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107th Congress
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COMMITTEE PRINT NO. 107–D

COMPILATION OF SELECTED ACTS CONCERNING WILDLIFE CONSERVATION AND RELATED MATTERS

WITH AMENDMENTS THROUGH THE END OF THE 106th CONGRESS

PREPARED FOR THE USE OF THE

COMMITTEE ON RESOURCES

OF THE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

July 2001

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COMPILATION OF SELECTED ACTS CONCERNING WILDLIFE CONSERVATION AND RELATED MATTERS

FISH AND WILDLIFE COORDINATION ACT

FISH AND WILDLIFE COORDINATION ACT [1]

[Chapter 55, Approved March 10, 1934, 48 Stat. 491]

[Amended through Public Law 89–724, July 9, 1965]

* * * * * * *

AN ACT To promote the conservation of wildlife, fish, and game, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [16 U.S.C. 661] For the purpose of recognizing the vital contribution of our wildlife resources to the Nation, the increasing public interest and significance thereof due to expansion of our national economy and other factors, and to provide that wildlife conservation shall receive equal consideration and be coordinated with other features of water-resource development programs through the effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation for the purposes of this Act in the United States, its Territories and possessions, the Secretary of the Interior is authorized (1) to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat, in controlling losses of the same from disease or other causes, in minimizing damages from overabundant species, in providing public shooting and fishing areas, including easements across public lands for access thereto, and in carrying out other measures necessary to effectuate the purposes of this Act; (2) to make surveys and investigations of the wildlife of the public domain, including lands and waters or interests therein acquired or controlled by any agency of the United States; and (3) to accept donations of land and contributions of funds in furtherance of the purposes of this Act.

SEC. 2. [16 U.S.C. 662] (a) Except as hereafter stated in subsection (h) of this section, whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State wherein

[1] The first section of Public Law 85–624 (16 U.S.C. 661 note; 72 Stat. 563) provided as follows: "That the Act of March 10, 1934, as amended, and as further amended by this Act may be cited as the 'Fish and Wildlife Coordination Act'.".

the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development.

(b) In furtherance of such purposes, the reports and recommendations of the Secretary of the Interior on the wildlife aspects of such projects, and any report of the head of the State agency exercising administration over the wildlife resources of the State, based on surveys and investigations conducted by the United States Fish and Wildlife Service and such State agency for the purpose of determining the possible damage to wildlife resources and for the purpose of determining means and measures that should be adopted to prevent the loss of or damage to such wildlife resources, as well as to provide concurrently for the development and improvement of such resources, shall be made an integral part of any report prepared or submitted by any agency of the Federal Government responsible for engineering surveys and construction of such projects when such reports are presented to the Congress or to any agency or person having the authority or the power, by administrative action or otherwise, (1) to authorize the construction of water-resource development projects or (2) to approve a report on the modification or supplementation of plans for previously authorized projects, to which this Act applies. Recommendations of the Secretary of the Interior shall be as specific as is practicable with respect to features recommended for wildlife conservation and development, lands to be utilized or acquired for such purposes, the results expected, and shall describe the damage to wildlife attributable to the project and the measures proposed for mitigating or compensating for these damages. The reporting officers in project reports of the Federal agencies shall give full consideration to the report and recommendations of the Secretary of the Interior and to any report of the State agency on the wildlife aspects of such projects, and the project plan shall include such justifiable means and measures for wildlife purposes as the reporting agency finds should be adopted to obtain maximum overall project benefits.

(c) Federal agencies authorized to construct or operate water-control projects are hereby authorized to modify or add to the structures and operations of such projects, the construction of which has not been substantially completed on the date of enactment of the Fish and Wildlife Coordination Act, and to acquire lands in accordance with section 3 of this Act, in order to accommodate the means and measures for such conservation of wildlife resources as an integral part of such projects: *Provided,* That for projects authorized by a specific Act of Congress before the date of enactment of the Fish and Wildlife Coordination Act (1) such modification or land acquisition shall be compatible with the purposes for which the project was authorized; (2) the cost of such modifications or land acquisition, as means and measures to prevent loss of and damage to wildlife resources to the extent justifiable, shall be an integral part of the cost of such projects; and (3) the cost of such modifications or land acquisition for the development or improvement of wildlife resources may be included to the extent justifiable, and an appropriate share of the cost of any project may be

allocated for this purpose with a finding as to the part of such allocated cost, if any, to be reimbursed by non-Federal interests.

(d) The cost of planning for and the construction or installation and maintenance of such means and measures adopted to carry out the conservation purposes of this section shall constitute an integral part of the cost of such projects: *Provided,* That such cost attributable to the development and improvement of wildlife shall not extend beyond that necessary for (1) land acquisition, (2) facilities as specifically recommended in water resource project reports, (3) modification of the project, and (4) modification of project operations, but shall not include the operation of wildlife facilities.

(e) In the case of construction by a Federal agency, that agency is authorized to transfer to the United States Fish and Wildlife Service, out of appropriations or other funds made available for investigations, engineering, or construction, such funds as may be necessary to conduct all or part of the investigations required to carry out the purposes of this section.

(f) In addition to other requirements, there shall be included in any report submitted to Congress supporting a recommendation for authorization of any new project for the control or use of water as described herein (including any new division of such project or new supplemental works on such project) an estimation of the wildlife benefits or losses to be derived therefrom including benefits to be derived from measures recommended specifically for the development and improvement of wildlife resources, the cost of providing wildlife benefits (including the cost of additional facilities to be installed or lands to be acquired specifically for that particular phase of wildlife conservation relating to the development and improvement of wildlife), the part of the cost of joint-use facilities allocated to wildlife, and the part of such costs, if any, to reimbursed by non-Federal interests.

(g) The provisions of this section shall be applicable with respect to any project for the control or use of water as prescribed herein, or any unit of such project authorized before or after the date of enactment of the Fish and Wildlife Coordination Act for planning or construction, but shall not be applicable to any project or unit thereof authorized before the date of enactment of the Fish and Wildlife Coordination Act if the construction of the particular project or unit thereof has been substantially completed. A project or unit thereof shall be considered to be substantially completed when sixty percent or more of the estimated construction cost has been obligated for expenditure.

(h) The provisions of this Act shall not be applicable to those projects for the impoundment of water where the maximum surface area of such impoundments is less than ten acres, nor to activities for or in connection with programs primarily for land management and use carried out by Federal agencies with respect to Federal lands under their jurisdiction.

SEC. 3. [16 U.S.C. 663] (a) Subject to the exceptions prescribed in section 2(h) of this Act, whenever the waters of any stream or other body of water are impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, adequate provision, consistent with the primary purposes of such impound-

ment, diversion, or other control, shall be made for the use thereof, together with any areas of land, water, or interests therein, acquired or administered by a Federal agency in connection therewith, for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon, including the development and improvement of such wildlife resources pursuant to the provisions of section 2 of this Act.

(b) The use of such waters, land, or interests therein for wildlife conservation purposes shall be in accordance with general plans approved jointly (1) by the head off the particular department or agency exercising primary administration in each instance, (2) by the Secretary of the Interior, and (3) by the head of the agency exercising the administration of the wildlife resources of the particular State wherein the waters and areas lie. Such waters and other interests shall be made available, without cost for administration, by such State agency, if the management of the properties relate to the conservation of wildlife other than migratory birds, or by the Secretary of the Interior, for administration in such manner as he may deem advisable, where the particular properties have value in carrying out the national migratory bird management program: *Provided,* That nothing in this section shall be construed as affecting the authority of the Secretary of Agriculture to cooperate with the States or in making lands available to the States with respect to the management of wildlife and wildlife habitat on lands administered by him.

(c) When consistent with the purposes of this Act and the reports and findings of the Secretary of the Interior prepared in accordance with section 2, land, waters, and interests therein may be acquired by Federal construction agencies for the wildlife conservation and development purposes of this Act in connection with a project as reasonably needed to preserve and assure for the public benefit the wildlife potentials of the particular project area: *Provided,* That before properties are acquired for this purpose, the probable extent of such acquisition shall be set forth, along with other data necessary for project authorization, in a report submitted to the Congress, or in the case of a project previously authorized, no such properties shall be acquired unless specifically authorized by Congress, if specific authority for such acquisition is recommended by the construction agency.

(d) Properties acquired for the purposes of this section shall continue to be used for such purposes, and shall not become the subject of exchange or other transactions if such exchange or other transaction would defeat the initial purpose of their acquisition.

(e) Federal lands acquired or withdrawn for Federal water-resource purposes and made available to the States or to the Secretary of the Interior for wildlife management purposes, shall be made available for such purposes in accordance with this Act, notwithstanding other provisions of law.

(f) Any lands acquired pursuant to this section by any Federal agency within the exterior boundaries of a national forest shall, upon acquisition, be added to and become national forest lands, and shall be administered as a part of the forest within which they are situated, subject to all laws applicable to lands acquired under the provisions of the Act of March 1, 1911 (36 Stat. 961), unless

such lands are acquired to carry out the National Migratory Bird Management Program.

SEC. 4. [16 U.S.C. 664] Such areas as are made available to the Secretary of the Interior for the purposes of this Act, pursuant to sections 1 and 3 or pursuant to any other authorization, shall be administered by him directly or in accordance with cooperative agreements entered into pursuant to the provisions of the first section of this Act and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife, resources thereof, and its habitat thereon, as may be adopted by the Secretary in accordance with general plans approved jointly by the Secretary of the Interior and the head of the department or agency exercising primary administration of such areas: *Provided,* That such rules and regulations shall not be inconsistent with the laws for the protection of fish and game of the States in which such area is situated (16 U.S.C., sec. 664): *Provided further,* That lands having value to the National Migratory Bird Management Program may, pursuant to general plans, be made available without cost directly to the State agency having control over wildlife resources, if it is jointly determined by the Secretary of the Interior and such State agency that this would be in the public interest: *And provided further,* That the Secretary of the Interior shall have the right to assume the management and administration of such lands in behalf of the National Migratory Bird Management Program if the Secretary finds that the State agency has withdrawn from or otherwise relinquished such management and administration.

SEC. 5. [16 U.S.C. 665] The Secretary of the Interior, through the Fish an Wildlife Service and the Bureau of Mines,[1] is authorized to make such investigations as he deems necessary to determine the effect of domestic sewage, mine, petroleum, and industrial wastes, erosion, silt, and other polluting substances on wildlife, and to make report to the Congress concerning such investigations and of recommendations for alleviating dangerous and undesirable effects of such pollution. These investigations shall include (1) the determination of standards of water quality for the maintenance of wildlife; (2) the study of methods of abating and preventing pollution, including methods for the recovery of useful or marketable products and byproducts of wastes; and (3) the collation and distribution of data on the progress and results of such investigations for the use on Federal, State, municipal, and private agencies, individuals, organizations, or enterprises.

SEC. 5A. [16 U.S.C. 665A] In the management of existing facilities (including locks, dams, and pools) in the Mississippi River between Rock Island, Illinois, and Minneapolis, Minnesota, administered by the United States Corps of Engineers of the Department of the Army, that Department is hereby directed to give full consideration and recognition to the needs of fish and other wildlife resources and their habitat dependent on such waters, without increasing additional liability to the Government, and, to the maximum extent possible without causing damage to levee and drainage districts, adjacent railroads and highways, farm lands, and

[1] Section 10(b) of Public Law 102–285 (106 Stat. 172) provides as follows:

"(b) UNITED STATES BUREAU OF MINES.—The Bureau of Mines established by the Act of May 16, 1910 (30 U.S.C. 1), is designated as and shall hereafter be known as the United States Bureau of Mines.".

dam structures, shall generally operate and maintain pool levels as though navigation was carried on throughout the year.

SEC. 6. [16 U.S.C. 666] There is authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions of this Act and regulations made pursuant thereto, including the construction of such facilities, buildings, and other improvements necessary for economical administration of areas made available to the Secretary of the Interior under this Act, and the employment in the city of Washington and elsewhere of such persons and means as the Secretary of the Interior may deem necessary for such purposes.

SEC. 7. [16 U.S.C. 666a] Any person who shall violate any rule or regulation promulgated in accordance with this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $500 or imprisoned for not more than one year, or both.

SEC. 8. [16 U.S.C. 666b] The terms "wildlife" and "wildlife resources" as used herein include birds, fishes, mammals, and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent.

SEC. 9. [16 U.S.C. 666c] The provisions of this Act shall not apply to the Tennessee Valley Authority.

NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT OF 1966

NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT OF 1966 [1]

[Public Law 89–669, Approved Oct. 15, 1966, 80 Stat. 927]

[Amended through Public Law 105–213, Oct. 30, 1998]

AN ACT To provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the National Wildlife Refuge System; and for other purposes.

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

[Sections 1 through 3. Repealed by section 14 of P.L. 93–205, 87 Stat. 903]

SEC. 4. [16 U.S.C. 668dd] (a)(1) For the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary for the conservation of fish and wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas are hereby designated as the "National Wildlife Refuge System" (referred to herein as the "System"), which shall be subject to the provisions of this section, and shall be administered by the Secretary through the United States Fish and Wildlife Service. With respect to refuge lands in the State of Alaska, those programs relating to the management of resources for which any other agency of the Federal Government exercises administrative responsibility through cooperative agreement shall remain in effect, sub-

[1] Sec. 12(f) of P.L. 91–135 (16 U.S.C. 668dd note) provided that: "The provisions of sections 4 and 5 of the Act of October 15, 1966 (80 Stat. 929; 16 U.S.C. 668dd-668ee), as amended, shall hereinafter be cited as the 'National Wildlife Refuge System Administration Act of 1966'.". Sections 3 through 8 of the National Wildlife Refuge System Improvement Act of 1997 (Public Law 105–57) made amendments to this Act. Section 9 of the 1997 Act provides as follows:

"SEC. 9. [16 U.S.C. 668dd note] STATUTORY CONSTRUCTION WITH RESPECT TO ALASKA.

"(a) IN GENERAL.—Nothing in this Act is intended to affect—

"(1) the provisions for subsistence uses in Alaska set forth in the Alaska National Interest Lands Conservation Act (Public Law 96–487), including those in titles III and VIII of that Act;

"(2) the provisions of section 102 of the Alaska National Interest Lands Conservation Act, the jurisdiction over subsistence uses in Alaska, or any assertion of subsistence uses in Alaska in the Federal courts; and

"(3) the manner in which section 810 of the Alaska National Interest Lands Conservation Act is implemented in national wildlife refuges in Alaska.

"(b) CONFLICTS OF LAWS.—If any conflict arises between any provision of this Act and any provision of the Alaska National Interest Lands Conservation Act, then the provision in the Alaska National Interest Lands Conservation Act shall prevail.".

ject to the direct supervision of the United States Fish and Wildlife Service, as long as such agency agrees to exercise such responsibility.

(2) The mission of the System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

(3) With respect to the System, it is the policy of the United States that—

(A) each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established;

(B) compatible wildlife-dependent recreation is a legitimate and appropriate general public use of the System, directly related to the mission of the System and the purposes of many refuges, and which generally fosters refuge management and through which the American public can develop an appreciation for fish and wildlife;

(C) compatible wildlife-dependent recreational uses are the priority general public uses of the System and shall receive priority consideration in refuge planning and management; and

(D) when the Secretary determines that a proposed wildlife-dependent recreational use is a compatible use within a refuge, that activity should be facilitated, subject to such restrictions or regulations as may be necessary, reasonable, and appropriate.

(4) In administering the System, the Secretary shall—

(A) provide for the conservation of fish, wildlife, and plants, and their habitats within the System;

(B) ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans;

(C) plan and direct the continued growth of the System in a manner that is best designed to accomplish the mission of the System, to contribute to the conservation of the ecosystems of the United States, to complement efforts of States and other Federal agencies to conserve fish and wildlife and their habitats, and to increase support for the System and participation from conservation partners and the public;

(D) ensure that the mission of the System described in paragraph (2) and the purposes of each refuge are carried out, except that if a conflict exists between the purposes of a refuge and the mission of the System, the conflict shall be resolved in a manner that first protects the purposes of the refuge, and, to the extent practicable, that also achieves the mission of the System;

(E) ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which the units of the System are located;

(F) assist in the maintenance of adequate water quantity and water quality to fulfill the mission of the System and the purposes of each refuge;

(G) acquire, under State law, water rights that are needed for refuge purposes;

(H) recognize compatible wildlife-dependent recreational uses as the priority general public uses of the System through which the American public can develop an appreciation for fish and wildlife;

(I) ensure that opportunities are provided within the System for compatible wildlife-dependent recreational uses;

(J) ensure that priority general public uses of the System receive enhanced consideration over other general public uses in planning and management within the System;

(K) provide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting;

(L) continue, consistent with existing laws and interagency agreements, authorized or permitted uses of units of the System by other Federal agencies, including those necessary to facilitate military preparedness;

(M) ensure timely and effective cooperation and collaboration with Federal agencies and State fish and wildlife agencies during the course of acquiring and managing refuges; and

(N) monitor the status and trends of fish, wildlife, and plants in each refuge.

(5) No acquired lands which are or become a part of the System may be transferred or otherwise disposed of under any provision of law (except by exchange pursuant to subsection (b)(3) of this section) unless—

(A) the Secretary determines with the approval of the Migratory Bird Conservation Commission that such lands are no longer needed for the purposes for which the System was established; and

(B) such lands are transferred or otherwise disposed of for an amount not less than—

(i) the acquisition costs of such lands, in the case of lands of the system which were purchased by the United States with funds from the migratory bird conservation fund, or fair market value, whichever is greater; or

(ii) the fair market value of such lands (as determined by the Secretary as of the date of the transfer or disposal), in the case of lands of the System which were donated to the System.

The Secretary shall pay into the migratory bird conservation fund the aggregate amount of the proceeds of any transfer or disposal referred to in the preceding sentence.

(6) Each area which is included within the System on January 1, 1975, or thereafter, and which was or is—

(A) designated as an area within such System by law, Executive order, or secretarial order; or

(B) so included by public land withdrawal, donation, purchase, exchange, or pursuant to a cooperative agreement with any State or local government, any Federal department or agency, or any other governmental entity,

shall continue to be a part of the System until otherwise specified by Act of Congress, except that nothing in this paragraph shall be construed as precluding—

(i) the transfer or disposal of acquired lands within any such area pursuant to paragraph (5) of this subsection;

(ii) the exchange of lands within any such area pursuant to subsection (b)(3) of this section; or

(iii) the disposal of any lands within any such area pursuant to the terms of any cooperative agreement referred to in subparagraph (B) of this paragraph.

(b) In administering the System, the Secretary is authorized to take the following actions:

(1) Enter into contracts with any person or public or private agency through negotiation for the provision of public accommodations when, and in such locations, and to the extent that the Secretary determines will not be inconsistent with the primary purpose for which the affected area was established.

(2) Accept donations of funds and to use such funds to acquire or manage lands or interests therein.

(3) Acquire lands or interests therein by exchange (A) for acquired lands or public lands, or for interests in acquired or public lands, under his jurisdiction which he finds to be suitable for disposition, or (B) for the right to remove, in accordance with such terms and conditions as he may prescribe, products from the acquired or public lands within the System. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(4) Subject to standards established by and the overall management oversight of the Director, and consistent with standards established by this Act, to enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge.

(5) Issue regulations to carry out this Act.

(c) No person shall disturb, injure, cut, burn, remove, destroy, or possess any real or personal property of the United States, including natural growth, in any area of the System; or take or possess any fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof within any such area; or enter, use, or otherwise occupy any such area for any purpose; unless such activities are performed by persons authorized to manage such area, or unless such activities are permitted either under subsection (d) of this section or by express provision of the law, proclamation, Executive order, or public land order establishing the area, or amendment thereof: *Provided*, That the United States mining and mineral leasing laws shall continue to apply to any lands within the System to the same extent they apply prior to the effective date of this Act unless subsequently withdrawn under other authority of law. With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary

to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system[1]. The regulations permitting hunting and fishing of resident fish and wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws and regulations.

(d)(1) The Secretary is authorized, under such regulations as he may prescribe, to—

(A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established: *Provided*, That not to exceed 40 per centum at any one time of any area that has been, or hereafter may be acquired, reserved, or set apart as an inviolate sanctuary for migratory birds, under any law, proclamation, Executive order, or public land order may be administered by the Secretary as an area within which the taking of migratory game birds may be permitted under such regulations as he may prescribe unless the Secretary finds that the taking of any species of migratory game birds in more than 40 percent of such area would be beneficial to the species; and

(B) permit the use of, or grant easements in, over, across, upon, through, or under any areas within the System for purposes such as but not necessarily limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that such uses are compatible with the purposes for which these areas are established.

(2) Notwithstanding any other provision of law, the Secretary may not grant to any Federal, State, or local agency or to any private individual or organization any right-of-way, easement, or reservation in, over, across, through, or under any area within the system[1] in connection with any use permitted by him under paragraph (1)(B) of this subsection unless the grantee pays to the Secretary, at the option of the Secretary, either (A) in lump sum the fair market value (determined by the Secretary as of the date of conveyance to the grantee) of the right-of-way, easement, or reservation; or (B) annually in advance the fair market rental value (determined by the Secretary) of the right-of-way, easement, or reservation. If any Federal, State, or local agency is exempted from such payment by any other provision of Federal law, such agency shall otherwise compensate the Secretary by any other means agreeable to the Secretary, including, but not limited to, making other land available or the loan of equipment or personnel; except that (A) any such compensation shall relate to, and be consistent with, the objectives of the National Wildlife Refuge System, and (B) the Secretary may waive such requirement for compensation if he finds such requirement impracticable or unnecessary. All sums received by the Secretary pursuant to this paragraph shall, after payment of any necessary expenses incurred by him in administering this paragraph, be deposited into the Migratory Bird Conservation Fund and shall be available to carry out the provisions for land acquisition of the Migratory Bird Conservation Act (16 U.S.C. 715 et

[1] So in law. Probably should be capitalized.

seq.) and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 et seq.).

(3)(A)(i) Except as provided in clause (iv), the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety. The Secretary may make the determinations referred to in this paragraph for a refuge concurrently with development of a conservation plan under subsection (e).

(ii) On lands added to the System after March 25, 1996, the Secretary shall identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational uses that the Secretary determines shall be permitted to continue on an interim basis pending completion of the comprehensive conservation plan for the refuge.

(iii) Wildlife-dependent recreational uses may be authorized on a refuge when they are compatible and not inconsistent with public safety. Except for consideration of consistency with State laws and regulations as provided for in subsection (m), no other determinations or findings are required to be made by the refuge official under this Act or the Refuge Recreation Act for wildlife-dependent recreation to occur.

(iv) Compatibility determinations in existence on the date of enactment of the National Wildlife Refuge System Improvement Act of 1997 shall remain in effect until and unless modified.

(B) Not later than 24 months after the date of the enactment of the National Wildlife Refuge System Improvement Act of 1997, the Secretary shall issue final regulations establishing the process for determining under subparagraph (A) whether a use of a refuge is a compatible use. These regulations shall—

(i) designate the refuge official responsible for making initial compatibility determinations;

(ii) require an estimate of the timeframe, location, manner, and purpose of each use;

(iii) identify the effects of each use on refuge resources and purposes of each refuge;

(iv) require that compatibility determinations be made in writing;

(v) provide for the expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the purposes of a refuge or the mission of the System;

(vi) provide for the elimination or modification of any use as expeditiously as practicable after a determination is made that the use is not a compatible use;

(vii) require, after an opportunity for public comment, reevaluation of each existing use, other than those uses specified in clause (viii), if conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use, but not less frequently than once every 10 years, to ensure that the use remains a compatible use, except that, in the case of any use authorized for a period longer than 10 years (such as an electric utility right-of-way), the reevaluation required by this clause shall examine compliance with the terms and conditions of the authorization, not examine the authorization itself;

(viii) require, after an opportunity for public comment, reevaluation of each compatible wildlife-dependent recreational use when conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use, but not less frequently than in conjunction with each preparation or revision of a conservation plan under subsection (e) or at least every 15 years, whichever is earlier; and

(ix) provide an opportunity for public review and comment on each evaluation of a use, unless an opportunity for public review and comment on the evaluation of the use has already been provided during the development or revision of a conservation plan for the refuge under subsection (e) or has otherwise been provided during routine, periodic determinations of compatibility for wildlife-dependent recreational uses.

(4) The provisions of this Act relating to determinations of the compatibility of a use shall not apply to—

(A) overflights above a refuge; and

(B) activities authorized, funded, or conducted by a Federal agency (other than the United States Fish and Wildlife Service) which has primary jurisdiction over a refuge or a portion of a refuge, if the management of those activities is in accordance with a memorandum of understanding between the Secretary or the Director and the head of the Federal agency with primary jurisdiction over the refuge governing the use of the refuge.

(e)(1)(A) Except with respect to refuge lands in Alaska (which shall be governed by the refuge planning provisions of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.)), the Secretary shall—

(i) propose a comprehensive conservation plan for each refuge or related complex of refuges (referred to in this subsection as a "planning unit") in the System;

(ii) publish a notice of opportunity for public comment in the Federal Register on each proposed conservation plan;

(iii) issue a final conservation plan for each planning unit consistent with the provisions of this Act and, to the extent practicable, consistent with fish and wildlife conservation plans of the State in which the refuge is located; and

(iv) not less frequently than 15 years after the date of issuance of a conservation plan under clause (iii) and every 15 years thereafter, revise the conservation plan as may be necessary.

(B) The Secretary shall prepare a comprehensive conservation plan under this subsection for each refuge within 15 years after the date of enactment of the National Wildlife Refuge System Improvement Act of 1997.

(C) The Secretary shall manage each refuge or planning unit under plans in effect on the date of enactment of the National Wildlife Refuge System Improvement Act of 1997, to the extent such plans are consistent with this Act, until such plans are revised or superseded by new comprehensive conservation plans issued under this subsection.

(D) Uses or activities consistent with this Act may occur on any refuge or planning unit before existing plans are revised or

new comprehensive conservation plans are issued under this subsection.

(E) Upon completion of a comprehensive conservation plan under this subsection for a refuge or planning unit, the Secretary shall manage the refuge or planning unit in a manner consistent with the plan and shall revise the plan at any time if the Secretary determines that conditions that affect the refuge or planning unit have changed significantly.

(2) In developing each comprehensive conservation plan under this subsection for a planning unit, the Secretary, acting through the Director, shall identify and describe—

(A) the purposes of each refuge comprising the planning unit;

(B) the distribution, migration patterns, and abundance of fish, wildlife, and plant populations and related habitats within the planning unit;

(C) the archaeological and cultural values of the planning unit;

(D) such areas within the planning unit that are suitable for use as administrative sites or visitor facilities;

(E) significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants within the planning unit and the actions necessary to correct or mitigate such problems; and

(F) opportunities for compatible wildlife-dependent recreational uses.

(3) In preparing each comprehensive conservation plan under this subsection, and any revision to such a plan, the Secretary, acting through the Director, shall, to the maximum extent practicable and consistent with this Act—

(A) consult with adjoining Federal, State, local, and private landowners and affected State conservation agencies; and

(B) coordinate the development of the conservation plan or revision with relevant State conservation plans for fish and wildlife and their habitats.

(4)(A) In accordance with subparagraph (B), the Secretary shall develop and implement a process to ensure an opportunity for active public involvement in the preparation and revision of comprehensive conservation plans under this subsection. At a minimum, the Secretary shall require that publication of any final plan shall include a summary of the comments made by States, owners of adjacent or potentially affected land, local governments, and any other affected persons, and a statement of the disposition of concerns expressed in those comments.

(B) Prior to the adoption of each comprehensive conservation plan under this subsection, the Secretary shall issue public notice of the draft proposed plan, make copies of the plan available at the affected field and regional offices of the United States Fish and Wildlife Service, and provide opportunity for public comment.

(f) PENALTIES.—

(1) KNOWING VIOLATIONS.—Any person who knowingly violates or fails to comply with any of the provisions of this Act or any regulations issued thereunder shall be fined under title 18, United States Code, or imprisoned for not more than 1 year, or both.

(2) OTHER VIOLATIONS.—Any person who otherwise violates or fails to comply with any of the provisions of this Act (including a regulation issued under this Act) shall be fined under title 18, United States Code, or imprisoned not more than 180 days, or both.

(g) Any person authorized by the Secretary to enforce the provisions of this Act or any regulations issued thereunder, may, without a warrant, arrest any person violating this Act or regulations in his presence or view, and may execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this Act or regulations, and may with a search warrant search for and seize any property, fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof, taken or possessed in violation of this Act or the regulations issued thereunder. Any property, fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or egg thereof seized with or without a search warrant shall be held by such person or by a United States marshal, and upon conviction, shall be forfeited to the United States and disposed of by the Secretary, in accordance with law. The Director of the United States Fish and Wildlife Service is authorized to utilize by agreement, with or without reimbursement, the personnel and services of any other Federal or State agency for purposes of enhancing the enforcement of this Act.

(h) Regulations applicable to areas of the System that are in effect on the date of enactment of this Act shall continue in effect until modified or rescinded.

(i) Nothing in this section shall be construed to amend, repeal, or otherwise modify the provision of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 460K—460K–4) which authorizes the Secretary to administer the areas within the System for public recreation. The provisions of this section relating to recreation shall be administered in accordance with the provisions of said Act.

(j) Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(k) Notwithstanding any other provision of this Act, the Secretary may temporarily suspend, allow, or initiate any activity in a refuge in the System if the Secretary determines it is necessary to protect the health and safety of the public or any fish or wildlife population.

(l) Nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of fish and resident wildlife on lands or waters that are not within the System.

(m) Nothing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System. Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans.

(n)(1) Nothing in this Act shall—

(A) create a reserved water right, express or implied, in the United States for any purpose;

(B) affect any water right in existence on the date of enactment of the National Wildlife Refuge System Improvement Act of 1997; or

(C) affect any Federal or State law in existence on the date of the enactment of the National Wildlife Refuge System Improvement Act of 1997 regarding water quality or water quantity.

(2) Nothing in this Act shall diminish or affect the ability to join the United States in the adjudication of rights to the use of water pursuant to the McCarran Act (43 U.S.C. 666).

(o) Coordination with State fish and wildlife agency personnel or with personnel of other affected State agencies pursuant to this Act shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 5. [16 U.S.C. 668ee] DEFINITIONS.

For purposes of this Act:

(1) The term "compatible use" means a wildlife-dependent recreational use or any other use of a refuge that, in the sound professional judgment of the Director, will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.

(2) The terms "wildlife-dependent recreation" and "wildlife-dependent recreational use" mean a use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation.

(3) The term "sound professional judgment" means a finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of this Act and other applicable laws.

(4) The terms "conserving", "conservation", "manage", "managing", and "management", mean to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of this Act, protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

(5) The term "Coordination Area" means a wildlife management area that is made available to a State—

(A) by cooperative agreement between the United States Fish and Wildlife Service and a State agency having control over wildlife resources pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or

(B) by long-term leases or agreements pursuant to title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525; 7 U.S.C. 1010 et seq.).

(6) The term "Director" means the Director of the United States Fish and Wildlife Service or a designee of that Director.

(7) The terms "fish", "wildlife", and "fish and wildlife" mean any wild member of the animal kingdom whether alive or dead, and regardless of whether the member was bred,

hatched, or born in captivity, including a part, product, egg, or offspring of the member.

(8) The term "person" means any individual, partnership, corporation, or association.

(9) The term "plant" means any member of the plant kingdom in a wild, unconfined state, including any plant community, seed, root, or other part of a plant.

(10) The terms "purposes of the refuge" and "purposes of each refuge" mean the purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit.

(11) The term "refuge" means a designated area of land, water, or an interest in land or water within the System, but does not include Coordination Areas.

(12) The term "Secretary" means the Secretary of the Interior.

(13) The terms "State" and "United States" mean the several States of the United States, Puerto Rico, American Samoa, the Virgin Islands, Guam, and the territories and possessions of the United States.

(14) The term "System" means the National Wildlife Refuge System designated under section 4(a)(1).

(15) The terms "take", "taking", and "taken" mean to pursue, hunt, shoot, capture, collect, or kill, or to attempt to pursue, hunt, shoot, capture, collect, or kill.

[Section 6 through 10 of this Act made amendments to other laws.**]**

SIKES ACT

SIKES ACT

[Public Law 86–797, Approved Sept. 15, 1960, 74 Stat. 1052]

[Amended through Public Law 106–580, Dec. 29, 2000]

AN ACT To promote effectual planning, development, maintenance, and coordination of wildlife, fish, and game conservation and rehabilitation in military reservations.

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

SECTION 1. [16 U.S.C. 670 note] SHORT TITLE.

This Act may be cited as the "Sikes Act".

TITLE I—CONSERVATION PROGRAMS ON MILITARY INSTALLATIONS

SEC. 100. [16 U.S.C. 670] DEFINITIONS.

In this title:

(1) MILITARY INSTALLATION.—The term "military installation"—

(A) means any land or interest in land owned by the United States and administered by the Secretary of Defense or the Secretary of a military department, except land under the jurisdiction of the Assistant Secretary of the Army having responsibility for civil works;

(B) includes all public lands withdrawn from all forms of appropriation under public land laws and reserved for use by the Secretary of Defense or the Secretary of a military department; and

(C) does not include any land described in subparagraph (A) or (B) that is subject to an approved recommendation for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(2) STATE FISH AND WILDLIFE AGENCY.—The term "State fish and wildlife agency" means the one or more agencies of State government that are responsible under State law for managing fish or wildlife resources.

(3) UNITED STATES.—The term "United States" means the States, the District of Columbia, and the territories and possessions of the United States.

SEC. 101. [16 U.S.C. 670a] (a) AUTHORITY OF SECRETARY OF DEFENSE.—

(1) PROGRAM.—

(A) IN GENERAL.—The Secretary of Defense shall carry out a program to provide for the conservation and rehabilitation of natural resources on military installations.

(B) INTEGRATED NATURAL RESOURCES MANAGEMENT PLAN.—To facilitate the program, the Secretary of each military department shall prepare and implement an integrated natural resources management plan for each military installation in the United States under the jurisdiction of the Secretary, unless the Secretary determines that the absence of significant natural resources on a particular installation makes preparation of such a plan inappropriate.

(2) COOPERATIVE PREPARATION.—The Secretary of a military department shall prepare each integrated natural resources management plan for which the Secretary is responsible in cooperation with the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, and the head of each appropriate State fish and wildlife agency for the State in which the military installation concerned is located. Consistent with paragraph (4), the resulting plan for the military installation shall reflect the mutual agreement of the parties concerning conservation, protection, and management of fish and wildlife resources.

(3) PURPOSES OF PROGRAM.—Consistent with the use of military installations to ensure the preparedness of the Armed Forces, the Secretaries of the military departments shall carry out the program required by this subsection to provide for—

(A) the conservation and rehabilitation of natural resources on military installations;

(B) the sustainable multipurpose use of the resources, which shall include hunting, fishing, trapping, and nonconsumptive uses; and

(C) subject to safety requirements and military security, public access to military installations to facilitate the use.

(4) EFFECT ON OTHER LAW.—Nothing in this title—

(A)(i) affects any provision of a Federal law governing the conservation or protection of fish and wildlife resources; or

(ii) enlarges or diminishes the responsibility and authority of any State for the protection and management of fish and resident wildlife; or

(B) except as specifically provided in the other provisions of this section and in section 102, authorizes the Secretary of a military department to require a Federal license or permit to hunt, fish, or trap on a military installation.

(b) REQUIRED ELEMENTS OF PLANS.—Consistent with the use of military installations to ensure the preparedness of the Armed Forces, each integrated natural resources management plan prepared under subsection (a)—

(1) shall, to the extent appropriate and applicable, provide for—

(A) fish and wildlife management, land management, forest management, and fish- and wildlife-oriented recreation;

(B) fish and wildlife habitat enhancement or modifications;

(C) wetland protection, enhancement, and restoration, where necessary for support of fish, wildlife, or plants;

(D) integration of, and consistency among, the various activities conducted under the plan;

(E) establishment of specific natural resource management goals and objectives and time frames for proposed action;

(F) sustainable use by the public of natural resources to the extent that the use is not inconsistent with the needs of fish and wildlife resources;

(G) public access to the military installation that is necessary or appropriate for the use described in subparagraph (F), subject to requirements necessary to ensure safety and military security;

(H) enforcement of applicable natural resource laws (including regulations);

(I) no net loss in the capability of military installation lands to support the military mission of the installation; and

(J) such other activities as the Secretary of the military department determines appropriate;

(2) must be reviewed as to operation and effect by the parties thereto on a regular basis, but not less often than every 5 years; and

(3) may stipulate the issuance of special State hunting and fishing permits to individuals and require payment of nominal fees therefor, which fees shall be utilized for the protection, conservation, and management of fish and wildlife, including habitat improvement and related activities in accordance with the integrated natural resources management plan; except that—

(A) the Commanding Officer of the installation or persons designated by that Officer are authorized to enforce such special hunting and fishing permits and to collect, spend, administer, and account for fees for the permits, acting as agent or agents for the State if the integrated natural resources management plan so provides, and

(B) the fees collected under this paragraph may not be expended with respect to other than the military installation on which collected, unless the military installation is subsequently closed, in which case the fees may be transferred to another military installation to be used for the same purposes.

(c) After an integrated natural resources management plan is agreed to under subsection (a)—

(1) no sale of land, or forest products from land, that is within a military installation covered by that plan may be made under section 2665 (a) or (b) of title 10, United States Code; and

(2) no leasing of land that is within the installation may be made under section 2667 of such title 10;

unless the effects of that sale or leasing are compatible with the purposes of the plan.

(d) With regard to the implementation and enforcement of integrated natural resources management plans agreed to under subsection (a)—

(1) neither Office of Management and Budget Circular A–76 nor any successor circular thereto applies to the procurement of services that are necessary for that implementation and enforcement; and

(2) priority shall be given to the entering into of contracts for the procurement of such implementation and enforcement services with Federal and State agencies having responsibility for the conservation or management of fish or wildlife.

(e) Integrated natural resources management plans agreed to under the authority of this section and section 102 shall not be deemed to be, nor treated as, cooperative agreements to which chapter 63 of title 31, United States Code [1] applies.

(f) REVIEWS AND REPORTS.—

(1) SECRETARY OF DEFENSE.—Not later than March 1 of each year, the Secretary of Defense shall review the extent to which integrated natural resources management plans were prepared or were in effect and implemented in accordance with this title in the preceding year, and submit a report on the findings of the review to the committees. Each report shall include—

(A) the number of integrated natural resources management plans in effect in the year covered by the report, including the date on which each plan was issued in final form or most recently revised;

(B) the amounts expended on conservation activities conducted pursuant to the plans in the year covered by the report; and

(C) an assessment of the extent to which the plans comply with this title.

(2) SECRETARY OF THE INTERIOR.—Not later than March 1 of each year and in consultation with the heads of State fish and wildlife agencies, the Secretary of the Interior shall submit a report to the committees on the amounts expended by the Department of the Interior and the State fish and wildlife agencies in the year covered by the report on conservation activities conducted pursuant to integrated natural resources management plans.

(3) DEFINITION OF COMMITTEES.—In this subsection, the term "committees" means—

(A) the Committee on Resources and the Committee on Armed Services of the House of Representatives; and

(B) the Committee on Armed Services and the Committee on Environment and Public Works of the Senate.

SEC. 102. [16 U.S.C. 670b] The Secretary of Defense in cooperation with the Secretary of Interior and the appropriate State agency is authorized to carry out a program for the conservation, restoration and management of migratory game birds on military installations, including the issuance of special hunting permits and the collection of fees therefor, in accordance with an integrated nat-

[1] In subsection (e), a comma should be inserted after "United States Code".

ural resources management plan mutually agreed upon by the Secretary of Defense, the Secretary of the Interior and the appropriate State agency: *Provided,* That possession of a special permit for hunting migratory game birds issued pursuant to this title shall not relieve the permittee of the requirements of the Migratory Bird Hunting Stamp Act as amended nor of the requirements pertaining to State law set forth in Public Law 85–337.

SEC. 103. [16 U.S.C. 670c] PROGRAM FOR PUBLIC OUTDOOR RECREATION.

(a) PROGRAM AUTHORIZED.—The Secretary of Defense is also authorized to carry out a program for the development, enhancement, operation, and maintenance of public outdoor recreation resources at military installations in accordance with an integrated natural resources management plan mutually agreed upon by the Secretary of Defense and the Secretary of the Interior, in consultation with the appropriate State agency designated by the State in which the installations are located.

(b) ACCESS FOR DISABLED VETERANS, MILITARY DEPENDENTS WITH DISABILITIES, AND OTHER PERSONS WITH DISABILITIES.—(1) In developing facilities and conducting programs for public outdoor recreation at military installations, consistent with the primary military mission of the installations, the Secretary of Defense shall ensure, to the extent reasonably practicable, that outdoor recreation opportunities (including fishing, hunting, trapping, wildlife viewing, boating, and camping) made available to the public also provide access for persons described in paragraph (2) when topographic, vegetative, and water resources allow access for such persons without substantial modification to the natural environment.

(2) Persons referred to in paragraph (1) are the following:

(A) Disabled veterans.

(B) Military dependents with disabilities.

(C) Other persons with disabilities, when access to a military installation for such persons and other civilians is not otherwise restricted.

(3) The Secretary of Defense shall carry out this subsection in consultation with the Secretary of Veterans Affairs, national service, military, and veterans organizations, and sporting organizations in the private sector that participate in outdoor recreation projects for persons described in paragraph (2).

(c) ACCEPTANCE OF DONATIONS.—In connection with the facilities and programs for public outdoor recreation at military installations, in particular the requirement under subsection (b) to provide access for persons described in paragraph (2) of such subsection, the Secretary of Defense may accept—

(1) the voluntary services of individuals and organizations; and

(2) donations of property, whether real or personal.

(d) TREATMENT OF VOLUNTEERS.—A volunteer under subsection (c) shall not be considered to be a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits, except that—

(1) for the purposes of the tort claims provisions of chapter 171 of title 28, United States Code, the volunteer shall be considered to be a Federal employee; and

(2) for the purposes of subchapter I of chapter 81 of title 5, United States Code, relating to compensation to Federal employees for work injuries, the volunteer shall be considered to be an employee, as defined in section 8101(1)(B) of title 5, United States Code, and the provisions of such subchapter shall apply.

SEC. 103a. [16 U.S.C. 670c–1] (a) The Secretary of a military department may enter into cooperative agreements with States, local governments, nongovernmental organizations, and individuals to provide for the maintenance and improvement of natural resources on, or to benefit natural and historic research on, Department of Defense installations.

(b) MULTIYEAR AGREEMENTS.—Funds appropriated to the Department of Defense for a fiscal year may be obligated to cover the cost of goods and services provided under a cooperative agreement entered into under subsection (a) or through an agency agreement under section 1535 of title 31, United States Code, during any 18-month period beginning in that fiscal year, without regard to whether the agreement crosses fiscal years.

(c) Cooperative agreements entered into under this section shall be subject to the availability of funds and shall not be considered, nor be treated as, cooperative agreements to which chapter 63 of title 31, United States Code, applies.

SEC. 104. [16 U.S.C. 670d] The Department of Defense is held free from any liability to pay into the Treasury of the United States upon the operation of the program or programs authorized by this title any funds which may have been or may hereafter be collected, received or expended pursuant to, and for the purposes of, this title, and which collections, receipts and expenditures have been properly accounted for to the Comptroller General of the United States.

SEC. 105. [16 U.S.C. 670e] Nothing herein contained shall be construed to modify, amend or repeal any provision of Public Law 85–337, nor as applying to national forest lands administered pursuant to the provisions of section 9 of the Act of June 7, 1924 (43 Stat. 655), nor section 15 of the Taylor Grazing Act.

SEC. 106. [16 U.S.C. 670e–1] FEDERAL ENFORCEMENT OF OTHER LAWS.

All Federal laws relating to the management of natural resources on Federal land may be enforced by the Secretary of Defense with respect to violations of the laws that occur on military installations within the United States.

SEC. 107. [16 U.S.C. 670e–2] NATURAL RESOURCES MANAGEMENT SERVICES.

To the extent practicable using available resources, the Secretary of each military department shall ensure that sufficient numbers of professionally trained natural resources management personnel and natural resources law enforcement personnel are available and assigned responsibility to perform tasks necessary to

carry out this title, including the preparation and implementation of integrated natural resources management plans.

SEC. 108. [16 U.S.C. 670f] (a) The Secretary of Defense shall expend such funds as may be collected in accordance with the integrated natural resources management plans agreed to under sections 101 and 102 and cooperative agreements agreed to under section 103a of this title, and for no other purpose. All funds that are so collected shall remain available until expended.

(b) There are authorized to be appropriated to the Secretary of Defense not to exceed $1,500,000 for each of the fiscal years 1998 through 2003, to carry out this title, including the enhancement of fish and wildlife habitat and the development of public recreation and other facilities, and to carry out such functions and responsibilities as the Secretary may have under cooperative agreements entered into under section 103a. The Secretary of Defense shall, to the greatest extent practicable, enter into agreements to utilize the services, personnel, equipment, and facilities, with or without reimbursement, of the Secretary of the Interior in carrying out the provisions of this section.

(c) There are authorized to be appropriated to the Secretary of the Interior not to exceed $3,000,000 for each of the fiscal years 1998 through 2003, to carry out such functions and responsibilities as the Secretary may have under integrated natural resources management plans to which such Secretary is a party under this section, including those for the enhancement of fish and wildlife habitat and the development of public recreation and other facilities.

(d) The Secretary of Defense and the Secretary of the Interior may each use any authority available to him under other laws relating to fish, wildlife, or plant conservation or rehabilitation for purposes of carrying out the provisions of this title.

TITLE II—CONSERVATION PROGRAMS ON CERTAIN PUBLIC LAND

SEC. 201. [16 U.S.C. 670g] (a) The Secretary of the Interior and the secretary of Agriculture shall each, in cooperation with the State agencies and in accordance with comprehensive plans developed pursuant to section 202 of this title, plan, develop, maintain, and coordinate programs for the conservation and rehabilitation of wildlife, fish, and game. Such conservation and rehabilitation programs shall include, but not be limited to specific habitat improvement projects and related activities and adequate protection for species of fish, wildlife, and plants considered threatened or endangered.

(b) The Secretary of the Interior shall implement the conservation and rehabilitation programs required under subsection (a) of this section on public land under his jurisdiction. The Secretary of the Interior shall adopt, modify, and implement the conservation and rehabilitation programs required under such subsection (a) on public land under the jurisdiction of the Chairman, but only with the prior written approval of the Atomic Energy Commission, and on public land under the jurisdiction of the Administrator, but only

with the prior written approval of the Administrator. The Secretary of Agriculture shall implement such conservation and rehabilitation programs on public land under his jurisdiction.

SEC. 202. [16 U.S.C. 670h] (a)(1) The Secretary of the Interior shall develop, in consultation with the State agencies, a comprehensive plan for conservation and rehabilitation programs to be implemented on public land under his jurisdiction and the Secretary of Agriculture shall do the same in connection with public land under his jurisdiction.

(2) The Secretary of the Interior shall develop, with the prior written approval of the Atomic Energy Commission, a comprehensive plan for conservation and rehabilitation programs to be implemented on public land under the jurisdiction of the Chairman and develop, with the prior written approval of the Administrator, a comprehensive plan for such programs to be implemented on public land under the jurisdiction of the Administrator. Each such plan shall be developed after the Secretary of the Interior makes, with the prior written approval of the Chairman or the Administrator, as the case may be, and in consultation with the State agencies, necessary studies and surveys of the land concerned to determine where conservation and rehabilitation programs are most needed.

(b) Each comprehensive plan developed pursuant to this section shall be consistent with any overall land use and management plans for the lands involved. In any case in which hunting, trapping, or fishing (or any combination thereof) of resident fish and wildlife is to be permitted on public land under a comprehensive plan, such hunting, trapping, and fishing shall be conducted in accordance with applicable laws and regulations of the State in which such land is located.

(c)(1) Each State agency may enter into a cooperative agreement with—

(A) the Secretary of the Interior with respect to those conservation and rehabilitation programs to be implemented under this title within the State on public land which is under his jurisdiction;

(B) the Secretary of Agriculture with respect to those conservation and rehabilitation programs to be implemented under this title within the State on public land which is under his jurisdiction; and

(C) the Secretary of the Interior and the Chairman or the Administrator, as the case may be, with respect to those conservation and rehabilitation programs to be implemented under this title within the State on public land under the jurisdiction of the Chairman or the Administrator; except that before entering into any cooperative agreement which affects public land under the jurisdiction of the Chairman, the Secretary of the Interior shall obtain the prior written approval of the Atomic Energy Commission and before entering into any cooperative agreement which affects public lands under the jurisdiction of the Administrator, the Secretary of the Interior shall obtain the prior written approval of the Administrator.

Conservation and rehabilitation programs developed and implemented pursuant to this title shall be deemed as supplemental to wildlife, fish, and game-related programs conducted by the Sec-

retary of the Interior and the Secretary of Agriculture pursuant to other provisions of law. Nothing in this title shall be construed as limiting the authority of the Secretary of the Interior or the Secretary of Agriculture, as the case may be, to manage the national forests or other public lands for wildlife and fish and other purposes in accordance with the Multiple-Use Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528–531) or other applicable authority.

(2) Any conservation and rehabilitation program included within a cooperative agreement entered into under this subsection may be modified in a manner mutually agreeable to the State agency and the Secretary concerned (and the Chairman or the Administrator, as the case may be, if public land under his jurisdiction is involved). Before modifying any cooperative agreement which affects public land under the jurisdiction of the Chairman, the Secretary of the Interior shall obtain the prior written approval of the Atomic Energy Commission and before modifying any cooperative agreement which affects public land under the jurisdiction of the Administrator, the Secretary of the Interior shall obtain the prior written approval of the Administrator.

(3) Each cooperative agreement entered into under this subsection shall—

(A) specify those areas of public land within the State on which conservation and rehabilitation programs will be implemented;

(B) provide for fish and wildlife habitat improvements or modifications, or both;

(C) provide for range rehabilitation where necessary for support of wildlife;

(D) provide adequate protection for fish and wildlife officially classified as threatened or endangered pursuant to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or considered to be threatened, rare, or endangered by the State agency;

(E) require the control of off-road vehicle traffic;

(F) if the issuance of public land area management stamps is agreed to pursuant to section 203(a) of this title—

(i) contain such terms and conditions as are required under section 203(b) of this title;

(ii) require the maintenance of accurate records and the filing of annual reports by the State agency to the Secretary of the Interior or the Secretary of Agriculture, or both, as the case may be, setting forth the amount and disposition of the fees collected for such stamps; and

(iii) authorize the Secretary concerned and the Comptroller General of the United States, or their authorized representatives, to have access to such records for purposes of audit and examination; and

(G) contain such other terms and conditions as the Secretary concerned and the State agency deem necessary and appropriate to carry out the purposes of this title.

A cooperative agreement may also provide for arrangements under which the Secretary concerned may authorize officers and employees of the State agency to enforce, or to assist in the enforcement of, section 204(a) of this title.

(4) Except where limited under a comprehensive plan or pursuant to cooperative agreement, hunting, fishing, and trapping shall be permitted with respect to resident fish and wildlife in accordance with applicable laws and regulations of the State in which such land is located on public land which is the subject of a conservation and rehabilitation program implemented under this title.

(5) The Secretary of the Interior and the Secretary of Agriculture, as the case may be, shall prescribe such regulations as are deemed necessary to control, in a manner consistent with the applicable comprehensive plan and cooperative agreement, the public use of public land which is the subject of any conservation and rehabilitation program implemented by him under this title.

(d) Agreements entered into by State agencies under the authority of this section shall not be deemed to be, or treated as, cooperative agreements to which the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501 et seq.) applies.

SEC. 203. [16 U.S.C. 670i] (a) Any State agency may agree with the Secretary of the Interior and the Secretary of Agriculture (or with the Secretary of the Interior or the Secretary of Agriculture, as the case may be, if within the State concerned all conservation and rehabilitation programs under this title will be implemented by him) that no individual will be permitted to hunt, trap, or fish on any public land within the State which is subject to a conservation and rehabilitation program implemented under this title unless at the time such individual is engaged in such activity he has on his person a valid public land management area stamp issued pursuant to this section.

(b) Any agreement made pursuant to subsection (a) of this section to require the issuance of public land management area stamps shall be subject to the following conditions:

(1) Such stamps shall be issued, sold, and the fees therefor collected, by the State agency or by the authorized agents of such agency.

(2) Notice of the requirement to possess such stamps shall be displayed prominently in all places where State hunting, trapping, or fishing licenses are sold. To the maximum extent practicable, the sale of such stamps shall be combined with the sale of such State hunting, trapping, and fishing licenses.

(3)[1] Except for expenses incurred in the printing, issuing, or selling of such stamps, the fees collected for such stamps by the State agency shall be utilized in carrying out conservation and rehabilitation programs implemented under this title in the State concerned. Such fees may be used by the State agency to acquire lands or interests therein from willing sellers or donors to provide public access to program lands that have no existing public access for enhancement of outdoor recreation and wildlife conservation: *Provided,* That the Secretary of Agriculture and the Secretary of the Interior maintain such access, or ensure that maintenance is provided for such access, through or to lands within their respective jurisdiction.

(4) The purchase of any such stamp shall entitle the purchaser thereof to hunt, trap, and fish on any public land within

[1] Margin so in law. See section 201 of Public Law 100–653 (102 Stat. 3826).

such State which is the subject of a conservation or rehabilitation program implemented under this title except to the extent that the public use of such land is limited pursuant to a comprehensive plan or cooperative agreement; but the purchase of any such stamp shall not be construed as (A) eliminating the requirement for the purchase of a migratory bird hunting stamp as set forth in the first section of the Act of March 16, 1934, commonly referred to as the Migratory Bird Hunting Stamp Act (16 U.S.C. 718a), or (B) relieving the purchaser from compliance with any applicable State game and fish laws and regulations.

(5) The amount of the fee to be charged for such stamps, the age at which the individual is required to acquire such a stamp, and the expiration date for such stamps shall be mutually agreed upon by the State agency and the Secretary or Secretaries concerned; except that each such stamp shall be void not later than one year after the date of issuance.

(6) Each such stamp must be validated by the purchaser thereof by signing his name across the face of the stamp.

(7) Any individual to whom a stamp is sold pursuant to this section shall upon request exhibit such stamp for inspection to any officer or employee of the Department of the Interior or the Department of Agriculture, or to any other person who is authorized to enforce section 204(a) of this title.

SEC. 204. [16 U.S.C. 670j] (a)(1) Any person who hunts, traps, or fishes on any public land which is subject to a conservation and rehabilitation program implemented under this title without having on his person a valid public land management area stamp, if the possession of such a stamp is required, shall be fined not more than $1,000, or imprisoned for not more than six months, or both.

(2) Any person who knowingly violates or fails to comply with any regulations prescribed under section 202(c)(5) of this title shall be fined not more than $500, or imprisoned not more than six months, or both.

(b)(1) For the purpose of enforcing subsection (a) of this section, the Secretary of the Interior and the Secretary of Agriculture may designate any employee of their respective departments, and any State officer or employee authorized under a cooperative agreement to enforce such subsection (a), to (i) carry firearms; (ii) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; (iii) make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view; (iv) search without warrant or process any person, place, or conveyance as provided by law; and (v) seize without warrant or process any evidentiary item as provided by law.

(2) Upon the sworn information by a competent person, any United States magistrate or court of competent jurisdiction may issue process for the arrest of any person charged with committing any offense under subsection (a) of this section.

(3) Any person charged with committing any offense under subsection (a) of this section may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the

same conditions as provided for in section 3401 of title 18, United States Code.

(c) All guns, traps, nets, and other equipment, vessels, vehicles, and other means of transportation used by any person when engaged in committing an offense under subsection (a) of this section shall be subject to forfeiture to the United States and may be seized and held pending the prosecution of any person arrested for committing such offense. Upon conviction for such offense, such forfeiture may be adjudicated as a penalty in addition to any other provided for committing such offense.

(d) 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 forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as such provisions of law are applicable and not inconsistent with the provisions of this section; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Department of the Treasury shall, for the purposes of this section, be exercised or performed by the Secretary of the Interior or the Secretary of Agriculture, as the case may be, or by such persons as he may designate.

SEC. 205. [16 U.S.C. 670k] As used in this title—

(1) The term "Administrator" means the Administrator of the National Aeronautics and Space Administration.

(2) The term "Chairman" means the Chairman of the Atomic Energy Commission.

(3) The term "off-road vehicle" means any motorized vehicle designed for, or capable of, cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; but such term does not include—

(A) any registered motorboat at the option of each State;

(B) any military, fire, emergency, or law enforcement vehicle when used for emergency purposes; and

(C) any vehicle the use of which is expressly authorized by the Secretary of the Interior or the Secretary of Agriculture under a permit, lease, license, or contract.

(4) The term "public land" means all lands under the respective jurisdiction of the Secretary of the Interior, the Secretary of Agriculture, the Chairman, and the Administrator, except land which is, or hereafter may be, within or designated as—

(A) a military reservation;

(B) a unit of the National Park System;

(C) an area within the national wildlife refuge system;

(D) an Indian reservation; or

(E) an area within an Indian reservation or land held in trust by the United States for an Indian or Indian tribe.

(5) The term "State agency" means the agency or agencies of a State responsible for the administration of the fish and game laws of the State.

(6) The term "conservation and rehabilitation programs" means to utilize those methods and procedures which are necessary to protect, conserve, and enhance wildlife, fish, and game resources to the maximum extent practicable on public lands subject to this title consistent with any overall land use and management plans for the lands involved. Such methods and procedures shall include, but shall not be limited to, all activities associated with scientific resources management such as protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking in conformance with the provisions of this title. Nothing in this term shall be construed as diminishing the authority or jurisdiction of the States with respect to the management of resident species of fish, wildlife, or game, except as otherwise provided by law.

SEC. 206. [16 U.S.C. 670l] Notwithstanding any other provision in this title, section 203 of this title shall not apply to land which is, or hereafter may be, within or designated as Forest Service land or as Bureau of Land Management land of any State in which all Federal lands therein comprise 60 percent or more of the total area of such State; except that in any such State, any appropriate State agency may agree with the Secretary of Agriculture or the Secretary of the Interior, or both, as the case may be, to collect a fee as specified in such agreement at the point of sale of regular licenses to hunt, trap, or fish in such State, the proceeds of which shall be utilized in carrying out conservation and rehabilitation programs implemented under this title in the State concerned and for no other purpose.

SEC. 207. [16 U.S.C. 670m] Nothing in this title shall enlarge or diminish or in any way affect (1) the rights of Indians or Indian tribes to the use of water or natural resources or their rights to fish, trap, or hunt wildlife as secured by statute, agreement, treaty, Executive order, or court decree; or (2) existing State or Federal jurisdiction to regulate those rights either on or off reservations.

SEC. 208. Nothing in this Act shall in any way affect the jurisdiction, authority, duties, or activities of the Joint Federal-State Land Use Planning Commission established pursuant to section 17 of the Alaska Native Claims Settlement Act (85 Stat. 688). During the development of any cooperative plan for Alaska which may be agreed to under title I after the effective date of this section and of any comprehensive program for Alaska under title II, such Commission shall be given an opportunity to submit its comments on such plan or program.

SEC. 209. [16 U.S.C. 670o] (a) There are authorized to be appropriated $4,000,000 for each of fiscal years 1998 through 2003, to enable the Secretary of the Interior to carry out his functions and responsibilities under this title, including data collection, research, planning, and conservation and rehabilitation programs on public lands. Such funds shall be in addition to those authorized for wildlife, range, soil, and water management pursuant to section

318 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1748), or other provisions of law.

(b) There are authorized to be appropriated $5,000,000 for each of fiscal years 1998 through 2003, to enable the Secretary of Agriculture to carry out his functions and responsibilities under this title. Such funds shall be in addition to those provided under other provisions of law. In requesting funds under this subsection the Secretary shall take into account fish and wildlife program needs, including those for projects, identified in the State comprehensive plans as contained in the program developed pursuant to the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1601–1610).

(c) The Secretary of the Interior and the Secretary of Agriculture may each use any authority available to him under other laws relating to fish, wildlife, or plant conservation or rehabilitation for purposes of carrying out the provisions of this title.

(d) The Secretary of the Interior and the Secretary of Agriculture may each make purchases and contracts for property and services from, or provide assistance to, the State agencies concerned, if such property, services or assistance is required to implement those projects and programs carried out on, or of benefit to, Federal lands and identified in the comprehensive plans or cooperative agreements developed under section 202, without regard to title III (other than section 304) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251–260). Contract authority provided in this section is effective only to such extent or in such amounts as are provided in appropriation Acts.

PROVISIONS GRANTING GENERAL AUTHORITY REGARDING GAME BIRDS AND OTHER WILD BIRDS

SECTION 1 OF THE ACT OF MAY 25, 1900

[Chapter 553, Approved May 25, 1900, 31 Stat. 187]

CHAP. 553.—AN ACT To enlarge the powers of the Department of Agriculture, prohibit the transportation by interstate commerce of game killed in violation of local laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That [16 U.S.C. 701] the duties and powers of the Department of Agriculture are hereby enlarged so as to include the preservation, distribution, introduction, and restoration of game birds and other wild birds. The Secretary of Agriculture [1] is hereby authorized to adopt such measures as may be necessary to carry out the purposes of this Act and to purchase such game birds and other wild birds as may be required thereof, subject, however, to the laws of the various States and Territories. The object and purpose of this Act is to aid in the restoration of such birds in those parts of the United States adapted thereto where the same have become scarce or extinct, and also to regulate the introduction of American or foreign birds or animals in localities where they have not heretofore existed.

The Secretary of Agriculture [1] shall from time to time collect and publish useful information as to the propagation, uses, and preservation of such birds.

And the Secretary of Agriculture [1] shall make and publish all needful rules and regulations for carrying out the purposes of this Act, and shall expend for said purposes such sums as Congress may appropriate therefor.

ACT OF JUNE 3, 1902

[Chapter 983, Approved June 3, 1902, 32 Stat. 285]

CHAP. 983.—AN ACT To regulate the introduction of eggs of game birds for propagation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That [16 U.S.C. 702] from and after the passage of this Act the Secretary of Agriculture [1] shall have the power to authorize the importation of eggs of game birds for purposes of propagation, and he shall prescribe all necessary rules and regulations governing the importation of eggs of said birds for such purposes.

[1] Section 4(f) of Reorg. Plan No. II of 1939 (5 U.S.C. App.) transferred functions of the Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds to the Secretary of the Interior.

MIGRATORY BIRD TREATY ACT

MIGRATORY BIRD TREATY ACT

[Chapter 128, Approved July 3, 1918, 40 Stat. 703]

[Amended through Public Law 105–312, Oct. 30, 1998]

CHAP. 128.—AN ACT TO GIVE EFFECT TO THE CONVENTIONS BETWEEN THE UNITED STATES AND OTHER NATIONS FOR THE PROTECTION OF MIGRATORY BIRDS, BIRDS IN DANGER OF EXTINCTION, GAME MAMMALS, AND THEIR ENVIRONMENT.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known by the short title of the "Migratory Bird Treaty Act."

SEC. 2. [16 U.S.C. 703] That unless and except as permitted by regulations made as hereinafter provided, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird [1], any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof, included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916, the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936, the United States and the Government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment concluded March 4, 1972 [2] and the convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments concluded November 19, 1976.

SEC. 3. [16 U.S.C. 704] (a) That subject to the provisions and in order to carry out the purposes of the conventions, the Secretary of Agriculture [3] is authorized and directed, from time to time, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, to determine when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow hunting, taking, capture, killing, possession,

[1] For the definition of "migratory bird" for purposes of this Act, see section 11 of the Migratory Bird Treaty Act (16 U.S.C. 715j).

[2] So in original. Probably should be followed by a comma.

[3] Section 4(f) of Reorg. Plan No. II of 1939 (5 U.S.C. App.) transferred functions of the Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds to the Secretary of the Interior.

sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg thereof, and to adopt suitable regulations permitting and governing the same, in accordance with such determinations, which regulations shall become effective when approved by the President.

(b) It shall be unlawful for any person to—

(1) take any migratory game bird by the aid of baiting, or on or over any baited area, if the person knows or reasonably should know that the area is a baited area; or

(2) place or direct the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting on or over the baited area.

SEC. 4. [16 U.S.C. 705] That it shall be unlawful to ship, transport, or carry, by any means whatever, from one State, Territory, or District to or through another State, Territory, or District, or to or through a foreign country, any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried at any time contrary to the laws of the State, Territory, or District in which it was captured, killed, or taken, or from which it was shipped, transported, or carried. It shall be unlawful to import any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried contrary to the laws of any Province of the Dominion of Canada in which the same was captured, killed, or taken, or from which it was shipped, transported, or carried.

SEC. 5. [16 U.S.C. 706] That any employee of the Department of Agriculture authorized by the Secretary of Agriculture[1] to enforce the provisions of this Act shall have power, without warrant, to arrest any person committing a violation of this Act in his presence or view and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this Act; and shall have authority, with a search warrant, to search any place. The several judges of the courts established under the laws of the United States, and United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. All birds, or parts, nests, or eggs thereof, captured, killed, taken, sold or offered for sale, bartered or offered for barter, purchased, shipped, transported, carried, imported, exported, or possessed contrary to the provisions of this Act or of any regulation prescribed thereunder shall, when found, be seized and, upon conviction of the offender or upon judgment of a court of the United States that the same were captured, killed, taken, sold or offered for sale, bartered or offered for barter, purchased, shipped, transported, carried, imported, exported, or possessed contrary to the provisions of this Act or of any regulation prescribed thereunder, shall be forfeited to the United States and disposed of by the Secretary of the Interior in such manner as he deems appropriate.

SEC. 6. [16 U.S.C. 707] (a) Except as otherwise provided in this section, any person, association, partnership, or corporation

[1] See footnote to section 3(a).

who shall violate any provisions of said conventions or of this Act, or who shall violate or fail to comply with any regulation made pursuant to this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $15,000 or be imprisoned not more than six months, or both.

(b) Whoever, in violation of this Act, shall knowingly—

(1) take by any manner whatsoever any migratory bird with intent to sell, offer to sell, barter or offer to barter such bird, or

(2) sell, offer for sale, barter or offer to barter, any migratory bird[1] shall be guilty of a felony and shall be fined not more than $2,000 or imprisoned not more than two years, or both.

(c) Whoever violates section 3(b)(2) shall be fined under title 18, United States Code, imprisoned not more than 1 year, or both.

(d) All guns, traps, nets and other equipment, vessels, vehicles, and other means of transportation used by any person when engaged in pursuing, hunting, taking, trapping, ensnaring, capturing, killing, or attempting to take, capture, or kill any migratory bird in violation of this Act with the intent to offer for sale, or sell, or offer for barter, or barter such bird in violation of this Act shall be forfeited to the United States and may be seized and held pending the prosecution of any person arrested for violating this Act and upon conviction for such violation, such forfeiture shall be adjudicated as a penalty in addition to any other provided for violation of this Act. Such forfeited property shall be disposed of and accounted for by, and under the authority of, the Secretary of the Interior.

SEC. 7. [16 U.S.C. 708] That nothing in this Act shall be construed to prevent the several States and Territories from making or enforcing laws or regulations not inconsistent with the provisions of said conventions or of this Act, or from making or enforcing laws or regulations which shall give further protection to migratory birds, their nests, and eggs, if such laws or regulations do not extend the open seasons for such birds beyond the dates approved by the President in accordance with section three of this Act.

SEC. 8. [16 U.S.C. 709] That until the adoption and approval, pursuant to section three of this Act, of regulations dealing with migratory birds and their nests and eggs, such migratory birds and their nests and eggs as are intended and used exclusively for scientific or propagating purposes may be taken, captured, killed, possessed, sold, purchased, shipped, and transported for such scientific or propagating purposes if and to the extent not in conflict with the laws of the State, Territory, or District in which they are taken, captured, killed, possessed, sold, or purchased, or in or from which they are shipped or transported if the packages containing the dead bodies or the nests or eggs of such birds when shipped and transported shall be marked on the outside thereof so as accurately and clearly to show the name and address of the shipper and the contents of the package.

SEC. 9. [16 U.S.C. 709a] That there is authorized to be appropriated, from time to time, out of any money in the Treasury not

[1] So in law. There probably should be a comma after "any migratory bird", and the subsequent text should probably begin on the next line and align with the left margin of subsection (b).

otherwise appropriated, such amounts as may be necessary to carry out the provisions and to accomplish the purposes of said conventions and this Act and regulations made pursuant thereto, and the Secretary of Agriculture [1] is authorized out of such moneys to employ in the city of Washington and elsewhere such persons and means as he may deem necessary for such purpose and may cooperate with local authorities in the protection of migratory birds and make the necessary investigations connected therewith.

SEC. 10. [16 U.S.C. 710] That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SEC. 11. That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

SEC. 12. [16 U.S.C. 711] Nothing in this Act shall be construed to prevent the breeding of migratory game birds on farms and preserves and the sale of birds so bred under proper regulation for the purpose of increasing the food supply.

SEC. 13. That this Act shall become effective immediately upon its passage and approval.

[1] See footnote to section 3(a).

MIGRATORY BIRD CONSERVATION ACT

MIGRATORY BIRD CONSERVATION ACT

[Chapter 257, Approved Feb. 18, 1929, 45 Stat. 1222]

[Amended through Public Law 103–434, Oct. 31, 1994]

CHAP. 257.—An Act To more effectively meet the obligations of the United States under the migratory bird treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes, by the acquisition of areas of land and of water to furnish in perpetuity reservations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas, their maintenance and improvement, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That [16 U.S.C. 715] this Act shall be known by the short title of "Migratory Bird Conservation Act."

SEC. 2. [16 U.S.C. 715a] That a commission to be known as the Migratory Bird Conservation Commission, consisting of the Secretary of Agriculture, as chairman [1], the Administrator of the Environmental Protection Agency, the Secretary of the Interior, and two Members of the Senate, to be selected by the President of the Senate, and two Members of the House of Representatives to be selected by the Speaker, is hereby created and authorized to consider and pass upon any area of land, water, or land and water that may be recommended by the Secretary of Agriculture [1] for purchase or rental under this Act, and to fix the price or prices at which such area may be purchased or rented; and no purchase or rental shall be made of any such area until it has been duly approved for purchase or rental by said commission. Any Member of the House of Representatives who is a member of the commission, if reelected to the succeeding Congress, may serve on the commission notwithstanding the expiration of a Congress. Any vacancy on the commission shall be filled in the same manner as the original appointment. The ranking officer of the branch or department of a State to which is committed the administration of its game laws, or his authorized representative, and in a State having no such branch or department, the governor thereof, or his authorized representative, shall be a member ex officio of said commission for the purpose of considering and voting on all questions relating to the acquisition, under this Act, of areas in his State. For purposes of this Act, the purchase or rental of any area of land, water, or land and water includes the purchase or rental of any interest in any such area of land, water, or land and water.

[1] Section 4(f) of Reorg. Plan No. II of 1939 (5 U.S.C. App.) transferred functions of the Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds to the Secretary of the Interior. Section 4(h) of such plan specifies that the Secretary of the Interior is chairman of the Migratory Bird Conservation Commission and the Secretary of Agriculture is a member thereof.

SEC. 3. [16 U.S.C. 715b] That the commission hereby created shall, through its chairman, annually report in detail to Congress, not later than the first Monday in December, the operations of the commission during the preceding fiscal year.

SEC. 4. [16 U.S.C. 715c] The Secretary of the Interior may not recommend any area for purchase or rental under the terms of this Act unless the Secretary of the Interior—

(1) has determined that such area is necessary for the conservation of migratory birds; and

(2) has consulted with the county or other unit of local government in which such area is located and with the Governor of the State concerned or the appropriate State agency.

SEC. 5. [16 U.S.C. 715d] The Secretary of the Interior may—

(1) purchase or rent such areas or interests therein as have been approved for purchase or rental by the Commission at the price or prices fixed by the Commission; and

(2) acquire, by gift or devise, any area or interests therein; which he determines to be suitable for use as an inviolate sanctuary, or for any other management purpose, for migratory birds. The Secretary may pay, when deemed necessary by him and from moneys authorized to be appropriated for the purposes of this Act (A) the purchase or rental price of any such area or interest therein, and (B) the expenses incident to the location, examination, survey, and acquisition of title (including options) of any such area or interest therein. No lands acquired, held, or used by the United States for military purposes shall be subject to any provisions of this Act.

SEC. 6. [16 U.S.C. 715e] That the Secretary of Agriculture [1] may do all things and make all expenditures necessary to secure the safe title in the United States to the areas which may be acquired under this Act, but no payment shall be made for any such areas until the title thereto shall be satisfactory to the Attorney General or his designee, but the acquisition of such areas by the United States shall in no case be defeated because of rights-of-way, easements, and reservations which from their nature will in the opinion of the Secretary of Agriculture [1] in no manner interfere with the use of the areas so encumbered for the purposes of this Act; but such rights-of-way, easements, and reservations retained by the grantor or lessor from whom the United States receives title under this or any other Act for the acquisition by the Secretary of Agriculture [1] of areas for wildlife refuges shall be subject to rules and regulations prescribed by the Secretary of Agriculture [1] for the occupation, use, operation, protection, and administration of such areas as inviolate sanctuaries for migratory birds or as refuges for wildlife; and it shall be expressed in the deed or lease that the use, occupation, and operation of such rights-of-way, easements, and reservations shall be subordinate to and subject to such rules and regulations as are set out in such deed or lease or, if deemed necessary by the Secretary of Agriculture [1], to such rules and regulations as may be prescribed by him from time to time.

SEC. 7. [16 U.S.C. 715f] That no deed or instrument of conveyance in fee shall be accepted by the Secretary of Agriculture [1] under this Act unless the State in which the area lies shall have

[1] See footnote to section 2.

consented by law to the acquisition by the United States of lands in that State.

SEC. 8. [16 U.S.C. 715g] That the jurisdiction of the State, both civil and criminal, over persons upon areas acquired under this Act shall not be affected or changed by reason of their acquisition and administration by the United States as migratory bird reservations, except so far as the punishment of offenses against the United States is concerned.

SEC. 9. [16 U.S.C. 715h] That nothing in this Act is intended to interfere with the operation of the game laws of the several States applying to migratory game birds in so far as they do not permit what is forbidden by Federal law.

SEC. 10. [16 U.S.C. 715i] (a) Areas of lands, waters, or interests therein acquired or reserved pursuant to this Act shall, unless otherwise provided by law, be administered by the Secretary of the Interior under rules and regulations prescribed by him to conserve and protect migratory birds in accordance with treaty obligations with Mexico, Canada, Japan, and the Union of Soviet Socialist Republics, and other species of wildlife found thereon, including species that are listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered species or threatened species, and to restore or develop adequate wildlife habitat.

(b) In administering such areas, the Secretary is authorized to manage timber, range, and agricultural crops; to manage other species of animals, including but not limited to fenced range animals, with the objectives of perpetuating, distributing, and utilizing the resources; and to enter into agreements with public and private agencies.

SEC. 11. [16 U.S.C. 715j] That for the purposes of this Act and the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.), migratory birds are those defined as such by the treaty between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916 (39 Stat. 1702), the treaty between the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936 (50 Stat. 1311), the Convention between the Government of the United States of America and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction, and their Environment concluded March 4, 1972, and the Convention between the United States and the Union of Soviet Socialist Republics for the Conservation of Migratory Birds and their Environment concluded November 19, 1976.

SEC. 12. [16 U.S.C. 715k] For the acquisition, including the location, examination, and survey, of suitable areas of land, water, or land and water, for use as migratory bird reservations, and necessary expenses incident thereto, and for the administration, maintenance, and development of such areas and other preserves, reservations, or breeding grounds frequented by migratory birds and under the administration of the Secretary of Agriculture [1], including the construction of dams, dikes, ditches, flumes, spillways, buildings, and other necessary improvements, and for the elimination of the loss of migratory birds from alkali poisoning, oil pollution of waters, or other causes, for cooperation with local authori-

[1] See footnote to section 2.

ties in wild life conservation, for investigations and publications relating to North American birds, for personal services, printing, engraving, and issuance of circulars, posters, and other necessary matter and for the enforcement of the provisions of this Act, there are authorized to be appropriated, in addition to all other amounts authorized by law to be appropriated, the following amounts for the fiscal years specified—

$75,000 for the fiscal year ending June 30, 1930;

$200,000 for the fiscal year ending June 30, 1931;

$600,000 for the fiscal year ending June 30, 1932;

$1,000,000 for the fiscal year ending June 30, 1933;

$1,000,000 for each fiscal year thereafter for a period of six years; and

$200,000 for the fiscal year ending June 30, 1940, and for each fiscal year thereafter. Not more than 20 per centum of the amounts appropriated pursuant to this authorization for the fiscal year beginning July 1, 1930, and for each fiscal year to and including the fiscal year ending June 30, 1939, shall be expended for personal services in the District of Columbia and elsewhere incident to the administration and maintenance of acquired areas, printing, engraving, and issuance of circulars and posters. No part of any appropriation authorized by this section shall be used for payment of the salary, compensation, or expenses of any United States protector, except reservation protectors for the administration, maintenance, and protection of such reservations and the birds thereon: *Provided*, That reservation protectors appointed under the provisions of this Act shall be selected, when practicable, from qualified citizens of the State in which they are to be employed. The Secretary of Agriculture [1] is authorized and directed to make such expenditures and to employ such means, including personal services in the District of Columbia and elsewhere, as may be necessary to carry out the foregoing objects.

[Sections 13 and 14 were repealed by section 7(d) of Public Law 89–669, 80 Stat. 930.]

SEC. 15. [16 U.S.C. 715n] That for the purposes of this Act the word "take" shall be construed to mean pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill, unless the context otherwise requires.

SEC. 16. [16 U.S.C. 715o] Nothing in this Act shall be construed as authorizing or empowering the Migratory Bird Conservation Commission herein created, the Secretary of Agriculture [1], or any other board, commission, or officer, to declare, withdraw, or determine, except heretofore designated, any part of any national forest or power site, a migratory bird reservation under any of the provisions of this Act, except by and with the consent of the legislature of the State wherein such forest or power site is located.

SEC. 17. [16 U.S.C. 715p] That when any State shall, by suitable legislation, make provision adequately to enforce the provisions of this Act and all regulations promulgated thereunder, the Secretary of Agriculture [1] may so certify, and then and thereafter said State may cooperate with the Secretary of Agriculture [1] in the enforcement of this Act and the regulations thereunder.

[1] See footnote to section 2.

SEC. 18. [16 U.S.C. 715q] That a sum sufficient to pay the necessary expenses of the commission and its members, not to exceed an annual expenditure of $7,500, is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated. Said appropriation shall be paid out on the audit and order of the chairman of said commission, which audit and order shall be conclusive and binding upon the General Accounting Office as to the correctness of the accounts of said commission.

SEC. 19. [16 U.S.C. 715r] That if any provision of this Act or the application thereof to any person or circumstance is held invalid the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 20. That this Act shall take effect upon its passage and approval.

ACT POPULARLY KNOWN AS THE DUCK STAMP ACT
(ACT OF MARCH 16, 1934)

ACT POPULARLY KNOWN AS THE DUCK STAMP ACT

(ACT OF MARCH 16, 1934[1])

[Chapter 71, Approved Mar. 16, 1934, 48 Stat. 451]

[Amended through Public Law 105–269, Oct. 19, 1998]

AN ACT To supplement and support the Migratory Bird Conservation Act by providing funds for the acquisition of areas for use as migratory-bird sanctuaries, refuges, and breeding grounds, for developing and administering such areas, for the protection of certain migratory birds, for the enforcement of the Migratory Bird Treaty Act and regulations thereunder, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That [16 U.S.C. 718a] no person who has attained the age of sixteen years shall take any migratory waterfowl unless at the time of such taking he carries on his person an unexpired Federal migratory-bird hunting and conservation stamp validated by his signature written by himself in ink across the face of the stamp prior to his taking such birds; except that no such stamp shall be required for the taking of migratory waterfowl by Federal or State institutions or official agencies, or for propagation, or by the resident owner, tenant, or share cropper of the property or officially designated agencies of the Department of Agriculture[2] for the killing, under such restrictions as the Secretary of Agriculture[2] may by regulation prescribe, of such waterfowl when found injuring crops or other property. Any person to whom a stamp has been sold under this Act shall upon request exhibit such stamp for inspection to any officer or employee of the Department of Agriculture[2] authorized to enforce the provisions of this Act or to any officer of any State or any political subdivision thereof authorized to enforce game laws.

SEC. 2. [16 U.S.C. 718b] (a) The stamps required by section 1 of this Act shall be issued and sold by the Postal Service and may be sold by the Department of the Interior, pursuant to regulations prescribed jointly by the Postal Service and the Secretary of the Interior, at (1) each post office of the first- and second-class, and (2) any establishment, facility, or location as the Postal Service and the Secretary of the Interior shall direct or authorize. The funds received from the sale of such stamps by the Department of the Interior shall be deposited in the migratory bird conservation fund in accordance with the provisions of section 4 of this Act. Except as provided in subsection (b), for each stamp sold under the provisions of this section for any hunting year there shall be collected by the

[1] This Act is popularly known as the "Migratory Bird Hunting Stamp Act" and also as the "Duck Stamp Act".

[2] Section 4(f) of Reorg. Plan No. II of 1939 (5 U.S.C. App.) transferred functions of the Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds to the Secretary of the Interior.

Postal Service a sum of not less than $3 and not more than $5 as determined by the Secretary of the Interior after taking into consideration, among other matters, the increased cost of lands needed for the conservation of migratory birds. No such stamp shall be valid under any circumstances to authorize the taking of migratory waterfowl except in compliance with Federal and State laws and regulations and then only when the person so taking such waterfowl shall himself have written his signature in ink across the face of the stamp prior to such taking. Such stamps shall be usable as migratory-bird hunting stamps only during the year for which issued. The Postal Service, pursuant to regulations prescribed by it, shall provide for the redemption, on or before the 30th day of June of each year, of blocks composed of two or more attached unused stamps issued for such year (A) that were sold on consignment to any person, including, but not limited to, retail dealers for resale to their customers, and (B) that have not been resold by any such person. As used in this section, the term "retail dealers" means persons regularly engaged in the business of retailing hunting or fishing equipment, and persons duly authorized to act as agents of a State or political subdivision thereof for the sale of State or county hunting or fishing licenses.

(b) The Postal Service shall collect $10.00 for each stamp sold under the provisions of this section for hunting years 1987 and 1988, $12.50 for hunting years 1989 and 1990, and $15.00 for each hunting year thereafter, if the Secretary of the Interior determines, at any time before February 1 of the calendar year in which such hunting year begins, that all sums in the migratory bird conservation fund available for obligation and [1] attributable to—

(1) amounts appropriated pursuant to the Act for the fiscal year ending in the immediately preceding calendar year; and

(2) the sale of stamps under this section during such fiscal year have been obligated for expenditure. For purposes of this section, the term "hunting year" means the 12-month period beginning on July 1 of any such year.

SEC. 3. [16 U.S.C. 718c] Nothing in this Act shall be construed to authorize any person to take any migratory waterfowl otherwise than in accordance with regulations adopted and approved pursuant to any treaty or convention heretofore or hereafter entered into between the United States and any other country for the protection of migratory birds, nor to exempt any person from complying with the game laws of the several States.

SEC. 4. [16 U.S.C. 718d] All moneys received for such stamps shall be accounted for by the Postal Service or the Department of the Interior, whichever is appropriate, and paid into the Treasury of the United States, and shall be reserved and set aside as a special fund to be known as the migratory bird conservation fund, to be administered by the Secretary of Agriculture [2]. All moneys received into such fund are hereby appropriated for the following objects and shall be available therefor until expended:

(a) So much as may be necessary shall be used by the Secretary of the Interior to make advance allotments to the Postal

[1] Section 3 of Public Law 99–625 (100 Stat. 3502) and section 202(3) of Public Law 99–645 (100 Stat. 3586) both amended the first sentence of this subsection by inserting "available for obligation and" before "attributable to".

[2] See footnote 2 to first section.

Service at such times and in such amounts as may be mutually agreed upon by the Secretary of the Interior and the Postal Service for direct expenditure by the Postal Service for engraving, printing, issuing, selling, and accounting for migratory bird hunting stamps and moneys received from the sale thereof, in addition to expenses for personal services in the District of Columbia and elsewhere, and such other expenses as may be necessary in executing the duties and functions required of the postal service [1].

(b) Except as authorized in subsections (c) and (d) of this section, the remainder shall be available for the location, ascertainment, and acquisition of suitable areas for migratory bird refuges under the provisions of the Migratory Bird Conservation Act and for the administrative costs incurred in the acquisition of such areas.

(c) The Secretary of the Interior is authorized to utilize funds made available under subsection (b) of this section for the purposes of such subsection, and such other funds as may be appropriated for the purposes of such subsection, or of this subsection, to acquire, or defray the expense incident to the acquisition by gift, devise, lease, purchase, or exchange of, small wetland and pothole areas, interests therein, and rights-of-way to provide access thereto. Such small areas, to be designated as "Waterfowl Production Areas", may be acquired without regard to the limitations and requirements of the Migratory Bird Conservation Act, but all of the provisions of such Act which govern the administration and protection of lands acquired thereunder, except the inviolate sanctuary provisions of such Act, shall be applicable to areas acquired pursuant to this subsection.

(d) PROMOTION OF STAMP SALES.—(1) The Secretary of the Interior may utilize funds from the sale of migratory bird hunting and conservation stamps, not to exceed $1,000,000 in each of fiscal years 1999, 2000, 2001, 2002, and 2003, for the promotion of additional sales of those stamps, in accordance with a Migratory Bird Conservation Commission approved annual marketing plan. Such promotion shall include the preparation of reports, brochures, or other appropriate materials to be made available to the public that describe the benefits to wildlife derived from stamp sales.

(2) The Secretary of the Interior shall include in each annual report of the Commission under section 3 of the Migratory Bird Conservation Act (16 U.S.C. 715b) a description of activities conducted under this subsection in the year covered by the report.

SEC. 5. [16 U.S.C. 718e] (a) That no person to whom has been sold a migratory-bird hunting stamp, validated as provided in section 1 of this Act, shall loan or transfer such stamp to any person during the period of its validity; nor shall any person other than the person validating such stamp use it for any purpose during such period.

(b) Except as provided in clauses (i) and (ii) of section 504(1)(D) of title 18, United States Code, no person [2] shall alter, mutilate, imitate, or counterfeit any stamp authorized by this Act, or imitate

[1] So in law. Probably should be "Postal Service".

[2] Section 1077(b)(3) of Public Law 98–369 (98 Stat. 1055) provides that subsection (b) is amended by striking "No person" and inserting "Except as provided" through "Code, no person". The amendment was executed to reflect the probable intent of Congress, but probably should have been made to strike "That no person".

or counterfeit any die, plate, or engraving therefor, or make, print, or knowingly use, sell, or have in his possession any such counterfeit, die, plate, or engraving.

(c) Notwithstanding the provisions of subsection (b), or the prohibition in section 474 of title 18, United States Code, or other provisions of law, the Secretary of the Interior may authorize, with the concurrence of the Secretary of the Treasury,

(1) the color reproduction, or

(2) the black and white reproduction,

of migratory bird hunting stamps authorized by sections 1 through 4 and 6 through 9 of this Act, which otherwise satisfies the requirements of clauses (ii) and (iii) of section 504(1) of title 18, United States Code. Any such reproduction shall be subject to those terms and conditions deemed necessary by the Secretary of the Interior by regulation or otherwise and any proceeds received by the Federal Government as a result of such reproduction shall be paid[1] into the migratory bird conservation fund established under section 4 of this Act.

SEC. 6. [16 U.S.C. 718f] For the efficient execution of this Act, the judges of the several courts, established under the laws of the United States, United States commissioners, and persons appointed by the Secretary of Agriculture[2] to enforce the provisions of this Act, shall have, with respect thereto, like powers and duties as are conferred upon said judges, commissioners, and employees of the Department of Agriculture[2] by the Migratory Bird Treaty Act or any other Act to carry into effect any treaty for the protection of migratory birds with respect to that Act. Any bird or part thereof taken or possessed contrary to this Act shall, when seized, be disposed of by the Secretary in accordance with law.

SEC. 7. [16 U.S.C. 718g] Any person who shall violate any provision of this Act or who shall violate or fail to comply with any regulation made pursuant thereto shall be subject to the penalties provided in section 6 of the Migratory Bird Treaty Act.

SEC. 8. [16 U.S.C. 718h] The Secretary of Agriculture[2] is authorized to cooperate with the several States and Territories in the enforcement of the provisions of this Act.

SEC. 9. [16 U.S.C. 718i] (a) Terms defined in the Migratory Bird Treaty Act, or the Migratory Bird Conservation Act, shall, when used in this Act, have the meaning assigned to such terms in such Acts, respectively.

(b) As used in this Act (1) the term "migratory waterfowl" means the species enumerated in paragraph (a) of subdivision 1 of article I of the treaty between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916; (2) the term "State" includes the several States and Territories of the United States and the District of Columbia; and (3) the term "take" means pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill.

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[1] Section 302 of Public Law 100–653 (102 Stat. 3827) provides:

SEC. 302. MIGRATORY BIRD HUNTING STAMP ACT AMENDMENT.

Section 5 of the Act of March 16, 1934 (commonly known as the Migratory Bird Hunting Stamp Act; 16 U.S.C. 718e(c)) is amended in the second sentence by inserting after "paid" the following: ", after deducting expenses for marketing,".

The amendment was not executed because the word "paid" does not appear in the second sentence to section 5.

[2] See footnote 2 to first section.

SEC. 10. [16 U.S.C. 718j] Notwithstanding any other provision of law, moneys received by the United States Fish and Wildlife Service in the form of fees for entering the migratory-bird hunting and conservation stamp contest shall be credited first to the appropriation account from which expenditures for the administration of such contest are made, and second, to the extent such moneys exceed the expenditures for administration of the contest, to the migratory-bird conservation fund.

JUNIOR DUCK STAMP CONSERVATION AND DESIGN PROGRAM ACT OF 1994

JUNIOR DUCK STAMP CONSERVATION AND DESIGN PROGRAM ACT OF 1994

[Public Law 103–340, Approved Oct. 6, 1994, 108 Stat. 3119]

[Amended through Public Law 106–316, Oct. 19, 2000]

AN ACT To authorize the Secretary of the Interior to carry out a program to be known as the Junior Duck Stamp Conservation and Design Program, and for other purposes.

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

SECTION 1. [16 U.S.C. 719 note] SHORT TITLE.

This Act may be cited as the "Junior Duck Stamp Conservation and Design Program Act of 1994".

SEC. 2. [16 U.S.C. 719] ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—The Secretary of the Interior (in this Act referred to as the "Secretary") may carry out in accordance with this Act a program to be known as the "Junior Duck Stamp Conservation and Design Program" (in this Act referred to as the "Program") to accomplish the goals of—

(1) providing to school children environmental education opportunities relating to the conservation and management of migratory birds; and

(2) increasing the capacity for schools, States, and other educational programs to conduct conservation and education programs.

(b) PROGRAM FEATURES.—The Program shall consist of—

(1) conducting in all interested States the activities which on the day before the date of the enactment of this Act are conducted under the program known as the Junior Duck Stamp Conservation and Design Program;

(2) other activities authorized under the Program by this or any other Act; and

(3) any other activity necessary to carry out the conservation and education goals of the Program.

(c) EFFORT TO CONDUCT PROGRAM IN ALL STATES.—

(1) IN GENERAL.—The Secretary shall take appropriate steps to seek to conduct the Program in all of the States.

(2) ANNUAL REPORT.—The Secretary shall annually submit a report to the Congress on the status of the Program in each of the States.

SEC. 3. [16 U.S.C. 719a] JUNIOR DUCK STAMP.

(a) COMPETITION.—As part of the Program, the Secretary may annually conduct a competition to—

(1) solicit the submission by students at elementary and secondary schools of designs relating to conservation of migratory birds; and

(2) select winning designs from among those submissions for use for licensing and marketing under subsection (b).

(b) LICENSING AND MARKETING OF DESIGN OF JUNIOR DUCK STAMPS.—As part of the Program, the Secretary may—

(1) license and market winning designs selected in competitions under subsection (a); and

(2) license and market stamps bearing those designs, which shall be known as Junior Duck Stamps.

(c) USE OF PROCEEDS FROM LICENSING AND MARKETING OF JUNIOR DUCK STAMPS AND JUNIOR DUCK STAMP DESIGNS.—Amounts received under subsection (b)—

(1) shall be available to the Secretary until expended, without further appropriations, solely for—

(A) awards and scholarships to individuals who submit designs in competitions under subsection (a), that are—

(i) selected in such a competition as winning designs; or

(ii) otherwise determined in such a competition to be superior;

(B) awards to schools and other participants to further education activities related to the conservation education goals of the Program; and

(C) expenses for licensing and marketing under subsection (b); and

(2) may not be used for administrative expenses of the Program.

SEC. 4. [16 U.S.C. 719b] ACCEPTANCE OF GIFTS, DEVISES, AND BEQUESTS.

The Secretary may accept and use any gift, devise, or bequest of personal property, or proceeds thereof, for the purpose of funding the activities described in section 3(c)(1) (A) and (B).

SEC. 5. [16 U.S.C. 719b–1] DEFINITION OF STATE.

For the purposes of this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and any other territory or possession of the United States.

SEC. 6.[1] [16 U.S.C. 719c] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary for administrative expenses of the Program $250,000 for each of the fiscal years 2001 through 2005.

SEC. 6.[1] [16 U.S.C. 668dd note] ENVIRONMENTAL EDUCATION CENTER AND REFUGE HEADQUARTERS AT JOHN HEINZ NATIONAL WILDLIFE REFUGE AT TINICUM.

(a) IN GENERAL.—Notwithstanding other laws and subject to subsection (b), the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, may transfer to the National Fish and Wildlife Foundation the Cusano bequest.

[1] So in law. The first section designated as section 6 was originally enacted as section 5. Section 2 of Public Law 106–316 (114 Stat. 1276) redesignated section 5 (as amended by section 1 of that Act) as section 6 and inserted "after section 4" a new section 5, above.

(b) CONDITIONS OF TRANSFER.—As a condition of transferring the Cusano bequest under subsection (a), the Secretary of the Interior shall require the National Fish and Wildlife Foundation to enter into an agreement under which the Foundation is required to—

(1) solicit additional non-Federal contributions to provide a dollar for dollar match of the Cusano bequest;

(2) manage the Cusano bequest and those contributions in accordance with all applicable requirements of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3701 et seq.);

(3) use all amounts and proceeds from the Cusano bequest and any non-Federal contributions received pursuant to paragraph (1) for the purpose of designing and constructing a facility for an environmental education center and refuge headquarters on lands located within the John Heinz National Wildlife Refuge at Tinicum; and

(4) donate the facility to the United States Fish and Wildlife Service upon completion of its construction.

(c) CUSANO BEQUEST DEFINED.—For purposes of this section, the term "Cusano bequest" means the amounts totaling approximately $2,473,971 which were donated to the Department of the Interior in 1994 by Mr. Antonio Cusano of Crum Lynne, Pennsylvania, and includes all proceeds derived from such amounts in the period since the donation was made.

PITTMAN-ROBERTSON WILDLIFE RESTORATION ACT

PITTMAN-ROBERTSON WILDLIFE RESTORATION ACT

[Chapter 899, Approved Sept. 2, 1937, 50 Stat. 917]

[Amended through Public Law 106–553, Dec. 21, 2000]

AN ACT To provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, **[**16 U.S.C. 669**]** That the Secretary of Agriculture [1] is authorized to cooperate with the States, through their respective State fish and game departments, in wildlife-restoration projects as hereinafter set forth; but no money apportioned under this Act to any State shall be expended therein until its legislature, or other State agency authorized by the State constitution to make laws governing the conservation of wildlife, shall have assented to the provision of this Act and shall have passed laws for the conservation of wildlife which shall include a prohibition against the diversion of license fees paid by hunters for any other purpose than the administration of said State fish and game department, except that, until the final adjournment of the first regular session of the legislature held after the passage of this Act, the assent of the Governor of the State shall be sufficient. The Secretary of Agriculture [1] and the State fish and game department of each State accepting the benefits of this Act shall agree upon the wildlife-restoration projects to be aided in such State under the terms of this Act and all projects shall conform to the standards fixed by the Secretary of Agriculture. [1]

SEC. 2. [16 U.S.C. 669a] DEFINITIONS.

As used in this Act—

(1) the term "conservation" means the use of methods and procedures necessary or desirable to sustain healthy populations of wildlife, including all activities associated with scientific resources management such as research, census, monitoring of populations, acquisition, improvement and management of habitat, live trapping and transplantation, wildlife damage management, and periodic or total protection of a species or population, as well as the taking of individuals within wildlife stock or population if permitted by applicable State and Federal law;

(2) the term "Secretary" means the Secretary of the Interior;

(3) the term "State fish and game department" or "State fish and wildlife department" means any department or division of department of another name, or commission, or official

[1] Reorganization Plan No. II of 1939, transferred functions of the Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds to the Secretary of the Interior.

or officials, of a State empowered under its laws to exercise the functions ordinarily exercised by a State fish and game department or State fish and wildlife department.

(4) the term "wildlife" means any species of wild, free-ranging fauna including fish, and also fauna in captive breeding programs the object of which is to reintroduce individuals of a depleted indigenous species into previously occupied range;

(5) the term "wildlife-associated recreation" means projects intended to meet the demand for outdoor activities associated with wildlife including, but not limited to, hunting and fishing, wildlife observation and photography, such projects as construction or restoration of wildlife viewing areas, observation towers, blinds, platforms, land and water trails, water access, field trialing, trail heads, and access for such projects;

(6) the term "wildlife conservation and restoration program" means a program developed by a State fish and wildlife department and approved by the Secretary under section 304(d), the projects that constitute such a program, which may be implemented in whole or part through grants and contracts by a State to other State, Federal, or local agencies (including those that gather, evaluate, and disseminate information on wildlife and their habitats), wildlife conservation organizations, and outdoor recreation and conservation education entities from funds apportioned under this title, and maintenance of such projects;

(7) the term "wildlife conservation education" means projects, including public outreach, intended to foster responsible natural resource stewardship; and

(8) the term "wildlife-restoration project" includes the wildlife conservation and restoration program and means the selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife, including acquisition of such areas or estates or interests therein as are suitable or capable of being made suitable therefor, and the construction thereon or therein of such works as may be necessary to make them available for such purposes and also including such research into problems of wildlife management as may be necessary to efficient administration affecting wildlife resources, and such preliminary or incidental costs and expenses as may be incurred in and about such projects.

SEC. 3. [16 U.S.C. 669b] (a)(1) An amount equal to all revenues accruing each fiscal year (beginning with the fiscal year 1975) from any tax imposed on specified articles by sections 4161(b) and 4181 of the Internal Revenue Code of 1986 (26 U.S.C. 4161(b), 4181) shall, subject to the exemptions in section 4182 of such Code, be covered into the Federal aid to wildlife restoration fund in the Treasury (hereinafter referred to as the "fund") and is authorized to be appropriated and made available until expended to carry out the purposes of this Act.[1] So much of such appropriation appor-

[1] The Act of September 6, 1950 (Chapter 896; 64 Stat. 595) in title I of chapter VII under the heading FISH AND WILDLIFE SERVICE, provides:

tioned to any State for any fiscal year as remains unexpended at the close thereof is authorized to be made available for expenditure in that State until the close of the succeeding fiscal year. Any amount apportioned to any State under the provisions of this Act which is unexpended or unobligated at the end of the period during which it is available for expenditure on any project is authorized to be made available for expenditure by the Secretary of Agriculture in carrying out the provisions of the Migratory Bird Conservation Act.

(2)[1] There is established in the Federal aid to wildlife restoration fund a subaccount to be known as the "Wildlife Conservation and Restoration Account". There are authorized to be appropriated for the purposes of the Wildlife Conservation and Restoration Account $50,000,000 in fiscal year 2001 for apportionment in accordance with this Act to carry out State wildlife conservation and restoration programs. Further, interest on amounts transferred shall be treated in a manner consistent with 16 U.S.C. 669(b)(1)).[2]

(b)(1) The Secretary of the Treasury shall invest in interest-bearing obligations of the United States such portion of the fund as is not, in his judgment, required for meeting a current year's withdrawals. For purposes of such investment, the Secretary of the Treasury may—

(A) acquire obligations at the issue price and purchase outstanding obligations at the market price; and

(B) sell obligations held in the fund at the market price.

(2) The interest on obligations held in the fund—

(A) shall be credited to the fund;

(B) constitute the sums available for allocation by the Secretary under section 8 of the North American Wetlands Conservation Act; and

(C) shall become available for apportionment under this Act at the beginning of fiscal year 2006.

(c)(1) Amounts transferred to the Wildlife Conservation and Restoration Account shall supplement, but not replace, existing funds available to the States from the sport fish restoration account and wildlife restoration account and shall be used for the development, revision, and implementation of wildlife conservation and restoration programs and should be used to address the unmet needs for a diverse array of wildlife and associated habitats, including species that are not hunted or fished, for wildlife conservation, wildlife conservation education, and wildlife-associated recreation projects. Such funds may be used for new programs and projects as well as to enhance existing programs and projects.

(2) Funds may be used by a State or an Indian tribe for the planning and implementation of its wildlife conservation and restoration program and wildlife conservation strategy, as provided in

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FEDERAL AID IN WILDLIFE RESTORTATION

For carrying out the provisions of the Act of September 2, 1937, as amended (16 U.S.C. 669–669j), amounts equal to the sums credited during the next preceding fiscal year and each fiscal year thereafter to the special fund created by said Act.

* * * * * * *

This chapter may be cited as the "Interior Department Appropriation Act, 1951".

[1] Margin so in law.

[2] So in law. 16 U.S.C. 669 is the first section of this Act. It does not have a subsection (b)(1).

sections 4(d) and (e) of this Act, including wildlife conservation, wildlife conservation education, and wildlife-associated recreation projects. Such funds may be used for new programs and projects as well as to enhance existing programs and projects.

(3) Priority for funding from the Wildlife Conservation and Restoration Account shall be for those species with the greatest conservation need as defined by the State wildlife conservation and restoration program.

(d) Notwithstanding subsections (a) and (b) of this section, with respect to amounts transferred to the Wildlife Conservation and Restoration Account, so much of such amounts apportioned to any State for any fiscal year as remains unexpended at the close thereof shall remain available for obligation in that State until the close of the second succeeding fiscal year.

SEC. 4. [16 U.S.C. 669c] ALLOCATION AND APPORTIONMENT OF AVAILABLE AMOUNTS.

(a) SET-ASIDE FOR EXPENSES FOR ADMINISTRATION OF THE PITTMAN-ROBERTSON WILDLIFE RESTORATION ACT.—

(1) IN GENERAL.—

(A) SET-ASIDE.—For fiscal year 2001 and each fiscal year thereafter, of the revenues (excluding interest accruing under section 3(b)) covered into the fund for the fiscal year, the Secretary of the Interior may use not more than the available amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in implementation of this Act, in accordance with this subsection and section 9.

(B) AVAILABLE AMOUNTS.—The available amount referred to in subparagraph (A) is—

(i) for each of fiscal years 2001 and 2002, $9,000,000;

(ii) for fiscal year 2003, $8,212,000; and

(iii) for fiscal year 2004 and each fiscal year thereafter, the sum of—

(I) the available amount for the preceding fiscal year; and

(II) the amount determined by multiplying—

(aa) the available amount for the preceding fiscal year; and

(bb) the change, relative to the preceding fiscal year, in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(2) PERIOD OF AVAILABILITY; APPORTIONMENT OF UNOBLIGATED AMOUNTS.—

(A) PERIOD OF AVAILABILITY.—For each fiscal year, the available amount under paragraph (1) shall remain available for obligation for use under that paragraph until the end of the fiscal year.

(B) APPORTIONMENT OF UNOBLIGATED AMOUNTS.—Not later than 60 days after the end of a fiscal year, the Secretary of the Interior shall apportion among the States any of the available amount under paragraph (1) that remains unobligated at the end of the fiscal year, on the same basis

and in the same manner as other amounts made available under this Act are apportioned among the States for the fiscal year.

(b) APPORTIONMENT TO STATES.—The Secretary of the Interior, after deducting the available amount under subsection (a), the amount apportioned under subsection (c), any amount apportioned under section 8A, and amounts provided as grants under sections 10 and 11, shall apportion the remainder of the revenue in said fund for each fiscal year among the several States in the following manner: One-half in the ratio which the area of each State bears to the total area of all the States, and one-half in the ratio which the number of paid hunting-license holders of each State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the total number of paid hunting-license holders of all the States. Such apportionments shall be adjusted equitably so that no State shall receive less than one-half of 1 per centum nor more than 5 per centum of the total amount apportioned. The term fiscal year as used in this Act shall be a period of twelve consecutive months from October 1 through the succeeding September 30, except that the period for enumeration of paid hunting-license holders shall be a State's fiscal or license year.

(c) One-half of the revenues accruing to the fund under this Act each fiscal year (beginning with the fiscal year 1975) from any tax imposed on pistols, revolvers, bows, and arrows shall be apportioned among the States in proportion to the ratio that the population of each State bears to the population of all the States: *Provided*, That each State shall be apportioned not more than 3 per centum and not less than 1 per centum of such revenues and Guam, the Virgin Islands, American Samoa, Puerto Rico, and the Northern Mariana Islands shall each be apportioned one-sixth of 1 per centum of such revenues. For the purpose of this subsection, population shall be determined on the basis of the latest decennial census for which figures are available, as certified by the Secretary of Commerce.

(c)[1] APPORTIONMENT OF WILDLIFE CONSERVATION AND RESTORATION ACCOUNT.—

(1) The Secretary of the Interior shall make the following apportionment from the Wildlife Conservation and Restoration Account:

(A) to[2] the District of Columbia and to the Commonwealth of Puerto Rico, each a sum equal to not more than one-half of 1 percent thereof.

(B) to[2] Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, each a sum equal to not more than one-fourth of 1 percent thereof.

(2)(A) The Secretary of the Interior, after making the apportionment under paragraph (1), shall apportion the remaining amount in the Wildlife Conservation and Restoration Ac-

[1] The second subsection (c) and subsection (d) were added by section 902(e) of H.R. 5548, as introduced in the 106th Congress and enacted into law by section 1(a)(2) of Public Law 106–553.

[2] So in law. Should be "To".

count for each fiscal year among the States in the following manner:

(i) one-third of which is based on the ratio to which the land area of such State bears to the total land area of all such States; and

(ii) two-thirds of which is based on the ratio to which the population of such State bears to the total population of all such States.

(B) The amounts apportioned under this paragraph shall be adjusted equitably so that no such State shall be apportioned a sum which is less than one percent of the amount available for apportionment under this paragraph for any fiscal year or more than five percent of such amount.

(3) Of the amounts transferred to the Wildlife Conservation and Restoration Account, not to exceed 3 percent shall be available for any Federal expenses incurred in the administration and execution of programs carried out with such amounts.

(d) WILDLIFE CONSERVATION AND RESTORATION PROGRAMS.—

(1) Any State, through its fish and wildlife department, may apply to the Secretary of the Interior for approval of a wildlife conservation and restoration program, or for funds from the Wildlife Conservation and Restoration Account, to develop a program. To apply, a State shall submit a comprehensive plan that includes—

(A) provisions vesting in the fish and wildlife department of the State overall responsibility and accountability for the program;

(B) provisions for the development and implementation of—

(i) wildlife conservation projects that expand and support existing wildlife programs, giving appropriate consideration to all wildlife;

(ii) wildlife-associated recreation projects; and

(iii) wildlife conservation education projects pursuant to programs under section 8(a); and

(C) provisions to ensure public participation in the development, revision, and implementation of projects and programs required under this paragraph.

(D) WILDLIFE CONSERVATION STRATEGY.—Within five years of the date of the initial apportionment, develop and begin implementation of a wildlife conservation strategy based upon the best available and appropriate scientific information and data that—

(i) uses such information on the distribution and abundance of species of wildlife, including low population and declining species as the State fish and wildlife department deems appropriate, that are indicative of the diversity and health of wildlife of the State;

(ii) identifies the extent and condition of wildlife habitats and community types essential to conservation of species identified under paragraph (1);

(iii) identifies the problems which may adversely affect the species identified under paragraph (1) or their habitats, and provides for priority research and surveys to identify factors which may assist in restora-

tion and more effective conservation of such species and their habitats;

(iv) determines those actions which should be taken to conserve the species identified under paragraph (1) and their habitats and establishes priorities for implementing such conservation actions;

(v) provides for periodic monitoring of species identified under paragraph (1) and their habitats and the effectiveness of the conservation actions determined under paragraph (4), and for adapting conservation actions as appropriate to respond to new information or changing conditions;

(vi) provides for the review of the State wildlife conservation strategy and, if appropriate, revision at intervals of not more than ten years;

(vii) provides for coordination to the extent feasible the State fish and wildlife department, during the development, implementation, review, and revision of the wildlife conservation strategy, with Federal, State, and local agencies and Indian tribes that manage significant areas of land or water within the State, or administer programs that significantly affect the conservation of species identified under paragraph (1) or their habitats.

(2) A State shall provide an opportunity for public participation in the development of the comprehensive plan required under paragraph (1).

(3) If the Secretary finds that the comprehensive plan submitted by a State complies with paragraph (1), the Secretary shall approve the wildlife conservation and restoration program of the State and set aside from the apportionment to the State made pursuant to subsection (c) an amount that shall not exceed 75 percent of the estimated cost of developing and implementing the program.

(4)(A) Except as provided in subparagraph (B), after the Secretary approves a State's wildlife conservation and restoration program, the Secretary may make payments on a project that is a segment of the State's wildlife conservation and restoration program as the project progresses. Such payments, including previous payments on the project, if any, shall not be more than the United States pro rata share of such project. The Secretary, under such regulations as he may prescribe, may advance funds representing the United States pro rata share of a project that is a segment of a wildlife conservation and restoration program, including funds to develop such program.

(B) Not more than 10 percent of the amounts apportioned to each State under this section for a State's wildlife conservation and restoration program may be used for wildlife-associated recreation.

(5) For purposes of this subsection, the term "State" shall include the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

SEC. 5. [16 U.S.C. 669d] For each fiscal year, the Secretary of the Interior shall certify, at the time at which a deduction or apportionment is made, to the Secretary of the Treasury and to each State fish and game department the sum which he has estimated to be deducted for administering this Act and the Migratory Bird Conservation Act and the sum which he has apportioned to each State. Any State desiring to avail itself of the benefits of this Act shall notify the Secretary of the Interior to this effect within sixty days after it has received the certification referred to in this section. The sum apportioned to any State which fails to notify the Secretary of the Interior as herein provided is authorized to be made available for expenditure by the Secretary of the Interior in carrying out the provisions of the Migratory Bird Conservation Act.

SEC. 6. [16 U.S.C. 669e] (a) Any State desiring to avail itself of the benefits of this Act shall, by its State fish and game department, submit programs or projects for wildlife restoration in either of the following two ways:

(1) The State shall prepare and submit to the Secretary of the Interior a comprehensive fish and wildlife resource management plan which shall insure the perpetuation of these resources for the economic, scientific, and recreational enrichment of the people. Such plan shall be for a period of not less than five years and be based on projections of desires and needs of the people for a period of not less than fifteen years. It shall include provisions for updating at intervals of not more than three years and be provided in a format as may be required by the Secretary of the Interior. If the Secretary of the Interior finds that such plans conform to standards established by him and approves such plans, he may finance up to 75 per centum of the cost of implementing segments of those plans meeting the purposes of this Act from funds apportioned under this Act upon this approval of an annual agreement submitted to him. [1]

(2) A State may elect to avail itself of the benefits of this Act by its State fish and game department submitting to the Secretary of the Interior full and detailed statements of any wildlife-restoration project proposed for that State. If the Secretary of the Interior finds that such project meets with the standards set by him and approves said project, the State fish and game department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require. If the Secretary of the Interior approves the plans, specifications, and estimates for the project, he shall notify the State fish and game department and immediately set aside so much of said fund as represents the share of the United States payable under this Act on account of such project, which sum so set aside shall not exceed 75 per centum of the total estimated cost thereof. [1]

The Secretary of the Interior shall approve only such comprehensive plans or projects as may be substantial in character and design and the expenditure of funds hereby authorized shall be applied only to such approved comprehensive wildlife plans or projects and if otherwise applied they shall be replaced by the State before it may participate in any further apportionment under this Act. No payment of any money apportioned under this Act

[1] Margins of paragraphs (1) and (2) so in law.

shall be made on any comprehensive wildlife plan or project until an agreement to participate therein shall have been submitted to and approved by the Secretary of the Interior.

(b) If the State elects to avail itself of the benefits of this Act by preparing a comprehensive fish and wildlife plan under option (1) of subsection (a) of this section, then the term "project" may be defined for the purposes of this Act as a wildlife program, all other definitions notwithstanding.

(c) Administrative costs in the form of overhead or indirect costs for services provided by State central service activities outside of the State agency having primary jurisdiction over the wildlife resources of the State which may be charged against programs or projects supported by the fund established by section 3 of this Act shall not exceed in any one fiscal year 3 per centum of the annual apportionment to the State.

SEC. 7. [16 U.S.C. 669f] (a) When the Secretary of the Interior shall find that any project approved by him has been completed or, if involving research relating to wildlife, is being conducted, in compliance with said plans and specifications, he shall cause to be paid to the proper authority of said State the amount set aside for said project. The Secretary of the Interior may, in his discretion, from time to time, make payments on said project as the same progresses; but these payments, including previous payments, if any, shall not be more than the United States pro rata share of the project in conformity with said plans and specifications. If a State has elected to avail itself of the benefits of this Act by preparing a comprehensive fish and wildlife plan as provided for under option (1) of subsection (a) of section 6 of this Act, and this plan has been approved by the Secretary of the Interior, then 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 between the State fish and game department and the Secretary.

(b) Any construction work and labor in each State shall be performed in accordance with its laws and under the direct supervision of the State fish and game department, subject to the inspection and approval of the Secretary of the Interior and in accordance with rules and regulations made pursuant to this Act. The Secretary of the Interior and the State fish and game department of each State may jointly determine at what times and in what amounts payments shall be made under this Act. Such payments shall be made by the Secretary of the Treasury, on warrants drawn by the Secretary of the Interior against the said fund to such official or officials, or depository, as may be designated by the State fish and game department and authorized under the laws of the State to receive public funds of the State.

SEC. 8. [16 U.S.C. 669g] (a) Maintenance of wildlife-restoration projects established under the provisions of this Act shall be the duty of the State in accordance with their respective laws. Beginning July 1, 1945, the term "wildlife-restoration project", as defined in section 2 of this Act, shall include maintenance of completed projects. Notwithstanding any other provisions of this Act, funds apportioned to a State under this Act may be expended by the State for management (exclusive of law enforcement and public

relations) of wildlife areas and resources. Funds from the Wildlife Conservation and Restoration Account may be used for a wildlife conservation education program, except that no such funds may be used for education efforts, projects, or programs that promote or encourage opposition to the regulated taking of wildlife.

(b) Each State may use the funds apportioned to it under section 4(c) to pay up to 75 per centum of the costs of a hunter safety program and the construction, operation, and maintenance of public target ranges, as a part of such program. The non-Federal share of such costs may be derived from license fees paid by hunters, but not from other Federal grant programs. The Secretary shall issue not later than the 120th day after the effective date of this subsection such regulations as he deems advisable relative to the criteria for the establishment of hunter safety programs and public target ranges under this subsection.

SEC. 8A. [16 U.S.C. 669g–1] The Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Governor of Guam, the Governor of American Samoa, the Governor of the Commonwealth of the Northern Mariana Islands, and the Governor of the Virgin Islands, in the conduct of wildlife-restoration projects, as defined in section 2 of this Act, and hunter safety programs as provided by section 8(b) of this Act, upon such terms and conditions as he shall deem fair, just, and equitable, and is authorized to apportion to Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, out of the money available for apportionment under this Act, such sums as he shall determine, not exceeding for Puerto Rico one-half of 1 per centum, for Guam one-sixth of 1 per centum, for American Samoa one-sixth of one per centum, and for the Commonwealth of the Northern Mariana Islands one-sixth of 1 per centum, and for the Virgin Islands one-sixth of 1 per centum of the total amount apportioned, in any one year, but the Secretary shall in no event require any of said cooperating agencies to pay an amount which will exceed 25 per centum of the cost of any project. Any unexpended or unobligated balance of any apportionment made pursuant to this section shall be available for expenditure in Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, as the case may be, in the succeeding year, on any approved project, and if unexpended or unobligated at the end of such year is authorized to be made available for expenditure by the Secretary of the Interior in carrying out the provisions of the Migratory Bird Conservation Act.

SEC. 9. [16 U.S.C. 669h] REQUIREMENTS AND RESTRICTIONS CONCERNING USE OF AMOUNTS FOR EXPENSES FOR ADMINISTRATION.

(a) AUTHORIZED EXPENSES FOR ADMINISTRATION.—Except as provided in subsection (b), the Secretary of the Interior may use available amounts under section 4(a)(1) only for expenses for administration that directly support the implementation of this Act that consist of—

(1) personnel costs of employees who directly administer this Act on a full-time basis;

(2) personnel costs of employees who directly administer this Act on a part-time basis for at least 20 hours each week,

not to exceed the portion of those costs incurred with respect to the work hours of the employee during which the employee directly administers this Act, as those hours are certified by the supervisor of the employee;

(3) support costs directly associated with personnel costs authorized under paragraphs (1) and (2), excluding costs associated with staffing and operation of regional offices of the United States Fish and Wildlife Service and the Department of the Interior other than for the purposes of this Act;

(4) costs of determining under section 6(a) whether State comprehensive plans and projects are substantial in character and design;

(5) overhead costs, including the costs of general administrative services, that are directly attributable to administration of this Act and are based on—

(A) actual costs, as determined by a direct cost allocation methodology approved by the Director of the Office of Management and Budget for use by Federal agencies; and

(B) in the case of costs that are not determinable under subparagraph (A), an amount per full-time equivalent employee authorized under paragraphs (1) and (2) that does not exceed the amount charged or assessed for costs per full-time equivalent employee for any other division or program of the United States Fish and Wildlife Service;

(6) costs incurred in auditing, every 5 years, the wildlife and sport fish activities of each State fish and game department and the use of funds under section 6 by each State fish and game department;

(7) costs of audits under subsection (d);

(8) costs of necessary training of Federal and State full-time personnel who administer this Act to improve administration of this Act;

(9) costs of travel to States, territories, and Canada by personnel who—

(A) administer this Act on a full-time basis for purposes directly related to administration of State programs or projects; or

(B) administer grants under section 6, 10, or 11;

(10) costs of travel outside the United States (except travel to Canada), by personnel who administer this Act on a full-time basis, for purposes that directly relate to administration of this Act and that are approved directly by the Assistant Secretary for Fish and Wildlife and Parks;

(11) relocation expenses for personnel who, after relocation, will administer this Act on a full-time basis for at least 1 year, as certified by the Director of the United States Fish and Wildlife Service at the time at which the relocation expenses are incurred; and

(12) costs to audit, evaluate, approve, disapprove, and advise concerning grants under sections 6, 10, and 11.

(b) REPORTING OF OTHER USES.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary of the Interior determines that available amounts under section 4(a)(1) should be used for an expense for administration

other than an expense for administration described in subsection (a), the Secretary—

(A) shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report describing the expense for administration and stating the amount of the expense; and

(B) may use any such available amounts for the expense for administration only after the end of the 30-day period beginning on the date of submission of the report under subparagraph (A).

(2) MAXIMUM AMOUNT.—For any fiscal year, the Secretary of the Interior may use under paragraph (1) not more than $25,000.

(c) RESTRICTION ON USE TO SUPPLEMENT GENERAL APPROPRIATIONS.—The Secretary of the Interior shall not use available amounts under subsection (b) to supplement the funding of any function for which general appropriations are made for the United States Fish and Wildlife Service or any other entity of the Department of the Interior.

(d) AUDIT REQUIREMENT.—

(1) IN GENERAL.—The Inspector General of the Department of the Interior shall procure the performance of biennial audits, in accordance with generally accepted accounting principles, of expenditures and obligations of amounts used by the Secretary of the Interior for expenses for administration incurred in implementation of this Act.

(2) AUDITOR.—

(A) IN GENERAL.—An audit under this subsection shall be performed under a contract that is awarded under competitive procedures (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) by a person or entity that is not associated in any way with the Department of the Interior (except by way of a contract for the performance of an audit or other review).

(B) SUPERVISION OF AUDITOR.—The auditor selected under subparagraph (A) shall report to, and be supervised by, the Inspector General of the Department of the Interior, except that the auditor shall submit a copy of the biennial audit findings to the Secretary of the Interior at the time at which the findings are submitted to the Inspector General of the Department of the Interior.

(3) REPORT TO CONGRESS.—The Inspector General of the Department of the Interior shall promptly submit to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate—

(A) a report on the results of each audit under this subsection; and

(B) a copy of each audit under this subsection.

SEC. 10. [16 U.S.C. 669h–1] FIREARM AND BOW HUNTER EDUCATION AND SAFETY PROGRAM GRANTS.

(a) IN GENERAL.—

(1) GRANTS.—Of the revenues covered into the fund, $7,500,000 for each of fiscal years 2001 and 2002, and $8,000,000 for fiscal year 2003 and each fiscal year thereafter,

shall be apportioned among the States in the manner specified in section 4(c) by the Secretary of the Interior and used to make grants to the States to be used for—

(A) in the case of a State that has not used all of the funds apportioned to the State under section 4(c) for the fiscal year in the manner described in section 8(b)—

(i) the enhancement of hunter education programs, hunter and sporting firearm safety programs, and hunter development programs;

(ii) the enhancement of interstate coordination and development of hunter education and shooting range programs;

(iii) the enhancement of bow hunter and archery education, safety, and development programs; and

(iv) the enhancement of construction or development of firearm shooting ranges and archery ranges, and the updating of safety features of firearm shooting ranges and archery ranges; and

(B) in the case of a State that has used all of the funds apportioned to the State under section 4(c) for the fiscal year in the manner described in section 8(b), any use authorized by this Act (including hunter safety programs and the construction, operation, and maintenance of public target ranges).

(2) LIMITATION ON USE.—Under paragraph (1), a State shall not be required to use more than the amount described in section 8(b) for hunter safety programs and the construction, operation, and maintenance of public target ranges.

(b) COST SHARING.—The Federal share of the cost of any activity carried out with a grant under this section shall not exceed 75 percent of the total cost of the activity.

(c) PERIOD OF AVAILABILITY; REAPPORTIONMENT.—

(1) PERIOD OF AVAILABILITY.—Amounts made available and apportioned for grants under this section shall remain available only for the fiscal year for which the amounts are apportioned.

(2) REAPPORTIONMENT.—At the end of the period of availability under paragraph (1), the Secretary of the Interior shall apportion amounts made available that have not been used to make grants under this section among the States described in subsection (a)(1)(B) for use by those States in accordance with this Act.

SEC. 11. [16 U.S.C. 669h–2] MULTISTATE CONSERVATION GRANT PROGRAM.

(a) IN GENERAL.—

(1) AMOUNT FOR GRANTS.—Not more than $3,000,000 of the revenues covered into the fund for a fiscal year shall be available to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.

(2) PERIOD OF AVAILABILITY; APPORTIONMENT.—

(A) PERIOD OF AVAILABILITY.—Amounts made available under paragraph (1) shall remain available for making grants only for the first fiscal year for which the amount is made available and the following fiscal year.

(B) APPORTIONMENT.—At the end of the period of availability under subparagraph (A), the Secretary of the Interior shall apportion any amounts that remain available among the States in the manner specified in section 4(b) for use by the States in the same manner as funds apportioned under section 4(b).

(b) SELECTION OF PROJECTS.—

(1) STATES OR ENTITIES TO BE BENEFITED.—A project shall not be eligible for a grant under this section unless the project will benefit—

(A) at least 26 States;

(B) a majority of the States in a region of the United States Fish and Wildlife Service; or

(C) a regional association of State fish and game departments.

(2) USE OF SUBMITTED PRIORITY LIST OF PROJECTS.—The Secretary of the Interior may make grants under this section only for projects identified on a priority list of wildlife restoration projects described in paragraph (3).

(3) PRIORITY LIST OF PROJECTS.—A priority list referred to in paragraph (2) is a priority list of wildlife restoration projects that the International Association of Fish and Wildlife Agencies—

(A) prepares through a committee comprised of the heads of State fish and game departments (or their designees), in consultation with—

(i) nongovernmental organizations that represent conservation organizations;

(ii) sportsmen organizations; and

(iii) industries that support or promote hunting, trapping, recreational shooting, bow hunting, or archery;

(B) approves by vote of a majority of the heads of State fish and game departments (or their designees); and

(C) not later than October 1 of each fiscal year, submits to the Assistant Director for Wildlife and Sport Fish Restoration Programs.

(4) PUBLICATION.—The Assistant Director for Wildlife and Sport Fish Restoration Programs shall publish in the Federal Register each priority list submitted under paragraph (3)(C).

(c) ELIGIBLE GRANTEES.—

(1) IN GENERAL.—The Secretary of the Interior may make a grant under this section only to—

(A) a State or group of States;

(B) the United States Fish and Wildlife Service, or a State or group of States, for the purpose of carrying out the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation; and

(C) subject to paragraph (2), a nongovernmental organization.

(2) NONGOVERNMENTAL ORGANIZATIONS.—

(A) IN GENERAL.—Any nongovernmental organization that applies for a grant under this section shall submit with the application to the International Association of

Fish and Wildlife Agencies a certification that the organization—

(i) will not use the grant funds to fund, in whole or in part, any activity of the organization that promotes or encourages opposition to the regulated hunting or trapping of wildlife; and

(ii) will use the grant funds in compliance with subsection (d).

(B) PENALTIES FOR CERTAIN ACTIVITIES.—Any nongovernmental organization that is found to use grant funds in violation of subparagraph (A) shall return all funds received under this section and be subject to any other applicable penalties under law.

(d) USE OF GRANTS.—A grant under this section shall not be used, in whole or in part, for an activity, project, or program that promotes or encourages opposition to the regulated hunting or trapping of wildlife.

(e) NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any activity carried out under this section.

SEC. 12. [16 U.S.C. 669i] The Secretary of Agriculture[1] is authorized to make rules and regulations for carrying out the provisions of this Act.

SEC. 13. [16 U.S.C. 669 note] SHORT TITLE.

This Act may be cited as the "Pittman-Robertson Wildlife Restoration Act".

[1] Reorganization Plan No. II of 1939, transferred functions of the Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds to the Secretary of the Interior.

DINGELL-JOHNSON SPORT FISH RESTORATION ACT

DINGELL-JOHNSON SPORT FISH RESTORATION ACT

[Chapter 658, Approved Aug. 9, 1950, 64 Stat. 430]

[Amended through Public Law 106–408, Nov. 1, 2000]

AN ACT To provide that the United States shall aid the States in fish restoration and management projects, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [16 U.S.C. 777] That (a) the Secretary of the Interior[1] is authorized and directed to cooperate with the States through their respective State fish and game departments in fish restoration and management projects as hereinafter set forth: No money apportioned under this Act to any State, except as hereinafter provided, shall be expended therein until its legislature, or other State agency authorized by the State constitution to make laws governing the conservation of fish, shall have assented to the provisions of this Act and shall have passed laws for the conservation of fish, which shall include a prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said State fish and game department, except that, until the final adjournment of the first regular session of the legislature held after passage of this Act, the assent of the governor of the State shall be sufficient. The Secretary of the interior and the State fish and game department of each State accepting the benefits of this Act shall agree upon the fish restoration and management projects to be aided in such State under the terms of this Act, and all projects shall conform to the standards fixed by the Secretary of the Interior.

(b) ALLOCATION OF AMOUNTS BY COASTAL STATES BETWEEN MARINE FISH PROJECTS AND FRESHWATER FISH PROJECTS.—

(1) IN GENERAL.—Subject to paragraph (2), each coastal State, to the extent practicable, shall equitably allocate amounts apportioned to such State under this Act between marine fish projects and freshwater fish projects in the same proportion as the estimated number of resident marine anglers and the estimated number of resident freshwater anglers, respectively, bear to the estimated number of all resident anglers in that State.

[1] Transfer of functions to Secretary of Commerce from Secretary of the Interior in view of: creation of National Oceanic and Atmospheric Administration in Department of Commerce and Office of Administrator of such Administration; abolition of Bureau of Commercial Fisheries in Department of the Interior and Office of Director of such Bureau; transfers of functions, including functions formerly vested by law in Secretary of the Interior or Department of the Interior which were administered through Bureau of Commercial Fisheries or were primarily related to such Bureau, exclusive of certain enumerated functions with respect to Great Lakes fishery research, Missouri River Reservoir research, Gulf-Breeze Biological Laboratory, and Trans-Alaska pipeline investigations; and transfer of marine sport fish program of Bureau of Sport Fisheries and Wildlife by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees.

(2) PRESERVATION OF FRESHWATER PROJECT ALLOCATION AT 1988 LEVEL.—(A) Subject to subparagraph (B), the amount allocated by a State pursuant to this subsection to freshwater fish projects for each fiscal year shall not be less than the amount allocated by such State to such projects for fiscal year 1988.

(B) Subparagraph (A) shall not apply to a State with respect to any fiscal year for which the amount apportioned to the State under this Act is less than the amount apportioned to the State under this Act for fiscal year 1988.

(3) COASTAL STATE DEFINED.—As used in this subsection, the term "coastal State" means any one of the States of Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington. The term also includes the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

SEC. 2. [16 U.S.C. 777a] For purposes of this Act—

(1) the term "fish restoration and management projects" shall be construed to mean projects designed for the restoration and management of all species of fish which have material value in connection with sport or recreation in the marine and/or fresh waters of the United States and include—

(A) such research into problems of fish management and culture as may be necessary to efficient administration affecting fish resources;

(B) the acquisition of such facts as are necessary to guide and direct the regulation of fishing by law, including the extent of the fish population, the drain on the fish supply from fishing and/or natural causes, the necessity of legal regulation of fishing, and the effects of any measures of regulation that are applied;

(C) the formulation and adoption of plans of restocking waters with food and game fishes according to natural areas or districts to which such plans are applicable, together with the acquisition of such facts as are necessary to the formulation, execution, and testing the efficacy of such plans;

(D) the selection, restoration, rehabilitation, and improvement of areas of water or land adaptable as hatching, feeding, resting, or breeding places for fish, including acquisition by purchase, condemnation, lease, or gift of such areas or estates or interests therein as are suitable or capable of being made suitable therefor, and the construction thereon or therein of such works as may be necessary to make them available for such purposes, and such preliminary or incidental costs and expenses as may be incurred in and about such works; the term "State fish and game department" shall be construed to mean and include any department or division of department of another name, or commission, or official or officials, of a State empowered

under its laws to exercise the functions ordinarily exercised by a State fish and game department;

(2) the term "outreach and communications program" means a program to improve communications with anglers, boaters, and the general public regarding angling and boating opportunities, to reduce barriers to participation in these activities, to advance adoption of sound fishing and boating practices, to promote conservation and the responsible use of the Nation's aquatic resources, and to further safety in fishing and boating; and

(3) the term "aquatic resource education program" means a program designed to enhance the public's understanding of aquatic resources and sportfishing, and to promote the development of responsible attitudes and ethics toward the aquatic environment.

SEC. 3. [16 U.S.C. 777b] To carry out the provisions of this Act for fiscal years after September 30, 1984, there are authorized to be appropriated from the Sport Fish Restoration Account established by section 9504(a) of the Internal Revenue Code of 1986 the amounts paid, transferred, or otherwise credited to that Account.[1] For purposes of the provision of the Act of August 31, 1951, which refers to this section, such amounts shall be treated as the amounts that are equal to the revenues described in this section. The appropriation made under the provisions of this section for each fiscal year shall continue available during the succeeding fiscal year. So much of such appropriation apportioned to any State for any fiscal year as remains unexpended at the close thereof is authorized to be made available for expenditure in that State until the close of the succeeding fiscal year. Any amount apportioned to any State under the provisions of this Act which is unexpended or unobligated at the end of the period during which it is available for expenditure on any project is authorized to be made available for expenditure by the Secretary of the Interior in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport and recreation.

SEC. 4. [16 U.S.C. 777c] (a) The Secretary of the Interior shall distribute 18 per centum of each annual appropriation made in accordance with the provisions of section 3 of this Act as provided in the Coastal Wetlands Planning, Protection,[2] and Restoration Act (title III, Public Law 101–646). Notwithstanding the provisions of section 3 of this Act, such sums shall remain available to carry out such Act through fiscal year 2009.

(b) USE OF BALANCE AFTER DISTRIBUTION.—

(1) FISCAL YEAR 1998.—In fiscal year 1998, an amount equal to $20,000,000 of the balance remaining after the dis-

[1] The Act of August 31, 1951 (Chapter 375; 65 Stat. 261) in title I under the heading FISH AND WILDLIFE SERVICE, provides:

FEDERAL AID IN RESTORTATION AND MANAGEMENT

For carrying out the provisions of the Act of August 9, 1950 (Public Law 681), amounts equal to the revenues described in section 3 of said Act and credited during the next preceding fiscal year and each fiscal year thereafter, to remain available until expended.

[2] Transfer of functions to Secretary of Commerce from Secretary of the Interior by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, see note set out under section 777 of this title.

tribution under subsection (a) shall be transferred to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106(a)(1) of title 46, United States Code.

(2) FISCAL YEAR 1999.—For fiscal year 1999, of the balance of each annual appropriation remaining after making the distribution under subsection (a), an amount equal to $74,000,000, reduced by 82 percent of the amount appropriated for that fiscal year from the Boat Safety Account of the Aquatic Resources Trust Fund established by section 9504 of the Internal Revenue Code of 1986 to carry out the purposes of section 13106(a) of title 46, United States Code, shall be used as follows:

(A) $10,000,000 shall be available to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

(B) The balance remaining after the application of subparagraph (A) shall be transferred to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106 of title 46, United States Code.

(3) FISCAL YEARS 2000–2003.—For each of fiscal years 2000 through 2003, of the balance of each annual appropriation remaining after making the distribution under subsection (a), an amount equal to $82,000,000, reduced by 82 percent of the amount appropriated for that fiscal year from the Boat Safety Account of the Aquatic Resources Trust Fund established by section 9504 of the Internal Revenue Code of 1986 to carry out the purposes of section 13106(a) of title 46, United States Code, shall be used as follows:

(A) $10,000,000 shall be available for each fiscal year to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

(B) $8,000,000 shall be available for each fiscal year to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 7404(d) of the Sportfishing and Boating Safety Act of 1998.

(C) The balance remaining after the application of subparagraphs (A) and (B) shall be transferred for each such fiscal year to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106 of title 46, United States Code.

(4) TRANSFER OF CERTAIN FUNDS.—Amounts available under subparagraph (A) of paragraph (2) and subparagraphs (A) and (B) of paragraph (3) that are unobligated by the Secretary of the Interior after 3 fiscal years shall be transferred to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106(a) of title 46, United States Code.

(c) NATIONAL OUTREACH AND COMMUNICATIONS PROGRAM.—Of the balance of each such annual appropriation remaining after

making the distribution under subsections (a) and (b), respectively, an amount equal to—

(1) $5,000,000 for fiscal year 1999;
(2) $6,000,000 for fiscal year 2000;
(3) $7,000,000 for fiscal year 2001;
(4) $8,000,000 for fiscal year 2002; and
(5) $10,000,000 for fiscal year 2003;

shall be used for the National Outreach and Communications Program under section 8(d). Such amounts shall remain available for 3 fiscal years, after which any portion thereof that is unobligated by the Secretary of the Interior for that program may be expended by the Secretary under subsection (e).

(d) SET-ASIDE FOR EXPENSES FOR ADMINISTRATION OF THE DINGELL-JOHNSON SPORT FISH RESTORATION ACT.—

(1) IN GENERAL.—

(A) SET-ASIDE.—For fiscal year 2001 and each fiscal year thereafter, of the balance of each such annual appropriation remaining after the distribution and use under subsections (a), (b), and (c) and section 14, the Secretary of the Interior may use not more than the available amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in implementation of this Act, in accordance with this subsection and section 9.

(B) AVAILABLE AMOUNTS.—The available amount referred to in subparagraph (A) is—

(i) for each of fiscal years 2001 and 2002, $9,000,000;

(ii) for fiscal year 2003, $8,212,000; and

(iii) for fiscal year 2004 and each fiscal year thereafter, the sum of—

(I) the available amount for the preceding fiscal year; and

(II) the amount determined by multiplying—

(aa) the available amount for the preceding fiscal year; and

(bb) the change, relative to the preceding fiscal year, in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(2) PERIOD OF AVAILABILITY; APPORTIONMENT OF UNOBLIGATED AMOUNTS.—

(A) PERIOD OF AVAILABILITY.—For each fiscal year, the available amount under paragraph (1) shall remain available for obligation for use under that paragraph until the end of the fiscal year.

(B) APPORTIONMENT OF UNOBLIGATED AMOUNTS.—Not later than 60 days after the end of a fiscal year, the Secretary of the Interior shall apportion among the States any of the available amount under paragraph (1) that remains unobligated at the end of the fiscal year, on the same basis and in the same manner as other amounts made available under this Act are apportioned among the States under subsection (e) for the fiscal year.

(e) The Secretary of the Interior, after the distribution, transfer, use, and deduction under subsections (a), (b), (c), and (d), respectively, and after deducting amounts used for grants under section 14, shall apportion the remainder of each such annual appropriation among the several States in the following manner: 40 per centum in the ratio which the area of each State including coastal and Great Lakes waters (as determined by the Secretary of the Interior) bears to the total area of all the States, and 60 per centum in the ratio which the number of persons holding paid licenses to fish for sport or recreation in the State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the number of such persons in all the States. Such apportionments shall be adjusted equitably so that no State shall receive less than 1 per centum nor more than 5 per centum of the total amount apportioned. Where the apportionment to any State under this section is less than $4,500 annually, the Secretary of the Interior may allocate not more than $4,500 of said appropriation to said State to carry out the purposes of this Act when said State certifies to the Secretary of the Interior that it has set aside not less than $1,500 from its fish-and-game funds or has made, through its legislature, an appropriation in this amount for said purposes.

(f) So much of any sum not allocated under the provisions of this section for any fiscal year is hereby authorized to be made available for expenditure to carry out the purposes of this Act until the close of the succeeding fiscal year. The term fiscal year as used in this section shall be a period of twelve consecutive months from October 1 through the succeeding September 30, except that the period for enumeration of persons holding licenses to fish shall be a State's fiscal or license year.

(g) EXPENSES FOR ADMINISTRATION OF CERTAIN PROGRAMS.—

(1) IN GENERAL.—For each fiscal year, of the amounts appropriated under section 3, the Secretary of the Interior shall use only funds authorized for use under subsections (a), (b)(3)(A), (b)(3)(B), and (c) to pay the expenses for administration incurred in carrying out the provisions of law referred to in those subsections, respectively.

(2) MAXIMUM AMOUNT.—For each fiscal year, the Secretary of the Interior may use not more than $900,000 in accordance with paragraph (1).

SEC. 5. [16 U.S.C. 777d] For each fiscal year beginning with the fiscal year ending June 30, 1951, the Secretary of the Interior shall certify, at the time at which a deduction or apportionment is made, to the Secretary of the Treasury, and to each State fish and game department, the sum which he has estimated to be deducted for administering this Act and the sum which he has apportioned to each State for such fiscal year.

SEC. 6. [16 U.S.C. 777e] (a) Any State desiring to avail itself of the benefits of this Act shall, by its State fish and game department, submit programs or projects for fish restoration in either of the following two ways:

(1) The State shall prepare and submit to the Secretary of the Interior a comprehensive fish and wildlife resource management plan which shall insure the perpetuation of these resources for the economic, scientific, and recreational enrichment of the people. Such plan shall be for a period of not less than five years and be based on projections of desires and needs of the people for a period of not less than fifteen years. It shall include provisions for updating at intervals of not more than three years and be provided in a format as may be required by the Secretary of the Interior. If the Secretary of the Interior finds that such plans conform to standards established by him and approves such plans, he may finance up to 75 per centum of the cost of implementing segments of those plans meeting the purposes of this Act from funds apportioned under this Act upon this approval of an annual agreement submitted to him.

(2) A State may elect to avail itself of the benefits of this Act by its State fish and game department submitting to the Secretary of the Interior full and detailed statements of any fish restoration and management project proposed for that State. If the Secretary of the Interior finds that such project meets with the standards set by him and approves said project, the State fish and game department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require. If the Secretary of the interior approves the plans, specifications, and estimates for the project, he shall notify the State fish and game department and immediately set aside so much of said appropriation as represents the share of the United States payable under this Act on account of such project, which sum so set aside shall not exceed 75 per centum of the total estimated cost thereof.

The Secretary of the Interior shall approve only such comprehensive plans or projects as may be substantial in character and design and the expenditure of funds hereby authorized shall be applied only to such approved comprehensive fishery plan or projects and if otherwise applied they shall be replaced by the State before it may participate in any further apportionment under this Act. No payment of any money apportioned under this Act shall be made on any comprehensive fishery plan or project until an agreement to participate therein shall have been submitted to and approved by the Secretary of the Interior.

(b) If the State elects to avail itself of the benefits of this Act by preparing a comprehensive fish and wildlife plan under option (1) of subsection (a) of this section, then the term "project" may be defined for the purpose of this Act as a fishery program, all other definitions notwithstanding.

(c) Administrative costs in the form of overhead or indirect costs for services provided by State central service activities outside of the State fish and game department charged against programs or projects supported by funds made available under this Act shall not exceed in any one fiscal year 3 per centum of the annual apportionment to the State.

(d) The Secretary of the Interior may enter into agreements to finance up to 75 per centum of the initial costs of the acquisition of lands or interests therein and the construction of structures or

facilities for[1] appropriations currently available for the purposes of this Act; and to agree to finance up to 75 per centum of the remaining costs over such a period of time as the Secretary may consider necessary. The liability of the United States in any such agreement is contingent upon the continued availability of funds for the purposes of this Act.

SEC. 7. [16 U.S.C. 777f] (a) When the Secretary of the Interior shall find that any project approved by him has been completed or, if involving research relating to fish, is being conducted, in compliance with said plans and specifications, he shall cause to be paid to the proper authority of said State the amount set aside for said project. The Secretary of the Interior may, in his discretion, from time to time, make payments on said project as the same progresses; but these payments, including previous payments, if any, shall not be more than the United States' pro rata share of the project in conformity with said plans and specifications. If a State has elected to avail itself of the benefits of this Act by preparing a comprehensive fish and wildlife plan as provided for under option (1) of subsection (a) of section 6 of this Act, and this plan has been approved by the Secretary of the Interior, then 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 between the State fish and game department and the Secretary.

(b) Any construction work and labor in each State shall be performed in accordance with its laws and under the direct supervision of the State fish and game department, subject to the inspection and approval of the Secretary of the Interior and in accordance with the rules and regulations made pursuant to this Act. The Secretary of the Interior and the State fish and game department of each State may jointly determine at what times and in what amounts payments shall be made under this Act. Such payments shall be made against the said appropriation to such official or officials, or depository, as may be designated by the State fish and game department and authorized under the laws of the State to receive public funds of the State.

SEC. 8. [16 U.S.C. 777g] (a) To maintain fish-restoration and management projects established under the provisions of this Act shall be the duty of the States according to their respective laws. Beginning July 1, 1953, maintenance of projects heretofore completed under the provisions of this Act may be considered as projects under this Act. Title to any real or personal property acquired by any State, and to improvements placed on State-owned lands through the use of funds paid to the State under the provisions of this Act, shall be vested in such State.

(b)(1) Each State shall allocate 15 percent of the funds apportioned to it for each fiscal year under section 4 of this Act for the payment of up to 75 per centum of the costs of the acquisition, development, renovation, or improvement of facilities (and auxiliary facilities necessary to insure the safe use of such facilities) that create, or add to, public access to the waters of the United States to

[1] So in original. Probably should be "from".

improve the suitability of such waters for recreational boating purposes. Notwithstanding this provision, States within a United States Fish and Wildlife Service Administrative Region may allocate more or less than 15 percent in a fiscal year, provided that the total regional allocation averages 15 percent over a 5 year period.

(2) So much of the funds that are allocated by a State under paragraph (1) in any fiscal year that remained unexpended or unobligated at the close of such year are authorized to be made available for the purposes described in paragraph (1) during the succeeding four fiscal years, but any portion of such funds that remain unexpended or unobligated at the close of such period are authorized to be made available for expenditure by the Secretary of the Interior in carrying out the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.

(c) Each State may use not to exceed 15 percent of the funds apportioned to it under section 4 of this Act to pay up to 75 per centum of the costs of an aquatic resource education and outreach and communications program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms. The non-Federal share of such costs may not be derived from other Federal grant programs. The Secretary shall issue not later than the one hundred and twentieth day after the effective date of this subsection such regulations as he deems advisable regarding the criteria for such programs.

(d) NATIONAL OUTREACH AND COMMUNICATIONS PROGRAM.—

(1) IMPLEMENTATION.—Within 1 year after the date of enactment of the Sportfishing and Boating Safety Act of 1998, the Secretary of the Interior shall develop and implement, in cooperation and consultation with the Sport Fishing and Boating Partnership Council, a national plan for outreach and communications.

(2) CONTENT.—The plan shall provide—

(A) guidance, including guidance on the development of an administrative process and funding priorities, for outreach and communications programs; and

(B) for the establishment of a national program.

(3) SECRETARY MAY MATCH OR FUND PROGRAMS.—Under the plan, the Secretary may obligate amounts available under subsection (c) or (d) of section 4 of this Act—

(A) to make grants to any State or private entity to pay all or any portion of the cost of carrying out any outreach and communications program under the plan; or

(B) to fund contracts with States or private entities to carry out such a program.

(4) REVIEW.—The plan shall be reviewed periodically, but not less frequently than once every 3 years.

(e) STATE OUTREACH AND COMMUNICATIONS PROGRAM.—Within 12 months after the completion of the national plan under subsection (d)(1), a State shall develop a plan for an outreach and communications program and submit it to the Secretary. In developing the plan, a State shall—

(1) review the national plan developed under subsection (d);

(2) consult with anglers, boaters, the sportfishing and boating industries, and the general public; and

(3) establish priorities for the State outreach and communications program proposed for implementation.

(f) PUMPOUT STATIONS AND WASTE RECEPTION FACILITIES.—Amounts apportioned to States under section 4 of this Act may be used to pay not more than 75 percent of the costs of constructing, renovating, operating, or maintaining pumpout stations and waste reception facilities (as those terms are defined in the Clean Vessel Act of 1992).

(g) SURVEYS.—

(1) NATIONAL FRAMEWORK.—Within 6 months after the date of enactment of the Sportfishing and Boating Safety Act of 1998, the Secretary, in consultation with the States, shall adopt a national framework for a public boat access needs assessment which may be used by States to conduct surveys to determine the adequacy, number, location, and quality of facilities providing access to recreational waters for all sizes of recreational boats.

(2) STATE SURVEYS.—Within 18 months after such date of enactment, each State that agrees to conduct a public boat access needs survey following the recommended national framework shall report its findings to the Secretary for use in the development of a comprehensive national assessment of recreational boat access needs and facilities.

(3) EXCEPTION.—Paragraph (2) does not apply to a State if, within 18 months after such date of enactment, the Secretary certifies that the State has developed and is implementing a plan that ensures there are and will be public boat access adequate to meet the needs of recreational boaters on its waters.

(4) FUNDING.—A State that conducts a public boat access needs survey under paragraph (2) may fund the costs of conducting that assessment out of amounts allocated to it as funding dedicated to motorboat access to recreational waters under subsection (b)(1) of this section.

SEC. 9. [16 U.S.C. 777h] REQUIREMENTS AND RESTRICTIONS CONCERNING USE OF AMOUNTS FOR EXPENSES FOR ADMINISTRATION.

(a) AUTHORIZED EXPENSES FOR ADMINISTRATION.—Except as provided in subsection (b), the Secretary of the Interior may use available amounts under section 4(d)(1) only for expenses for administration that directly support the implementation of this Act that consist of—

(1) personnel costs of employees who directly administer this Act on a full-time basis;

(2) personnel costs of employees who directly administer this Act on a part-time basis for at least 20 hours each week, not to exceed the portion of those costs incurred with respect to the work hours of the employee during which the employee directly administers this Act, as those hours are certified by the supervisor of the employee;

(3) support costs directly associated with personnel costs authorized under paragraphs (1) and (2), excluding costs asso-

ciated with staffing and operation of regional offices of the United States Fish and Wildlife Service and the Department of the Interior other than for the purposes of this Act;

(4) costs of determining under section 6(a) whether State comprehensive plans and projects are substantial in character and design;

(5) overhead costs, including the costs of general administrative services, that are directly attributable to administration of this Act and are based on—

(A) actual costs, as determined by a direct cost allocation methodology approved by the Director of the Office of Management and Budget for use by Federal agencies; and

(B) in the case of costs that are not determinable under subparagraph (A), an amount per full-time equivalent employee authorized under paragraphs (1) and (2) that does not exceed the amount charged or assessed for costs per full-time equivalent employee for any other division or program of the United States Fish and Wildlife Service;

(6) costs incurred in auditing, every 5 years, the wildlife and sport fish activities of each State fish and game department and the use of funds under section 6 by each State fish and game department;

(7) costs of audits under subsection (d);

(8) costs of necessary training of Federal and State full-time personnel who administer this Act to improve administration of this Act;

(9) costs of travel to States, territories, and Canada by personnel who—

(A) administer this Act on a full-time basis for purposes directly related to administration of State programs or projects; or

(B) administer grants under section 6 or 14;

(10) costs of travel outside the United States (except travel to Canada), by personnel who administer this Act on a full-time basis, for purposes that directly relate to administration of this Act and that are approved directly by the Assistant Secretary for Fish and Wildlife and Parks;

(11) relocation expenses for personnel who, after relocation, will administer this Act on a full-time basis for at least 1 year, as certified by the Director of the United States Fish and Wildlife Service at the time at which the relocation expenses are incurred; and

(12) costs to audit, evaluate, approve, disapprove, and advise concerning grants under sections 6 and 14.

(b) REPORTING OF OTHER USES.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary of the Interior determines that available amounts under section 4(d)(1) should be used for an expense for administration other than an expense for administration described in subsection (a), the Secretary—

(A) shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report describing

the expense for administration and stating the amount of the expense; and

(B) may use any such available amounts for the expense for administration only after the end of the 30-day period beginning on the date of submission of the report under subparagraph (A).

(2) MAXIMUM AMOUNT.—For any fiscal year, the Secretary of the Interior may use under paragraph (1) not more than $25,000.

(c) RESTRICTION ON USE TO SUPPLEMENT GENERAL APPROPRIATIONS.—The Secretary of the Interior shall not use available amounts under subsection (b) to supplement the funding of any function for which general appropriations are made for the United States Fish and Wildlife Service or any other entity of the Department of the Interior.

(d) AUDIT REQUIREMENT.—

(1) IN GENERAL.—The Inspector General of the Department of the Interior shall procure the performance of biennial audits, in accordance with generally accepted accounting principles, of expenditures and obligations of amounts used by the Secretary of the Interior for expenses for administration incurred in implementation of this Act.

(2) AUDITOR.—

(A) IN GENERAL.—An audit under this subsection shall be performed under a contract that is awarded under competitive procedures (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) by a person or entity that is not associated in any way with the Department of the Interior (except by way of a contract for the performance of an audit or other review).

(B) SUPERVISION OF AUDITOR.—The auditor selected under subparagraph (A) shall report to, and be supervised by, the Inspector General of the Department of the Interior, except that the auditor shall submit a copy of the biennial audit findings to the Secretary of the Interior at the time at which the findings are submitted to the Inspector General of the Department of the Interior.

(3) REPORT TO CONGRESS.—The Inspector General of the Department of the Interior shall promptly submit to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate—

(A) a report on the results of each audit under this subsection; and

(B) a copy of each audit under this subsection.

SEC. 10. [16 U.S.C. 777i] The Secretary of the Interior is authorized to make rules and regulations for carrying out the provisions of this Act.

[Sec. 11. Repealed, Public Law 89–348 (79 Stat. 1311).]

SEC. 12. [16 U.S.C. 777k] The Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Mayor of the District of Columbia, the Governor of Guam,

the Governor of American Samoa, the Governor of the Commonwealth of the Northern Mariana Islands, and the Governor of the Virgin Islands, in the conduct of fish restoration and management projects as defined in section 2 of this Act, upon such terms and conditions as he shall deem fair, just, and equitable, and is authorized to apportion to Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, out of money available for apportionment under this Act, such sums as he shall determine, not exceeding for Puerto Rico 1 per centum, for the District of Columbia one-third of 1 per centum, for Guam one-third of 1 per centum, for American Samoa one-third of 1 per centum, for the Commonwealth of the Northern Mariana Islands one-third of 1 per centum, and for the Virgin Islands one-third of 1 per centum of the total amount apportioned in any one year, but the Secretary shall in no event require any of said cooperating agencies to pay an amount which will exceed 25 per centum of the cost of any project. Any unexpended or unobligated balance of any apportionment made pursuant to this section shall be made available for expenditure in Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, as the case may be, in the succeeding year, on any approved projects, and if unexpended or unobligated at the end of such year is authorized to be made available for expenditure by the Secretary of the Interior in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.

SEC. 13. [16 U.S.C. 777l] STATE USE OF CONTRIBUTIONS.

A State may use contributions of funds, real property, materials, and services to carry out an activity under this Act in lieu of payment by the State of the State share of the cost of such activity. Such a State share shall be considered to be paid in an amount equal to the fair market value of any contribution so used.

SEC. 14. [16 U.S.C. 777m] MULTISTATE CONSERVATION GRANT PROGRAM.

(a) IN GENERAL.—

(1) AMOUNT FOR GRANTS.—Of the balance of each annual appropriation made under section 3 remaining after the distribution and use under subsections (a), (b), and (c) of section 4 in a fiscal year, not more than $3,000,000 shall be available to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.

(2) PERIOD OF AVAILABILITY; APPORTIONMENT.—

(A) PERIOD OF AVAILABILITY.—Amounts made available under paragraph (1) shall remain available for making grants only for the first fiscal year for which the amount is made available and the following fiscal year.

(B) APPORTIONMENT.—At the end of the period of availability under subparagraph (A), the Secretary of the Interior shall apportion any amounts that remain available among the States in the manner specified in section 4(e) for use by the States in the same manner as funds apportioned under section 4(e).

(b) SELECTION OF PROJECTS.—

(1) STATES OR ENTITIES TO BE BENEFITED.—A project shall not be eligible for a grant under this section unless the project will benefit—

(A) at least 26 States;

(B) a majority of the States in a region of the United States Fish and Wildlife Service; or

(C) a regional association of State fish and game departments.

(2) USE OF SUBMITTED PRIORITY LIST OF PROJECTS.—The Secretary of the Interior may make grants under this section only for projects identified on a priority list of sport fish restoration projects described in paragraph (3).

(3) PRIORITY LIST OF PROJECTS.—A priority list referred to in paragraph (2) is a priority list of sport fish restoration projects that the International Association of Fish and Wildlife Agencies—

(A) prepares through a committee comprised of the heads of State fish and game departments (or their designees), in consultation with—

(i) nongovernmental organizations that represent conservation organizations;

(ii) sportsmen organizations; and

(iii) industries that fund the sport fish restoration programs under this Act;

(B) approves by vote of a majority of the heads of State fish and game departments (or their designees); and

(C) not later than October 1 of each fiscal year, submits to the Assistant Director for Wildlife and Sport Fish Restoration Programs.

(4) PUBLICATION.—The Assistant Director for Wildlife and Sport Fish Restoration Programs shall publish in the Federal Register each priority list submitted under paragraph (3)(C).

(c) ELIGIBLE GRANTEES.—

(1) IN GENERAL.—The Secretary of the Interior may make a grant under this section only to—

(A) a State or group of States;

(B) the United States Fish and Wildlife Service, or a State or group of States, for the purpose of carrying out the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation; and

(C) subject to paragraph (2), a nongovernmental organization.

(2) NONGOVERNMENTAL ORGANIZATIONS.—

(A) IN GENERAL.—Any nongovernmental organization that applies for a grant under this section shall submit with the application to the International Association of Fish and Wildlife Agencies a certification that the organization—

(i) will not use the grant funds to fund, in whole or in part, any activity of the organization that promotes or encourages opposition to the regulated taking of fish; and

(ii) will use the grant funds in compliance with subsection (d).

(B) PENALTIES FOR CERTAIN ACTIVITIES.—Any nongovernmental organization that is found to use grant funds in violation of subparagraph (A) shall return all funds received under this section and be subject to any other applicable penalties under law.

(d) USE OF GRANTS.—A grant under this section shall not be used, in whole or in part, for an activity, project, or program that promotes or encourages opposition to the regulated taking of fish.

(e) FUNDING FOR OTHER ACTIVITIES.—Of the balance of each annual appropriation made under section 3 remaining after the distribution and use under subsections (a), (b), and (c) of section 4 for each fiscal year and after deducting amounts used for grants under subsection (a)—

(1) $200,000 shall be made available for each of—

(A) the Atlantic States Marine Fisheries Commission;

(B) the Gulf States Marine Fisheries Commission;

(C) the Pacific States Marine Fisheries Commission; and

(D) the Great Lakes Fisheries Commission; and

(2) $400,000 shall be made available for the Sport Fishing and Boating Partnership Council established by the United States Fish and Wildlife Service.

(f) NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any activity carried out under this section.

SEC. 15. [16 U.S.C. 777 note] SHORT TITLE.

This Act may be cited as the "Dingell-Johnson Sport Fish Restoration Act".

PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 RELATING TO TAXES ON RECREATIONAL EQUIPMENT AND TAXES ON FIREARMS

INTERNAL REVENUE CODE OF 1986

Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 32—MANUFACTURERS EXCISE TAXES

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Subchapter D—Recreational Equipment

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PART I—SPORTING GOODS

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SEC. 4161. IMPOSITION OF TAX.

(a) SPORT FISHING EQUIPMENT.—

(1) IMPOSITION OF TAX.—There is hereby imposed on the sale of any article of sport fishing equipment by the manufacturer, producer, or importer a tax equal to 10 percent of the price for which so sold.

(2) 3 PERCENT RATE OF TAX FOR ELECTRIC OUTBOARD MOTORS AND SONAR DEVICES SUITABLE FOR FINDING FISH.—

(A) IN GENERAL.—In the case of an electric outboard motor or a sonar device suitable for finding fish, paragraph (1) shall be applied by substituting "3 percent" for "10 percent".

(B) $30 LIMITATION ON TAX IMPOSED ON SONAR DEVICES SUITABLE FOR FINDING FISH.—The tax imposed by paragraph (1) on any sonar device suitable for finding fish shall not exceed $30.

(3) PARTS OR ACCESSORIES SOLD IN CONNECTION WITH TAXABLE SALE.—In the case of any sale by the manufacturer, producer, or importer of any article of sport fishing equipment, such article shall be treated as including any parts or accessories of such article sold on or in connection therewith or with the sale thereof.

(b) BOWS AND ARROWS, ETC.—

(1) BOWS.—

(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow

which has a draw weight of 10 pounds or more, a tax equal to 11 percent of the price for which so sold.

(B) PARTS AND ACCESSORIES.—There is hereby imposed upon the sale by the manufacturer, producer, or importer—

(i) of any part of accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

(ii) of any quiver suitable for use with arrows described in paragraph (2), a tax equivalent to 11 percent of the price for which so sold.

(2) ARROWS.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any shaft, point, nock, or vane of a type used in the manufacture of any arrow which after its assembly—

(A) measures 18 inches overall or more in length, or

(B) measures less than 18 inches overall in length but is suitable for use with a bow described in paragraph (1)(A), a tax equal to 12.4 percent of the price for which so sold.

(3) COORDINATION WITH SUBSECTION (a).—No tax shall be imposed under this subsection with respect to any article taxable under subsection (a).

SEC. 4162. DEFINITIONS; TREATMENT OF CERTAIN RESALES.

(a) SPORT FISHING EQUIPMENT DEFINED.—For purposes of this part, the term "sport fishing equipment" means—

(1) fishing rods and poles (and component parts therefor),

(2) fishing reels,

(3) fly fishing lines, and other fishing lines not over 130 pounds test,

(4) fishing spears, spear guns, and spear tips,

(5) items of terminal tackle, including—

(A) leaders,

(B) artificial lures,

(C) artificial baits,

(D) artificial flies,

(E) fishing hooks,

(F) bobbers,

(G) sinkers,

(H) snaps,

(I) drayles, and

(J) swivels,

but not including natural bait or any item of terminal tackle designed for use and ordinarily used on fishing lines not described in paragraph (3), and

(6) the following items of fishing supplies and accessories—

(A) fish stringers,

(B) creels,

(C) tackle boxes,

(D) bags, baskets, and other containers designed to hold fish,

(E) portable bait containers,

(F) fishing vests,

(G) landing nets,

(H) gaff hooks,

(I) fishing hook disgorgers, and

(J) dressing for fishing lines and artificial flies,

(7) fishing tip-ups and tilts,

(8) fishing rod belts, fishing rodholders, fishing harnesses, fish fighting chairs, fishing outriggers, and fishing downriggers,

(9) electric outboard boat motors, and

(10) sonar devices suitable for finding fish.

(b) SONAR DEVICE SUITABLE FOR FINDING FISH.—For purposes of this part, the term "sonar device suitable for finding fish" shall not include any sonar device which is—

(1) a graph recorder,

(2) a digital type,

(3) a meter readout, or

(4) a combination graph recorder or combination meter readout.

(c) TREATMENT OF CERTAIN RESALES.—

(1) IN GENERAL.—If—

(A) the manufacturer, producer, or importer sells any article taxable under section 4161(a) to any person,

(B) the constructive sale price rules of section 4216(b) do not apply to such sale, and

(C) such person (or any other person) sells such article to a related person with respect to the manufacturer, producer, or importer,

then such related person shall be liable for tax under section 4161 in the same manner as if such related person were the manufacturer of the article.

(2) CREDIT FOR TAX PREVIOUSLY PAID.—If—

(A) tax is imposed on the sale of any article by reason of paragraph (1), and

(B) the related person establishes the amount of the tax which was paid on the sale described in paragraph (1)(A),

the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

(3) RELATED PERSON.—For purposes of this subsection, the term "related person" has the meaning given such term by section 465(b)(3)(C).

(4) REGULATIONS.—Except to the extent provided in regulations, rules similar to the rules of this subsection shall also apply in cases (not described in paragraph (1)) in which intermediaries or other devices are used for purposes of reducing the amount of the tax imposed by section 4161(a).

PART III—FIREARMS

SEC. 4181. IMPOSITION OF TAX.

There is hereby imposed upon the sale by the manufacturer, producer, or importer of the following articles a tax equivalent to the specified percent of the price for which so sold:

Articles taxable at 10 percent—

Pistols.

Revolvers.

Articles taxable at 11 percent—

Firearms (other than pistols and revolvers).

Shells, and cartridges.

SEC. 4182. EXEMPTIONS.

(a) MACHINE GUNS AND SHORT BARRELLED FIREARMS—The tax imposed by section 4181 shall not apply to any firearm on which the tax provided by section 5811 has been paid.

(b) SALES TO DEFENSE DEPARTMENT.—No firearms, pistols, revolvers, shells, and cartridges purchased with funds appropriated for the military department shall be subject to any tax imposed on the sale or transfer of such articles.

(c) RECORDS.—Notwithstanding the provisions of sections 922(b)(5) and 923(g) of title 18, United States Code, no person holding a Federal license under chapter 44 of title 18, United States Code, shall be required to record the name, address, or other information about the purchaser of shotgun ammunition, ammunition suitable for use only in rifles generally available in commerce, or component parts for the aforesaid types of ammunition.

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PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 RELATING TO SPORT FISH RESTORATION ACCOUNT IN THE AQUATIC RESOURCES TRUST FUND

INTERNAL REVENUE CODE OF 1986

Subtitle I—Trust Fund Code

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CHAPTER 98—TRUST FUND CODE

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Subchapter A—Establishment of Trust Funds

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SEC. 9503. HIGHWAY TRUST FUND.

(a) * * *

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(c) EXPENDITURES FROM HIGHWAY TRUST FUND.—

(1) * * *

* * * * * * *

(4) TRANSFERS FROM THE TRUST FUND FOR MOTORBOAT FUEL TAXES.—

(A) TRANSFER TO BOAT SAFETY ACCOUNT.—

(i) IN GENERAL.—The Secretary shall pay from time to time from the Highway Trust Fund into the Boat Safety Account in the Aquatic Resources Trust Fund amounts (as determined by him) equivalent to the motorboat fuel taxes received on or after October 1, 1980, and before October 1, 1997.

(ii) LIMITATIONS.—

(I) LIMIT ON TRANSFERS DURING ANY FISCAL YEAR.—The aggregate amount transferred under this subparagraph during any fiscal year shall not exceed $60,000,000 for each of fiscal years 1989 and 1990 and $70,000,000 for each fiscal year thereafter.

(II) Limit on amount in fund.—No amount shall be transferred under this subparagraph if the Secretary determines that such transfer would result in increasing the amount in the Boat Safety Account to a sum in excess of $60,000,000 for each of fiscal years 1989 and 1990 and $70,000,000 for each fiscal year thereafter.

(B) $1,000,000 PER YEAR OF EXCESS TRANSFERRED TO LAND AND WATER CONSERVATION FUND.—

(i) IN GENERAL.—Any amount received in the Highway Trust Fund—

(I) which is attributable to motorboat fuel taxes, and

(II) which is not transferred from the Highway Trust Fund under subparagraph (A),

shall be transferred (subject to the limitation of clause (ii)) by the Secretary from the Highway Trust Fund into the land and water conservation fund provided for in title I of the Land and Water Conservation Fund Act of 1965.

(ii) LIMITATION.—The aggregate amount transferred under this subparagraph during any fiscal year shall not exceed $1,000,000.

(C) EXCESS FUNDS TRANSFERRED TO SPORT FISH RESTORATION ACCOUNT.—Any amount received in the Highway Trust Fund—

(i) which is attributable to motorboat fuel taxes, and

(ii) which is not transferred from the Highway Trust Fund under subparagraph (A) or (B),

shall be transferred by the Secretary from the Highway Trust Fund into the Sport Fish Restoration Account in the Aquatic Resources Trust Fund.

(D) MOTORBOAT FUEL TAXES.—For purposes of this paragraph, the term "motorboat fuel taxes" means the taxes under section 4041(a)(2) with respect to special motor fuels used as fuel in motorboats and under section 4081 with respect to gasoline used as fuel in motorboats, but only to the extent such taxes are attributable to the Highway Trust Fund financing rate.

(E) DETERMINATION.—The amount of payments made under this paragraph after October 1, 1986 shall be determined by the Secretary in accordance with the methodology described in the Treasury Department's Report to Congress of June 1986 entitled "Gasoline Excise Tax Revenues Attributable to Fuel Used in Recreational Motorboats."

* * * * * * *

SEC. 9504. AQUATIC RESOURCES TRUST FUND.

(a) CREATION OF TRUST FUND.—

(1) IN GENERAL.—There is hereby established in the Treasury of the United States a trust fund to be known as the "Aquatic Resources Trust Fund".

(2) ACCOUNTS IN TRUST FUND.—The Aquatic Resources Trust Fund shall consist of—

(A) a Sport Fish Restoration Account, and

(B) a Boat Safety Account.

Each such Account shall consist of such amounts as may be appropriated, credited, or paid to it as provided in this section, section 9503(c)(4), section 9503(c)(5) or section 9602(b).

(b) SPORT FISH RESTORATION ACCOUNT.—

(1) TRANSFER OF CERTAIN TAXES TO ACCOUNT.—There is hereby appropriated to the Sport Fish Restoration Account

amounts equivalent to the following amounts received in the Treasury on or after October 1, 1984—

(A) the taxes imposed by section 4161(a) (relating to sport fishing equipment), and

(B) the import duties imposed on fishing tackle under heading 9507 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and on yachts and pleasure craft under chapter 89 of the Harmonized Tariff Schedule of the United States.

(2) EXPENDITURES FROM ACCOUNT.—Amounts in the Sport Fish Restoration Account shall be available, as provided by appropriation Acts, for making expenditures—

(A) to carry out the purposes of the Act entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes", approved August 9, 1950 (as in effect on the date of the enactment of the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 [1]),

(B) to carry out the purposes of section 7404(d) of the Transportation Equity Act for the 21st Century (as in effect on the date of the enactment of the TEA 21 Restoration Act [2]), and

(C) to carry out the purposes of the Coastal Wetlands Planning, Protection and Restoration Act (as in effect on the date of the enactment of the TEA 21 Restoration Act [2]).

Amounts transferred to such account under section 9503(c)(5) may be used only for making expenditures described in subparagraph (B) of this paragraph.

(c) EXPENDITURES FROM BOAT SAFETY ACCOUNT.—Amounts in the Boat Safety Account shall be available, as provided by appropriation Acts, for making expenditures before October 1, 2003, to carry out the purposes of section 13106 of title 46, United States Code (as in effect on the date of the enactment of the TEA 21 Restoration Act).

(d) LIMITATION ON TRANSFERS TO AQUATIC RESOURCES TRUST FUND.—

(1) IN GENERAL.—Except as provided in paragraph (2), no amount may be appropriated or paid to any Account in the Aquatic Resources Trust Fund on and after the date of any expenditure from any such Account which is not permitted by this section. The determination of whether an expenditure is so permitted shall be made without regard to—

(A) any provision of law which is not contained or referenced in this title or in a revenue Act, and

(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this subsection.

(2) EXCEPTION FOR PRIOR OBLIGATIONS.—Paragraph (1) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated) before October 1, 2003, in accordance with the provisions of this section.

[1] Such date of enactment was November 1, 2000.
[2] Such date of enactment was June 9, 1998.

(e) CROSS REFERENCE.—

For provision transferring motorboat fuels taxes to Boat Safety Account and Sport Fish Restoration Account, see section 9503(c)(4).

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FUR SEAL ACT

FUR SEAL ACT OF 1966 [1]

[Public Law 89–702, Approved Nov. 2, 1966, 80 Stat. 1091]

[Amended through Public Law 106–562, Dec. 23, 2000]

AN ACT To protect and conserve the North Pacific fur seals, to provide for the administration of the Pribilof Islands, to conserve the fur seals and other wildlife on the Pribilof Islands, and to protect sea otters on the high seas.

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

SECTION 1. [16 U.S.C. 1151 note] This Act may be cited as the "Fur Seal Act of 1966".

TITLE I—FUR SEAL MANAGEMENT

SEC. 101. [16 U.S.C. 1151] (a) "Commission" means the North Pacific Fur Seal Commission established pursuant to article V of the Convention.

(b) "Convention" means the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, as amended by the protocol signed in Washington on October 8, 1963; by the exchange of notes among the party governments which became effective on September 3, 1969; by the protocol signed in Washington on May 7, 1976; and by the protocol signed in Washington on October 14, 1980, by the parties.

(c) "Cure" or "curing" means the performance of those post-harvest activities traditionally performed on the Pribilof Islands, including cooling, washing, removal of blubber, soaking in brine, draining, treating with salt or boric acid, and packing in containers for shipment of fur seal skins.

(d) "Fur Seal" means the North Pacific Fur Seal, Callorhinus Ursinus.

(e) "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.

(f) [2] "Natives of the Pribilof Islands" means any Aleuts who are permanent residents of the Pribilof Islands, or any organization or entity representing such natives.

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[1] Similar provisions relating to the Pribilof Islands, including amendments made to this Act, were enacted by section 144(e) of the Miscellaneous Appropriations Act, 2001 (P.L. 106–554; approved Dec. 21, 2000; 114 Stat. 2763A–244) and the Pribilof Islands Transition Act (P.L. 106–652; approved Dec. 23, 2000; 114 Stat. 2794).

[2] Effective upon the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, section 303 of Public Law 102–251 amends section 101 by redesignating subsections (f)–(m) as subsections (g)–(n) and inserts a new subsection (f) as follows:

Continued

(g) "North Pacific Ocean" means the waters of the Pacific Ocean north of the thirtieth parallel of north latitude, including the Bering, Okhotsk, and Japan Seas.

(h) "Party" or "parties" means the United States of America, Canada, Japan, and Russia (except that as used in subsection (b) of this section, "party" and "parties" refer to the Union of Soviet Socialist Republics).

(i) "Person" means any individual, partnership, corporation, trust, association or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(j) "Pribilof Islands" means the islands of Saint Paul and Saint George, Walrus and Otter Islands, and Sea Lion Rock.

(k) "Sealing" means the taking of fur seals.

(l) "Secretary" means the Secretary of Commerce.

(m) "Take" or "taking" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill.

SEC. 102. [16 U.S.C. 1152] It is unlawful, except as provided in this Act or by regulation of the Secretary, for any person or vessel subject to the jurisdiction of the United States to engage in the taking of fur seals in the North Pacific Ocean or on lands or waters under the jurisdiction of the United States, or to use any port or harbor or other place under the jurisdiction of the United States for any purpose connected in any way with such taking, or for any person to transport, import, offer for sale, or possess at any port or place or on any vessel, subject to the jurisdiction of the United States, fur seals or the parts thereof, including, but not limited to, raw, dressed, or dyed fur seal skins, taken contrary to the provisions of this Act or the Convention, or for any person subject to the jurisdiction of the United States to refuse to permit, except within the Exclusive Economic Zone of the United States, a duly authorized official of Canada, Japan, or Russia to board and search any vessel which is outfitted for the harvesting of living marine resources and which is subject to the jurisdiction of the United States to determine whether such vessel is engaged in sealing contrary to the provisions of said Convention.

SEC. 103. [16 U.S.C. 1153] (a) Indians, Aleuts, and Eskimos who dwell on the coasts of the North Pacific Ocean are permitted to take fur seals and dispose of their skins after the skins have been officially marked and certified by a person authorized by the Secretary: *Provided,* That the seals are taken for subsistence uses as defined in section 109(f)(2) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1379), and only in canoes not transported by or used in connection with other vessels, and propelled entirely by oars, paddles, or sails, and manned by not more than five persons each, in the way hitherto practiced and without the use of firearms. This authority shall not apply to Indians, Aleuts, and Eskimos while they are employed by any person for the

"(f) 'Jurisdiction of the United States' includes jurisdiction over the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.".

purpose of taking fur seals or are under contract to deliver the skins to any person.

(b) Indians, Aleuts, and Eskimos who live on the Pribilof Islands are authorized to take fur seals for subsistence purposes as defined in section 109(f)(2) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1379), under such conditions as recommended by the Commission and accepted by the Secretary of State pursuant to regulations promulgated by the Secretary.

SEC. 104. [16 U.S.C. 1154] The Secretary shall (1) conduct such scientific research and investigations on the fur seal resources of the North Pacific Ocean as he deems necessary to carry out the obligations of the United States under the Convention, and (2) permit, subject to such terms and conditions as he deems desirable, the taking, transportation, importation, exportation, or possession of fur seals or their parts for educational, scientific, or exhibition purposes.

SEC. 105. [16 U.S.C. 1155] (a) The Secretary shall prescribe such regulations with respect to the taking of fur seals on the Pribilof Islands and on lands subject to the jurisdiction of the United States as he deems necessary and appropriate for the conservation, management, and protection of the fur seal population, and to dispose of any fur seals seized or forfeited pursuant to this Act, and to carry out the provisions of the Convention, and shall deliver to authorized agents of the parties such fur seal skins as the parties are entitled to under the Convention.

(b) The Secretary is authorized to enter into agreements with any public or private agency or person for the purpose of carrying out the provisions of the Convention and of this title, including but not limited to the taking of fur seals on the Pribilof Islands, and the curing and marketing of the sealskins and other seal parts, and may retain the proceeds therefrom.

(c) The Secretary shall give preference to the village corporations of Saint Paul and Saint George Islands established pursuant to section 8 of the Alaska Native Claims Settlement Act (Public Law 92–203) for the taking of fur seals on the village corporations' respective islands, and the curing and marketing of the sealskins and other seal parts, and may retain the proceeds therefrom. Any proceeds therefrom will be deposited in a separate fund in the Treasury and will be available to the Secretary, subject to appropriations, for the purpose of this section. All seal harvests will be financed, to the extent possible, from proceeds collected in preceding years or unsold assets retained from harvests conducted in preceding years. In the event that such assets and proceeds are insufficient, as determined by the Secretary, to finance the seal harvest in accordance with the requirements of the Convention, there are authorized to be appropriated to the Secretary for fiscal year 1984, and for fiscal year 1985 and beyond if the Convention is extended by protocol signed by the parties and made effective as to the United States, such sums as may be necessary to carry out the harvest and curing on the Pribilof Islands. Such amounts as are determined by the Secretary to exceed amounts required to carry out this section shall be transferred to the General Fund of the Treasury.

SEC. 106. [16 U.S.C. 1156] (a) Any person authorized to enforce the provisions of this Act who has reasonable cause to believe

that any vessel outfitted for the harvesting of living marine resources and subject to the jurisdiction of any of the parties to the Convention is violating the provisions of article III of the Convention may, except within the areas in which another State exercises fisheries jurisdiction, board and search such vessel. Such person shall carry a special certificate of identification issued by the Secretary or Secretary of the department in which the Coast Guard is operating which shall be in English, Japanese, and Russian and which shall be exhibited to the master of the vessel upon request.

(b) If, after boarding and searching such vessel, such person continues to have reasonable cause to believe that such vessel, or any person onboard, is violating said article, he may seize such vessel or arrest such person, or both. The Secretary of State shall, as soon as practicable, notify the party having jurisdiction over the vessel or person of such seizure or arrest.

The Secretary or the Secretary of the department in which the Coast Guard is operating, upon request of the Secretary of State, shall deliver the seized vessel or arrested person, or both, as promptly as practicable to the authorized officials of said party: *Provided,* That whenever said party cannot immediately accept such delivery, the Secretary or the Secretary of the department in which the Coast Guard is operating may, upon the request of the Secretary of State, keep the vessel or person in custody within the United States.

(c) At the request of said party, the Secretary or the Secretary of the department in which the Coast Guard is operating, shall direct the person authorized to enforce the provisions of this Act to attend the trial as a witness in any case arising under said article or give testimony by deposition, and shall produce such records and files or copies thereof as may be necessary to establish the offense.

SEC. 107. [16 U.S.C. 1157] The President shall appoint to the Commission a United States Commissioner who shall serve at the pleasure of the President. The President may appoint one Native from each of the two inhabited Pribilof Islands to serve as Advisors to the Commissioner and as liaisons between the Commissioner and the Natives of the Pribilof Islands. The President may also appoint other interested parties as Advisors to the Commissioner. Such Advisors shall serve at the pleasure of the President. The President may also appoint a Deputy United States Commissioner who shall serve at the pleasure of the President. The Deputy Commissioner shall be the principal adviser of the Commissioner, and shall perform the duties of the Commissioner in the case of his death, resignation, absence, or illness. The Commissioner, the Deputy Commissioner, and the Advisors shall receive no compensation for their services. The Commissioners may be paid traval[1] expenses and per diem in lieu of subsistence at the rates authorized by section 5 of the Administrative Expense Act of 1946 when engaged in the performance of their duties.

SEC. 108. [16 U.S.C. 1158] The Secretary of State, with the concurrence of the Secretary, is authorized to accept or reject, on behalf of the United States, recommendations made by the Commission pursuant to article V of the Convention.

[1] So in law. Probably should be "travel".

SEC. 109. [16 U.S.C. 1159] The head of any Federal agency is authorized to consult with and provide technical assistance to the Secretary or the Commission whenever such assistance is needed and reasonably can be furnished in carrying out the provisions of this title. Any Federal agency furnishing assistance hereunder may expend its own funds for such purposes, with or without reimbursement.

TITLE II—ADMINISTRATION OF THE PRIBILOF ISLANDS

SEC. 201. [16 U.S.C. 1161] The Secretary shall administer the fur seal rookeries and other Federal real and personal property on the Pribilof Islands, with the exception of lands purchased by the U.S. Fish and Wildlife Service under section 1417 of the Alaska National Interest Lands Conservation Act (Public Law 96–487) or acquired or purchased by any other authority after enactment of the Fur Seal Act Amendments of 1983 and, in consultation with the Secretary of the Interior, shall ensure that activities on such property are consistent with the purposes of conserving, managing, and protecting the North Pacific fur seals and other wildlife and for other purposes consistent with that primary purpose.

SEC. 202. [16 U.S.C. 1162] In carrying out the provisions of this title, the Secretary is authorized—

(1) to operate, maintain, and repair such Government-owned property, both real and personal, and other facilities held by the Secretary on the Pribilof Islands as may be necessary; and

(2) to provide the employees of the Department of Commerce and other Federal agencies and their dependents, at reasonable rates to be determined by the Secretary, with such facilities, services, and equipment as he deems necessary, including, but not limited to, food, fuel, shelter, and transportation.

SEC. 203. [16 U.S.C. 1163] The State of Alaska will be responsible for meeting the educational needs of the citizens of the Pribilof Islands.

SEC. 204. [16 U.S.C. 1164] The Secretary of Health and Human Services shall provide medical and dental care to the Natives of the Pribilof Islands with or without reimbursement, as provided by other law. He is authorized to provide such care to Federal employees and their dependents and tourists and other persons in the Pribilof Islands at reasonable rates to be determined by him. He may purchase, lease, construct, operate, and maintain such facilities, supplies, and equipment as he deems necessary to carry out the provisions of this section; and the costs of such items, including medical and dental care, shall be charged to the budget of the Secretary of Health and Human Services. Nothing in this Act shall be construed as superseding or limiting the authority and responsibility of the Secretary of Health and Human Services under the Act of August 5, 1954, as amended, or any other law with respect to medical and dental care of natives or other persons in the Pribilof Islands.

SEC. 205.[1] [16 U.S.C. 1165] (a) Any provision of law relating to the transfer and disposal of Federal property to the contrary notwithstanding, the Secretary, after consultation with the Secretary of the department in which the Coast Guard is operating, is authorized to bargain, grant, sell or otherwise convey, on such terms as he deems to be in the best interests of the United States and in furtherance of the purposes of this Act, any and all right, title, and interest of the United States in and to the property, both real and personal, held by the Secretary on the Pribilof Islands: *Provided,* That such property is specified in a document entitled "Transfer of Property on the Pribilof Islands: Descriptions, Terms and Conditions," which is submitted to the Congress on or before October 31, 1983.

(b) The property transfer document described in subsection (a) shall include, but need not be limited to—

(1) a description of each conveyance;

(2) the terms to be imposed on each conveyance;

(3) designation of the recipient of each conveyance;

(4) a statement noting acceptance of each conveyance, including the terms, if any, under which it is accepted; and

(5) an identification of all Federal property to be retained by the Federal Government on the Pribilof Islands to meet its responsibilities as described in this Act and under the Convention.

(c) Not later than 3 months after the date of the enactment of the Pribilof Islands Transition Act, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report that includes—

(1) a description of all property specified in the document referred to in subsection (a) that has been conveyed under that subsection;

(2) a description of all Federal property specified in the document referred to in subsection (a) that is going to be conveyed under that subsection; and

(3) an identification of all Federal property on the Pribilof Islands that will be retained by the Federal Government to meet its responsibilities under this Act, the Convention, and any other applicable law.

(d) A Memorandum of Understanding shall be entered into by the Secretary, a representative of the local governmental authority on each Island, the trustee or trustees, and the appropriate officer of the State of Alaska setting forth the respective responsibilities of the Federal Government, the Trust, and the State regarding—

(1) application of Federal retirement benefits, severance pay, and insurance benefits with respect to Natives of the Pribilof Islands;

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[1] Section 144(e)(5)(C) of the Miscellaneous Appropriations Act, 2001 (114 Stat. 2763A–247) provides as follows:

(C) Effective on the date on which the Secretary of Commerce makes the certification described in subparagraph (b)(2), the following provisions are repealed:

(i) Section 205 of the Fur Seal Act of 1966 (16 U.S.C. 1165).

(ii) Section 3 of Public Law 104–91 (16 U.S.C. 1165 note).

The reference to "subparagraph (b)(2)" probably was intended to be to "subparagraph (B)(ii)". Compare to section 105(c) of Public Law 106–562 (114 Stat. 2798).

(2) funding to be allocated by the State of Alaska for the construction of boat harbors on St. Paul and St. George Islands;

(3) assumption of the State of Alaska of traditional State responsibilities for facilities and services on such islands in accordance with applicable laws and regulations;

(4) preservation of wildlife resources within the Secretary's jurisdiction;

(5) continued activities relating to the implementation of the Convention;

(6) oversight of the operation of the Trust, established by section 206(a) to further progress toward creation of a stable, diversified, and enduring economy not dependent on commercial fur sealing;

(7) the cooperation of government agencies, rendered through existing programs, in assisting with an orderly transition from Federal management and the creation of a private enterprise economy on the Pribilof Islands as described in this Act; and

(8) such other matters as may be necessary and appropriate for carrying out the purposes of the Act, including the assumption of responsibilities to ensure an orderly transition from Federal management of the Pribilof Islands.

The Memorandum shall be submitted to Congress on or before October 31, 1983.

(e) The grant, sale, transfer or conveyance of any real or personal property pursuant to this section shall not be subject to any form of Federal, State or local taxation. The basis for computing gain or loss on subsequent sale or disposition of such real or personal property for purposes of any Federal, State, or local tax imposed on, or measured by revenue shall be the fair market value of such real or personal property at the time of receipt.

(f) In carrying out the purposes of this Act, the Secretary is authorized to enter into agreements, including but not limited to land exchange agreements with other Departments and Agencies of both the State and Federal Governments, and with third parties, notwithstanding any provision of law relating to the transfer and disposal of Federal property to the contrary; except that the authority of the Secretary of the Interior regarding exchanges involving lands in the National Wildlife Refuge System on the date of enactment of the Fur Seal Act Amendments of 1983 is not affected by this section.

SEC. 206. [16 U.S.C. 1166] (a)(1) Subject to the availability of appropriations, the Secretary shall provide financial assistance to any city government, village corporation, or tribal council of St. George, Alaska, or St. Paul, Alaska.

(2) Notwithstanding any other provision of law relating to matching funds, funds provided by the Secretary as assistance under this subsection may be used by the entity as non-Federal matching funds under any Federal program that requires such matching funds.

(3) The Secretary may not use financial assistance authorized by this Act—

(A) to settle any debt owed to the United States;

(B) for administrative or overhead expenses; or

(C) for contributions sought or required from any person for costs or fees to clean up any matter that was caused or contributed to by such person on or after March 15, 2000.

(4) In providing assistance under this subsection the Secretary shall transfer any funds appropriated to carry out this section to the Secretary of the Interior, who shall obligate such funds through instruments and procedures that are equivalent to the instruments and procedures required to be used by the Bureau of Indian Affairs pursuant to title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(5) In any fiscal year for which less than all of the funds authorized under subsection (c)(1) are appropriated, such funds shall be distributed under this subsection on a pro rata basis among the entities referred to in subsection (c)(1) in the same proportions in which amounts are authorized by that subsection for grants to those entities.

(b)(1) Subject to the availability of appropriations, the Secretary shall provide assistance to the State of Alaska for designing, locating, constructing, redeveloping, permitting, or certifying solid waste management facilities on the Pribilof Islands to be operated under permits issued to the City of St. George and the City of St. Paul, Alaska, by the State of Alaska under section 46.03.100 of the Alaska Statutes.

(2) The Secretary shall transfer any appropriations received under paragraph (1) to the State of Alaska for the benefit of rural and Native villages in Alaska for obligation under section 303 of Public Law 104–182, except that subsection (b) of that section shall not apply to those funds.

(3) In order to be eligible to receive financial assistance under this subsection, not later than 180 days after the date of enactment of this paragraph, each of the Cities of St. Paul and St. George shall enter into a written agreement with the State of Alaska under which such City shall identify by its legal boundaries the tract or tracts of land that such City has selected as the site for its solid waste management facility and any supporting infrastructure.

(c) There are authorized to be appropriated to the Secretary for fiscal years 2001, 2002, 2003, 2004, and 2005—

(1) for assistance under subsection (a) a total not to exceed—

(A) $9,000,000, for grants to the City of St. Paul;

(B) $6,300,000, for grants to the Tanadgusix Corporation;

(C) $1,500,000, for grants to the St. Paul Tribal Council;

(D) $6,000,000, for grants to the City of St. George;

(E) $4,200,000, for grants to the St. George Tanaq Corporation; and

(F) $1,000,000, for grants to the St. George Tribal Council; and

(2) for assistance under subsection (b), for fiscal years 2001, 2002, 2003, 2004, and 2005 a total not to exceed—

(A) $6,500,000 for the City of St. Paul; and

(B) $3,500,000 for the City of St. George.

(d) None of the funds authorized by this section may be available for any activity a purpose of which is to influence legislation pending before the Congress, except that this subsection shall not prevent officers or employees of the United States or of its departments, agencies, or commissions from communicating to Members of Congress, through proper channels, requests for legislation or appropriations that they consider necessary for the efficient conduct of public business.

(e) Neither the United States nor any of its agencies, officers, or employees shall have any liability under this Act or any other law associated with or resulting from the designing, locating, contracting for, redeveloping, permitting, certifying, operating, or maintaining any solid waste management facility on the Pribilof Islands as a consequence of—

(1) having provided assistance to the State of Alaska under subsection (b); or

(2) providing funds for, or planning, constructing, or operating, any interim solid waste management facilities that may be required by the State of Alaska before permanent solid waste management facilities constructed with assistance provided under subsection (b) are complete and operational.

In addition, there are authorized to be appropriated to the Secretary $3,200,000 for fiscal year 1989 and $1,800,000 for fiscal year 1990 to be used for the purpose of funding the Saint Paul Island Trust, as established pursuant to subsection (a)(1) of this section, and $3,700,000 for fiscal year 1990 to be used for the purpose of funding the Saint George Trust, as established pursuant to subsection (a)(1).

(f) Each entity which receives assistance authorized under subsection (c) shall submit an audited statement listing the expenditure of that assistance to the Committee on Appropriations and the Committee on Resources of the House of Representatives and the Committee on Appropriations and the Committee on Commerce, Science, and Transportation of the Senate, on the last day of fiscal years 2002, 2004, and 2006.

(g) Amounts authorized under subsection (c) are intended by Congress to be provided in addition to the base funding appropriated to the National Oceanic and Atmospheric Administration in fiscal year 2000.

SEC. 207. [16 U.S.C. 1167] The Secretary is authorized to enter into agreements or contracts or leases with, or to issue permits to, any public or private agency or person for carrying out the provisions of the Convention or this Act.

SEC. 208. [16 U.S.C. 1168] (a) Service by natives of the Pribilof Islands engaged in the taking and curing of fur seal skins and other activities in connection with the administration of such islands prior to January 1, 1950, as determined by the Secretary based on records available to him, shall be considered for purposes of credit under the Civil Service Retirement Act, as amended, as civilian service performed by an employee, as defined in said Act.

(b) The annuity of any person or the annuity of the survivor of any person who shall have performed service described in subsection (a) of this section, and who, prior to November 2, 1966, died or shall have been retired on annuity payable from the civil service retirement and disability fund, shall, upon application filed by the

annuitant within one year after November 2, 1966, be adjusted, effective as of the first day of the month immediately following November 2, 1966, so that the amount of the annuity shall be the same as if such subsection had been in effect at the time of such person's retirement or death.

(c) In no case shall credit for the service described in subsection (a) of this section entitle a person to the benefits of section 11(h) of the Civil Service Retirement Act.

(d) Notwithstanding any other provisions of this Act or any other law, benefits under the Civil Service Retirement Act made available by reason of the provisions of this section shall be paid from the civil service retirement and disability fund subject to reimbursement to such fund from the Operations, Research, and Facilities Account of the National Oceanic and Atmospheric Administration in the Department of Commerce, for the purpose of compensating said retirement fund for the cost, as determined by the Civil Service Commission during each fiscal year, of benefits provided by this section.

[SEC. 209. Made amendments to chapter 83 of title 5, United States Code.]

[SEC. 210. (a) Made an amendment to section 105(e) of Public Law 93–638.]

(b) [25 U.S.C. 450i note] Notwithstanding any other provision of Law, any Native of the Pribilof Islands employed by the Federal government[1] on October 28, 1983, shall be deemed to have been covered under chapters 81, 83, 85 and 87 of title 5, United States Code, on such date for the purposes of determining eligibility for continuity of benefits under section 105(e) of the Act of January 4, 1975 (Public Law 93–638), known as the Indian Self-Determination and Education Assistance Act.

SEC. 211. [16 U.S.C. 1169] The Secretary is authorized to prescribe such regulations as he deems necessary to carry out the provisions of this title.

SEC. 212. [16 U.S.C. 1169a] (a)(1)[2] An annuity or survivor annuity based on the service of an employee or Member who performed service described in the second paragraph (13) of subsection (b) or subsection (l)(1)(C) of section 8332 of title 5, United States Code, as added by subsections (b) and (e), respectively, of section 209 of this Act, shall, upon application to the Office of Personnel Management, be recomputed in accordance with the second paragraph (13) of subsection (b) and subsection (l), respectively, of such section 8332, regardless of whether the employee or Member retires before, on, or after the effective date of this paragraph.

(2) Any recomputation of annuity under paragraph (1) of this subsection shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received by the Office.

SEC. 212.[3] [16 U.S.C. 1169b] Notwithstanding any other law to the contrary, the Secretary of Commerce shall, to the maximum extent practicable, carry out activities under subsection (a) and fulfill other obligations under Federal and State law relating to the

[1] So in law. Probably should be "Government".
[2] So in law. This section was enacted without enacting a subsection (b).
[3] The second section 212 resulted from the amendment made by section 144(e)(6)(A)(ii) of the Miscellaneous Appropriations Act, 2001 (114 Stat. 2763A–248).

Pribilof Islands, through grants or other agreements with local entities and residents of the Pribilof Islands, unless specialized skills are needed for an activity, and the Secretary specifies in writing that such skills are not available through local entities and residents of the Pribilof Islands.

TITLE III—ENFORCEMENT

SEC. 301. [16 U.S.C. 1171] (a) Every vessel subject to the jurisdiction of the United States that is employed in any manner in connection with a violation of the provision of this Act, including its tackle, apparel, furniture, appurtenances, cargo, and stores shall be subject to forfeiture; and all fur seals, or parts thereof, taken or retained in violation of this Act, or the monetary value thereof, shall be forfeited.

(b) All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of a vessel, including its tackle, apparel, furniture, appurtenances, cargo, and stores for violation of the customs laws, the disposition of such vessel, including its tackle, apparel, furniture, appurtenances, cargo, and stores or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to 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.

SEC. 302. [16 U.S.C. 1172] (a) Enforcement of the provisions of this Act is the joint responsibility of the Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating. In addition, the Secretary may designate officers and employees of the States of the United States to enforce the provisions of this Act which relate to persons or vessels subject to the jurisdiction of the United States. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes; but they shall not be held and considered as employees of the United States for the purpose of any laws administered by the Office of Personnel Management.

(b) The judges of the United States district courts and United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process, including warrants or other process issued in admiralty proceedings in Federal district courts, as may be required for enforcement of this Act and any regulations issued thereunder.

(c) Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this Act.

(d) Such person so authorized shall have the power—

(1) with or without a warrant or other process, to arrest any person committing in his presence or view a violation of this Act or the regulations issued thereunder; [1]

(2) with a warrant or other process or without a warrant, if he has reasonable cause to believe that a vessel subject to the jurisdiction of the United States or any person onboard is

[1] So in law. Should include "and" after the semicolon.

in violation of any provision of this Act or the regulations issued thereunder, to search such vessel and to arrest such person.

(e) Such person so authorized may seize any vessel subject to the jurisdiction of the United States, together with its tackle, apparel, furniture, appurtenances, cargo, and stores, used or employed contrary to the provisions of this Act or the regulations issued hereunder or which it reasonably appears has been used or employed contrary to the provisions of this Act or the regulations issued hereunder.

(f) Such person so authorized may seize, whenever and wherever lawfully found, all fur seals taken or retained in violation of this Act or the regulations issued thereunder. Any fur seals so seized or forfeited to the United States pursuant to this Act shall be disposed of in accordance with the provisions of section 105 of this Act.

SEC. 303. [16 U.S.C. 1173] The Secretary is authorized to prescribe such regulations as he deems necessary and appropriate to carry out the provisions of this title.

SEC. 304. [16 U.S.C. 1174] (a) Any person who knowingly violates any provision of this Act or of any permit or regulation issued thereunder shall, upon conviction, be fined not more than $20,000 for such violation, or imprisoned for not more than one year, or both.

(b) Any person who violates any provision of this Act or any regulation or permit issued hereunder may be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Hearings held during proceedings for the assessment of civil penalties authorized by this subsection shall be conducted in accordance with section 554 of title 5. 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. Any civil penalty assessed may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute 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.

SEC. 305. [16 U.S.C. 1175] (a) There are authorized to be appropriated to the operations, research, and facilities account of the National Oceanic and Atmospheric Administration in the Depart-

ment of Commerce, such sums as may be necessary, up to $2,000,000, for fiscal year 1984 for the purpose of upgrading Federal property to be transferred pursuant to section 205 of this Act, $736,000 for fiscal year 1984 for the purposes of sections 104 and 208 of this Act and such sums as may be necessary for each fiscal year thereafter for the purposes of sections 104 and 208 of this Act.

(b) The contract authority of the Secretary under this Act is effective for any fiscal year only to the extent that appropriations are available for such purposes.

SECTION 105 OF THE PRIBILOF ISLANDS TRANSITION ACT

SECTION 105 OF THE PRIBILOF ISLANDS TRANSITION ACT

[Public Law 106–562, Approved December 23, 2000, 114 Stat. 2794]

AN ACT To To complete the orderly withdrawal of the NOAA from the civil administration of the Pribilof Islands, Alaska, and to assist in the conservation of coral reefs, and for other purposes.

SEC. 105. [16 U.S.C. 1161 note] TERMINATION OF RESPONSIBILITIES.

(a) FUTURE OBLIGATION.—

(1) IN GENERAL.—The Secretary of Commerce shall not be considered to have any obligation to promote or otherwise provide for the development of any form of an economy not dependent on sealing on the Pribilof Islands, Alaska, including any obligation under section 206 of the Fur Seal Act of 1966 (16 U.S.C. 1166) or section 3(c)(1)(A) of Public Law 104–91 (16 U.S.C. 1165 note).

(2) SAVINGS.—This subsection shall not affect any cause of action under section 206 of the Fur Seal Act of 1966 (16 U.S.C. 1166) or section 3(c)(1)(A) of Public Law 104–91 (16 U.S.C. 1165 note)—

(A) that arose before the date of the enactment of this title; and

(B) for which a judicial action is filed before the expiration of the 5-year period beginning on the date of the enactment of this title.

(3) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to imply that—

(A) any obligation to promote or otherwise provide for the development in the Pribilof Islands of any form of an economy not dependent on sealing was or was not established by section 206 of the Fur Seal Act of 1966 (16 U.S.C. 1166), section 3(c)(1)(A) of Public Law 104–91 (16 U.S.C. 1165 note), or any other provision of law; or

(B) any cause of action could or could not arise with respect to such an obligation.

(4) CONFORMING AMENDMENT.—Section 3(c)(1) of Public Law 104–91 (16 U.S.C. 1165 note) is amended by striking subparagraph (A) and redesignating subparagraphs (B) through (D) in order as subparagraphs (A) through (C).

(b) PROPERTY CONVEYANCE AND CLEANUP.—

(1) IN GENERAL.—Subject to paragraph (2), there are terminated all obligations of the Secretary of Commerce and the United States to—

(A) convey property under section 205 of the Fur Seal Act of 1966 (16 U.S.C. 1165); and

(B) carry out cleanup activities, including assessment, response, remediation, and monitoring, except for postremedial measures such as monitoring and operation and maintenance activities, related to National Oceanic and Atmospheric Administration administration of the Pribilof Islands, Alaska, under section 3 of Public Law 104–91 (16 U.S.C. 1165 note) and the Pribilof Islands Environmental Restoration Agreement between the National Oceanic and Atmospheric Administration and the State of Alaska, signed January 26, 1996.

(2) APPLICATION.—Paragraph (1) shall apply on and after the date on which the Secretary of Commerce certifies that—

(A) the State of Alaska has provided written confirmation that no further corrective action is required at the sites and operable units covered by the Pribilof Islands Environmental Restoration Agreement between the National Oceanic and Atmospheric Administration and the State of Alaska, signed January 26, 1996, with the exception of postremedial measures, such as monitoring and operation and maintenance activities;

(B) the cleanup required under section 3(a) of Public Law 104–91 (16 U.S.C. 1165 note) is complete;

(C) the properties specified in the document referred to in subsection (a) of section 205 of the Fur Seal Act of 1966 (16 U.S.C. 1165(a)) can be unconditionally offered for conveyance under that section; and

(D) all amounts appropriated under section 206(c)(1) of the Fur Seal Act of 1966, as amended by this title, have been obligated.

(3) FINANCIAL CONTRIBUTIONS FOR CLEANUP COSTS.—(A) On and after the date on which section 3(b)(5) of Public Law 104–91 (16 U.S.C. 1165 note) is repealed pursuant to subsection (c), the Secretary of Commerce may not seek or require financial contribution by or from any local governmental entity of the Pribilof Islands, any official of such an entity, or the owner of land on the Pribilof Islands, for cleanup costs incurred pursuant to section 3(a) of Public Law 104–91 (as in effect before such repeal), except as provided in subparagraph (B).

(B) Subparagraph (A) shall not limit the authority of the Secretary of Commerce to seek or require financial contribution from any person for costs or fees to clean up any matter that was caused or contributed to by such person on or after March 15, 2000.

(4) CERTAIN RESERVED RIGHTS NOT CONDITIONS.—For purposes of paragraph (2)(C), the following requirements shall not be considered to be conditions on conveyance of property:

(A) Any requirement that a potential transferee must allow the National Oceanic and Atmospheric Administration continued access to the property to conduct environmental monitoring following remediation activities.

(B) Any requirement that a potential transferee must allow the National Oceanic and Atmospheric Administration access to the property to continue the operation, and eventual closure, of treatment facilities.

(C) Any requirement that a potential transferee must comply with institutional controls to ensure that an environmental cleanup remains protective of human health or the environment that do not unreasonably affect the use of the property.

(D) Valid existing rights in the property, including rights granted by contract, permit, right-of-way, or easement.

(E) The terms of the documents described in subsection (d)(2).

(c) REPEALS.—Effective on the date on which the Secretary of Commerce makes the certification described in subsection (b)(2), the following provisions are repealed:

(1) Section 205 of the Fur Seal Act of 1966 (16 U.S.C. 1165).

(2) Section 3 of Public Law 104–91 (16 U.S.C. 1165 note).

(d) SAVINGS.—

(1) IN GENERAL.—Nothing in this title shall affect any obligation of the Secretary of Commerce, or of any Federal department or agency, under or with respect to any document described in paragraph (2) or with respect to any lands subject to such a document.

(2) DOCUMENTS DESCRIBED.—The documents referred to in paragraph (1) are the following:

(A) The Transfer of Property on the Pribilof Islands: Description, Terms, and Conditions, dated February 10, 1984, between the Secretary of Commerce and various Pribilof Island entities.

(B) The Settlement Agreement between Tanadgusix Corporation and the City of St. Paul, dated January 11, 1988, and approved by the Secretary of Commerce on February 23, 1988.

(C) The Memorandum of Understanding between Tanadgusix Corporation, Tanaq Corporation, and the Secretary of Commerce, dated December 22, 1976.

(e) DEFINITIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the definitions set forth in section 101 of the Fur Seal Act of 1966 (16 U.S.C. 1151) shall apply to this section.

(2) NATIVES OF THE PRIBILOF ISLANDS.—For purposes of this section, the term "Natives of the Pribilof Islands" includes the Tanadgusix Corporation, the St. George Tanaq Corporation, and the city governments and tribal councils of St. Paul and St. George, Alaska.

MARINE MAMMAL PROTECTION ACT OF 1972

MARINE MAMMAL PROTECTION ACT OF 1972

[Public Law 92–522, Approved Oct. 21, 1972, 86 Stat. 1027]

[Amended through Public Law 106–555, Dec. 21, 2000]

AN ACT To protect marine mammals; to establish a Marine Mammal Commission; for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Marine Mammal Protection Act of 1972".

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FINDINGS AND DECLARATION OF POLICY

SEC. 2. [16 U.S.C. 1361] The Congress finds that—

(1) certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities;

(2) such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population. Further measures should be immediately taken to replenish any species or population stock which has already diminished below that population. In particular, efforts should be made to protect essential habitats, including the rookeries, mating grounds, and areas of similar significance for each species of marine mammal from the adverse effect of man's actions;

(3) there is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully;

(4) negotiations should be undertaken immediately to encourage the development of international arrangements for research on, and conservation of, all marine mammals;

(5) marine mammals and marine mammal products either—

(A) move in interstate commerce, or

(B) affect the balance of marine ecosystems in a manner which is important to other animals and animal products which move in interstate commerce,

and that the protection and conservation of marine mammals and their habitats is therefore necessary to insure the continuing availability of those products which move in interstate commerce; and

(6) marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic, and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this

primary objective, it should be the goal to obtain an optimum sustainable population keeping in mind the carrying capacity of the habitat.

DEFINITIONS

SEC. 3. [16 U.S.C. 1362] For the purposes of this Act—

(1) The term "depletion" or "depleted" means any case in which—

(A) the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act, determines that a species or population stock is below its optimum sustainable population;

(B) a State, to which authority for the conservation and management of a species or population stock is transferred under section 109, determines that such species or stock is below its optimum sustainable population; or

(C) a species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973.

(2) The terms "conservation" and "management" mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of marine mammals at their optimum sustainable population. Such terms include the entire scope of activities that constitute a modern scientific resource program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(3) The term "district court of the United States" includes the District Court of Guam, District Court of the Virgin Islands, District Court of Puerto Rico, District Court of the Canal Zone, and, in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii.

(4) The term "humane" in the context of the taking of a marine mammal means that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved.

(5) The term "intermediary nation" means a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B).

(6) The term "marine mammal" means any mammal which (A) is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia and Cetacea), or (B) primarily inhabits the marine environment (such as the polar bear); and, for the purposes of this Act, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.

(7) The term "marine mammal product" means any item of merchandise which consists, or is composed in whole or in part, of any marine mammal.

(8) The term "moratorium" means a complete cessation of the taking of marine mammals and a complete ban on the importation into the United States of marine mammals and marine mammal products, except as provided in this Act.

(9) The term "optimum sustainable population" means, with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

(10) The term "person" includes (A) any private person or entity, and (B) any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(11) The term "population stock" or "stock" means a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature.

(12)(A) Except as provided in subparagraph (B), the term "Secretary" means—

(i) The Secretary of the department in which the National Oceanic and Atmospheric Administration is operating, as to all responsibility, authority, funding, and duties under this Act with respect to members of the order Cetacea and members, other than walruses, of the order Pinnipedia, and

(ii) The Secretary of the Interior as to all responsibility, authority, funding, and duties under this Act with respect to all other marine mammals covered by this Act.

(B) in[1] section 118 and title IV (other than section 408) the term "Secretary" means the Secretary of Commerce.

(13) The term "take" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

(14) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and Northern Mariana Islands.

(15) The term "waters under the jurisdiction of the United States" means—

(A) the territorial sea of the United States;

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the other boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the

[1] So in law. Should be "In".

Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured, except that this subparagraph shall not apply before the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States.

(16) The term "fishery" means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(17) The term "competent regional organization"—

(A) for the tuna fishery in the eastern tropical Pacific Ocean, means the Inter-American Tropical Tuna Commission; and

(B) in any other case, means an organization consisting of those nations participating in a tuna fishery, the purpose of which is the conservation and management of that fishery and the management of issues relating to that fishery.

(18)(A) The term "harassment" means any act of pursuit, torment, or annoyance which—

(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

(B) The term "Level A harassment" means harassment described in subparagraph (A)(i).

(C) The term "Level B harassment" means harassment described in subparagraph (A)(ii).

(19) The term "strategic stock" means a marine mammal stock—

(A) for which the level of direct human-caused mortality exceeds the potential biological removal level;

(B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future; or

(C) which is listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or is designated as depleted under this Act.

(20) The term "potential biological removal level" means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum

sustainable population. The potential biological removal level is the product of the following factors:

(A) The minimum population estimate of the stock.

(B) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size.

(C) A recovery factor of between 0.1 and 1.0.

(21) The term "Regional Fishery Management Council" means a Regional Fishery Management Council established under section 302 of the Magnuson Fishery Conservation and Management Act.

(22) The term "bona fide research" means scientific research on marine mammals, the results of which—

(A) likely would be accepted for publication in a referred scientific journal;

(B) are likely to contribute to the basic knowledge of marine mammal biology or ecology; or

(C) are likely to identify, evaluate, or resolve conservation problems.

(23) The term "Alaska Native organization" means a group designated by law or formally chartered which represents or consists of Indians, Aleuts, or Eskimos residing in Alaska.

(24) The term "take reduction plan" means a plan developed under section 118.

(25) The term "take reduction team" means a team established under section 118.

(26) The term "net productivity rate" means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

(27) The term "minimum population estimate" means an estimate of the number of animals in a stock that—

(A) is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

(B) provides reasonable assurance that the stock size is equal to or greater than the estimate.

(28) The term "International Dolphin Conservation Program" means the international program established by the agreement signed in LaJolla, California, in June, 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama.

(29) The term "Declaration of Panama" means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

EFFECTIVE DATE

SEC. 4. The provisions of this Act shall take effect upon the expiration of the sixty-day period following the date of its enactment.

TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

MORATORIUM AND EXCEPTIONS

SEC. 101. [16 U.S.C. 1371] (a) There shall be a moratorium on the taking and importation of marine mammals and marine mam-

mal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) Consistent with the provisions of section 104, permits may be issued by the Secretary for taking, and importation for purposes of scientific research, public display, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock, or for importation of polar bear parts (other than internal organs) taken in sport hunts in Canada. Such permits, except permits issued under section 104(c)(5), may be issued if the taking or importation proposed to be made is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II. The Commission and Committee shall recommend any proposed taking or importation, other than importation under section 104(c)(5), which is consistent with the purposes and policies of section 2 of this Act. If the Secretary issues such a permit for importation, the Secretary shall issue to the importer concerned a certificate to that effect in such form as the Secretary of the Treasury prescribes, and such importation may be made upon presentation of the certificate to the customs officer concerned.

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 104 subject to regulations prescribed by the Secretary in accordance with section 103, or in lieu of such permits, authorizations may be granted therefor under section 118, subject to regulations prescribed under that section by the Secretary without regard to section 103. Such authorizations may be granted under title III with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that title by the Secretary without regard to section 103. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary—

(A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States;

(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

(i)(I) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of section 4 of the International Dolphin Conservation Program Act; or

(II) the tuna or products therefrom were harvested after the effective date of section 4 of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and

(iii) the total dolphin mortality limits, and per-stock per-year dolphin mortality limits permitted for that nation's vessels under the International Dolphin Conservation Program do not exceed the limits determined for 1997, or for any year thereafter, consistent with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality, and requirements of the International Dolphin Conservation Program;

(C) shall not accept such documentary evidence if—

(i) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner—

(I) to allow determination of compliance with the International Dolphin Conservation Program; and

(II) for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)); or

(ii) after taking into consideration such information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting

nation is not in compliance with the International Dolphin Conservation Program.

(D) shall require the government of any intermediary nation to certify and provide reasonable proof to the Secretary that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States under subparagraph (B);

(E) shall, six months after importation of yellowfin tuna or tuna products has been banned under this section, certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)) for as long as such ban is in effect; and

(F)(i) except as provided in clause (ii), in the case of fish or products containing fish harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the fish or fish product was not harvested with a large-scale driftnet in the South Pacific Ocean after July 1, 1991, or in any other water of the high seas after January 1, 1993, and

(ii) in the case of tuna or a product containing tuna harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the tuna or tuna product was not harvested with a large-scale driftnet anywhere on the high seas after July 1, 1991.

For purposes of subparagraph (F), the term "driftnet" has the meaning given such term in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note), except that, until January 1, 1994, the term "driftnet" does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

(3)(A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this Act to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 102, 103, 104, and 111 of this title permitting and governing such taking and importing, in accordance with such determinations: Provided, however, That the Secretary, in making such determinations, must be assured that the taking of such marine mammal is in accord with sound principles of resource protection and conservation

as provided in the purposes and policies of this Act: Provided further, however, That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this Act. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock as provided for in paragraph (1) of this subsection, or as provided for under paragraph (5) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

(4)(A) Except as provided in subparagraphs (B) and (C), the provisions of this Act shall not apply to the use of measures—

(i) by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch;

(ii) by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property;

(iii) by any person, to deter a marine mammal from endangering personal safety; or

(iv) by a government employee, to deter a marine mammal from damaging public property,

so long as such measures do not result in the death or serious injury of a marine mammal.

(B) The Secretary shall, through consultation with appropriate experts, and after notice and opportunity for public comment, publish in the Federal Register a list of guidelines for use in safely deterring marine mammals. In the case of marine mammals listed as endangered species or threatened species under the Endangered Species Act of 1973, the Secretary shall recommend specific measures which may be used to nonlethally deter marine mammals. Actions to deter marine mammals consistent with such guidelines or specific measures shall not be a violation of this Act.

(C) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods, after notice and opportunity for public comment, through regulation under this Act.

(D) The authority to deter marine mammals pursuant to subparagraph (A) applies to all marine mammals, including all stocks designated as depleted under this Act.

(5)(A) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region

of small numbers of marine mammals of a species or population stock if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

(i) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or, in the case of a cooperative agreement under both this Act and the Whaling Convention Act of 1949, pursuant to section 112(c); and

(ii) prescribes regulations setting forth

(I) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses; and

(II) requirements pertaining to the monitoring and reporting of such taking.

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that—

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

(ii) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.

(D)(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specific geographic region, the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned—

(I) will have a negligible impact on such species or stock, and

(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b), or section 109(f) or pursuant to a cooperative agreement under section 119.

(ii) The authorization for such activity shall prescribe, where applicable—

(I) permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or pursuant to a cooperative agreement under section 119,

(II) the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or pursuant to a cooperative agreement under section 119, and

(III) requirements pertaining to the monitoring and reporting of such taking by harassment, including requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or pursuant to a cooperative agreement under section 119.

(iii) The Secretary shall publish a proposed authorization not later than 45 days after receiving an application under this subparagraph and request public comment through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media and to all locally affected communities for a period of 30 days after publication. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in clause (i), the Secretary shall issue an authorization with appropriate conditions to meet the requirements of clause (ii).

(iv) The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses [1] (i) or (ii) are not being met.

(v) A person conducting an activity for which an authorization has been granted under this subparagraph shall not be subject to the penalties of this Act for taking by harassment that occurs in compliance with such authorization.

(E)(i) During any period of up to 3 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Con-

[1] So in law. Probably should be "clause". See section 4(a)(5) of the Marine Mammal Protection Act Amendments of 1994 (P.L. 103–238; 108 Stat. 534).

servation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that—

(I) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(II) a recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(III) where required under section 118, a monitoring program is established under subsection (d) of such section, vessels engaged in such fisheries are registered in accordance with such section, and a take reduction plan has been developed or is being developed for such species or stock.

(ii) Upon a determination by the Secretary that the requirements of clause (i) have been met, the Secretary shall publish in the Federal Register a list of those fisheries for which such determination was made, and, for vessels required to register under section 118, shall issue an appropriate permit for each authorization granted under such section to vessels to which this paragraph applies. Vessels engaged in a fishery included in the notice published by the Secretary under this clause which are not required to register under section 118 shall not be subject to the penalties of this Act for the incidental taking of marine mammals to which this paragraph applies, so long as the owner or master of such vessel reports any incidental mortality or injury of such marine mammals to the Secretary in accordance with section 118.

(iii) If, during the course of the commercial fishing season, the Secretary determines that the level of incidental mortality or serious injury from commercial fisheries for which a determination was made under clause (i) has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Secretary shall use the emergency authority granted under section 118 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(iv) The Secretary may suspend for a time certain or revoke a permit granted under this subparagraph only if the Secretary determines that the conditions or limitations set forth in such permit are not being complied with. The Secretary may amend or modify, after notice and opportunity for public comment, the list of fisheries published under clause (ii) whenever the Secretary determines there has been a significant change in the information or conditions used to determine such list.

(v) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this subparagraph.

(vi) This subparagraph shall not govern the incidental taking of California sea otters and shall not be deemed to amend

or repeal the Act of November 7, 1986 (Public Law 99–625; 100 Stat. 3500).

(6)(A) A marine mammal product may be imported into the United States if the product—

(i) was legally possessed and exported by any citizen of the United States in conjunction with travel outside the United States, provided that the product is imported into the United States by the same person upon the termination of travel;

(ii) was acquired outside of the United States as part of a cultural exchange by an Indian, Aleut, or Eskimo residing in Alaska; or

(iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is imported for noncommercial purposes in conjunction with travel within the United States or as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.

(B) For the purposes of this paragraph, the term—

(i) "Native inhabitant of Russia, Canada, or Greenland" means a person residing in Russia, Canada, or Greenland who is related by blood, is a member of the same clan or ethnological grouping, or shares a common heritage with an Indian, Aleut, or Eskimo residing in Alaska; and

(ii) "cultural exchange" means the sharing or exchange of ideas, information, gifts, clothing, or handicrafts between an Indian, Aleut, or Eskimo residing in Alaska and a Native inhabitant of Russia, Canada, or Greenland, including rendering of raw marine mammal parts as part of such exchange into clothing or handicrafts through carving, painting, sewing, or decorating.

(b) Except as provided in section 109, the provisions of this Act shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

(1) is for subsistence purposes; or

(2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: Provided, That only authentic native articles of handicrafts and clothing may be sold in interstate commerce: And provided further, That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of panto-graphs, 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; and

(3) in each case, is not accomplished in a wasteful manner.

Notwithstanding the preceding provisions of this subsection, when, under this Act, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos

to be depleted, he may prescribe regulations upon thetaking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, 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 purposes of this Act. Such regulations shall be prescribed after notice and hearing required by section 103 of this title and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared. In promulgating any regulation or making any assessment pursuant to a hearing or proceeding under this subsection or section 117(b)(2), or in making any determination of depletion under this subsection or finding regarding unmitigable adverse impacts under subsection (a)(5) that affects stocks or persons to which this subsection applies, the Secretary shall be responsible for demonstrating that such regulation, assessment, determination, or finding is supported by substantial evidence on the basis of the record as a whole. The preceding sentence shall only be applicable in an action brought by one or more Alaska Native organizations representing persons to which this subsection applies.

(c) It shall not be a violation of this Act to take a marine mammal if such taking is imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported to the Secretary within 48 hours. The Secretary may seize and dispose of any carcass.

(d) GOOD SAMARITAN EXEMPTION.—It shall not be a violation of this Act to take a marine mammal if—

(1) such taking is imminently necessary to avoid serious injury, additional injury, or death to a marine mammal entangled in fishing gear or debris;

(2) reasonable care is taken to ensure the safe release of the marine mammal, taking into consideration the equipment, expertise, and conditions at hand;

(3) reasonable care is exercised to prevent any further injury to the marine mammal; and

(4) such taking is reported to the Secretary within 48 hours.

(e) ACT NOT TO APPLY TO INCIDENTAL TAKINGS BY UNITED STATES CITIZENS EMPLOYED ON FOREIGN VESSELS OUTSIDE THE UNITED STATES EEZ.—The provisions of this Act shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.

PROHIBITIONS

SEC. 102. [16 U.S.C. 1372] (a) Except as provided in sections 101, 103, 104, 109, 111, 113, 114, and 118 of this title and title IV[1], it is unlawful—

(1) for any person subject to the jurisdiction of the United States or any vessel or other conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas;

(2) except as expressly provided for by an international treaty, convention, or agreement to which the United States is a party and which was entered into before the effective date of this title or by any statute implementing any such treaty, convention, or agreement—

(A) for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States; or

(B) for any person to use any port, harbor, or other place under the jurisdiction of the United States to take or import marine mammals or marine mammal products; and

(3) for any person, with respect to any marine mammal taken in violation of this title, to possess that mammal or any product from that mammal;

(4) for any person to transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal or marine mammal product—

(A) that is taken in violation of this Act; or

(B) for any purpose other than public display, scientific research, or enhancing the survival of a species or stock as provided for under subsection[2] 104(c); and

(5) for any person to use, in a commercial fishery, any means or methods of fishing in contravention of any regulations or limitations, issued by the Secretary for that fishery to achieve the purposes of this Act.

(b) Except pursuant to a permit for scientific research, or for enhancing the survival or recovery of a species or stock, issued under section 104(c) of this title, it is unlawful to import into the United States any marine mammal if such mammal was—

(1) pregnant at the time of taking;

(2) nursing at the time of taking, or less than eight months old, whichever occurs later;

(3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock; or

(4) taken in a manner deemed inhumane by the Secretary.

Notwithstanding the provisions of paragraphs (1) and (2), the Secretary may issue a permit for the importation of a marine mammal, if the Secretary determines that such importation is necessary for the protection or welfare of the animal.

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[1] Error in amendment made by section 24(c)(9) of the Marine Mammal Protection Act Amendments of 1994 (P.L. 103–238, 108 Stat. 566). Section 13(c) of such Act amended section 102(a) by striking "and 114 of this title or title III" and inserting "114, and 118 of this title and title IV". Section 24(c)(9) attempted to amend section 102(a) by striking "title III" and inserting "title IV".

[2] So in law. Probably should be "section". See section 5(a)(2)(C) of the Marine Mammal Protection Act Amendments of 1994 (P.L. 103–238, 108 Stat. 537).

(c) It is unlawful to import into the United States any of the following:

(1) Any marine mammal which was—

(A) taken in violation of this title; or

(B) taken in another country in violation of the law of that country.

(2) Any marine mammal product if—

(A) the importation into the United States of the marine mammal from which such product is made is unlawful under paragraph (1) of this subsection; or

B) the sale in commerce of such product in the country of origin of the product is illegal; [1]

(3) Any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner which the Secretary has proscribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

(d) Subsections (b) and (c) of this section shall not apply—

(1) in the case of marine mammals or marine mammal products, as the case may be, to which subsection (b)(3) of this section applies, to such items imported into the United States before the date on which the Secretary publishes notice in the Federal Register of his proposed rulemaking with respect to the designation of the species or stock concerned as depleted; or

(2) in the case of marine mammals or marine mammal products to which subsection (c)(1)(B) or (c)(2)(B) of this section applies, to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

(e) This Act shall not apply with respect to any marine mammal taken before the effective date of this Act, or to any marine mammal product consisting of, or composed in whole or in part of, any marine mammal taken before such date.

(f) It is unlawful for any person or vessel or other conveyance to take any species of whale incident to commercial whaling in waters subject to the jurisdiction of the United States.

REGULATIONS ON TAKING OF MARINE MAMMALS

SEC. 103. [16 U.S.C. 1373] (a) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, shall prescribe such regulations with respect to the taking and importing of animals from each species of marine mammal (including regulations on the taking and importing of individuals within population stocks) as he deems necessary and appropriate to insure that such taking will not be to the disadvantage of those species and population stocks and will be consistent with the purposes and policies set forth in section 2 of this Act.

(b) In prescribing such regulations, the Secretary shall give full consideration to all factors which may affect the extent to which

[1] So in law. The semicolon probably should be a period.

such animals may be taken or imported, including but not limited to the effect of such regulations on—

(1) existing and future levels of marine mammal species and population stocks;

(2) existing international treaty and agreement obligations of the United States;

(3) the marine ecosystem and related environmental considerations;

(4) the conservation, development, and utilization of fishery resources; and

(5) the economic and technological feasibility of implementation.

(c) The regulations prescribed under subsection (a) of this section for any species or population stock of marine mammal may include, but are not limited to, restrictions with respect to—

(1) the number of animals which may be taken or imported in any calendar year pursuant to permits issued under section 104 of this title;

(2) the age, size, or sex (or any combination of the foregoing) of animals which may be taken or imported, whether or not a quota prescribed under paragraph (1) of this subsection applies with respect to such animals;

(3) the season or other period of time within which animals may be taken or imported;

(4) the manner and locations in which animals may be taken or imported; and

(5) fishing techniques which have been found to cause undue fatalities to any species of marine mammal in a fishery.

(d) Regulations prescribed to carry out this section with respect to any species or stock of marine mammals must be made on the record after opportunity for an agency hearing on both the Secretary's determination to waive the moratorium pursuant to section 101(a)(3)(A) of this title and on such regulations, except that, in addition to any other requirements imposed by law with respect to agency rulemaking, the Secretary shall publish and make available to the public either before or concurrent with the publication of notice in the Federal Register of his intention to prescribe regulations under this section—

(1) a statement of the estimated existing levels of the species and population stocks of the marine mammal concerned;

(2) a statement of the expected impact of the proposed regulations on the optimum sustainable population of such species or population stock;

(3) a statement describing the evidence before the Secretary upon which he proposes to base such regulations; and

(4) any studies made by or for the Secretary or any recommendations made by or for the Secretary or the Marine Mammal Commission which relate to the establishment of such regulations.

(e) Any regulation prescribed pursuant to this section shall be periodically reviewed, and may be modified from time to time in such manner as the Secretary deems consistent with and necessary to carry out the purposes of this Act.

(f) Within six months after the effective date of this Act and every twelve months thereafter, the Secretary shall report to the

public through publication in the Federal Register and to the Congress on the current status of all marine mammal species and population stocks subject to the provisions of this Act. His report shall describe those actions taken and those measures believed necessary, including where appropriate, the issuance of permits pursuant to this title to assure the well-being of such marine mammals.

PERMITS

SEC. 104. [16 U.S.C. 1374] (a) The Secretary may issue permits which authorize the taking or importation of any marine mammal. Permits for the incidental taking of marine mammals in the course of commercial fishing operations may only be issued as specifically provided for in sections[1] 101(a)(5) or 306, or subsection (h) of this section.

(b) Any permit issued under this section shall—

(1) be consistent with any applicable regulation established by the Secretary under section 103 of this title, and

(2) specify

(A) the number and kind of animals which are authorized to be taken or imported,

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported,

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate.

In any case in which an application for a permit cites as a reason for the proposed taking the overpopulation of a particular species or population stock, the Secretary shall first consider whether or not it would be more desirable to transplant a number of animals (but not to exceed the number requested for taking in the application) of that species or stock to a location not then inhabited by such species or stock but previously inhabited by such species or stock.

(c)(1) Any permit issued by the Secretary which authorizes the taking or importation of a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed pursuant to such taking or importation. Any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority.

(2)[2](A) A permit may be issued to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines—

[1] So in law. Probably should be "section". See section 5(b)(1) of the Marine Mammal Protection Act Amendments of 1994 (P.L. 103–238, 108 Stat. 537).

[2] Margins so in law. Section 5(b)(2)(B) of the Marine Mammal Protection Act Amendments of 1994 (P.L. 103–238, 108 Stat. 537) amended paragraph (2) by striking the existing paragraph and inserting this text.

(i) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community;

(ii) is registered or holds a license issued under 7 U.S.C. 2131 et seq.; and

(iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee.

(B) A permit under this paragraph shall grant to the person to which it is issued the right, without obtaining any additional permit or authorization under this Act, to—

(i) take, import, purchase, offer to purchase, possess, or transport the marine mammal that is the subject of the permit; and

(ii) sell, export, or otherwise transfer possession of the marine mammal, or offer to sell, export, or otherwise transfer possession of the marine mammal—

(I) for the purpose of public display, to a person that meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

(II) for the purpose of scientific research, to a person that meets the requirements of paragraph (3); or

(III) for the purpose of enhancing the survival or recovery of a species or stock, to a person that meets the requirements of paragraph (4).

(C) A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any additional permit or authorization under this Act. Such responsibilities shall be limited to—

(i) for the purpose of public display, the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

(ii) for the purpose of scientific research, the responsibility to meet the requirements of paragraph (3), and

(iii) for the purpose of enhancing the survival or recovery of a species or stock, the responsibility to meet the requirements of paragraph (4).

(D) If the Secretary—

(i) finds in concurrence with the Secretary of Agriculture, that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(ii) and is not reasonably likely to meet those requirements in the near future, or

(ii) finds that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A) (i) or (iii) and is not reasonably likely to meet those requirements in the near future,

the Secretary may revoke the permit in accordance with section 104(e), seize the marine mammal, or cooperate with other persons authorized to hold marine mammals under this Act for disposition of the marine mammal. The Secretary may recover from the person expenses incurred by the Secretary for that seizure.

(E) No marine mammal held pursuant to a permit issued under subparagraph (A), or by a person exercising rights under subparagraph (C), may be sold, purchased, exported, or transported unless the Secretary is notified of such action no later than 15 days before such action, and such action is for purposes of public display, scientific research, or enhancing the survival or recovery of a species or stock. The Secretary may only require the notification to include the information required for the inventory established under paragraph (10).

(3) [1](A) The Secretary may issue a permit under this paragraph for scientific research purposes to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose. The Secretary may issue a permit under this paragraph before the end of the public review and comment period required under subsection (d)(2) if delaying issuance of the permit could result in injury to a species, stock, or individual, or in loss of unique research opportunities.

(B) No permit issued for purposes of scientific research shall authorize the lethal taking of a marine mammal unless the applicant demonstrates that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock that is depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

(C) Not later than 120 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, the Secretary shall issue a general authorization and implementing regulations allowing bona fide scientific research that may result only in taking by Level B harassment of a marine mammal. Such authorization shall apply to persons which submit, by 60 days before commencement of such research, a letter of intent via certified mail to the Secretary containing the following:

(i) The species or stocks of marine mammals which may be harassed.

(ii) The geographic location of the research.

(iii) The period of time over which the research will be conducted.

(iv) The purpose of the research, including a description of how the definition of bona fide research as established under this Act would apply.

(v) Methods to be used to conduct the research.

[1] Margins so in law. Section 5(b)(2)(C) of the Marine Mammal Protection Act Amendments of 1994 (P.L. 103–238, 108 Stat. 538) amended paragraph (3) by striking the existing paragraph and inserting this text.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general authorization, the Secretary shall issue a letter to the applicant confirming that the general authorization applies, or, if the proposed research is likely to result in the taking (including Level A harassment) of a marine mammal, shall notify the applicant that subparagraph (A) applies.

(4)(A) A permit may be issued for enhancing the survival or recovery of a species or stock only with respect to a species or stock for which the Secretary, after consultation with the Marine Mammal Commission and after notice and opportunity for public comment, has first determined that—

(i) taking or importation is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock; and

(ii) taking or importation is consistent (I) with any conservation plan adopted by the Secretary under section 115(b) of this title or any recovery plan developed under section 4(f) of the Endangered Species Act of 1973 for the species or stock, or (II) if there is no conservation or recovery plan in place, with the Secretary's evaluation of actions required to enhance the survival or recovery of the species or stock in light to the factors that would be addressed in a conservation plan or a recovery plan.

(B) A permit issued in accordance with this paragraph may allow the captive maintenance of a marine mammal from a depleted species or stock only if the Secretary—

(i) determines that captive maintenance is likely to contribute to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing biological information, or establishing animal reserves;

(ii) determines that the expected benefit to the affected species or stock outweighs the expected benefit of alternatives which do not require removal of animals from the wild; and

(iii) requires that the marine mammal or its progeny be returned to the natural habitat of the species or stock as soon as feasible, consistent with the objectives of any applicable conservation plan or recovery plan, or of any evaluation by the Secretary under subparagraph (A).

The Secretary may allow the public display of such a marine mammal only if the Secretary determines that such display is incidental to the authorized maintenance and will not interfere with the attainment of the survival or recovery objectives.

(5) [1](A) The Secretary may issue a permit for the importation of polar bear parts (other than internal organs) taken in sport hunts in Canada to an applicant which submits with its permit application proof that the polar bear was legally harvested in Canada by the applicant. Such a permit shall be issued if the Secretary, in consultation with the Marine Mammal Commission and after notice and opportunity for public comment, finds that—

[1] Margins so in law. Section 5(b)(2)(D) of the Marine Mammal Protection Act Amendments of 1994 (P.L. 103–238, 108 Stat. 539) added paragraphs (5) through (10).

(i) Canada has a monitored and enforced sport hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears;

(ii) Canada has a sport hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level;

(iii) the export and subsequent import are consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other international agreements and conventions; and

(iv) the export and subsequent import are not likely to contribute to illegal trade in bear parts.

(B) The Secretary shall establish and charge a reasonable fee for permits issued under this paragraph. All fees collected under this paragraph shall be available to the Secretary until expended for use in developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia pursuant to section 113(d).

(C)(i) The Secretary shall undertake a scientific review of the impact of permits issued under this paragraph on the polar bear population stocks in Canada within 2 years after the date of enactment of this paragraph. The Secretary shall provide an opportunity for public comment during the course of such review, and shall include a response to such public comment in the final report on such review.

(ii) The Secretary shall not issue permits under this paragraph after September 30, 1996, if the Secretary determines, based on the scientific review, that the issuance of permits under this paragraph is having a significant adverse impact on the polar bear population stocks in Canada. The Secretary may review such determination annually thereafter, in light of the best scientific information available, and shall complete the review not later than January 31 in any year a review is undertaken. The Secretary may issue permits under this paragraph whenever the Secretary determines, on the basis of such annual review, that the issuance of permits under this paragraph is not having a significant adverse impact on the polar bear population stocks in Canada.

(D) The Secretary of the Interior shall, expeditiously after the expiration of the applicable 30 day period under subsection (d)(2), issue a permit for the importation of polar bear parts (other than internal organs) from polar bears taken in sport hunts in Canada before the date of enactment of the Marine Mammal Protection Act Amendments of 1994, to each applicant who submits, with the permit application, proof that the polar bear was legally harvested in Canada by the applicant. The Secretary shall issue such permits without regard to the provisions of subparagraphs (A) and (C)(ii) of this paragraph, subsection (d)(3) of this section, and sections 101 and 102. This subparagraph shall not apply to polar bear parts that were imported before the effective date of this subparagraph.

(6) A permit may be issued for photography for educational or commercial purposes involving marine mammals in the wild only to an applicant which submits with its permit application information indicating that the taking will be limited to Level

B harassment, and the manner in which the products of such activities will be made available to the public.

(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine mammal which is in the possession of any person authorized to possess it under this Act and which is determined under guidance under section 402(a) not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit if that person—

(A) meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A), in the case of a request for a permit under paragraph (2);

(B) meets the requirements of paragraph (3), in the case of a request for a permit under that paragraph; or

(C) meets the requirements of paragraph (4), in the case of a request for a permit under that paragraph.

(8)(A) No additional permit or authorization shall be required to possess, sell, purchase, transport, export, or offer to sell or purchase the progeny of marine mammals taken or imported under this subsection, if such possession, sale, purchase, transport, export, or offer to sell or purchase is—

(i) for the purpose of public display, and by or to, respectively, a person which meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A);

(ii) for the purpose of scientific research, and by or to, respectively, a person which meets the requirements of paragraph (3); or

(iii) for the purpose of enhancing the survival or recovery of a species or stock, and by or to, respectively, a person which meets the requirements of paragraph (4).

(B)(i) A person which has a permit under paragraph (2), or a person exercising rights under paragraph (2)(C), which has possession of a marine mammal that gives birth to progeny shall—

(I) notify the Secretary of the birth of such progeny within 30 days after the date of birth; and

(II) notify the Secretary of the sale, purchase, or transport of such progeny no later than 15 days before such action.

(ii) The Secretary may only require notification under clause (i) to include the information required for the inventory established under paragraph (10).

(C) Any progeny of a marine mammal born in captivity before the date of the enactment of the Marine Mammal Protection Act Amendments of 1994 and held in captivity for the purpose of public display shall be treated as though born after that date of enactment.

(9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.

(10) The Secretary shall establish and maintain an inventory of all marine mammals possessed pursuant to permits issued under paragraph (2)(A), by persons exercising rights

under paragraph (2)(C), and all progeny of such marine mammals. The inventory shall contain, for each marine mammal, only the following information which shall be provided by a person holding a marine mammal under this Act:

(A) The name of the marine mammal or other identification.

(B) The sex of the marine mammal.

(C) The estimated or actual birth date of the marine mammal.

(D) The date of acquisition or disposition of the marine mammal by the permit holder.

(E) The source from whom the marine mammal was acquired including the location of the take from the wild, if applicable.

(F) If the marine mammal is transferred, the name of the recipient.

(G) A notation if the animal was acquired as the result of a stranding.

(H) The date of death of the marine mammal and the cause of death when determined.

(d)(1) The Secretary shall prescribe such procedures as are necessary to carry out this section, including the form and manner in which application for permits may be made.

(2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.

(3) The applicant for any permit under this section must demonstrate to the Secretary that the taking or importation of any marine mammal under such permit will be consistent with the purposes of this Act and the applicable regulations established under section 103 of this title.

(4) If within thirty days after the date of publication of notice pursuant to paragraph (2) of this subsection with respect to any application for a permit any interested party or parties request a hearing in connection therewith, the Secretary may, within sixty days following such date of publication, afford to such party or parties an opportunity for such a hearing.

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the last day on which data, or views, may be submitted pursuant to paragraph (2) of this subsection, the Secretary shall (A) issue a permit containing such terms and conditions as he deems appropriate, or (B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial.

(6) Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit. Such review, which shall be pursuant to chapter 7 of Title 5, United States Code, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his prin-

cipal place of business, or in the United States District Court for the District of Columbia, within sixty days after the date on which such permit is issued or denied.

(e)(1) The Secretary may modify, suspend, or revoke in whole or part any permit issued by him under this section—

(A) in order to make any such permit consistent with any change made after the date of issuance of such permit with respect to any applicable regulation prescribed under section 103 of this title,

(B) in any case in which a violation of the terms and conditions of the permit is found, or

(C) if, in the case of a permit under subsection (c)(5) authorizing importation of polar bear parts, the Secretary, in consultation with the appropriate authority in Canada, determines that the sustainability of Canada's polar bear population stocks are being adversely affected or that sport hunting may be having a detrimental effect on maintaining polar bear population stocks throughout their range.

(2) Whenever the Secretary shall propose any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Secretary with respect to such proposed modification, suspension, or revocation. Such proposed action by the Secretary shall not take effect until a decision is issued by him after such hearing. Any action taken by the Secretary after such a hearing is subject to judicial review on the same basis as is any action taken by him with respect to a permit application under paragraph (5) of subsection (d) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Secretary shall be published in the Federal Register within ten days from the date of the Secretary's decision.

(f) Any permit issued under this section must be in the possession of the person to whom it is issued (or an agent of such person) during—

(1) the time of the authorized or taking importation;

(2) the period of any transit of such person or agent which is incident to such taking or importation; and

(3) any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

(g) The Secretary shall establish and charge a reasonable fee for permits issued under this section.

(h) GENERAL PERMITS.—

(1) Consistent with the regulations prescribed pursuant to section 103 of this title and to the requirements of section 101 of this title, the Secretary may issue an annual permit to a United States purse seine fishing vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

(2) Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing

for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 306 of this Act, subject to the regulations issued pursuant to section 303 of this Act.

PENALTIES

SEC. 105. [16 U.S.C. 1375] (a)(1) Any person who violates any provision of this title or of any permit or regulation issued thereunder, except as provided in section 118, may be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each unlawful taking or importation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary for good cause shown. 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.

(2) In any case involving an alleged unlawful importation of a marine mammal or marine mammal product, if such importation is made by an individual for his own personal or family use (which does not include importation as an accommodation to others or for sale or other commercial use), the Secretary may, in lieu of instituting a proceeding under paragraph (1), allow the individual to abandon the mammal or product, under procedures to be prescribed by the Secretary, to the enforcement officer at the port of entry.

(b) Any person who knowingly violates any provision of this title or of any permit or regulation issued thereunder (except as provided in section 118) shall, upon conviction, be fined not more than $20,000 for each such violation, or imprisoned for not more than one year, or both.

(16 U.S.C. 1375)

VESSEL FINE, CARGO FORFEITURE, AND REWARDS

SEC. 106. [16 U.S.C. 1376] (a) Any vessel or other conveyance subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall have its entire cargo or the monetary value thereof subject to seizure and forfeiture. All provisions of law relating to the seizure, judicial forfeiture, and condemnation of cargo for violation of the customs laws, the disposition of such cargo, and the proceeds from the sale thereof, and the remission or mitigation of any such forfeiture, shall apply with respect to the cargo of any vessel or other conveyanceseized in connection with the unlawful taking of a marine mammal insofar as such provisions of law are applicable and not inconsistent with the provisions of this title.

(b) Any vessel subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall be liable for a civil penalty of not more than $25,000. Such penalty shall be assessed by the district court of the United States having jurisdiction over the vessel. Clearance of a vessel against which a penalty has been assessed, from a port of

the United States, may be withheld until such penalty is paid, or until a bond or otherwise satisfactory surety is posted. Such penalty shall constitute a maritime lien on such vessel which may be recovered by action in rem in the district court of the United States having jurisdiction over the vessel.

(c) Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the fine incurred but not to exceed $2,500 to any person who furnishes information which leads to a conviction for a violation of this title. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

ENFORCEMENT

SEC. 107. [16 U.S.C. 1377] (a) Except as otherwise provided in this title, the Secretary shall enforce the provisions of this title. The Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal agency for purposes of enforcing this title.

(b) The Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this title. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Director of the Office of Personnel Management.

(c) 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, including warrants or other process issued in admiralty proceedings in United States district courts, as may be required for enforcement of this title and any regulations issued thereunder.

(d) Any person authorized by the Secretary to enforce this title may execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this title. Such person so authorized may, in addition to any other authority conferred by law—

(1) with or without warrant or other process, arrest any person committing in his presence or view a violation of this title or the regulations issued thereunder;

(2) with a warrant or other process, or without a warrant if he has reasonable cause to believe that a vessel or other conveyance subject to the jurisdiction of the United States or any person on board is in violation of any provision of this title or the regulations issued thereunder, search such vessel or conveyance and arrest such person;

(3) seize the cargo of any vessel or other conveyance subject to the jurisdiction of the United States used or employed contrary to the provisions of this title or the regulations issued hereunder or which reasonably appears to have been so used or employed; and

(4) seize, whenever and wherever found, all marine mammals and marine mammal products taken or retained in violation of this title or the regulations issued thereunder and shall dispose of them in accordance with regulations prescribed by the Secretary.

(e)(1) Whenever any cargo or marine mammal or marine mammal product is seized pursuant to this section, the Secretary shall expedite any proceedings commenced under section 105(a) or (b) of this title. All marine mammals or marine mammal products or other cargo so seized shall be held by any person authorized by the Secretary pending disposition of such proceedings. The owner or consignee of any such marine mammal or marine mammal product or other cargo so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary.

(2) The Secretary may, with respect to any proceeding under section 105(a) or (b) of this title, in lieu of holding any marine mammal or marine mammal product or other cargo, permit the person concerned to post bond or other surety satisfactory to the Secretary pending the disposition of such proceeding.

(3)(A) Upon the assessment of a penalty pursuant to section 105(a) of this title, all marine mammals and marine mammal products or other cargo seized in connection therewith may be proceeded against in any court of competent jurisdiction and forfeited to the Secretary for disposition by him in such manner as he deems appropriate.

(B) Upon conviction for violation of section 105(b) of this title, all marine mammals and marine mammal products seized in connection therewith shall be forfeited to the Secretary for disposition by him in such manner as he deems appropriate. Any other property or item so seized may, at the discretion of the court, be forfeited to the United States or otherwise disposed of.

(4) If with respect to any marine mammal or marine mammal product or other cargo so seized—

(A) a civil penalty is assessed under section 105(a) of this title and no judicial action is commenced to obtain the forfeiture of such mammal or product within thirty days after such assessment, such marine mammal or marine mammal product or other cargo shall be immediately returned to the owner or the consignee; or

(B) no conviction results from an alleged violation of section 105(b) of this title, such marine mammal or marine mammal product or other cargo shall immediately be returned to the owner or consignee if the Secretary does not, with thirtydays after the final disposition of the case involving such alleged violation, commence proceedings for the assessment of a civil penalty under section 105(a) of this title.

INTERNATIONAL PROGRAM

SEC. 108. [16 U.S.C. 1378] (a) The Secretary, through the Secretary of State, shall—

(1) initiate negotiations as soon as possible for the development of bilateral or multinational agreements with other nations for the protection and conservation of all marine mammals covered by this Act;

(2) initiate—

(A) negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species or population stock of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals, with the Secretary of State to prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums;

(B) discussions with foreign governments whose vessels harvest yellowfin tuna with purse seines in the eastern tropical Pacific Ocean, for the purpose of concluding, through the Inter-American Tropical Tuna Commission or such other bilateral or multilateral institutions as may be appropriate, international arrangements for the conservation of marine mammals taken incidentally in the course of harvesting such tuna, which should include provisions for (i) cooperative research into alternative methods of locating and catching yellowfin tuna which do not involve the taking of marine mammals, (ii) cooperative research on the status of affected marine mammal population stocks, (iii) reliable monitoring of the number, rate, and species of marine mammals taken by vessels of harvesting nations, (iv) limitations on incidental take levels based upon the best scientific information available, and (v) the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable to reduce the incidental kill and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate;

(C) negotiations to revise the Convention for the Establishment of an Inter-American Tropical Tuna Commission (1 U.S.T. 230; TIAS 2044) which will incorporate—

(i) the conservation and management provisions agreed to by the nations which have signed the Declaration of Panama and in the Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement, as opened for signature on December 4, 1995; and

(ii) a revised schedule of annual contributions to the expenses of the Inter-American Tropical Tuna Commission that is equitable to participating nations; and

(D) discussions with those countries participating, or likely to participate, in the International Dolphin Conservation Program, for the purpose of identifying sources of funds needed for research and other measures promoting effective protection of dolphins, other marine species, and the marine ecosystem;

(3) encourage such other agreements to promote the purposes of this Act with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of marine mammals;

(4) initiate the amendment of any existing international treaty for the protection and conservation of any species of marine mammal to which the United States is a party in order to make such treaty consistent with the purposes and policies of this Act;

(5) seek the convening of any international ministerial meeting on marine mammals before July 1, 1973, for the purposes of (A) the negotiation of a binding international convention for the protection and conservation of all marine mammals, and (B) the implementation of paragraph (3) of this section; and

(6) provide to the Congress by not later than one year after the date of the enactment of this Act a full report on the results of his efforts under this section.

(b)(1) In addition to the foregoing, the Secretary shall—

(A) in consultation with the Marine Mammal Commission established by section 201 of this Act, undertake a study of the North Pacific fur seals to determine whether herds of such seals subject to the jurisdiction of the United States are presently at their optimum sustainable population and what population trends are evident; and

(B) in consultation with the Secretary of State, promptly undertake a comprehensive study of the provisions of this Act, as they relate to North Pacific fur seals, and the provisions of the North Pacific Fur Seal Convention signed on February 9, 1957, as extended (hereafter referred to in this subsection as the "Convention"), to determine what modifications, if any, should be made to the provisions of the Convention, or of this Act, or both, to make the Convention and this Act consistent with each other.

The Secretary shall complete the studies required under this paragraph not later than one year after the date of enactment of this Act and shall immediately provide copies thereof to Congress.

(2) If the Secretary finds—

(A) as a result of the study required under paragraph (1)(A) of this subsection, that the North Pacific fur seal herds are below their optimum sustainable population and are not trending upward toward such level, or have reached their optimum sustainable population but are commencing a downward trend, and believes the herds to be in danger of depletion; or

(B) as a result of the study required under paragraph (1)(B) of this subsection, that modifications of the Convention are desirable to make it and this Act consistent;

he shall, through the Secretary of State, immediately initiate negotiations to modify the Convention so as to (i) reduce or halt the taking of seals to the extent required to assure that such herds attain and remain at their optimum sustainable population, or (ii) make the Convention and this Act consistent; or both, as the case may be. If negotiations to so modify the Convention are unsuccessful, the Secretary shall, through the Secretary of State, take such steps as may be necessary to continue the existing Convention beyond its present termination date so as to continue to protect and conserve the North Pacific fur seals and to prevent a return to pelagic sealing.

(c) The Secretary shall include a description of the annual results of discussions initiated and conducted pursuant to subsection (a)(2)(B), as well as any proposals forfurther action to achieve the purposes of that subsection, in the report required under section 103(f) of this title.

FEDERAL COOPERATION WITH STATES

SEC. 109. [16 U.S.C. 1379] (a) No State may enforce, or attempt to enforce, any State law or regulation relating to the taking of any species (which term for purposes of this section includes any population stock) of marine mammal within the State unless the Secretary has transferred authority for the conservation and management of that species (hereinafter referred to in this section as "management authority") to the State under subsection (b)(1).

(b)(1) Subject to paragraph (2) and subsection (f), the Secretary shall transfer management authority for a species of marine mammal to a State if the Secretary finds, after notice and opportunity for public comment, that the State has developed and will implement a program for the conservation and management of the species that—

(A) is consistent with the purposes, policies, and goals of this Act and with international treaty obligations;

(B) requires that all taking of the species be humane;

(C) does not permit the taking of the species unless and until—

(i) the State has determined, under a process consistent with the standards set forth in subsection (c)—

(I) that the species is at its optimum sustainable population (hereinafter in this section referred to as "OSP"), and

(II) the maximum number of animals of that species that may be taken without reducing the species below its OSP, and

(ii) the determination required under clause (i) is final and implemented under State law, and, if a cooperative allocation agreement for the species is required under subsection (d)(1), such an agreement is implemented;

(D) does not permit the taking of a number of animals of the species that exceeds the maximum number determined pursuant to subparagraph (C)(i)(II), and, in the case of taking for subsistence uses (as defined in subsection (f)(2)), does not permit the taking of a number of animals that would be inconsistent with the maintenance of the species at its OSP;

(E) does not permit the taking of the species for scientific research, public display, or enhancing the survival or recovery of a species or stock, except for taking for such purposes that is undertaken by, or on behalf of, the State;

(F) provides procedures for acquiring data, and evaluating such data and other new evidence, relating to the OSP of the species, and the maximum take that would maintain the species at that level, and, if required on the basis of such evaluation, for amending determinations under subparagraph (C)(i);

(G) provides procedures for the resolution of differences between the State and the Secretary that might arise during the

development of a cooperative allocation agreement under subsection (d)(1); and

(H) provides for the submission of an annual report to the Secretary regarding the administration of the program during the reporting period.

(2) During the period between the transfer of management authority for a species to a State under paragraph (1) and the time at which the implementation requirements under paragraph (1)(C)(ii) are complied with—

(A) the State program shall not apply with respect to the taking of the species within the State for any purpose, or under any condition, provided for under section 101; and

(B) the Secretary shall continue to regulate, under this title, all takings of the species within the State.

(3) After the determination required under paragraph (1)(C)(i) regarding a species is final and implemented under State law and after a cooperative allocation agreement described in subsection (d)(1), if required, is implemented for such species—

(A) such determination shall be treated, for purposes of applying this title beyond the territory of the State, as a determination made in accordance with section 103 and as an applicable waiver under section 101(a)(3);

(B) the Secretary shall regulate, without regard to this section other than the allocations specified under such an agreement, the taking of the species—

(i) incidentally in the course of commercial fishing operations (whether provided for under section 101(a)(2) or (4)), or in the course of other specified activities provided for under section 101(a)(5), in the zone described in section 3(14)(B), and

(ii) for scientific research, public display, or enhancing the survival or recovery of a species or stock (other than by, or on behalf of, the State), except that any taking authorized under a permit issued pursuant to section 101(a)(1) after the date of the enactment of the 1981 amendment to this sub- section allowing the removal of live animals from habitat within the State shall not be effective if the State agency disapproves, on or before the date of issuance of the permit, such taking as being inconsistent with the State program; and

(C) section 101(b) shall not apply.

(c) The State process required under subsection (b)(1)(C) must comply with the following standards:

(1) The State agency with management authority for the species (hereinafter in this section referred to as the "State agency") must make an initial determination regarding the factors described in clause (i) of that subsection. The State agency must identify, and make available to the public under reasonable circumstances, the documentation supporting such initial determination. Unless request for a hearing under paragraph (2) regarding the initial determination is timely made, the initial determination shall be treated as final under State law.

(2) The State agency shall provide opportunity, at the request of any interested party, for a hearing with respect to the

initial determination made by it under paragraph (1) at which interested parties may—

(A) present oral and written evidence in support of or against such determination; and

(B) cross-examine persons presenting evidence at the hearing.

The State agency must give public notice of the hearing and make available to the public within a reasonable time before commencing the hearing a list of the witnesses for the State and a general description of the documentation and other evidence that will be relied upon by such witnesses.

(3) The State agency, solely on the basis of the record developed at a hearing held pursuant to paragraph (2), must make a decision regarding its initial determination under paragraph (1) and shall include with the record a statement of the findings and conclusions, and the reason or basis therefor, on all material issues.

(4) Opportunity for judicial review of the decision made by the State agency on the record under paragraph (3), under scope of review equivalent to that provided for in section 706(2)(A) through (E) of Title 5, United States Code, must be available under State law. The Secretary may not initiate judicial review of any such decision.

(d)(1) If the range of a species with respect to which a determination under paragraph (1)(C)(i) of subsection (b) is made extends beyond the territorial waters of the State, the State agency and the Secretary (who shall first coordinate with the Marine Mammal Commission and the appropriate Regional Fishery Management Council established under section 302 of the Act of April 13, 1976 (16 U.S.C. 1852)) shall enter into a cooperative allocation agreement providing procedures for allocating, on a timely basis, such of the number of animals, as determined under paragraph (1)(C)(i)(II) of subsection (b), as may be appropriate with priority of allocation being given firstly to taking for subsistence uses in the case of the State of Alaska, and secondly to taking for purposes provided for under section 101(a) within the zone described in section 3(14)(B).

(2) If the State agency requests the Secretary to regulate the taking of a species to which paragraph (1) applies within the zone described in section 3(14)(B) for subsistence uses or for hunting, or both, in a manner consistent with the regulation by the State agency of such taking within the State, the Secretary shall adopt, and enforce within such zone, such of the State agency's regulatory provisions as the Secretary considers to be consistent with his administration of section 101(a) within such zone. The Secretary shall adopt such provisions through the issuance of regulations under section 553 of Title 5, United States Code, and with respect to such issuance theRegulatory Flexibility Act, the Paperwork Reduction Act, Executive Order No. 12291, dated February 17, 1981, and the thirty-day notice requirement in subsection (d) of such section 553 shall not apply. For purposes of sections 105, 106, and 107, such regulations shall be treated as having been issued under this title.

(e)(1) Subject to paragraph (2), the Secretary shall revoke, after opportunity for a hearing, any transfer of management authority made to a State under subsection (b)(1) if the Secretary

finds that the State program for the conservation and management of the species concerned is not being implemented, or is being implemented in a manner inconsistent with the provisions of this section or the provisions of the program. The Secretary shall also establish a procedure for the voluntary return by a State to the Secretary of species management authority that was previously transferred to the State under subsection (b)(1).

(2)(A) The Secretary may not revoke a transfer of management authority under paragraph (1) unless—

(i) The Secretary provides to the State a written notice of intent to revoke together with a statement, in detail, of those actions, or failures to act, on which such intent is based; and

(ii) during the ninety-day period after the date of the notice of intent to revoke—

(I) the Secretary provides opportunity for consultation between him and the State concerning such State actions or failures to act and the remedial measures that should be taken by the State, and

(II) the State does not take such remedial measures as are necessary, in the judgment of the Secretary, to bring its conservation and management program, or the administration or enforcement of the program, into compliance with the provisions of this section.

(B) When a revocation by the Secretary of a transfer of management authority to a State becomes final, or the State voluntarily returns management authority to the Secretary, the Secretary shall regulate the taking, and provide for the conservation and management, of the species within the State in accordance with the provisions of this Act (and in the case of Alaskan Natives, section 101(b) and subsection (i) of this section shall apply upon such revocation or return of management authority).

(f)(1) The Secretary may not transfer management authority to the State of Alaska under subsection (b)(1) for any species of marine mammal unless—

(A) the State has adopted and will implement a statute and regulations that insure that the taking of the species for subsistence uses—

(i) is accomplished in a nonwasteful manner,

(ii) will be the priority consumptive use of the species, and

(iii) if required to be restricted, such restriction will be based upon—

(I) the customary and direct dependence upon the species as the mainstay of livelihood,

(II) local residency, and

(III) the availability of alternative resources; and

(B) the State has adopted a statute or regulation that requires that any consumptive use of marine mammal species, other than for subsistence uses, will be authorized during a regulatory year only if the appropriate agency first makes findings, based on an administrative record before it, that—

(i) such use will have no significant adverse impact upon subsistence uses of the species, and

(ii) the regulation of such use, including, but not limited to, licensing of marine mammal hunting guides and

the assignment of guiding areas, will, to the maximum extent practicable, provide economic opportunities for the residents of the rural coastal villages of Alaska who engage in subsistence uses of that species.

(2) For purposes of paragraph (1), the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of marine mammals for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of marine mammals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this paragraph—

(A) The term "family" means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

(B) The term "barter" means the exchange of marine mammals or their parts, taken for subsistence uses—

(i) for other wildlife or fish or their parts, or

(ii) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

(g) Neither the transfer of management authority to a State under subsection (b)(1), nor the revocation or voluntary return of such authority under subsection (e), shall be deemed to be an action for which an environmental impact statement is required under section 102 of the National Environmental Policy Act of 1969.

(h)(1) Nothing in this title or title IV shall prevent a Federal, State, or local government official or employee or a person designated under section 112(c) from taking, in the course of his or her duties as an official, employee, or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for—

(A) the protection or welfare of the mammal,

(B) the protection of the public health and welfare, or

(C) the nonlethal removal of nuisance animals.

(2) Nothing in this title shall prevent the Secretary or a person designated under section 112(c) from importing a marine mammal into the United States if such importation is necessary to render medical treatment that is not otherwise available.

(3) In any case in which it is feasible to return to its natural habitat a marine mammal taken or imported under circumstances described in this subsection, steps to achieve that result shall be taken.

(i) The Secretary may (after providing notice thereof in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the affected area and providing opportunity for a hearing thereon in such area) prescribe regulations requiring the marking, tagging, and reporting of animals taken pursuant to section 101(b).

(j) The Secretary may make grants to States to assist them—

(1) in developing programs, to be submitted for approval under subsection (b), for the conservation and management of species of marine mammals; and

(2) in administering such programs if management authority for such species is transferred to the State under such subsection.

Grants made under this subsection may not exceed 50 per centum of the costs of developing a State program before Secretarial approval, or of administering the program thereafter.

(k) The Secretary is authorized and directed to enter into cooperative arrangements with the appropriate officials of any State for the delegation to such State of the administration and enforcement of this title: Provided, That any such arrangement shall contain such provisions as the Secretary deems appropriate to insure that the purposes and policies of this Act will be carried out.

(l)(1) There are authorized to be appropriated to the Department of the Interior, for the purposes of carrying out this section, not to exceed $400,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

(2) There are authorized to be appropriated to the Department of Commerce, for the purposes of carrying out this section, not to exceed $225,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

MARINE MAMMAL RESEARCH GRANTS

SEC. 110. [16 U.S.C. 1380] (a) The Secretary is authorized to make grants, or to provide financial assistance in such other form as he deems appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects which are relevant to the protection and conservation of marine mammals. In carrying out this subsection, the Secretary shall undertake a program of, and shall provide financial assistance for, research into new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals. The Secretary shall include a description of the annual results of research carried out under this section in the report required under section 103(f).

(b) Any grant or other financial assistance provided by the Secretary pursuant to this section shall be subject to such terms and conditions as the Secretary deems necessary to protect the interests of the United States and shall be made after review by the Marine Mammal Commission.

(c)(1) No later than 1 year after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, the Secretary of Commerce shall convene a regional workshop for the Gulf of Maine to assess human-caused factors affecting the health and stability of that marine ecosystem, of which marine mammals are a part. The workshop shall be conducted in consultation with the Marine Mammal Commission, the adjacent coastal States, individuals with expertise in marine mammal biology and ecology, representatives from environmental organizations, the fishing industry, and other appropriate persons. The goal of the workshop shall be to identify such factors, and to recommend a program of research and management to restore or maintain that marine ecosystem and its key components that—

(A) protects and encourages marine mammals to develop to the greatest extent feasible commensurate with sound policies of resource management;

(B) has as the primary management objective the maintenance of the health and stability of the marine ecosystems;

(C) ensures the fullest possible range of management options for future generations; and

(D) permits nonwasteful, environmentally sound development of renewable and nonrenewable resources.

(2) On or before December 31, 1995, the Secretary of Commerce shall submit to the Committee on Merchant Marine and Fisheries [1] of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate a report containing the results of the workshop under this subsection, proposed regulatory or research actions, and recommended legislative action.

(d)(1) The Secretary of Commerce, in consultation with the Secretary of the Interior, the Marine Mammal Commission, the State of Alaska, and Alaska Native organizations, shall, not later than 180 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, undertake a scientific research program to monitor the health and stability of the Bering Sea marine ecosystem and to resolve uncertainties concerning the causes of population declines of marine mammals, sea birds, and other living resources of that marine ecosystem. The program shall address the research recommendations developed by previous workshops on Bering Sea living marine resources, and shall include research on subsistence uses of such resources and ways to provide for the continued opportunity for such uses.

(2) To the maximum extent practicable, the research program undertaken pursuant to paragraph (1) shall be conducted in Alaska. The Secretary of Commerce shall utilize, where appropriate, traditional local knowledge and may contract with a qualified Alaska Native organization to conduct such research.

(3) The Secretary of Commerce, the Secretary of the Interior, and the Commission shall address the status and findings of the research program in their annual reports to Congress required by sections 103(f) and 204 of this Act.

COMMERCIAL FISHERIES GEAR DEVELOPMENT

SEC. 111. [16 U.S.C. 1381] (a) The Secretary of the department in which the National Oceanic and Atmospheric Administration is operating (hereafter referred to in this section as the "Secretary") is hereby authorized and directed to immediately undertake a program of research and development for the purpose of devising improved fishing methods and gear so as to reduce to the maximum extent practicable the incidental taking of marine mammals in connection with commercial fishing. At the end of the full twenty-four calendar month period following the date of the enactment of this Act, the Secretary shall deliver his report in writing to the Congress with respect to the results of such research and development. For the purposes of this section, there is hereby authorized to be appropriated the sum of $1,000,000 for the fiscal year ending June 30, 1973, and the same amount for the next fiscal

[1] The Committee on Merchant Marine and Fisheries of the House of Representatives was abolished by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. The former jurisdiction of such committee is divided among the Committee on Resources, the Committee on Transportation and Infrastructure, and the Committee on Armed Services of the House of Representatives.

year. Funds appropriated for this section shall remain available until expended.

(b) The Secretary, after consultation with the Marine Mammal Commission, is authorized and directed to issue, as soon as practicable, such regulations, covering the twenty-four-month period referred to in section 101(a)(2) of this title, as he deems necessary or advisable, to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations. Such regulations shall be adopted pursuant to section 553 of Title 5, United States Code. In issuing such regulations, the Secretary shall take into account the results of any scientific research under subsection (a) of this section and, in each case, shall provide a reasonable time not exceeding four months for the persons affected to implement such regulations.

(c) Additionally, the Secretary and Secretary of State are directed to commence negotiations within the Inter-American Tropical Tuna Commission in order to effect essential compliance with the regulatory provisions of this Act so as to reduce to the maximum extent feasible the incidental taking of marine mammals by vessels involved in the tuna fishery. The Secretary and Secretary of State are further directed to request the Director of Investigations of the Inter-American Tropical Tuna Commission to make recommendations to all member nations of the Commission as soon as ispracticable as to the utilization of methods and gear devised under subsection (a) of this section.

(d) Furthermore, after timely notice and during the period of research provided in this section, duly authorized agents of the Secretary are hereby empowered to board and to accompany any commercial fishing vessel documented under the laws of the United States, there being space available, on a regular fishing trip for the purpose of conducting research or observing operations in regard to the development of improved fishing methods and gear as authorized by this section. Such research and observation shall be carried out in such manner as to minimize interference with fishing operations. The Secretary shall provide for the cost of quartering and maintaining such agents. No master, operator, or owner of such a vessel shall impair or in any way interfere with the research or observation being carried out by agents of the Secretary pursuant to this section.

REGULATIONS AND ADMINISTRATION

SEC. 112. [16 U.S.C. 1382] (a) The Secretary, in consultation with any other Federal agency to the extent that such agency may be affected, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this title.

(b) Each Federal agency is authorized and directed to cooperate with the Secretary, in such manner as may be mutually agreeable, in carrying out the purposes of this title.

(c) The Secretary may enter into such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the purposes of this title or title IV and on such terms as he deems appropriate with any Federal or State agency, public or private institution, or other person.

(d) The Secretary shall review annually the operation of each program in which the United States participates involving the tak-

ing of marine mammals on land. If at any time the Secretary finds that any such program cannot be administered on lands owned by the United States or in which the United States has an interest in a manner consistent with the purposes of policies of this Act, he shall suspend the operation of that program and shall include in the annual report to the public and the Congress required under section 103(f) of this Act his reasons for such suspension, together with recommendations for such legislation as he deems necessary and appropriate to resolve the problem.

(e) If the Secretary determines, based on a stock assessment under section 117 or other significant new information obtained under this Act, that impacts on rookeries, mating grounds, or other areas of similar ecological significance to marine mammals may be causing the decline or impeding the recovery of a strategic stock, the Secretary may develop and implement conservation or management measures to alleviate those impacts. Such measures shall be developed and implemented after consultation with the Marine Mammal Commission and the appropriate Federal agencies and after notice and opportunity for public comment.

APPLICATION TO OTHER TREATIES AND CONVENTIONS

SEC. 113. [16 U.S.C. 1383] (a) The provisions of this title shall be deemed to be in addition to and not in contravention of the provisions of any existing international treaty, convention, or agreement, or any statute implementing the same, which may otherwise apply to the taking of marine mammals. Upon a finding by the Secretary that the provisions of any international treaty, convention, or agreement, or any statute implementing the same has been made applicable to persons subject to the provisions of this title in order to effect essential compliance with the regulatory provisions of this Act so as to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations, section 105 of this title may not apply to such persons.

(b) Not later than 1 year after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, the Secretary of the Interior shall, in consultation with the contracting parties, initiate a review of the effectiveness of the Agreement on the Conservation of Polar Bears, as provided for in Article IX of the Agreement, and establish a process by which future reviews shall be conducted.

(c) The Secretary of the Interior, in consultation with the Secretary of State and the Marine Mammal Commission, shall review the effectiveness of United States implementation of the Agreement on the Conservation of Polar Bears, particularly with respect to the habitat protection mandates contained in Article II. The Secretary shall report the results of this review to the Committee on Merchant Marine and Fisheries [1] of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than April 1, 1995.

[1] The Committee on Merchant Marine and Fisheries of the House of Representatives was abolished by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. The former jurisdiction of such committee is divided among the Committee on Resources, the Committee on Transportation and Infrastructure, and the Committee on Armed Services of the House of Representatives.

(d) Not later than 6 months after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, the Secretary of the Interior, acting through the Secretary of State and in consultation with the Marine Mammal Commission and the State of Alaska, shall consult with the appropriate officials of the Russian Federation on the development and implementation of enhanced cooperative research and management programs for the conservation of polar bears in Alaska and Russia. The Secretary shall report the results of this consultation and provide periodic progress reports on the research and management programs to the Committee on Merchant Marine and Fisheries[1] of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate.

INTERIM EXEMPTION FOR COMMERCIAL FISHERIES

SEC. 114. [16 U.S.C. 1383a] (a)(1) During the period beginning on the date of enactment of this section and until superseded by regulations prescribed under section 118, or until September 1, 1995, whichever is earlier, except as provided in paragraph (2), the provisions of this section, rather than sections 101, 103, and 104, shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States and vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)). In any event it shall be the immediate goal that the incidental kill or serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate.

(2) The provisions of this section other than subsection (e)(6)(A) shall not govern the incidental taking of marine mammals in the course of commercial yellowfin tuna fishing subject to section 104(h)(2) of this title.

(b)(1) The Secretary shall, after consultation with the Marine Mammal Commission—

(A) publish in the Federal Register, for public comment, not later than sixty days after the date of enactment of this section a proposed list of those fisheries, along with a statement of the marine mammals and the approximate number of vessels or persons involved in each such fishery, that have—

(i) frequent incidental taking of marine mammals;

(ii) occasional incidental taking of marine mammals; or

(iii) a remote likelihood of or no known incidental taking of marine mammals;

(B) publish in the Federal Register not later than one hundred and twenty days after the date of enactment of this section a final list of the fisheries and otherinformation required by paragraph (A), together with a summary of the provisions of this section and information sufficient to advise vessel owners on how to obtain an exemption and otherwise comply with the requirements of this section; and

(C) at least once each year thereafter, and at such other times as the Secretary considers appropriate, reexamine, based on information gathered from the program established under

subsections (c), (d), (e), and (f), and other relevant sources and after notice and opportunity for public comment, the classification of fisheries and other determinations required under subparagraph (A) and publish in the Federal Register any necessary changes.

(2)(A) An exemption shall be granted by the Secretary in accordance with this section for a vessel engaged in a fishery identified under paragraph (1)(A) (i) or (ii), upon receipt by the Secretary of a completed registration form providing the name of the vessel owner, the name and description of the vessel, the fisheries in which it will be engaged, and such other information as the Secretary considers necessary. A decal or other physical evidence that the exemption is current and valid shall be issued by the Secretary at the time an exemption is granted, and so long as the exemption remains current and valid, shall be reissued annually thereafter.

(B) No exemption may be granted under this section to the owner of a vessel unless such vessel

(i) is a vessel of the United States; or

(ii) has a valid fishing permit issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)).

(C) Notwithstanding any other provision of this title, exemptions granted under this section shall authorize the incidental taking of marine mammals, other than California sea otters, from any species or stock, including a population stock designated as depleted, but shall not authorize the intentional lethal taking of any Steller sea lion, any cetacean, or any marine mammals from a population stock designated as depleted.

(3)(A) Beginning two hundred and forty days after the date of enactment of this section, each owner of a vessel engaged in any fishery identified under paragraph (1)(A) (i) or (ii) shall, in order to engage lawfully in that fishery—

(i) have registered with the Secretary in order to obtain for each such vessel owned an exemption for the purpose of incidentally taking marine mammals in accordance with this section;

(ii) ensure that a decal or such other physical evidence of a current and valid exemption as the Secretary may require is displayed on or is in the possession of the master of each such vessel; and

(iii) report as required by subsection (c).

(B) Any owner of a vessel receiving an exemption under this section for any fishery identified under paragraph (1)(A)(i) shall, as a condition of that exemption, take on board a natural resource observer if requested to do so by the Secretary.

(C) An owner of a vessel engaged in a fishery identified under paragraph (1)(A) (i) or (ii) who—

(i) fails to obtain from the Secretary an exemption under this section;

(ii) fails to maintain a current and valid exemption; or

(iii) fails to ensure that a decal or other physical evidence of such exemption issued by the Secretary is displayed on or is in possession of the master of the vessel,

and the master of any such vessel engaged in such fishery, shall be deemed to have violated this title, and shall be subject to the

penalties of this title except in the case of unknowing violations before January l, 1990.

(D) If the owner of a vessel has obtained and maintains a current and valid exemption from the Secretary under this section and meets the requirements set forth in this section, the owner of such vessel, and the master and crew members of the vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals while such vessel is engaged in a fishery to which the exemption applies.

(E) Each owner of a vessel engaged in any fishery not identified in paragraph (1)(A) (i) or (ii), and the master and crew members of such a vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals if such owner reports to the Secretary, in such form and manner as the Secretary may require, instances of lethal incidental taking in the course of that fishery.

(4) The Secretary shall suspend or revoke an exemption granted under this section and shall not issue a decal or other physical evidence of the exemption for any vessel until the owner of such vessel complies with the reporting requirements under subsection (c) and such requirements to take on board a natural resource observer under paragraph (3)(B) as are applicable to such vessel.

(5)(A) The Secretary shall develop, in consultation with the appropriate States, Regional Fishery Management Councils, and other interested parties, the means by which the granting and administration of exemptions under this section shall be integrated and coordinated, to the maximum extent practicable, with existing fishery licenses, registrations, and related programs.

(B) The Secretary shall utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the provisions of this section and the means by which they can comply with its requirements.

(C) The Secretary is authorized to charge a fee for the granting of an exemption under this subsection. The level of fees charged under this subparagraph shallnot exceed the administrative costs incurred in granting an exemption. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the granting and administration of exemptions under this section.

(c) The owner of each vessel holding an exemption granted under subsection (b) of this section shall regularly compile information which shall be used in a report to be submitted to the Secretary at the close of the fishing season or annually, as the Secretary may prescribe. Such report shall be submitted in such form as the Secretary may require and shall include the following:

(1) the type of fishery engaged in by the owner's vessel;

(2) the date and approximate time of any incidental taking of a marine mammal, together with the area in which the incidental taking occurred, the fishing gear used at the time of the incidental taking, and the species of fish involved; and

(3) for each incidental taking, the number and species of marine mammals involved, whether the marine mammals were deterred from gear or catch, incidentally injured, incidentally killed, or lethally removed to protect gear, catch, or human life.

If there was no incidental taking of marine mammals during the reporting period, a report stating that fact shall be filed with the Secretary.

(d)(1) The Secretary shall establish a program to enhance the quality of and verify information received from reports submitted by owners of vessels who have been granted an exemption under subsection (b) of this section. The program shall include, but not be limited to—

(A) education efforts regarding the information that must be submitted;

(B) interviews with fishermen; and

(C) other such information gathering and verification activities that will enable the Secretary to determine reliably the nature, type, and extent of the incidental taking of marine mammals that occurs in a fishery.

Except to the extent authorized by the provisions of subsection (e), the program shall not include placement of observers aboard exempted vessels.

(2) Information obtained under this subsection shall be subject to the confidentiality provisions of subsection (j).

(e)(1) For each fishery identified under subsection (b)(1)(A)(i) of this section, the Secretary shall, after consultation with the appropriate Regional Fishery Management Councils, other Federal and State agencies, and other interested parties, and subject to paragraph (6), place observers on board exempted vessels so as to monitor not less than 20 percent nor more than 35 percent of the fishing operations by vessels in the fishery to obtain statistically reliable information on the species and number of marine mammals incidentally taken in the fishery. If the Secretary determines that fewer than 20 percent of the fishing operations by vessels in the fishery will be monitored during the course of the fishing season, the Secretary shall implement the alternative observation program described in subsection (f) to the extent necessary to supplement the observer program described in this subsection.

(2) When determining the distribution of observers among fisheries and between vessels in a particular fishery, the Secretary shall be guided by the following standards:

(A) the requirement to obtain the best scientific information available;

(B) the requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery;

(C) consistent with paragraph (1), the requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage; and

(D) where practicable, the need to minimize costs and avoid duplication.

(3) If the Secretary finds that, for reasons beyond his or her control, the Secretary cannot assign observers to all the fisheries identified under subsection (b)(1)(A)(i) of this section at the level of observer coverage set forth in paragraph (1), the Secretary shall allocate available observers among such fisheries, consistent with paragraph (2), according to the following priority:

(A) those fisheries that incidentally take marine mammals from any population stock designated as depleted;

(B) those fisheries that incidentally take marine mammals from population stocks that the Secretary believes are declining;

(C) those fisheries other than those described in subparagraphs (A) and (B) in which the greatest incidental take of marine mammals occur; and

(D) any other fishery identified under subsection (b)(1)(A)(i).

The Secretary may, with the consent of the vessel owner, station an observer on board a vessel engaged in a fishery not identified under subsection (b)(1)(A)(i).

(4) Information gathered by observers shall be subject to the provisions of subsection (j). Consistent with the requirements of paragraph (1), the Secretary shall, if requested by the Appropriate Regional Fishery Management Council, or in the case of a State fishery, the State, require observers to collect additional information, including but not limited to the quantities, species, and physical condition of target and non- target fishery resources and, if requested by the Secretary of the Interior, seabirds.

(5) Notwithstanding the provisions of paragraph (4), the Secretary may decline to require observers to collect information described in such paragraph, if the Secretary finds in writing, following public notice and opportunity for comment, that such information will not contribute to the protection of marine mammals or the understanding of the marine ecosystem, including fishery resources and seabirds.

(6) The Secretary shall not be required to place an observer on a vessel in a fishery if the Secretary finds that—

(A) in a situation where harvesting vessels are delivering fish to a processing vessel and the catch is not taken on board the harvesting vessel, statistically reliable information can be obtained from an observer on board the processing vessel to which the fish are delivered;

(B) the facilities of a vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; or

(C) for reasons beyond the control of the Secretary, an observer is not available.

(7)(A) An observer on a vessel (or the observer's personal representative) under the requirements of this section or section 104 that is ill, disabled, injured, or killed from service as an observer on that vessel may not bring a civil action under any law of the United States for that illness, disability, injury, or death against the vessel or vessel owner, except that a civil action may be brought against the vessel owner for the owner's willful misconduct.

(B) This paragraph does not apply if the observer is engaged by the owner, master, or individual in charge of a vessel to perform any duties in service to the vessel.

(8) There are authorized to be appropriated to the Department of Commerce for the purposes of carrying out this subsection not to exceed $2,700,000 for fiscal year 1989 and not to exceed $8,000,000 for each of the fiscal years 1990, 1991, 1992, and 1993.

(f)(1) The Secretary shall establish an alternative observation program to provide statistically reliable information on the species and number of marine mammals incidentally taken in those fisheries identified pursuant to subsection (b)(1)(A)(i) of this section for which the required level of observer coverage has not been met or for any other fisheries about which such reliable information is not otherwise available. The alternative program shall include, but not be limited to, direct observation of fishing activities from vessels, airplanes, or points on shore.

(2) Individuals engaged in the alternative observation program shall collect scientific information on the fisheries subject to observation, consistent with the requirements of paragraph (1) and subsection (e) (4) and (5). All information collected shall be subject to the provisions of subsection (j).

(g)(1) The Secretary shall review information regarding the incidental taking of marine mammals and evaluate the effects of such incidental taking on the affected population stocks of marine mammals.

(2) If the Secretary finds, based on the information received from the programs established under subsections (c), (d), (e), and (f), that the incidental taking of marine mammals in a fishery is having an immediate and significant adverse impact on a marine mammal population stock or, in the case of Steller sea lions and North Pacific fur seals, that more than 1,350 and 50, respectively, will be incidentally killed during acalendar year, the Secretary shall consult with appropriate Regional Fishery Management Councils and State fishery managers and prescribe emergency regulations to prevent to the maximum extent practicable any further taking. Any emergency regulations prescribed under this paragraph—

(A) shall, to the maximum extent practicable, avoid interfering with existing State or regional fishery management plans;

(B) shall be published in the Federal Register together with the reasons therefor;

(C) shall remain in effect for not more than one hundred and eighty days or until the end of the fishing season, whichever is earlier; and

(D) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines the reasons for the emergency regulations no longer exist.

In prescribing emergency regulations under this paragraph, the Secretary shall take into account the economics of the fishery concerned and the availability of existing technology to prevent or minimize incidental taking of marine mammals.

(3) If the Secretary finds, based on information received from the programs established under subsections (c), (d), (e), and (f), that incidental taking of marine mammals in a fishery is not having an immediate and significant adverse impact on a marine mammal population stock but that it will likely have a significant adverse impact over a period of time longer than one year, the Secretary shall request the appropriate Regional Fishery Management Council or State to initiate, recommend, or take such action within its authority as it considers necessary to mitigate the adverse im-

pacts, including adjustments to requirements on fishing times or areas or the imposition of restrictions on the use of vessels or gear.

(4) The Secretary shall impose appropriate conditions and restrictions on an exemption granted under subsection (b) if—

(A) a Regional Fishery Management Council or State does not act in a reasonable period of time on a request made by the Secretary under paragraph (3); or

(B) if the Secretary determines after notice and opportunity for public comment that the purposes of this section would be better served by such action.

(h) The Secretary shall design and implement an information management system capable of processing and analyzing reports received from the programs established under subsections (c), (d), (e), and (f), and other relevant sources, including Federal and State enforcement authorities, marine mammal stranding networks, and the marine mammal researchers. The information shall be made accessible to the public on a continuing basis, but in any case no later than six months after it is received, subject to the provisions of subsection (j).

(i) When carrying out the Secretary's responsibilities under subsections (b), (d), (e), (f), and (h) of this section, the Secretary shall, to the maximum extent practicable, utilizethe services and programs of State agencies, Federal agencies (including programs established by Regional Fishery Management Councils), marine fisheries commissions, universities, and private entities, on a reimbursable basis or otherwise. The Secretary is authorized to enter into contracts and agreements to carry out his or her responsibilities and shall establish appropriate guidelines to ensure that other programs used or contracted for will meet the same standards as a program established by the Secretary. A person contracting with the Secretary to provide observer services under subsection (e) of this section must provide evidence of financial responsibility in an amount and form prescribed by the Secretary to compensate employees (or their survivors) adequately for any illness, disability, injury, or death from service on a vessel.

(j)(1) Any information collected under subsection (c), (d), (e), (f), or (h) of this section shall be confidential and shall not be disclosed except—

(A) to Federal employees whose duties require access to such information;

(B) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(C) when required by court order; or

(D) in the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(2) The Secretary shall prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary shall release or make public any such information in aggregate, summary, or other form which does not directly or indirectly disclose the identity or business of any person.

(k) The Secretary, in consultation with any other Federal agency to the extent that such agency may be affected, shall prescribe

such regulations as necessary and appropriate to carry out the purposes of this section.

(l)(1) The Chairman of the Marine Mammal Commission shall, after consultation with interested parties and not later than February 1, 1990, transmit to the Secretary and make available to the public recommended guidelines to govern the incidental taking of marine mammals in the course of commercial fishing operations, other than those subject to section 104(h)(2), after October 1, 1993. Such guidelines shall be developed by the Commission and its Committee of Scientific Advisers on Marine Mammals and shall—

(A) be designed to provide a scientific rationale and basis for determining how many marine mammals may be incidentally taken under a regime to be adopted to govern such taking after October 1, 1993;

(B) be based on sound principles of wildlife management, and be consistent with and in furtherance of the purposes and policies set forth in this Act; and

(C) to the maximum extent practicable, include as factors to be considered and utilized in determining permissible levels of such taking—

(i) the status and trends of the affected marine mammal population stocks;

(ii) the abundance and annual net recruitment of such stocks;

(iii) the level of confidence in the knowledge of the affected stocks; and

(iv) the extent to which incidental taking will likely cause or contribute to their decline or prevent their recovery to optimum sustainable population levels.

(2) The Secretary shall advise the Chairman of the Commission in writing if the Secretary determines that any additional information or explanation of the Chairman's recommendations is needed, and the Chairman shall respond in writing to any such request by the Secretary.

(3) On or before February 1, 1991, the Secretary, after consultation with the Marine Mammal Commission, Regional Fishery Management Councils, and other interested governmental and nongovernmental organizations, shall publish in the Federal Register, for public comment, the suggested regime that the Secretary considers should, if authorized by enactment of any additional legislation, govern incidental taking of marine mammals, other than those subject to section 104(h)(2), after October 1, 1993. The suggested regime shall include—

(A) the scientific guidelines to be used in determining permissible levels of incidental taking;

(B) a description of the arrangements for consultation and cooperation with other Federal agencies, the appropriate Regional Fishery Management Councils and States, the commercial fishing industry, and conservation organizations; and

(C) a summary of such regulations and legislation as would be necessary to implement the suggested regime.

(4) On or before January 1, 1992, the Secretary, after consultation with the Marine Mammal Commission, and consideration of public comment, shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on

Merchant Marine and Fisheries[1] of the House of Representatives recommendations pertaining to the incidental taking of marine mammals, other than those subject to section 104(h)(2), after October 1, 1993. The recommendations shall include—

(A) the suggested regime developed under paragraph (3) of this subsection as modified after comment and consultations;

(B) a proposed schedule for implementing the suggested regime; and

(C) such recommendations for additional legislation as the Secretary considers necessary or desirable to implement the suggested regime.

(m) The Secretary shall consult with the Secretary of the Interior prior to taking actions or making determinations under this section that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under this title.

(n) For the purposes of this section, the owner of fixed or other commercial fishing gear that is deployed with or without the use of a vessel shall be deemed to be an owner of a vessel engaged in the fishery in which that gear is deployed.

(o) As used in this section—

(1) the term "fishery" has the same meaning as it does in section 3(8) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(8)).

(2) the term "Secretary" means the Secretary of Commerce.

(3) the term "vessel engaged in a fishery" means a fishing vessel as defined in section 2101(11a) of Title 46, United States Code, or a fish processing vessel as defined in section 2101(11b) of that title, which is engaged in fishery.

(4) the term "vessel of the United States" has the same meaning as it does in section 3(27) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(27)).

STATUS REVIEW; CONSERVATION PLANS

SEC. 115. [16 U.S.C. 1383b] (a)(1) In any action by the Secretary to determine if a species or stock should be designated as depleted, or should no longer be designated as depleted, regardless of whether such action is taken on the initiative of the Secretary or in response to a petition for a status review, the Secretary shall only make such a determination by issuance of a rule, after notice and opportunity for public comment and after a call for information in accordance with paragraph (2).

(2) The Secretary shall make any determination described in paragraph (1) solely on the basis of the best scientific information available. Prior to the issuance of a proposed rule concerning any such determination, the Secretary shall publish in the Federal Register a call to assist the Secretary in obtaining scientific information from individuals and organizations concerned with the conservation of marine mammals, from persons in industry which

[1] The Committee on Merchant Marine and Fisheries of the House of Representatives was abolished by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. The former jurisdiction of such committee is divided among the Committee on Resources, the Committee on Transportation and Infrastructure, and the Committee on Armed Services of the House of Representatives.

might be affected by the determination, and from academic institutions. In addition, the Secretary shall utilize, to the extent the Secretary determines to be feasible, informal working groups of interested parties and other methods to gather the necessary information.

(3)(A) If the Secretary receives a petition for a status review as described in paragraph (1), the Secretary shall publish a notice in the Federal Register that such a petition has been received and is available for public review.

(B) Within sixty days after receipt of the petition, the Secretary shall publish a finding in the Federal Register as to whether the petition presents substantial information indicating that the petitioned action may be warranted.

(C) If the Secretary makes a positive finding under subparagraph (B), the Secretary shall include in the Federal Register notice, a finding that—

(i) a review of the status of the species or stock will be commenced promptly; or

(ii) a prompt review of the petition is precluded by other pending status determination petitions and that expeditious progress is being made to process pending status determination petitions under this title.

In no case after making a finding under this subparagraph shall the Secretary delay commencing a review of the status of a species or stock for more than one hundred and twenty days after receipt of the petition.

(D) No later than two hundred and ten days after the receipt of the petition, the Secretary shall publish in the Federal Register a proposed rule as to the status of the species or stock, along with the reasons underlying the proposed status determination. Persons shall have at least sixty days to submit comments on such a proposed rule.

(E) Not later than ninety days after the close of the comment period on a proposed rule issued under subparagraph (D), the Secretary shall issue a final rule on the status of the species or stock involved, along with the reasons for the status determination. If the Secretary finds with respect to such a proposed rule that there is substantial disagreement regarding the sufficiency or accuracy of the available information relevant to a status determination, the Secretary may delay the issuance of a final rule for a period of not more than six months for purposes of soliciting additional information.

(F) Notwithstanding subparagraphs (D) and (E) of this paragraph and section 553 of Title 5, United States Code, the Secretary may issue a final rule as to the status of a species or stock any time sixty or more days after a positive finding under subparagraph (B) if the Secretary determines there is substantial information available to warrant such final status determination and further delay would pose a significant risk to the well-being of any species or stock. Along with the final rule, the Secretary shall publish in the Federal Register detailed reasons for the expedited determination.

(b)(1) The Secretary shall prepare conservation plans—

(A) by December 31, 1989, for North Pacific fur seals;

(B) by December 31, 1990, for Steller sea lions; and

(C) as soon as possible, for any species or stock designated as depleted under this title, except that a conservation plan need not be prepared if the Secretary determines that it will not promote the conservation of the species or stock.

(2) Each plan shall have the purpose of conserving and restoring the species or stock to its optimum sustainable population. The Secretary shall model such plans on recovery plans required under section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)).

(3) The Secretary shall act expeditiously to implement each conservation plan prepared under paragraph (1). Each year, the Secretary shall specify in the annual report prepared under section 103(f) of this title what measures have been taken to prepare and implement such plans.

(4) If the Secretary determines that a take reduction plan is necessary to reduce the incidental taking of marine mammals in the course of commercial fishing operations from a strategic stock, or for species or stocks which interact with a commercial fishery for which the Secretary has made a determination under section 118(f)(1), any conservation plan prepared under this subsection for such species or stock shall incorporate the take reduction plan required under section 118 for such species or stock.

SEC. 116. [16 U.S.C. 1384] AUTHORIZATION OF APPROPRIATIONS.

(a) DEPARTMENT OF COMMERCE.—(1) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out its functions and responsibilities under this title (other than sections 117 and 118) and title IV, $12,138,000 for fiscal year 1994, $12,623,000 for fiscal year 1995, $13,128,000 for fiscal year 1996, $13,653,000 for fiscal year 1997, $14,200,000 for fiscal year 1998, and $14,768,000 for fiscal year 1999.

(2) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out sections 117 and 118, $20,000,000 for each of the fiscal years 1994 through 1999.

(b) DEPARTMENT OF THE INTERIOR.—There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out its functions and responsibilities under this title, $8,000,000 for fiscal year 1994, $8,600,000 for fiscal year 1995, $9,000,000 for fiscal year 1996, $9,400,000 for fiscal year 1997, $9,900,000 for fiscal year 1998, and $10,296,000 for fiscal year 1999.

SEC. 117. [16 U.S.C. 1386] STOCK ASSESSMENTS.

(a) IN GENERAL.—Not later than August 1, 1994, the Secretary shall, in consultation with the appropriate regional scientific review group established under subsection (d), prepare a draft stock assessment for each marine mammal stock which occurs in waters under the jurisdiction of the United States. Each draft stock assessment, based on the best scientific information available, shall—

(1) describe the geographic range of the affected stock, including any seasonal or temporal variation in such range;

(2) provide for such stock the minimum population estimate, current and maximum net productivity rates, and current population trend, including a description of the information upon which these are based;

(3) estimate the annual human-caused mortality and serious injury of the stock by source and, for a strategic stock, other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey;

(4) describe commercial fisheries that interact with the stock, including—

(A) the approximate number of vessels actively participating in each such fishery;

(B) the estimated level of incidental mortality and serious injury of the stock by each such fishery on an annual basis;

(C) seasonal or area differences in such incidental mortality or serious injury; and

(D) the rate, based on the appropriate standard unit of fishing effort, of such incidental mortality and serious injury, and an analysis stating whether such level is insignificant and is approaching a zero mortality and serious injury rate;

(5) categorize the status of the stock as one that either—

(A) has a level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population; or

(B) is a strategic stock, with a description of the reasons therefor; and

(6) estimate the potential biological removal level for the stock, describing the information used to calculate it, including the recovery factor.

(b) PUBLIC COMMENT.—(1) The Secretary shall publish in the Federal Register a notice of the availability of a draft stock assessment or any revision thereof and provide an opportunity for public review and comment during a period of 90 days. Such notice shall include a summary of the assessment and a list of the sources of information or published reports upon which the assessment is based.

(2) Subsequent to the notice of availability required under paragraph (1), if requested by a person to which section 101(b) applies, the Secretary shall conduct a proceeding on the record prior to publishing a final stock assessment or any revision thereof for any stock subject to taking under section 101(b).

(3) After consideration of the best scientific information available, the advice of the appropriate regional scientific review group established under subsection (d), and the comments of the general public, the Secretary shall publish in the Federal Register a notice of availability and a summary of the final stock assessment or any revision thereof, not later than 90 days after—

(A) the close of the public comment period on a draft stock assessment or revision thereof; or

(B) final action on an agency proceeding pursuant to paragraph (2).

(c) REVIEW AND REVISION.—(1) The Secretary shall review stock assessments in accordance with this subsection—

(A) at least annually for stocks which are specified as strategic stocks;

(B) at least annually for stocks for which significant new information is available; and

(C) at least once every 3 years for all other stocks.

(2) If the review under paragraph (1) indicates that the status of the stock has changed or can be more accurately determined, the Secretary shall revise the stock assessment in accordance with subsection (b).

(d) REGIONAL SCIENTIFIC REVIEW GROUPS.—(1) Not later than 60 days after the date of enactment of this section, the Secretary of Commerce shall, in consultation with the Secretary of the Interior (with respect to marine mammals under that Secretary's jurisdiction), the Marine Mammal Commission, the Governors of affected adjacent coastal States, regional fishery and wildlife management authorities, Alaska Native organizations and Indian tribes, and environmental and fishery groups, establish three independent regional scientific review groups representing Alaska, the Pacific Coast (including Hawaii), and the Atlantic Coast (including the Gulf of Mexico), consisting of individuals with expertise in marine mammal biology and ecology, population dynamics and modeling, commercial fishing technology and practices, and stocks taken under section 101(b). The Secretary of Commerce shall, to the maximum extent practicable, attempt to achieve a balanced representation of viewpoints among the individuals on each regional scientific review group. The regional scientific review groups shall advise the Secretary on—

(A) population estimates and the population status and trends of such stocks;

(B) uncertainties and research needed regarding stock separation, abundance, or trends, and factors affecting the distribution, size, or productivity of the stock;

(C) uncertainties and research needed regarding the species, number, ages, gender, and reproductive status of marine mammals;

(D) research needed to identify modifications in fishing gear and practices likely to reduce the incidental mortality and serious injury of marine mammals in commercial fishing operations;

(E) the actual, expected, or potential impacts of habitat destruction, including marine pollution and natural environmental change, on specific marine mammal species or stocks, and for strategic stocks, appropriate conservation or management measures to alleviate any such impacts; and

(F) any other issue which the Secretary or the groups consider appropriate.

(2) The scientific review groups established under this subsection shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.).

(3) Members of the scientific review groups shall serve without compensation, but may be reimbursed by the Secretary, upon request, for reasonable travel costs and expenses incurred in performing their obligations.

(4) The Secretary may appoint or reappoint individuals to the regional scientific review groups under paragraph (1) as needed.

(e) EFFECT ON SECTION 101(b).—This section shall not affect or otherwise modify the provisions of section 101(b).

SEC. 118. [16 U.S.C. 1387] TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS.

(a) IN GENERAL.—(1) Effective on the date of enactment of this section, and except as provided in section 114 and in paragraphs (2), (3), and (4) of this subsection, the provisions of this section shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)). In any event it shall be the immediate goal that the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate within 7 years after the date of enactment of this section.

(2) In the case of the incidental taking of marine mammals from species or stocks designated under this Act as depleted on the basis of their listing as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), both this section and section 101(a)(5)(E) of this Act shall apply.

(3) Sections 104(h) and title III, and not this section, shall govern the taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

(4) This section shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99–625; 100 Stat. 3500).

(5) Except as provided in section 101(c), the intentional lethal take of any marine mammal in the course of commercial fishing operations is prohibited.

(6) Sections 103 and 104 shall not apply to the incidental taking of marine mammals under the authority of this section.

(b) ZERO MORTALITY RATE GOAL.—(1) Commercial fisheries shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate within 7 years after the date of enactment of this section.

(2) Fisheries which maintain insignificant serious injury and mortality levels approaching a zero rate shall not be required to further reduce their mortality and serious injury rates.

(3) Three years after such date of enactment, the Secretary shall review the progress of all commercial fisheries, by fishery, toward reducing incidental mortality and serious injury to insignificant levels approaching a zero rate. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries[1] of the House of Representatives a report setting forth the results of such review within 1 year after commencement of the review. The Secretary shall note any commercial fishery for which additional

[1] The Committee on Merchant Marine and Fisheries of the House of Representatives was abolished by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. The former jurisdiction of such committee is divided among the Committee on Resources, the Committee on Transportation and Infrastructure, and the Committee on Armed Services of the House of Representatives.

information is required to accurately assess the level of incidental mortality and serious injury of marine mammals in the fishery.

(4) If the Secretary determines after review under paragraph (3) that the rate of incidental mortality and serious injury of marine mammals in a commercial fishery is not consistent with paragraph (1), then the Secretary shall take appropriate action under subsection (f).

(c) REGISTRATION AND AUTHORIZATION.—(1) The Secretary shall, within 90 days after the date of enactment of this section—

(A) publish in the Federal Register for public comment, for a period of not less than 90 days, any necessary changes to the Secretary's list of commercial fisheries published under section 114(b)(1) and which is in existence on March 31, 1994 (along with an explanation of such changes and a statement describing the marine mammal stocks interacting with, and the approximate number of vessels or persons actively involved in, each such fishery), with respect to commercial fisheries that have—

(i) frequent incidental mortality and serious injury of marine mammals;

(ii) occasional incidental mortality and serious injury of marine mammals; or

(iii) a remote likelihood of or no known incidental mortality or serious injury of marine mammals;

(B) after the close of the period for such public comment, publish in the Federal Register a revised list of commercial fisheries and an update of information required by subparagraph (A), together with a summary of the provisions of this section and information sufficient to advise vessel owners on how to obtain an authorization and otherwise comply with the requirements of this section; and

(C) at least once each year thereafter, and at such other times as the Secretary considers appropriate, reexamine, based on information gathered under this Act and other relevant sources and after notice and opportunity for public comment, the classification of commercial fisheries and other determinations required under subparagraph (A) and publish in the Federal Register any necessary changes.

(2)(A) An authorization shall be granted by the Secretary in accordance with this section for a vessel engaged in a commercial fishery listed under paragraph (1)(A) (i) or (ii), upon receipt by the Secretary of a completed registration form providing the name of the vessel owner and operator, the name and description of the vessel, the fisheries in which it will be engaged, the approximate time, duration, and location of such fishery operations, and the general type and nature of use of the fishing gear and techniques used. Such information shall be in a readily usable format that can be efficiently entered into and utilized by an automated or computerized data processing system. A decal or other physical evidence that the authorization is current and valid shall be issued by the Secretary at the time an authorization is granted, and so long as the authorization remains current and valid, shall be reissued annually thereafter.

(B) No authorization may be granted under this section to the owner of a vessel unless such vessel—

(i) is a vessel of the United States; or

(ii) has a valid fishing permit issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)).

(C) Except as provided in subsection (a), an authorization granted under this section shall allow the incidental taking of all species and stocks of marine mammals to which this Act applies.

(3)(A) An owner of a vessel engaged in any fishery listed under paragraph (1)(A) (i) or (ii) shall, in order to engage in the lawful incidental taking of marine mammals in a commercial fishery—

(i) have registered as required under paragraph (2) with the Secretary in order to obtain for each such vessel owned and used in the fishery an authorization for the purpose of incidentally taking marine mammals in accordance with this section, except that owners of vessels holding valid certificates of exemption under section 114 are deemed to have registered for purposes of this subsection for the period during which such exemption is valid;

(ii) ensure that a decal or such other physical evidence of a current and valid authorization as the Secretary may require is displayed on or is in the possession of the master of each such vessel;

(iii) report as required by subsection (e); and

(iv) comply with any applicable take reduction plan and emergency regulations issued under this section.

(B) Any owner of a vessel receiving an authorization under this section for any fishery listed under paragraph (1)(A) (i) or (ii) shall, as a condition of that authorization, take on board an observer if requested to do so by the Secretary.

(C) An owner of a vessel engaged in a fishery listed under paragraph (1)(A) (i) or (ii) who—

(i) fails to obtain from the Secretary an authorization for such vessel under this section;

(ii) fails to maintain a current and valid authorization for such vessel; or

(iii) fails to ensure that a decal or other physical evidence of such authorization issued by the Secretary is displayed on or is in possession of the master of the vessel,

and the master of any such vessel engaged in such fishery, shall be deemed to have violated this title, and for violations of clauses (i) and (ii) shall be subject to the penalties of this title, and for violations of clause (iii) shall be subject to a fine of not more than $100 for each offense.

(D) If the owner of a vessel has obtained and maintains a current and valid authorization from the Secretary under this section and meets the requirements set forth in this section, including compliance with any regulations to implement a take reduction plan under this section, the owner of such vessel, and the master and crew members of the vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals while such vessel is engaged in a fishery to which the authorization applies.

(E) Each owner of a vessel engaged in any fishery not listed under paragraph (1)(A) (i) or (ii), and the master and crew members of such a vessel, shall not be subject to the penalties set forth

in this title for the incidental taking of marine mammals if such owner reports to the Secretary, in the form and manner required under subsection (e), instances of incidental mortality or injury of marine mammals in the course of that fishery.

(4)(A) The Secretary shall suspend or revoke an authorization granted under this section and shall not issue a decal or other physical evidence of the authorization for any vessel until the owner of such vessel complies with the reporting requirements under subsection (e) and such requirements to take on board an observer under paragraph (3)(B) as are applicable to such vessel. Previous failure to comply with the requirements of section 114 shall not bar authorization under this section for an owner who complies with the requirements of this section.

(B) The Secretary may suspend or revoke an authorization granted under this subsection, and may not issue a decal or other physical evidence of the authorization for any vessel which fails to comply with a take reduction plan or emergency regulations issued under this section.

(C) The owner and master of a vessel which fails to comply with a take reduction plan shall be subject to the penalties of sections 105 and 107, and may be subject to section 106.

(5)(A) The Secretary shall develop, in consultation with the appropriate States, affected Regional Fishery Management Councils, and other interested persons, the means by which the granting and administration of authorizations under this section shall be integrated and coordinated, to the maximum extent practicable, with existing fishery licenses, registrations, and related programs.

(B) The Secretary shall utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the provisions of this section and the means by which they can comply with its requirements.

(C) The Secretary is authorized to charge a fee for the granting of an authorization under this section. The level of fees charged under this subparagraph shall not exceed the administrative costs incurred in granting an authorization. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the granting and administration of authorizations under this section.

(d) MONITORING OF INCIDENTAL TAKES.—(1) The Secretary shall establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations. The purposes of the monitoring program shall be to—

(A) obtain statistically reliable estimates of incidental mortality and serious injury;

(B) determine the reliability of reports of incidental mortality and serious injury under subsection (e); and

(C) identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

(2) Pursuant to paragraph (1), the Secretary may place observers on board vessels as necessary, subject to the provisions of this section. Observers may, among other tasks—

(A) record incidental mortality and injury, or by catch of other nontarget species;

(B) record numbers of marine mammals sighted; and

(C) perform other scientific investigations.

(3) In determining the distribution of observers among commercial fisheries and vessels within a fishery, the Secretary shall be guided by the following standards:

(A) The requirement to obtain statistically reliable information.

(B) The requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery.

(C) The requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage.

(D) To the extent practicable, the need to minimize costs and avoid duplication.

(4) To the extent practicable, the Secretary shall allocate observers among commercial fisheries in accordance with the following priority:

(A) The highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(B) The second highest priority for allocation shall be for commercial fisheries that have incidental mortality and serious injury of marine mammals from strategic stocks.

(C) The third highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks for which the level of incidental mortality and serious injury is uncertain.

(5) The Secretary may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

(6) The Secretary is not required to place an observer on a vessel in a fishery if the Secretary finds that—

(A) in a situation in which harvesting vessels are delivering fish to a processing vessel and the catch is not taken on board the harvesting vessel, statistically reliable information can be obtained from an observer on board the processing vessel to which the fish are delivered;

(B) the facilities on a vessel for quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; or

(C) for reasons beyond the control of the Secretary, an observer is not available.

(7) The Secretary may, with the consent of the vessel owner, station an observer on board a vessel engaged in a fishery not listed under subsection (c)(1)(A) (i) or (ii).

(8) Any proprietary information collected under this subsection shall be confidential and shall not be disclosed except—

(A) to Federal employees whose duties require access to such information;

(B) to State or tribal employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(C) when required by court order; or

(D) in the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(9) The Secretary shall prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary shall release or make public upon request any such information in aggregate, summary, or other form which does not directly or indirectly disclose the identity or business of any person.

(e) REPORTING REQUIREMENT.—The owner or operator of a commercial fishing vessel subject to this Act shall report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Secretary by mail or other means acceptable to the Secretary within 48 hours after the end of each fishing trip on a standard postage-paid form to be developed by the Secretary under this section. Such form shall be capable of being readily entered into and usable by an automated or computerized data processing system and shall require the vessel owner or operator to provide the following:

(1) The vessel name, and Federal, State, or tribal registration numbers of the registered vessel.

(2) The name and address of the vessel owner or operator.

(3) The name and description of the fishery.

(4) The species of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence.

(f) TAKE REDUCTION PLANS.—(1) The Secretary shall develop and implement a take reduction plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with a commercial fishery listed under subsection (c)(1)(A) (i) or (ii), and may develop and implement such a plan for any other marine mammal stocks which interact with a commercial fishery listed under subsection (c)(1)(A)(i) which the Secretary determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.

(2) The immediate goal of a take reduction plan for a strategic stock shall be to reduce, within 6 months of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to levels less than the potential biological removal level established for that stock under section 117. The long-term goal of the plan shall be to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans.

(3) If there is insufficient funding available to develop and implement a take reduction plan for all such stocks that interact with

commercial fisheries listed under subsection (c)(1)(A) (i) or (ii), the Secretary shall give highest priority to the development and implementation of take reduction plans for species or stocks whose level of incidental mortality and serious injury exceeds the potential biological removal level, those that have a small population size, and those which are declining most rapidly.

(4) Each take reduction plan shall include—

(A) a review of the information in the final stock assessment published under section 117(b) and any substantial new information;

(B) an estimate of the total number and, if possible, age and gender, of animals from the stock that are being incidentally lethally taken or seriously injured each year during the course of commercial fishing operations, by fishery;

(C) recommended regulatory or voluntary measures for the reduction of incidental mortality and serious injury; [1]

(D) recommended dates for achieving the specific objectives of the plan.

(5)(A) For any stock in which incidental mortality and serious injury from commercial fisheries exceeds the potential biological removal level established under section 117, the plan shall include measures the Secretary expects will reduce, within 6 months of the plan's implementation, such mortality and serious injury to a level below the potential biological removal level.

(B) For any stock in which human-caused mortality and serious injury exceeds the potential biological removal level, other than a stock to which subparagraph (A) applies, the plan shall include measures the Secretary expects will reduce, to the maximum extent practicable within 6 months of the plan's implementation, the incidental mortality and serious injury by such commercial fisheries from that stock. For purposes of this subparagraph, the term "maximum extent practicable" means to the lowest level that is feasible for such fisheries within the 6-month period.

(6)(A) At the earliest possible time (not later than 30 days) after the Secretary issues a final stock assessment under section 117(b) for a strategic stock, the Secretary shall, and for stocks that interact with a fishery listed under subsection (c)(1)(A)(i) for which the Secretary has made a determination under paragraph (1), the Secretary may—

(i) establish a take reduction team for such stock and appoint the members of such team in accordance with subparagraph (C); and

(ii) publish in the Federal Register a notice of the team's establishment, the names of the team's appointed members, the full geographic range of such stock, and a list of all commercial fisheries that cause incidental mortality and serious injury of marine mammals from such stock.

(B) The Secretary may request a take reduction team to address a stock that extends over one or more regions or fisheries, or multiple stocks within a region or fishery, if the Secretary determines that doing so would facilitate the development and implementation of plans required under this subsection.

[1] Probably should be "injury; and". See section 11 of the Marine Mammal Protection Act Amendments of 1994 (P.L. 103–238, 108 Stat. 546).

(C) Members of take reduction teams shall have expertise regarding the conservation or biology of the marine mammal species which the take reduction plan will address, or the fishing practices which result in the incidental mortality and serious injury of such species. Members shall include representatives of Federal agencies, each coastal State which has fisheries which interact with the species or stock, appropriate Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which incidentally take the species or stock, Alaska Native organizations or Indian tribal organizations, and others as the Secretary deems appropriate. Take reduction teams shall, to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests.

(D) Take reduction teams shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.). Meetings of take reduction teams shall be open to the public, and prior notice of meetings shall be made public in a timely fashion.

(E) Members of take reduction teams shall serve without compensation, but may be reimbursed by the Secretary, upon request, for reasonable travel costs and expenses incurred in performing their duties as members of the team.

(7) Where the human-caused mortality and serious injury from a strategic stock is estimated to be equal to or greater than the potential biological removal level established under section 117 for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A) (i) or (ii), the following procedures shall apply in the development of the take reduction plan for the stock:

(A)(i) Not later than 6 months after the date of establishment of a take reduction team for the stock, the team shall submit a draft take reduction plan for such stock to the Secretary, consistent with the other provisions of this section.

(ii) Such draft take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.

(B)(i) The Secretary shall take the draft take reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, any changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days.

(ii) In the event that the take reduction team does not submit a draft plan to the Secretary within 6 months, the Secretary shall, not later than 8 months after the establishment of the team, publish in the Federal Register a proposed take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.

(C) Not later than 60 days after the close of the comment period required under subparagraph (B), the Secretary shall

issue a final take reduction plan and implementing regulations, consistent with the other provisions of this section.

(D) The Secretary shall, during a period of 30 days after publication of a final take reduction plan, utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the requirements of the plan and how to comply with them.

(E) The Secretary and the take reduction team shall meet every 6 months, or at such other intervals as the Secretary determines are necessary, to monitor the implementation of the final take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.

(F) The Secretary shall amend the take reduction plan and implementing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.

(8) Where the human-caused mortality and serious injury from a strategic stock is estimated to be less than the potential biological removal level established under section 117 for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii), or for any marine mammal stocks which interact with a commercial fishery listed under subsection (c)(1)(A)(i) for which the Secretary has made a determination under paragraph (1), the following procedures shall apply in the development of the take reduction plan for such stock:

(A)(i) Not later than 11 months after the date of establishment of a take reduction team for the stock, the team shall submit a draft take reduction plan for the stock to the Secretary, consistent with the other provisions of this section.

(ii) Such draft take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.

(B)(i) The Secretary shall take the draft take reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, any changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days.

(ii) In the event that the take reduction team does not submit a draft plan to the Secretary within 11 months, the Secretary shall, not later than 13 months after the establishment of the team, publish in the Federal Register a proposed take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.

(C) Not later than 60 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final take reduction plan and implementing regulations, consistent with the other provisions of this section.

(D) The Secretary shall, during a period of 30 days after publication of a final take reduction plan, utilize newspapers of general circulation, fishery trade associations, electronic

media, and other means of advising commercial fishermen of the requirements of the plan and how to comply with them.

(E) The Secretary and the take reduction team shall meet on an annual basis, or at such other intervals as the Secretary determines are necessary, to monitor the implementation of the final take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.

(F) The Secretary shall amend the take reduction plan and implementing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.

(9) In implementing a take reduction plan developed pursuant to this subsection, the Secretary may, where necessary to implement a take reduction plan to protect or restore a marine mammal stock or species covered by such plan, promulgate regulations which include, but are not limited to, measures to—

(A) establish fishery-specific limits on incidental mortality and serious injury of marine mammals in commercial fisheries or restrict commercial fisheries by time or area;

(B) require the use of alternative commercial fishing gear or techniques and new technologies, encourage the development of such gear or technology, or convene expert skippers' panels;

(C) educate commercial fishermen, through workshops and other means, on the importance of reducing the incidental mortality and serious injury of marine mammals in affected commercial fisheries; and

(D) monitor, in accordance with subsection (d), the effectiveness of measures taken to reduce the level of incidental mortality and serious injury of marine mammals in the course of commercial fishing operations.

(10)(A) Notwithstanding paragraph (6), in the case of any stock to which paragraph (1) applies for which a final stock assessment has not been published under section 117(b)(3) by April 1, 1995, due to a proceeding under section 117(b)(2), or any Federal court review of such proceeding, the Secretary shall establish a take reduction team under paragraph (6) for such stock as if a final stock assessment had been published.

(B) The draft stock assessment published for such stock under section 117(b)(1) shall be deemed the final stock assessment for purposes of preparing and implementing a take reduction plan for such stock under this section.

(C) Upon publication of a final stock assessment for such stock under section 117(b)(3) the Secretary shall immediately reconvene the take reduction team for such stock for the purpose of amending the take reduction plan, and any regulations issued to implement such plan, if necessary, to reflect the final stock assessment or court action. Such amendments shall be made in accordance with paragraph (7)(F) or (8)(F), as appropriate.

(D) A draft stock assessment may only be used as the basis for a take reduction plan under this paragraph for a period of not to exceed two years, or until a final stock assessment is published, whichever is earlier. If, at the end of the two-year period, a final stock assessment has not been published, the Secretary shall cat-

egorize such stock under section 117(a)(5)(A) and shall revoke any regulations to implement a take reduction plan for such stock.

(E) Subparagraph (D) shall not apply for any period beyond two years during which a final stock assessment for such stock has not been published due to review of a proceeding on such stock assessment by a Federal court. Immediately upon final action by such court, the Secretary shall proceed under subparagraph (C).

(11) Take reduction plans developed under this section for a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall be consistent with any recovery plan developed for such species or stock under section 4 of such Act.

(g) EMERGENCY REGULATIONS.—(1) If the Secretary finds that the incidental mortality and serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Secretary shall take actions as follows:

(A) In the case of a stock or species for which a take reduction plan is in effect, the Secretary shall—

(i) prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce incidental mortality and serious injury in that fishery; and

(ii) approve and implement, on an expedited basis, any amendments to such plan that are recommended by the take reduction team to address such adverse impact.

(B) In the case of a stock or species for which a take reduction plan is being developed, the Secretary shall—

(i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and

(ii) approve and implement, on an expedited basis, such plan, which shall provide methods to address such adverse impact if still necessary.

(C) In the case of a stock or species for which a take reduction plan does not exist and is not being developed, or in the case of a commercial fishery listed under subsection (c)(1)(A)(iii) which the Secretary believes may be contributing to such adverse impact, the Secretary shall [1]—

(i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;

(ii) immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established; and

(iii) may, [1] where necessary to address such adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), place observers on vessels in a commercial fishery listed under subsection (c)(1)(A)(iii), if the Secretary has reason to believe such vessels may be causing the incidental mortality and serious injury to marine mammals from such stock.

[1] So in law. The relationship between "shall" in the matter preceding clause (i) and "may" in clause (iii) is not apparent.

(2) Prior to taking action under paragraph (1) (A), (B), or (C), the Secretary shall consult with the Marine Mammal Commission, all appropriate Regional Fishery Management Councils, State fishery managers, and the appropriate take reduction team (if established).

(3) Emergency regulations prescribed under this subsection—

(A) shall be published in the Federal Register, together with an explanation thereof;

(B) shall remain in effect for not more than 180 days or until the end of the applicable commercial fishing season, whichever is earlier; and

(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, if the Secretary determines that the reasons for emergency regulations no longer exist.

(4) If the Secretary finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency no longer exist, whichever is earlier.

(h) PENALTIES.—Except as provided in subsection (c), any person who violates this section shall be subject to the provisions of sections 105 and 107, and may be subject to section 106 as the Secretary shall establish by regulations.

(i) ASSISTANCE.—The Secretary shall provide assistance to Regional Fishery Management Councils, States, interstate fishery commissions, and Indian tribal organizations in meeting the goal of reducing incidental mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate.

(j) CONTRIBUTIONS.—For purposes of carrying out this section, the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

(k) CONSULTATION WITH SECRETARY OF THE INTERIOR.—The Secretary shall consult with the Secretary of the Interior prior to taking actions or making determinations under this section that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under this title.

(l) DEFINITIONS.—As used in this section and section 101(a)(5)(E), each of the terms "fishery" and "vessel of the United States" has the same meaning it does in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

SEC. 119. [16 U.S.C. 1388] MARINE MAMMAL COOPERATIVE AGREEMENTS IN ALASKA.

(a) IN GENERAL.—The Secretary may enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives.

(b) GRANTS.—Agreements entered into under this section may include grants to Alaska Native organizations for, among other purposes—

(1) collecting and analyzing data on marine mammal populations;

(2) monitoring the harvest of marine mammals for subsistence use;

(3) participating in marine mammal research conducted by the Federal Government, States, academic institutions, and private organizations; and

(4) developing marine mammal co-management structures with Federal and State agencies.

(c) EFFECT OF JURISDICTION.—Nothing in this section is intended or shall be construed—

(1) as authorizing any expansion or change in the respective jurisdiction of Federal, State, or tribal governments over fish and wildlife resources; or

(2) as altering in any respect the existing political or legal status of Alaska Natives, or the governmental or jurisdictional status of Alaska Native communities or Alaska Native entities.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purposes of carrying out this section—

(1) $1,500,000 to the Secretary of Commerce for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999; and

(2) $1,000,000 to the Secretary of the Interior for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999.

The amounts authorized to be appropriated under this subsection are in addition to the amounts authorized to be appropriated under section 116.

SEC. 120. [16 U.S.C. 1389] PACIFIC COAST TASK FORCE; GULF OF MAINE.

(a) PINNIPED REMOVAL AUTHORITY.—Notwithstanding any other provision of this title, the Secretary may permit the intentional lethal taking of pinnipeds in accordance with this section.

(b) APPLICATION.—(1) A State may apply to the Secretary to authorize the intentional lethal taking of individually identifiable pinnipeds which are having a significant negative impact on the decline or recovery of salmonid fishery stocks which—

(A) have been listed as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the Secretary finds are approaching threatened species or endangered species status (as those terms are defined in that Act); or

te through the Ballard Locks at Seattle, Washington.

(2) Any such application shall include a means of identifying the individual pinniped or pinnipeds, and shall include a detailed description of the problem interaction and expected benefits of the taking.

(c) ACTIONS IN RESPONSE TO APPLICATION.—(1) Within 15 days of receiving an application, the Secretary shall determine whether the application has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force to address the situation described in the application. If the Secretary determines sufficient evidence has been provided, the Secretary shall establish a Pinniped-Fishery Interaction Task Force and publish a notice in the Federal Register requesting public comment on the application.

(2) A Pinniped-Fishery Interaction Task Force established under paragraph (1) shall consist of designated employees of the Department of Commerce, scientists who are knowledgeable about

the pinniped interaction that the application addresses, representatives of affected conservation and fishing community organizations, Indian Treaty tribes, the States, and such other organizations as the Secretary deems appropriate.

(3) Within 60 days after establishment, and after reviewing public comments in response to the Federal Register notice under paragraph (1), the Pinniped-Fishery Interaction Task Force shall—

(A) recommend to the Secretary whether to approve or deny the proposed intentional lethal taking of the pinniped or pinnipeds, including along with the recommendation a description of the specific pinniped individual or individuals, the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority; and

(B) suggest nonlethal alternatives, if available and practicable, including a recommended course of action.

(4) Within 30 days after receipt of recommendations from the Pinniped-Fishery Interaction Task Force, the Secretary shall either approve or deny the application. If such application is approved, the Secretary shall immediately take steps to implement the intentional lethal taking, which shall be performed by Federal or State agencies, or qualified individuals under contract to such agencies.

(5) After implementation of an approved application, the Pinniped-Fishery Interaction Task Force shall evaluate the effectiveness of the permitted intentional lethal taking or alternative actions implemented. If implementation was ineffective in eliminating the problem interaction, the Task Force shall recommend additional actions. If the implementation was effective, the Task Force shall so advise the Secretary, and the Secretary shall disband the Task Force.

(d) CONSIDERATIONS.—In considering whether an application should be approved or denied, the Pinniped-Fishery Interaction Task Force and the Secretary shall consider—

(1) population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;

(2) past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;

(3) the extent to which such pinnipeds are causing undue injury or impact to, or imbalance with, other species in the ecosystem, including fish populations; and

(4) the extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

(e) LIMITATION.—The Secretary shall not approve the intentional lethal taking of any pinniped from a species or stock that is—

(1) listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(2) depleted under this Act; or

(3) a strategic stock.

(f) CALIFORNIA SEA LIONS AND PACIFIC HARBOR SEALS; INVESTIGATION AND REPORT.—

(1) The Secretary shall engage in a scientific investigation to determine whether California sea lions and Pacific harbor seals—

(A) are having a significant negative impact on the recovery of salmonid fishery stocks which have been listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or which the Secretary finds are approaching such endangered species or threatened species status; or

(B) are having broader impacts on the coastal ecosystems of Washington, Oregon, and California.

The Secretary shall conclude this investigation and prepare a report on its results no later than October 1, 1995.

(2) Upon completion of the scientific investigation required under paragraph (1), the Secretary shall enter into discussions with the Pacific States Marine Fisheries Commission, on behalf of the States of Washington, Oregon, and California, for the purpose of addressing any issues or problems identified as a result of the scientific investigation, and to develop recommendations to address such issues or problems. Any recommendations resulting from such discussions shall be submitted, along with the report, to the Committee on Merchant Marine and Fisheries [1] of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(3) The Secretary shall make the report and the recommendations submitted under paragraph (2) available to the public for review and comment for a period of 90 days.

(4) There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the provisions of this subsection.

(5) The amounts appropriated under section 308(c) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(c)) and allocated to the Pacific States Marine Fisheries Commission may be used by the Commission to participate in discussions with the Secretary under paragraph (2).

(g) REGIONWIDE PINNIPED-FISHERY INTERACTION STUDY.—

(1) The Secretary may conduct a study, of not less than three high predation areas in anadromous fish migration corridors within the Northwest Region of the National Marine Fisheries Service, on the interaction between fish and pinnipeds. In conducting the study, the Secretary shall consult with other State and Federal agencies with expertise in pinniped-fishery interaction. The study shall evaluate—

(A) fish behavior in the presence of predators generally;

(B) holding times and passage rates of anadromous fish stocks in areas where such fish are vulnerable to predation;

[1] The Committee on Merchant Marine and Fisheries of the House of Representatives was abolished by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. The former jurisdiction of such committee is divided among the Committee on Resources, the Committee on Transportation and Infrastructure, and the Committee on Armed Services of the House of Representatives.

(C) whether additional facilities exist, or could be reasonably developed, that could improve escapement for anadromous fish; and

(D) other issues the Secretary considers relevant.

(2) Subject to the availability of appropriations, the Secretary may, not later than 18 months after the commencement of the study under this subsection, transmit a report on the results of the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries [1] of the House of Representatives.

(3) The study conducted under this subsection may not be used by the Secretary as a reason for delaying or deferring a determination or consideration under subsection (c) or (d).

(h) GULF OF MAINE TASK FORCE.—The Secretary shall establish a Pinniped-Fishery Interaction Task Force to advise the Secretary on issues or problems regarding pinnipeds interacting in a dangerous or damaging manner with aquaculture resources in the Gulf of Maine. No later than 2 years from the date of enactment of this section, the Secretary shall after notice and opportunity for public comment submit to the Committee on Merchant Marine and Fisheries [1] of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing recommended available alternatives to mitigate such interactions.

(i) REQUIREMENTS APPLICABLE TO TASK FORCES.—(1) Any task force established under this section—

(A) shall to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests; and

(B) shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.).

(2) Meetings of any task force established under this section shall be open to the public, and prior notice of those meetings shall be given to the public by the task force in a timely fashion.

(j) GULF OF MAINE HARBOR PORPOISE.—(1) Nothing in section 117 shall prevent the Secretary from publishing a stock assessment for Gulf of Maine harbor porpoise in an expedited fashion.

(2) In developing and implementing a take reduction plan under section 118 for Gulf of Maine harbor porpoise, the Secretary shall consider all actions already taken to reduce incidental mortality and serious injury of such stock, and may, based on the recommendations of the take reduction team for such stock, modify the time period required for compliance with section 118(f)(5)(A), but in no case may such modification extend the date of compliance beyond April 1, 1997.

[1] The Committee on Merchant Marine and Fisheries of the House of Representatives was abolished by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. The former jurisdiction of such committee is divided among the Committee on Resources, the Committee on Transportation and Infrastructure, and the Committee on Armed Services of the House of Representatives.

TITLE II—MARINE MAMMAL COMMISSION

ESTABLISHMENT OF COMMISSION

SEC. 201. [16 U.S.C. 1401] (a) There is hereby established the Marine Mammal Commission (hereafter referred to in this title as the "Commission").

(b)(1) Effective September 1, 1982, the Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate. The President shall make his selection from a list of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. Such list shall be submitted to him by the Chairman of the Council on Environmental Quality and unanimously agreed to by that Chairman, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation and the Chairman of the National Academy of Sciences. No member of the Commission may, during his period of service on the Commission, hold any other position as an officer or employee of the United States except as a retired officer or retired civilian employee of the United States.

(2) The term of office for each member shall be three years; except that of the members initially appointed to the Commission, the term of one member shall be for one year, the term of one member shall be for two years, and the term of one member shall be for three years. No member is eligible for reappointment; except that any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed (A) shall be appointed for the remainder of such term, and (B) is eligible for reappointment for one full term. A member may serve after the expiration of his term until his successor has taken office.

(c) The President shall designate a Chairman of the Commission (hereafter referred to in this title as the "Chairman") from among its members.

(d) Members of the Commission shall each be compensated at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule under section 5332 of Title 5, United States Code, for each day such member is engaged in the actual performance of duties vested in the Commission. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, United States Code, for persons in Government service employed intermittently.

(e) The Commission shall have an Executive Director, who shall be appointed (without regard to the provisions of Title 5, United States Code, governing appointments in the competitive service) by the Chairman with the approval of the Commission and shall be paid at a rate not in excess of the rate for GS–18 of the General Schedule under section 5332 of Title 5, United States Code. The Executive Director shall have such duties as the Chairman may assign.

DUTIES OF COMMISSION

SEC. 202. [16 U.S.C. 1402] (a) The Commission shall—

(1) undertake a review and study of the activities of the United States pursuant to existing laws and international conventions relating to marine mammals, including, but not limited to, the International Convention for the Regulation of Whaling, the Whaling Convention Act of 1949, the Interim Convention on the Conservation of North Pacific Fur Seals, and the Fur Seal Act of 1966;

(2) conduct a continuing review of the condition of the stocks of marine mammals, of methods for their protection and conservation, of humane means of taking marine mammals, of research programs conducted or proposed to be conducted under the authority of this Act, and of all applications for permits for scientific research, public display, or enhancing the survival or recovery of a species or stock;

(3) undertake or cause to be undertaken such other studies as it deems necessary or desirable in connection with its assigned duties as to the protection and conservation of marine mammals;

(4) recommend to the Secretary and to other Federal officials such steps as it deems necessary or desirable for the protection and conservation of marine mammals;

(5) recommend to the Secretary of State appropriate policies regarding existing international arrangements for the protection and conservation of marine mammals, and suggest appropriate international arrangements for the protection and conservation of marine mammals;

(6) recommend to the Secretary such revisions of the endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973, as may be appropriate with regard to marine mammals; and

(7) recommend to the Secretary, other appropriate Federal officials, and Congress such additional measures as it deems necessary or desirable to further the policies of this Act, including provisions for the protection of the Indians, Eskimos, and Aleuts whose livelihood may be adversely affected by actions taken pursuant to this Act.

(b) The Commission shall consult with the Secretary at such intervals as it or he may deem desirable, and shall provide each annual report required under section 204, before submission to Congress, to the Secretary for comment.

(c) The reports and recommendations which the Commission makes shall be matters of public record and shall be available to the public at all reasonable times. All other activities of the Commission shall be matters of public record and available to the public in accordance with the provisions of section 552 of Title 5, United States Code.

(d) Any recommendations made by the Commission to the Secretary and other Federal officials shall be responded to by those individuals within one hundred and twenty days after receipt thereof. Any recommendations which are not followed or adoptedshall be referred to the Commission together with a detailed explanation of the reasons why those recommendations were not followed or adopted.

COMMITTEE OF SCIENTIFIC ADVISORS ON MARINE MAMMALS

SEC. 203. [16 U.S.C. 1403] (a) The Commission shall establish, within ninety days after its establishment, a Committee of Scientific Advisors on Marine Mammals (hereafter referred to in this title as the "Committee"). Such Committee shall consist of nine scientists knowledgeable in marine ecology and marine mammal affairs appointed by the Chairman after consultation with the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences.

(b) Except for United States Government employees, members of the Committee shall each be compensated at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule under section 5332 of Title 5, United States Code, for each day such member is engaged in the actual performance of duties vested in the Committee. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, United States Code, for persons in Government service employed intermittently.

(c) The Commission shall consult with the Committee on all studies and recommendations which it may propose to make or has made, on research programs conducted or proposed to be conducted under the authority of this Act, and on all applications for permits for scientific research. Any recommendations made by the Committee or any of its members which are not adopted by the Commission shall be transmitted by the Commission to the appropriate Federal agency and to the appropriate committees of Congress with a detailed explanation of the Commission's reasons for not accepting such recommendations.

COMMISSION REPORTS

SEC. 204. [16 U.S.C. 1404] The Commission shall transmit to Congress, by January 31 of each year, a report which shall include—

(1) a description of the activities and accomplishments of the Commission during the immediately preceding year; and

(2) all the findings and recommendations made by and to the Commission pursuant to section 202 of this Act together with the responses made to these recommendations.

COORDINATION WITH OTHER FEDERAL AGENCIES

SEC. 205. [16 U.S.C. 1405] The Commission shall have access to all studies and data compiled by Federal agencies regarding marine mammals. With the consent of the appropriate Secretary or Agency head, the Commission may also utilize the facilities or services of any Federal agency and shall take every feasible step to avoid duplication of research and to carry out the purposes of this Act.

ADMINISTRATION OF COMMISSION

SEC. 206. [16 U.S.C. 1406] The Commission, in carrying out its responsibilities under this title, may—

(1) employ and fix the compensation of such personnel;

(2) acquire, furnish, and equip such office space;

(3) enter into such contracts or agreements with, or provide such grants to, other organizations, both public and private;

(4) procure the services of such experts or consultants or an organization thereof as is authorized under section 3109 of Title 5, United States Code (but at rates for individuals not to exceed $100 per diem); and

(5) incur such necessary expenses and exercise such other powers, as are consistent with and reasonably required to perform its functions under this title; except that no fewer than 11 employees must be employed under paragraph (1) at any time.[1] Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of General Services.

SEC. 207. [16 U.S.C. 1407] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out this title, $1,500,000 for fiscal year 1994, $1,550,000 for fiscal year 1995, $1,600,000 for fiscal year 1996, $1,650,000 for fiscal year 1997, $1,700,000 for fiscal year 1998, and $1,750,000 for fiscal year 1999.

TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

SEC. 301. [16 U.S.C. 1411] FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds the following:

(1) The yellowfin tuna fishery of the eastern tropical Pacific Ocean has resulted in the deaths of millions of dolphins.

(2) Significant awareness and increased concern for the health and safety of dolphin populations has encouraged a change in fishing methods worldwide.

(3) United States tuna fishing vessels have led the world in the development of fishing methods to reduce dolphin mortalities in the eastern tropical Pacific Ocean and United States tuna processing companies have voluntarily promoted the marketing of tuna that is dolphin safe.

(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have demonstrated their willingness to participate in appropriate multilateral agreements to reduce dolphin mortality progressively to a level approaching zero through the setting of annual limits, with the goal of eliminating dolphin mortality in that fishery. Recognition of the International Dolphin Conservation Program will assure that the existing trend of reduced dolphin mortality continues; that individual stocks of dolphins are adequately protected; and that the goal of eliminating all dolphin mortality continues to be a priority.

(b) POLICY.—It is the policy of the United States to—

[1] So in law. The sentence beginning "Financial and administrative services..." should probably begin as a flush sentence on the next line.

(1) eliminate the marine mammal mortality resulting from the intentional encirclement of dolphins and other marine mammals in tuna purse seine fisheries;

(2) support the International Dolphin Conservation Program and efforts within the Program to reduce, with the goal of eliminating, the mortality referred to in paragraph (1);

(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught with driftnets or caught by purse seine vessels in the eastern tropical Pacific Ocean not operating in compliance with the International Dolphin Conservation Program;

(4) secure appropriate multilateral agreements to ensure that United States tuna fishing vessels shall have continued access to productive tuna fishing grounds in the South Pacific Ocean and elsewhere; and

(5) encourage observer coverage on purse seine vessels fishing for tuna outside of the eastern tropical Pacific Ocean in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals.

SEC. 302. [16 U.S.C. 1412] INTERNATIONAL DOLPHIN CONSERVATION PROGRAM.

The Secretary of State, in consultation with the Secretary, shall seek to secure a binding international agreement to establish an International Dolphin Conservation Program that requires—

(1) that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean shall not exceed 5,000 animals with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits;

(2) the establishment of a per-stock per-year dolphin mortality limit, to be in effect through calendar year 2000, at a level between 0.2 percent and 0.1 percent of the minimum population estimate, as calculated, revised, or approved by the Secretary;

(3) the establishment of a per-stock per-year dolphin mortality limit, beginning with the calendar year 2001, at a level less than or equal to 0.1 percent of the minimum population estimate as calculated, revised, or approved by the Secretary;

(4) that if a dolphin mortality limit is exceeded under—

(A) paragraph (1), all sets on dolphins shall cease for the applicable fishing year; and

(B) paragraph (2) or (3), all sets on the stocks covered under paragraph (2) or (3) and any mixed schools that contain any of those stocks shall cease for the applicable fishing year;

(5) a scientific review and assessment to be conducted in calendar year 1998 to—

(A) assess progress in meeting the objectives set for calendar year 2000 under paragraph (2); and

(B) as appropriate, consider recommendations for meeting these objectives;

(6) a scientific review and assessment to be conducted in calendar year 2000—

(A) to review the stocks covered under paragraph (3); and

(B) as appropriate to consider recommendations to further the objectives set under that paragraph;

(7) the establishment of a per vessel maximum annual dolphin mortality limit consistent with the established per-year mortality limits, as determined under paragraphs (1) through (3); and

(8) the provision of a system of incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin mortality.

SEC. 303. [16 U.S.C. 1413] REGULATORY AUTHORITY OF THE SECRETARY.

(a) REGULATIONS.—

(1) The Secretary shall issue regulations, and revise those regulations as may be appropriate, to implement the International Dolphin Conservation Program.

(2)(A) The Secretary shall issue regulations to authorize and govern the taking of marine mammals in the eastern tropical Pacific Ocean, including any species of marine mammal designated as depleted under this Act but not listed as endangered or threatened under the Endangered Species Act (16 U.S.C. 1531 et seq.), by vessels of the United States participating in the International Dolphin Conservation Program.

(B) Regulations issued under this section shall include provisions—

(i) requiring observers on each vessel;

(ii) requiring use of the backdown procedure or other procedures equally or more effective in avoiding mortality of, or serious injury to, marine mammals in fishing operations;

(iii) prohibiting intentional sets on stocks and schools in accordance with the International Dolphin Conservation Program;

(iv) requiring the use of special equipment, including dolphin safety panels in nets, monitoring devices as identified by the International Dolphin Conservation Program to detect unsafe fishing conditions that may cause high incidental dolphin mortality before nets are deployed by a tuna vessel, operable rafts, speedboats with towing bridles, floodlights in operable condition, and diving masks and snorkels;

(v) ensuring that the backdown procedure during sets of purse seine net on marine mammals is completed and rolling of the net to sack up has begun no later than 30 minutes before sundown;

(vi) banning the use of explosive devices in all purse seine operations;

(vii) establishing per vessel maximum annual dolphin mortality limits, total dolphin mortality limits and per-stock per-year mortality limits in accordance with the International Dolphin Conservation Program;

(viii) preventing the making of intentional sets on dolphins after reaching either the vessel maximum annual dolphin mortality limits, total dolphin mortality limits, or per-stock per-year mortality limits;

(ix) preventing the fishing on dolphins by a vessel without an assigned vessel dolphin mortality limit;

(x) allowing for the authorization and conduct of experimental fishing operations, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury do not require the encirclement of dolphins in the course of commercial yellowfin tuna fishing;

(xi) authorizing fishing within the area covered by the International Dolphin Conservation Program by vessels of the United States without the use of special equipment or nets if the vessel takes an observer and does not intentionally deploy nets on, or encircle, dolphins, under such terms and conditions as the Secretary may prescribe; and

(xii) containing such other restrictions and requirements as the Secretary determines are necessary to implement the International Dolphin Conservation Program with respect to vessels of the United States.

(C) ADJUSTMENTS TO REQUIREMENTS.—The Secretary may make such adjustments as may be appropriate to requirements of subparagraph (B) that pertain to fishing gear, vessel equipment, and fishing practices to the extent the adjustments are consistent with the International Dolphin Conservation Program.

(b) CONSULTATION.—In developing any regulation under this section, the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission appointed under section 3 of the Tuna Conventions Act of 1950 (16 U.S.C. 952).

(c) EMERGENCY REGULATIONS.—

(1) If the Secretary determines, on the basis of the best scientific information available (including research conducted under section 304 and information obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this title is having, or is likely to have, a significant adverse impact on a marine mammal stock or species, the Secretary shall—

(A) notify the Inter-American Tropical Tuna Commission of his or her determination, along with recommendations to the Commission as to actions necessary to reduce incidental mortality and serious injury and mitigate such adverse impact; and

(B) prescribe emergency regulations to reduce incidental mortality and serious injury and mitigate such adverse impact.

(2) Before taking action under subparagraph (A) or (B) of paragraph (1), the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United

States Commissioners to the Inter-American Tropical Tuna Commission.

(3) Emergency regulations prescribed under this subsection—

(A) shall be published in the Federal Register, together with an explanation thereof;

(B) shall remain in effect for the duration of the applicable fishing year; and

(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines that the reasons for the emergency action no longer exist.

(4) If the Secretary finds that the incidental mortality and serious injury of marine mammals in the yellowfin tuna fishery in the eastern tropical Pacific Ocean is continuing to have a significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for such additional periods as may be necessary.

(5) Within 120 days after the Secretary notifies the United States Commissioners to the Inter-American Tropical Tuna Commission of the Secretary's determination under paragraph (1)(A), the United States Commissioners shall call for a special meeting of the Commission to address the actions necessary to reduce incidental mortality and serious injury and mitigate the adverse impact which resulted in the determination. The Commissioners shall report the results of the special meeting in writing to the Secretary and to the Secretary of State. In their report, the Commissioners shall—

(A) include a description of the actions taken by the harvesting nations or under the International Dolphin Conservation Program to reduce the incidental mortality and serious injury and measures to mitigate the adverse impact on the marine mammal species or stock;

(B) indicate whether, in their judgment, the actions taken address the problem adequately; and

(C) if they indicate that the actions taken do not address the problem adequately, include recommendations of such additional action to be taken as may be necessary.

SEC. 304. [16 U.S.C. 1414a] RESEARCH.

(a) REQUIRED RESEARCH.—

(1) IN GENERAL.—The Secretary shall, in consultation with the Marine Mammal Commission and the Inter-American Tropical Tuna Commission, conduct a study of the effect of intentional encirclement (including chase) on dolphins and dolphin stocks incidentally taken in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The study, which shall commence on October 1, 1997, shall consist of abundance surveys as described in paragraph (2) and stress studies as described in paragraph (3), and shall address the question of whether such encirclement is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean.

(2) POPULATION ABUNDANCE SURVEYS.—The abundance surveys under this subsection shall survey the abundance of

such depleted stocks and shall be conducted during each of the calendar years 1998, 1999, and 2000.

(3) STRESS STUDIES.—The stress studies under this subsection shall include—

(A) a review of relevant stress-related research and a 3-year series of necropsy samples from dolphins obtained by commercial vessels;

(B) a 1-year review of relevant historical demographic and biological data related to dolphins and dolphin stocks referred to in paragraph (1); and

(C) an experiment involving the repeated chasing and capturing of dolphins by means of intentional encirclement.

(4) REPORT.—No later than 90 days after publishing the finding under subsection (g)(2) of the Dolphin Protection Consumer Information Act, the Secretary shall complete and submit a report containing the results of the research described in this subsection to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representatives Committees on Resources and on Commerce, and to the Inter-American Tropical Tuna Commission.

(b) OTHER RESEARCH.—

(1) IN GENERAL.—In addition to conducting the research described in subsection (a), the Secretary shall, in consultation with the Marine Mammal Commission and in cooperation with the nations participating in the International Dolphin Conservation Program and the Inter-American Tropical Tuna Commission, undertake or support appropriate scientific research to further the goals of the International Dolphin Conservation Program.

(2) SPECIFIC AREAS OF RESEARCH.—Research carried out under paragraph (1) may include—

(A) projects to devise cost-effective fishing methods and gear so as to reduce, with the goal of eliminating, the incidental mortality and serious injury of marine mammals in connection with commercial purse seine fishing in the eastern tropical Pacific Ocean;

(B) projects to develop cost-effective methods of fishing for mature yellowfin tuna without setting nets on dolphins or other marine mammals;

(C) projects to carry out stock assessments for those marine mammal species and marine mammal stocks taken in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean, including species or stocks not within waters under the jurisdiction of the United States; and

(D) projects to determine the extent to which the incidental take of nontarget species, including juvenile tuna, occurs in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, the geographic location of the incidental take, and the impact of that incidental take on tuna stocks and nontarget species.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) There are authorized to be appropriated to the Secretary the following amounts, to be used by the Secretary to carry out the research described in subsection (a):

(A) $4,000,000 for fiscal year 1998.

(B) $3,000,000 for fiscal year 1999.

(C) $4,000,000 for fiscal year 2000.

(D) $1,000,000 for fiscal year 2001.

(2) In addition to the amount authorized to be appropriated under paragraph (1), there are authorized to be appropriated to the Secretary for carrying out this section $3,000,000 for each of the fiscal years 1998, 1999, 2000, and 2001.

SEC. 305. [16 U.S.C. 1415] REPORTS BY THE SECRETARY.

Notwithstanding section 103(f), the Secretary shall submit annual reports to the Congress which include—

(1) results of research conducted pursuant to section 304;

(2) a description of the status and trends of stocks of tuna;

(3) a description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and bycatch of nontarget species;

(4) a description of the activities of the International Dolphin Conservation Program and of the efforts of the United States in support of the Program's goals and objectives, including the protection of dolphin stocks in the eastern tropical Pacific Ocean, and an assessment of the effectiveness of the Program;

(5) actions taken by the Secretary under section 101(a)(2)(B) and section 101(d);

(6) copies of any relevant resolutions and decisions of the Inter-American Tropical Tuna Commission, and any regulations promulgated by the Secretary under this title; and

(7) any other information deemed relevant by the Secretary.

SEC. 306. [16 U.S.C. 1416] PERMITS.

(a) IN GENERAL.—

(1) Consistent with the regulations issued pursuant to section 303, the Secretary shall issue a permit to a vessel of the United States authorizing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including requiring the submission of—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof; and

(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 303, with respect to each vessel.

(2) The Secretary is authorized to charge a fee for granting an authorization and issuing a permit under this section. The level of fees charged under this paragraph may not exceed the

administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in granting authorizations and issuing permits under this section.

(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

(b) PERMIT SANCTIONS.—

(1) In any case in which—

(A) a vessel for which a permit has been issued under this section has been used in the commission of an act prohibited under section 307;

(B) the owner or operator of any such vessel or any other person who has applied for or been issued a permit under this section has acted in violation of section 307; or

(C) any civil penalty or criminal fine imposed on a vessel, owner or operator of a vessel, or other person who has applied for or been issued a permit under this section has not been paid or is overdue,

the Secretary may—

(i) revoke any permit with respect to such vessel, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and other such matters as justice requires.

(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of transfer.

(4) In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this section unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this title or otherwise.

SEC. 307. [16 U.S.C. 1417] PROHIBITIONS.

(a) IN GENERAL.—It is unlawful—

(1) for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the International Dolphin Conservation Program by a country that is a member of the Inter-American Tropical Tuna Commission or has initiated and within 6 months thereafter completed all steps required of applicant nations in accordance with Article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(2) except as provided for in subsection 101(d), for any person or vessel subject to the jurisdiction of the United States intentionally to set a purse seine net on or to encircle any marine mammal in the course of tuna fishing operations in the eastern tropical Pacific Ocean except in accordance with this title and regulations issued pursuant to this title; and [1]

(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2);

(4) for any person to violate any regulation promulgated under this title;

(5) for any person to refuse to permit any duly authorized officer to board a vessel subject to that person's control for purposes of conducting any search or inspection in connection with the enforcement of this title; and

(6) for any person to assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in paragraph (5).

(b) PENALTIES.—

(1) CIVIL PENALTY.—A person that knowingly and willfully violates subsection (a) (1), (2), (3), (4), or (5) shall be subject to a civil penalty under section 105(a).

(2) CRIMINAL PENALTY.—A person that knowingly and willfully violates subsection (a)(5) or (a)(6) shall be subject to a criminal penalty under section 105(b).

(c) CIVIL FORFEITURES.—Any vessel (including its fishing gear, appurtenances, stores, and cargo) used, and any fish (or its fair market value) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by this section shall be subject to forfeiture to the United States in the manner provided in section 310 of the Magnuson Fishery Conservation and Management Act.

TITLE IV—MARINE MAMMAL HEALTH AND STRANDING RESPONSE

SEC. 401. [16 U.S.C. 1421] ESTABLISHMENT OF PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding

[1] So in law. Probably "and" should be deleted.

network participants, establish a program to be known as the "Marine Mammal Health and Stranding Response Program".

(b) PURPOSES.—The purposes of the Program shall be to—

(1) facilitate the collection and dissemination of reference data on the health of marine mammals and health trends of marine mammal populations in the wild;

(2) correlate the health of marine mammals and marine mammal populations, in the wild, with available data on physical, chemical, and biological environmental parameters; and

(3) coordinate effective responses to unusual mortality events by establishing a process in the Department of Commerce in accordance with section 404.

SEC. 402. [16 U.S.C. 1421a] DETERMINATION; DATA COLLECTION AND DISSEMINATION.

(a) DETERMINATION FOR RELEASE.—The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, develop objective criteria, after an opportunity for public review and comment, to provide guidance for determining at what point a rehabilitated marine mammal is releasable to the wild.

(b) COLLECTION.—The Secretary shall, in consultation with the Secretary of the Interior, collect and update, periodically, existing information on—

(1) procedures and practices for—

(A) rescuing and rehabilitating stranded marine mammals, including criteria used by stranding network participants, on a species-by-species basis, for determining at what point a marine mammal undergoing rescue and rehabilitation is returnable to the wild; and

(B) collecting, preserving, labeling, and transporting marine mammal tissues for physical, chemical, and biological analyses;

(2) appropriate scientific literature on marine mammal health, disease, and rehabilitation;

(3) strandings, which the Secretary shall compile and analyze, by region, to monitor species, numbers, conditions, and causes of illnesses and deaths of stranded marine mammals; and

(4) other life history and reference level data, including marine mammal tissue analyses, that would allow comparison of the causes of illness and deaths in stranded marine mammals with physical, chemical, and biological environmental parameters.

(c) AVAILABILITY.—The Secretary shall make information collected under this section available to stranding network participants and other qualified scientists.

SEC. 403. [16 U.S.C. 1421b] STRANDING RESPONSE AGREEMENTS.

(a) IN GENERAL.—The Secretary may enter into an agreement under section 112(c) with any person to take marine mammals under section 109(h)(1) in response to a stranding.

(b) REQUIRED PROVISION.—An agreement authorized by subsection (a) shall—

(1) specify each person who is authorized to perform activities under the agreement; and

(2) specify any terms and conditions under which a person so specified may delegate that authority to another person.

(c) REVIEW.—The Secretary shall periodically review agreements under section 112(c) that are entered into pursuant to this title, for performance adequacy and effectiveness.

SEC. 404. [16 U.S.C. 1421c] UNUSUAL MORTALITY EVENT RESPONSE.

(a) RESPONSE.—

(1) WORKING GROUP.—

(A) The Secretary, acting through the Office, shall establish, in consultation with the Secretary of the Interior, a marine mammal unusual mortality event working group, consisting of individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, marine conservation, and medical science, to provide guidance to the Secretary and the Secretary of the Interior for—

(i) determining whether an unusual mortality event is occurring;

(ii) determining, after an unusual mortality event has begun, if response actions with respect to that event are no longer necessary; and

(iii) developing the contingency plan in accordance with subsection (b), to assist the Secretary in responding to unusual mortality events.

(B) The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to the marine mammal unusual mortality event working group established under this paragraph.

(2) RESPONSE TIMING.—The Secretary, in consultation with the Secretary of the Interior, shall to the extent necessary and practicable—

(A) within 24 hours after receiving notification from a stranding network participant that an unusual mortality event might be occurring, contact as many members as is possible of the unusual mortality event working group for guidance; and

(B) within 48 hours after receiving such notification—

(i) make a determination as to whether an unusual mortality event is occurring;

(ii) inform the stranding network participant of that determination; and

(iii) if the Secretary has determined an unusual mortality event is occurring, designate an Onsite Coordinator for the event, in accordance with subsection (c).

(b) CONTINGENCY PLAN.—

(1) IN GENERAL.—The Secretary shall, in consultation with the Secretary of the Interior and the unusual mortality event working group, and after an opportunity for public review and

comment, issue a detailed contingency plan for responding to any unusual mortality event.

(2) CONTENTS.—The contingency plan required under this subsection shall include—

(A) a list of persons, including stranding network participants, at a regional, State, and local level, who can assist the Secretary in implementing a coordinated and effective response to an unusual mortality event;

(B) the types of marine mammal tissues and analyses necessary to assist in diagnosing causes of unusual mortality events;

(C) training, mobilization, and utilization procedures for available personnel, facilities, and other resources necessary to conduct a rapid and effective response to unusual mortality events; and

(D) such requirements as are necessary to—

(i) minimize death of marine mammals in the wild and provide appropriate care of marine mammals during an unusual mortality event;

(ii) assist in identifying the cause or causes of an unusual mortality event;

(iii) determine the effects of an unusual mortality event on the size estimates of the affected populations of marine mammals; and

(iv) identify any roles played in an unusual mortality event by physical, chemical, and biological factors, including contaminants.

(c) ONSITE COORDINATORS.—

(1) DESIGNATION.—

(A) The Secretary shall, in consultation with the Secretary of the Interior, designate one or more Onsite Coordinators for an unusual mortality event, who shall make immediate recommendations to the stranding network participants on how to proceed with response activities.

(B) An Onsite Coordinator so designated shall be one or more appropriate Regional Directors of the National Marine Fisheries Service or the United States Fish and Wildlife Service, or their designees.

(C) If, because of the wide geographic distribution, multiple species of marine mammals involved, or magnitude of an unusual mortality event, more than one Onsite Coordinator is designated, the Secretary shall, in consultation with the Secretary of the Interior, designate which of the Onsite Coordinators shall have primary responsibility with respect to the event.

(2) FUNCTIONS.—

(A) An Onsite Coordinator designated under this subsection shall coordinate and direct the activities of all persons responding to an unusual mortality event in accordance with the contingency plan issued under subsection (b), except that—

(i) with respect to any matter that is not covered by the contingency plan, an Onsite Coordinator shall use his or her best professional judgment; and

(ii) the contingency plan may be temporarily modified by an Onsite Coordinator, consulting as expeditiously as possible with the Secretary, the Secretary of the Interior, and the unusual mortality event working group.

(B) An Onsite Coordinator may delegate to any qualified person authority to act as an Onsite Coordinator under this title.

SEC. 405. [16 U.S.C. 1421d] UNUSUAL MORTALITY EVENT ACTIVITY FUNDING.

(a) ESTABLISHMENT OF FUND.—There is established in the Treasury an interest bearing fund to be known as the "Marine Mammal Unusual Mortality Event Fund", which shall consist of amounts deposited into the Fund under subsection (c).

(b) USES.—

(1) IN GENERAL.—Amounts in the Fund—

(A) shall be available only for use by the Secretary, in consultation with the Secretary of the Interior—

(i) to compensate persons for special costs incurred in acting in accordance with the contingency plan issued under section 404(b) or under the direction of an Onsite Coordinator for an unusual mortality event;

(ii) for reimbursing any stranding network participant for costs incurred in preparing and transporting tissues collected with respect to an unusual mortality event for the Tissue Bank; and

(iii)[1] for care and maintenance of marine mammal seized under section 104(c)(2)(D); and

(B) shall remain available until expended.

(2) PENDING CLAIMS.—If sufficient amounts are not available in the Fund to satisfy any authorized pending claim, such claim shall remain pending until such time as sufficient amounts are available. All authorized pending claims shall be satisfied in the order received.

(c) DEPOSITS INTO THE FUND.—There shall be deposited into the Fund—

(1) amounts appropriated to the Fund;

(2) other amounts appropriated to the Secretary for use with respect to unusual mortality events; and

(3) amounts received by the United States in the form of gifts, devises, and bequests under subsection (d).

(d) ACCEPTANCE OF DONATIONS.—For purposes of carrying out this title and section 104(c)(2)(D), the Secretary may accept, solicit, and use the services of volunteers, and may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

SEC. 406. [16 U.S.C. 1421e] LIABILITY.

(a) IN GENERAL.—A person who is authorized to respond to a stranding pursuant to an agreement entered into under section 112(c) is deemed to be an employee of the government[2] for pur-

[1] So in original. Public Law 103–238 (sec. 6, 108 Stat. 542) added this new clause with the wrong indentation.

[2] So in law. Probably should be "Government".

poses of chapter 171 of title 28, United States Code, with respect to actions of the person that are—

(1) in accordance with the agreement; and

(2) in the case of an unusual mortality event, in accordance with—

(A) the contingency plan issued under section 404(b);

(B) the instructions of an Onsite Coordinator designated under section 404(c); or

(C) the best professional judgment of an Onsite Coordinator, in the case of any matter that is not covered by the contingency plan.

(b) LIMITATION.—Subsection (a) does not apply to actions of a person described in that subsection that are grossly negligent or that constitute willful misconduct.

SEC. 407. [16 U.S.C. 1421f] NATIONAL MARINE MAMMAL TISSUE BANK AND TISSUE ANALYSIS.

(a) TISSUE BANK.—

(1) IN GENERAL.—The Secretary shall make provision for the storage, preparation, examination, and archiving of marine mammal tissues. Tissues archived pursuant to this subsection shall be known as the "National Marine Mammal Tissue Bank".

(2) GUIDANCE FOR MARINE MAMMAL TISSUE COLLECTION, PREPARATION, AND ARCHIVING.—The Secretary shall, in consultation with individuals with knowledge and expertise in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for marine mammal tissue collection, preparation, archiving, and quality control procedures, regarding—

(A) appropriate and uniform methods and standards for those activities to provide confidence in marine mammal tissue samples used for research; and

(B) documentation of procedures used for collecting, preparing, and archiving those samples.

(3) SOURCE OF TISSUE.—In addition to tissues taken during marine mammal unusual mortality events, the Tissue Bank shall incorporate tissue samples taken from other sources in the wild, including—

(A) samples from marine mammals taken incidental to commercial fishing operations;

(B) samples from marine mammals taken for subsistence purposes;

(C) biopsy samples; and

(D) any other samples properly collected.

(b) TISSUE ANALYSIS.—The Secretary shall, in consultation with the Marine Mammal Commission, the Secretary of the Interior, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for analyzing tissue samples (by use of the most effective and advanced diagnostic technologies and tools practicable) as a means to monitor and measure overall health trends in representative species or populations of marine mammals, including—

(1) the levels of, and if possible, the effects of, potentially harmful contaminants; and

(2) the frequency of, and if possible, the causes and effects of abnormal lesions or anomalies.

(c) DATA BASE.—

(1) IN GENERAL.—The Secretary shall maintain a central data base which provides an effective means for tracking and accessing data on marine mammals, including relevant data on marine mammal tissues collected for and maintained in the Tissue Bank.

(2) CONTENTS.—The data base established under this subsection shall include—

(A) reference data on the health of marine mammals and populations of marine mammals; and

(B) data on species of marine mammals that are subject to unusual mortality events.

(d) ACCESS.—The Secretary shall, in consultation with the Secretary of the Interior, establish criteria, after an opportunity for public review and comment, for access to—

(1) marine mammal tissues in the Tissue Bank;

(2) analyses conducted pursuant to subsection (b); and

(3) marine mammal data in the data base maintained under subsection (c);

which provide for appropriate uses of the tissues, analyses, and data by qualified scientists, including stranding network participants.

SEC. 408. [16 U.S.C. 1421f–1] JOHN H. PRESCOTT MARINE MAMMAL RESCUE ASSISTANCE GRANT PROGRAM.

(a) IN GENERAL.—(1) Subject to the availability of appropriations, the Secretary shall conduct a grant program to be known as the John H. Prescott Marine Mammal Rescue Assistance Grant Program, to provide grants to eligible stranding network participants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes.

(2)(A) The Secretary shall ensure that, to the greatest extent practicable, funds provided as grants under this subsection are distributed equitably among the stranding regions designated as of the date of the enactment of the Marine Mammal Rescue Assistance Act of 2000, and in making such grants shall give preference to those facilities that have established records for rescuing or rehabilitating sick and stranded marine mammals in each of the respective regions, or subregions.

(B) In determining priorities among such regions, the Secretary may consider—

(i) any episodic stranding or any mortality event other than an event described in section 410(6), that occurred in any region in the preceding year;

(ii) data regarding average annual strandings and mortality events per region; and

(iii) the size of the marine mammal populations inhabiting a geographic area within such a region.

(b) APPLICATION.—To receive a grant under this section, a stranding network participant shall submit an application in such form and manner as the Secretary may prescribe.

(c) CONSULTATION.—The Secretary shall consult with the Marine Mammal Commission, a representative from each of the designated stranding regions, and other individuals who represent public and private organizations that are actively involved in rescue, rehabilitation, release, scientific research, marine conservation, and forensic science regarding stranded marine mammals, regarding the development of criteria for the implementation of the grant program and the awarding of grants under the program.

(d) LIMITATION.—The amount of a grant under this section shall not exceed $100,000.

(e) MATCHING REQUIREMENT.—

(1) IN GENERAL.—The non-Federal share of the costs of an activity conducted with a grant under this section shall be 25 percent of such costs.

(2) IN-KIND CONTRIBUTIONS.—The Secretary may apply to the non-Federal share of an activity conducted with a grant under this section the amount of funds, and the fair market value of property and services, provided by non-Federal sources and used for the activity.

(f) ADMINISTRATIVE EXPENSES.—Of amounts available each fiscal year to carry out this section, the Secretary may expend not more than 6 percent or $80,000, whichever is greater, to pay the administrative expenses necessary to carry out this section.

(g) DEFINITIONS.—In this section:

(1) DESIGNATED STRANDING REGION.—The term 'designated stranding region' means a geographic region designated by the Secretary for purposes of administration of this title.

(2) SECRETARY.—The term 'Secretary' has the meaning given that term in section 3(12)(A).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years 2001 through 2003, to remain available until expended, of which—

(1) $4,000,000 may be available to the Secretary of Commerce; and

(2) $1,000,000 may be available to the Secretary of the Interior.

SEC. 409. [16 U.S.C. 1421g] AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated—

(1) to the Secretary for carrying out this title (other than sections 405 and 407) $250,000 for each of fiscal years 1993 and 1994;

(2) to the Secretary for carrying out section 407, $250,000 for each of fiscal years 1993 and 1994; and

(3) to the Fund, $500,000 for fiscal year 1993.

SEC. 410. [16 U.S.C. 1421h] DEFINITIONS.

In this title, the following definitions apply:

(1) The term "Fund" means the Marine Mammal Unusual Mortality Event Fund established by section 405(a).

(2) The term "Office" means the Office of Protected Resources, in the National Marine Fisheries Service.

(3) The term "stranding" means an event in the wild in which—

(A) a marine mammal is dead and is—

(i) on a beach or shore of the United States; or

(ii) in waters under the jurisdiction of the United States (including any navigable waters); or

(B) a marine mammal is alive and is—

(i) on a beach or shore of the United States and unable to return to the water;

(ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or

(iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.

(4) The term "stranding network participant" means a person who is authorized by an agreement under section 112(c) to take marine mammals as described in section 109(h)(1) in response to a stranding.

(5) The term "Tissue Bank" means the National Marine Tissue Bank provided for under section 407(a).

(6) The term "unusual mortality event" means a stranding that—

(A) is unexpected;

(B) involves a significant die-off of any marine mammal population; and

(C) demands immediate response.

ENDANGERED SPECIES ACT OF 1973

ENDANGERED SPECIES ACT OF 1973

[Public Law 93–205, Approved Dec. 28, 1973, 87 Stat. 884]

[Amended through Public Law 106–201, May 18, 2000]

AN ACT To provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [16 U.S.C. 1531 note] That this Act may be cited as the "Endangered Species Act of 1973".

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FINDINGS, PURPOSES, AND POLICY

SEC. 2. [16 U.S.C. 1531] (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;

[1] Bracketed material does *not* appear in Act. Sec. 1012 of P.L. 100–478, 102 Stat. 2314, October 7, 1988, added sec. 18 of the Act but did not conform the table of contents of the Act.

(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 seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of 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. [16 U.S.C. 1532] 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) Repealed by section 4(b) of P.L. 97–304, 96 Stat. 1420.]

(12) 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.

(13) 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.

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

(15) 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.

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

(17) 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.

(18) 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.

(19) 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.

(20) 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.

(21) The term "United States," when used in a geographical context, includes all States.

DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

SEC. 4. [16 U.S.C. 1533] (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; or

(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.

(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 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 which have been—

(i) designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any 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 outweight 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[1] 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 after 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) 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

(E) 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

[1] So in original. Probably should be paragraph "(7)".

(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 a 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 data as may be available at that time, designating, to the maximum extent prudent, such habitat.

(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.

(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 through 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)(1) RECOVERY PLANS.—The Secretary shall develop and implement plans (hereinafter in this subsection referred to as "recovery plans") for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in development and implementing recovery plans, shall, to the maximum extent practicable—

(A) give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity; [1]

(B) incorporate in each plan—

(i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species;

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

[1] So in law. Probably should be "; and".

(iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

(2) The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.

(3) 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 this section and on the status of all species for which such plans have been developed.

(4) The Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information presented during the public comment period prior to approval of the plan.

(5) Each Federal agency shall, prior to implementation of a new or revised recovery plan, consider all information presented during the public comment period under paragraph (4).

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

(2) The Secretary shall make prompt use of the authority under paragraph 7[1] of subsection (b) of this section to prevent a significant risk to the well being of any such recovered species.

(h) 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 subsection (f) of this section.

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.

(i) 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,

[1] So in original. Probably should be paragraph "(7)".

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.

LAND ACQUISITION

SEC. 5. (a) [16 U.S.C. 1534] 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.

(b) 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. [16 U.S.C. 1535] (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.

(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 con-

servation 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 subparagraphs (C), (D), and (E) of this paragraph 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 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 findings, 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 plants; 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 bore 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 specie or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this Act of 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 any State law or regulation which is intended to conserve migratory, resident, 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 legislative 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. [16 U.S.C. 1536] (a) FEDERAL AGENCY ACTIONS AND CONSULTATIONS.—(1) The Secretary shall review other programs administered by him and utilize such 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 car-

rying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.

(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).

(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 101(a)(5) of the Marine Mammal Protection Act of 1972;

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 101(a)(5) of the Marine Mammal Protection Act of 1972 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 informa-

tion 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 in 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. Agency. [1]

(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

[1] So in law. At the end of section 7(e)(3)(D) of the Endangered Species Act of 1973, the second "Agency." should had been stricken.

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 [1]

(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

[1] So in law. At the end of section 7(e)(4)(B) of the Endangered Species Act of 1973, the period at end of the paragraph was omitted.

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 by 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 in mutually agreeable to the exemption applicant and the Secretary, the Secretary shall submit to the Committee a report discussing—

(A) the availability and 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 consider-

ation 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, transplantation, 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 purposes 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.

(l) 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 4(d) and 9(a)(1)(B) and (C) of this Act, sections 101 and 102 of the Marine Mammal Protection Act of 1972, 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 and Emergency Assistance Act, 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 405 or 406 of the Disaster Relief and Emergency Assistance Act, 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. [16 U.S.C. 1537] (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 county (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. [16 U.S.C. 1537a] (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 of 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 and 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) cooperation with contracting parties and international organizations for the purpose of developing personnel resources and programs that will facilitate implementation of the Western Convention;

(B) 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; and

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

(3) No later than September 30, 1985, 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. [16 U.S.C. 1538] (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 areas 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 subsections (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 as 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 subsections (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 reasonably 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 of the Convention have been satisfied;

(C) the applicable requirements of subsection (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 important 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 OF 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 of ports designated by the Secretary of the Interior. For the pur-

poses 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. [16 U.S.C. 1539] (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 steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(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) HARDSHIP 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 Alaska 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

[1] (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,

[1] So in law. Section 10(e)(3)(ii) of the Endangered Species Act of 1973 paragraph indention is incorrect. Indention should be same as 10(e)(3)(i)

weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (l) 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 form 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, and pre-Act finished scrimshaw product unless such person holds a valid certificate of exemption issued by the Secretary under this subsection, and 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 population 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. [16 U.S.C. 1540] (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 or 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 on 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 con-

ducted 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 of 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 violations 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, prop-

erty, 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 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 fur-

nishing 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 well-being 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 limitation, 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. [16 U.S.C. 1541] 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.

CONFORMING AMENDMENTS

SEC. 13. [Section 13 consists of amendments to other Acts.]

REPEALER

SEC. 14. [Section 14 consists of repeals of provisions of law.]

AUTHORIZATION OF APPROPRIATIONS

SEC. 15. [16 U.S.C. 1542] (a) IN GENERAL.—Except as provided in subsection (b), (c), and (d), there are authorized to be appropriated—

(1) not to exceed $35,000,000 for fiscal year 1988, $36,500,000 for fiscal year 1989, $38,000,000 for fiscal year 1990, $39,500,000 for fiscal year 1991, and $41,500,000 for fiscal year 1992 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act;

(2) not to exceed $5,750,000 for fiscal year 1988, $6,250,000 for each of fiscal years 1989 and 1990, and $6,750,000 for each of fiscal year 1991 and 1992 to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act; and

(3) not to exceed $2,200,000 for fiscal year 1988, $2,400,000 for each of fiscal years 1989 and 1990, and $2,600,000 for each of fiscal years 1991 and 1992, to enable the Department of Agriculture to carry out its functions and responsibilities with respect to the enforcement of this Act and the Convention which pertain to the importation or exportation of plants.

(b) EXEMPTIONS FROM ACT.—There are authorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out their functions under sections [1] 7 (e), (g), and (h) not to exceed $600,000 for each of fiscal years 1988, 1989, 1990, 1991, and 1992.

(c) CONVENTION IMPLEMENTATION.—There are authorized to be appropriated to the Department of the Interior for purposes of carrying out section 8A(e) not to exceed $400,000 for each of fiscal years 1988, 1989, and 1990, and $500,000 for each of fiscal years 1991 and 1992, and such sums shall remain available until expended.

EFFECTIVE DATE

SEC. 16. [16 U.S.C. 1531 note] This Act shall take effect on the date of its enactment.

MARINE MAMMAL PROTECTION ACT OF 1972

SEC. 17. [16 U.S.C. 1543] 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. [16 U.S.C. 1544] Notwithstanding section 3003 of Public Law 104–66 (31 U.S.C. 1113 note; 109 Stat. 734), 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

[1] So in original. Probably should be "section".

(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.

COASTAL BARRIER RESOURCES ACT

COASTAL BARRIER RESOURCES ACT

[Public Law 97–348, Approved Oct. 18, 1982, 96 Stat 1653]

[Amended through Public Law 106–514, Nov. 13, 2000]

AN ACT To protect and conserve fish and wildlife resources, and for other purposes.

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

SECTION 1. [16 U.S.C. 3501 note] SHORT TITLE.

This Act may be cited as the "Coastal Barrier Resources Act".

SEC. 2. [16 U.S.C. 3501] FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) coastal barriers along the Atlantic and Gulf coasts and along the shore areas of the Great Lakes of the United States and the adjacent wetlands, marshes, estuaries, inlets and near-shore waters provide—

(A) habitats for migratory birds and other wildlife; and

(B) habitats which are essential spawning, nursery, nesting, and feeding areas for commercially and recreationally important species of finfish and shellfish, as well as other aquatic organisms such as sea turtles;

(2) coastal barriers contain resources of extraordinary scenic, scientific, recreational, natural, historic, archeological, cultural, and economic importance; which are being irretrievably damaged and lost due to development on, among, and adjacent to, such barriers;

(3) coastal barriers serve as natural storm protective buffers and are generally unsuitable for development because they are vulnerable to hurricane and other storm damage and because natural shoreline recession and the movement of unstable sediments undermine manmade structures;

(4) certain actions and programs of the Federal Government have subsidized and permitted development on coastal barriers and the result has been the loss of barrier resources, threats to human life, health, and property, and the expenditure of millions of tax dollars each year; and

(5) a program of coordinated action by Federal, State, and local governments is critical to the more appropriate use and conservation of coastal barriers.

(b) PURPOSE.—The Congress declares that it is the purpose of this Act to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf coasts and along the shore areas of the Great Lakes by restricting future Federal expenditures and financial assistance

which have the effect of encouraging development of coastal barriers, by establishing the John H. Chafee Coastal Barrier Resources System, and by considering the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved.

SEC. 3. [16 U.S.C. 3502] DEFINITIONS.

For purposes of this Act—

(1) The term "undeveloped coastal barrier" means—

(A) a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that—

(i) is subject to wave, tidal, and wind energies, and

(ii) protects landward aquatic habitats from direct wave attack; and

(B) all associated aquatic habitats including the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters;

but only if such features and associated habitats contain few man-made structures and these structures, and man's activities on such features and within such habitats, do not significantly impede geomorphic and ecological processes.

(2) The term "Committees" means the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(3) The term "financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal assistance other than—

(A) deposit or account insurance for customers of banks, savings and loan associations, credit unions, or similar institutions;

(B) the purchase of mortgages or loans by the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

(C) assistance for environmental studies, planning, and assessments that are required incident to the issuance of permits or other authorizations under Federal law; and

(D) assistance pursuant to programs entirely unrelated to development, such as any Federal or federally assisted public assistance program or any Federal old-age survivors or disability insurance program.

Such term includes flood insurance described in section 1321 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4028).

(4) The term "Great Lakes" means Lake Ontario, Lake Erie, Lake Huron, Lake St. Clair, Lake Michigan, and Lake Superior, to the extent that those lakes are subject to the jurisdiction of the United States.

(5) The term "Secretary" means the Secretary of the Interior.

(6) The term "System" means the John H. Chafee Coastal Barrier Resources System established by section 4(a).

(7) The term "System unit" means any undeveloped coastal barrier, or combination of closely-related undeveloped coastal barriers, included within the John H. Chafee Coastal Barrier Resources System established by section 4.

SEC. 4. [16 U.S.C. 3503] ESTABLISHMENT OF JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM.

(a) ESTABLISHMENT.—There is established the John H. Chafee Coastal Barrier Resources System, which shall consist of those undeveloped coastal barriers and other areas located on the coasts of the United States that are identified and generally depicted on the maps on file with the Secretary entitled "Coastal Barrier Resources System", dated October 24, 1990, as those maps may be modified, revised, or corrected under—

(1) subsection (f)(3);

(2) section 4 of the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3503 note; Public Law 101–591); or

(3) any other provision of law enacted on or after November 16, 1990, that specifically authorizes the modification, revision, or correction. [1]

(b) SYSTEM MAPS.—The Secretary shall keep the maps referred to in subsection (a) on file and available for public inspection in the Office of the Director of the United States Fish and Wildlife Service, and in such other offices of that service as the Director considers appropriate.

(c) BOUNDARY REVIEW AND MODIFICATION.—At least once every 5 years, the Secretary shall review the maps referred to in subsection (a) and shall make, in consultation with the appropriate State, local, and Federal officials, such minor and technical modifications to the boundaries of System units as are necessary solely to reflect changes that have occurred in the size or location of any System unit as a result of natural forces.

(d) ADDITIONS TO SYSTEM.—The Secretary may add a parcel of real property to the System, if—

(1) the owner of the parcel requests, in writing, that the Secretary add the parcel to the System; and

(2) the parcel is an undeveloped coastal barrier.

(e) ADDITION OF EXCESS FEDERAL PROPERTY.—

(1) CONSULTATION AND DETERMINATION.—Prior to transfer or disposal of excess property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)

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[1] The following provisions of law enacted on or after November 16, 1990, specifically directed the Secretary of the Interior to make technical revisions and corrections to maps relating to particular units of the John H. Chafee Coastal Barrier Resources System:

Unit DE–03P, Delaware: Pub. L. 106–128, section 1, Dec. 6, 1999, 113 Stat. 1652.

Units NC–03P and L03, North Carolina: Pub. L. 106–116, section 1 (113 Stat. 1544), Nov. 29, 1999

Unit SC–03, South Carolina: Pub. L. 105–277, div. A, section 101(e), title I (112 Stat. 2681–238), Oct. 21, 1998

Units FL–35P and FL–35, Florida: Pub. L. 105–277, div. A, section 101(e), title I (112 Stat. 2681–238), Oct. 21, 1998

Unit M09, South Carolina: Pub. L. 105–277, division A, section 101(e), title I, section 134 (112 Stat. 2681–264), Oct. 21, 1998

Units P04A, P05/P05P; P05A/P05AP, FL–06P; P10/P10P; P11; P11AP; P11A; P18/P18P; P25/P25P; P32/P32P, Florida: Pub. L. 105–277, division A, section 101(e), title III, section 335 (112 Stat. 2681–295), Oct. 21, 1998

Units P05, P05A, P10, P11, P11A, P18, P25, P32, P32P, Florida: Pub. L. 104–333, division I, title II, section 220 (110 Stat. 4115), Nov. 12, 1996

Unit SC–01, South Carolina: Pub. L. 104–265, title II, section 201 (110 Stat. 3289), Oct. 9, 1996

Unit NY-59P, New York: Pub. L. 104–148, section 2 (110 Stat. 1378), May 24, 1996

Units AL-01P, FL-05P, P11A, P17, P17A, P18P, P19P, FL-15, FL-95P, FL-36P, P31P, FL-72P, MI21, NY75, and VA62P, Alabama, Florida, Michigan, New York and Virginia: Pub. L. 103–461, section 1(a), (b) (108 Stat. 4804), Nov. 2, 1994

Units NC–01P, NC–05P, VA–59P, VA–60P, North Carolina and Virginia: Pub. L. 102–440, title III, section 303 (106 Stat. 2234), Oct. 23, 1992

that may be an undeveloped coastal barrier, the Administrator of General Services shall consult with and obtain from the Secretary a determination as to whether and what portion of the property constitutes an undeveloped coastal barrier. Not later than 180 days after the initiation of such consultation, the Secretary shall make and publish notice of such determination. Immediately upon issuance of a positive determination, the Secretary shall—

(A) prepare a map depicting the undeveloped coastal barrier portion of such property; and

(B) publish in the Federal Register notice of the addition of such property to the System.

(2) EFFECTIVE DATE OF INCLUSION.—An area to be added to the System under this subsection shall be part of the System effective on the date on which the Secretary publishes notice in the Federal Register under paragraph (1)(B) with respect to that area.

(f) MAPS.—The Secretary shall—

(1) keep a map showing the location of each boundary modification made under subsection (c) and of each parcel of real property added to the System under subsection (d) or (e) on file and available for public inspection in the Office of the Director of the United States Fish and Wildlife Service and in such other offices of the Service as the Director considers appropriate;

(2) provide a copy of the map to—

(A) the State and unit of local government in which the property is located;

(B) the Committees; and

(C) the Federal Emergency Management Agency; and

(3) revise the maps referred to in subsection (a) to reflect each boundary modification under subsection (c) and each addition of real property to the System under subsection (d) or (e), after publishing in the Federal Register a notice of any such proposed revision.

(g) GUIDELINES FOR CERTAIN RECOMMENDATIONS AND DETERMINATIONS.—

(1) IN GENERAL.—In making any recommendation to the Congress regarding the addition of any area to the System or in determining whether, at the time of the inclusion of a System unit within the System, a coastal barrier is undeveloped, the Secretary shall consider whether within the area—

(A) the density of development is less than 1 structure per 5 acres of land above mean high tide; and

(B) there is existing infrastructure consisting of—

(i) a road, with a reinforced road bed, to each lot or building site in the area;

(ii) a wastewater disposal system sufficient to serve each lot or building site in the area;

(iii) electric service for each lot or building site in the area; and

(iv) a fresh water supply for each lot or building site in the area.

(2) STRUCTURE DEFINED.—In paragraph (1), the term "structure" means a walled and roofed building, other than a gas or liquid storage tank, that—

(A) is principally above ground and affixed to a permanent site, including a manufactured home on a permanent foundation; and

(B) covers an area of at least 200 square feet.

(3) SAVINGS CLAUSE.—Nothing in this subsection supersedes the official maps referred to in subsection (a).

SEC. 5. [16 U.S.C. 3504] LIMITATIONS ON FEDERAL EXPENDITURES AFFECTING THE SYSTEM.

(a) Except as provided in section 6, no new expenditures or new financial assistance may be made available under authority of any Federal law for any purpose within the System, including, but not limited to—

(1) the construction or purchase of any structure, appurtenance, facility, or related infrastructure;

(2) the construction or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway, to any System unit; and

(3) the carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to section 4 on maps numbered S01 through S08 and LA07 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.

(b) An expenditure or financial assistance made available under authority of Federal law shall, for purposes of this Act, be a new expenditure or new financial assistance if—

(1) in any case with respect to which specific appropriations are required, no money for construction or purchase purposes was appropriated before the date on which the relevant System unit or portion of the System unit was included within the System under this Act or the Coastal Barrier Improvement Act of 1990; or

(2) no legally binding commitment for the expenditure or financial assistance was made before such date.

SEC. 6. [16 U.S.C. 3505] EXCEPTIONS TO LIMITATIONS ON EXPENDITURES.

(a) IN GENERAL.—Notwithstanding section 5, the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures and may make financial assistance available within the System for the following:

(1) Any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to a coastal water area because the use or facility requires access to the coastal water body.

(2) The maintenance or construction of improvements of existing Federal navigation channels (including the Intracoastal Waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction.

(3) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system.

(4) Military activities essential to national security.

(5) The construction, operation, maintenance, and rehabilitation of Coast Guard facilities and access thereto.

(6) Any of the following actions or projects, if a particular expenditure or the making available of particular assistance for the action or project is consistent with the purposes of this Act:

(A) Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats, including acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

(B) Establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.

(C) Projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(D) Scientific research, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, and applications.

(E) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Disaster Relief and Emergency Assistance Act and section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) and are limited to actions that are necessary to alleviate the emergency.

(F) Maintenance, replacement, reconstruction, or repair, but not the expansion (except with respect to United States route 1 in the Florida Keys), of publicly owned or publicly operated roads, structures, and facilities.

(G) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.

(b) EXISTING FEDERAL NAVIGATION CHANNELS.—For purposes of subsection (a)(2), a Federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System unit or portion of the System unit was included within the System.

(c) EXPANSION OF HIGHWAYS IN MICHIGAN.—The limitations on the use of Federal expenditures or financial assistance within the System under subsection (a)(3) shall not apply to a highway—

(1) located in a unit of the System in Michigan; and

(2) in existence on the date of the enactment of the Coastal Barrier Improvement Act of 1990.

(d) SERVICES AND FACILITIES OUTSIDE SYSTEM.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) of this subsection, limitations on the use of Federal expend-

itures or financial assistance within the System under section 5 shall not apply to expenditures or assistance provided for services or facilities and related infrastructure located outside the boundaries of unit T–11 of the System (as depicted on the maps referred to in section 4(a)) which relate to an activity within that unit.

(2) PROHIBITION OF FLOOD INSURANCE COVERAGE.—No new flood insurance coverage may be provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) for any new construction or substantial improvements relating to services or facilities and related infrastructure located outside the boundaries of unit T–11 of the System that facilitate an activity within that unit that is not consistent with the purposes of this Act.

(3) PROHIBITION OF HUD ASSISTANCE.—

(A) IN GENERAL.—No financial assistance for acquisition, construction, or improvement purposes may be provided under any program administered by the Secretary of Housing and Urban Development for any services or facilities and related infrastructure located outside the boundaries of unit T–11 of the System that facilitate an activity within that unit that is not consistent with the purposes of this Act.

(B) DEFINITION OF FINANCIAL ASSISTANCE.—For purposes of this paragraph, the term 'financial assistance' includes any contract, loan, grant, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages.".

SEC. 7. [16 U.S.C. 3506] CERTIFICATION OF COMPLIANCE.

(a) REGULATIONS.—Not later than 12 months after the date of enactment of the Coastal Barrier Improvement Act of 1990, the head of each Federal agency affected by this Act shall promulgate regulations to assure compliance with the provisions of this Act.

(b) CERTIFICATION.—The head of each Federal agency affected by this Act shall report and certify that each such agency is in compliance with the provisions of this Act. Such reports and certifications shall be submitted annually to the Committees and the Secretary.

SEC. 8. [16 U.S.C. 3507] PRIORITY OF LAWS.

Nothing contained in this Act shall be construed as indicating an intent on the part of the Congress to change the existing relationship of other Federal laws to the law of a State, or a political subdivision of a State, or to relieve any person of any obligation imposed by any law of any State, or political subdivision of a State. No provision of this Act shall be construed to invalidate any provision of State or local law unless there is a direct conflict between such provision and the law of the State, or political subdivision of the State, so that the two cannot be reconciled or consistently stand together. This Act shall in no way be interpreted to interfere with a State's right to protect, rehabilitate, preserve, and restore lands within its established boundary.

SEC. 9. [16 U.S.C. 3508] SEPARABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act

and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

SEC. 10. [16 U.S.C. 3510] AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary to carry out this Act $2,000,000 for each of fiscal years 2001, 2002, 2003, 2004, and 2005.

[Section 11 amended the National Flood Insurance Act of 1968.]

NATIONAL FISH AND WILDLIFE FOUNDATION ESTABLISHMENT ACT

NATIONAL FISH AND WILDLIFE FOUNDATION ESTABLISHMENT ACT

[Public Law 98–244, Approved Mar. 26, 1984, 98 Stat. 107]

[Amended through Public Law 106–408, Nov. 1, 2000]

AN ACT To establish a National Fish and Wildlife Foundation.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Fish and Wildlife Foundation Establishment Act".

(16 U.S.C. 3701 note)

SEC. 2. ESTABLISHMENT AND PURPOSES OF FOUNDATION.

(a) ESTABLISHMENT.—There is established the National Fish and Wildlife Foundation (hereinafter in this Act referred to as the "Foundation"). The Foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States.

(b) PURPOSES.—The purposes of the Foundation are—

(1) to encourage, accept, and administer private gifts of property for the benefit of, or in connection with, the activities and services of the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, to further the conservation and management of fish, wildlife, plants, and other natural resources;

(2) to undertake and conduct such other activities as will further the conservation and management of the fish, wildlife, and plant resources of the United States, and its territories and possessions, for present and future generations of Americans; and

(3) to participate with, and otherwise assist, foreign governments, entities, and individuals in undertaking and conducting activities that will further the conservation and management of the fish, wildlife, and plant resources of other countries.

(16 U.S.C. 3701)

SEC. 3. BOARD OF DIRECTORS OF THE FOUNDATION.

(a) ESTABLISHMENT AND MEMBERSHIP.—

(1) IN GENERAL.—The Foundation shall have a governing Board of Directors (referred to in this Act as the 'Board'), which shall consist of 25 Directors appointed in accordance with subsection (b), each of whom shall be a United States citizen.

(2) REPRESENTATION OF DIVERSE POINTS OF VIEW.—To the maximum extent practicable, the membership of the Board shall represent diverse points of view relating to conservation and management of fish, wildlife, plants, and other natural resources.

(3) NOT FEDERAL EMPLOYEES.—Appointment as a Director of the Foundation shall not constitute employment by, or the holding of an office of, the United States for the purpose of any Federal law.

(b) APPOINTMENT AND TERMS.—

(1) AGENCY HEADS.—The Director of the United States Fish and Wildlife Service and the Under Secretary of Commerce for Oceans and Atmosphere shall be Directors of the Foundation.

(2) APPOINTMENTS BY THE SECRETARY OF THE INTERIOR.—

(A) IN GENERAL.—Subject to subparagraph (B), after consulting with the Secretary of Commerce and considering the recommendations submitted by the Board, the Secretary of the Interior shall appoint 23 Directors who meet the criteria established by subsection (a), of whom—

(i) at least six shall be educated or experienced in fish, wildlife, or other natural resource conservation;

(ii) at least four shall be educated or experienced in the principles of fish, wildlife, or other natural resource management; and

(iii) at least four shall be educated or experienced in ocean and coastal resource conservation.

(B) TRANSITION PROVISION.—

(i) CONTINUATION OF TERMS.—The 15 Directors serving on the Board as of the date of the enactment of this paragraph shall continue to serve until the expiration of their terms.

(ii) NEW DIRECTORS.—Subject to paragraph (3), the Secretary of the Interior shall appoint eight new Directors.

(3) TERMS.—

(A) IN GENERAL.—Subject to subparagraph (B), each Director (other than a Director described in paragraph (1)) shall be appointed for a term of 6 years.

(B) INITIAL APPOINTMENTS TO NEW MEMBER POSITIONS.—Of the Directors appointed by the Secretary of the Interior under paragraph (2)(B)(ii), the Secretary shall appoint, in fiscal year 2001, three Directors for a term of 6 years.

(C) SUBSEQUENT APPOINTMENTS TO NEW MEMBER POSITIONS.—Of the Directors appointed by the Secretary of the Interior under paragraph (2)(B)(ii), the Secretary shall appoint, in fiscal year 2002—

(i) two Directors for a term of 2 years; and

(ii) three Directors for a term of 4 years.

(4) VACANCIES.—

(A) IN GENERAL.—The Secretary of the Interior shall fill a vacancy on the Board.

(B) TERM OF APPOINTMENTS TO FILL UNEXPIRED TERMS.—An individual appointed to fill a vacancy that oc-

curs before the expiration of the term of a Director shall be appointed for the remainder of the term.

(5) REAPPOINTMENT.—An individual (other than an individual described in paragraph (1)) shall not serve more than 2 consecutive terms as a Director, excluding any term of less than 6 years.

(6) REQUEST FOR REMOVAL.—The executive committee of the Board may submit to the Secretary of the Interior a letter describing the nonperformance of a Director and requesting the removal of the Director from the Board.

(7) CONSULTATION BEFORE REMOVAL.—Before removing any Director from the Board, the Secretary of the Interior shall consult with the Secretary of Commerce.

(c) CHAIRMAN.—The Chairman shall be elected by the Board from its members for a 2-year term.

(d) QUORUM.—A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(e) MEETINGS.—The Board shall meet at the call of the Chairman at least once a year. If a Director misses 3 consecutive regularly scheduled meetings, that individual may be removed from the Board and that vacancy filled in accordance with subsection (b).

(f) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Foundation.

(g) GENERAL POWERS.—

(1) The Board may complete the organization of the Foundation by—

(A) appointing officers and employees;

(B) adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this Act; and

(C) undertaking of other such acts as may be necessary to carry out the provisions of this Act.

(2) The following limitations apply with respect to the appointment of officers and employees of the Foundation:

(A) Officers and employees may not be appointed until the Foundation has sufficient funds to pay them for their service. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(B) The first officer or employee appointed by the Board shall be the Secretary of the Board who—

(i) shall serve, at the direction of the Board, as its chief operating officer; and

(ii) shall be knowledgeable and experienced in matters relating to fish and wildlife conservation.

(16 U.S.C. 3702)

SEC. 4. RIGHTS AND OBLIGATIONS OF THE FOUNDATION.

(a) IN GENERAL.—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States and abroad;

(3) shall have its principal offices in the District of Columbia or in a county in the State of Maryland or Virginia that borders on the District of Columbia; and

(4) shall at all times maintain a designated agent authorized to accept service of process for the Foundation.

The serving of notice to, or service of process upon, the agent required under paragraph (4), or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(b) SEAL.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(c) POWERS.—To carry out its purposes under section 2, the Foundation shall have, in addition to the powers otherwise given it under this Act, the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;

(2) to acquire by purchase or exchange any real or personal property or interest therein, subject to subsection (e);

(3) to invest any funds provided to the Foundation by the Federal Government in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States;

(4) to deposit any funds provided to the Foundation by the Federal Government into accounts that are insured by an agency or instrumentality of the United States;

(5) to make use of any interest or investment income that accrues as a consequence of actions taken under paragraph (3) or (4) to carry out the purposes of the Foundation;

(6) to use Federal funds to make payments under cooperative agreements entered into with willing private landowners to provide substantial long-term benefits for the restoration or enhancement of fish, wildlife, plants, and other natural resources on private land;

(7) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain or otherwise dispose of any property or income therefrom;

(8) to borrow money and issue bonds, debentures, or other debt instruments;

(9) to sue and be sued, and complain and defend itself in any court of competent jurisdiction, except that the Directors of the Foundation shall not be personally liable, except for gross negligence;

(10) to enter into contracts or other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its functions; and

(11) to do any and all acts necessary and proper to carry out the purposes of the Foundation.[1]

For purposes of this Act, an interest in real property shall be treated as including, among other things, easements or other rights for preservation, conservation, protection, or enhancement by and for the public of natural, scenic, historic, scientific, educational, inspirational, or recreational resources. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of the Foundation.

(d) CERTAIN LANDS, WATERS, AND INTERESTS NOT SUBJECT TO CONDEMNATION.—No lands or waters, or interests therein, that are owned by the Foundation and are determined by the Director of the United States Fish and Wildlife Service or the Migratory Bird Conservation Commission, as the case may be, to be valuable for purposes of fish and wildlife conservation or management shall be subject to condemnation by any State or political subdivision, or any agent or instrumentality thereof.

(e) ACQUISITION, MANAGEMENT AND DISPOSAL OF REAL PROPERTY.—(1) The Foundation may only use Federal funds for the acquisition of interests in real property if—

(A) the interest is a long-term property interest; and

(B) the Foundation notifies the Federal agency that administers the program under which the funds were provided of the proposed acquisition, and the agency does not object in writing to the proposed acquisition within 60 calendar days after the date of the notification.

(2) The Foundation shall convey to the United States Fish and Wildlife Service for inclusion within the National Wildlife Refuge System any real property acquired by the Foundation in whole or in part with Federal funds if the Director, within 1 year after the date on which the property was acquired by the Foundation, requests the conveyance in writing.

(3)(A) Subject to subparagraph (B), the Foundation may—

(i) convey to another person any real property acquired in whole or in part with Federal funds and not conveyed under paragraph (2); and

(ii) grant or otherwise provide Federal funds to another person for purposes of assisting that person to acquire real property in whole or in part with such funds.

(B) The Foundation may only make a conveyance or provide Federal funds under subparagraph (A) if—

(i) the conveyance or provision is subject to terms and conditions that will ensure that the real property will be administered for the long-term conservation and management of fish

[1] Stipulated in reauthorizing language in P.L. 102–440: "Beginning in fiscal year 1993 and hereafter, the National Fish and Wildlife Foundation may continue to draw down Federal funds when matching requirements have been met: *Provided,* That interest earned by the Foundation and its subgrantees on funds drawn down to date, but not immediately disbursed, shall be used to fund all activities as approved by the Board of Directors: *Provided further,* That the Foundation's subgrantees shall be exempt from the audit reporting and compliance requirements of OMB Circular A–133, for all grants of $100,000 or less. The Foundation shall amend its grant contracts to ensure that its subgrantees are advised and certify that they will comply with all applicable Federal laws and regulations imposed on individuals or organizations receiving Federal funds.".

and wildlife and in a manner that will provide for appropriate public access and use; and

(ii) the Foundation notifies the Federal agency that administers the Federal program under which the funds were provided of the proposed conveyance or provision of Federal funds, and the agency does not object in writing to the proposed conveyance or provision of Federal funds within 60 calendar days after the date of the notification.

(4) All real property acquired by the Foundation in whole or in part with Federal funds and held by it shall be administered for the conservation and management of fish and wildlife and in a manner that will provide for appropriate public access and use.

(5) RECONVEYANCE OF REAL PROPERTY.—The Foundation shall convey at not less than fair market value any real property acquired by the Foundation in whole or in part with Federal funds if the Foundation notifies the Federal agency that administers the Federal program under which the funds were provided, and the agency does not disagree within 60 calendar days after the date of the notification, that—

(A) the property is no longer valuable for the purpose of conservation or management of fish, wildlife, plants, and other natural resources; and

(B) the purposes of the Foundation would be better served by use of the proceeds of the conveyance for other authorized activities of the Foundation.

(f)(1) In carrying out the purposes under section 2(b), the Foundation may establish a national whale conservation endowment fund, to be used by the Foundation to support research, management activities, or educational programs that contribute to the protection, conservation, or recovery of whale populations in waters of the United States.

(2)(A) In a manner consistent with subsection (c)(1), the Foundation may—

(i) accept, receive, solicit, hold, administer, and use any gift, devise, or bequest made to the Foundation for the express purpose of supporting whale conservation; and

(ii) deposit in the endowment fund under paragraph (1) any funds made available to the Foundation under this subparagraph, including any income or interest earned from a gift, devise, or bequest received by the Foundation under this subparagraph.

(B) To raise funds to be deposited in the endowment fund under paragraph (1), the Foundation may enter into appropriate arrangements to provide for the design, copyright, production, marketing, or licensing, of logos, seals, decals, stamps, or any other item that the Foundation determines to be appropriate.

(C)(i) The Secretary of Commerce may transfer to the Foundation for deposit in the endowment fund under paragraph (1) any amount (or portion thereof) received by the Secretary under section 105(a)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375(a)(1)) as a civil penalty assessed by the Secretary under that section.

(ii) The Directors of the Board shall ensure that any amounts transferred to the Foundation under clause (i) for the endowment

fund under paragraph (1) are deposited in that fund in accordance with this subparagraph.

(3) It is the intent of Congress that in making expenditures from the endowment fund under paragraph (1) to carry out activities specified in that paragraph, the Foundation should give priority to funding projects that address the conservation of populations of whales that the Foundation determines—

(A) are the most endangered (including the northern right whale (Eubaleana glacialis)); or

(B) most warrant, and are most likely to benefit from, research management, or educational activities that may be funded with amounts made available from the fund.

(g) In carrying out any action on the part of the Foundation under subsection (f), the Directors of the Board shall consult with the Administrator of the National Oceanic and Atmospheric Administration and the Marine Mammal Commission.

(h) EXPENDITURES FOR PRINTING SERVICES OR CAPITAL EQUIPMENT.—The Foundation shall not make any expenditure of Federal funds in connection with any one transaction for printing services or capital equipment that is greater than $10,000 unless the expenditure is approved by the Federal agency that administers the Federal program under which the funds were provided.

(i) NOTICE TO MEMBERS OF CONGRESS.—The Foundation shall not make a grant of funds unless, by not later than 30 days before the grant is made, the Foundation provides notice of the grant to the Member of Congress for the congressional district in which the project to be funded with the grant will be carried out.

(16 U.S.C. 3703)

SEC. 5. ADMINISTRATIVE SERVICES AND SUPPORT.

(a) PROVISION OF SERVICES.—The Secretary may provide personnel, facilities, and other administrative services to the Foundation, including reimbursement of expenses under section 3, not to exceed the current Federal Government per diem rates, for a period of up to five years from the date of enactment of this Act.

(b) REIMBURSEMENT.—The Foundation may reimburse the Secretary for any administrative service provided under subsection (a). The Secretary shall deposit any reimbursement received under this subsection into the Treasury to the credit of the appropriations then current and chargeable for the cost of providing such services.

(16 U.S.C. 3704)

SEC. 6. VOLUNTEER STATUS.

The Secretary of the Interior or the Secretary of Commerce may accept, without regard to the civil service classification laws, rules, or regulations, the services of the Foundation, the Board, and the officers and employees of the Board, without compensation from the Department of the Interior or the Department of Commerce, as volunteers in the performance of the functions authorized herein, in the manner provided for under section 7(c) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(c)).

(16 U.S.C. 3705)

SEC. 7. AUDITS, REPORT REQUIREMENTS, AND PETITION OF ATTORNEY GENERAL FOR EQUITABLE RELIEF.

(a) AUDITS.—For purposes of the Act entitled "An Act for audit accounts of private corporations established under Federal law" approved August 30, 1964 (Public Law 88–504, 36 U.S.C. 1101–1103), the Foundation shall be treated as a private corporation established under Federal law.

(b) REPORT.—The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate a report of its proceedings and activities during such year, including a full and complete statement of its receipts, expenditures, and investments; and a description of all acquisition and disposal of real property that is subject to section 4(e). The report shall include a detailed statement of the recipient, amount, and purpose of each grant made by the Foundation in the fiscal year.

(c) RELIEF WITH RESPECT TO CERTAIN FOUNDATION ACTS OR FAILURE TO ACT.—If the Foundation—

(1) engages in, or threatens to engage in, any act, practice, or policy that is inconsistent with its purposes set forth in section 2(b); or

(2) refuses, fails, or neglects to discharge its obligations under this Act, or threatens to do'

the Attorney General of the United States may petition in the United States District Court for the District of Columbia for such equitable relief as may be necessary or appropriate.

(16 U.S.C. 3706)

SEC. 8. UNITED STATES RELEASE FROM LIABILITY.

The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligation of the Foundation.

(16 U.S.C. 3707)

SEC. 9. AMENDMENT AND REPEAL.

The Congress expressly reserves the right to repeal or amend this Act at any time.

(16 U.S.C. 3708)

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this Act for each of fiscal years 2001 through 2003—

(A) $20,000,000 to the Department of the Interior; and

(B) $5,000,000 to the Department of Commerce.

(2) REQUIREMENT OF ADVANCE PAYMENT.—The amount made available for a fiscal year under paragraph (1) shall be provided to the Foundation in an advance payment of the entire amount on October 1, or as soon as practicable thereafter, of the fiscal year.

(3) USE OF APPROPRIATED FUNDS.—Subject to paragraph (4), amounts made available under paragraph (1) shall be provided to the Foundation for use for matching, on a 1-to-1 basis,

contributions (whether in currency, services, or property) made to the Foundation by private persons and State and local government agencies.

(4) PROHIBITION ON USE FOR ADMINISTRATIVE EXPENSES.—No Federal funds made available under paragraph (1) shall be used by the Foundation for administrative expenses of the Foundation, including for salaries, travel and transportation expenses, and other overhead expenses.

(b) ADDITIONAL AUTHORIZATION.—

(1) IN GENERAL.—In addition to the amounts authorized to be appropriated under subsection (a), the Foundation may accept Federal funds from a Federal agency under any other Federal law for use by the Foundation to further the conservation and management of fish, wildlife, plants, and other natural resources in accordance with the requirements of this Act.

(2) USE OF FUNDS ACCEPTED FROM FEDERAL AGENCIES.—Federal funds provided to the Foundation under paragraph (1) shall be used by the Foundation for matching, in whole or in part, contributions (whether in currency, services, or property) made to the Foundation by private persons and State and local government agencies.

(c) PROHIBITION ON USE OF GRANT AMOUNTS FOR LITIGATION AND LOBBYING EXPENSES.—Amounts provided as a grant by the Foundation shall not be used for—

(1) any expense related to litigation; or

(2) any activity the purpose of which is to influence legislation pending before Congress.

(16 U.S.C. 3709)

SEC. 11. LIMITATION ON AUTHORITY.

Nothing in this Act authorizes the Foundation to perform any function the authority for which is provided to the National Park Foundation by Public Law 90–209 (16 U.S.C. 19e et seq.).

(16 U.S.C. 3710)

AFRICAN ELEPHANT CONSERVATION ACT

AFRICAN ELEPHANT CONSERVATION ACT

[Title II of Public Law 100–478, Approved Oct. 7, 1988, 102 Stat. 2315]

[Amended through Public Law 105–217, Aug. 5, 1998)

AN ACT To authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1988, 1989, 1990, 1991, and 1992, and for other purposes.

* * * * * * *

TITLE II—AFRICAN ELEPHANT CONSERVATION

SEC. 2001. [16 U.S.C. 4201 note] SHORT TITLE.

This title may be cited as the "African Elephant Conservation Act".

SEC. 2002. [16 U.S.C. 4201] STATEMENT OF PURPOSE.

The purpose of this title is to perpetuate healthy populations of African elephants.

SEC. 2003. [16 U.S.C. 4202] FINDINGS.

The Congress finds the following:

(1) Elephant populations in Africa have declined at an alarming rate since the mid-1970's.

(2) The large illegal trade in African elephant ivory is the major cause of this decline and threatens the continued existence of the African elephant.

(3) The African elephant is listed as threatened under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and its continued existence will be further jeopardized if this decline is not reversed.

(4) Because African elephant ivory is indistinguishable from Asian elephant ivory, there is a need to ensure that the trade in African elephant ivory does not further endanger the Asian elephant, which is listed as endangered under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) and under Appendix I of CITES.

(5) In response to the significant illegal trade in African elephant ivory, the parties to CITES established the CITES Ivory Control System to curtail the illegal trade and to encourage African countries to manage, conserve, and protect their African elephant populations.

(6) The CITES Ivory Control System entered into force recently and should be allowed to continue in force for a reasonable period of time to assess its effectiveness in curtailing the illegal trade in African elephant ivory.

(7) Although some African countries have effective African elephant conservation programs, many do not have sufficient resources to properly manage, conserve, and protect their elephant populations.

(8) The United States, as a party to CITES and a large market for worked ivory, shares responsibility for supporting and implementing measures to stop the illegal trade in African elephant ivory and to provide for the conservation of the African elephant.

(9) There is no evidence that sport hunting is part of the poaching that contributes to the illegal trade in African elephant ivory, and there is evidence that the proper utilization of well-managed elephant populations provides an important source of funding for African elephant conservation programs.

SEC. 2004. [16 U.S.C. 4202] STATEMENT OF POLICY.

It is the policy of the United States—

(1) to assist in the conservation and protection of the African elephant by supporting the conservation programs of African countries and the CITES Secretariat; and

(2) to provide financial resources for those programs.

PART I—AFRICAN ELEPHANT CONSERVATION ASSISTANCE

SEC. 2101. [16 U.S.C. 4211] PROVISION OF ASSISTANCE.

(a) IN GENERAL.—The Secretary may provide financial assistance under this part from the African Elephant Conservation Fund for approved projects for research, conservation, management, or protection of African elephants.

(b) PROJECT PROPOSAL.—Any African government agency responsible for African elephant conservation and protection, the CITES Secretariat, and any organization or individual with experience in African elephant conservation may submit to the Secretary a project proposal under this section. Each such proposal shall contain—

(1) the name of the person responsible for conducting the project;

(2) a succinct statement of the need for and purposes of the project;

(3) a description of the qualifications of the individuals who will be conducting the project;

(4) an estimate of the funds and time required to complete the project;

(5) evidence of support of the project by governmental entities of countries within which the project will be conducted, if such support may be important for the success of the project; and

(6) any other information the Secretary considers to be necessary or appropriate for evaluating the eligibility of the project for funding under this title.

(c) PROJECT REVIEW AND APPROVAL.—The Secretary shall review each project proposal to determine if it meets the criteria set forth in subsection (d) and otherwise merits assistance under this title. Not later than six months after receiving a project proposal,

and subject to the availability of funds, the Secretary shall approve or disapprove the proposal and provide written notification to the person who submitted the proposal and to each country within which the project is proposed to be conducted.

(d) CRITERIA FOR APPROVAL.—The Secretary may approve a project under this section if the project will enhance programs for African elephant research, conservation, management, or protection by—

(1) developing in a usable form sound scientific information on African elephant habitat condition and carrying capacity, total elephant numbers and population trends, or annual reproduction and mortality; or

(2) assisting efforts—

(A) to ensure that any taking of African elephants in the country is effectively controlled and monitored;

(B) to implement conservation programs to provide for healthy, sustainable African elephant populations; or

(C) to enhance compliance with the CITES Ivory Control System.

(e) PROJECT REPORTING.—Each entity that receives assistance under this section shall provide such periodic reports to the Director of the United States Fish and Wildlife Service as the Director considers relevant and appropriate. Each report shall include all information requested by the Director for evaluating the progress and success of the project.

SEC. 2102. [16 U.S.C. 4212] AFRICAN ELEPHANT CONSERVATION FUND.

(a) ESTABLISHMENT.—There is established in the general fund of the Treasury a separate account to be known as the "African Elephant Conservation Fund", which shall consist of amounts deposited into the Fund by the Secretary of the Treasury under subsection (b).[1]

(b) DEPOSITS INTO FUND.—The Secretary of the Treasury shall deposit into the Fund—

(1) subject to appropriations, all amounts received by the United States in the form of penalties under section 2204 which are not used to pay rewards under section 2205;

(2) amounts received by the Secretary of the Interior in the form of donations under subsection (d); and

(3) other amounts appropriated to the Fund to carry out this part.

(c) USE.—

(1) IN GENERAL.—Subject to paragraph (2), amounts in the Fund may be used by the Secretary, without further appropriation, to provide assistance under this part.

(2) ADMINISTRATION.—Not more than three percent of amounts appropriated to the Fund for a fiscal year may be used by the Secretary to administer the Fund for that fiscal year.

(d) ACCEPTANCE AND USE OF DONATIONS.—The Secretary may accept and use donations of funds to provide assistance under this

[1] For subsequently enacted provision establishing a multinational species conservation fund to serve the same purposes (and presumably replace) this account, *see* provision in title I of the Department of the Interior and Related Agencies Appropriations Act of 1999 (Public Law 105–277, 112 Stat. 2681–237) under the heading "UNITED STATES FISH AND WILDLIFE SERVICE—MULTINATIONAL SPECIES CONSERVATION FUND", which is included in this compilation.

part. Amounts received by the Secretary in the form of such donations shall be transferred by the Secretary to the Secretary of the Treasury for deposit into the Fund.

SEC. 2103. [16 U.S.C. 4213] ANNUAL REPORTS.

The Secretary shall submit an annual report to the Congress not later than January 31 of each year regarding the Fund and the status of the African elephant. Each such report shall include with respect to the year for which the report is submitted a description of—

(1) the total amounts deposited into and expended from the Fund;

(2) the costs associated with the administration of the Fund;

(3) a summary of the projects for which the Secretary has provided assistance under this part and an evaluation of those projects; and

(4) an evaluation of African elephant populations and whether the CITES Ivory Control System is functioning effectively to control the illegal trade in African elephant ivory.

PART II—MORATORIA AND PROHIBITED ACTS

SEC. 2201. [16 U.S.C. 4221] REVIEW OF AFRICAN ELEPHANT CONSERVATION PROGRAMS.

(a) IN GENERAL.—Within one month after the date of the enactment of this title, the Secretary shall issue a call for information on the African elephant conservation program of each ivory producing country by—

(1) publishing a notice in the Federal Register requesting submission of such information to the Secretary by all interested parties; and

(2) submitting a written request for such information through the Secretary of State to each ivory producing country.

(b) REVIEW AND DETERMINATION.—

(1) IN GENERAL.—The Secretary shall review the African elephant conservation program of each ivory producing country and, not later than one year after the date of the enactment of this title, shall issue and publish in the Federal Register a determination of whether or not the country meets the following criteria:

(A) The country is a party to CITES and adheres to the CITES Ivory Control System.

(B) The country's elephant conservation program is based on the best available information, and the country is making expeditious progress in compiling information on the elephant habitat condition and carrying capacity, total population and population trends, and the annual reproduction and mortality of the elephant populations within the country.

(C) The taking of elephants in the country is effectively controlled and monitored.

(D) The country's ivory quota is determined on the basis of information referred to in subparagraph (B) and

reflects the amount of ivory which is confiscated or consumed domestically by the country.

(E) The country has not authorized or allowed the export of amounts of raw ivory which exceed its ivory quota under the CITES Ivory Control System.

(2) DELAY IN ISSUING DETERMINATION.—If the Secretary finds within one year after the date of the enactment of this title that there is insufficient information upon which to make the determination under paragraph (1), the Secretary may delay issuing the determination until no later than December 31, 1989. The Secretary shall issue and publish in the Federal Register at the time of the finding a statement explaining the reasons for any such delay.

SEC. 2202. [16 U.S.C. 4222] MORATORIA.

(a) IVORY PRODUCING COUNTRIES.—

(1) IN GENERAL.—The Secretary shall establish a moratorium on the importation of raw and worked ivory from an ivory producing country immediately upon making a determination that the country does not meet all the criteria set forth in section 2201(b)(1).

(2) LATER ESTABLISHMENT.—With regard to any ivory producing country for which the Secretary has insufficient information to make a determination pursuant to section 2201(b), the Secretary shall establish a moratorium on the importation of raw and worked ivory from such country not later than January 1, 1990, unless, based on new information, the Secretary concludes before that date that the country meets all of the criteria set forth in section 2201(b)(1).

(b) INTERMEDIARY COUNTRIES.—The Secretary shall establish a moratorium on the importation of raw and worked ivory from an intermediary country immediately upon making a determination that the country—

(1) is not a party to CITES;

(2) does not adhere to the CITES Ivory Control System;

(3) imports raw ivory from a country that is not an ivory producing country;

(4) imports raw or worked ivory from a country that is not a party to CITES;

(5) imports raw or worked ivory that originates in an ivory producing country in violation of the laws of that ivory producing country;

(6) substantially increases its imports of raw or worked ivory from a country that is subject to a moratorium under this title during the first three months of that moratorium; or

(7) imports raw or worked ivory from a country that is subject to a moratorium under this title after the first three months of that moratorium, unless the ivory is imported by vessel during the first six months of that moratorium and is accompanied by shipping documents which show that it was exported before the establishment of the moratorium.

(c) SUSPENSION OF MORATORIUM.—The Secretary shall suspend a moratorium established under this section if, after notice and public comment, the Secretary determines that the reasons for establishing the moratorium no longer exist.

(d) PETITION.—

(1) IN GENERAL.—Any person may at any time submit a petition in writing requesting that the Secretary establish or suspend a moratorium under this section. Such a petition shall include such substantial information as may be necessary to demonstrate the need for the action requested by the petition.

(2) CONSIDERATION AND RULING.—The Secretary shall publish a notice of receipt of a petition under this subsection in the Federal Register and shall provide an opportunity for the public to comment on the petition. The Secretary shall rule on such petition not later than 90 days after the close of the public comment period.

(e) SPORT-HUNTED TROPHIES.—Individuals may import sport-hunted elephant trophies that they have legally taken in an ivory producing country that has submitted an ivory quota. The Secretary shall not establish any moratorium under this section, pursuant to a petition or otherwise, which prohibits the importation into the United States of sport-hunted trophies from elephants that are legally taken by the importer or the importer's principal in an ivory producing country that has submitted an ivory quota.

(f) CONFISCATED IVORY.—Trade in raw or worked ivory that is confiscated by an ivory producing country or an intermediary country and is disposed of pursuant to the CITES Ivory Control System shall not be the sole cause for the establishment of a moratorium under this part if all proceeds from the disposal of the confiscated ivory are used solely to enhance wildlife conservation programs or conservation purposes of CITES. With respect to any country that was not a party to CITES at the time of such confiscation, this subsection shall not apply until such country develops appropriate measures to assure that persons with a history of illegal dealings in ivory shall not benefit from the disposal of confiscated ivory.

SEC. 2203. [16 U.S.C. 4223] PROHIBITED ACTS.

Except as provided in section 2202(e), it is unlawful for any person—

(1) to import raw ivory from any country other than an ivory producing country;

(2) to export raw ivory from the United States;

(3) to import raw or worked ivory that was exported from an ivory producing country in violation of that country's laws or of the CITES Ivory Control System;

(4) to import worked ivory, other than personal effects, from any country unless that country has certified that such ivory was derived from legal sources; or

(5) to import raw or worked ivory from a country for which a moratorium is in effect under section 2202.

SEC. 2204. [16 U.S.C. 4224] PENALTIES AND ENFORCEMENT.

(a) CRIMINAL VIOLATIONS.—Whoever knowingly violates section 2203 shall, upon conviction, be fined under title 18, United States Code, or imprisoned for not more than one year, or both.

(b) CIVIL VIOLATIONS.—Whoever violates section 2203 may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation.

(c) PROCEDURES FOR ASSESSMENT OF CIVIL PENALTY.—Proceedings for the assessment of a civil penalty under this section

shall be conducted in accordance with the procedures provided for in section 11(a) of the Endangered Species Act of 1973 (16 U.S.C. 1540(a)).

(d) USE OF PENALTIES.—Subject to appropriations, penalties collected under this section may be used by the Secretary of the Treasury to pay rewards under section 2205 and, to the extent not used to pay such rewards, shall be deposited by the Secretary of the Treasury into the Fund.

(e) ENFORCEMENT.—The Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating shall enforce this part in the same manner such Secretaries carry out enforcement activities under section 11(e) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)). Section 11(c) of the Endangered Species Act of 1973 (16 U.S.C. 1540(c)) shall apply to actions arising under this part.

SEC. 2205. [16 U.S.C. 4225] REWARDS.

(a) IN GENERAL.—Upon the recommendation of the Secretary, the Secretary of the Treasury may pay a reward to any person who furnishes information which leads to a civil penalty or a criminal conviction under this title.

(b) AMOUNT.—The amount of a reward under this section shall be equal to not more than one-half of any criminal or civil penalty or fine with respect to which the reward is paid, or $25,000, whichever is less.

(c) LIMITATION ON ELIGIBILITY.—An officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his or her official duties shall not be eligible for a reward under this section.

PART III—MISCELLANEOUS

SEC. 2301. PERMISSION TO IMPORT OR EXPORT AFRICAN ELEPHANT IVORY.

[Amends section 9(d) of the Endangered Species Act of 1973]

SEC. 2302. [16 U.S.C. 4241] RELATIONSHIP TO ENDANGERED SPECIES ACT OF 1973.

The authority of the Secretary under this title is in addition to and shall not affect the authority of the Secretary under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or diminish the Secretary's authority under the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

SEC. 2303. [16 U.S.C. 4242] CERTIFICATION UNDER PELLY AMENDMENT.

If the Secretary finds in administering this title that a country does not adhere to the CITES Ivory Control System, that country is deemed, for purposes of section 8(a)(2) of the Act of August 27, 1954 (22 U.S.C. 1978), to be diminishing the effectiveness of an international program for endangered or threatened species.

SEC. 2304. [16 U.S.C. 4243] EFFECTIVENESS OF CITES.

Within 3 months after the completion of the 8th Conference of the Parties to CITES, the Secretary shall determine whether this title, together with the CITES Ivory Control System, has substantially stopped the importation of illegally harvested ivory into the United States. If the Secretary determines that the importation of

illegally harvested ivory has not been substantially stopped, the Secretary shall recommend to the Congress amendments to this title or other actions that may be necessary to achieve the purposes of this title, including the establishment of a complete moratorium on the importation of elephant ivory into the United States.

SEC. 2305. [16 U.S.C. 4244] DEFINITIONS.

In this title—

(1) the term "African elephant" means any animal of the species loxodonta africana;

(2) the term "CITES" means the Convention on the International Trade in Endangered Species of Wild Fauna and Flora;

(3) the term "CITES Ivory Control System" means the ivory quota and marking system established by CITES to curtail illegal trade in African elephant ivory;

(4) the term "Fund" means the African Elephant Conservation Fund established by section 2102;

(5) the terms "import" and "importation" have the meanings such terms have in the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(6) the term "intermediary country" means a country that exports raw or worked ivory that does not originate in that country;

(7) the term "ivory producing country" means any African country within which is located any part of the range of a population of African elephants;

(8) the term "ivory quota" means a quota submitted by an ivory producing country to the CITES Secretariat in accordance with the CITES Ivory Control System;

(9) the term "personal effects" means articles which are not intended for sale and are part of a shipment of the household effects of a person who is moving his or her residence to or from the United States, or are included in personal accompanying baggage;

(10) the term "raw ivory" means any African elephant tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved;

(11) the term "Secretary" means the Secretary of the Interior;

(12) the term "United States" means the fifty States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the territories and possessions of the United States; and

(13) the term "worked ivory" means any African elephant tusk, and any piece thereof, which is not raw ivory.

SEC. 2306. [16 U.S.C. 4245] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Fund and to the Secretary a total of not to exceed $5,000,000 for each of fiscal years 1997, 1998, 1999, 2000, 2001, and 2002 to carry out this title, to remain available until expended.

ASIAN ELEPHANT CONSERVATION ACT OF 1997

ASIAN ELEPHANT CONSERVATION ACT OF 1997

[Public Law 105–961, Approved Nov. 19, 1997, 111 Stat. 2150]

[Amended through Public Law 105–961, Nov. 19, 1997)

AN ACT To assist in the conservation of Asian elephants by supporting and providing financial resources for the conservation programs of nations within the range of Asian elephants and projects of persons with demonstrated expertise in the conservation of Asian elephants.

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

SECTION 1. [16 U.S.C. 4261 note] SHORT TITLE.

This Act may be cited as the "Asian Elephant Conservation Act of 1997".

SEC. 2. [16 U.S.C. 4261] FINDINGS.

The Congress finds the following:

(1) Asian elephant populations in nations within the range of Asian elephants have continued to decline to the point that the long-term survival of the species in the wild is in serious jeopardy.

(2) The Asian elephant is listed as an endangered species under section 4 of the Endangered Species Act of 1973 and under appendix I of the Convention on International Trade of Endangered Species of Wild Fauna and Flora.

(3) Because the challenges facing the conservation of Asian elephants are so great, resources to date have not been sufficient to cope with the continued loss of habitat and the consequent diminution of Asian elephant populations.

(4) The Asian elephant is a flagship species for the conservation of tropical forest habitats in which it is found and provides the consequent benefit from such conservation to numerous other species of wildlife including many other endangered species.

(5) Among the threats to the Asian elephant in addition to habitat loss are population fragmentation, human-elephant conflict, poaching for ivory, meat, hide, bones and teeth, and capture for domestication.

(6) To reduce, remove, or otherwise effectively address these threats to the long-term viability of populations of Asian elephants in the wild will require the joint commitment and effort of nations within the range of Asian elephants, the United States and other countries, and the private sector.

SEC. 3. [16 U.S.C. 4262] PURPOSES.

The purposes of this Act are the following:

(1) To perpetuate healthy populations of Asian elephants.

(2) To assist in the conservation and protection of Asian elephants by supporting the conservation programs of Asian elephant range states and the CITES Secretariat.

(3) To provide financial resources for those programs.

SEC. 4. [16 U.S.C. 4263] DEFINITIONS.

In this Act:

(1) The term "CITES" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and its appendices.

(2) The term "conservation" means the use of methods and procedures necessary to bring Asian elephants to the point at which there are sufficient populations in the wild to ensure that the species does not become extinct, including all activities associated with scientific resource management, such as conservation, protection, restoration, acquisition, and management of habitat; research and monitoring of known populations; assistance in the development of management plans for managed elephant ranges; CITES enforcement; law enforcement through community participation; translocation of elephants; conflict resolution initiatives; and community outreach and education.

(3) The term "Fund" means the Asian Elephant Conservation Fund established under section 6(a).

(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "Administrator" means the Administrator of the Agency for International Development.

SEC. 5. [16 U.S.C. 4264] ASIAN ELEPHANT CONSERVATION ASSISTANCE.

(a) IN GENERAL.—The Secretary, subject to the availability of funds and in consultation with the Administrator, shall use amounts in the Fund to provide financial assistance for projects for the conservation of Asian elephants for which final project proposals are approved by the Secretary in accordance with this section.

(b) PROJECT PROPOSAL.—Any relevant wildlife management authority of a nation within the range of Asian elephants whose activities directly or indirectly affect Asian elephant populations, the CITES Secretariat, or any person with demonstrated expertise in the conservation of Asian elephants, may submit to the Secretary a project proposal under this section. Each proposal shall include the following:

(1) The name of the individual responsible for conducting the project.

(2) A succinct statement of the purposes of the project.

(3) A description of the qualifications of the individuals who will conduct the project.

(4) An estimate of the funds and time required to complete the project.

(5) Evidence of support of the project by appropriate governmental entities of countries in which the project will be conducted, if the Secretary determines that the support is required for the success of the project.

(6) Information regarding the source and amount of matching funding available to the applicant.

(7) Any other information the Secretary considers to be necessary for evaluating the eligibility of the project for funding under this Act.

(c) PROJECT REVIEW AND APPROVAL.—

(1) IN GENERAL.—Within 30 days after receiving a final project proposal, the Secretary shall provide a copy of the proposal to the Administrator. The Secretary shall review each final project proposal to determine if it meets the criteria set forth in subsection (d).

(2) CONSULTATION; APPROVAL OR DISAPPROVAL.—Not later than 6 months after receiving a final project proposal, and subject to the availability of funds, the Secretary, after consulting with the Administrator, shall—

(A) request written comments on the proposal from each country within which the project is to be conducted;

(B) after requesting those comments, approve or disapprove the proposal; and

(C) provide written notification of that approval or disapproval to the person who submitted the proposal, the Administrator, and each of those countries.

(d) CRITERIA FOR APPROVAL.—The Secretary may approve a final project proposal under this section if the project will enhance programs for conservation of Asian elephants by assisting efforts to—

(1) implement conservation programs;

(2) address the conflicts between humans and elephants that arise from competition for the same habitat;

(3) enhance compliance with provisions of CITES and laws of the United States or a foreign country that prohibit or regulate the taking or trade of Asian elephants or regulate the use and management of Asian elephant habitat;

(4) develop sound scientific information on the condition of Asian elephant habitat, Asian elephant population numbers and trends, or the threats to such habitat, numbers, or trends; or

(5) promote cooperative projects on those topics with other foreign governments, affected local communities, nongovernmental organizations, or others in the private sector.

(e) PROJECT SUSTAINABILITY.—To the maximum extent practical, in determining whether to approve project proposals under this section, the Secretary shall give consideration to projects which will enhance sustainable integrated conservation development programs to ensure effective, long-term conservation of Asian elephants.

(f) PROJECT REPORTING.—Each person who receives assistance under this section for a project shall provide periodic reports, as the Secretary considers necessary, to the Secretary and the Administrator. Each report shall include all information required by the Secretary, after consulting with the Administrator, for evaluating the progress and success of the project.

(g) MATCHING FUNDS.—In determining whether to approve project proposals under this section, the Secretary shall give priority to those projects for which there exists some measure of matching funds.

(h) LIMITATION ON USE FOR CAPTIVE BREEDING.—Amounts provided as a grant under this Act may not be used for captive breeding of Asian elephants other than for release in the wild.

SEC. 6. [16 U.S.C. 4265] ASIAN ELEPHANT CONSERVATION FUND.

(a) ESTABLISHMENT.—There is established in the general fund of the Treasury a separate account to be known as the "Asian Elephant Conservation Fund", which shall consist of amounts deposited into the Fund by the Secretary of the Treasury under subsection (b).[1]

(b) DEPOSITS INTO THE FUND.—The Secretary of the Treasury shall deposit into the Fund—

(1) all amounts received by the Secretary in the form of donations under subsection (d); and

(2) other amounts appropriated to the Fund.

(c) USE.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary may use amounts in the Fund without further appropriation to provide assistance under section 5.

(2) ADMINISTRATION.—Of amounts in the Fund available for each fiscal year, the Secretary may use not more than 3 percent to administer the Fund.

(d) ACCEPTANCE AND USE OF DONATIONS.—The Secretary may accept and use donations to provide assistance under section 5. Amounts received by the Secretary in the form of donations shall be transferred to the Secretary of the Treasury for deposit into the Fund.

SEC. 7. [16 U.S.C. 4266] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Fund $5,000,000 for each of fiscal years 1998, 1999, 2000, 2001, and 2002 to carry out this Act, which may remain available until expended.

[1] For subsequently enacted provision establishing a multinational species conservation fund to serve the same purposes (and presumably replace) this account, *see* provision in title I of the Department of the Interior and Related Agencies Appropriations Act of 1999 (Public Law 105–277, 112 Stat. 2681–237) under the heading "UNITED STATES FISH AND WILDLIFE SERVICE—MULTINATIONAL SPECIES CONSERVATION FUND", which is included in this compilation.

RHINOCEROS AND TIGER CONSERVATION ACT OF 1994

RHINOCEROS AND TIGER CONSERVATION ACT OF 1994

[Title II of Public Law 103–391, Approved Oct. 22, 1994, 108 Stat. 4094]

[Amended through Public Law 105–312, Oct. 30, 1998)

AN ACT To assist in the conservation of rhinoceros and tigers by supporting and providing financial resources for the conservation programs of nations whose activities directly or indirectly affect rhinoceros and tiger populations, and of the CITES Secretariat.

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

SECTION 1. [16 U.S.C. 5301 note] SHORT TITLE.

This Act may be cited as the "Rhinoceros and Tiger Conservation Act of 1994".

SEC. 2. [16 U.S.C. 5301] FINDINGS.

The Congress finds the following:

(1) The world's rhinoceros population is declining at an alarming rate, a 90 percent decline since 1970.

(2) All 5 subspecies of tiger are currently threatened with extinction in the wild, with approximately 5,000 to 6,000 tigers remaining worldwide.

(3) All rhinoceros species have been listed on Appendix I of CITES since 1977.

(4) All tiger subspecies have been listed on Appendix I of CITES since 1987.

(5) The tiger and all rhinoceros species, except the southern subspecies of white rhinoceros, are listed as endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(6) In 1987, the parties to CITES adopted a resolution that urged all parties to establish a moratorium on the sale and trade in rhinoceros products (other than legally taken trophies), to destroy government stockpiles of rhinoceros horn, and to exert pressure on countries continuing to allow trade in rhinoceros products.

(7) On September 7, 1993, under section 8 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978) the Secretary certified that the People's Republic of China and Taiwan were engaged in trade of rhinoceros parts and tiger parts that diminished the effectiveness of an international conservation program for that endangered species.

(8) On September 9, 1993, the Standing Committee of CITES, in debating the continuing problem of trade in rhinoceros horn and tiger parts, adopted a resolution urging parties to CITES to implement stricter domestic measures, up to and including an immediate prohibition in trade in wildlife species.

(9) On November 8, 1993, under section 8 of the Fisherman's Protection[1] Act of 1967 (22 U.S.C. 1978), the President announced that the United States would impose trade sanctions against China and Taiwan unless substantial progress was made by March 1994 towards ending trade in rhinoceros and tiger products.

(10) On April 11, 1994, under section 8 of the Fisherman's Protective Act of 1967 (22 U.S.C. 1978), the President—

(A) directed that imports of wildlife specimens and products from Taiwan be prohibited, in response to Taiwan's failure to undertake sufficient actions to stop illegal rhinoceros and tiger trade; and

(B) indicated that the certification of China would remain in effect and directed that additional monitoring of China's progress be undertaken.

SEC. 3. [16 U.S.C. 5302] PURPOSES.

The purposes of this Act are the following:

(1) To assist in the conservation of rhinoceros and tigers by supporting the conservation programs of nations whose activities directly or indirectly affect rhinoceros and tiger populations, and the CITES Secretariat.

(2) To provide financial resources for those programs.

(3) To prohibit the sale, importation, and exportation of products intended for human consumption or application containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger.

SEC. 4. [16 U.S.C. 5303] DEFINITIONS.

In this Act—

(1) "CITES" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and its appendices;

(2) "conservation" means the use of all methods and procedures necessary to bring rhinoceros and tigers to the point at which there are sufficient populations to ensure that those species do not become extinct, including all activities associated with scientific resource management, such as research, census, law enforcement, habitat protection, acquisition, and management, propagation, live trapping, and transportation;

(3) "Fund" means the Rhinoceros and Tiger Conservation Fund established under section 6(a);

(4) "Secretary" means the Secretary of the Interior;

(5) "Administrator" means the Administrator of the Agency for International Development; and

(6) "person" means—

(A) an individual, corporation, partnership, trust, association, or other private entity;

(B) an officer, employee, agent, department, or instrumentality of—

(i) the Federal Government;

(ii) any State, municipality, or political subdivision of a State; or

(iii) any foreign government;

[1] So in law. Probably should be "Protective".

(C) a State, municipality, or political subdivision of a State; or

(D) any other entity subject to the jurisdiction of the United States.

SEC. 5. [16 U.S.C. 5304] RHINOCEROS AND TIGER CONSERVATION ASSISTANCE.

(a) IN GENERAL.—The Secretary, subject to the availability of appropriations and in consultation with the Administrator, shall use amounts in the Fund to provide financial assistance for projects for the conservation of rhinoceros and tigers.

(b) PROJECT PROPOSAL.—A country whose activities directly or indirectly affect rhinoceros or tiger populations, the CITES Secretariat, or any other person may submit to the Secretary a project proposal under this section. Each proposal shall—

(1) name the individual responsible for conducting the project;

(2) state the purposes of the project succinctly;

(3) describe the qualifications of the individuals who will conduct the project;

(4) estimate the funds and time required to complete the project;

(5) provide evidence of support of the project by appropriate governmental entities of countries in which the project will be conducted, if the Secretary determines that the support is required for the success of the project; and

(6) provide any other information the Secretary considers to be necessary for evaluating the eligibility of the project for funding under this Act.

(c) PROJECT REVIEW AND APPROVAL.—Within 30 days of receiving a final project proposal, the Secretary shall provide a copy of the proposal to the Administrator. The Secretary shall review each final project proposal to determine if it meets the criteria set forth in subsection (d). Not later than 6 months after receiving a final project proposal, and subject to the availability of funds, the Secretary, after consulting with the Administrator, shall approve or disapprove the proposal and provide written notification to the person who submitted the proposal, to the Administrator, and to each country within which the project is to be conducted.

(d) CRITERIA FOR APPROVAL.—The Secretary may approve a project under this section if the project will enhance programs for conservation of rhinoceros or tigers by assisting efforts to—

(1) implement conservation programs;

(2) enhance compliance with provisions of CITES and laws of the United States or a foreign country that prohibit or regulate the taking or trade of rhinoceros or tigers or the use of rhinoceros or tiger habitat; or

(3) develop sound scientific information on that species' habitat condition and carrying capacity, total numbers and population trends, or annual reproduction and mortality.

(e) PROJECT SUSTAINABILITY.—To the maximum extent practical, the Secretary should give consideration to projects which will enhance sustainable development programs to ensure effective, long-term conservation of rhinoceros and tigers.

(f) PROJECT REPORTING.—Each person that receives assistance under this section for a project shall provide periodic reports, as

the Secretary considers necessary, to the Secretary and the Administrator. Each report shall include all information requested by the Secretary, after consulting with the Administrator, for evaluating the progress and success of the project.

SEC. 6. [16 U.S.C. 5305] RHINOCEROS AND TIGER CONSERVATION FUND.

(a) ESTABLISHMENT.—There is established in the general fund of the Treasury a separate account to be known as the "Rhinoceros and Tiger Conservation Fund", which shall consist of amounts deposited into the Fund by the Secretary of the Treasury under subsection (b).[1]

(b) DEPOSITS INTO THE FUND.—The Secretary of the Treasury shall deposit into the Fund—

(1) all amounts received by the Secretary in the form of donations under subsection (d); and

(2) other amounts appropriated to the Fund.

(c) USE.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary may use amounts in the Fund without further appropriation to provide assistance under section 5.

(2) ADMINISTRATION.—Of amounts in the Fund available for each fiscal year, the Secretary may use not more than 3 percent to administer the Fund.

(d) ACCEPTANCE AND USE OF DONATIONS.—The Secretary may accept and use donations to provide assistance under section 5. Amounts received by the Secretary in the form of donations shall be transferred to the Secretary of the Treasury for deposit into the Fund.

SEC. 7. [16 U.S.C. 5305a] PROHIBITION ON SALE, IMPORTATION, OR EXPORTATION OF PRODUCTS LABELED OR ADVERTISED AS RHINOCEROS OR TIGER PRODUCTS.

(a) PROHIBITION.—A person shall not sell, import, or export, or attempt to sell, import, or export, any product, item, or substance intended for human consumption or application containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger.

(b) PENALTIES.—

(1) CRIMINAL PENALTY.—A person engaged in business as an importer, exporter, or distributor that knowingly violates subsection (a) shall be fined under title 18, United States Code, imprisoned not more than 6 months, or both.

(2) CIVIL PENALTIES.—

(A) IN GENERAL.—A person that knowingly violates subsection (a), and a person engaged in business as an importer, exporter, or distributor that violates subsection (a), may be assessed a civil penalty by the Secretary of not more than $12,000 for each violation.

(B) MANNER OF ASSESSMENT AND COLLECTION.—A civil penalty under this paragraph shall be assessed, and may be collected, in the manner in which a civil penalty under

[1] For subsequently enacted provision establishing a multinational species conservation fund to serve the same purposes (and presumably replace) this account, *see* provision in title I of the Department of the Interior and Related Agencies Appropriations Act of 1999 (Public Law 105–277, 112 Stat. 2681–237) under the heading "UNITED STATES FISH AND WILDLIFE SERVICE—MULTINATIONAL SPECIES CONSERVATION FUND", which is included in this compilation.

the Endangered Species Act of 1973 may be assessed and collected under section 11(a) of that Act (16 U.S.C. 1540(a)).

(c) PRODUCTS, ITEMS, AND SUBSTANCES.—Any product, item, or substance sold, imported, or exported, or attempted to be sold, imported, or exported, in violation of this section or any regulation issued under this section shall be subject to seizure and forfeiture to the United States.

(d) REGULATIONS.—After consultation with the Secretary of the Treasury, the Secretary of Health and Human Services, and the United States Trade Representative, the Secretary shall issue such regulations as are appropriate to carry out this section.

(e) ENFORCEMENT.—The Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating shall enforce this section in the manner in which the Secretaries carry out enforcement activities under section 11(e) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)).

(f) USE OF PENALTY AMOUNTS.—Amounts received as penalties, fines, or forfeiture of property under this section shall be used in accordance with section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)).

SEC. 8. [16 U.S.C. 5305b] EDUCATIONAL OUTREACH PROGRAM.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary shall develop and implement an educational outreach program in the United States for the conservation of rhinoceros and tiger species.

(b) GUIDELINES.—The Secretary shall publish in the Federal Register guidelines for the program.

(c) CONTENTS.—Under the program, the Secretary shall publish and disseminate information regarding—

(1) laws protecting rhinoceros and tiger species, in particular laws prohibiting trade in products containing, or labeled or advertised as containing, their parts;

(2) use of traditional medicines that contain parts or products of rhinoceros and tiger species, health risks associated with their use, and available alternatives to the medicines; and

(3) the status of rhinoceros and tiger species and the reasons for protecting the species.

SEC. 9. [16 U.S.C. 5306] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Fund $10,000,000 for each of fiscal years 1996 through 2002 to carry out this Act, to remain available until expended.

PROVISION ESTABLISHING MULTINATIONAL SPECIES CONSERVATION FUND

PROVISION ESTABLISHING MULTINATIONAL SPECIES CONSERVATION FUND

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

[Enacted by Public Law 105–277, Approved Oct. 21, 1998, 112 Stat. 2681–237]

DIVISION A—OMNIBUS CONSOLIDATED APPROPRIATIONS

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SEC. 101. (a) * * *

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(e) For programs, projects or activities in the Department of the Interior and Related Agencies Appropriations Act, 1999, provided as follows, to be effective as if it had been enacted into law as the regular appropriations Act:

AN ACT Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1999, and for other purposes.

TITLE I—DEPARTMENT OF THE INTERIOR

* * * * * * *

UNITED STATES FISH AND WILDLIFE SERVICE

* * * * * * *

MULTINATIONAL SPECIES CONSERVATION FUND

For expenses necessary to carry out the African Elephant Conservation Act (16 U.S.C. 4201–4203, 4211–4213, 4221–4225, 4241–4245, and 1538), the Asian Elephant Conservation Act of 1997 (Public Law 105–96), and the Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5301–5306), $2,000,000, to remain available until expended: *Provided,* That unexpended balances of amounts previously appropriated to the African Elephant Conservation Fund, Rewards and Operations account, and Rhinoceros and Tiger Conservation Fund may be transferred to and merged with this appropriation: *Provided further,* That in fiscal year 1999 and thereafter, donations to provide assistance under section 5304 of the Rhinoceros and Tiger Conservation Act, subchapter I of the African Elephant Conservation Act, and section 6 of the Asian Elephant Conservation Act of 1997 shall be deposited to this Fund and shall be available without further appropriation: *Provided further,* That in fiscal year 1999 and thereafter, all penalties received by the United States under 16 U.S.C. 4224 which are not used to pay rewards under 16 U.S.C. 4225 shall be deposited to this Fund to provide assistance under 16 U.S.C. 4211 and shall be available with-

out further appropriation: *Provided further,* That in fiscal year 1999 and thereafter, not more than three percent of amounts appropriated to this Fund may be used by the Secretary of the Interior to administer the Fund.

* * * * * * *

NORTH AMERICAN WETLANDS CONSERVATION ACT

NORTH AMERICAN WETLANDS CONSERVATION ACT

[Public Law 101–233, Approved Dec. 13, 1989, 103 Stat. 1968]

[Amended through Public Law 106–553, Dec. 21, 2000]

AN ACT To conserve North American wetland ecosystems and waterfowl and the other migratory birds and fish and wildlife that depend upon such habitats.

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

SECTION 1. [16 U.S.C. 4401 note] SHORT TITLE.

This Act may be cited as the "North American Wetlands Conservation Act".

SEC. 2. [16 U.S.C. 4401] FINDINGS AND STATEMENT OF PURPOSE.

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

(1) the maintenance of healthy populations of migratory birds in North America is dependent on the protection, restoration, and management of wetland ecosystems and other habitats in Canada, as well as in the United States and Mexico;

(2) wetland ecosystems provide essential and significant habitat for fish, shellfish, and other wildlife of commercial, recreational, scientific, and aesthetic values;

(3) almost 35 per centum of all rare, threatened, and endangered species of animals are dependent on wetland ecosystems;

(4) wetland ecosystems provide substantial flood and storm control values and can obviate the need for expensive manmade control measures;

(5) wetland ecosystems make a significant contribution to water availability and quality, recharging ground water, filtering surface runoff, and providing waste treatment;

(6) wetland ecosystems provide aquatic areas important for recreational and aesthetic purposes;

(7) more than 50 per centum of the original wetlands in the United States alone have been lost;

(8) wetlands destruction, loss of nesting cover, and degradation of migration and wintering habitat have contributed to long-term downward trends in populations of migratory bird species such as pintails, American bitterns, and black ducks;

(9) the migratory bird treaty obligations of the United States with Canada, Mexico, and other countries require protection of wetlands that are used by migratory birds for breeding, wintering, or migration and are needed to achieve and to maintain optimun population levels, distributions, and patterns of migration;

(10) the 1988 amendments to the Fish and Wildlife Conservation Act of 1980 require the Secretary of the Interior to identify conservation measures to assure that nongame migra-

tory bird species do not reach the point at which measures of the Endangered Species Act [1] are necessary;

(11) protection of migratory birds and their habitats requires long-term planning and the close cooperation and coordination of management activities by Canada, Mexico, and the United States within the framework of the 1916 and 1936 Migratory Bird Conventions and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(12) the North American Waterfowl Management Plan, signed in 1986 by the Minister of Environment for Canada and the Secretary of the Interior for the United States, provides a framework for maintaining and restoring an adequate habitat base to ensure perpetuation of populations of North American waterfowl and other migratory bird species;

(13) a tripartite agreement signed in March 1988, by the Director General for Ecological Conservation of Natural Resources of Mexico, the Director of the Canadian Wildlife Service, and the Director of the United States Fish and Wildlife Service, provides for expanded cooperative efforts in Mexico to conserve wetlands for migratory birds that spend the winter there;

(14) the long-term conservation of migratory birds and habitat for these species will require the coordinated action of governments, private organizations, landowners, and other citizens; and

(15) the treaty obligations of the United States under the Convention on Wetlands of International Importance especially as waterfowl habitat requires promotion of conservation and wise use of wetlands.

(b) PURPOSE.—The purposes of this Act are to encourage partnership among public agencies and other interests—

(1) to protect, enhance, restore, and manage an appropriate distribution and diversity of wetland ecosystems and other habitats for migratory birds and other fish and wildlife in North America;

(2) to maintain current or improved distributions of migratory bird populations; and

(3) to sustain an abundance of waterfowl and other migratory birds consistent with the goals of the North American Waterfowl Management Plan and the international obligations contained in the migratory bird treaties and conventions and other agreements with Canada, Mexico, and other countries.

SEC. 3. [16 U.S.C. 4402] DEFINITIONS.

For the purposes of this Act:

(1) The term "Agreement" means the Tripartite Agreement signed in March 1988, by the Director General for Ecological Conservation of Natural Resources of Mexico, the Director of the Canadian Wildlife Service, and the Director of the United States Fish and Wildlife Service.

(2) The term "appropriate Committees" means the Committee on Environment and Public Works of the United States

[1] So in law. Probably should be the "Endangered Species Act of 1973".

Senate and the Committee on Merchant Marine and Fisheries[1] of the United States House of Representatives.

(3) The term "flyway" means the four administrative units used by the United States Fish and Wildlife Service and the States in the management of waterfowl populations.

(4) The term "Migratory Bird Conservation Commission" means that commission established by section 2 of the Migratory Bird Conservation Act (16 U.S.C. 715a).

(5) The term "migratory birds" means all wild birds native to North America that are in an unconfined state and that are protected under the Migratory Bird Treaty Act, including ducks, geese, and swans of the family Anatidae, species listed as threatened or endangered under the Endangered Species Act[2] (16 U.S.C. 1531 et seq.), and species defined as nongame under the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901–2912).

(6) The term "Plan" means the North American Waterfowl Management Plan signed by the Minister of the Environment for Canada and the Secretary of the Interior for the United States in May 1986.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "State" means the State fish and wildlife agency, which shall be construed to mean any department, or any division of any department of another name, of a State that is empowered under its laws to exercise the functions ordinarily exercised by a State fish and wildlife agency.

(9) The term "wetlands conservation project" means—

(A) the obtaining of a real property interest in lands or waters, including water rights, if the obtaining of such interest is subject to terms and conditions that will ensure that the real property will be administered for the long-term conservation of such lands and waters and the migratory birds and other fish and wildlife dependent thereon;

(B) the restoration, management, or enhancement of wetland ecosystems and other habitat for migratory birds and other fish and wildlife species if such restoration, management, or enhancement is conducted on lands and waters that are administered for the long-term conservation of such lands and waters and the migratory birds and other fish and wildlife dependent thereon; and

(C) in the case of projects undertaken in Mexico, includes technical training and development of infrastructure neessary for the conservation and management of wetlands and studies on the sustainable use of wetland resources.

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[1] The Committee on Merchant Marine and Fisheries of the House of Representatives was abolished by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. The former jurisdiction of such committee is divided among the Committee on Resources, the Committee on Transportation and Infrastructure, and the Committee on Armed Services of the House of Representatives.

[2] See footnote to section 2(a)(10).

SEC. 4. [16 U.S.C. 4403] ESTABLISHMENT OF NORTH AMERICAN WETLANDS CONSERVATION COUNCIL.

(a) COUNCIL MEMBERSHIP.—(1) There shall be established a North American Wetlands Conservation Council (hereinafter in this Act referred to as the "Council") which shall consist of nine members who may not receive compensation as members of the Council. Of the Council members—

(A) one shall be the Director of the United States Fish and Wildlife Service, who shall be the responsible Federal official for ensuring Council compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)[1];

(B) one shall be the Secretary of the Board of the National Fish and Wildlife Foundation appointed pursuant to section 3(2)(B)[2] of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3702);

(C) four shall be individuals who shall be appointed by the Secretary, who shall reside in different flyways and who shall each be a Director of the State fish and wildlife agency; and

(D) three shall be individuals who shall be appointed by the Secretary and who shall each represent a different charitable and nonprofit organization which is actively participating in carrying out wetlands conservation projects under this Act, the Plan, or the Agreement.

The provisions of Public Law 92–463, as amended, shall not apply to the Council.

(2) The Secretary shall appoint an alternate member of the Council who shall be knowledgeable and experienced in matters relating to fish, wildlife, and wetlands conservation and who shall perform the duties of a Council member appointed under subsection (a)(1)(C) or subsection (a)(1)(D) of this section—

(A) until a vacancy referred to in subsection (b)(4) of this section is filled; or

(B) in the event of the anticipated absence of such a member from any meeting of the Council.

(b) APPOINTMENT AND TERMS.—(1) Except as provided in paragraphs (2) and (3), the term of office of a member of the Council appointed under subsections (a)(1)(C) and (a)(1)(D) of this section is three years.

(2) Of the Council members first appointed under subsection (a)(1)(C) of this section after the date of enactment of this Act, one shall be appointed for a term of one year, one shall be appointed for a term of two years, and two shall be appointed for a term of three years.

(3) Of the Council members first appointed under subsection (a)(1)(D) of this section after the date of enactment of this Act, one shall be appointed for a term of one year, one shall be appointed for a term of two years, and one shall be appointed for a term of three years.

(4) Whenever a vacancy occurs among members of the Council appointed under subsection (a)(1)(C) or subsection (a)(1)(D) of this

[1] The amendment made by section 112(1) of Public Law 101–593 (104 Stat. 2962) to insert ", who shall be the responsible Federal official for ensuring Council compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)" after "Service" and before the period was inserted after "Service" and before the semicolon to reflect the probable intent of Congress.

[2] So in law. Probably should be "section 3(g)(2)(B)".

section, the Secretary shall appoint an individual in accordance with either such subsection to fill that vacancy for the remainder of the applicable term.

(c) EX OFFICIO COUNCIL MEMBERS.—The Secretary is authorized and encouraged to include as ex officio nonvoting members of the Commission [1] representatives of—

(1) the Federal, provincial, territorial, or State government agencies of Canada and Mexico, which are participating actively in carrying out one or more wetlands conservation projects under this Act, the Plan, or the Agreement;

(2) the Environmental Protection Agency and other appropriate Federal agencies, in addition to the United States Fish and Wildlife Service, which are participating actively in carrying out one or more wetlands conservation projects under this Act, the Plan, or the Agreement; and

(3) nonprofit charitable organizations and Native American interests, including tribal organizations, which are participating actively in one or more wetlands conservation projects under this Act, the Plan, or the Agreement.

(d) CHAIRMAN.—The Chairman shall be elected by the Council from its members for a three-year term, except that the first elected Chairman may serve a term of less than three years.

(e) QUORUM.—A majority of the current membership of the Council shall constitute a quorum for the transaction of business.

(f) MEETINGS.—The Council shall meet at the call of the Chairman at least once a year. Council meetings shall be open to the public, and the Chairman shall take appropriate steps to provide adequate notice to the public of the time and place of such meetings. If a Council member appointed under subsection (a)(1)(C) or (a)(1)(D) of this section misses three consecutive regularly scheduled meetings, the Secretary may remove that individual in accordance with subsection (b)(4).

(g) COORDINATOR.—The Director of the United States Fish and Wildlife Service shall appoint an individual who shall serve at the pleasure of the Director and—

(1) who shall be educated and experienced in the principles of fish, wildlife, and wetlands conservation;

(2) who shall be responsible, with assistance from the United States Fish and Wildlife Service, for facilitating consideration of wetlands conservation projects by the Council and otherwise assisting the Council in carrying out its responsibilities under this Act; and

(3) who shall be compensated with the funds available under section 8(a)(1) for administering this Act.

SEC. 5. [16 U.S.C. 4404] APPROVAL OF WETLANDS CONSERVATION PROJECTS.

(a) CONSIDERATION BY THE COUNCIL.—The Council shall recommend wetlands conservation projects to the Migratory Bird Conservation Commission based on consideration of—

(1) the extent to which the wetlands conservation project fulfills the purposes of this Act, the Plan, or the Agreement;

(2) the availability of sufficient non-Federal moneys to carry out any wetlands conservation project and to match Fed-

[1] So in law. Probably should be "Council".

eral contributions in accordance with the requirements of section 8(b) of this Act;

(3) the extent to which any wetlands conservation project represents a partnership among public agencies and private entities;

(4) the consistency of any wetlands conservation project in the United States with the National Wetlands Priority Conservation Plan developed under section 301 of the Emergency Wetlands Resources Act (16 U.S.C. 3921);

(5) the extent to which any wetlands conservation project would aid the conservation of migratory nongame birds, other fish and wildlife and species that are listed, or are candidates to be listed, as threatened and endangered under the Endangered Species Act [1] (16 U.S.C. 1531 et seq.);

(6) the substantiality of the character and design of the wetlands conservation project; and

(7) the recommendations of any partnerships among public agencies and private entities in Canada, Mexico, or the United States which are participating actively in carrying out one or more wetlands conservation projects under this Act, the Plan, or the Agreement.

(b) RECOMMENDATIONS TO THE MIGRATORY BIRD CONSERVATION COMMISSION.—The Council shall submit to the Migratory Bird Conservation Commission by January 1 of each year, a description, including estimated costs, of the wetlands conservation projects which the Council has considered under subsection (a) of this section and which it recommends, in order of priority, that the Migratory Bird Conservation Commission approve for Federal funding under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act. Solely for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), recommendations by the Council for carrying out wetlands conservation projects under section 6(a) of this Act shall be considered Federal actions requiring the preparation of environmental assessments or, where appropriate, environmental impact statements.

(c) COUNCIL PROCEDURES.—The Council shall establish practices and procedures for the carrying out of its functions under subsections (a) and (b) of this section. The procedures shall include requirements that—

(1) a quorum of the Council must be present before any business may be transacted; and

(2) no recommendations referred to in subsection (b) of this section may be adopted by the Council except by the vote of two-thirds of all members present and voting.

(d) COUNCIL REPRESENTATION ON MIGRATORY BIRD CONSERVATION COMMISSION.—The Chairman of the Council shall select one Council member of the United States citizenship to serve with the Chairman as ex officio members of the Migratory Bird Conservation Commission for the purposes of considering and voting upon wetlands conservation projects recommended by the Council.

(e) APPROVAL OF COUNCIL RECOMMENDATIONS BY THE MIGRATORY BIRD CONSERVATION COMMISSION.—The Migratory Bird Con-

[1] See footnote to section 2(a)(10).

vention Commission, along with the two members of the Council referred to in subsection (d) of this section, shall approve, reject or reorder the priority of any wetlands conservation projects recommended by the Council based on, to the greatest extent practicable, the criteria of subsection (a) of this section. If the Migratory Bird Conservation Commission approves any wetlands conservation project, Federal funding shall be made available under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act. If the Migratory Bird Conservation Commission rejects or reorders the priority of any wetlands conservation project recommended by the Council, the Migratory Bird Conservation Commission shall provide the Council and the appropriate Committees with a written statement explaining its rationale for the rejection or the priority modification.

(f) NOTIFICATION OF APPROPRIATE COMMITTEES.—The Migratory Bird Conservation Commission shall submit annually to the appropriate Committees a report including a list and description of the wetlands conservation projects approved by the Migratory Bird Conservation Commission for Federal funding under subsection (d) of this section in order of priority; the amounts and sources of Federal and non-Federal funding for such projects; a justification for the approval of such projects and the order of priority for funding such projects; a list and description of the wetlands conservation projects which the Council recommended, in order of priority that the Migratory Bird Conservation Commission approve for Federal funding; and a justification for any rejection or re-ordering of the priority of wetlands conservation projects recommended by the Council that was based on factors other than the criteria of section 5(a) of this Act.

SEC. 6. [16 U.S.C. 4405] CONDITIONS RELATING TO WETLANDS CONSERVATION PROJECTS.

(a) PROJECTS IN THE UNITED STATES.—(1) Subject to the allocation requirements of section 8(a)(2) and the limitations on Federal contributions under section 8(b) of this Act, the Secretary shall assist in carrying out wetlands conservation projects in the United States, which have been approved by the Migratory Bird Conservation Commission, with the Federal funds made available under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act.

(2) Except as provided in paragraph (3), any lands or waters or interests therein acquired in whole or in part by the Secretary with the Federal funds made available under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act, to carry out wetlands conservation projects shall be included in the National Wildlife Refuge System.

(3) In lieu of including in the National Wildlife Refuge System any lands or waters or interests therein acquired under this Act, the Secretary may, with the concurrence of the Migratory Bird Conservation Commission, grant or otherwise provide the Federal funds made available under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act or convey any real property interest acquired in whole or in part with such funds without cost to a State or to another public agency or other entity upon a finding by the Secretary that the real property interests should not be included in the National Wildlife Refuge

System: *Provided,* That any grant recipient shall have been so identified in the project description accompanying the recommendation from the Council and approved by the Migratory Bird Conservation Commission. The Secretary shall not convey any such interest to a State, another public agency or other entity unless the Secretary determines that such State, agency or other entity is committed to undertake the management of the property being transferred in accordance with the objectives of this Act, and the deed or other instrument of transfer contains provisions for the reversion of title to the property to the United States if such State, agency or other entity fails to manage the property in accordance with the objectives of this Act. Any real property interest conveyed pursuant to this paragraph shall be subject to such terms and conditions that will ensure that the interest will be administered for the long-term conservation and management of the wetland ecosystem and the fish and wildlife dependent thereon.

(b) PROJECTS IN CANADA OR MEXICO.—Subject to the allocation requirements of section 8(a)(1) and the limitations on Federal contributions under section 8(b) of this Act, the Secretary shall grant or otherwise provide the Federal funds made available under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act, to public agencies and other entities for the purpose of assisting such entities and individuals in carrying out wetlands conservation projects in Canada or Mexico that have been approved by the Migratory Bird Conservation Commission: *Provided,* That the grant recipient shall have been so identified in the project description accompanying the recommendation from the Council and approved by Migratory Bird Conservation Commission. The Secretary may only grant or otherwise provide Federal funds if the grant is subject to the terms and conditions that will ensure that any real property interest acquired in whole or in part, or enhanced, managed, or restored with such Federal funds will be administered for the long-term conservation and management of such wetland ecosystem and the fish and wildlife dependent thereon. Real property and interests in real property acquired pursuant to this subsection shall not become part of the National Wildlife Refuge System. Acquisitions of real property and interests in real property carried out pursuant to this subsection shall not be subject to any provision of Federal law governing acquisitions of property for inclusion in the National Wildlife Refuge System.

SEC. 7. [16 U.S.C. 4406] AMOUNTS AVAILABLE TO CARRY OUT THIS ACT.

(a) AID IN WILDLIFE RESTORATION.—(1) [Amends section 3 of the Act of September 2, 1937]

(2) [Amends section 4(a) of the Act of September 2, 1937]

(3) The amendments made by this subsection of this Act take effect October 1, 1989.

(b) MIGRATORY BIRD FINES, PENALTIES, FORFEITURES.—The sums received under section 6 of the Migratory Bird Treaty Act (16 U.S.C. 707) as penalties or fines, or from forfeitures of property are authorized to be appropriated to the Department of the Interior for purposes of allocation under section 8 of this Act. This subsection shall not be construed to require the sale of instrumentalities.

(c) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amounts made available under subsections (a) and (b) of this section, there are authorized to be appropriated to the Department of the Interior for purposes of allocation under section 8 of this Act not to exceed $50,000,000 for each of fiscal years 1999 through 2003.

(d) AVAILABILITY OF FUNDS.—Sums made available under this section shall be available until expended.

SEC. 8. [16 U.S.C. 4407] ALLOCATION OF AMOUNTS AVAILABLE TO CARRY OUT THIS ACT.

(a) ALLOCATIONS.—Of the sums available to the Secretary for any fiscal year under this Act and section 3(b) of the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669b(b)), as amended by this Act—

(1) such percentage of that sum (but at least 50 per centum and not more than 70 per centum thereof) as is considered appropriate by the Secretary, which can be matched with non-Federal moneys in accordance with the requirements of subsection (b) of this section, less such amount (but not more than 4 per centum of such percentage) considered necessary by the Secretary to defray the costs of administering this Act during such fiscal year, shall be allocated by the Secretary to carry out approved wetlands conservation projects in Canada and Mexico in accordance with section 6(b) of this Act; and

(2) the remainder of such sum after paragraph (1) is applied (but at least 30 per centum and not more than 50 per centum thereof), which can be matched with non-Federal moneys in accordance with the requirements of subsection (b) of this section, shall be allocated by the Secretary to carry out approved wetlands conservation projects in the United States in accordance with section 6(a) of this Act.

(b) FEDERAL CONTRIBUTION FOR PROJECTS.—The Federal moneys allocated under subsection (a) of this section for any fiscal year to carry out approved wetlands conservation projects shall be used for the payment of not to exceed 50 per centum of the total United States contribution to the costs of such projects, or may be used for payment of 100 per centum of the costs of such projects located on Federal lands and waters, including the acquisition of inholdings within such lands and waters. The non-Federal share of the United States contribution to the costs of such projects may not be derived from Federal grant programs. In the case of a project carried out in Mexico, the non-Federal share of the United States contribution to the costs of the project may include cash contributions from non-United States sources that are used to pay costs of the project.

(c) PARTIAL PAYMENTS.—(1) The Secretary may from time to time make payments to carry out approved wetlands conservation projects as such projects progress, but such payments, including previous payments, if any, shall not be more than the Federal pro rata share of any such project in conformity with subsection (b) of this section.

(2) The Secretary may enter into agreements to make payments on an initial portion of an approved wetlands conservation project and to agree to make payments on the remaining Federal share of the costs of such project from subsequent allocations if and when they become available. The liability of the United States

under such an agreement is contingent upon the continued availability of funds for the purposes of this Act.

SEC. 9. [16 U.S.C. 4408] RESTORATION, MANAGEMENT, AND PROTECTION OF WETLANDS AND HABITAT FOR MIGRATORY BIRDS ON FEDERAL LANDS.

The head of each Federal agency responsible for acquiring, managing, or disposing of Federal lands and waters shall, to the extent consistent with the mission of such agency and existing statutory authorities, cooperate with the Director of the United States Fish and Wildlife Service to restore, protect, and enhance the wetland ecosystems and other habitats for migratory birds, fish, and wildlife within the lands and waters of each such agency.

SEC. 10. [16 U.S.C. 4409] REPORT TO CONGRESS.

The Secretary shall report to the appropriate Committees on the implementation of this Act. The report shall include—

(1) a biennial assessment of—

(A) the estimated number of acres of wetlands and habitat for waterfowl and other migratory birds that were restored, protected, or enhanced during such two-year period by Federal, State, and local agencies and other entities in the United States, Canada, and Mexico;

(B) trends in the population size and distribution of North American migratory birds;

(C) the status of efforts to establish agreements with nations in the western hemisphere [1] pursuant to section 17 of this Act; and

(D) wetlands conservation projects funded under this Act, listed and identified by type, conservation mechanism (such as acquisition, easement, or lease), location, and duration. [2]

(2) an annual assessment of the status of wetlands conservation projects, including an accounting of expenditures by Federal, State, and other United States entities, and expenditures by Canadian and Mexican sources to carry out these projects.

SEC. 11. [16 U.S.C. 4410] REVISIONS TO THE PLAN.

The Secretary shall, in 1998 and at five-year intervals thereafter, undertake with the appropriate officials in Canada and Mexico to revise the goals and other elements of the Plan in accordance with the information required under section 10 and with the other provisions of this Act.

SEC. 12. [16 U.S.C. 4411] RELATIONSHIP TO OTHER AUTHORITIES.

(a) ACQUISITION OF LANDS AND WATERS.—Nothing in this Act affects, alters, or modifies the Secretary's authorities, responsibilities, obligations, or powers to acquire lands or waters or interests therein under any other statute.

(b) MITIGATION.—The Federal funds made available under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act, may not be used for fish and wildlife mitigation purposes under the Fish and Wildlife Coordina-

[1] So in law. Probably should be "Western Hemisphere".
[2] So in law. The period probably should be "; and".

tion Act (16 U.S.C. 661 et seq.) or the Water Resources Development Act of 1986, Public Law 99–662 (1986), 100 Stat. 4235.

SEC. 13. ADDITION OF EPA ADMINISTRATOR TO MIGRATORY BIRD CONSERVATION COMMISSION.

[Amends section 2 of the Migratory Bird Conservation Act]

SEC. 14. [16 U.S.C. 4412] LIMITATION ON ASSESSMENTS AGAINST MIGRATORY BIRD CONSERVATION FUND.

Notwithstanding any other provision of law, only those personnel and administrative costs directly related to acquisition of real property shall be levied against the Migratory Bird Conservation Account.

SEC. 15. TECHNICAL AND CONFORMING AMENDMENTS TO THE MIGRATORY BIRD TREATY ACT.

[Amends section 2 of the Migratory Bird Treaty Act]

SEC. 16. OTHER AGREEMENTS.

(a) [16 U.S.C. 4413] The Secretary shall undertake with the appropriate officials of nations in the western hemisphere to establish agreements, modeled after the Plan or the Agreement, for the protection of migratory birds identified in section 13(a)(5) of the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2912(a)). When any such agreements are reached, the Secretary shall make recommendations to the appropriate Committees on legislation necessary to implement the agreements.

(b) [Amends section 13(a) of the Fish and Wildlife Conservation Act]

SEC. 17. TO EXPAND THE BOGUE CHITTO NATIONAL WILDLIFE REFUGE.

[Amends sections 3(b) and 5(a) of the Act entitled "An Act to establish the Bogue Chitto National Wildlife Refuge" (Public Law 96–288; 94 Stat. 603)]

SEC. 18. WETLANDS ASSESSMENTS.

(a) [Amends section 401(a) of the Emergency Wetlands Resources Act of 1986]

(b) [Amends section 401 of the Emergency Wetlands Resources Act of 1986]

SEC. 19. [16 U.S.C. 4414] ASSESSMENT OF PROGRESS IN WETLANDS CONSERVATION.

Not later than January 31, 1996, the Secretary, in cooperation with the Council, to further the purposes of the Act shall—

(1) develop and implement a strategy to assist in the implementation of this Act in conserving the full complement of North American wetlands systems and species dependent on those systems, that incorporates information existing on the date of the issuance of the strategy in final form on types of wetlands habitats and species dependent on the habitats; and

(2) develop and implement procedures to monitor and evaluate the effectiveness of wetlands conservation projects completed under this Act.