能以別的方式減低壓力，則可採有管制的捕捉方式為之。

(4)公約(Convention)一係指 1973 年 3 月 3 日所簽訂之瀕臨絕種野生動植物國際貿易公約(Convention on International Trade in Endangered Species of Wild

Fauna and Flora)及其附錄。

- (5)(A)關鍵棲地(critical habitat)—受威脅或瀕絕物種之「關鍵棲地」的定義為—
- (i)依據本法第 4 節的條款所列之物種所分布的地理區域內的特殊地區。這些特殊地區具有下列物理及生物學上的特徵：
 - (I)為保育這些物種所必須；且
 - (II)需要特殊的經營管理考量或保護。
 - (ii)依據本法第 4 節的條款所列之物種，所分布的地理區域外的特殊地區，而根據部長的決議，為保育這些物種所必須者。
- (B)關鍵棲地可以為現已列為受威脅或瀕絕，但迄今並無(A)所定義關鍵棲地的物種而設立。
- (C)除了部長認定的特殊狀況外，關鍵棲地不可涵蓋受威脅或瀕絕物種所分布的全部地理區域。
- (6)瀕絕物種(endangered species)—意指任何物種於所有或大部分分布地有滅絕的危機，而昆蟲綱的物種，若經部長決定，其屬害蟲，如依本法加以保護將可能造成人類無法抵抗的災難者不包括在內。
- (7)聯邦機構(Federal agency)—係指美國的所有部門、機構或協助單位。
- (8)魚類或野生動物(fish or wildlife)—係指動物界的所有成員，包括所有的哺乳類、魚類、鳥類（包括其他協定或國際公約所保護的遷徙性、非遷徙性或瀕絕鳥類）、兩棲類、爬蟲類、軟體動物、甲殼類、節肢動物及其他無脊椎動物，並包括牠們的任何部分、產品、卵、子代或屍體的全部或部分。
- (9)國外貿易(foreign commerce)—包括下列任何交易—
- (A)在某一外國國內不同人之間的貿易；
 - (B)在兩個或更多外國國家內不同人之間的貿易；
 - (C)一個美國境內的人和一個國外的人之間的貿易；
 - (D)美國境內的人對自一國或多國帶入美國的魚類或野生動物進行貿易。

- (10)輸入(import)—意指登陸、攜帶、引進或意圖登陸、攜帶或引進任何美國管轄權所及之處，不論此種登陸、攜帶或引進是否為美國關稅法所定義。
- (11)許可證或執照申請者(permit or license applicant)—當用於聯邦機構依第 7 節所採取行動之豁免申請時，係指任何向聯邦機構申請許可證或執照的人，其申請案遭否決主要係依據第 7 節(a)之規定。
- (12)人(person)—意指個人、法人、合夥人、信託、公會或任何其他私人實體；或任何聯邦政府、州政府、自治區域、各州政府的下屬單位或任何外國政府的官員、雇員、代理人、部門或協助單位。任何州、自治區、州的下屬單位或任何受到美國管轄之其他實體。
- (13)植物(plant)—係指植物界所有的成員，包括種子、根及其他部分。
- (14)部長(Secretary)—除特別註明外，係指依據 1970 年重組計畫第 4 號條文而應負責主管之內政部長或商業部長，但當涉及本法及公約中關於陸生植物輸入或輸出的執法工作時，也適用於農業部長。
- (15)種(species)—包括任何魚類或野生動物或植物之亞種，及當成熟後能相互交配繁殖的個體所組成的任何明確族群。
- (16)州(State)—指任何一個州、哥倫比亞特區(District of Columbia)、波多黎各(Puerto Rico)聯邦，美屬薩摩亞(Samoa)、維京群島(Virgin Islands)、關島(Guam)及太平洋島嶼上的託管土地。
- (17)州機構(State agency)—係指任何的州機構、部門、局、委員會或州內對魚類、植物或野生動物資源之保育及經營管理有權責之政府實體。
- (18)取得(take)—係指騷擾、傷害、追趕、獵捕、射擊、宰殺、捕捉、收集或意圖進行上述行爲。
- (19)受威脅種(threatened species)—係指在可見的未來，任何物種在其全部或大部分分布地，即將瀕臨滅絕者。
- (20)美國(United States)—當用於地理區域時，係指所有的州。

第 4 節 瀕絕及受威脅物種之決定

(a)概述：

(1)部長應依據(b)小節所訂之行政命令並考慮下列因子，以決定列為瀕絕及受威脅之物種：

(A)該物種分布範圍或棲地受到破壞、改變、縮小等的威脅；

(B)受到商業、娛樂、科學或教育等方面的過度利用；

(C)疾病或天敵；

(D)現有管理機制不足；

(E)其他影響該物種持續存在的天然或人為因子。

(2)根據 1970 年重組計畫第 4 號條文屬於商業部長主管之物種：

(A)當商業部長決定某些物種必須—

(i) 列為瀕絕或受威脅種，或

(ii) 由受威脅種變為瀕絕物種時，必須通知內政部長依據本法將這些物種列出。

(B)當商業部長決定某些物種時必須—

(i) 依照(c)將該物種自名單中除名，或

(ii) 由瀕絕物種變為受威脅種時，應向內政部長提出行動建議，如果獲得其認同，即予以實施。

(C)未事先獲得商業部長依本節提出認同的決定，內政部長不得擅自將任何物種加入名單，自名單中除名或變更其等級。

(3)部長依照(b)的規定，用最謹慎的態度來決定：

(A)依照(1)認定一個物種為瀕絕或受威脅時，應同時劃設該物種之關鍵棲地；

(B)俟後並可適時調整此種劃設。

(4)部長應依(b)之規定，決定任何物種是否因(1)中所認定因子之改變而不

再為瀕絕或受威脅之物種。

(b)決定的基礎—

(1)(A)部長應以(a)(1)之要件，單純根據現有最好的科學及商業資料來進行前述決定。並完整地考慮有關該物種的現況評估及各州機構有關物種狀況之科學及商業資料，同時考慮各州、外國、州及外國的下屬單位在其所轄範圍內或深海進行天敵的控制、棲地保護、食物供應或其他保育措施的努力。

(B)在實施本節時，部長應考慮可以減少其他依賴相同生態系之物種列入名單之保育事項，此外，部長應斟酌以下二點：

(i) 依照任何外國或某一國際協定，將未限制貿易的物種列為需要保護的物種；或

(ii) 被對魚類、野生動物或植物保育有權責的各州機構或國外機構認定為現在或可見的未來有滅絕危險的物種。

(2)部長應依照(a)(3)之規定，以現有最好的科學資料，並考慮經濟上及任何相關的衝突來劃設及檢討關鍵棲地。部長如果依據最好的科學及商業資料認為將某一地區自關鍵棲地除名，比將其劃為關鍵棲地之利益為大時，除非未將這些棲地劃設為關鍵棲地，將會導致這些物種的滅絕，否則可以將其除名。

(3)(A)部長在收到任何人依據美國法典(United States Code)第 5 號 553(e)之規定提出增列或刪除某一依照(c)公告之物種的陳情書後，至遲 90 天內必須予以判定，部長必須判定陳情書所述，是否有科學及商業資料的根據。如果有根據，部長必須儘快地採取行動，審查該物種的相關狀況，並立刻將每一項判定於聯邦公報上發布。

(B)部長在收到(A)所述提供具體資料的陳情書 12 個月內必須做出下列判定之一：

(i) 如果陳情書所請求的行動是不適當的，部長應立刻在聯邦公報上發

布。

(ii) 如果陳情書所請求的行動是適當的，部長應立刻在聯邦公報上發布一概況性的通告，和依第(5)所擬定執行此項行動之相關規定的全文。

(iii) 陳情書所請求的行動合理，但一

(I) 依據(5)及(6)所訂定執行建議行動相關規定的計畫書或公告程序，因為尚須先認定該物種是否應列為瀕絕或受威脅種之待審案而無法進行，及

(II) 依據(c)將物種加入名單中，或是某物種不再需要本法的保育時，將其除名的進展太過快速時。

遇有前述情形，部長應儘快地將這些判定公布在聯邦公報上，並敘述該判定所依據的資料和理由。

(C)(i) 與依 B(iii)所判定的相關陳情書，應視同依(A)在決定的日期重新申請並具有具體科學和商業資料之陳情書。

(ii) 任何依(A)而做的負面判定及依(B)(i)或(iii)所作的判定，都應受到司法的審查。

(iii) 部長應依 B(iii)所做判定對所有物種實施有效的相關監測系統，並立刻使用(7)之權力，以防止這些物種的福祉遭受顯著的風險。

(D)(i) 儘可能在收到依美國法典第 5 號 553(e)所提之陳情書 90 天內，修正關鍵棲地的劃設，部長應判定是否有適當的科學及商業資料指出其要求修正之陳情係合理的。部長並應立刻將判定刊登聯邦公報。

(ii) 在收到(i)所述之陳情書 12 個月內，如發現其陳情係有具體資料者，部長應決定打算如何進行修正，並立刻於聯邦公報上刊登通告。

(4) 除了(5)、(6)二條所述之外，將可應用美國法典第 5 號 553 節(有關規則制定過程)的法規來公告相關規則以完成本法之目的。

(5) 關於部長所提實施有關(a)(1)或(3)之決定、劃定或修正之相關規定，部長

必須一

(A)在該規定生效前至少 90 天一

(i) 於聯邦公報上發布一般性通告及規則全文，及

(ii) 向可能有列名物種分布的各州政府機構及相當轄區提出通告(包括所有條文規則)並徵詢其意見；

(B)在可行的範圍內，和國務卿合作，給予其他有列名物種分布或其居民在公海中取得列名物種的各國一份規則草案的通告，並請該州提供意見；

(C)向專業的科學機構發出規定草案通告；

(D)當依規定實施一項決定，如果任何人在一般通告發出的三十天內要求提出有關該項決定的實質、正確、有用的科學資料，則必須將規則草案委託至少三位藉由在有發表專家審查之科學文獻而證明其具相關科學專業知識的獨立的仲裁人予以檢視；

(E)將草案摘要發布於美國境內可能存在列名物種地區的新聞媒體；且

(F)在通告發出 45 天之內，如果有人提出召開公聽會之要求，應立刻舉辦。

(6)(A)依(5)(A)(i)發出一般通告日起一年內，部長應刊登聯邦公報一

(i)如果涉及決定一個物種是否要列為瀕絕或受威脅物種，或關於關鍵棲地的修正，包括一

(I) 執行此一決定之最新規則，

(II)執行修正或判定不須修正之最新規則，

(III)依(B)(i)給予一年展延期之通告，或

(IV)依(B)(ii)將規則草案予以撤銷，及撤銷原因之通告；或

(ii)根據(C)，如果要劃設關鍵棲地，包括一

(I) 施行此劃設之最新規則，

(II) 給予一年展延期之通告。

(B)(i)如對於依(A)(i)認定之規則草案，如果部長對用於決定物種是否要列名或關鍵棲地是否要修正，所依據的資料的正確性或充分與否有相當不一致的看法，可將(A)所規定不超過一年的時間展延不超過六個月，以收集更多的資料。

(ii)如果因為部長判定沒有足夠的證據支持規則草案，致未依(a)(i) 在一年內(或是在(i)中所規定更長的期限內)公告為最新規則，則應立即撤銷該規則。撤銷判定將受到司法的審查，除非有充分的新資訊，否則部長不得將曾被撤銷的規則重行送出。

(iii)如果依(A)所訂之一年期限被展延，則在展延的期限結束前，部長應在聯邦公報上刊登最新的執行規定或相關的修正，或不須修正的判定，或依照(ii)而撤銷規則的通告，以及撤銷的判定依據。

(C)關於瀕絕或受威脅物種關鍵棲地劃設的最新規則，必須與這些物種被認定為瀕絕或受威脅的最新規則同時公告，除非部長認為一

(i) 為了保育這些物種，這些規則的實施及決定必須立刻公告；或

(ii) 這些物種的關鍵棲地無法立即確定，在這種情況下，部長就可在(A)所定之一年期限展延，至多不得超過一年，且應在展延期限前儘可能的依據當時可收集到的資料，謹慎地劃設關鍵棲地並發布最新規則。

(D)若部長依(C)將期限展延一年，則劃設關鍵棲地的最後規則，應納入第5節適當復育計畫發展的相關資訊。

(7)部長為防止有危害魚類、野生動物或植物福祉的緊急事件發生而公布的相關規則，均不受(4)，(5)，(6)或是美國法典第5號553節之限制，但必須一

(A)部長於聯邦公報公布時，須詳述該規則及其必要性；且

(B)如果這些規則的實施對象為本土的魚類、野生動物及植物，則部長應通告每一個有這些物種生存的州機關。

這些規則在部長的判斷下，應於聯邦公報刊行後立即生效。任何依

本段所發布之規則，若在 240 天的期限內無法完成立法，則須予以中止。部長發出緊急規定後任何時間，若決定依任何最適當的資料亦無實際上的證據支持此種規則的合理性，則此規則必須撤銷。

(8)任何在聯邦公報上刊登與執行本法有關之草案或新規則，部長均應提供摘要及相關資料，包括與新規則相關數據依據，並說明數據與規則的關係。如果這些規則係有關劃設關鍵棲地者，應該儘可能地提供一個簡短的描述和評估，包括依部長的觀點，評估如果在該區域從事那些活動(不論是公家或私人)是否會破壞或影響該棲地及關鍵棲地的劃設。

(9)部長應依(a)(1)所述草擬相關規定並刊登於聯邦公報上；描述有助於依第 5 節所述與該規則草案有關的物種復育計畫的其他科學及商業資料。

(c)名錄一

(1)內政部長應在聯邦公報上刊登由他本人或商業部長列為瀕絕或受威脅之所有物種名錄。名錄上之每一物種，如果有的話，均應包括其學名及俗名，及在其屬於瀕絕或威脅種之分布範圍內被使用的名稱及關鍵棲地。部長應依(a)，(b)時常檢討名單，以使決定、劃設、修正符合現況。

(2)部長應一

(A)依(1)至少每 5 年全面檢討名錄一次，新名單在檢討完畢後立刻生效。

(B)依據此種檢討決定某些物種是否應一

(i) 從名單中除名；

(ii) 自瀕絕類移至受威脅類；或

(iii) 自受威脅類移至瀕絕類。

依(B)所作的決定必須和(a)及(b)條文之規定相符。

(d)保護規則一任何物種依(c)而列為受威脅者，部長應實行其認為必須之相關規則以保育該物種。部長可依法禁止任何 9(a)(1)規定禁止對瀕絕之魚類及野生動物所採取的行動，及 9(a)(2)規定禁止對瀕絕植物所採取的行動。但若涉及本土種之魚類及野生動物，則這些規則之效力只及於依本法 6(c)簽訂

合作協定且相關規則為該州通過的各州。

(e)外表相似之物種—如有下列情況，部長可依商業或取得的規定，對外表類似瀕絕或受威脅物種的物種採取適當措施，即使這些物種未依本法第 4 節列為瀕絕及受威脅物種—

(A)這些物種和已依法列入名單之物種在外表上極為相似，執法人員實難以區別；

(B)這種分辨上實際的困難，是這些瀕絕或受威脅物種的另一個威脅；及

(C)以此種方式處理這些未列入名單的物種，可確實地幫助本法政策的執行。

(f)機關準則—部長應建立並在聯邦公報上刊登機關準則，以確保本節的目的可以有效達成。此準則內容應包括，但不僅限於—

(1)對(b)(3)所述陳情書之收受、處置及記錄等過程；

(2)對陳情書所作判定之決定基準；

(3)對(a)(1)物種優先順序之排序系統；及

(4)有關依第 5 節所排定優先的復育計畫之發展及實施系統。部長應予以公告並供大眾提出對依此小節研擬的任何機關準則(包括任何的修正案)的書面意見。

(g)州意見的回應—

如果(b)(5)(A)(ii)所述之州單位，不同意由部長依本節所草擬的規則，而部長最後所公布之規則又和其所提意見相衝突，或是部長未將州單位依(b)(3)所提之陳情書意見予以列入，部長應予書面說明。

第 5 節 瀕絕及受威脅物種之復育

(a)復育計畫—

(1)概述—

(A)除非部長發現復育計畫無助於某一物種的保育，否則部長即應和每一個

受託州的州機構合作，並在現有最好的科學及商業資料的基礎下，發展並實施計畫，(在本小節中以下簡稱復育計畫)，以保育依第 4 節所列瀕絕及受威脅物種(在本節中，以下簡稱復育物種)及該等物種賴以存續的棲地。

(B)部長應依(A)設法減少因執行復育計畫所導致社會及經濟上的不利影響。

(C)部長應為某一物種發展及實施復育計畫—

(i)已依 4(c)在 1996 年 1 月 1 日前列入名錄且尚無復育計畫者，至遲應於 1996 年 12 月 31 日前實施復育計畫；且

(ii)在 1996 年 1 月 1 日或之後依 4(c)首次列入名錄者，至遲應於列入名錄後的 18 個月內實施。

(2)復育計畫實施及發展的優先性—部長應將下列計畫列為優先—

(A)為保育瀕絕或受威脅或部長依第 4 節列為候選物種，並依賴一種常見的生態系活存的物種所發展與執行多物種或整合型復育計畫；及

(B)若干不考慮其分類，但最可能自復育計畫中獲得好處的瀕絕或受威脅物種，尤其是這些物種的保育與開發計畫或其他型式的經濟活動相衝突時。

(3)內容—部長應儘最大的可能在各復育計畫中納入下列內容—

(A)對於達成復育物種之保育及存活的計畫目標，所必要的特定區域的經營計畫之描述，包括維持或恢復復育物種所賴以為生的生態系；

(B)一套客觀且可測量的標準，若已達到此標準則可依第 4 節條文將此一受復育物種自名錄中除名；

(C)估計欲達到復育目標及實施各步驟所需之時間與花費；

(D)描述減輕因實施復育計畫所導致有害社會及經濟衝擊之方案；

(E)就可利用的土地能對受復育物種之保育發揮最大的效力的現行聯邦土

地的利用政策；

- (F) 確認聯邦機構所將採取的措施將對受復育物種之保育有利；
- (G) 確認是否有任何特定地區或狀況，使得依 10(a)(2) 所述復育計畫之施行及發展，將有助於受復育物種之保育；
- (H) 確認是否有任何特定區域或狀況使得依第 14 節與私有土地所有人簽訂協定，將有助於受威脅物種之保育；且
- (I) 確認與自治區、州的下屬單位及行動中的其他個人合作以保育受復育物種的機會。

(4) 公眾的檢視及意見—

- (A) 部長在同意一個新的或修訂的復育計畫前，應—
 - (i) 公告周知並讓公眾對計畫有檢視及提供意見的機會；
 - (ii) 考慮在公眾評論期間所獲得的所有資訊。
- (B) 每一個聯邦機構應於實施新的或修正的復育計畫前仔細考慮(A)所述公眾評論期所獲得的資訊。

(5) 公眾參與(Public outreach)—

- (A) 部長在發展及實施復育計畫時，可以取得適當的公眾或私人機構、組織及個人的服務。
- (B) 本小節復育小組(Recovery teams)人員之任命，不受聯邦諮詢委員會法(the Federal Advisory Committee Act)之限制。
- (C) 部長應與各州合作，請求相關聯邦機構及適當人士參與(3)(E)，(F)，(G)，(H)，及(I)之敘述事務。
- (6) 報告—部長每二年應向參議院環境與公共事務委員會及眾議院海商及漁業委員會報告依第 4 節所列物種之狀況及其復育計畫施行及發展工作的現況。

(b) 監測—

- (1) 概述—部長應與州合作對依本法第 4 節所訂標準及依 4(c) 公告的名錄上予以除名的物種，進行至少 5 年以上的有系統且有效的監測。
- (2) 已復育物種的風險預防—部長應儘速依 4(b)(7) 之授權，避免(1)所述已復育物種的福利受到顯著的風險。
- (c) 計畫—部長及與國家森林系統有關的農業部長，應建立並實施依本法第 4 節列為瀕絕或受威脅魚類、野生動物及植物的保育計畫。為了實施這個計畫，部長被賦予以下的權責—
- (1) 利用依照 1956 年魚類及野生動物法修正案(the Fish and Wildlife Act, as amended)、魚類及野生動物綜合法修正案(the Fish and Wildlife Coordination Act, as amended)及遷徙鳥類保育法(Migratory Bird Conservation Act)等所取得之土地與授權事項；及
- (2) 可用購買、捐助或其他方式獲得土地、水或其他的相關利益；這項權利也包括其他他所取得的土地。
- (d) 取得— 1965 年土地及水資源保育基金法修正案(the Land and Water Conservation Fund Act of 1965, as amended)之基金，可用於(a)所述土地、水或其他相關利益之取得。

第 6 節 聯邦與州際合作

- (a) 概述—為了實施本法所賦予的權責，部長應儘可能地和各州合作。包括為保育瀕絕或受威脅物種而需取得土地、水資源或其他相關利益前的諮商。為執行本法而與州機構合作時，部長應不受聯邦諮詢委員會法之限制。
- (b) 經營管理協定—部長為保育瀕絕或受威脅物種，可以和各州簽訂行政及管理協定。在協定的規定下，這些區域內所有管理上的收入，應受到 1935 年 6 月 15 日本法 401 節條文之規範(49 Stat 383;16 U.S.C. 715s)。
- (c)(1) 合作協定—為了進一步達成本法目的，部長有權依本節和已建立並維持適當而有效的瀕絕或受威脅物種保育計畫的任何州簽訂合作協定。在部長收到州計畫草案的 120 天內，必須判定該計畫是否符合本法之規定。

除非部長判定該計畫不符規定，否則部長就應該開始與州政府合作執行該計畫。部長為判定此州計畫對瀕絕或受威脅物種之保育為適當而有效的，必須認定並每年再予確認—

(A)州機構或部長所判定被列為瀕絕或受威脅之本土魚類或野生動物，其保育的權責單位為州機構；

(B)州機構已依本法之目的及政策，建立州內所有由部長列為瀕絕或受威脅的本土魚類或野生動物之合理保育計畫，並提供詳述所有部長所要求的資料及細節的計畫書；

(C)州機構有權對轄內本土魚類及野生動物之存活需求及現況進行調查；

(D)州機構有權為本土瀕絕或受威脅物種之保育，而建立取得土地或水生棲地及其他相關利益之計畫；及

(E)條文中規定，公眾可參與瀕絕或受威脅之本土魚類或野生動物之指定，或依州計畫—

(i) 符合(3)(4)(5)(譯者註：(3),(4),(5)於文中找不到，可能係誤漏)所陳述之要求，且

(ii) 對部長或州機構列為瀕絕或受威脅且需有立即的保育計畫的本土魚類及野生動物應立即予以注意，但是部長依照(i)、本段及之後條文與州機構建立合理而有效的合作協定，應不影響依 4(d)或 9(a)(1)關於禁止取得瀕絕或受威脅物種規定的適用性。

(2)為了進一步達成本法的目的，部長有權依本節和任何已建立並維持適當而有效的瀕絕或受威脅植物的保育計畫的州簽訂合作協定。在部長收到州計畫 120 天內，必須判定該計畫是否符合本法之規定。除非部長判定計畫不符規定，否則部長就應開始與州政府合作執行該計畫。部長為判定此州計畫對瀕絕或受威脅植物的保育是適當而有效的，必須認定並每年再予確認—

(A)州機構或部長所判定為瀕絕或受威脅物種的本土植物，其保育的權責單位為州機構；

(B)州機構已依本法之目的及政策，建立州內所有由部長列為瀕絕或受威脅植物的合理保育計畫，並提供詳述所有部長所要求的資訊及細節的計畫書；

(C)州機構有權對轄內本土植物的存活狀況及需求進行調查；

(D)條文中規定，公眾可以參與瀕絕或受威脅本土植物之指定，或依州計畫—

(i) 符合本節(C)(D)之要求。

(ii) 對部長或州機構列為瀕絕或受威脅，且需有立即保育計畫的本土植物，應予以注意。但是部長依照(i)、本段及後續條文與州機構建立合理而有效的合作協定，應不影響依 4(d)或 9(a)(1)關於禁止取得瀕絕或受威脅物種規定的適用性。

(d)基金分配—

(1)部長有權對依(c)中簽訂合作協定的各州，透過各州機關分別提供財政上的支援，以協助發展瀕絕或受威脅物種保育計畫或協助 4(b)(3)(C)物種(譯者註：係指民眾陳情增列或修正、除名等物種)及 5(b)物種(譯者註：係指已復育成功之物種)之監測。部長每年均會基於(i)小節及以下考量分配撥款—

(A)美國在保護瀕絕或受威脅物種方面的國際承諾；

(B)州執行與本法目標及目的相符的保育計畫的準備狀況；

(C)州內瀕絕及受威脅物種的數目；

(D)州內瀕絕及受威脅物種恢復的潛力；

(E)著手進行瀕絕或受威脅物種復育、保護計畫對該物種存活的急迫性；

(F)監測州內候選物種狀況以預防這些物種面臨危險的重要性；

(G)監測州內已復育物種狀況，以確保這些物種不再回到需再依本法加以保護之重要性。

每年依據(i)給各州的分配經費若在該會計年度尚有餘額，可保留至下一會計年度結束前。部長有權依本節將各州某一時限內的結餘經費撥用於執行本節所述的計畫。

(2)合作協定應提供下列資料：

(A)部長及州所採取的行動；

(B)保育瀕絕或受威脅物種可望獲得的利益；

(C)行動預估的花費；

(D)聯邦政府及各州對這些經費的分擔；但一

(i)聯邦分擔執行此計畫的金額不得超過預估花費的 75 %。

(ii)如果有二個以上的州，同時針對一個或以上的瀕絕或受威脅物種進行保育，且透過州際及與部長進行合作而更能提昇保育，則聯邦分擔之經費可提高至 90 %。

部長可自行判斷並依規定按合作協定中所定之比例支付各州的費用。依本節的目的，非聯邦的部分，可由部長決定用金錢或實質財產分擔，其價值係由部長做最後的決定。

(e)州計畫的審查一部長依本節所採取的任何行動，均至少一年要檢討一次。

(f)聯邦法和州法間的衝突—所有有關於瀕絕或受威脅物種的輸入、輸出的州法或規定，如會影響到以下各項者，均屬無效：

(1)本法或本法相關子法所禁止的許可證；

(2)本法或本法相關子法許可證之例外禁止事項。本法不應被解釋為任何其他有關於保育遷徙及本土或引進之魚類或野生動物，或是禁止販售該等魚類或野生動物的州法規係屬無效。任何的州法規對於瀕絕或受威脅物種之取得，可訂定較本法更為嚴格的限制，但不可訂定較本法禁止事項較為寬鬆

之規定。

(g)過渡條文—

(1)本小節所稱之“創設期(establishment period)”係指本法於各州生效至下列情況首次發生之日為止：

(A)本法制定後，該州議會首次休會後的 120 天，或

(B)本法制定後滿 15 個月之日。

(2)各州有下列情況，則本法對取得任何本土瀕絕及受威脅物種之禁令的發布及 4(d)及 9(a)(1)(B)之授權不適用(除了瀕臨絕種野生動植物貿易公約附錄一或其他協定或聯邦法所列之物種)—

(A)依本法 6(c)與部長有合作協定的成員(取得該等物種與州法相抵觸者不包括在內)；或

(B)在創設期之外，當—

(i)部長依州政府的要求公布禁令適用於該等物種；或

(ii)部長判定並公布有明顯危及該等物種福利的危機存在，因此必須實施禁令以保護該等物種。部長的判定及公告，可以不經美國法典第 5 號 553 節的條款或公聽會而逕行完成；但除非部長進一步通告展延，否則其有效期限只有 90 天。

(h)規則—部長有權發布關於撥款補助各州施行本節相關事項所需經費的相關規定。

(i)撥款—

(1)1988 年 9 月 30 日後，每個會計年度均要撥入一筆錢至“瀕絕物種保育合作基金(the cooperative endangered species conservation fund)”，該基金係由部長支配，其數額相當於聯邦依 1937 年 9 月 2 日本法第 3 節補助之野生物復育基金(wildlife restoration fund)加上每個會計年度依本法 1984 年 7 月 18 日 1016 號設立之娛樂魚種復育專戶(the Sport Fishing Restoration Account)的轉帳總額的 5%。

(2)特殊基金內的存款可依本節(d)之規定撥款。

第 7 節 機構合作

(a)聯邦機構的措施及諮詢：

(1)(A)部長將檢討所主管各計畫之執行，並利用這些計畫促成本法目的之達成。其他的聯邦機構應在部長的諮詢及協助下，利用他們的職權實施本法第 4 節所列之瀕絕及受威脅物種的保育計畫，以達成本法的目的。

(B)每一個管理土地及水經營的聯邦權責機構的首長—

(i)至遲應於 1994 年 12 月 31 日前，準備並提供部長有關其所管轄的土地及水域內瀕絕、受威脅或名錄草案列名及經部長依本法第 4 節列入候選物種的資源調查資料；

(ii)至遲應於 1995 年 12 月 31 日前，提出對其所管轄的土地及水域內由部長依第 4 節列為候選物種擬採取之保育措施；及

(iii)可針對任何部長依第 4 節列為候選之物種，與部長簽訂保育協定。

(2)除非這些機構被委員會依本節(h)認定可享有豁免權。否則每個聯邦機構均應在部長的諮詢及協助下，確定其任何授權、補助或執行的行動(以下簡稱機構行動)不會危害到部長認定的(在經諮詢會受到影響的各州後認為是適當的)任何瀕絕或受威脅物種的永續生存，或造成關鍵棲地的毀滅或傷害。為了符合本節的各項要求，各機構應使用最好的科學及商業資料。

(3)聯邦機構在許可證或執照申請者的要求下，若申請人有理由認為其所實施之計畫區內有瀕絕或受威脅物種，且計畫的執行有可能影響這些物種時，應依照部長可能建立的準則，向部長提出諮詢。

(4)每一個聯邦機構應和部長商量關於其機構的行動可能危害到第 4 節所列物種的永續生存，或導致這些物種關鍵棲地的破壞。本段並不要求如(d)小節所述限制資源的投入。

(5)除了 7(j)所述之外，本節規定適用於所有聯邦機構及機構行動，包括治外法權的行動及有治外法權影響的行動。

(6)諮商及會議的協商—

(A)依本節部長及聯邦機構間的諮商及會議，若經部長同意，可包括在一特定地理區域或生態系中的許多有關或相似機構行動。

(B)部長可以將各聯邦機構計畫採取可影響利用同一生態系且依第 4 節列為瀕絕、受威脅及名單草案中的物種，其相關之諮商及會議予以結合。

(b)部長的觀點—

(1)(A)在(a)(2)關於機構行動的諮商，應在 90 天內或依(B)所述的經由部長和聯邦機構雙方同意的期限內決定；

(B)當機構行動涉及許可證或執照的申請者時，部長和聯邦機構必須在 90 天內達成共識，若不能在 90 天以內達成共識，則部長應依(A)所述，在第 90 天結束前—

(i)如果諮商期限不超過 150 天，則需給申請人一份書面聲明—

(I)所需期間較長的理由；

(II)完成諮商所需之資訊；及

(III)完成諮商的預估日期；或

(ii)如果諮商期限為 150 天或以上，需獲得申請人的同意。

如果部長在期限內獲得申請人之同意，則部長及聯邦機構會依前述內容，商議諮商期限之展延。

(2)依(a)(3)所為之諮商，將在部長、聯邦機構及申請人均同意之期限內完成。

(3)(A)如果依(a)(2)或(3)之諮商有結果，部長應立即將結果、部長的意見、產生此意見所依據的資料摘要，以及機構行動影響該物種或是關鍵棲地等書面資料，提供聯邦機構及申請人。如果發現有危害，部長應提出

不會抵觸(a)(2)規定之合理而明確的替代方案，供聯邦機構或申請人施行。

(B)經由(a)(3)之諮商及在諮商中部長所提的意見，如果部長在聯邦機構著手行動之前，審查並發現及注意到這些機構關於這個行動及相關資料均沒有顯著的修正，則機構行動計畫應再分別依(a)(2)加以協商。

(4)在依(a)(2)諮商後，部長如果下結論—

(A)機構行動不會抵觸該小節之規定，或可提供部長認可不抵觸該小節規定的替代方案；

(B)機構行動取得瀕絕或受威脅物種，並不違反該小節之規定；且

(C)如果行動中涉及瀕絕或受威脅海洋哺乳動物，而其取得依 1371(a)(5)授權辦理；

部長應提供聯邦機構及相關申請人書面聲明—

(i)詳載取得此物種所造成之衝擊，

(ii)詳載部長認為需要且合理而明確的措施減少這些衝擊，

(iii)詳載按照 1371 節(a)(5)，取得海洋哺乳動物之必要措施，及

(iv)發布由聯邦機構及(或)申請人按照(ii)及(iii)之內容實施的時間及條件(包括，但不僅限於需求報告)。

(c)生物學評估—

(1)為促使符合(a)(2)之要求，每個聯邦機構在有可能有已列入或即將列入保護之物種的地區，應無不符規定的建設合約，在 1978 瀕絕物種法生效日後，亦不得再有建設。如果部長基於現有最好的科學及商業資料，認為這些物種可能存在，則這些機構就應進行生物學評估，以確定在此行動中瀕絕或受威脅物種是否會受到的影響。此種評估應在建設的契約書生效及關於本行動的建設開始前 180 天內完成(或是在部長及聯邦機構雙方均同意的期限內，除非許可證或執照申請人亦同意，否則期限不得超過 180 天，在期限結束前，需有書面聲明，估計預計展延的期限及其理由)，此項評

估可由聯邦機構依照 1969 年國家環境政策法(the National Environment Policy Act —)(42 U.S.C 4332)102 節所述之要求予以規劃。

(2)任何人希望申請(g)小節所述之豁免條款，可以進行生物學評估，以確認是否有任何瀕絕或受威脅物種受到其行動之影響。任何的生物學評估，均應在部長的指導及適當的聯邦機構監督下進行。

(d)資源投入的限制—

經由(a)(2)所述之諮商後，聯邦機構及許可證或執照的申請人不得對可能影響日後在不牴觸(a)(2)條件下實施合理而明確地替代方案之可行性的機構行動，投入過多資源而造成不可恢復的傷害。

(e)(1)委員會的設立—本法設有瀕絕物種委員會 (Endangered Species Committee，以下簡稱“委員會”)。

(2)委員會將依(h)小節之規定，審查依本節所提之所有申請案，並決定申請案是否符合(a)(2)之豁免條件。

(3)委員會由下列七成員組成：

(A)農業部長(the Secretary of Agriculture)。

(B)國防部長(the Secretary of Army)。

(C)經濟諮詢委員會(the Council of Economic Advisors)主任委員。

(D)環境保護局(the Environmental Protection Agency)局長。

(E)內政部長(the Secretary of the Interior)。

(F)國家海洋及大氣行政署(the National Oceanic and Atmospheric Administration)署長。

(G)在仔細考量依(g)(2)(B)由部長認定受影響的各州所推薦的名單後，總統應由受影響的州各任命一員為委員會成員，並在申請案提出 30 天內成立委員會。

(4)(A)委員會的成員為無給職。

- (B)當這些委員爲了執行本委員會之工作而需離開其居所或辦公處時，可依美國法典第 5 號 5703 節公務人員支給標準支給旅費，包括每日的生活費。
- (5)(A)委員會成員中的五人或其代表將組成一個小組來辦理委員會的任何工作，但若涉及表決各項任務時，任何上述小組的成員，均不能代表小組辦理委員會的工作。
- (B)內政部長將爲委員會的主任委員。
- (C)本委員會依主任委員或五人小組之要求而開會。
- (D)委員會所有的會議及記錄均應公開。
- (6)在委員會的要求下，各聯邦機構的首長應責無旁貸地指派其雇員協助委員會執行本節所述的各項職責。
- (7)(A)委員會得依本節之職權爲執行其職責，且經委員會認可舉辦公聽會、會議或活動、出席作證及收集相關證據。
- (B)當得到委員會的授權，委員會的任何成員或職員即可依本節採取各項行動。
- (C)依據隱私法(Privacy Act)之規定，委員會得依本節保留聯邦機構的相關資料以執行其職責。在委員會主任委員的要求下，聯邦機構的首長應提供相關資料供委員會使用。
- (D)委員會可以和聯邦機構一樣地使用美國郵政資源。
- (E)公共事務署(General Services)之首長應在有償的狀況下提供委員會所要求的各項行政支援。
- (8)爲了執行本節所賦予的各項職責，委員會必要時可發布及修正這些規定或程序。
- (9)爲了得到豁免申請案所需的各項資料，委員會可發傳票請見證人出席作證，並製作相關的書籍及文件。

- (10)依據(3)(G)沒有任何人可代表委員會的成員投票。
- (f) 規則— 1978 年瀕絕物種法修正案施行後 90 天內，部長應發布規定說明申請豁免的表格、形式，及申請書內所應詳載之內容。這些規定聯邦機構行動所需的資訊，其內容包括，但不僅限於—
- (1)依(a)(2)聯邦機構首長及部長諮詢之過程描述；及
 - (2)描述為何這些行動不能加以修正，以符合(a)(2)之要求之理由。
- (g)豁免申請(Application for Exemption)及委員會的報告—
- (1)如果依(a)(2)諮詢後，部長依(b)指出機構行動可能牴觸(a)(2)之規定，則聯邦機構或州長的行動，或許可證或執照申請者，得向部長申請豁免許可證或執照，一個豁免申請案，首先應由部長依本節加以考量，再由委員會在依(5)完成報告後，依(h)作最後之決定。豁免申請者在本節中簡稱為“豁免申請”。
 - (2)(A)豁免申請應依(f)之規定，在諮詢期滿 90 天內，向部長提出書面申請，但任何和許可證或執照申請相關的機構行動，其申請至遲不得超過聯邦機構決定最後實施該項機構行動後的 90 天。前述“機構的最後行動”，意指—
 - (i)機構對於許可證或執照的核發之處置，無論是否受到司法的審查，都受行政的審查；或
 - (ii)經行政的審查決定的結果，申請書應說明這些機構行動適用豁免規定的理由。
 - (B)部長收到依(1)所提出機構行動豁免申請時，應立刻—
 - (i)通知相關州長，要求其提出瀕絕物種委員會成員的推薦名單；且
 - (ii)在聯邦公報上發出收到申請的通告，內容包括申請書各項資料的摘要並對該機構計畫加以描述。
 - (3)部長應在收到豁免申請 20 天內，或在豁免申請者及部長雙方共同同意之期限內—

(A)決定有關的豁免申請與聯邦機構已—

(i)做到(a)所述之諮商，並善意而努力負責地針對該機構行動，提出合理而明確的修正或替代方案，以避免抵觸(a)(2)之條件；

(ii)經過(c)所需之生物學評估；及

(iii)在期限內避免投入任何(d)所禁止的過多資源而造成不可復原的傷害；或

(B)因為有關聯邦機構或豁免申請者的申請與(A)(i)(ii)及(iii)之要求不符，則將駁回申請。

依(B)駁回之申請，依美國法典第 5 號第 7 章之目的，將被視為最後的機構行動。

(4)如果部長確認有關聯邦機構及豁免申請，符合(3)(A)(i),(ii)及(iii)之要求，則可以在與委員會成員諮商後，照美國法典第 5 號 554、555 及 556 節(除了(b)(1)及(2)之外)舉辦公聽會，並依(5)所述準備報告。

(5)部長應在依(3)之決定 140 天，或是在部長與豁免申請人雙方同意之期限內，提供委員會一份報告，討論—

(A)該機構行動合理而明確的代替方案之可行性，及此機構行動與替代方案符合關鍵棲地內物種保育之利益的程度；

(B)提出機構行動是否對公眾利益及對國家或地區具有顯著影響之證據摘要資料；

(C)委員會必須考慮的適當合理的緩和或增進措施；及

(D)有關聯邦機構及豁免申請者，是否有依(d)之規定，避免投入過多資源造成不可恢復之傷害。

(6)在(g) 規範之期限內，除非其和本節所述規定不符，否則均應儘可能依美國法典第 5 號，554、555 及 556(除 556(b)(3))外等節舉辦公聽會，並據以審查豁免申請案。

(7)在部長的要求下，聯邦機構的首長應責無旁貸地指派其雇員協助部長執行其依本節所述的職責。

(8)本小節所述之各項行動之會議及記錄，均應向公眾公開。

(h)豁免一

(1)依(g)(5)之決定，委員會應在收到部長報告書起 30 天內，判決豁免申請是否合理。如果有 5 位以上的委員親自投票，認為機構行動與(a)(2)之規定符合，則委員會應許可該申請案一

(A)此決定是基於部長所作報告的資料，依(g)(4)公聽會的記錄及其他證明或證據，這些證據指出一

(i) 機構行動並無合理而明確的替代方案；

(ii) 此行動明顯地較替代方案更能提供保育物種或其關鍵棲地更多的利益，而此行動符合公眾利益；

(iii)此行動具有地區或是國家的顯著性；且

(iv)相關聯邦機構，或豁免申請人，均未投入(d)所禁止之過多資源造成不可恢復之傷害；且

(B)建立合理的緩和或加強措施，包括但不僅限於，活體繁殖、轉植、棲地取得及改進，是減少機構行動對瀕絕物種、受威脅物種或相關關鍵棲地之不良影響所必須而適當的。

委員會依本小節所做的任何最後決定，均應依美國法典第 5 號第 7 章之目的視為最後的機構行動。

(2)(A)除了(B)所述之例外，所有依(1)獲得豁免之機構行動，均可永久豁免對瀕絕及受威脅物種之相關規定，以利這些機構行動目的的達成一

(i) 不論該物種是否業經生物學評估確認；且

(ii) 只要該機構行動業依(c)進行生物學評估即可。

(B)依(A)之規定，豁免應永久有效，除非一

- (i) 部長依現有最好的科學及商業資料，發現該項豁免，將會導致物種的滅絕，而該物種未經(a)(2)之諮商或是未依(c)進行生物學評估，且
- (ii) 委員會在部長發現豁免不應永久有效起 60 天內決定。

如果部長做了如(i)之判定，委員會應在判定後 30 天內召開相關會議。

(i) 國務卿的審查—

不論本法其他條文的規定如何，如果國務卿經由審查機構行動與其可能影響，及進行公聽會舉證或投書等方式後，在豁免申請獲准 60 天內，發現該項豁免申請將違反國際協定或美國其他的國際義務，委員會仍不得同意其豁免申請。國務卿在做決定的同時應於聯邦公報上發布。

- (j) 不論本法其他條文之規定如何，若國防部長基於國家安全之理由，認為豁免申請係必要的話，委員會仍將同意機構行動之豁免申請。

(k) 特別條款—

依 1969 年國家環境政策法(the National Environmental Policy Act, 42 U.S.C.4321 et seq.)之目的，委員會依據本節所做之豁免決定，不應成為主要的聯邦行動：只要依命令豁免的機構行動已預先準備了探討瀕絕及受威脅物種或其關鍵棲地所受衝擊的環境影響說明書。

(l) 委員會的命令—

(1) 如果委員會依(h)許可機構行動的豁免案，委員會應發布命令同意豁免並載明其依(h)建立的減緩傷害與補強之措施，並由豁免申請人負責執行及負擔這些措施之相關加強措施。所有的減緩或補強措施都應在執行機關行動前獲准並有經費支援。

(2) 申請人獲得豁免，必須將減緩及補強措施之花費納入執行行動的花費。申請人可以要求部長實施減緩及補強措施。而部長實施這些措施所需的花費，將由申請人支付。在豁免案同意後的一年內，豁免申請人應向環境品質委員會(Council on Environmental Quality) 提出報告，詳述其依據本節

所採取之減緩或補強措施。這些報告應每年提出，直到所有的減緩或補強措施均已完成為止。爲了供公眾利用，環境品質委員會應將報告刊登於聯邦公報中。

(m)注意一

本法 11(g)要求之 60 天，不適用有關委員會依(h)同意符合(a)(2)條件之豁免案所作最終判決的審查上。

(n)司法的審查一

本法 3(13)定義所稱之“人”，均可依美國法典第 5 號第 7 章獲請在聯邦上訴法院進行司法審查，以審查瀕絕物種委員會應依(h)所做的決定，包括

—
(1)有關執行機構行動未來或現在涉及的範圍，或

(2)除了在哥倫比亞特區外，執行機關行動未來或現在涉及的範圍之外，均應在做成決定後的 90 天內向法院提出陳情書以供審查。陳情書的副本將由法院的職員轉交委員會，而委員會應依美國法典第 28 號 2112 節所述之程序向法院提出前述的記錄。瀕絕物種委員會所委任的律師，將依本小節代表委員會出席審查。

(o)瀕絕物種取得的例外豁免一

不論 1533(d)、1538(a)(1)(B)及(C)，1371 及 1372 及這些章節的規定如何

—
(1)任何依(b)核准豁免之行動，不應視爲爲了實施此行動所必須而可以取得任何瀕絕或受威脅物種；且

(2)任何依照(b)(4)(iv)所提書面資料內所列條件與狀況之取得，不應視爲是禁止可能取得有關物種。

(p)總統宣布災區的豁免一

任何由總統依 1974 年災難救助法(Disaster Relief Act)宣布的災區，總統有權作本節(g)及(h)之決定，依 1974 年災難救助法 401 或 402 節提出修復或

改建災區公共設施至發生災難前狀況的計畫，如果總統決定—

(1)為防止災難繼續發生及減少人員傷亡所必須，且

(2)屬於緊急狀況，因此本節的各項規定暫不適用。不論本節其他條文如何規定，委員會都必須接受總統依本小節所做之決定。

第 8 節 國際合作

(a)財務支援—

為顯示美國對全世界保育瀕絕及受威脅物種之承諾，總統得依 1953 年撥款補助法(Supplemental Appropriation Act)1415 節之規定(31 U.S.C.724)，依 1954 年農業貿易發展及協助法(Agricultural Trade Development and Assistance Act)或其他法案之規定，以美國政府的外幣孳息收入，給予對部長依本法第 4 節列為瀕絕或受威脅物種之保育有需要之國家(如該國同意的話)支援，以協助該國發展及經營管理保育計畫，總統應依本節適用的條件與狀況援助其他國家，(包括，但不僅限於，租借或用其他方式取得土地、水或有利的事物)。如果有外幣(foreign currencies)供援外所需，應較依本法第 15 節之撥款規定優先適用。

(b)國外計畫的獎勵—

為了進一步實施本法的條文，部長應透過國務卿鼓勵—

(1)外國加強保育依本法第 4 節列為瀕絕或受威脅之魚類或野生動物及植物；

(2)和外國簽訂雙邊或多邊協定，執行保育工作；

(3)直接或間接在外國或公海取得魚類、野生動物或植物，而以商業或其他目的將其輸入美國之外國人士，他們可發展並協助對該等魚類、野生動物或植物及其棲地之保育規劃。

(c)人員—

在與國務卿諮商之後，部長可—

- (1)指派或交待部內適當的官員或職員，與外國或國際組織合作，以發展人力資源，並促進魚類及野生動物或植物保育計畫，及
- (2)提供財務支援，在國內或國外教育訓練外國人士關於魚類、野生動物或植物之經營管理、研究及執法之相關事宜，並提供海外的專業協助。

(d)調查—

經由部長與國務卿及財政部長諮商後，部長如認為有必要實施以達本法的目的，可進行或推動海外的執法、調查及研究工作。

第 8A 節 公約執行

(a)管理機構及科學機構—

公約之管理機構及科學機構為內政部長(在本節中以下簡稱部長)，公約科學機構的各項任務，將透過美國魚類及野生動物署執行。

(b)管理機構的任務—

部長應執行所有必要且適當的事項，以達成公約管理機構的各項任務。

(c)科學機構的任務—

- (1)部長應執行所有必要且適當的事項，以達成公約科學機構的各項任務。
- (2)部長應依據公約第 4 條，以在野生動物經營管理經驗中所獲取現有最好的科學資料，提出建言或作出決定；但不需要，也不必要求任何州估計族群量來作成這些建言或決定。

(d) 美國對公約的保留事項—

如果美國投票反對任何物種列入公約附錄 I 或附錄 II，但未依公約第 15 條第 3 項取得保留，國務卿應在申請保留截止日後的 90 天內，向眾議院海商及漁業委員會及參議院環境公共事務委員會提出書面報告，說明未爭取保留的理由。

(e)西半球野生物的保存—

- (1)內政部長(在本小節中以下簡稱“部長”)及國務卿，應代表美國執行西半

球自然保護及野生物保存公約 (Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere)(56 Stat.1354, T.S. 982 , 在本小節中以下簡稱“西半球公約”)的相關事項。部長及國務卿應和農業部長，商業部長及其他相關或可能影響其職權的機構首長商量，以完成該公約所賦予之任務。

- (2)部長和國務卿在可能的範圍下，應和西半球公約之簽約國合作，在州機構的參與下，採取實施西半球公約所需的相關步驟。這些步驟包括，但不僅限於—
 - (A)建立美國與其他簽約國或包括墨西哥、中美、南美北部、巴西、南美南部及加勒比等簽約國分布地區的美國永久聯繫；
 - (B)與簽約國及適當的國際組織為下列目的進行合作—
 - (i)召開西半球公約會員國會議及雙邊或多邊的技術合作會議，以執行西半球公約的工作，及
 - (ii)設立及支持西半球公約永久辦公室。
 - (C)和各簽約國及國際組織合作，以實施有助於西半球公約工作推動之人力資源發展計畫。
 - (D)確認在美國及其他簽約國間遷徙之鳥種及這些鳥種所需之棲地，並實施合作措施以確保這些物種免於瀕絕或受威脅；
 - (E)確認依據西半球公約建議對應予保護之植物物種所應採取的保護措施；
 - (F)實施保育敏感及受威脅棲地與生態系的合作措施；且
- (3)1995年及往後每3年的9月30日前，部長及國務卿應向國會提出報告，述說已依本小節要求所採取的相關步驟，及其他有關西半球公約尚未完成但必須執行的有效措施。
- (4)本節的條款不應被解釋為會影響各州依州法管理、控制、調整本土魚類或野生動物的主管權責、司法權或責任。

第 9 節 禁止行為

(a) 概述—

(1) 除了本法第 6(g)(2) 及第 10 節所述之外，美國管轄權所及之人民，禁止對依本法第 4 條所列之瀕絕魚類或野生動物有下列行為—

- (A) 將該等物種輸入或輸出美國國境；
- (B) 在美國境內或美國領海取得該等物種；
- (C) 在公海中取得該等物種；
- (D) 以任何方式持有、販售、寄送、攜帶、運輸、或船運任何違反(B)款及(C)款而取得的該等物種；
- (E) 在州際或國際以任何方式寄送、收受、攜帶、運輸或船運該等物種並進行商業活動；
- (F) 在州際或國際貿易中出售該等物種或要約出售(譯者註：要約出售係法律上之專有名詞，意即有出售之表示或象徵者，如店面展示或兜售或口頭詢問，即使未出示物品亦屬要約出售)；
- (G) 違反部長依本法之授權，對本法第 4 條所列之物種或受威脅魚類及野生動物所訂定之相關行政規則。

(2) 除了本法 6(g)(2) 及第 10 節所述之外，美國管轄權所及之人民，禁止對本法第 4 條所列瀕絕植物有下列的行為：

- (A) 將該等物種輸入或輸出美國國境；
- (B) 移除或減少以便持有聯邦政府管轄區域內的該等物種；在該等區域內惡意的傷害毀損或滅盡這些物種；或是在其他區域內明知違反州法令或觸犯州法侵入罪而移除、砍伐、挖掘或傷害或破壞這些物種；
- (C) 以任何方式在州際或國際間以寄送、收受、攜帶、運輸或船運該等物種並進行商業活動；
- (D) 在州際或國際貿中出售或要約出售該等物種；

(E)違反任何部長依本法授權，就本法第 4 條所列之物種或受威脅植物所訂定之相關行政規則。

(b)(1)人工培育或環境控制中的物種—在(A)1973年12月28日或(B)聯邦公報依第 4 節(c)所增列魚類及野生動物時，係屬圈養或環境控制中的動物，倘若持有或使用這些魚類及野生動物並不屬商業行為者，不適用本節(a)(1)(A)及(a)(1)(G)條文之規定。若在本節(a)(1)(A)及(a)(1)(G)所禁止事項是在(i)1973年12月28日或(ii)聯邦公報依本法第 4 節(c)所增列魚類及野生動物的最後規定等限制之公告日後的 180 天發生者，則可反推為這些針對該等物種的行為不適用本節所述之豁免規定。

(2)(A)(a)(1)的條文，不適用於—

(i) 1978 年瀕絕物種法修正案生效時已合法圈養或在人為控制的環境下持有猛禽者；

(ii) (i)中所述猛禽的子代，直到這些猛禽及其子代被有計劃地野放為止。

(B)任何人擁有(A)中所述之猛禽及其子代，必須要證明這些猛禽及其子代符合本節的規定，並應依要求提供部長相關的調查、文件資料及記錄等，以便部長依本節條文予以認定其資格，而這些要求應避免和其他法規之要求重覆。

(c)違反公約—

(1)任何美國司法管轄所及之人民，違反公約從事第 1 條所定義該等物種之貿易，或因貿易而擁有該等物種者，均屬不法。

(2)輸入魚類及野生動物有下列情況，均應推定此種輸入並不違反本法或相關行政規則之規定：

(A)這些物種並未列入瀕絕物種法第 4 節之名單，但為公約附錄 II 物種者；

(B)這些魚類或野生動物的取得及輸出，並不違反公約的規定，且亦符合公約的其他相關要件者；

(C)符合本節(d)(e)及(f)之要件者；且

(D)這些輸入行為不屬商業活動。

(d)輸入及輸出一

(1)概述—任何人未先取得部長之同意，即從事於下列商業行為是不合法的一

(A)輸入或輸出魚類或野生動物(但(i)未依本法第 4 節列入瀕絕或受威脅物種，及(ii)以供人類或動物消費為目的，或在美國司法管轄權所及的水域中取得，或以娛樂為目的，自公海取得之貝類及漁產品除外)或植物；
或

(B)輸入或輸出任何數量的非洲象象牙原牙或加工品。

(2)需求—任何人要依本節(1)取得許可者，應一

(A)由申請人製作魚類、野生動物、植物或非洲象牙，輸入或輸出及其對該等魚類、野生動物、植物或象牙後續處置之完整而正確的記錄；

(B)在部長授權之人員通知後合理的期限內，同意該人員至其商業地點查驗其輸入魚類、野生動物、植物或非洲象牙的資料及依本節(A)所留存之記錄，並拷貝這些記錄；及

(C)建立部長可能會需要的報告檔案。

(3)規則—部長必要時應描述這些規則，以利本小節目的之達成。

(4)非洲象牙輸入或輸出時，關於其價值或數量上限制之考量—依本小節對非洲象牙輸入或輸出之許可，部長不可因其價值或數量而改變許可之要件。

(e)報告—任何人輸入或輸出魚類或野生動物，(但(1)未依本法第 4 節列為瀕絕或受威脅物種，及(2)以供人類或動物消費為目的，或在美國管轄權所及之水域中取得，或以娛樂為目的自深海中取得之貝類及漁產品除外)，或植物，而未經申報，或未提出部長為促使本法施行或為實行公約之義務而要求提出之報告，為不合法。

(f)港口指定—

(1)美國管轄權所及之人民，輸入或輸出的任何魚類或野生動物，(但(A)未依本法第 4 節列為瀕絕或受威脅物種，且(B)以供人類或動物消費為目的，或在美國司法管轄權所及之水域中取得，或以娛樂為目的，自深海取得之之貝類及漁產品除外)，或植物，除了在內政部長指定之一個或多個港口外，其輸入或輸出都是不合法的。為了促進本法之執行並減低花費，內政部長在財政部長的同意下，並經公聽會及通告後，得指定港口或改變其指定。內政部長在符合本法精神的原則下，亦可基於魚類、野生動物或植物的健康或安全上之考量或其他理由，而同意不在指定的港口輸出入。

(2)內政部長依本法 1969 年 12 月 5 日(16 U.S.C. 666cc-4(d))指定之任何港口，如果其指定係在本法生效前，則該港口在部長所規定的期限內，被視為部長依(1)所指定的港口。

(g)違法—任何美國管轄權所及的人民，凡有本節所述之意圖犯罪或指使或引誘他人犯罪等罪行，都是不合法的。

第 10 節 豁免

(a)許可—

(1)部長在下列情況下會許可—

(A)任何第 9 節所禁止，但為科學目的，或有助於增進受影響物種之繁衍或存活之行動，包括，但不僅限於，依(j)為維持及建立所需實驗族群的行動；或

(B)任何(9)(a)(1)(B)所禁止之取得，如取得係屬偶一為之，且並非為了非法活動之目的者。

(2)(A)除非申請者向部長提出保育計畫，載明以下資料，否則部長均不依(1)(B)給予許可—

(i) 此種取得可能造成的衝擊；

(ii)申請人所將採取的保育相關措施，如保育地役權，土地取得，調節控制，外來種控制，有效棲地的經營策略，以減少或減輕其影響；

及採取這些措施的經費來源。

(iii)申請中採取行動的替代方案，及為何未採用這些替代方案之理由；
及

(iv)為實行該計畫，部長可能認為需要而要求的其他措施。

(B)如果部長，在經過關於許可申請案的相關公聽會後，發現有下列情形，並獲得其他關於該計畫應予實施之保證者，部長應核發許可證—

(i)該取得為偶發事件；

(ii)申請中將儘最大的可能來減少或減輕這種取得所造成的衝擊；

(iii)申請人可保證本計畫將有適當的財務支援；

(iv)這種取得不會減少這些物種野外族群的復育及存活；且

(v)申請人將會達成(A)(iv)要求之措施(如果有的話)。

許可證上將包括部長認為有利本段目的達成的必要要求，包括，但不僅限於，部長用以評估所有的條件與要求是否達成的報告。

(C)若部長發現申請人並未達成許可的條件與要求，可將許可證予以撤銷。

(b)困境豁免—

(1)任何人在聯邦公報公告瀕絕物種之通告，及該等物種依本法第4節列為瀕絕物種之前，已簽訂關於這些魚類、野生動物及植物之契約，將會因該契約而陷入困境者，當其提供足夠證據，證明其確實陷入困境，部長為了減輕此種困境，可以豁免本法9(a)之規定，但—

(A)豁免期間至多到自聯邦公報發出通告之日起一年內，或豁免量不得超過部長指定的魚類、野生動物或植物的數量；

(B)在本法生效日前一年內，由部長列為瀕絕物種者，可依本法1969年12月5日版(83 Stat. 275)第3節之期限為豁免到期日；

(C)任何列於公約附錄I物種涉及商業活動之輸入及輸出，均不適用豁免之規定。

(2)本小節所稱之“陷入經濟上的困境”包括，但不僅限於：

(A)因本法而致有關聯邦公報發出這些物種為瀕絕通告前之契約無法履行，所造成實質上經濟損失；

(B)因這些物種列為瀕絕物種，依本法取得這些物種為不合法，相較於物種列入名錄前一年合法取得該物種的收入有實質減少者；或

(C)因本法之規定，而致生計受到剝奪或削減者，包括

(i) 無其他生計來源，使生活無靠者；

(ii) 主要依賴狩獵及漁獲維生者；及

(iii) 為了生計目的，必須從事於此項被剝奪之權利者。

(3)部長可進一步規定適用“陷入經濟困境”的要件。部長可依本節的規定，裁量可豁免的時間、區域及其他適當的因子。

(c)通告及審查—部長應將本節所述之豁免或許可證申請案，逐一於聯邦公報上發行通告。每一個通告均應邀請相關人士，在通告發出之 30 天內，提出與申請案相關的意見、看法與討論，除非部長因瀕絕動物的健康或生命受到威脅等緊急狀況，且無其他合適的替代方案下，才可將此 30 天期限予以免除，而部長在將此期限予以免除後，應在免除之日起 10 天內，於聯邦公報上發布此免除案或許可證。在這整個過程中，部長所收到有關該申請案的所有資料，均應予以記錄並向民眾公開。

(d)許可及豁免的政策—當部長發現，並在聯邦公報上載明下列事實，則可依本節(a)(1)(A)及(b)予以合理的豁免—

(1)是在十分善意的基礎下同意豁免案的，

(2)這種許可不會對瀕絕物種有不利影響，且

(3)和本法第 2 節的目的及政策相符。

(e)阿拉斯加原住民—

(1)除本小節(4)之規定外，下列人因生計而從事瀕絕或受威脅物種之取得及

輸出入時，本法不適用—

(A)任何居住於阿拉斯加的印第安人(Indian)，阿留申人(Aleut)、愛基斯摩人(Eskimo)等阿拉斯加原住民；或

(B)任何在阿拉斯加原住民部落上永久居留的非原住民；

除非部長發現阿拉斯加原住民村落的非原住民，並非主要依賴取得的魚或野生動物，或以創造或出售原住民衣服及手工藝品為生者；否則利用為生計所需而獲取之野生物而製作的衣服及手工藝品等非食用性副產品，均可在州間出售。

(2)本小節所述的各種取得，都不可浪費。

(3)本小節所稱之一

(i) “生計(Subsistence)”包括在阿拉斯加原住民村落或城鎮中出售魚類或野生動物的任何可食用的部分，以供原住民消費者；及

(ii) “原住民衣服及手工藝品(authentic native articles of handicrafts and clothing)”，係指未使用畫圖器、複合式雕刻器或其他大量複製的器材所製造、裝飾或修飾之傳統原住民手工藝品，這些成品全部或有明顯部分是以天然物品製成的。這些傳統原住民手工藝品包括，但不僅限於，編織、雕刻、刺繡、縫紉、滾邊、串珠、素描、繪畫等。

(4)儘管本小節(1)中有所規定，但當部長認為取得任何瀕絕或受威脅物種之魚類或野生動物，會對這些物種造成實質的負面影響時，則部長有權將印第安、阿留申、愛基斯摩或在阿拉斯加原住民部落居住的非原住民之取得設限。部長可依物種、地理區域、取得的季節或其他與設限理由相關的因子訂定規定，以符合本法之相關規定。依 1972 年海洋哺乳動物保護法 103 節之規定，這些規定應於受影響的阿拉斯加法定區域舉辦公聽會及通告後生效，並應在部長判定設限的理由消失後立刻撤銷。

(f)(1)本小節所稱之一

- (A) “本法實施前瀕絕物種部分(pre-Act endangered species part)” 意指—
- (i) 任何抹香鯨油，包括 1973 年 12 月 28 日時為合法商業活動的衍生物；
或
 - (ii) 在 1973 年 12 月 28 日時，為合法商業活動的衍生物的任何已完成的牙骨雕刻品。
- (B) “牙骨雕刻品(Scrimshaw product)” 係指任何涉及明顯地蝕刻、雕刻、設計鯨目海洋哺乳動物牙或骨的藝品。依本節之意旨，磨光或在物體表面上做細微的修飾，是不屬於蝕刻或雕刻等定義的。
- (2) 部長依本節可在不違反公約的前提下，對本法實施前瀕絕物種部分，豁免以下一個或以上之禁止規定：
- (A) 依本法 9(a)(1)(A) 禁止自美國輸出之規定。
 - (B) 任何本法 9(a)(1)(E) 或 (F) 中之禁止規定。
- (3) 任何人欲申請本小節(2)中所述之豁免，應依部長之要求格式提出申請，但除非申請案符合下述狀況，否則部長均不予考慮—
- (A) 部長在發布實施此小節規定日起一年內收到；
 - (B) 提出所有欲申請豁免之瀕絕物種在本法實施前的完整而詳細的調查資料；
 - (C) 瀕絕物種或其產品為公約前取得之證明文件；
 - (D) 其他部長認為必要之資料。
- (4) 若部長同意豁免案，應核發豁免同意文件，敘明—
- (A) 本法 9(a) 相關禁令之豁免；
 - (B) 受到豁免之瀕絕物種部分；
 - (C) 豁免許可之有效期間，但任何豁免的有效期間，均不得超過本法實施後的三年，除非該豁免依(8)予以更新；
 - (D) 任何部長依(5)(A) 及(或)(B) 認為必要或要求的條件。

(5)部長應規定其所認定達成本小節目的所必要的相關規定，這些規定可包括下列內容，以確保豁免案是正當合理，且不違背本法之規定—

(A)本小節豁免許可之申請條件及要求(包括，但不僅限於，申請者登記的調查資料，完整的販售記錄，部長授權之官員調查記錄及定期提交部長的適當報告)；及

(B)購買依本節獲得實施前瀕絕物種部分豁免許可之物品的條件及狀況；

部長所作有關達成本節(A)的各種規定，均不受到 4(f)(2)(A)(i)之約束。(譯者註：4(f)(2)(A)(i)於原文中找不到，疑係誤漏)

(6)(A)任何於本小節生效前由公共事務署所同意及 1973 年 1 月 9 日(本節有效實施前)聯邦公報刊登通告前有關於販售本法實施前瀕絕物種部分所訂定的合約，不得因此合約牴觸 9(a)(1)(F)而被視為無效。

(B)若有本段為無效的情況，本法的其他部分將不受到影響。

(7)本小節不可推斷為—

(A)本節實施前犯 9(a)之(1)(A)，(1)(E)或(1)(F)是無罪的；或

(B)任何人可免受本法之起訴。

(8)(A)(i)任何在 1982 年 10 月 13 日以後換發之有效豁免許可證，而在 1988 年 3 月 31 日仍屬有效者，視為本法 1988 年修正案實施起半年內有效。任何人持有該種同意文件，均可據以向部長換發自該法實施起五年內有效之文件。(譯者註：本段只見(i)未見(ii)，疑係誤漏)

(B)若部長依本段核准豁免許可的更新案，應核發許可文件，詳載要求、條件、禁止事項，及其他在該新同意文件許可期間，原同意文件仍屬有效之規定條文。

(C)在依本節獲得之豁免許可或更新的豁免許可可在有效期滿後均無效。

(D)除非獲得部長依本小節核發之合法的豁免許可，且這些產品或產品的原料是在 1982 年 10 月 13 日即由其所有者，否則在 1984 年 1 月 31 日以後，任何人均不可出售或提供任何本法實施前之牙骨雕刻品，供州

間或國際商業用途。

(g)若有任何人對違反第 9 節相關事項提出抗議，並宣稱本法已核發其許可或豁免許可，應負責證明其許可或豁免在被控違法時仍為有效且經過核可。

(h)古物—

(1)4(d),9(a)及 9(c)之規定不適用於下列物品：

(A)超過 100 年；

(B)全部或部分由依第 4 節所列之瀕絕或受威脅物種製成者；

(C)在本法生效日或生效日後未被用該物種的任何部分修理或修改者；

(D)依(3)之指定港口進入者。

(2)任何人欲依本節豁免條文輸入物品者，應在入關時向海關人員提出由財政部長與內政部長諮商後所決定應提出有關輸入合乎(1)(A)(B)及(C)要求的相關文件。

(3)財政部長在和內政部長諮商後，應在每一關稅區內指定一個港口，以供(1)(A),(B),及(C)所述之物品輸入美國領域。

(4)任何人在 1973 年 12 月 27 日以後，且在本法 1978 年修正案實施前，輸入(1)所述之物品有下列情況，可在本法實施後一年內，向部長申請歸還該等物品—

(A)在輸入後未曾用本法第 4 條公布之瀕絕或受威脅物種的部分，修復或修飾者；

(B)在實施日前遭美國政府沒收，或在生效日由美國政府依第 11 節處以行政處罰者；及

(C)在生效日時係由美國政府管理者；

申請書應依部長規定之型式及內容撰寫。若申請案係在時限內提出，部長亦認為這些物品符合本段之規定，部長應將物品歸還申請人，且這些輸入案在歸還日或之後，均依本法視為合法的。

(i)非商業運輸—

任何魚類或野生物輸入美國，若有下列情形，在海關控管下不視為違反本法相關規定—

- (1)如果這些魚類或野生動物係合法取得，且自原產國或再輸出國輸出者；如果
- (2)這些魚類或野生動物，是經過美國司法轄區內過境或運輸到可合法輸入及接受牠們的其他國家；
- (3)這些魚類及野生動物的所有人或輸入者，明確的表示，不將這些魚類及野生動物通過美國的司法轄區，或是竭盡所能地防範運輸，但某些狀況導致運輸係運輸者及所有人所不能控制的；
- (4)符合公約的相關規定；
- (5)這些輸入並非用於商業活動。

(j)試驗族群—

- (1)本小節所指之“試驗族群(experimental population)”係指任何族群(包括族群內所衍生之任何子代)，由部長依(2)同意釋放者，但僅在當這個族群與同一物種非試驗族群在地理上完全隔離者，方得釋放。
- (2)(A)若部長認為釋放有利於瀕絕或受威脅物種之保育，部長有權在物種現存範圍外釋放(及相關之運輸)任何瀕絕或受威脅物種族群(包括卵、繁殖單位(propagates)或個體)。
- (B)在依(D)釋放任何族群前，部長應依法鑑定該族群，並確定在現有資料的基礎下，這些族群是否對瀕絕或受威脅物種為必要的。
- (C)依本法之目的，實驗族群的每一成員，均應視為受威脅物種；除非—
 - (i) 僅為第 7 節目的(除了(a)(1)以外)，一個實驗族群依(B)確定並非維繫一個物種之存活所必須者後，除非牠出現在國家野生動物保護系統或國家公園系統內，該物種將被視為可依第 4 節列入名錄之物種；且

(ii) 依本法不應為本小節所決定的實驗族群而設定關鍵棲地。

(3) 部長對於主管之瀕絕或受威脅物種族群，在本小節實行前，為釋放該物種至與其他族群相隔離的地理區域，應依法決定那些族群係符合本小節目的之試驗族群，及是否該族群為該瀕絕或受威脅物種存續所必須。

第 11 節 罰則及執行

(a) 行政罰則(CIVIL PENALTIES)—(譯者註：Civil Penalties 字義為民事罰則，但因我國與美國的司法制度不同，在實質上其民事罰則相當於我國的行政罰則，故意譯作“行政罰則”)

(1) 任何人故意違反，或任何從事輸出或輸入魚類、野生動物或植物貿易之人，違反本法或依本法所發許可證及同意文件之規定，或違反依本法第 9 節(a)(1)(A),(B),(C),(D) ,(E)或(F),(a)(2)(A),(B),(C),或(D),(c),(d)(但有關於記錄保持或報告檔案之行政規則不在此限)，(f)或(g)之規定所訂定之行政規則者，可由部長就每一違法行為處 25,000 美元以下之行政罰鍰。任何人故意違反及任何從事輸出或輸入魚類、野生動物或植物貿易之人，違反依本法其他條文所訂定之相關規定者，可由部長就每一違法行為，處 12,000 美元以下之行政罰鍰。任何人違反本法其他規定、其他行政規則及依本法所核發之許可證及同意文件等規定者，可由部長就每一違法行為，處 500 美元以下的行政罰鍰。除非違法之人曾獲通知並有參加聽證會的機會，否則不應受罰。每一個違反事項，均為各別獨立的違規事件。任何行政罰鍰，均可由部長予以免除或減輕。未繳納本節所處行政罰鍰者，部長可請求檢察總長，在該違法者之所在地，住居所地或營業所所在地聯邦地方法院提出請求，以催收罰鍰，該法院有管轄權審理及裁判此類請求。法院應就部長作成之違法記錄所載內容予以審理，如就紀錄整體觀察結果已有充分證據支持該請求者，則法院應准許其請求。

(2) 依前述第(1)款進行之聽證程序，應依美國法典第 5 號 554 節之規定舉行。部長可發出傳票請證人到場作證，並製作相關之文件、書籍及監誓等。受傳喚到之證人應給予與美國法庭所傳喚證人應支付之見證費及交通費相

同之費用。若無故拒絕或拒絕遵照依本款所發之傳票指示，則受傳喚人所在地、居所或營業所所在地之聯邦地方法院得依聯邦政府之請求，於通知該人後，有權命令該人至部長前作證或製作相關文件或為二者，且違反前開法院命令者，可以藐視法庭罪處罰。

(3)雖然本法有所規定，行為人若能依優勢證據舉證其行動是基於善意保護其自身或家人或其他人免受瀕絕或受威脅物種之身體傷者，應不受行政處罰。

(b)刑事罰則—

(1)任何人故意違反本法，或依本法所發許可證及同意文件之規定，或依本法第 9 節(a)(1)(A),(B),(C),(D),(E)或(F)；(a)(2)(A),(B),(C),或(D),(c),(d)(但有關於記錄保持或報告檔案之行政規則不在此限)，(f)，(g)所訂定之行政規則者，處一年以下有期徒刑，或科或併科 50,000 美元以下之罰金。任何人故意違反本法所訂定之行政規則者，處六月以下有期徒刑，或科或併科 25,000 美元以下之罰金。

(2)聯邦機構首長對任何人發出租約、執照、許可證，或其他有關輸出入魚類、野生動物或植物或設立檢疫站等協定，或准許使用聯邦土地，包括家畜之放牧者，該人如因違反本法與相關行政規則及據此所發許可證或同意文件之規定而被判定有罪者，該首長可立即修正、暫時中止或取消該租約、執照、許可證或其他協定。若有依本法之相關條文定罪者，首長亦得取消或中止一年以下之聯邦狩獵、釣魚許可證。美國政府不需賠償或補償有關修正、暫時中止或取消任何租約、執照或其他協定所造成之損害。

(3)雖然本法有所規定，被告在刑事追訴程序中，仍可以其係基於善意保護自身或家人或其他人之安全，免於瀕絕或受威脅物種之傷害之理由辯護。

(c)地方法院管轄權— 美國的若干地方法院，包括美國法典第 28 號 460 節所列舉的法院，對本法規定之各項行為均有司法管轄權。基於本法之目的，美屬薩摩亞(Samoa)群島亦包括在夏威夷地方法院的司法管轄範圍內。

(d)報酬及若干附帶支出一 部長或財政部長應自所收之罰鍰、罰金或沒收之財產中支付一

(1)提供資訊而致逮捕犯罪、判決罪犯，處刑事罰或沒入財產者。

(2)在本法相關之行政及刑事違法案件尚在處理程序中，暫時照顧與案件相關之魚類、野生動物或植物之合理且必要花費。此報酬之數額，若有，係由部長或財政部長在適當範圍內指定。美國聯邦或各州或地方政府官員或雇員，基於職責提供資料或服務者，不在給付之列。依本節及本法 1981 年 11 月 16 日修正版(16 U.S.C. 3375(d))第 6 節(d)所收之罰鍰、罰金及沒收財產超過 500,000 美元時，財政部長應提撥相同的數額，作為本法第 6 節(i)所設立之瀕絕物種保育基金。

(e)執行一

(1)本法及相關行政法規或依法核發之許可證均應由部長、財政部長或海岸防禦部長，分別或共同執行。為執行本法，各部長可協商有償或無償利用其他聯邦機構或州機構之人員、服務、設備。

(2)美國聯邦地方法院法官及美國聯邦有司法權的首長，可以在其司法管轄權內，依據證人所提供之適當證據，發出逮捕令狀或進行其他執行本法及相關行政法規所需之程序。

(3)任何受部長、財政部長及海岸防禦部長之授權執行本法及相關行政法規者，可扣留並檢視任何進輸入之包裹、箱具或其他容器，包括其內含物及伴隨文件。上述執法人員若有合理的理由相信在其面前之人正進行違反本法之行爲者，則雖無逮捕令亦逕行逮捕該人；其亦得執行或送達該管機關或法院為執行本法而發出之逮捕令、搜索令或其他行政或刑事程序之令狀。上述執法人員依法之授權可進行有令狀或無令狀之搜索及扣押，除非部長同意所有人或收件人，以保稅單或其他證明，自行在適當場所保管這些魚類、野生動物或財產；否則，任何被扣押之魚類、野生動物或財產，均應由部長、財政部長或海岸防禦部長所授權之人，在行政及刑事程序處理中予以保管；但這些沒收或放棄之財產，則應由部長依本法或行政法規

予以處置(除了向一般大眾拍賣之外的方法)。

(4)(A)違反本法或行政法規或相關許可證或同意文件而取得、持有、出售、要約出售或購買、運輸、運送、收受、攜帶、船運、輸入或輸出之魚類、野生動物或植物者，均應由美國聯邦政府沒收之。

(B)所有槍支、陷阱、網具或其他器材、船舶、車輛、飛機及其他運輸工具，用以幫助違反本法或行政法規相關許可證或同意文件而取得、持有、出售、要約出售或購買、運輸、運送、收受、攜帶、船運、輸出入魚類或野生動物，應依本法 11(6)(1)之刑事判決，由聯邦政府予以沒收。

(5)任何有關扣押、沒收之法律規定，判定船舶違反海關法之規定，其船舶的處置或拍賣過程及沒收之豁免或減輕之規定與本法不相牴觸者，均適用於本法有關扣押、沒收之處理上；此外，所有海關法賦予財政部官員及雇員之權力、權利或義務，依本法之目的，均應由部長或其所選定之人員執行。

(6)美國聯邦檢察總長可以依本法下令禁止任何人違反本法。

(f)規則一

部長、財政部長及海岸防禦部長，有權發布執行本法與公約及本公約會員國依本公約所作之決議相關之適當規則，並合理收取本法相關許可證、同意文件等核發之費用，包括申請手續、合理的檢視、運輸、登機、處理、貯存魚類、野生動物或植物及依本法扣押或沒收之項目等。所有依本節所收取之費用，均應置放於財政部撥款的活期帳戶中，以便支付上述服務的相關費用。撥款基金可用在未決案件相關利益團體之補償。

(g)市民訴訟一

(1)除了本小節(2)所述外，任何人均可基於自身利益提出訴訟一

(A)禁止任何人，包括美國聯邦政府及其他的協助單位或機構(在美國憲法第 11 次修正版之範圍內)違反本法及行政法規；或

(B)要求部長依本法第 6 節(g)(2)(B)(ii)發布本法 4(d)或 9(a)(1)(B)所規定禁止於取得州內本土瀕絕或受威脅物種之命令；或

(C)抗議部長未依第 4 節執行職務及採取行動，而此職務並非屬部長裁量權之範圍，地方法院不論其爭論數額的大小、請願團體的國籍，均有司法管轄權，並應執行任何相關規定，或下令部長採取行動或執行職責。依(B)之行政訴訟，地方法院如發現現有相當的證據，證明有緊急狀況存在，應要求部長發出禁令。

(2)在下述狀況不得開始進行本節(1)(A)之訴訟程序—

(i) 違法通知送達部長或其他違法者後之六十日前；

(ii) 部長已依本節(a)科處罰鍰；或

(iii)聯邦政府已開始並積極自聯邦或由法院提起違反本法或行政法規之刑事追訴。

(B)在下列狀況下不得開始進行本節(1)(B)之訴訟程序—

(i) 有關州內瀕絕或受威脅物種之緊急事件出現之理由書面通知送達部長後之六十日前；或

(ii) 部長已開始並積極依本法 6(g)(2)(B)(ii)決定緊急事件是否存在。

(C)在書面通知部長後六十日前不得提起(1)(C)之訴訟，但如魚類、野生動物或植物之福祉已有顯著危險，須立刻採取行動者，則於通知後亦得提起此項訴訟。

(3)(A)本小節之請願，可在違法發生地之地方法院提起。

(B)本小節的任何請願，如聯邦政府並非當事人之一造，檢察總長可在部長的要求下，代表聯邦政府行使權利。

(4)法院就(1)項規定所提起訴訟作最後裁判時，可裁定訴訟之一造支付訴訟費(包括合理的律師及專家見證費)。

(5)本小節所提供之強制處分，並不因而限制任何人(或任何層級之人)依法律

或普通法所享有尋求執法標準或限制或其他救濟權利(包括對抗議部長和州機構之救濟手段)。

(h)和其他法律間之整合—

農業部長及部長，應將本法和動物檢疫法規(21 U.S.C 101- 105, 111-135b, and 612-614)及 1930 年關稅法(Tariff Act-19 U.S.C. 1306)306 節之行政管理措施予以整合。本法或本法任何修正案之內容，均不可解釋為代替或限制部長依其他法律所規定禁止或限制輸入、持有野生動物或其他物品之職權，也沒有任何本法規定之程序或決定可排除農業部長依法所進行之程序或對該程序之事實或法律爭議有決定性之影響。本法不可解釋為代替或限制財政部長依 1930 年關稅法應有之職權，包括但不僅限於，該法第 527 節(19 U.S.C. 1527)有關輸入來自別的國家違法取得、宰殺、持有或輸入到美國的野生動物。

第 12 節 瀕絕植物

史密蘇尼亞中心首長及其相關機構，被授權審查—

(1)現在或將來可能瀕絕或受威脅之植物；及

(2)對這些物種的適當保育方法，並在本法生效一年內向國會提出報告審查結果，包括對新法規或現存法令修訂等建議。

第 13 節 保育計畫

(a)候選物種的保育計畫—

(1)計畫的發展—

(A)任何州、郡、自治區、州的下屬單位或其他個人，均可針對業由部長依第 4 節列為候選或名單草案中的任何物種，發展保育計畫。

(B)依(A)準備的計畫應單獨或與鄰近土地結合以進行保育，其大小必須大到可涵蓋物種長期存續所需夠大的適當棲地。

(2)許可證的核發—若依 10(a)(2)(A)(i)所述的資訊發展一個計畫，並提供

公眾陳述意見的機會後，部長在獲得計畫將被執行的保證，而依 10(a)(2)(B)做出判定，應依 10(a)(1)(B)之規定，核發實施依第 4 節所列任何物種相關計畫的許可證。

(3)名錄的檢視—

依(2)對第 4 節列入名錄的物種核發的許可證後，部長應—

- (A)檢視針對該物種依(3)核發許可證中的條文及要件；
- (B)確定是否每一個被許可者均符合許可證上的條件；且
- (C)若依(B)確定許可者不符合許可證的條件，則應中止許可證。

(b)聯邦對州及地方政府發展計畫的協助—

(1)設立棲地保育計畫基金(Habitat Conservation Planning Fund)—部長應設立一棲地保育計畫基金(本小節中以下簡稱基金)—

- (A)為依 15(d)所有撥款的總金額，及
- (B)當作由部長管理的紓困基金。

(2)自基金提供補助及預支之權責—部長有權自基金中提供補助或無息預支予任何州、郡、自治區或任何州的下屬單位，以協助其發展本節或 10(a)(2)的計畫。本段之補助及預支不得超過其他單位所提供發展該計畫之總經費。

(3)基金提供補助及預支之準則—當基金提供補助或預支時，部長應考慮該發展計畫涉及的物種數目，計畫規劃過程所涉及的利益團體(包括地方政府，商人，環保人士及土地所有人等)的投入程度，該計畫成功的可能性及其他部長認為應考慮的因子。

(4)預支款的償還—

(A)除了(B)所述的例外情形，所有自基金預支之款項，均應在預借日起 10 年內償還。

(B)在下列情況下，預支款應於預支日起 4 年內償還—

(i)在預支款項後三年內均未進一步發展該計畫，或

(ii)10(a)(2)所述的計畫，在預支款項後三年內，仍未取得 10(a)(1)(B)之許可證者。

(C)美國於收到償還金後，應將償還金存回基金帳戶中，以供未來其他的預支，不得移作他用。

第 14 節 對私人土地所有人協助復育瀕絕、受威脅及候選物種之獎勵

(a)協助協議—部長可與每一個受委託的州之州機構及 15(e)的單位合作，與任何下列情況下的私人簽訂協議—

(1)此人同意於其所有之土地上進行部長認為有利於下列事項的活動—

(A)依復育計畫對瀕絕或受威脅物種之保育；或

(B)對部長依第 4 節認定列入候選名單物種之保育；

(2)部長同意支付部長及個人雙方均同意的金額予個人。

(b)特定活動補助的禁止—下列狀況，部長不得給予任何補助—

(1)依 10(a)(2)(B)之規定應取得許可證者；

(2)本法規定領有其他許可證的狀況；或

(3)其他依本法或其他聯邦法應符合的要求。

(c)確保協定的實施—部長有責任確保本節所訂協約條款的進行。

(d)技術協助—部長可對本節協約簽訂人提供執行(a)(1)活動的技術協助。

第 15 節 撥款的授權

(a)概述—除了依 6(i)及本節(b),(c),(d),(e)的授權外，以下所述是可被授權撥款的—

(1)內政部長執行本法的經費如下：

1994 會計年度為 110,000,000 美元

1995 會計年度為 120,000,000 美元

1996 會計年度為 130,000,000 美元

1997 會計年度為 140,000,000 美元

1998 會計年度為 150,000,000 美元

1999 會計年度為 160,000,000 美元

(2) 商業部長執行本法的經費如下：

1994 會計年度為 15,000,000 美元

1995 會計年度為 20,000,000 美元

1996 會計年度為 25,000,000 美元

1997 會計年度為 30,000,000 美元

1998 會計年度為 35,000,000 美元

1999 會計年度為 40,000,000 美元

(3) 農業部長執行本法的經費如下：

1994-1999 會計年度均為 4,000,000 美元

(b) 本法之例外—自 1994-1999 會計年度內政部長依 7(e)(g)及(h)執行內政部長瀕絕物種委員會任務，每年經費為 625,000 美元。

(c) 公約的施行—1994 至 1999 會計年度，內政部長執行 8(A)(e)(譯者註：係指西半球公約)的規定，每年經費為 1,000,000 美元，這些經費可一直保留至用完為止。

(d) 棲地保育計畫基金—協助第 10(a)(2)(譯者註：係指豁免申請案中的保育計畫)及第 13 節計畫的發展，內政部部长可獲 20,000,000 美元置於依 13(b)所設立之棲地保育計畫基金中，這筆經費可保留至用完為止。

(e) 私人協助—內政部長依第 14 節，自 1994 年至 1999 會計年度，每年有 25,000,000 美元的經費獎勵私人協助。

(f) 有效期限—依本節撥款授權之經費可保留至用完為止。

第 16 節 生效日期

本法自公布日起實施。

第 17 節 1972 年海洋哺乳動物保護法

除了本法另有規定外，1972 年海洋哺乳動物保護法較嚴格之規定均優先適用。

第 18 節 魚類及野生動物署會計年報

1990 年 1 月 15 日或之前，以及往後每年的同一日期，內政部長均須透過魚類及野生動物署，向國會提出會計年報，內容包括一

- (1) 依本法對每種瀕絕或受威脅物種所採取合理但不明確的花費會計報告；
- (2) 依本法對每種瀕絕或受威脅物種所採取的合理且明確的花費會計報告。

附 錄

ENDANGERED SPECIES ACT OF 1993

103D CONGRESS
1ST SESSION

S.921

As amended by P.L. 94-325, June 30, 1976; P.L. 94-359, July 12, 1976; P.L. 95-212, December 19, 1977; P.L. 95-632, November 10, 1978; P.L. 96-159, December 28, 1979; P.L. 97-304, October 13, 1982; P.L. 98-327, June 25, 1984; and P.L. 100-478, October 7, 1988.

IN THE SENATE OF THE UNITED STATES

May 6 (legislative day, APRIL 19), 1993

Mr. BAUCUS (for himself, Mr. CHAFEE, Mr. GRAHAM, Mr. MOYNTHAN, Mr. MITCHELL, Mr. LIEBERMAN, Mrs. BOXER, Mr. SARBANES, Mr. PELL, Mr. KENNEDY, Mr. LEAHY, Mr. KERRY, Mr. AKAKA, and Mr. DUREN-BERGER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works.

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ENDANGERED SPECIES ACT OF 1993

FINDINGS, PURPOSES, AND POLICY

SEC. 2. (a) FINDINGS.—The Congress finds and declares that —

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to —

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements; and

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

(b) PURPOSES.—The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) POLICY.—(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall conserve endangered species, threatened species, species which have been proposed for listing, and species which the Secretary has identified as candidates for listing under section 4 and shall utilize their authorities in furtherance of this policy and the purposes of this Act.

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term “alternative courses of action” means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(2) The term “commercial activity” means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: Provided, however, That it does not include exhibitions of commodities by museums or similar cultural or historical organizations.

(3) The terms “conserve,” “conserving,” and “conservation” mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(4) The term “Convention” means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(5) (A) The term “critical habitat” for a threatened or endangered species means—

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(6) The term “endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(7) The term “Federal agency” means any department, agency, or instrumentality of the United States.

(8) The term “fish or wildlife” means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(9) The term “foreign commerce” includes, among other things, any transaction—

- (A) between persons within one foreign country;
- (B) between persons in two or more foreign countries;
- (C) between a person within the United States and a person in a foreign country; or
- (D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(10) The term “import” means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(11) The term “permit or license applicant” means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 7 (a) to such agency action.

(12) “The term person means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.”

(13) The term “plant” means any member of the plant kingdom, including seeds, roots and other parts thereof.

(14) The term “Secretary” means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term also means the Secretary of Agriculture.

(15) The term “species” includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature.

(16) The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(17) The term “State agency” means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(18) The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(19) The term “threatened species” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(20) The term “United States,” when used in a geographical context, includes all States.

DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

SEC. 4. (a) GENERAL. —(1) The Secretary shall by regulation promulgated in accordance with subsection (b) determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) overutilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;
- (D) the inadequacy of existing regulatory mechanisms;
- (E) other natural or manmade factors affecting its continued existence.

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970 —

(A) in any case in which the Secretary of Commerce determines that such species should

- (i) be listed as an endangered species or a threatened species, or
- (ii) be changed in status from a threatened species to an endangered species, he shall so inform the Secretary of the Interior, who shall list such species in accordance with this section;

(B) in any case in which the Secretary of Commerce determines that such species should

- (i) be removed from any list published pursuant to subsection (c) of this section, or
- (ii) be changed in status from an endangered species to a threatened species, he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and
- (C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

(3) The Secretary, by regulation promulgated in accordance with subsection (b) and to the maximum extent prudent and determinable —

(A) shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and

(B) may, from time-to-time thereafter as appropriate, revise such designation.

(4) The Secretary shall by regulation promulgated in accordance with subsection (b) determine whether any species is no longer an endangered species or a threatened species because of change in the factors identified under paragraph (1).

(b) BASIS FOR DETERMINATIONS. —(1)(A) The Secretary shall make determinations required by subsection (a)(1) solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after soliciting and fully considering scientific and commercial data concerning the status of the species from the State agency in each appropriate State, if any, and taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation to protect

such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

(B) In carrying out this section, the Secretary shall give consideration to species the conservation of which is most likely to reduce the need to list other species dependent upon the same ecosystem. In addition, the Secretary shall give consideration to species which have been —

(i) designated as requiring protection from unrestricted commerce by any foreign nation or pursuant to an international agreement; or

(ii) identified as in danger of extinction, or likely to become so within the foreseeable future, by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish or wildlife or plants.

(2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

(3)(A) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to add a species to, or to remove a species from, 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 such 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.

(B) Within 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:

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

(ii) 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 such action in accordance with paragraph (5).

(iii) The petitioned action is warranted but that —

(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 such lists species for which the protections of the Act are no longer necessary.

in which case the Secretary shall promptly publish such finding in the Federal Register,

together with a description and evaluation of the reasons and data on which the finding is based.

(C)(i) A petition with respect to which a finding is made under subparagraph (B)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.

(ii) Any negative finding described in subparagraph (A) and any finding described in subparagraph (B) (i) or (iii) shall be subject to judicial review.

(iii) The Secretary shall implement a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (B)(iii) and shall make prompt use of the authority under paragraph 7 to prevent a significant risk to the well being of any such species.

(D)(i) To the maximum extent practicable, within 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 information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register.

(ii) Within 12 months receiving a petition that is found under clause (i) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

(4) Except as provided in paragraphs (5) and (6) of this subsection, the provisions of section 553 of title 5, United States Code (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this Act.

(5) With respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3), the Secretary shall—

(A) not less than 90 days before the effective date of the regulation—

(i) publish a general notice and the complete text of the proposed regulation in the Federal Register, and

(ii) give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;

(B) insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon;

(C) give notice of the proposed regulation to such professional scientific organizations as he deems appropriate;

(D) in the case of a regulation to implement a determination, request views on the proposed regulation from at least three independent referees who, through publication of peer-reviewed scientific literature, have demonstrated relevant scientific expertise, if any person files within 30 days after the date of publication of general notice a written request detailing a substantial scientific basis for questioning the sufficiency or accuracy of the available data relevant to the determination;

(E) publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur; and

(F) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.

(6)(A) Within the one-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) if a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either —

(I) a final regulation to implement such determination,

(II) a final regulation to implement such revision or a finding that such revision should not be made,

(III) notice that such one-year period is being extended under subparagraph (B)(i),
or

(IV) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based; or

(ii) subject to subparagraph (C), if a designation of critical habitat is involved, either —

(I) a final regulation to implement such designation, or

(II) notice that such one-year period is being extended under such subparagraph.

(B)(i) If the Secretary finds with respect to a proposed regulation referred to in subparagraph (A)(i) that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data.

(ii) If a proposed regulation referred to in subparagraph (a)(i) is not promulgated as final regulation within such one-year period (or longer period if extension under clause (i) applies) because the Secretary finds that there is not sufficient evidence to justify the action proposed by the regulation the Secretary shall immediately withdraw the regulation. The finding on which a withdrawal is based shall be subject to judicial review. The Secretary may not propose a regulation that has previously been withdrawn under this clause unless he determines that sufficient new information is available to warrant such proposal.

(iii) If the one-year period specified in subparagraph (A) is extended under clause (i) with respect to a proposed regulation, then before the close of such extended period the Secretary shall publish in the Federal Register either a final regulation to implement the determination or revision concerned, a finding that the revision should not be made, or a notice of withdrawal of the regulation under clause (ii), together with the finding on which the withdrawal is based.

(C) A final regulation designating critical habitat of an endangered species or a threatened species shall be published concurrently with the final regulation implementing the determination that such species is endangered or threatened, unless the Secretary deems that —

(i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or

(ii) critical habitat of such species is not then determinable, in which case the Secretary, with respect to the proposed regulation to designate such habitat, may extend the one-year period specified in subparagraph (A) by not more than one additional year, but not later than

the close of such additional year the Secretary must publish a final regulation, based on such date as may be available at that time, designating, to the maximum extent prudent, such habitat.

(D) If the Secretary, under subparagraph (C), extends the one-year period, any final regulation designating critical habitat shall incorporate relevant information gathered during the development of the appropriate recovery plan under section 5.

(7) Neither paragraph (4), (5), or (6) of this subsection nor section 553 of title 5, United States Code, shall apply to any regulation issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish and wildlife or plants, but only if—

(A) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary; and

(B) in the case such regulation applies to resident species of fish or wildlife, or plants, the Secretary gives actual notice of such regulation to the State agency in each State in which such species is believed to occur.

Such regulation shall, at the discretion of the Secretary, take effect immediately upon the publication of the regulation in the Federal Register. Any regulation promulgated under the authority of this paragraph shall cease to have force and effect at the close of the 240-day period following the date of publication unless, during such 240-day period, the rulemaking procedures which would apply to such regulation without regard to this paragraph are complied with. If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best appropriate data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it.

(8) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such 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.

(9) The Secretary shall identify and publish in the Federal Register with a proposed rule under paragraph (1) of subsection (a) a description of any additional scientific and commercial data that would assist in the preparation of a recovery plan under section 5 for the species to which the proposed rule relates.

(c) LISTS.—(1) The Secretary of the Interior shall publish in the Federal Register a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range. The Secretary shall from time to time revise each list published under the authority of this subsection to reflect recent determinations, designations, and revisions made in accordance with subsections (a) and (b).

(2) The Secretary shall—

(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and

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

(i) be removed from such list;

(ii) be changed in status from an endangered species to a threatened species; or

(iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsection (a) and (b).

(d) PROTECTIVE REGULATIONS.—Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(c) of this Act only to the extent that such regulations have also been adopted by such State.

(e) SIMILARITY OF APPEARANCE CASES.—The Secretary may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

(f) AGENCY GUIDELINES.—The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to—

(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (b)(3) of this section;

(2) criteria for making the findings required under such subsection with respect to petitions;

(3) a ranking system to assist in the identification of species that should receive priority review under subsection (a)(1) of the section; and

(4) a system for developing and implementing, on a priority basis, recovery plans under section 5. The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.

(g) RESPONSE TO STATE COMMENTS.—If, in the case of any regulation proposed by the Secretary under the authority of this section, a State agency to which notice thereof was given in accordance with subsection (b)(5)(A)(ii) files comments disagreeing with all or part of the

proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to adopt a regulation pursuant to an action petitioned by a State agency under subsection (b)(3), the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.

RECOVERY OF ENDANGERED SPECIES AND THREATENED SPECIES

SEC. 5. (a) RECOVERY PLANS. —

(1) IN GENERAL. —

(A) The Secretary shall, in cooperation with the State agency in each appropriate State, and on the basis of the best scientific and commercial data available, develop and implement plans (hereinafter in this subsection referred to as ‘recovery plans’) for the timely conservation of endangered species and threatened species listed pursuant to section 4 (hereinafter in this section referred to as ‘covered species’) and the habitats upon which such species depend, unless the Secretary finds that such a plan will not promote the conservation of a species.

(B) The Secretary shall, consistent with subparagraph (A), seek to minimize adverse social and economic consequences that may result from implementation of recovery plans.

(C) The Secretary shall develop and implement a recovery plan for a species —

(i) by not later than December 31, 1996, in the case of a species included in the list published under section 4(c) before January 1, 1996, and for which no recovery plan was developed before that date; and

(ii) by not later than 18 months after the date on which a species is first included in a list published under section 4(c), in the case of any species that is first included in such a list on or after January 1, 1996.

(2) PRIORITIES FOR DEVELOPING AND IMPLEMENTING RECOVERY PLANS. —

The Secretary shall give priority to —

(A) the development and implementation of integrated, multi-species recovery plans for the conservation of threatened species, endangered species, or species which the Secretary has identified as candidates for listing under section 4 that are dependent upon a common ecosystem; and

(B) those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from recovery plans, particularly those species whose conservation is, or may be, in conflict with construction or other development projects or other forms of economic activity.

(3) CONTENTS. — The Secretary shall to the maximum extent practicable incorporate in each recovery plan —

(A) a description of such site-specific management actions as may be necessary to achieve the goal of the recovery plan for the conservation and survival of the covered species, including actions to maintain or restore ecosystems upon which the covered species are dependent;

(B) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4, that the covered species be removed from the list;

(C) estimates of the time required and the cost to carry out those measures needed to achieve the goal of the recovery plan and to achieve intermediate steps toward that goal;

(D) a description of actions that will be taken to minimize adverse social or economic impacts that may result from implementation of the recovery plan;

(E) strategies that utilize existing Federal lands, to the extent that such lands are available, to promote the conservation of the covered species;

(F) an identification of the measures, which if taken by Federal agencies, would contribute to the conservation of the covered species;

- o (G) an identification of the specific areas or circumstances, if any, in which the development and implementation of conservation plans under section 10(a)(2) would contribute to the conservation of the covered species;

(H) an identification of the specific areas or circumstances, if any, in which entering into agreements with private landowners under section 14 would promote the conservation of the covered species; and

(I) an identification of opportunities to cooperate with municipalities, political subdivisions of State, and other persons in actions which would contribute to the conservation of the covered species.

(4) PUBLIC REVIEW AND COMMENT. —

(A) The Secretary shall, prior to final approval of a new or revised recovery plan —

(i) provide public notice and an opportunity for public review and comment on the plan; and

(ii) consider all information presented during the public comment period.

(B) Each Federal agency shall, before implementing a new or revised recovery plan, consider all information presented during the public comment period under subparagraph (A).

(5) PUBLIC OUTREACH. —

(A) The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions and other qualified persons.

(B) Recovery teams appointed pursuant to this subsection shall not be to the Federal Advisory Committee Act.

(C) The Secretary shall in cooperation with the States solicit the participation of relevant Federal agencies and appropriate persons to identify matters under paragraph (3)(E),(F),(G),(H),and (I).

(6) REPORTS. —The Secretary shall report every two years to the Committee on Environment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries 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 such plans have been developed.

(b) MONITORING. —

(1) IN GENERAL. —The Secretary shall implement a system in cooperation with the States to monitor effectively for not less than 5 years the status of all species which have been brought to the point at which the measures provided pursuant to this Act are no longer necessary and which, in accordance with the provisions of section 4, have been removed from either of the list published under section 4(c).

(2) PREVENTING RISKS TO RECOVERED SPECIES. —The Secretary shall make prompt use of the authority under section 4(b)(7) to prevent a significant risk to the well-being of any recovered species referred to in paragraph (1).

(c) PROGRAM.—The Secretary, and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants, including those which are listed as endangered species or threatened species pursuant to section 4 of this Act. To carry out such a program, the appropriate Secretary—

(1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate; and

(2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition vested in him.

(d) ACQUISITIONS.—Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interests therein under subsection (a) of this section.

COOPERATION WITH THE STATES

SEC. 6. (a) GENERAL.—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species. In cooperating with State agencies in carrying out this Act, the Secretary shall not be subject to the Federal Advisory Committee Act.

(b) MANAGEMENT AGREEMENTS.—The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715s).

(c)(1) COOPERATIVE AGREEMENTS.—In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find and annually thereafter reconfirm such finding, that under the State program.—

(A) authority resides in the State agency of conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

(D) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species of fish or wildlife; and

(E) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened, or that under the State program—

(i) the requirements set forth in paragraphs (3),(4) and (5) of this subsection are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative

agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause and this subparagraph shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.

(2) In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plant; and

(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or that under the State program—

(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.

(d) ALLOCATION OF FUNDS.—(1) The Secretary is authorized to provide financial assistance to any State, through its respective, state agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species or to assist in monitoring the status of candidate species pursuant to subparagraph (C) of section 4(b)(3) and recovered species pursuant to section

4(g). The Secretary shall allocate each annual appropriation made in accordance with the provisions of subsection (i) of this section to such States based on consideration of —

(A) the international commitments of the United States to protect endangered species or threatened species;

(B) the readiness of a State to proceed with a conservation program consistent with the objectives and purposes of this Act;

(C) the number of endangered species and threatened species within a State;

(D) the potential for restoring endangered species and threatened species within a State;

(E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species;

(F) the importance of monitoring the status of candidate species within a State to prevent a significant risk to the well being of any such species; and

(G) the importance of monitoring the status of recovered species within a State to assure that such species do not return to the point at which the measures provided pursuant to this Act are again necessary.

So much of the annual appropriation made in accordance with provisions of subsection (i) of this section allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.

(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be derived in connection with the conservation of endangered or threatened species; (C) the estimated cost of these actions; and (D) the share of such costs to be borne by the Federal Government and by the States; except that —

(i) the Federal share of such program costs shall not exceed 75 percent of the estimated program cost stated in the agreement; and

(ii) the Federal share may be increased to 90 percent whenever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary whose decision shall be final.

(e) REVIEW OF STATE PROGRAMS. — Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) CONFLICTS BETWEEN FEDERAL AND STATE LAWS. — Any state law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this Act or by any regulation which implements this Act, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this Act or in any regulation which implements this Act. This Act shall not otherwise be construed to void and State law or

regulation which is intended to conserve migratory, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this Act or in any regulation which implements this Act but not less restrictive than the prohibitions so defined.

(g) TRANSITION. —(1) For purposes of this subsection, the term “establishment period” means, with respect to any State, the period beginning on the date of enactment of this Act and ending on whichever of the following dates first occurs: (A) the date of the close of the 120-day period following the adjournment of the first regular session of the legislature of such State which commences, after such date of enactment, or (B) the date of the close of the 15-month period following such date of enactment.

(2) The prohibitions set forth in or authorized pursuant to sections 4(d) and 9(a)(1)(B) of this Act shall not apply with respect to the taking of any resident endangered species or threatened species (other than species listed in Appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within any State —

(A) which is then a party to a cooperative agreement with the Secretary pursuant to section 6(c) of this Act (except to the extent that the taking of any such species is contrary to the law of such State); or

(B) except for any time within the establishment period when —

(i) the Secretary applies such prohibition to such species at the request of the State,
or

(ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of title 5, United States Code, or any other provision of this Act; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

(h) REGULATIONS. —The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(i) APPROPRIATIONS. —(1) To carry out the provisions of this section for fiscal years after September 30, 1988, there shall be deposited into a special fund known as the cooperative endangered species conservation fund, to be administered by the Secretary, an amount equal to five percent of the combined amounts covered each fiscal year into the Federal aid to wildlife restoration fund under section 3 of the Act of September 2, 1937, and paid, transferred, or otherwise credited each fiscal year to the Sport Fishing Restoration Account established under 1016 of the Act of July 18, 1984.

(2) Amounts deposited into the special fund are authorized to be appropriated annually and allocated in accordance with subsection (d) of this section.

INTERAGENCY COOPERATION

SEC. 7. (a) FEDERAL AGENCY ACTIONS AND CONSULTATIONS. —(1)(A) The Secretary shall review other programs administered by him and utilize such programs in programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.

(B) The head of each Federal agency responsible for the management of lands and waters—

(i) shall, by not later than December 31, 1994, prepare and provide to the Secretary an inventory of endangered species, threatened species, species which have been proposed for listing, and species which the Secretary has identified as candidates for listing under section 4, which are located on lands and waters within the jurisdiction of the agency;

(ii) shall, by not later than December 31, 1995, identify measures to be taken on lands and waters within the jurisdiction of the agency to conserve species which the Secretary has identified as candidates for listing under section 4; and

(iii) may enter into agreements with the Secretary to further the conservation of any species which the Secretary has identified as candidates for listing under section 4.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an “agency action”) is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) 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 his project and that implementation of such action will likely affect such species.

(4) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).

(5) Except as provided in subsection 7(j), the provisions of this section are applicable to all Federal agencies and agency actions, including extraterritorial actions and actions with extraterritorial effects.

(6) CONSOLIDATION OF CONSULTATIONS AND CONFERENCES. —

(A) Consultations and conferences under this section between the Secretary and a Federal

agency may, if approved by the Secretary, encompass a number of related or similar agency actions to be undertaken within a particular geographic area or ecosystem.

(B) The Secretary may consolidate requests for consultations or conferences from various Federal agencies whose proposed actions may affect endangered species, threatened species, or species which have been proposed for listing under section 4, that are dependent upon the same ecosystem.

(b) OPINION OF SECRETARY.—(1)(A) Consultation under subsection (a)(2) with respect to any agency action shall be concluded within the 90-day period beginning on the date on which initiated or, subject to subparagraph (B), within such other period of time as is mutually agreeable to the Secretary and the Federal agency;

(B) in the case of an agency action involving a permit or license applicant, the Secretary and the Federal agency may not mutually agree to conclude consultation within a period exceeding 90 days unless the Secretary, before the close of the 90th day referred to in subparagraph (A) —

(i) if the consultation period proposed to be agreed to will end before the 150th day after the date on which consultation was initiated, submits to the applicant a written statement setting forth —

(I) the reasons why a longer period is required;

(II) the information that is required to complete the consultation; and

(III) the estimated date on which consultation will be completed; or

(ii) if the consultation period proposed to be agreed to will end 150 or more days after the date on which consultation was initiated, obtains the consent of the applicant to such period.

The Secretary and the Federal agency may mutually agree to extend a consultation period established under the preceding sentence if the Secretary, before the close of such period, obtains the consent of the applicant to the extension.

(2) Consultation under subsection (a)(3) shall be concluded within such period as is agreeable to the Secretary, the Federal agency, and the applicant concerned.

(3)(A) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a), the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. If jeopardy or adverse modification is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) and can be taken by the Federal agency or applicant in implementing the agency action.

(B) Consultation under subsection (a)(3), and an opinion based by the Secretary incident to such consultation, regarding an agency action shall be treated respectively as a consultation under subsection (a)(2), and as an opinion issued after consultation under such subsection, regarding that action if the Secretary reviews the action before it is commenced by the Federal agency and finds, and notifies such agency, that no significant changes have been made with respect to the action and that no significant change has occurred regarding the information used during the initial consultation.

(4) If after consultation under subsection (a)(2) of this section the Secretary concludes that —

(A) the agency action will not violate such subsection, or offers reasonable and prudent alternatives which the Secretary believes would not violate such subsection;

(B) the taking of an endangered species or a threatened species incidental to the agency action will not violate such subsection; and

(C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 1371 (a)(5) of this title;

The Secretary shall provide the Federal agency and the applicant concerned, if any, with a written statement that —

- (i) specifies the impact of such incidental taking on the species,
- (ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact,
- (iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 1371(a)(5) of this title with regard to such taking, and
- (iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clauses (ii) and (iii).

(c) BIOLOGICAL ASSESSMENT. —(1) To facilitate compliance with the requirements of subsection (a)(2) each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as is mutually agreed to by the Secretary and such agency, except that if a permit or license applicant is involved, the 180-day period may not be extended unless such agency provides the applicant, before the close of such period, with a written statement setting forth the estimated length of the proposed extension and the reasons therefor) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.

(d) LIMITATION ON COMMITMENT OF RESOURCES. —After initiation of consultation required under subsection (a)(2), the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2).

(e)(1) ESTABLISHMENT OF COMMITTEE. —There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the "Committee").

(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or not to grant an exemption from the requirements of subsection (a)(2) of this action for the action set forth in such application.

(3) The Committee shall be composed of seven members as follows :

(A) The Secretary of Agriculture.

(B) The Secretary of the Army.

(C) The Chairman of the Council of Economic Advisors.

(D) The Administrator of the Environmental Protection Agency.

(E) The Secretary of the Interior.

(F) The Administrator of the National Oceanic and Atmospheric Administration.

(G) The President after consideration of any recommendations received pursuant to subsection (g)(2)(B) shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made not later than 30 days after an application is submitted pursuant to this section.

(4)(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(5)(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

(B) The Secretary of the Interior shall be the Chairman of the Committee.

(C) The Committee shall meet at the call of the Chairman or five of its members.

(D) All meetings and records of the Committee shall be open to the public.

(6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

(7)(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

(C) Subject to the Privacy Act, the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

(D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.

(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

(8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

(9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(10) In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.

(f) REGULATIONS. —Not later than 90 days after the date of enactment of the Endangered Species Act Amendments of 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application be the head of any Federal agency with respect to any agency action include but not be limited to —

(1) a description of the consultation process carried out pursuant to subsection (a)(2) of this section between the head of the Federal agency and the Secretary; and

(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a)(2) of this section.

(g) APPLICATION FOR EXEMPTION AND REPORT TO THE COMMITTEE. —(1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a)(2), the Secretary's opinion under subsection (b) indicates that the agency action would violate subsection (a)(2). An application for an exemption shall be considered initially by the Secretary in the manner provided for in this subsection, and shall be considered by the Committee for a final determination under subsection (h) after a report is made pursuant to paragraph (5). The applicant for an exemption shall be referred to as the “exemption applicant” in this section.

(2)(A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f), not later than 90 days after the completion of the consultation process; except that, in the case of any agency action involving a permit or license applicant, such application shall be submitted not later than 90 days after the date on which the Federal agency concerned takes final agency action with respect to the issuance of the permit or license. For purposes of the preceding sentence, the term “final agency action” means (i) a disposition by an agency with respect to the issuance of a permit or license that is subject to administrative review, whether or not such disposition is subject to judicial review; or (ii) if administrative review is sought with respect to such disposition, the decision resulting after such review. Such application shall set forth the reasons why the exemption applicant considers that the agency action meets the requirements for an exemption under this subsection.

(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly (i) notify the Governor of each affected State, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the Endangered Species Committee for consideration of such application; and (ii) publish notice of receipt of the application in the Federal Register, including a summary of the information contained in the application and a description of the agency action with respect to which the application for exemption has been filed.

- (3) The Secretary shall within 20 days after the receipt of an application for exemption, or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary —
- (A) determine that the Federal agency concerned and the exemption applicant have —
 - (i) carried out the consultation responsibilities described in subsection (a) in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which would not violate subsection (a)(2);
 - (ii) conducted any biological assessment required by subsection (c); and
 - (iii) to the extent determinable within the time provided herein, refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d); or
 - (B) deny the application for exemption because the Federal agency concerned or the exemption applicant have not met the requirements set forth in subparagraph (A)(i),(ii), and (iii). The denial of an application under subparagraph (B) shall be considered final agency action for purposes of chapter 7 of title 5, United States Code.
- (4) If the Secretary determines that the Federal agency concerned and the exemption applicant have met the requirements set forth in paragraph (3)(A) (i), (ii) and (iii) he shall, in consultation with the Members of the Committee, hold a hearing on the application for exemption in accordance with sections 554, 555, and 556 (other than subsection (b) (1) and (2) thereof) of title 5, United States Code, and prepare the report to be submitted pursuant to paragraph (5).
- (5) Within 140 days after making the determinations under paragraph (3) or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary, the Secretary shall submit to the Committee a report discussing —
- (A) the availability of reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species of the critical habitat;
 - (B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;
 - (C) appropriate reasonable mitigation and enhancement measures which should be considered by the Committee; and
 - (D) whether the Federal agency concerned and the exemption applicant refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d).
- (6) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5, United States Code.
- (7) Upon request of the Secretary, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Secretary to assist him in carrying out his duties under this section.
- (8) All meetings and records resulting from activities pursuant to this subsection shall be open to the public.
- (h) EXEMPTION. —(1) The Committee shall make a final determination whether or not to

grant an exemption within 30 days after receiving the report of the Secretary pursuant to subsection (g)(5). The Committee shall grant an exemption from the requirements of subsection (a)(2) for an agency action if, by a vote of not less than five of its members voting in person —

(A) it determines on the record, based on the report of the Secretary, the record of the hearing held under subsection (g)(4), and on such other testimony or evidence as it may receive, that —

(i) there are no reasonable and prudent alternatives to the agency action;

(ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) the action is of regional or national significance; and

(iv) neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d); and

(B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, translocation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by Committee under this subsection shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect to all endangered or threatened species for the purpose of completing such agency action —

(i) regardless whether the species was identified in the biological assessment; and

(ii) only if a biological assessment has been conducted under subsection (c) with respect to such agency action.

(B) An exemption shall be permanent under subparagraph (A) unless —

(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under subsection (a)(2) or was not identified in any biological assessment conducted under subsection (c), and

(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding.

(i) **REVIEW BY SECRETARY OF STATE.** — Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

(j) Notwithstanding any other provision of this Act, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of

national security.

(k) SPECIAL PROVISIONS.—An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the national Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): *Provided*, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

(1) COMMITTEE ORDERS.—(1) If the Committee determines under subsection (h) that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (h) which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the Council on Environmental Quality.

(m) NOTICE—The 60-day notice requirement of section 11(g) of this Act shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a)(2) of this section.

(n) JUDICIAL REVIEW.—Any person, as defined by section 3(13) of this Act, may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any decision of the Endangered Species Committee under subsection (h) in the United States Court of Appeals for (1) any circuit wherein the agency action concerned will be, or is being, carried out, or (2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing, in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the record in the proceeding, as provided in section 2112, of title 28, United States Code. Attorneys, designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

(o) EXEMPTION AS PROVIDING EXCEPTION ON TAKING OF ENDANGERED SPECIES.—Notwithstanding sections 1533(d) and 1538(a)(1)(B) and (C) of this title, sections 1371 and 1372 of this title, or any regulation promulgated to implement any such section—

(1) any action for which an exemption is granted under subsection (h) of this section shall not be considered to be a taking of any endangered species or threatened species with

respect to any activity which is necessary to carry out such action; and

(2) any taking that is in compliance with the terms and conditions specified in a written statement provided under subsection (b)(4)(iv) of this section shall not be considered to be a prohibited taking of the species concerned.

(p) EXEMPTIONS IN PRESIDENTIALLY DECLARED DISASTER AREAS. —In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 401 or 402 of the Disaster Relief Act of 1974, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

INTERNATIONAL COOPERATION

SEC. 8. (a) FINANCIAL ASSISTANCE. —As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

(b) ENCOURAGEMENT OF FOREIGN PROGRAMS. —In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State shall encourage —

(1) foreign countries to provide for the conservation of fish or wildlife and plants including endangered species and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife or plants in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife or plants and their habitat.

(c) PERSONNEL. —After consultation with the Secretary of State, the Secretary may —

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife or plants, and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS. —After consultation with the Secretary of State and the Secretary of the Treasury as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

CONVENTION IMPLEMENTATION

SEC. 8A. (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—The Secretary of the Interior (hereinafter in this section referred to as the “Secretary”) is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

(b) MANAGEMENT AUTHORITY FUNCTIONS.—The Secretary shall do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

(c) SCIENTIFIC AUTHORITY FUNCTIONS.—(1) The Secretary shall do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

(2) The Secretary shall base the determinations and advice given by him under Article IV of the Convention with respect to wildlife upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice.

(d) RESERVATIONS BY THE UNITED STATES UNDER CONVENTION.—If the United States votes against including any species in Appendix I or II of the Convention and does not enter a reservation pursuant to paragraph (3) of Article XV or the Convention with respect to that species, the Secretary of State, before the 90th day after the last day on which such a reservation could be entered, shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives, and to the Committee on the Environment and Public Works of the Senate, a written report setting forth the reasons why such a reservation was not entered.

(e) WILDLIFE PRESERVATION IN WESTERN HEMISPHERE.—(1) The Secretary of the Interior (hereinafter in this subsection referred to as the “Secretary”), in cooperation with the Secretary of State, shall act on behalf of, and represent, the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (56 Stat. 1354, T.S. 982, hereinafter in this subsection referred to as the “Western Convention”). In the discharge of these responsibilities, the Secretary any the Secretary of State shall consult with the Secretary of Agriculture, the Secretary of Commerce, and the heads of other agencies with respect to matters relating to or affecting their areas of responsibility.

(2) The Secretary and the Secretary of State shall, in cooperation with the contracting parties to the Western Convention and, to the extent feasible and appropriate, with the participation of State agencies, take such steps as are necessary to implement the Western Convention. Such steps shall include, but not be limited to—

(A) placement of permanent United States liaisons in contracting party nations or in regions representing several contracting party nations, including Mexico, Central America, northern South America, Brazil, southern South America, and the Caribbean;

(B) cooperation with contracting parties and appropriate international organizations for the purposes of—

(i) convening a conference of the parties and appropriate technical meetings on cooperative bilateral and multilateral actions to implement the Western Convention, and

(ii) establishing and supporting a Permanent Office of Western Convention;

(C) cooperation with contracting parties and international organizations for the purpose of developing personnel resources and programs that will facilitate implementation of the Western Convention;

(D) identification of those species of birds that migrate between the United States and other contracting parties, and the habitats upon which those species depend, and the implementation of cooperative measures to ensure that such species will not become endangered or threatened;

(E) identification of measures that are necessary and appropriate to implement those provisions of the Western Convention which address the protection of wild plants.

(F) implementation of cooperative measures to conserve sensitive and threatened habitats and ecosystems; and

(3) No later than September 30, the Secretary and the Secretary of State shall submit a report to Congress describing those steps taken in accordance with the requirements of this subsection and identifying the principal remaining actions yet necessary for comprehensive and effective implementation of the Western Convention.

(4) The provisions of this subsection shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate resident fish or wildlife under State law or regulations.

PROHIBITED ACTS

SEC. 9. (a) GENERAL.—(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) remove and reduce to possession any such species from area under Federal jurisdiction; maliciously damage or destroy any such species on any such area, or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any state or in the course of any violation of a state criminal trespass law;

(C) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(D) sell or offer for sale in interstate or foreign commerce any such species; or

(E) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(b)(1) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of subsection (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act: Provided, That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

(2)(A) The provisions of subsection (a)(1) shall not apply to—

(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

(ii) any progeny of any raptor described in clause (i); until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonable appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

(c) VIOLATION OF CONVENTION. —(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II of the Convention;

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements or the Convention have been satisfied;

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied; and

(D) such importation is not made in the course of a commercial activity;

be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(d) IMPORTS AND EXPORTS. —

(1) IN GENERAL. —It is unlawful for any person, without first having obtained permission from the secretary, to engage in business—

(A) as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (ii) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or (on the high seas for recreational purposes) or plants; or

(B) as an importer or exporter of any amount of raw or worked African elephant ivory.

(2) REQUIREMENTS. —Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, plants, or African elephant ivory made by him and the subsequent disposition made by him with respect to such fish, wildlife, plants, or ivory;

(B) at all reasonable times upon notice by a duly authorized representative of the

Secretary, afford such representative access to his place of business, an opportunity to examine his inventory of imported fish, wildlife, plants, or African elephant ivory and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(4) RESTRICTION ON CONSIDERATION OF VALUE OR AMOUNT OF AFRICAN ELEPHANT IVORY IMPORTED OR EXPORTED.—In granting permission under this subsection for importation or exportation of African elephant ivory, the Secretary shall not vary the requirements for obtaining such permission on the basis of the value or amount of ivory imported or exported under such permission.

(e) REPORTS.—It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(f) DESIGNATION OF PORTS.—(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purposes of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc-4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) VIOLATIONS.—It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

EXCEPTIONS

SEC. 10. (a) PERMITS. —(1) The Secretary may permit, under such terms and conditions as he shall prescribe —

(A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant subsection (j); or

(B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies —

(i) the impact which will likely result from such taking;

(ii) what measures, such as conservation easements, land acquisition, regulatory controls, exotic species controls, and active habitat management, the applicant will take to minimize and mitigate those impacts and the funding that will be available to implement those measure;

(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that —

(i) the taking will be incidental;

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

(iii) the applicant will ensure that adequate funding for the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(v) the measures, if any, required under subparagraph (A)(iv) will be met;

and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

(C) The Secretary shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit.

(b) HARSHIP EXEMPTIONS. —(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application

such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms, of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act; or

(C) curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) NOTICE AND REVIEW.—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. Information received by the Secretary as part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(d) PERMIT AND EXEMPTION POLICY.—The Secretary may grant exceptions under subsections (a)(1)(A) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(e) ALASKA NATIVES.—(1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village;

if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection —

(i) The term “subsistence” includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term “authentic native articles of handicrafts and clothing” means items composed wholly or in some significant respect to natural materials, and which are produced, decorated or fashioned in the exercise of traditional native handicrafts

without the use of pantographs, multiple carvers, or other mass copying devices, Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f)(1) As used in this subsection —

(A) The term “pre-Act endangered species part” means —

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term “scrimshaw product” means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea. For purposes of this subsection, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the

following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

(B) Any prohibition set forth in section 9(a)(1) (E) or (F) of this Act.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such firm and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application —

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify —

(A) any prohibition in section 9(a) of this Act which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8); and

(D) any term or condition prescribed pursuant to paragraph (5)(A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth —

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection; to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a)(1)(F).

(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act,

including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to —

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 9(a) prior to the date of enactment of this subsection; or

(B) immunize any person from prosecution for any such act.

(8)(A)(i) Any valid certificate of exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, shall be deemed to be renewed for a 6-month period beginning on the date of enactment of the Endangered Species Act Amendments of 1988. Any person holding such a certificate may apply to the Secretary for one additional renewal of such certificate for a period not to exceed 5 years beginning on the date of such enactment.

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other

regulations made applicable by the previous certificate shall remain in effect during the period of the renewal.

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

(D) No person may, after January 31, 1984, sell or offer for sale in interstate or foreign commerce, any pre-Act finished scrimshaw product unless such person holds a valid certificate of exemption issued by the Secretary under this subsection, any

unless such product or the raw material for such product was held by such person on October 13, 1982.

(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

(h) CERTAIN ANTIQUE ARTICLES. — (1) Sections 4(d), 9(a), and 9(c) do not apply to any article which —

(A) is not less than 100 years of age;

(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

(C) has not been repaired or modified with any part of any such species on or after the date of the enactment of this Act; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation

with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1)(A),(B) and (C).

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1) (A), (B), and (C) must be entered into the customs territory of the United States.

(4) Any person who imported, after December 27, 1973, and on or before the date of the

enactment of the Endangered Species Act Amendments of 1978, any article described in paragraph (1) which—

(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 4;

(B) was forfeited to the United States before such date of the enactment, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 11; and

(C) is in the custody of the United States on such date of enactment;

may, before the close of the one-year period beginning on such date of enactment make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this Act.

(i) NONCOMMERCIAL TRANSSHIPMENTS.—Any importation into the United States of fish or wildlife shall, if—

(1) such fish or wildlife was lawfully taken and exported from the country of origin and country of reexport, if any;

(2) such fish or wildlife is in transit or transshipment through any place subject to the jurisdiction of the United States en route to a country where such fish or wildlife may be lawfully imported and received;

(3) the exporter or owner of such fish or wildlife gave explicit instructions not to ship such fish or wildlife through any place subject to the jurisdiction of the United States, or did all that could have reasonably been done to prevent transshipment, and the circumstances leading to the transshipment were beyond the exporter's or owner's control;

(4) the applicable requirements of the Convention have been satisfied; and

(5) such importation is not made in the course of a commercial activity,

be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act while such fish or wildlife remains in the control of the United States Customs Service.

(j) EXPERIMENTAL POPULATIONS.—(1) For purposes of this subsection, the term “experimental population” means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only

when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2)(A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary

determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the

continued existence of an endangered species or a threatened species.

(C) For the purposes of this Act, each member of an experimental population shall be treated as

a threatened species; except that—

(i) solely for purposes of section 7 (other than subsection (a)(1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species shall be treated, except when it occurs in an area

within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 4; and

(ii) critical habitat shall not be designated under this Act for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.

(3) The Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before the date of the enactment of this subsection, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species.

PENALTIES AND ENFORCEMENT

SEC.11.(a)CIVIL PENALTIES-(1)Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of this Act, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F), (a)(2)(A), (B), (C), or (D), (c), (d) (other than regulation relating to recordkeeping or filing of reports), (f), or (g) of section 9 of this Act, may be assessed a civil penalty by the Secretary of not more than \$25,000 for each violation. Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of any other regulation issued under this Act may be assessed a civil penalty by the Secretary of not more than \$12,000 for each such violation. Any person who otherwise violates any provision of this Act, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than \$500 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action or the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) Notwithstanding any other provision of this Act, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.

(b) CRIMINAL VIOLATIONS. —(1) Any person who knowingly violates any provision of this Act, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F); (a)(2)(A), (B), (C), or (D), (c), (d) (other than a regulation relating to recordkeeping, or filing of reports), (f), or (g) of section 9 of this Act shall, upon conviction, be fined not more than \$50,000 or imprisoned for not more than one year, or both. Any person who knowingly violates any provision of any other regulation issued under this Act shall, upon conviction, be fined not more than \$25,000 or imprisoned for not more than six

months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing a person to import or export fish, wildlife, or plants, or to operate a quarantine station for imported wildlife, or authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted to a criminal violation of this Act or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this Act or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses permits stamps, or other agreements pursuant to this section.

(3) Notwithstanding any other provision of this Act, it shall be a defense to prosecution under this subsection if the defendant committed the offense based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual, from bodily harm from any endangered or threatened species.

(c) DISTRICT COURT JURISDICTION.—The several district courts of the United States; including the courts enumerated in section 460 of title 28, United States Code, shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

(d) REWARDS AND CERTAIN INCIDENTAL EXPENSES.—The Secretary or the Secretary of the Treasury shall pay, from sums received as penalties, fines, or forfeitures of property for any violation of this chapter or any regulation issued hereunder (1) a reward to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this chapter or any regulation issued hereunder, and (2) the reasonable and necessary costs incurred by any person in providing temporary care for any fish, wildlife, or plant pending the disposition of any civil or criminal proceeding alleging a violation of this chapter with respect to that fish, wildlife, or plant. The amount of the reward, if any, is to be designated by the Secretary or the Secretary of the Treasury, as appropriate. Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of his official duties is ineligible for payment under this subsection. Whenever the balance of sums received under this section and section 6(d) of the Act of November 16, 1981 (16 U.S.C.3375(d)) as penalties or fines, or from forfeitures of property, exceed \$500,000, the Secretary of the Treasury shall deposit an amount equal to such excess balance in the cooperative endangered species conservation fund established under section 6(i) of this Act.

(e) ENFORCEMENT.—(1) the provisions of this Act and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may within their respective jurisdictions, upon proper oath or affirmation showing probable cause,

issue such warrants, or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such persons may make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view and may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of the subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary, but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this Act, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this Act, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to section 11(b)(1) of this Act.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(6) The Attorney General of the United States may seek to enjoin any person who is alleged to be in violation of any provision of this Act or regulation issued under authority thereof.

(f) REGULATIONS.—The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act and to carry out the Convention and resolutions adopted under the Convention by the parties to the Convention, and charge reasonable fees for expenses to

the Government connected with permits or certificates authorized by this Act including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this Act. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) CITIZEN SUITS—(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 6(g)(2)(B)(ii) of this Act, the prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1)(B) of this Act with respect to the taking of any resident endangered species or threatened species within any State; or

(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under section 4 which is not discretionary with the Secretary.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation or to order the Secretary to perform such act or duty, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section 6(g)(2)(B)(ii) of this Act to determine whether any such emergency exists.

(C) No action may be commenced under subparagraph (1)(C) of this section prior to sixty days after written notice has been given to the Secretary, except that such action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the wellbeing of any species of fish or wildlife or plants.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney

General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) COORDINATION WITH OTHER LAWS. —The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101-105, 111-135b, and 612-614) and section 306 of the Tariff Act of 1930 (19 U.S.C 1306) Nothing in this Act or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitaion, section, 527 of that Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED PLANTS

SEC. 12. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered, or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation.

CONSERVATION PLANNING

SEC. 13.(a)CONSERVATION PLANNING FOR CANDIDATE SPECIES. —

(1) DEVELOPMENT OF PLANS. —

(A) Any State, county municipality, political subdivision of a State, or other person, may develop a plan for the conservation of any species which has been proposed for listing of identified by the Secretary as a candidate for listing under section 4.

(B) A plan prepared under subparagraph (A) shall cover an area that, alone or when considered in association with nearby lands dedicated to conservation, is sufficiently large in size to encompass adequate suitable habitat within which the covered species can be maintained over the long-term.

(2) PERMIT ISSUANCE. — If a plan developed pursuant to paragraph (1) specifies the information required under section 10(a)(2)(A), and if, after opportunity for public comment thereon, the Secretary makes the findings required under section 10(a)(2)(B) the Secretary shall, upon receipt of such assurances as the Secretary may require that the plan will be implemented, issue a permit which shall be treated, upon the listing under section 4 of any species for which the plan was developed, as a permit

issued pursuant to section 10(a)(1)(B).

REVIEW UPON LISTING. — Upon the listing under section 4 of a species for which a permit is issued under paragraph (2), the Secretary shall —

(A) review the terms and implementation of each permit issued under paragraph (3) for that species;

(B) determine whether each of those permittees has complied with the terms of their permit; and

(C) suspend the permit of any of those permittees that is determined under subparagraph (B) to have not complied with their permit.

(b) FEDERAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS FOR DEVELOPMENT OF PLANS. —

(1) ESTABLISHMENT OF HABITAT CONSERVATION PLANNING FUND. — The Secretary shall establish a Habitat Conservation Planning Fund (hereinafter referred to in this subsection as 'Fund') which shall —

(A) consist of all sums appropriated pursuant to section 15(d), and

(B) be administered by the Secretary as a revolving fund.

(2) AUTHORITY TO MAKE GRANTS OR ADVANCES FROM THE FUND. — The Secretary is authorized to make a grant or interest-free advance from the Fund to any State, county, municipality, or political subdivision of any State to assist in the development of a plan under this section or section 10(a)(2). A grant or advance under this paragraph may not exceed the total financial contribution of the other parties participating in development of the plan.

(3) CRITERIA FOR GRANTS AND ADVANCES FROM THE FUND. — In making grants or advances from the fund, the Secretary shall consider the number of species for which the plan is to be developed, the commitment to participate in the planning process from a diversity of interests (including local governmental, business, environmental, and landowner interests), the likelihood of success of the planning effort, and other factors as the

Secretary deems appropriate.

(4) REPAYMENT OF ADVANCES FROM THE FFUND. —

(A) Except as provided in subparagraph (B), sums advanced from the Fund shall be repaid within 10 years after the date of the advance.

(B) Sums advanced under this subsection for development of a plan shall be repaid within 4 years after the date of the advance if—

(i) no plan is developed within 3 years after the date of the advance; or

(ii) in the case of an advance for the development of a plan under section 10(a)(2), no permit is issued under section 10(a)(1)(B) based on the plan within three years after the date of the advance.

(C) Sums received by the United States as repayment of advances from the Fund shall be credited to the Fund and available for further advances in accordance with this subsection without further appropriation.

**INCENTIVES FOR PRIVATE LANDOWNERS TO ASSIST RECOVERY OF
ENDANGERED SPECIES, THREATENED SPECIES, AND CANDIDATE SPECIES.**

SEC. 14 (a) ASSISTANCE AGREEMENTS.—The Secretary may, in cooperation with the State agency in each appropriate State and subject to the availability of appropriations under section 15(e), enter into an agreement with any person who is a private landowner, under which—

(1) the person agrees to carry out on land they own activities that the Secretary determines will promote—

(A) the conservation of an endangered species or a threatened species pursuant to a recovery plan; or

(B) the conservation of a species which the Secretary has identified to be a candidate for listing under section 4;

(2) the Secretary agrees to pay to the person such amount as may be agreed by the person and the Secretary.

(b) PROHIBITION ON ASSISTANCE FOR CERTAIN REQUIRED ACTIVITIES.—The Secretary may not pay any amount as assistance under this section for any action that is—

(1) required under a permit issued pursuant to subparagraph 10(a)(2)(B);

(2) a condition of any other permit issued under this Act; or

(3) otherwise required under this Act or any other Federal law.

(c) ENSURING IMPLEMENTATION OF AGREEMENTS.—The Secretary shall be responsible for ensuring that the terms of the agreements entered into under this section are carried out.

(d) TECHNICAL ASSISTANCE.—The Secretary may provide, to a person who enters into an agreement under this section, technical assistance in the implementation of the activities under subsection (a)(1).

AUTHORIZATION OF APPROPRIATIONS

SEC. 15.(a)IN GENERAL.—In addition to amounts authorized under section 6(i) and subsections (b),(c),(d), and (e) of this section, there are authorized to be appropriated—

(1) to the Secretary of the Interior for carrying out functions of the Secretary of the Interior under this Act \$110,000,000 for fiscal year 1994, \$120,000,000 for fiscal year 1995, \$130,000,000 for fiscal year 1996, \$140,000,000 for fiscal year 1997, \$150,000,000 for fiscal year 1998, and \$160,000,000 for fiscal year 1999;

(2) to the Secretary of Commerce for carrying out functions of the Secretary of Commerce under this Act \$15,000,000 for fiscal year 1994, \$20,000,000 for fiscal year 1995, \$25,000,000 for fiscal year 1996, \$30,000,000 for fiscal year 1997, \$35,000,000 for fiscal year 1998, and \$40,000,000 for fiscal year 1999; and

(3) to the Secretary of Agriculture for carrying out functions of the Secretary of Agriculture under this Act \$4,000,000 for each of fiscal years 1994 through 1999.

(b) EXEMPTIONS FROM ACT.—There are authorized to be appropriated to the Secretary of the Interior for carrying out functions of the Secretary of the Interior and the Endangered Species Committee under section 7(e), (g), and (h) \$625,000 for each of fiscal years 1994 through 1999.

(c) CONVENTION IMPLEMENTATION.—There are authorized to be appropriated to the Secretary of the Interior for carrying out section 8A(e) \$1,000,000 for each of fiscal years 1994 through 1999; such sums shall remain available until expended.

(d) HABITAT CONSERVATION PLANNING FUND.—To assist in the development of plans under sections 10(a)(2) and 13, there are authorized to be appropriated to the Secretary of the Interior \$20,000,000, which shall be deposited into the Habitat

Conservation Planning Fund established under section 13(b) and which shall remain available until expended.

(e) PRIVATE ASSISTANCE.—There are authorized to be appropriated to the Secretary of the Interior for carrying out section 14 \$25,000,000 for each of fiscal years 1994 through 1999.

(f) AVAILABILITY.—Amounts appropriated under the authority of this section shall remain available until expended”

EFFECTIVE DATE

SEC. 16. This Act shall take effect on the date of its enactment.

MARINE MAMMAL PROTECTION ACT OF 1972

SEC. 17. Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine mammal Protection Act of 1972.

ANNUAL COST ANALYSIS BY THE FISH AND WILDLIFE SERVICE

SEC. 18. On or before January 15, 1990; and each January 15 thereafter, the Secretary of the Interior, acting through the Fish and Wildlife Service, shall submit to the Congress an annual report covering the preceding fiscal year which shall contain —

(1) an accounting on a species by species basis of all reasonably unidentifiable Federal expenditures made primarily for the conservation of endangered or threatened species pursuant to this Act; and

(2) an accounting on a species by species basis for all reasonably identifiable expenditures made primarily for the conservation of endangered or threatened species pursuant to this Act by states receiving grants under section 6.

美國瀕絕物種法

發行人：顏仁德

策 劃：何源三、彭國棟

審 訂：李玲玲、謝福源

編 輯：林麗紅、楊嘉棟

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