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(Original Signature of Member)

115TH CONGRESS
1ST SESSION **H. R.**

To enact certain laws relating to wildlife as title 56, United States Code,
“Wildlife”.

IN THE HOUSE OF REPRESENTATIVES

, 2017

Mr. GOODLATTE (for himself and Mr. CONYERS) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To enact certain laws relating to wildlife as title 56, United
States Code, “Wildlife”.

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

3 **SECTION 1. TABLE OF CONTENTS.**

4 The table of contents for this Act is as follows:

- Sec. 1. Table of contents.
- Sec. 2. Purpose; restatement does not change meaning or effect of existing law.
- Sec. 3. Enactment of title 56, United States Code.
- Sec. 4. Amendment of title 18, United States Code.
- Sec. 5. Conforming amendments to certain provisions of law.
- Sec. 6. Transitional and savings provisions.
- Sec. 7. Repeals.

5 **SEC. 2. PURPOSE; RESTATEMENT DOES NOT CHANGE MEANING OR EF-**
6 **FFECT OF EXISTING LAW.**

7 (a) PURPOSE.—The purpose of this Act is to enact a restatement of cer-
8 tain existing law relating to wildlife as a positive law title of the United
9 States Code.

1 (b) RESTATEMENT DOES NOT CHANGE MEANING OR EFFECT OF EXIST-
 2 ING LAW.—

3 (1) IN GENERAL.—The restatement of existing law enacted by this
 4 Act does not change the meaning or effect of the existing law. The re-
 5 statement consolidates various provisions that were enacted separately
 6 over a period of many years, reorganizing them, conforming style and
 7 terminology, modernizing obsolete language, and correcting drafting er-
 8 rors. These changes serve to remove ambiguities, contradictions, and
 9 other imperfections, but they do not change the meaning or effect of
 10 the existing law or impair the precedential value of earlier judicial deci-
 11 sions or other interpretations.

12 (2) RULE OF CONSTRUCTION.—

13 (A) IN GENERAL.—Notwithstanding the plain meaning rule or
 14 other rules of statutory construction, a change in wording made
 15 in the restatement of existing law enacted by this Act serves to
 16 clarify the existing law as indicated in paragraph (1), but not to
 17 change the meaning or effect of the existing law.

18 (B) REVISION NOTES.—Subparagraph (A) applies whether or
 19 not a change in wording is explained by a revision note appearing
 20 in a congressional report accompanying this Act. If such a revision
 21 note does appear, a court shall consider the revision note in inter-
 22 preting the change.

23 **SEC. 3. ENACTMENT OF TITLE 56, UNITED STATES CODE.**

24 Title 56, United States Code, “Wildlife”, is enacted as follows:

25 **TITLE 56—WILDLIFE**

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1 in effect on June 30, 1974, that relate to matters administered by the
2 Department of the Interior through the United States Fish and Wild-
3 life Service (as constituted on that date) and the Bureau of Sport Fish-
4 eries and Wildlife (as constituted on that date) remain in effect.

5 (e) FUNCTIONS AND RESPONSIBILITIES OF THE SECRETARY.—All func-
6 tions and responsibilities assigned to the Director—

7 (1) shall be included among the functions and responsibilities of the
8 Secretary; and

9 (2) shall be carried out under the Secretary's direction pursuant to
10 such procedures or delegations of authority as the Secretary considers
11 advisable and in the public interest.

12 **§ 105103. Assistant Director for Wildlife and Sport Fish**
13 **Restoration Programs**

14 (a) IN GENERAL.—There is established in USFWS the position of Assist-
15 ant Director for Wildlife and Sport Fish Restoration Programs, who shall
16 report directly to the Director.

17 (b) RESPONSIBILITIES.—The Assistant Director for Wildlife and Sport
18 Fish Restoration Programs shall be responsible for the administration, man-
19 agement, and oversight of the Federal Assistance Program for State Wild-
20 life and Sport Fish Restoration under chapters 205 and 227 of this title.

21 **§ 105104. Wildlife conservation and rehabilitation**

22 (a) DEFINITION OF WILDLIFE.—In this section, the term “wildlife” in-
23 cludes—

24 (1) birds, fishes, mammals, and all other classes of wild animals; and

25 (2) all types of aquatic and land vegetation on which wildlife is de-
26 pendent.

27 (b) IN GENERAL.—The Secretary may carry out the activities described
28 in subsection (c) to—

29 (1) recognize the vital contribution of wildlife resources to the Nation
30 and the increasing public interest in and significance of wildlife re-
31 sources due to expansion of the national economy and other factors;
32 and

33 (2) provide that wildlife conservation shall receive equal consider-
34 ation and shall be coordinated with other features of water resource de-
35 velopment programs through the effective and harmonious planning,
36 development, maintenance, and coordination of wildlife conservation
37 and rehabilitation under this section, section 213103 of this title, and
38 sections 2 through 4 and 5A through 9 of the Fish and Wildlife Co-
39 ordination Act (16 U.S.C. 662 through 664, 665a through 666e) in the
40 United States and its territories (including possessions).

41 (c) ACTIVITIES.—The Secretary may—

- 1 (1) provide assistance to, and cooperate with, Federal, State, and
- 2 public or private agencies and organizations—
- 3 (A) in developing, protecting, rearing, and stocking all species
- 4 of wildlife, wildlife resources, and wildlife habitat;
- 5 (B) in controlling the loss of wildlife from disease or other
- 6 causes;
- 7 (C) in minimizing damages from overabundant species;
- 8 (D) in providing public shooting and fishing areas, including
- 9 easements across public land for access to the areas; and
- 10 (E) in carrying out other activities necessary to carry out this
- 11 section, section 213103 of this title, and sections 2 through 4 and
- 12 5A through 9 of the Fish and Wildlife Coordination Act (16
- 13 U.S.C. 662 through 664, 665a through 666e);
- 14 (2) make surveys and investigations of wildlife in the public domain,
- 15 including areas of land and water or interests in areas of land and
- 16 water acquired or controlled by any Federal agency; and
- 17 (3) accept donations of land and contributions of funds to carry out
- 18 this section, section 213103 of this title, and sections 2 through 4 and
- 19 5A through 9 of the Fish and Wildlife Coordination Act (16 U.S.C.
- 20 662 through 664, 665a through 666e).

21 **§ 105105. Policies, procedures, and recommendations**

- 22 (a) POLICIES AND PROCEDURES.—The Secretary, with such advice and
- 23 assistance as the Secretary may require from the Assistant Secretary, shall
- 24 consider and determine the policies and procedures that are necessary and
- 25 desirable in carrying out efficiently and in the public interest the laws relat-
- 26 ing to fish and wildlife.
- 27 (b) RECOMMENDATIONS.—The Secretary shall—
- 28 (1) develop and recommend measures that are appropriate to—
- 29 (A) ensure the maximum sustainable production of fish and
- 30 fishery products; and
- 31 (B) prevent unnecessary and excessive fluctuations in the pro-
- 32 duction of fish and fishery products;
- 33 (2)(A) study the economic condition of the fishing industry; and
- 34 (B) if the Secretary determines that any segment of the domestic
- 35 fisheries has been seriously disturbed either by wide fluctuation in the
- 36 abundance of the resource supporting it or by unstable market or fish-
- 37 ing conditions, or due to any other factors, make such recommenda-
- 38 tions to the President and Congress as the Secretary considers appro-
- 39 priate to aid in stabilizing the domestic fisheries;
- 40 (3) develop and recommend special promotional and informational
- 41 activities with a view to stimulating the consumption of fishery prod-

1 ucts if the Secretary determines that there is a prospective or actual
2 surplus of fishery products; and

3 (4) take such steps as may be required for the development, advance-
4 ment, management, conservation, and protection of fish and wildlife re-
5 sources, including research, development of existing facilities, and ac-
6 quisition by purchase or exchange of areas of land and water, or inter-
7 ests in areas of land and water.

8 **§ 105106. Gifts, devises, and bequests**

9 (a) ACCEPTANCE.—

10 (1) IN GENERAL.—In furtherance of the purposes of sections
11 105102, 105105, 105107 through 105113, and 213101 of this title,
12 chapter 211 of this title, section 2 of the Fish and Wildlife Act of 1956
13 (ch. 1036, 70 Stat. 1119), and sections 4 and 9 of the Fish and Wild-
14 life Act of 1956 (16 U.S.C. 742c, 742h), the Secretary may accept, for
15 the benefit of USFWS, in performing activities and services of
16 USFWS, a gift, devise, or bequest of—

17 (A) real or personal property;

18 (B) an interest in real or personal property; or

19 (C) proceeds from real or personal property.

20 (2) COVENANTS AND SERVITUDES.—Acceptance of a gift, devise, or
21 bequest under paragraph (1) may be subject to the terms of a restric-
22 tive or affirmative covenant, or condition of servitude, if the Secretary
23 considers the terms to be in accordance with law and compatible with
24 the purpose for which acceptance is sought.

25 (b) USE.—

26 (1) IN GENERAL.—A gift or bequest of money or the proceeds from
27 a sale of other property received as a gift or bequest under this section
28 shall be—

29 (A) deposited in a separate account in the Treasury; and

30 (B) disbursed on order of the Secretary for the benefit of pro-
31 grams administered by USFWS.

32 (2) PARTICULAR REFUGES.—

33 (A) DISBURSAL.—A gift, devise, or bequest made for the benefit
34 of a particular national wildlife refuge or complex of geographi-
35 cally related refuges shall be disbursed only for the benefit of that
36 refuge or complex of refuges and without further appropriations.

37 (B) MATCHING.—Subject to the availability of appropriations
38 and the requirements of the National Wildlife Refuge System Ad-
39 ministration Act of 1966 (16 U.S.C. 668dd et seq.) and other ap-
40 plicable law, the Secretary may provide funds to match a gift, de-
41 vise, or bequest made for the benefit of a particular national wild-

1 life refuge or complex of geographically related refuges. With re-
2 spect to each gift, devise, or bequest, the amount of Federal funds
3 shall not exceed the amount (or, in the case of property or in-kind
4 services, the fair market value) of the gift, devise, or bequest.

5 (c) TAX TREATMENT.—For the purpose of Federal income, estate, and
6 gift taxes, property, proceeds from property, or an interest in property ac-
7 cepted under this section shall be considered to be a gift, devise, or bequest
8 to the United States.

9 **§ 105107. Volunteers**

10 (a) IN GENERAL.—The Secretary may, without regard to title 5, recruit,
11 train, and accept the services of individuals without compensation as volun-
12 teers for USFWS or in aid of programs conducted by the Secretary through
13 USFWS.

14 (b) INCIDENTAL EXPENSES.—The Secretary may provide for incidental
15 expenses such as transportation, uniforms, lodging, awards (including nomi-
16 nal cash awards) and recognition, and subsistence of volunteers without re-
17 gard to their places of residence.

18 (c) NONEMPLOYEE STATUS.—

19 (1) IN GENERAL.—A volunteer under this section—

20 (A) is not a Federal employee; and

21 (B) is not subject to provisions of law relating to Federal em-
22 ployment, including provisions relating to hours of work, rates of
23 compensation, leave, unemployment compensation, and Federal
24 employee benefits.

25 (2) EXCEPTIONS.—

26 (A) TORT CLAIMS.—A volunteer under this section is deemed to
27 be a Federal employee for purposes of the tort claim provisions
28 of title 28.

29 (B) COMPENSATION FOR WORK INJURIES.—A volunteer under
30 this section is deemed to be an employee of the United States
31 within the meaning of the term “employees” (as defined in section
32 8101 of title 5) for purposes of subchapter I of chapter 81 of title
33 5, which subchapter shall apply with respect to the volunteer.

34 (d) SENIOR VOLUNTEER CORPS.—The Secretary may establish a Senior
35 Volunteer Corps consisting of volunteers over the age of 50. To assist in
36 the recruitment and retention of the volunteers, the Secretary may provide
37 for incidental expenses to members of the Corps in addition to the incidental
38 expenses provided to volunteers under subsection (b). A member of the
39 Corps shall be subject to the other provisions of this section.

1 **§ 105108. Community partnership program**

2 (a) DEFINITION OF PARTNER ORGANIZATION.—In this section, the term
3 “partner organization” means an organization that—

4 (1) draws its membership from private individuals, organizations,
5 corporations, academic institutions, or State or local governments;

6 (2) is established to promote the understanding of, education relat-
7 ing to, and the conservation of the fish, wildlife, plants, and cultural
8 and historical resources of a particular refuge or complex of geographi-
9 cally related refuges; and

10 (3) is described in section 501(c)(3) of the Internal Revenue Code
11 of 1986 (26 U.S.C. 501(c)(3)) and is exempt from taxation under sec-
12 tion 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. 501(a)).

13 (b) COOPERATIVE AGREEMENTS.—

14 (1) IN GENERAL.—Notwithstanding chapter 63 of title 31, the Sec-
15 retary may negotiate and enter into a cooperative agreement with a
16 partner organization, academic institution, State or local government
17 agency, or other person to implement 1 or more projects or programs
18 for a refuge or complex of geographically related refuges in accordance
19 with the purposes of this section and in compliance with the policies
20 of other relevant authorities, regulations, and policy guidance.

21 (2) PROJECTS AND PROGRAMS.—Subject to the requirements of the
22 National Wildlife Refuge System Administration Act of 1966 (16
23 U.S.C. 668dd et seq.) and other applicable law, and such terms and
24 conditions as the Secretary determines to be appropriate, the Secretary
25 may approve projects and programs for a refuge or complex of geo-
26 graphically related refuges that—

27 (A) promote the stewardship of resources of the refuge or com-
28 plex through—

29 (i) maintenance, restoration, and improvement of habitat;

30 (ii) biological monitoring; or

31 (iii) research;

32 (B) support the operation and maintenance of the refuge or
33 complex through constructing, operating, maintaining, or improv-
34 ing the facilities and services of the refuge or complex;

35 (C) increase awareness and understanding of the refuge or com-
36 plex and the National Wildlife Refuge System through the develop-
37 ment, publication, or distribution of educational materials and
38 products;

39 (D) advance education concerning the purposes of the refuge or
40 complex and the mission of the System through the use of the ref-

1 uge or complex as an outdoor classroom and development of other
2 educational programs; or

3 (E) contribute financial resources to the refuge or complex,
4 under terms that require that the net revenues be used exclusively
5 for the benefit of the refuge or complex, through donation of net
6 revenues from the sale of educational materials and products and
7 through encouragement of gifts, devises, and bequests.

8 (3) FEDERAL FUNDING AND OWNERSHIP.—

9 (A) MATCHING.—Subject to the availability of appropriations
10 and the requirements of the National Wildlife Refuge System Ad-
11 ministration Act of 1966 (16 U.S.C. 668dd et seq.) and other ap-
12 plicable law, the Secretary may provide funds to match non-Fed-
13 eral funds donated under a cooperative agreement under this sub-
14 section. With respect to each project or program, the amount of
15 funds provided by the Secretary shall not exceed the amount of
16 the non-Federal funds donated through the project or program.

17 (B) USE OF FEDERAL FUNDS.—Federal funds used to fund a
18 project or program under a cooperative agreement may be used
19 only for expenses directly related to the project or program and
20 shall not be used for operation or administration of a non-Federal
21 entity.

22 (C) OWNERSHIP OF FACILITIES.—A new facility, improvement
23 to an existing facility, or other permanent improvement to a ref-
24 uge constructed under this section is the property of the United
25 States Government.

26 (4) TREASURY ACCOUNT.—The Secretary shall deposit amounts re-
27 ceived by the Secretary, as a result of projects and programs under
28 paragraph (2), in a separate account in the Treasury. Amounts in the
29 account that are attributable to activities at a particular refuge or com-
30 plex of geographically related refuges are available to the Secretary,
31 without further appropriation, to—

32 (A) pay the costs of incidental expenses related to volunteer ac-
33 tivities; and

34 (B) carry out cooperative agreements for the refuge or complex
35 of refuges.

36 **§ 105109. Refuge education program**

37 (a) GUIDANCE.—The Secretary shall develop guidance for refuge edu-
38 cation programs to further the mission of the National Wildlife Refuge Sys-
39 tem and the purposes of individual refuges by—

1 (1) using national wildlife refuges as outdoor classrooms to combine
2 educational curricula with opportunities for students to develop per-
3 sonal experiences relating to—

- 4 (A) fish, wildlife, and plants and their habitats; and
- 5 (B) the cultural and historical resources of the refuges;

6 (2) promoting understanding and conservation of fish, wildlife, and
7 plants and their habitats and cultural and historical resources of the
8 refuges; and

9 (3) improving scientific literacy in conjunction with both formal and
10 informal education programs.

11 (b) REFUGE PROGRAMS.—

12 (1) IN GENERAL.—The Secretary may develop or enhance refuge
13 education programs, as appropriate, based on—

- 14 (A) the guidance developed under subsection (a);
- 15 (B) the resources of individual refuges; and
- 16 (C) the opportunities available in State, local, and private
17 schools.

18 (2) COOPERATION WITH STATE AND LOCAL EDUCATION AUTHORI-
19 TIES.—In developing and implementing a program, the Secretary—

- 20 (A) should cooperate with State and local education authorities;
21 and
- 22 (B) may cooperate with partner organizations in accordance
23 with section 105108 of this title.

24 **§ 105110. Quinquennial report on programs**

25 Every 5 years, the Secretary shall submit to the Committee on Natural
26 Resources of the House of Representatives and the Committee on Environ-
27 ment and Public Works of the Senate a report that—

28 (1) evaluates the accomplishments of—

- 29 (A) the volunteer program under section 105107 of this title;
- 30 (B) the community partnership program under section 105108
31 of this title;
- 32 (C) the refuge education programs under section 105109 of this
33 title; and

34 (D) the National Volunteer Coordination Program and volunteer
35 coordination strategy under section 4(a) of the National Wildlife
36 Refuge System Volunteer and Community Partnership Enhance-
37 ment Act of 1998 (16 U.S.C. 742f-1); and

38 (2) makes recommendations to improve the effectiveness of the pro-
39 grams specified in paragraph (1), including recommendations for imple-
40 menting paragraphs (1), (2), and (3) of section 105109(a) of this title.

1 **§ 105111. Federal agency cooperation**

2 (a) IN GENERAL.—The Secretary may request and secure the advice or
3 assistance of any Federal agency in carrying out sections 105102, 105105
4 through 105110, 105112, 105113, 105122, and 213101 of this title, chap-
5 ter 211 of this title, section 2 of the Fish and Wildlife Act of 1956 (ch.
6 1036, 70 Stat. 1119), sections 4 and 9 of the Fish and Wildlife Act of 1956
7 (16 U.S.C. 742c, 742h), and subsections (a) and (b) of section 6 of the Fish
8 and Wildlife Act of 1956 (ch. 1036, 70 Stat. 1122).

9 (b) EXPENDITURE OF FEDERAL AGENCY FUNDS.—A Federal agency
10 that furnishes advice or assistance to the Secretary may expend its own
11 funds for that purpose, with or without reimbursement from the Secretary
12 as may be agreed on between the Secretary and the head of the Federal
13 agency.

14 **§ 105112. Cooperation with Secretary of State**

15 (a) REPRESENTATION AT INTERNATIONAL MEETINGS.—

16 (1) IN GENERAL.—The Secretary shall cooperate to the fullest prac-
17 ticable extent with the Secretary of State in providing representation
18 at all meetings and conferences relating to fish and wildlife in which
19 representatives of the United States and foreign countries participate.

20 (2) MEMBER OF DELEGATION.—The Secretary of State shall des-
21 ignate the Secretary or Assistant Secretary, or a person designated by
22 the Secretary, to represent the Department of the Interior as a member
23 of the United States delegation attending meetings and conferences de-
24 scribed in paragraph (1) and as a member of the negotiating team of
25 any such delegation.

26 (b) CONSULTATION WITH OFFICIALS RESPONSIBLE FOR TECHNICAL AND
27 ECONOMIC AID.—The Secretary of State and all other officials having re-
28 sponsibilities in the fields of technical and economic aid to foreign countries
29 shall consult with the Secretary in all cases in which the interests of fish
30 and wildlife are involved, with a view to ensuring that those interests are
31 adequately represented at all times.

32 (c) INTERNATIONAL NEGOTIATIONS.—Notwithstanding any other law, the
33 Secretary shall be represented in all international negotiations conducted by
34 the United States pursuant to section 350 of the Tariff Act of 1930 (19
35 U.S.C. 1351) in any case in which fish products are directly affected by the
36 negotiations.

37 **§ 105113. Consultation with governmental, private non-**
38 **profit, and other organizations**

39 The Secretary shall consult periodically with governmental, private non-
40 profit, and other organizations and agencies that carry out activities relating

1 to fish and wildlife with respect to any problems that may arise in connec-
2 tion with fish and wildlife.

3 **§ 105114. Relinquishment of exclusive legislative jurisdic-**
4 **tion**

5 (a) IN GENERAL.—Notwithstanding any other law, the Secretary, acting
6 through the Director, may relinquish to a State, territory, or possession of
7 the United States the exclusive legislative jurisdiction of the United States
8 over all or part of any USFWS land or interest in land, including National
9 Wildlife Refuge System land and National Fish Hatchery System land, in
10 the State, territory, or possession.

11 (b) MEANS OF ACCOMPLISHMENT.—Relinquishment of exclusive legisla-
12 tive jurisdiction under this section may be accomplished—

13 (1) by filing with the Governor (or, if none, the chief executive offi-
14 cer) of the State, territory, or possession a notice of relinquishment to
15 take effect on acceptance of the relinquishment; or

16 (2) as the law of the State, territory, or possession may provide.

17 **§ 105115. Cooperative work**

18 (a) IN GENERAL.—In carrying out the activities of USFWS involving co-
19 operation with entities described in subsection (b), amounts contributed
20 from those entities shall be paid only through the Secretary or through
21 State, county, or municipal agencies cooperating for the purposes of those
22 activities with the Secretary.

23 (b) ENTITIES.—The following entities are the entities referred to in sub-
24 section (a) if they are within the State, district, or territory (including a
25 possession) in which the activities described in subsection (a) are to be car-
26 ried out:

- 27 (1) State, county, and municipal agencies.
- 28 (2) Universities and colleges.
- 29 (3) Boards of trade, chambers of commerce, and other local associa-
30 tions of businesspeople.
- 31 (4) Business organizations.
- 32 (5) Individuals.

33 (c) INAPPLICABILITY OF SECTION 209 OF TITLE 18.—The officials and
34 the employees of USFWS engaged in the activities described in subsection
35 (a) and paid in whole or in part out of amounts contributed as provided
36 in subsection (a), and the entities making contributions as provided in sub-
37 section (a), are not subject to section 209 of title 18.

38 **§ 105116. Detail of personnel and loan of equipment to the**
39 **Director**

40 (a) DEFINITION OF AGENCY.—In this section, the term “agency”
41 means—

- 1 (1) the department in which the Coast Guard is operating;
- 2 (2) the Department of the Army;
- 3 (3) the Department of the Navy;
- 4 (4) the Department of the Air Force; or
- 5 (5) the National Aeronautics and Space Administration.

6 (b) PERSONNEL AND EQUIPMENT AVAILABLE.—The head of an agency
7 may, from time to time—

8 (1) detail, for duty under the Director, the agency's commissioned
9 personnel, enlisted personnel, and civilian employees who may be
10 spared for the duty; and

11 (2) consistent with the operational needs of the agency, loan equip-
12 ment of the agency to the Director.

13 (c) REPORTS.—At the end of a fiscal year in which a detail or loan takes
14 place under subsection (b), the Director shall submit to the Committee on
15 Commerce, Science, and Transportation of the Senate and the Committee
16 on Natural Resources of the House of Representatives a report that de-
17 scribes the detail or loan and specifies the additional cost, if any, to the
18 Federal Government resulting from the detail or loan.

19 **§ 105117. Commutation of rations for officers and crews of**
20 **vessels of USFWS**

21 (a) IN GENERAL.—Commutation of rations (not to exceed \$1 per individ-
22 ual per day) may be paid to officers and crews of vessels of USFWS under
23 regulations prescribed by the Secretary.

24 (b) VOUCHERS.—Amounts accruing from commutation of rations on
25 board vessels may be paid on proper vouchers to the persons having charge
26 of the mess of the vessels.

27 (c) NO SALARY DEDUCTION.—Section 5911 of title 5 does not require
28 deductions from the salaries of officers and crews of vessels of USFWS for
29 quarters and rations furnished on vessels of USFWS.

30 **§ 105118. Amounts for uniform and clothing for USFWS em-**
31 **ployees**

32 (a) UNIFORM ALLOWANCE.—Notwithstanding section 5901(a) of title 5,
33 the uniform allowance for a uniformed employee of USFWS shall be not
34 more than \$400 annually.

35 (b) CLOTHING AND SUPPLIES.—The Secretary may use not more than
36 \$5,000 from appropriations for USFWS to purchase clothing and small
37 stores of supplies for the crews of vessels. The clothing and supplies are to
38 be sold to employees of USFWS, with proceeds of sales used to reimburse
39 appropriations.

1 **§ 105119. Travel and transportation expenses of newly ap-**
2 **pointed special agents**

3 The Secretary may pay from agency appropriations the travel expense of
4 a newly appointed special agent of USFWS and the transportation expense
5 of the special agent for household goods and personal effects from place of
6 residence at time of selection to 1st duty station to the extent authorized
7 by section 5724 of title 5.

8 **§ 105120. Cooperative research and training programs**

9 (a) IN GENERAL.—For the purpose of developing adequate, coordinated,
10 cooperative research and training programs for fish and wildlife resources,
11 the Secretary may enter into cooperative agreements, relating to cooperative
12 research units, with—

- 13 (1) colleges and universities;
14 (2) State fish and wildlife agencies; and
15 (3) nonprofit organizations.

16 (b) LIMITATION.—Federal participation in a cooperative unit program
17 under subsection (a) shall be limited to—

- 18 (1) the assignment by the Secretary of scientific personnel of the De-
19 partment of the Interior to serve at a unit;
20 (2) the provision of assistance (including reasonable financial com-
21 pensation) for the work of researchers on fish and wildlife ecology and
22 resource management projects funded under this section;
23 (3) the supply of equipment for the operations of a unit, from equip-
24 ment that is available to the Secretary for that purpose; and
25 (4) the payment of incidental expenses of Federal personnel and em-
26 ployees of a cooperating agency assigned to a unit.

27 **§ 105121. Enforcement**

28 (a) LAW ENFORCEMENT TRAINING PROGRAM.—

29 (1) IN GENERAL.—To provide for and encourage training, research,
30 and development for the purpose of improving fish and wildlife law en-
31 forcement and developing new methods for the prevention, detection,
32 and reduction of violation of fish and wildlife laws, and the apprehen-
33 sion of violators of fish and wildlife laws, the Secretary may—

- 34 (A) establish and conduct national training programs to provide,
35 at the request of a State, training for State fish and wildlife law
36 enforcement personnel;
37 (B) develop new or improved approaches, techniques, systems,
38 equipment, and service to improve and strengthen fish and wildlife
39 law enforcement; and

1 (C) assist in conducting, at the request of an appropriate State
2 official, local or regional training programs for the training of
3 State fish and wildlife law enforcement personnel.

4 (2) ESTABLISHED PROGRAMS.—Training programs under paragraph
5 (1) shall be conducted to the maximum extent practicable through es-
6 tablished programs.

7 (3) REIMBURSEMENT.—The Secretary may require reimbursement
8 from a State for an expenditure made pursuant to subparagraph (A)
9 or (C) of paragraph (1).

10 (b) LAW ENFORCEMENT COOPERATIVE AGREEMENT.—

11 (1) IN GENERAL.—Notwithstanding any other law, the Secretary
12 may utilize, by agreement and with or without reimbursement, the per-
13 sonnel, services, and facilities of another Federal agency or a State
14 agency, to the extent the Secretary considers necessary for the enforce-
15 ment of—

16 (A) any Federal or State law, if enforcement is on an area of
17 land or water or interest in an area of land or water—

18 (i) under the Secretary’s jurisdiction; and

19 (ii) administered or managed for fish and wildlife purposes;

20 or

21 (B) any law administered by the Secretary relating to fish and
22 wildlife.

23 (2) STATUS OF PERSONNEL.—Personnel used under paragraph (1)
24 who are not employees of another Federal agency—

25 (A) are not Federal employees and are not subject to the provi-
26 sions of law relating to Federal employment, including those relat-
27 ing to hours of work, competitive examination, rates of compensa-
28 tion, and Federal employee benefits, but may be considered eligible
29 for compensation for work injuries under subchapter III of chapter
30 81 of title 5;

31 (B) are investigative or law enforcement officers of the United
32 States for purposes of the tort claim provisions of title 28;

33 (C) may, to the extent specified by the Secretary, search, seize,
34 arrest, and exercise any other law enforcement functions or au-
35 thorities under Federal law relating to fish and wildlife, in cases
36 in which those functions or authorities are made applicable by law
37 to employees, officers, or other persons designated or employed by
38 the Secretary; and

39 (D) are officers or employees of the Department of the Interior
40 within the meaning of sections 111 and 1114 of title 18.

41 (c) DISPOSAL OF ABANDONED OR FORFEITED PROPERTY.—

1 (1) IN GENERAL.—Subject to paragraph (2), notwithstanding any
2 other law, all fish, wildlife, plants, or other items abandoned or for-
3 feited to the United States under any law administered by the Sec-
4 retary relating to fish, wildlife, or plants shall be disposed of by the
5 Secretary in such a manner as the Secretary considers appropriate (in-
6 cluding loan, gift, sale, or destruction).

7 (2) PROHIBITION ON SALE OF CERTAIN ITEMS.—In carrying out
8 paragraph (1), the Secretary shall not sell a species of fish, wildlife,
9 or plant, or derivative of any fish, wildlife, or plant, for which the sale
10 is prohibited by a Federal law other than this section.

11 (3) USE OF REVENUES.—The Secretary may expend any revenues
12 received from the disposal of an item under paragraph (1), and all
13 sums referred to in sections 201809(a) and 203108(e)(1) of this title—

14 (A) to make payments in accordance with those sections; and
15 (B) to pay costs associated with—

16 (i) shipping an item described in paragraph (1) to and
17 from a place of storage, sale, or temporary or final disposal,
18 including temporary or permanent loan;

19 (ii) storage of an item, including inventory of, and security
20 for, the item;

21 (iii) appraisal of the item;

22 (iv) sale or other disposal of the item in accordance with
23 applicable law, including auctioneer commissions and related
24 expenses;

25 (v) payment of a valid lien or other encumbrance on the
26 item and payment for other measures required to clear title
27 to the item; and

28 (vi) processing and shipping of an eagle or other migratory
29 bird or part of a migratory bird for Native American religious
30 purposes.

31 (d) EFFECT OF SECTION.—Nothing in this section invalidates a law en-
32 forcement agreement or delegation made by the Secretary with respect to
33 fish and wildlife before November 8, 1978.

34 (e) LAW ENFORCEMENT OPERATIONS.—

35 (1) IN GENERAL.—With respect to an undercover or other enforce-
36 ment operation that is necessary for the detection and prosecution of
37 a violation of a law administered by the Director relating to fish, wild-
38 life, or plants, the Secretary may, notwithstanding any other law—

39 (A) direct the advance of funds that may be deposited in com-
40 mercial banks or other financial institutions;

1 (B) use appropriations for payment for information, rewards, or
2 evidence concerning violations, without reference to any rewards to
3 which a person may otherwise be entitled by law (and any
4 amounts subsequently recovered shall be reimbursed to the current
5 appropriation); and

6 (C)(i) use appropriations to establish or acquire a proprietary
7 corporation or business entity as part of an undercover operation;

8 (ii) operate the corporation or business entity on a commercial
9 basis;

10 (iii) lease space and make other necessary expenditures; and

11 (iv) use the proceeds from the undercover operation to offset
12 necessary and reasonable expenses incurred in the operation.

13 (2) PROCEEDS.—At the conclusion of an operation under paragraph
14 (1), the proceeds shall be deposited in the Treasury as miscellaneous
15 receipts.

16 **§ 105122. Effect on rights of States and international com-**
17 **missions**

18 Nothing in sections 105102, 105105 through 105113, and 213101 of this
19 title, chapter 211 of this title, section 2 of the Fish and Wildlife Act of
20 1956 (ch. 1036, 70 Stat. 1119), and sections 4 and 9 of the Fish and Wild-
21 life Act of 1956 (16 U.S.C. 742e, 742h)—

22 (1) interferes with the rights of a State under the Submerged Lands
23 Act (43 U.S.C. 1301 et seq.) or otherwise provided by law;

24 (2) supersedes any regulatory authority over fisheries exercised by
25 the States either individually or under interstate compacts; or

26 (3) interferes with the authority exercised by any international com-
27 mission established under any treaty or convention to which the United
28 States is a party.

29 **§ 105123. Authorization of appropriations and other fund-**
30 **ing provisions**

31 (a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be ap-
32 propriated to carry out sections 105106 through 105110 of this title
33 \$2,000,000 for each of fiscal years 2011 through 2014.

34 (b) FEES FOR COSTS OF PROVIDING TRAINING.—Pursuant to section
35 9701 of title 31, the Secretary shall charge reasonable fees for the full costs
36 of providing training by the National Conservation Training Center, to be
37 credited to the USFWS resource management appropriations account, not-
38 withstanding section 3302 of title 31, for the full costs of providing the
39 training, to remain available until expended.

40 (c) AMOUNTS PROVIDED FOR ACTIVITIES UNDER REIMBURSABLE
41 AGREEMENTS.—

1 (1) CREDITING TO RESOURCE MANAGEMENT APPROPRIATIONS AC-
2 COUNT.—Notwithstanding any other law, amounts provided by private
3 entities for activities under reimbursable agreements shall be credited
4 to the USFWS resource management appropriations account and shall
5 remain available until expended.

6 (2) WORK UNDER REIMBURSABLE AGREEMENTS.—In carrying out
7 work under reimbursable agreements with a State, local, or tribal gov-
8 ernment, the Director—

9 (A) may, without regard to section 1341 of title 31 and notwith-
10 standing any other law (including a regulation), record obligations
11 against accounts receivable from those governments; and

12 (B) shall credit amounts received from the governments to the
13 USFWS resource management appropriations account, such credit
14 to occur not later than 90 days after the date of the original re-
15 quest by the Director for payment.

16 (d) FEE SCHEDULE FOR FORENSIC LABORATORY SERVICES.—

17 (1) IN GENERAL.—Notwithstanding any other law, the Director shall
18 establish and implement a fee schedule to permit a return to USFWS
19 for forensic laboratory services provided to entities other than the De-
20 partment of the Interior.

21 (2) CREDITING TO APPROPRIATION FOR FORENSIC LABORATORY
22 SERVICES.—Fees collected under paragraph (1)—

23 (A) shall be credited to the appropriation for forensic laboratory
24 services described in paragraph (1); and

25 (B) shall be available for expenditure without further appropria-
26 tion until expended.

27 (e) LAW ENFORCEMENT FUNDS.—Of the amount available for law en-
28 forcement for a fiscal year, not more than \$400,000, to remain available
29 until expended, may at the discretion of the Secretary be used for payment
30 for information, rewards, or evidence concerning violations of laws adminis-
31 tered by the Director, and miscellaneous and emergency expenses of enforce-
32 ment activity, authorized or approved by the Secretary and to be accounted
33 for solely on the Secretary's certificate.

34 (f) FUNDS FOR CONTAMINANT SAMPLE ANALYSES.—Of the amount
35 made available for environmental contaminants for a fiscal year, not more
36 than \$1,000,000 may remain available until expended for contaminant sam-
37 ple analyses.

38 **Chapter 107—Department of Commerce**

Sec.

107101. Definition of Secretary.

107102. Establishment of National Oceanic and Atmospheric Administration.

107103. Under Secretary of Commerce for Oceans and Atmosphere.

- 107104. Assistant Secretary of Commerce for Oceans and Atmosphere.
- 107105. Functions transferred to the Secretary.
- 107106. Estuarine Programs Office.
- 107107. Chesapeake Bay Office.
- 107108. Volunteers.
- 107109. Cooperative research and training programs.
- 107110. Enforcement.

1 **§ 107101. Definition of Secretary**

2 In this chapter, the term “Secretary” means the Secretary of Commerce.

3 **§ 107102. Establishment of National Oceanic and Atmos-**
4 **spheric Administration**

5 (a) IN GENERAL.—There is established in the Department of Commerce
6 the National Oceanic and Atmospheric Administration.

7 (b) ADMINISTRATOR.—There shall be at the head of NOAA the Adminis-
8 trator of the National Oceanic and Atmospheric Administration. The Ad-
9 ministrator shall be appointed by the President, by and with the advice and
10 consent of the Senate, and shall be compensated at the rate provided for
11 level III of the Executive Schedule under section 5314 of title 5.

12 (c) DEPUTY ADMINISTRATOR.—There shall be in NOAA a Deputy Ad-
13 ministrator of the National Oceanic and Atmospheric Administration. The
14 Deputy Administrator shall be appointed by the President, by and with the
15 advice and consent of the Senate, and shall be compensated at the rate pro-
16 vided for level IV of the Executive Schedule under section 5315 of title 5.
17 The Deputy Administrator shall perform such functions as the Adminis-
18 trator shall from time to time assign or delegate and shall act as Adminis-
19 trator during the absence or disability of the Administrator or in the event
20 of a vacancy in the office of Administrator.

21 (d) CHIEF SCIENTIST.—There shall be in NOAA a Chief Scientist of the
22 National Oceanic and Atmospheric Administration. The Chief Scientist shall
23 be appointed by the President and shall be compensated at the rate provided
24 for level V of the Executive Schedule under section 5316 of title 5. The
25 Chief Scientist shall be the principal scientific adviser to the Administrator
26 and shall perform such other duties as the Administrator may direct. The
27 Chief Scientist shall be an individual who is, by reason of scientific edu-
28 cation and experience, knowledgeable in the principles of oceanic, atmos-
29 pheric, or other scientific disciplines important to the work of NOAA.

30 (e) GENERAL COUNSEL; ASSISTANT ADMINISTRATORS.—

31 (1) IN GENERAL.—There shall be in NOAA a General Counsel and
32 5 Assistant Administrators. One of the Assistant Administrators shall
33 be the Assistant Administrator for Coastal Zone Management and one
34 of the Assistant Administrators shall be the Assistant Administrator
35 for Fisheries. The General Counsel and each Assistant Administrator
36 shall be appointed by the Secretary, subject to the approval of the

1 President, and shall be compensated at a rate provided for level V of
2 the Executive Schedule under section 5316 of title 5.

3 (2) GENERAL COUNSEL.—The General Counsel shall serve as the
4 chief legal officer for all legal matters that may arise in connection with
5 the conduct of the functions of the Administrator.

6 (3) ASSISTANT ADMINISTRATOR FOR COASTAL ZONE MANAGE-
7 MENT.—The Assistant Administrator for Coastal Zone Management
8 shall be an individual who is, by reason of background and experience,
9 especially qualified to direct the implementation and administration of
10 the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

11 (4) ASSISTANT ADMINISTRATOR FOR FISHERIES.—The Assistant Ad-
12 ministrator for Fisheries shall be responsible for all matters related to
13 living marine resources that may arise in connection with the conduct
14 of the functions of the Administrator.

15 **§ 107103. Under Secretary of Commerce for Oceans and At-**
16 **mosphere**

17 There is in the Department of Commerce an Under Secretary of Com-
18 merce for Oceans and Atmosphere who shall serve as the Administrator of
19 the National Oceanic and Atmospheric Administration and perform such du-
20 ties as the Secretary shall prescribe. The Under Secretary shall be ap-
21 pointed by the President by and with the advice and consent of the Senate
22 and shall be compensated at the rate provided for Level III of the Executive
23 Schedule under section 5314 of title 5.

24 **§ 107104. Assistant Secretary of Commerce for Oceans and**
25 **Atmosphere**

26 There shall be in the Department of Commerce, in addition to the Assist-
27 ant Secretaries of Commerce provided by law before November 14, 1986,
28 1 additional Assistant Secretary of Commerce who shall have the title As-
29 sistant Secretary of Commerce for Oceans and Atmosphere and shall serve
30 as the Deputy Administrator of NOAA and perform such duties and func-
31 tions as the Under Secretary of Commerce for Oceans and Atmosphere shall
32 prescribe. The Assistant Secretary for Oceans and Atmosphere shall be ap-
33 pointed by the President by and with the advice and consent of the Senate
34 and shall be compensated at the rate provided for Level IV of the Executive
35 Schedule under section 5315 of title 5.

36 **§ 107105. Functions transferred to the Secretary**

37 (a) FUNCTIONS OF THE BUREAU OF COMMERCIAL FISHERIES.—There
38 are vested in the Secretary all functions that, on October 2, 1970, were
39 vested by law in the Bureau of Commercial Fisheries of the Department of
40 the Interior or in the head of the Bureau, with all functions vested by law
41 in the Secretary of the Interior or the Department of the Interior that were

1 administered through the Bureau or were primarily related to the Bureau,
2 except functions with respect to—

3 (1) Great Lakes fishery research and activities related to the Great
4 Lakes Fisheries Commission;

5 (2) Missouri River Reservoir research;

6 (3) the Gulf Breeze Biological Laboratory of the Bureau at Gulf
7 Breeze, Florida; and

8 (4) Trans-Alaska pipeline investigations.

9 (b) FUNCTIONS OF THE BUREAU OF MINES.—There are vested in the
10 Secretary the functions that, on October 2, 1970, were vested by law in the
11 Secretary of the Interior, or in the Department of the Interior or in any
12 officer or instrumentality of the Department, and were administered
13 through the Marine Minerals Technology Center of the Bureau of Mines.

14 (c) INCIDENTAL OR NECESSARY FUNCTIONS.—Effective October 3, 1970,
15 there are transferred to the Secretary so much of the functions of the trans-
16 feror officers and agencies referred to in or affected by subsections (a) and
17 (b) as is incidental to or necessary for the performance by or under the Sec-
18 retary of the functions transferred by those subsections or relates primarily
19 to those functions. The transfers to the Secretary made by this section in-
20 clude the transfer of authority, provided by law, to prescribe regulations re-
21 lating primarily to the transferred functions.

22 (d) PERFORMANCE OF TRANSFERRED FUNCTIONS.—

23 (1) PERFORMANCE OF FUNCTIONS OF SECRETARY.—The Secretary
24 may from time to time make such provisions as the Secretary considers
25 appropriate authorizing the performance by any other officer, or by any
26 agency or employee, of the Department of Commerce of any function
27 of the Secretary, including any function transferred to the Secretary
28 by subsections (a), (b), and (c).

29 (2) INCIDENTAL TRANSFERS.—The Secretary may from time to time
30 effect such transfers within the Department of Commerce of any of the
31 records, property, personnel, and unexpended balances (available or to
32 be made available) of appropriations, allocations, and other funds of
33 the Department as the Secretary considers necessary to carry out this
34 section.

35 (e) INCIDENTAL TRANSFERS.—

36 (1) PERSONNEL, PROPERTY, RECORDS, AND UNEXPENDED BAL-
37 ANCES IN CONNECTION WITH THE FUNCTIONS.—So much of the per-
38 sonnel, property, records, and unexpended balances of appropriations,
39 allocations, and other funds employed, used, held, available, or to be
40 made available in connection with the functions transferred to the Sec-
41 retary by subsections (a), (b), and (c) as the Director of the Office of

1 Management and Budget shall determine shall be transferred to the
2 Department of Commerce at such time as the Director of the Office
3 of Management and Budget shall direct.

4 (2) FURTHER MEASURES AND DISPOSITIONS.—Such further meas-
5 ures and dispositions as the Director of the Office of Management and
6 Budget considers necessary to effectuate the transfers described in
7 paragraph (1) shall be carried out in such manner as the Director of
8 the Office of Management and Budget shall direct and by such agen-
9 cies as the Director of the Office of Management and Budget shall des-
10 ignate.

11 (3) PERSONNEL, PROPERTY, RECORDS, AND UNEXPENDED BAL-
12 ANCES OF ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION.—
13 The personnel, property, records, and unexpended balances of appro-
14 priations, allocations, and other funds of the Environmental Science
15 Services Administration shall become personnel, property, records, and
16 unexpended balances of NOAA or of such other organizational entity
17 of the Department of Commerce as the Secretary shall determine.

18 (4) COMMISSIONED OFFICER CORPS.—Effective October 3, 1970, the
19 Commissioned Officer Corps of the Environmental Science Services Ad-
20 ministration shall become the Commissioned Officer Corps of NOAA.
21 Members of the Corps, including those appointed on or after that date,
22 shall be entitled to all rights, privileges, and benefits available before
23 that date under any law to commissioned officers of the Environmental
24 Science Services Administration, including the rights, privileges, and
25 benefits accorded by law before that date to commissioned officers of
26 the former Coast and Geodetic Survey.

27 (5) PERSONNEL, PROPERTY, RECORDS, AND UNEXPENDED BAL-
28 ANCES NOT TRANSFERRED.—Personnel, property, records, and unex-
29 pended balances of appropriations, allocations, and other funds of the
30 Bureau of Commercial Fisheries not otherwise transferred shall become
31 personnel, property, records, and unexpended balances of such organi-
32 zational entity of the Department of the Interior as the Secretary of
33 the Interior shall determine.

34 **§ 107106. Estuarine Programs Office**

35 (a) ESTABLISHMENT.—The Administrator shall establish in NOAA an
36 Estuarine Programs Office.

37 (b) FUNCTIONS.—The Estuarine Programs Office shall—

38 (1) develop and implement a national estuarine strategy for NOAA
39 that integrates the research, regulatory, and trusteeship responsibilities
40 of NOAA;

1 (2) coordinate the estuarine activities of the various organizations in
2 NOAA, including activities in estuarine research and assessment, fish-
3 eries research, coastal management, and habitat conservation;

4 (3) coordinate the estuarine activities of NOAA with the activities of
5 other Federal and State agencies; and

6 (4) provide technical assistance to the Administrator, to other Fed-
7 eral agencies, and to State and local government agencies in—

8 (A) assessing the condition of estuaries;

9 (B) identifying estuaries of critical national or regional impor-
10 tance;

11 (C) identifying technical and management alternatives for the
12 restoration and protection of estuarine resources; and

13 (D) monitoring the implementation and effectiveness of estua-
14 rine management plans.

15 **§ 107107. Chesapeake Bay Office**

16 (a) DEFINITIONS.—In this section:

17 (1) CHESAPEAKE EXECUTIVE COUNCIL.—The term “Chesapeake Ex-
18 ecutive Council” means the representatives of the State of Virginia, the
19 State of Maryland, the State of Pennsylvania, the Environmental Pro-
20 tection Agency, the District of Columbia, and the Chesapeake Bay
21 Commission, which are signatories to the Chesapeake Bay Agreement,
22 and of any future signatory to the Chesapeake Bay Agreement.

23 (2) DIRECTOR.—The term “Director” means the Director of the Of-
24 fice appointed under subsection (b)(2).

25 (3) OFFICE.—The term “Office” means the Chesapeake Bay Office
26 established in subsection (b)(1).

27 (b) ESTABLISHMENT OF OFFICE.—

28 (1) IN GENERAL.—The Secretary shall establish in NOAA an office
29 to be known as the Chesapeake Bay Office.

30 (2) DIRECTOR.—The Office shall be headed by a Director who shall
31 be appointed by the Secretary, in consultation with the Chesapeake Ex-
32 ecutive Council. An individual appointed as Director shall have knowl-
33 edge and experience in research or resource management efforts in the
34 Chesapeake Bay.

35 (3) ADDITIONAL PERSONNEL.—The Director may appoint such addi-
36 tional personnel for the Office as the Director determines to be nec-
37 essary to carry out this section.

38 (c) FUNCTIONS.—The Director, in consultation with the Chesapeake Ex-
39 ecutive Council, shall—

40 (1) provide technical assistance to the Administrator, to other Fed-
41 eral agencies, and to State and local government agencies in—

1 (A) assessing the processes that shape the Chesapeake Bay sys-
2 tem and affect its living resources;

3 (B) identifying technical and management alternatives for the
4 restoration and protection of living resources and the habitats they
5 depend on; and

6 (C) monitoring the implementation and effectiveness of manage-
7 ment plans;

8 (2) develop and implement a strategy for the Administrator that in-
9 tegrates the science, research, monitoring, data collection, regulatory,
10 and management responsibilities of the Secretary in such a manner as
11 to assist the cooperative, intergovernmental Chesapeake Bay Program
12 to meet the commitments of the Chesapeake Bay Agreement;

13 (3) coordinate the programs and activities of the various organiza-
14 tions in NOAA, the Chesapeake Bay Regional Sea Grant Programs,
15 and the Chesapeake Bay units of the National Estuarine Research Re-
16 serve System, including—

17 (A) programs and activities in—

18 (i) coastal and estuarine research, monitoring, and assess-
19 ment;

20 (ii) fisheries research and stock assessments;

21 (iii) data management;

22 (iv) remote sensing;

23 (v) coastal management;

24 (vi) habitat conservation and restoration; and

25 (vii) atmospheric deposition; and

26 (B) programs and activities of the Cooperative Oxford Labora-
27 tory of the National Ocean Service with respect to—

28 (i) nonindigenous species;

29 (ii) estuarine and marine species pathology;

30 (iii) human pathogens in estuarine and marine environ-
31 ments; and

32 (iv) ecosystem health;

33 (4) coordinate the activities of NOAA with the activities of the Envi-
34 ronmental Protection Agency and other Federal, State, and local agen-
35 cies;

36 (5) establish an effective mechanism that shall ensure that projects
37 have undergone appropriate peer review and provide other appropriate
38 means to determine that projects have acceptable scientific and tech-
39 nical merit for the purpose of achieving maximum utilization of avail-
40 able funds and resources to benefit the Chesapeake Bay area;

1 (6) remain cognizant of ongoing research, monitoring, and manage-
2 ment projects and assist in the dissemination of the results and find-
3 ings of those projects; and

4 (7) submit to Congress and the Secretary a biennial report with re-
5 spect to the activities of the Office and on progress made in protecting
6 and restoring the living resources and habitat of the Chesapeake Bay,
7 which report shall include an action plan consisting of—

8 (A) a list of recommended research, monitoring, and data collec-
9 tion activities necessary to continue implementation of the strategy
10 described in paragraph (2); and

11 (B) proposals for—

12 (i) continuing any new NOAA activities in the Chesapeake
13 Bay; and

14 (ii) the integration of those activities with the activities of
15 the partners in the Chesapeake Bay Program to meet the
16 commitments of the Chesapeake 2000 agreement and subse-
17 quent agreements.

18 (d) CHESAPEAKE BAY FISHERY AND HABITAT RESTORATION SMALL WA-
19 TERSHED GRANTS PROGRAM.—

20 (1) IN GENERAL.—The Director, in cooperation with the Chesapeake
21 Executive Council, shall carry out a community-based fishery and habi-
22 tat restoration small grants and technical assistance program in the
23 Chesapeake Bay watershed.

24 (2) GRANTS.—

25 (A) IN GENERAL.—The Director shall make grants under this
26 subsection to pay the Federal share of the cost of projects that
27 are carried out by entities eligible under paragraph (3) for the res-
28 toration of fisheries and habitats in the Chesapeake Bay.

29 (B) FEDERAL SHARE.—The Federal share under subparagraph
30 (A) shall not exceed 75 percent.

31 (C) TYPES OF PROJECTS.—Projects for which grants may be
32 made under this subsection include—

33 (i) the improvement of fish passageways;

34 (ii) the creation of natural or artificial reefs or substrata
35 for habitats;

36 (iii) the restoration of wetland or sea grass;

37 (iv) the production of oysters for restoration projects; and

38 (v) the prevention, identification, and control of nonindige-
39 nous species.

40 (3) ELIGIBLE ENTITIES.—The following entities are eligible to re-
41 ceive grants under this subsection:

1 (A)(i) The government of a political subdivision of a State in
2 the Chesapeake Bay watershed.

3 (ii) The government of the District of Columbia.

4 (B) An organization in the Chesapeake Bay watershed (such as
5 an educational institution or a community organization)—

6 (i) that is described in section 501(c) of the Internal Reve-
7 nue Code of 1986 (26 U.S.C. 501(c)) and is exempt from tax-
8 ation under section 501(a) of the Code (26 U.S.C. 501(a));
9 and

10 (ii) that will administer the grants in coordination with a
11 government referred to in subparagraph (A).

12 (4) ADDITIONAL REQUIREMENTS.—The Director may prescribe any
13 additional requirements, including procedures, that the Director consid-
14 ers necessary to carry out the program under this subsection.

15 **§ 107108. Volunteers**

16 (a) IN GENERAL.—The Secretary may, without regard to title 5, recruit,
17 train, and accept the services of individuals without compensation as volun-
18 teers for NOAA or in aid of programs conducted by the Secretary through
19 NOAA.

20 (b) INCIDENTAL EXPENSES.—The Secretary may provide for incidental
21 expenses such as transportation, uniforms, lodging, awards (including nomi-
22 nal cash awards) and recognition, and subsistence of volunteers without re-
23 gard to their places of residence.

24 (c) NONEMPLOYEE STATUS.—

25 (1) IN GENERAL.—A volunteer under this section—

26 (A) is not a Federal employee; and

27 (B) is not subject to provisions of law relating to Federal em-
28 ployment, including provisions relating to hours of work, rates of
29 compensation, leave, unemployment compensation, and Federal
30 employee benefits.

31 (2) EXCEPTIONS.—

32 (A) TORT CLAIMS.—A volunteer under this section is deemed to
33 be a Federal employee for purposes of the tort claim provisions
34 of title 28.

35 (B) COMPENSATION FOR WORK INJURIES.—A volunteer under
36 this section is deemed to be an employee of the United States
37 within the meaning of the term “employees” (as defined in section
38 8101 of title 5) for purposes of subchapter I of chapter 81 of title
39 5, which subchapter shall apply with respect to the volunteer.

1 **§ 107109. Cooperative research and training programs**

2 (a) IN GENERAL.—For the purpose of developing adequate, coordinated,
3 cooperative research and training programs for fish and wildlife resources,
4 the Secretary may enter into cooperative agreements, relating to cooperative
5 research units, with—

- 6 (1) colleges and universities;
7 (2) State fish and wildlife agencies; and
8 (3) nonprofit organizations.

9 (b) LIMITATION.—Federal participation in a cooperative unit program
10 under subsection (a) shall be limited to—

- 11 (1) the assignment by the Secretary of scientific personnel of the De-
12 partment of Commerce to serve at a unit;
13 (2) the provision of assistance (including reasonable financial com-
14 pensation) for the work of researchers on fish and wildlife ecology and
15 resource management projects funded under this section;
16 (3) the supply of equipment for the operations of a unit, from equip-
17 ment that is available to the Secretary for that purpose; and
18 (4) the payment of incidental expenses of Federal personnel and em-
19 ployees of a cooperating agency assigned to a unit.

20 **§ 107110. Enforcement**

21 (a) LAW ENFORCEMENT TRAINING PROGRAM.—

22 (1) IN GENERAL.—To provide for and encourage training, research,
23 and development for the purpose of improving fish and wildlife law en-
24 forcement and developing new methods for the prevention, detection,
25 and reduction of violation of fish and wildlife laws, and the apprehen-
26 sion of violators of fish and wildlife laws, the Secretary may—

27 (A) establish and conduct national training programs to provide,
28 at the request of a State, training for State fish and wildlife law
29 enforcement personnel;

30 (B) develop new or improved approaches, techniques, systems,
31 equipment, and service to improve and strengthen fish and wildlife
32 law enforcement; and

33 (C) assist in conducting, at the request of an appropriate State
34 official, local or regional training programs for the training of
35 State fish and wildlife law enforcement personnel.

36 (2) ESTABLISHED PROGRAMS.—Training programs under paragraph
37 (1) shall be conducted to the maximum extent practicable through es-
38 tablished programs.

39 (3) REIMBURSEMENT.—The Secretary may require reimbursement
40 from a State for an expenditure made pursuant to subparagraph (A)
41 or (C) of paragraph (1).

1 (b) LAW ENFORCEMENT COOPERATIVE AGREEMENT.—

2 (1) IN GENERAL.—Notwithstanding any other law, the Secretary
3 may utilize, by agreement and with or without reimbursement, the per-
4 sonnel, services, and facilities of another Federal agency or a State
5 agency, to the extent the Secretary considers necessary for the enforce-
6 ment of—

7 (A) any Federal or State law, if enforcement is on an area of
8 land or water or interest in an area of land or water—

9 (i) under the Secretary’s jurisdiction; and

10 (ii) administered or managed for fish and wildlife purposes;

11 or

12 (B) any law administered by the Secretary relating to fish and
13 wildlife.

14 (2) STATUS OF PERSONNEL.—Personnel used under paragraph (1)
15 who are not employees of another Federal agency—

16 (A) are not Federal employees and are not subject to the provi-
17 sions of law relating to Federal employment, including those relat-
18 ing to hours of work, competitive examination, rates of compensa-
19 tion, and Federal employee benefits, but may be considered eligible
20 for compensation for work injuries under subchapter III of chapter
21 81 of title 5;

22 (B) are investigative or law enforcement officers of the United
23 States for purposes of the tort claim provisions of title 28;

24 (C) may, to the extent specified by the Secretary, search, seize,
25 arrest, and exercise any other law enforcement functions or au-
26 thorities under Federal law relating to fish and wildlife, in cases
27 in which those functions or authorities are made applicable by law
28 to employees, officers, or other persons designated or employed by
29 the Secretary; and

30 (D) are officers or employees of the Department of Commerce
31 within the meaning of sections 111 and 1114 of title 18.

32 (c) DISPOSAL OF ABANDONED OR FORFEITED PROPERTY.—

33 (1) IN GENERAL.—Subject to paragraph (2), notwithstanding any
34 other law, all fish, wildlife, plants, or other items abandoned or for-
35 feited to the United States under any law administered by the Sec-
36 retary relating to fish, wildlife, or plants shall be disposed of by the
37 Secretary in such a manner as the Secretary considers appropriate (in-
38 cluding loan, gift, sale, or destruction).

39 (2) PROHIBITION ON SALE OF CERTAIN ITEMS.—In carrying out
40 paragraph (1), the Secretary shall not sell a species of fish, wildlife,

1 or plant, or derivative of any fish, wildlife, or plant, for which the sale
2 is prohibited by a Federal law other than this section.

3 (3) USE OF REVENUES.—The Secretary may expend any revenues
4 received from the disposal of an item under paragraph (1), and all
5 sums referred to in sections 201809(a) and 203108(e)(1) of this title—

6 (A) to make payments in accordance with those sections; and

7 (B) to pay costs associated with—

8 (i) shipping an item described in paragraph (1) to and
9 from a place of storage, sale, or temporary or final disposal,
10 including temporary or permanent loan;

11 (ii) storage of an item, including inventory of, and security
12 for, the item;

13 (iii) appraisal of the item;

14 (iv) sale or other disposal of the item in accordance with
15 applicable law, including auctioneer commissions and related
16 expenses; and

17 (v) payment of a valid lien or other encumbrance on the
18 item and payment for other measures required to clear title
19 to the item.

20 (d) EFFECT OF SECTION.—Nothing in this section invalidates a law en-
21 forcement agreement or delegation made by the Secretary with respect to
22 fish and wildlife before November 8, 1978.

23 (e) LAW ENFORCEMENT OPERATIONS.—

24 (1) IN GENERAL.—With respect to an undercover or other enforce-
25 ment operation that is necessary for the detection and prosecution of
26 a violation of a law administered by the Administrator relating to fish,
27 wildlife, or plants, the Secretary may, notwithstanding any other law—

28 (A) direct the advance of funds that may be deposited in com-
29 mercial banks or other financial institutions;

30 (B) use appropriations for payment for information, rewards, or
31 evidence concerning violations, without reference to any rewards to
32 which a person may otherwise be entitled by law (and any
33 amounts subsequently recovered shall be reimbursed to the current
34 appropriation); and

35 (C)(i) use appropriations to establish or acquire a proprietary
36 corporation or business entity as part of an undercover operation;

37 (ii) operate the corporation or business entity on a commercial
38 basis;

39 (iii) lease space and make other necessary expenditures; and

40 (iv) use the proceeds from the undercover operation to offset
41 necessary and reasonable expenses incurred in the operation.

1 (2) PROCEEDS.—At the conclusion of an operation under paragraph
2 (1), the proceeds shall be deposited in the Treasury as miscellaneous
3 receipts.

4 **Subtitle II—Conservation of Wildlife**
5 **Division A—Wildlife Generally**
6 **Chapter 201—Endangered Species**

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1 **Subchapter I—General Provisions**

2 **§ 201101. Findings, purposes, and policy**

3 (a) FINDINGS.—Congress finds and declares that—

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

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

9 (3) the species of fish, wildlife, and plants described in paragraphs
10 (1) and (2) are of aesthetic, ecological, educational, historical, rec-
11 reational, and scientific value to the United States and its people;

12 (4) the United States has pledged itself as a sovereign State in the
13 international community to conserve, to the extent practicable, the var-
14 ious species of fish, wildlife, and plants facing extinction, pursuant to—

15 (A) Convention Between the United States of America and
16 Great Britain for the Protection of Migratory Birds in Canada
17 and the United States, signed at Washington August 16, 1916 (39
18 Stat. 1702; TS 628);

19 (B) Convention Between the United States of America and the
20 United Mexican States for the Protection of Migratory Birds and
21 Game Mammals, signed at Mexico February 7, 1936 (50 Stat.
22 1311; TS 912);

23 (C) Convention Between the United States of America and
24 Japan for the Protection of Migratory Birds and Birds in Danger
25 of Extinction, and Their Environment, signed at Tokyo March 4,
26 1972 (25 UST 3329; TIAS 7990);

27 (D) the Convention on Nature Protection and Wild Life Preser-
28 vation in the Western Hemisphere, done at the Pan American
29 Union, Washington October 12, 1940 (56 Stat. 1354; TS 981);

30 (E) the Convention on Future Multilateral Cooperation in the
31 Northwest Atlantic Fisheries, signed at Ottawa October 24, 1978
32 (1135 UNTS 369);

1 (F) the Convention for the Conservation of Anadromous Stocks
2 in the North Pacific Ocean, done at Moscow February 11, 1992
3 (TIAS 11465);

4 (G) the Convention on International Trade in Endangered Spe-
5 cies of Wild Fauna and Flora, done at Washington March 3, 1973
6 (27 UST 1087; TIAS 8249); and

7 (H) other international agreements; and

8 (5) encouraging the States and other interested parties, through
9 Federal financial assistance and a system of incentives, to develop and
10 maintain conservation programs that meet national and international
11 standards is a key—

12 (A) to meeting the international commitments of the United
13 States; and

14 (B) to better safeguarding the heritage of the United States in
15 fish, wildlife, and plants for the benefit of all its citizens.

16 (b) PURPOSES.—The purposes of this chapter are—

17 (1) to provide a means whereby the ecosystems on which endangered
18 species and threatened species depend may be conserved;

19 (2) to provide a program for the conservation of endangered species
20 and threatened species; and

21 (3) to take steps that are appropriate to achieve the purposes of the
22 international agreements referred to in subsection (a)(4).

23 (c) POLICY.—It is the policy of Congress that—

24 (1) all Federal agencies shall seek to conserve endangered species
25 and threatened species and shall utilize their authorities in furtherance
26 of the purposes of this chapter; and

27 (2) Federal agencies shall cooperate with State and local agencies to
28 resolve water resource issues in concert with conservation of endan-
29 gered species.

30 **§ 201102. Definitions**

31 In this chapter:

32 (1) ALTERNATIVE COURSES OF ACTION.—The term “alternative
33 courses of action” means all alternatives and is not limited to original
34 project objectives and agency jurisdiction.

35 (2) CITES.—The term “CITES” means the Convention on Inter-
36 national Trade in Endangered Species of Wild Fauna and Flora, done
37 at Washington March 3, 1973 (27 UST 1087; TIAS 8249).

38 (3) COMMERCIAL ACTIVITY.—

39 (A) IN GENERAL.—The term “commercial activity” means any
40 activity of industry or trade.

41 (B) INCLUSIONS.—The term “commercial activity” includes—

- 1 (i) the buying or selling of a commodity; and
- 2 (ii) an activity conducted for the purpose of facilitating the
- 3 buying or selling of a commodity.

4 (C) EXCLUSION.—The term “commercial activity” does not in-

5 clude exhibition of a commodity by a museum or similar cultural

6 or historical organization.

7 (4) CONSERVE.—

8 (A) IN GENERAL.—The term “conserve” means to use all meth-

9 ods and procedures that are necessary to bring a listed species to

10 the point at which the measures provided pursuant to this chapter

11 are no longer necessary.

12 (B) METHODS AND PROCEDURES.—The methods and proce-

13 dures referred to in subparagraph (A)—

14 (i) include all activities associated with scientific resources

15 management such as research, census, law enforcement, habi-

16 tat acquisition and maintenance, propagation, live trapping,

17 and transplantation; and

18 (ii) in the extraordinary case where population pressures

19 within a particular ecosystem cannot be otherwise relieved,

20 may include regulated taking.

21 (5) COOPERATIVE AGREEMENT.—The term “cooperative agreement”

22 means a cooperative agreement entered into under section 201303 of

23 this title.

24 (6) CRITICAL HABITAT.—The term “critical habitat” for a listed spe-

25 cies means—

26 (A) a specific area or group of areas within the geographical

27 area occupied by the listed species, at the time the species is list-

28 ed, on which is found physical or biological features—

29 (i) that are essential to the conservation of the listed spe-

30 cies; and

31 (ii) that may require special management considerations or

32 protection; and

33 (B) a specific area or group of areas outside the geographical

34 area occupied by the listed species, at the time the species is list-

35 ed, on a determination by the Secretary that the area or group

36 of areas is essential for the conservation of the species.

37 (7) DELIST.—The term “delist” means to remove a species from a

38 list.

39 (8) DELISTED SPECIES.—The term “delisted species” means a spe-

40 cies that has been removed from a list.

41 (9) ENDANGERED SPECIES.—

1 (A) IN GENERAL.—The term “endangered species” means a spe-
2 cies that is in danger of extinction throughout all or a significant
3 portion of its range.

4 (B) EXCLUSION.—The term “endangered species” does not in-
5 clude a species of the Class Insecta determined by the Secretary
6 to constitute a pest, the protection of which under this chapter
7 would present an overwhelming and overriding risk to humans.

8 (10) ENDANGERED SPECIES LIST.—The term “endangered species
9 list” means the list of endangered species maintained by the Secretary
10 under section 201204(a)(1)(A) of this title.

11 (11) FEDERAL AGENCY.—The term “Federal agency” means a de-
12 partment, agency, or instrumentality of the United States.

13 (12) FISH OR WILDLIFE.—

14 (A) IN GENERAL.—The term “fish or wildlife” means a member
15 of the animal kingdom.

16 (B) INCLUSIONS.—The term “fish or wildlife” includes—

17 (i) a mammal, fish, bird (including a migratory, nonmigra-
18 tory, or endangered bird for which protection is also afforded
19 by treaty or other international agreement), amphibian, or
20 reptile;

21 (ii) a mollusk, crustacean, arthropod, or any other inverte-
22 brate; and

23 (iii) a part, product, egg, or offspring of a member of the
24 animal kingdom, or the dead body or body part of a member
25 of the animal kingdom.

26 (13) FOREIGN COMMERCE.—The term “foreign commerce” includes
27 a transaction—

28 (A) between persons within 1 foreign country;

29 (B) between persons in 2 or more foreign countries;

30 (C) between a person within the United States and a person in
31 a foreign country; and

32 (D) between persons within the United States, if the transaction
33 involves the movement of fish or wildlife in a foreign country.

34 (14) IMPORT.—The term “import” means to land on, bring into, or
35 introduce into, or attempt to land on, bring into, or introduce into, a
36 place subject to the jurisdiction of the United States, whether or not
37 the landing, bringing, or introduction constitutes an importation within
38 the meaning of the customs laws of the United States.

39 (15) LIST.—

40 (A) NOUN.—The term “list”, used as a noun, means—

41 (i) the endangered species list; or

- 1 (ii) the threatened species list.
- 2 (B) VERB.—The term “list”, used as a verb, means to add a
3 species to a list.
- 4 (16) LISTED SPECIES.—The term “listed species” means—
5 (A) an endangered species; and
6 (B) a threatened species.
- 7 (17) PENDING SPECIES.—The term “pending species” means a spe-
8 cies with respect to which the Secretary makes a finding under section
9 201202(a)(2)(C)(i) of this title.
- 10 (18) PERMIT OR LICENSE APPLICANT.—The term “permit or license
11 applicant” means, with respect to an action of a Federal agency for
12 which exemption is sought under subchapter IV, a person whose appli-
13 cation to the Federal agency for a permit or license has been denied
14 primarily because of the application of section 201403 of this title to
15 the agency action.
- 16 (19) PERSON.—The term “person” means—
17 (A) an individual, corporation, partnership, trust, association, or
18 any other private entity;
19 (B) an officer, employee, agent, department, or instrumentality
20 of—
21 (i) the Federal Government;
22 (ii) a State, municipality, or political subdivision of a State;
23 or
24 (iii) a foreign government;
25 (C) a State, municipality, or political subdivision of a State; or
26 (D) any other entity subject to the jurisdiction of the United
27 States.
- 28 (20) PLACE SUBJECT TO THE JURISDICTION OF THE UNITED
29 STATES.—The term “place subject to the jurisdiction of the United
30 States” includes a special area (as defined in section 3 of the Magnu-
31 son-Stevens Fishery Conservation and Management Act (16 U.S.C.
32 1802)).
- 33 (21) PLANT.—
34 (A) IN GENERAL.—The term “plant” means a member of the
35 plant kingdom.
36 (B) INCLUSIONS.—The term “plant” includes a seed, root, or
37 any other part of a member of the plant kingdom.
- 38 (22) PROPOSED CRITICAL HABITAT.—The term “proposed critical
39 habitat” means habitat that is proposed to be designated under section
40 201201(b) of this title.

1 (23) PROPOSED SPECIES.—The term “proposed species” means a
2 species that is proposed to be listed.

3 (24) RECOVERY PLAN.—The term “recovery plan” means a plan de-
4 veloped under section 201208 of this title.

5 (25) SECRETARY.—The term “Secretary”—

6 (A) means—

7 (i) the Secretary of the Interior; or

8 (ii) the Secretary of Commerce, as program responsibilities
9 are vested pursuant to section 107105 of this title; and

10 (B) with respect to the enforcement of the provisions of this
11 chapter and CITES that pertain to the importation or exportation
12 of terrestrial plants, and subject to section 421 of the Homeland
13 Security Act of 2002 (6 U.S.C. 231) and the Department of
14 Homeland Security Reorganization Plan of November 25, 2002 (6
15 U.S.C. 542 note), means the Secretary of Agriculture, concu-
16 rrently with the Secretary of the Interior.

17 (26) SPECIES.—The term “species” includes—

18 (A) a subspecies of fish or wildlife or of a plant; and

19 (B) a distinct population segment of a species of a vertebrate
20 fish or wildlife that interbreeds when mature.

21 (27) STATE.—The term “State” means a State, the District of Co-
22 lumbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

23 (28) STATE AGENCY.—The term “State agency” means a State
24 agency, department, board, commission, or other governmental entity
25 that is responsible for the management and conservation of fish, plant,
26 or wildlife resources within a State.

27 (29) TAKE.—The term “take”, with respect to fish or wildlife or to
28 a plant, means to harass, harm, pursue, hunt, shoot, wound, kill, trap,
29 capture, or collect the fish or wildlife or plant, or to attempt to engage
30 in any such conduct.

31 (30) THREATENED SPECIES.—The term “threatened species” means
32 a species that is likely to become an endangered species within the fore-
33 seeable future throughout all or a significant portion of its range.

34 (31) THREATENED SPECIES LIST.—The term “threatened species
35 list” means the list of threatened species maintained by the Secretary
36 under section 201204(a)(1)(B) of this title.

37 (32) UNITED STATES.—The term “United States”, when used in a
38 geographical context, includes all States.

1 **§ 201103. Conservation program**

2 (a) IN GENERAL.—The Secretary, and the Secretary of Agriculture with
3 respect to the National Forest System, shall implement a program to con-
4 serve fish or wildlife and plants, including listed species.

5 (b) LAND ACQUISITION AUTHORITIES.—

6 (1) IN GENERAL.—To carry out a program under subsection (a), the
7 Secretary or the Secretary of Agriculture—

8 (A) shall utilize the appropriate land acquisition and other au-
9 thority under—

10 (i) sections 105102, 105104 through 105113, 107108,
11 213101, and 213103 of this title;

12 (ii) chapter 211 of this title;

13 (iii) subchapter III of chapter 261 of this title;

14 (iv) sections 2 through 4 and 6 through 8 of the Fish and
15 Wildlife Coordination Act (16 U.S.C. 662 through 664, 666
16 through 666b); and

17 (v) sections 4 and 9 of the Fish and Wildlife Act of 1956
18 (16 U.S.C. 742c, 742h); and

19 (B) may acquire, by purchase, donation, or otherwise, an area
20 of land or water, or an interest in an area of land or water.

21 (2) ADDITIONAL AUTHORITY.—The authority under paragraph
22 (1)(B) is in addition to any other land acquisition authority vested in
23 the Secretary or the Secretary of Agriculture.

24 (c) FUNDING.—Funds made available pursuant to chapter 2003 of title
25 54, United States Code, may be used for the purpose of acquiring an area
26 of land or water, or an interest in an area of land or water, under sub-
27 section (b).

28 **Subchapter II—Endangered Species List**
29 **and Threatened Species List**

30 **§ 201201. Determination of endangered species and threat-**
31 **ened species and designation of critical habitats**

32 (a) DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPE-
33 CIES.—

34 (1) FACTORS.—The Secretary shall by regulation determine whether
35 a species is an endangered species or threatened species because of any
36 of the following factors:

37 (A) Present or threatened destruction, modification, or curtail-
38 ment of a habitat or range of the species.

39 (B) Overutilization of the species for commercial, recreational,
40 scientific, or educational purposes.

41 (C) Disease or predation.

- 1 (D) Inadequacy of existing regulatory mechanisms.
- 2 (E) Other natural or manmade factors affecting the continued
- 3 existence of the species.

4 (2) SPECIES UNDER AUTHORITY OF SECRETARY OF COMMERCE.—

5 (A) IN GENERAL.—This paragraph applies with respect to a

6 species over which program responsibilities are vested in the Sec-

7 retary of Commerce pursuant to section 107105 of this title.

8 (B) INCREASED PROTECTION.—

9 (i) DETERMINATION.—Clause (ii) applies if the Secretary

10 of Commerce determines that a species should be—

11 (I) listed; or

12 (II) changed in status from a threatened species to an

13 endangered species.

14 (ii) IMPLEMENTATION.—The Secretary of Commerce shall

15 inform the Secretary of the Interior of a determination de-

16 scribed in clause (i), and the Secretary of the Interior shall

17 list the species in accordance with this subchapter.

18 (C) DECREASED PROTECTION.—

19 (i) DETERMINATION.—Clause (ii) applies if the Secretary

20 of Commerce determines that a species should be—

21 (I) delisted; or

22 (II) changed in status from an endangered species to

23 a threatened species;

24 (ii) RECOMMENDATION AND POSSIBLE IMPLEMENTA-

25 TION.—Based on the determination described in clause (i),

26 the Secretary of Commerce shall recommend to the Secretary

27 of the Interior the delisting or change in status. If the Sec-

28 retary of the Interior concurs in the recommendation, the

29 Secretary of the Interior shall implement the recommenda-

30 tion.

31 (D) REQUIRED PRIOR FAVORABLE DETERMINATION.—The Sec-

32 retary of the Interior shall not list or delist any species, or change

33 the status of any listed species, without a prior favorable deter-

34 mination made pursuant to this paragraph by the Secretary of

35 Commerce.

36 (b) DESIGNATION OF CRITICAL HABITAT.—

37 (1) IN GENERAL.—The Secretary, by regulation and to the maximum

38 extent prudent and determinable, after consultation as appropriate with

39 affected States—

40 (A) shall, concurrently with making a determination under sub-

41 section (a) that a species is an endangered species or a threatened

1 species, designate any habitat of the species that is then consid-
2 ered to be critical habitat; and

3 (B) may, from time to time after the designation of the habitat
4 as appropriate, revise the designation.

5 (2) SPECIES LISTED AS OF NOVEMBER 10, 1978 FOR WHICH NO CRIT-
6 ICAL HABITAT IS ESTABLISHED.—Critical habitat may be established
7 for species that were listed as of November 10, 1978, for which no crit-
8 ical habitat was established before that date.

9 (3) LIMITATION.—Except in circumstances determined by the Sec-
10 retary, critical habitat established for a listed species shall not include
11 the entire geographical area that can be occupied by the listed species.

12 (4) EXCEPTION FOR THE DEPARTMENT OF DEFENSE.—

13 (A) IN GENERAL.—The Secretary shall not designate as critical
14 habitat for a listed species any land or other geographical area
15 owned or controlled by the Department of Defense, or designated
16 for its use, that is subject to an integrated natural resources man-
17 agement plan prepared under section 101 of the Sikes Act (16
18 U.S.C. 670a), if the Secretary determines in writing that the plan
19 provides a benefit to the listed species for which critical habitat
20 is proposed for designation.

21 (B) NO EFFECT ON CONSULTATION REQUIREMENT.—Nothing
22 in this subsection affects the requirement to consult under section
23 201403(a) of this title with respect to an agency action (as defined
24 under section 201401 of this title).

25 (C) NO EFFECT ON OBLIGATION TO COMPLY.—Nothing in this
26 subsection affects the obligation of the Department of Defense to
27 comply with section 201801 of this title, including the prohibition
28 preventing extinction and taking of listed species.

29 (e) BASES FOR DETERMINATIONS AND DESIGNATIONS.—

30 (1) DETERMINATION OF SPECIES.—

31 (A) IN GENERAL.—The Secretary shall make a determination
32 required by subsection (a) with respect to a species solely on the
33 basis of the best scientific and commercial data available to the
34 Secretary after—

35 (i) conducting a review of the status of the species; and

36 (ii) taking into account the efforts being made by a State
37 or foreign country, or a political subdivision of a State or for-
38 eign country, to protect the species, whether by—

39 (I) predator control;

40 (II) protection of habitat and food supply; or

1 (III) other conservation practices within any area
2 under its jurisdiction or on the high seas.

3 (B) INTERNATIONAL CONSIDERATIONS.—In carrying out sub-
4 section (a), the Secretary shall give consideration to species that
5 are—

6 (i) designated by a foreign country, or pursuant to an
7 international agreement, as requiring protection from unre-
8 stricted commerce; or

9 (ii) identified by a State agency, or by an agency of a for-
10 eign country that is responsible for the conservation of fish
11 or wildlife or plants, as in danger of extinction or likely to
12 become in danger of extinction within the foreseeable future.

13 (2) DESIGNATION OF CRITICAL HABITAT.—

14 (A) IN GENERAL.—The Secretary shall designate critical habi-
15 tat, and make revisions to designations of critical habitat, under
16 subsection (b) on the basis of the best scientific data available and
17 after taking into consideration the economic impact, the impact on
18 national security, and any other relevant impact of specifying a
19 particular area as critical habitat.

20 (B) EXCLUSIONS.—The Secretary may exclude an area from
21 critical habitat for a listed species if the Secretary determines that
22 the benefits of the exclusion outweigh the benefits of specifying the
23 area as part of the critical habitat, unless the Secretary deter-
24 mines, based on the best scientific and commercial data available,
25 that the failure to designate the area as critical habitat will result
26 in the extinction of the listed species.

27 **§ 201202. Petitions relating to determinations of species**
28 **and designations of critical habitats**

29 (a) DETERMINATION OF SPECIES.—

30 (1) FINDING WHETHER PETITION PRESENTS SUBSTANTIAL SCI-
31 ENTIFIC OR COMMERCIAL INFORMATION.—

32 (A) IN GENERAL.—To the maximum extent practicable, not
33 later than 90 days after receiving a petition of an interested per-
34 son under section 553(e) of title 5 to list or delist a species, the
35 Secretary shall make a finding as to whether the petition presents
36 substantial scientific or commercial information indicating that the
37 petitioned action may be warranted.

38 (B) REVIEW OF STATUS.—If a petition under subparagraph (A)
39 is found to present substantial scientific or commercial informa-
40 tion concerning a species, the Secretary shall promptly commence
41 a review of the status of the species.

1 (C) PUBLICATION IN THE FEDERAL REGISTER.—The Secretary
2 shall promptly publish a finding under subparagraph (A) in the
3 Federal Register.

4 (2) FINDING WHETHER PETITION IS WARRANTED.—Not later than
5 12 months after receiving a petition that is found under paragraph (1)
6 to present substantial scientific or commercial information indicating
7 that the petitioned action may be warranted, the Secretary shall make
8 one of the following findings:

9 (A) PETITIONED ACTION NOT WARRANTED.—The Secretary
10 finds that the petitioned action is not warranted, in which case the
11 Secretary shall promptly publish the finding in the Federal Reg-
12 ister.

13 (B) PETITIONED ACTION WARRANTED.—The Secretary finds
14 that the petitioned action is warranted, in which case the Sec-
15 retary shall promptly publish in the Federal Register a general no-
16 tice and the complete text of a proposed regulation to implement
17 the action in accordance with section 201203(b) of this title.

18 (C) PETITIONED ACTION WARRANTED, BUT UNDER CERTAIN
19 CIRCUMSTANCES.—

20 (i) IN GENERAL.—The Secretary finds that the petitioned
21 action is warranted, but the Secretary also finds that—

22 (I) the immediate proposal and timely promulgation of
23 a final regulation implementing the petitioned action in
24 accordance with subsections (b) and (c) of section
25 201203 of this title are precluded by pending proposals
26 to determine whether any species is an endangered spe-
27 cies or a threatened species; and

28 (II) expeditious progress is being made to list qualified
29 species and to delist species for which the protections of
30 this chapter are no longer necessary.

31 (ii) PUBLICATION.—The Secretary shall promptly publish a
32 finding under clause (i) in the Federal Register, with a de-
33 scription and evaluation of the reasons and data on which the
34 finding is based.

35 (iii) TREATMENT OF PETITION.—A petition with respect to
36 which a finding is made under clause (i) shall be treated as
37 a petition that—

38 (I) is resubmitted to the Secretary under paragraph
39 (1) on the date of the finding; and

40 (II) presents substantial scientific or commercial infor-
41 mation that the petitioned action may be warranted.

1 (iv) MONITORING.—The Secretary shall implement a sys-
2 tem to monitor effectively the status of all species with re-
3 spect to which a finding is made under clause (i) and shall
4 make prompt use of the authority under section 201203(d)
5 of this title to prevent a significant risk to the well-being of
6 any of the species.

7 (3) JUDICIAL REVIEW.—A negative finding described in paragraph
8 (1) and a finding described in subparagraph (A) or (C)(i) of paragraph
9 (2) shall be subject to judicial review.

10 (b) DESIGNATION OF CRITICAL HABITAT.—

11 (1) FINDING WHETHER PETITION PRESENTS SUBSTANTIAL SCI-
12 ENTIFIC OR COMMERCIAL INFORMATION.—

13 (A) IN GENERAL.—To the maximum extent practicable, not
14 later than 90 days after receiving the petition of an interested per-
15 son under section 553(e) of title 5 to revise a critical habitat des-
16 ignation, the Secretary shall make a finding as to whether the pe-
17 tition presents substantial scientific information indicating that
18 the revision may be warranted.

19 (B) PUBLICATION.—The Secretary shall promptly publish the
20 finding made under subparagraph (A) in the Federal Register.

21 (2) INTENDED ACTION OF SECRETARY.—Not later than 12 months
22 after receiving a petition that is found under paragraph (1) to present
23 substantial scientific information indicating that the requested revision
24 may be warranted, the Secretary shall determine how the Secretary in-
25 tends to proceed with the requested revision and promptly publish no-
26 tice of the intention in the Federal Register.

27 **§ 201203. Additional rulemaking procedures**

28 (a) IN GENERAL.—Except as provided in subsections (b) and (c), section
29 553 of title 5 applies to any regulation prescribed to carry out this chapter.

30 (b) PROPOSED REGULATIONS.—With respect to a regulation proposed by
31 the Secretary to implement a determination, designation, or revision re-
32 ferred to in subsection (a) or (b) of section 201201 of this title, the Sec-
33 retary shall—

34 (1) not less than 90 days before the effective date of the regula-
35 tion—

36 (A) publish a general notice and the complete text of the pro-
37 posed regulation in the Federal Register;

38 (B) give actual notice of the proposed regulation (including the
39 complete text of the regulation) to—

40 (i) the State agency in each State in which the species is
41 believed to occur; and

1 (ii) each county or equivalent jurisdiction in which the spe-
2 cies is believed to occur; and

3 (C) invite the comment of the State agency and each jurisdic-
4 tion referred to in subparagraph (B) on the proposed regulation;

5 (2) to the extent practical, and in cooperation with the Secretary of
6 State, give notice of the proposed regulation to each foreign country
7 in which the species is believed to occur or whose citizens harvest the
8 species on the high seas, and invite the comment of the foreign country
9 on the proposed regulation;

10 (3) give notice of the proposed regulation to such professional sci-
11 entific organizations as the Secretary considers appropriate;

12 (4) publish a summary of the proposed regulation in a newspaper of
13 general circulation in each area of the United States in which the spe-
14 cies is believed to occur; and

15 (5) promptly hold 1 public hearing on the proposed regulation if a
16 person files a request for such a hearing not later than 45 days after
17 the date of publication of general notice.

18 (c) FINAL REGULATIONS.—

19 (1) IN GENERAL.—Within the 1-year period beginning on the date
20 on which general notice is published in accordance with subsection
21 (b)(1)(A) regarding a proposed regulation, the Secretary shall publish
22 in the Federal Register—

23 (A) if a determination as to whether a species is an endangered
24 species or a threatened species or a revision of critical habitat is
25 involved—

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

27 (ii) a final regulation to implement the revision or a finding
28 that the revision should not be made;

29 (iii) notice that the 1-year period is being extended under
30 paragraph (2); or

31 (iv) notice that the proposed regulation is being withdrawn
32 under paragraph (3), together with the finding on which the
33 withdrawal is based; or

34 (B) subject to paragraph (4), if a designation of critical habitat
35 is involved—

36 (i) a final regulation to implement the designation; or

37 (ii) notice that the 1-year period is being extended under
38 paragraph (4).

39 (2) EXTENSIONS.—

40 (A) IN GENERAL.—If the Secretary finds with respect to a pro-
41 posed regulation described in paragraph (1)(A) that there is sub-

1 stantial disagreement regarding the sufficiency or accuracy of the
2 available data relevant to the determination or revision, the Sec-
3 retary may extend the 1-year period specified in paragraph (1) for
4 not more than 6 months for purposes of soliciting additional data.

5 (B) PUBLICATION REQUIREMENT AT THE CLOSE OF EXTENDED
6 PERIOD.—If the 1-year period specified in paragraph (1) is ex-
7 tended under this paragraph with respect to a proposed regulation,
8 then before the close of the extended period, the Secretary shall
9 publish in the Federal Register—

10 (i) a final regulation to implement the determination or re-
11 vision concerned;

12 (ii) a finding that the revision should not be made; or

13 (iii) a notice of withdrawal of the regulation under para-
14 graph (3), together with the finding on which the withdrawal
15 is based.

16 (3) WITHDRAWAL OF REGULATIONS.—

17 (A) IN GENERAL.—If a proposed regulation described in para-
18 graph (1)(A) is not prescribed as a final regulation within the 1-
19 year period (or longer period if extension under paragraph (2) ap-
20 plies) because the Secretary finds that there is not sufficient evi-
21 dence to justify the action proposed by the regulation, the Sec-
22 retary shall immediately withdraw the regulation.

23 (B) JUDICIAL REVIEW.—The finding on which a withdrawal is
24 based shall be subject to judicial review.

25 (C) PREVIOUS WITHDRAWALS.—The Secretary shall not propose
26 a regulation that has been withdrawn under this paragraph unless
27 the Secretary determines that sufficient new information is avail-
28 able to warrant the proposal.

29 (4) CONCURRENT PUBLICATION OF REGULATIONS DESIGNATING
30 CRITICAL HABITATS.—A final regulation designating critical habitat of
31 a listed species shall be published concurrently with the final regulation
32 implementing the determination that the species is endangered or
33 threatened, unless the Secretary determines that—

34 (A) it is essential to the conservation of the species that the reg-
35 ulation implementing the determination be promptly published; or

36 (B) critical habitat of the species is not then determinable, in
37 which case the Secretary, with respect to the proposed regulation
38 to designate the habitat, may extend the 1-year period specified
39 in paragraph (1) by not more than 1 additional year, but not later
40 than the close of the additional year, the Secretary shall publish
41 a final regulation based on data that may be available at that

1 time, designating, to the maximum extent prudent, the critical
2 habitat.

3 (d) EMERGENCY REGULATIONS.—

4 (1) DEFINITION OF EMERGENCY REGULATION.—In this subsection,
5 “emergency regulation” means a regulation prescribed by the Secretary
6 in regard to an emergency posing a significant risk to the well-being
7 of a species of fish or wildlife or plant.

8 (2) IN GENERAL.—Neither subsection (a), (b), or (c) nor section 553
9 of title 5 shall apply to an emergency regulation if—

10 (A) at the time of publication of the emergency regulation in
11 the Federal Register, the Secretary publishes in the Federal Reg-
12 ister detailed reasons why the emergency regulation is necessary;
13 and

14 (B) in the case that an emergency regulation applies to a resi-
15 dent species of fish or wildlife or plant, the Secretary gives actual
16 notice of the emergency regulation to the State agency in each
17 State in which the species is believed to occur.

18 (3) EFFECTIVE DATE.—An emergency regulation shall, at the discre-
19 tion of the Secretary, take effect immediately on the publication of the
20 regulation in the Federal Register.

21 (4) CESSATION OF EFFECTIVENESS.—An emergency regulation pre-
22 scribed under this subsection shall cease effectiveness at the close of
23 the 240-day period following the date of publication unless, during the
24 240-day period, compliance is made with the rulemaking procedures
25 that would apply to the regulation without regard to this subsection.

26 (5) WITHDRAWAL OF EMERGENCY REGULATION.—If at any time
27 after issuing an emergency regulation, the Secretary determines, on the
28 basis of the best appropriate data available to the Secretary, that sub-
29 stantial evidence does not exist to warrant the emergency regulation,
30 the Secretary shall withdraw the emergency regulation.

31 (e) INCLUSIONS IN THE FEDERAL REGISTER.—

32 (1) IN GENERAL.—The publication in the Federal Register of a pro-
33 posed or final regulation that is necessary or appropriate to carry out
34 this chapter shall include a summary, made by the Secretary, of the
35 data on which the regulation is based, which shall show the relationship
36 of the data to the regulation.

37 (2) ADDITIONAL INCLUSION FOR CERTAIN REGULATIONS.—If the
38 regulation designates or revises critical habitat, the summary shall, to
39 the maximum extent practicable, also include a brief description and
40 evaluation of activities (whether public or private) that, in the opinion

1 of the Secretary, if undertaken, may adversely modify the habitat, or
2 may be affected by the designation.

3 **§ 201204. Endangered species list and threatened species**
4 **list**

5 (a) PUBLICATION OF LISTS IN THE FEDERAL REGISTER.—

6 (1) IN GENERAL.—The Secretary of the Interior shall publish in the
7 Federal Register—

8 (A) a list of all species determined by the Secretary of the Inte-
9 rior or the Secretary of Commerce to be endangered species; and

10 (B) a list of all species determined by the Secretary of the Inte-
11 rior or the Secretary of Commerce to be threatened species.

12 (2) CONTENTS.—A list shall—

13 (A) refer to each species contained in the list by its scientific
14 name and common name or names, if any;

15 (B) specify with respect to each of the species over what portion
16 of its range the species is endangered or threatened; and

17 (C) specify any critical habitat within the range.

18 (3) REVISION OF LISTS.—The Secretary shall from time to time re-
19 vise each list to reflect recent determinations, designations, and revi-
20 sions made in accordance with sections 201201, 201202, and 201203
21 of this title.

22 (b) REVIEWS AND CHANGES.—

23 (1) IN GENERAL.—The Secretary shall—

24 (A) conduct, at least once every 5 years, a review of all species
25 included in a list as in effect at the time of the review; and

26 (B) determine on the basis of the review whether any of the spe-
27 cies should—

28 (i) be delisted;

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

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

33 (2) COMPLIANCE WITH CERTAIN PROVISIONS.—A determination
34 under paragraph (1)(B) shall be made in accordance with sections
35 201201, 201202, and 201203 of this title.

36 **§ 201205. Submission to State agency of justification for**
37 **regulations inconsistent with State agency's com-**
38 **ments or petition**

39 If, in the case of a regulation proposed by the Secretary under section
40 201201 of this title, a State agency to which notice of the proposed regula-
41 tion was given in accordance with section 201203(b)(1)(B) of this title files

1 comments disagreeing with all or part of the proposed regulation, and the
2 Secretary issues a final regulation which is in conflict with the comments,
3 or if the Secretary fails to adopt a regulation pursuant to an action peti-
4 tioned by a State agency under section 201202 of this title, the Secretary
5 shall submit to the State agency a written justification for the Secretary's
6 failure to adopt regulations consistent with the State agency's comments or
7 petition.

8 **§ 201206. Regulations protecting threatened species**

9 (a) IN GENERAL.—When a species is listed as a threatened species pursu-
10 ant to section 201204 of this title, the Secretary shall issue such regulations
11 as the Secretary considers necessary and advisable to provide for the con-
12 servation of the threatened species.

13 (b) ACTS PROHIBITED BY SECTION 201801(a).—

14 (1) IN GENERAL.—With respect to a threatened species, the Sec-
15 retary may by regulation prohibit any act—

16 (A) prohibited for an endangered species of fish or wildlife
17 under section 201801(a)(1) of this title; or

18 (B) prohibited for an endangered species of plant under section
19 201801(a)(2) of this title.

20 (2) EXCEPTION FOR COOPERATING STATES.—With respect to the
21 taking of resident species of fish or wildlife, the regulations prescribed
22 under paragraph (1) shall apply in a State that has entered into a co-
23 operative agreement only to the extent that the regulations have also
24 been adopted by the State.

25 **§ 201207. Similarity of appearance cases**

26 The Secretary may, by regulation of commerce or taking, and to the ex-
27 tent that the Secretary considers advisable, treat a species as a listed spe-
28 cies even though the species is not a listed species if the Secretary finds
29 that—

30 (1) the unlisted species so closely resembles in appearance, at the
31 point in question, a listed species that enforcement personnel would
32 have substantial difficulty in attempting to differentiate between the
33 listed species and the unlisted species;

34 (2) the effect of the substantial difficulty is an additional threat to
35 the listed species; and

36 (3) such treatment of the unlisted species will substantially facilitate
37 the enforcement and further the policy of this chapter.

38 **§ 201208. Recovery plans**

39 (a) IN GENERAL.—The Secretary shall develop and implement a plan for
40 the conservation and survival of each listed species unless the Secretary

1 finds that a recovery plan will not promote the conservation and survival
2 of a listed species.

3 (b) REQUIREMENTS FOR RECOVERY PLANS.—The Secretary, in develop-
4 ing and implementing recovery plans, to the maximum extent practicable,
5 shall—

6 (1) give priority to listed species, without regard to taxonomic classi-
7 fication, that are most likely to benefit from recovery plans, particularly
8 listed species for which conservation and survival are or may be in con-
9 flict with construction or other development projects or other forms of
10 economic activity; and

11 (2) incorporate in each recovery plan—

12 (A) a description of site-specific management actions that may
13 be necessary to achieve the recovery plan’s goal for the conserva-
14 tion and survival of the species;

15 (B) objective, measurable criteria that, when met, would result
16 in a determination, in accordance with section 201201 of this title,
17 that the species be delisted; and

18 (C) estimates of the time required and the cost to carry out
19 measures needed to achieve the recovery plan’s goal and to achieve
20 intermediate steps toward that goal.

21 (c) AUTHORITY TO PROCURE SERVICES.—The Secretary, in developing
22 and implementing a recovery plan, may procure the services of appropriate
23 public and private agencies and institutions and other qualified persons.

24 (d) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—A re-
25covery team appointed pursuant to this section shall not be subject to the
26 Federal Advisory Committee Act (5 U.S.C. App.).

27 (e) NOTICE AND COMMENT.—

28 (1) SECRETARY.—Before final approval of a new or revised recovery
29 plan, the Secretary shall—

30 (A) provide public notice and an opportunity for public review
31 and comment on the recovery plan; and

32 (B) consider all information presented during the public com-
33 ment period under subparagraph (A).

34 (2) FEDERAL AGENCIES.—Before implementation of a new or revised
35 recovery plan, each Federal agency shall consider all information pre-
36 sented during the public comment period under paragraph (1)(A).

37 (f) REPORTS.—The Secretary shall biennially submit to the Committee on
38 Environment and Public Works of the Senate and the Committee on Natu-
39 ral Resources of the House of Representatives a report on—

40 (1) the status of efforts to develop and implement recovery plans for
41 all listed species; and

1 (2) the status of all species for which a recovery plan has been devel-
2 oped.

3 **§ 201209. Monitoring**

4 (a) MONITORING.—In cooperation with the States, the Secretary shall im-
5 plement a system to monitor effectively for not less than 5 years the status
6 of all species that—

7 (1) have recovered to the point at which the measures provided pur-
8 suant to this chapter are no longer necessary; and

9 (2) in accordance with this subchapter, have been delisted.

10 (b) EMERGENCY REGULATIONS.—The Secretary shall make prompt use
11 of the authority under section 201203(d) of this title to prevent a signifi-
12 cant risk to the well-being of the delisted species.

13 **§ 201210. Agency guidelines**

14 (a) IN GENERAL.—The Secretary shall establish, and publish in the Fed-
15 eral Register, agency guidelines to ensure that the purposes of this sub-
16 chapter are achieved efficiently and effectively. The guidelines shall in-
17 clude—

18 (1) procedures for recording the receipt and the disposition of peti-
19 tions submitted under section 201202 of this title;

20 (2) criteria for making the findings required under section 201202
21 of this title with respect to petitions;

22 (3) a ranking system to assist in the identification of species that
23 should receive priority review under section 201201(a)(1) of this title;
24 and

25 (4) a system for developing and implementing recovery plans under
26 section 201208 of this title on a priority basis.

27 (b) NOTICE AND COMMENT.—The Secretary shall provide to the public
28 notice of, and opportunity to submit written comments on, any guideline
29 (including any amendment to the guideline) proposed to be established
30 under this section.

31 **Subchapter III—Cooperation With States**

32 **§ 201301. Duty of Secretary to cooperate with States**

33 (a) IN GENERAL.—In carrying out the program authorized by this chap-
34 ter, the Secretary shall cooperate to the maximum extent practicable with
35 the States.

36 (b) CONSULTATION.—The cooperation shall include consultation with the
37 States concerned before acquiring an area of land or water, or an interest
38 in an area of land or water, for the purpose of conserving listed species.

1 **§ 201302. Management agreements**

2 (a) IN GENERAL.—The Secretary may enter into agreements with a State
3 for the administration and management of an area established for the con-
4 servation of listed species.

5 (b) REVENUES FROM ADMINISTRATION OF AREAS.—Revenues derived
6 from the administration of areas under agreements under subsection (a)
7 shall be subject to section 401 of the Act of June 15, 1935 (16 U.S.C.
8 715s).

9 **§ 201303. Cooperative agreements**

10 (a) AUTHORITY.—In furtherance of the purposes of this chapter, the Sec-
11 retary may enter into a cooperative agreement in accordance with this sub-
12 chapter with a State that establishes and maintains an adequate and active
13 program for the conservation of listed species.

14 (b) DETERMINATION OF STATE PROGRAM COMPLIANCE.—Not later than
15 120 days after the Secretary receives a certified copy of a proposed program
16 described in subsection (a), the Secretary shall make a determination wheth-
17 er the program is in accordance with this chapter.

18 (c) ASSISTANCE FROM THE SECRETARY.—Unless the Secretary deter-
19 mines under subsection (b) that the State program is not in accordance with
20 this chapter, the Secretary shall enter into a cooperative agreement with the
21 State to assist in implementation of the State program.

22 (d) CRITERIA FOR ADEQUATE AND ACTIVE PROGRAM.—For a State pro-
23 gram to be considered an adequate and active program for the conservation
24 of listed species, the Secretary shall find, and annually reconfirm, that
25 under the State program, paragraph (1) or (2), whichever applies, is sat-
26 isfied:

27 (1) FISH OR WILDLIFE.—This paragraph is applicable in the case of
28 fish or wildlife, and is satisfied if subparagraph (A) or (B) is satisfied:

29 (A) STATES WITH ESTABLISHED CONSERVATION PROGRAMS.—
30 This subparagraph is satisfied if—

31 (i) authority resides in the State agency to conserve resi-
32 dent species of fish or wildlife determined by the State agency
33 or the Secretary to be endangered or threatened;

34 (ii) the State agency has—

35 (I) established acceptable conservation programs, con-
36 sistent with the purposes and policies of this chapter, for
37 all resident species of fish or wildlife in the State that
38 are considered by the Secretary to be endangered or
39 threatened; and

1 (II) furnished to the Secretary a copy of the program
2 together with all pertinent details, information, and data
3 requested;

4 (iii) the State agency may conduct investigations to deter-
5 mine the status and requirements for survival of resident spe-
6 cies of fish or wildlife;

7 (iv) the State agency may establish programs, including the
8 acquisition of land or aquatic habitat or interests in land or
9 aquatic habitat, for the conservation of resident listed species
10 of fish or wildlife; and

11 (v) provision is made for public participation in designating
12 resident species of fish or wildlife as endangered or threat-
13 ened.

14 (B) STATES WITH CONSERVATION PLANS.—This subparagraph
15 is satisfied if—

16 (i) the requirements in clauses (iii), (iv), and (v) of sub-
17 paragraph (A) are complied with; and

18 (ii) plans are included under which immediate attention will
19 be given to resident species of fish or wildlife that—

20 (I) are determined by the Secretary or the State agen-
21 cy to be endangered or threatened; and

22 (II) the Secretary and the State agency agree are
23 most urgently in need of conservation programs.

24 (2) PLANTS.—This paragraph is applicable in the case of plants, and
25 is satisfied if subparagraph (A) or (B) is satisfied:

26 (A) STATES WITH ESTABLISHED CONSERVATION PROGRAMS.—
27 This subparagraph is satisfied if—

28 (i) authority resides in the State agency to conserve resi-
29 dent species of plants determined by the State agency or the
30 Secretary to be endangered or threatened;

31 (ii) the State agency has—
32 (I) established acceptable conservation programs, con-
33 sistent with the purposes and policies of this chapter, for
34 all resident species of plants in the State that are consid-
35 ered by the Secretary to be endangered or threatened;
36 and

37 (II) furnished to the Secretary a copy of the program
38 together with all pertinent details, information, and data
39 requested;

1 (iii) the State agency may conduct investigations to deter-
2 mine the status and requirements for survival of resident spe-
3 cies of plants; and

4 (iv) provision is made for public participation in designat-
5 ing resident species of plants as endangered or threatened.

6 (B) STATES WITH CONSERVATION PLANS.—This subparagraph
7 is satisfied if—

8 (i) the requirements set forth in clauses (iii) and (iv) of
9 subparagraph (A) are complied with; and

10 (ii) plans are included under which immediate attention will
11 be given to resident species of plants that—

12 (I) are determined by the Secretary or the State agen-
13 cy to be endangered or threatened; and

14 (II) the Secretary and the State agency agree are
15 most urgently in need of conservation programs.

16 (e) EFFECT OF STATE CONSERVATION PLANS.—Notwithstanding sections
17 201206(b)(2) and 201307 of this title, a cooperative agreement entered into
18 with a State whose program is considered adequate and active pursuant to
19 paragraph (1)(B) or (2)(B) of subsection (d) shall not affect the applicabil-
20 ity of prohibitions set forth in or authorized pursuant to section 201206 or
21 201801(a) of this title with respect to the taking, removal, or damaging of
22 a resident listed species.

23 (f) CONTENTS.—A cooperative agreement shall provide for—

24 (1) the actions to be taken by the Secretary and the State;

25 (2) the benefits that are expected to be derived in connection with
26 the conservation of listed species;

27 (3) the estimated cost of the actions referred to in paragraph (1);
28 and

29 (4) the share of the costs under paragraph (3) to be borne by the
30 Federal Government and by the State, subject to section 201304(d) of
31 this title.

32 **§ 201304. Federal aid**

33 (a) IN GENERAL.—The Secretary may provide financial assistance to a
34 State, through its State agency, that enters into a cooperative agreement,
35 to assist—

36 (1) in development of programs for the conservation of listed species;
37 or

38 (2) in monitoring the status of pending species pursuant to section
39 201202(a)(2)(C)(iv) of this title and delisted species pursuant to sec-
40 tion 201209 of this title.

1 (b) ALLOCATION CONSIDERATIONS.—The Secretary shall allocate each
2 annual appropriation made in accordance with section 201308 of this title
3 to a State described in subsection (a) based on—

4 (1) the international commitments of the United States to protect
5 listed species;

6 (2) the readiness of a State to proceed with a conservation program
7 consistent with the objectives and purposes of this chapter;

8 (3) the number of listed species within a State;

9 (4) the potential for restoring listed species within a State;

10 (5) the relative urgency to initiate a program to restore and protect
11 a listed species in terms of survival of the species;

12 (6) the importance of monitoring the status of pending species in a
13 State to prevent significant risk to the well-being of the pending spe-
14 cies; and

15 (7) the importance of monitoring the status of delisted species in a
16 State to ensure that the delisted species do not return to the point at
17 which the measures provided pursuant to this chapter are again nec-
18 essary.

19 (c) AVAILABILITY OF ALLOCATED AMOUNTS.—

20 (1) PERIOD OF AVAILABILITY TO STATES.—The annual appropria-
21 tion made in accordance with section 201308 of this title allocated for
22 obligation to a State for a fiscal year that remains unobligated at the
23 close of the fiscal year may be made available to that State until the
24 close of the succeeding fiscal year.

25 (2) AVAILABILITY FOR PROGRAMS.—An amount allocated to a State
26 that is unobligated at the end of the period during which the amount
27 is available for expenditure may be made available for expenditure by
28 the Secretary in conducting programs under this subchapter.

29 (d) FEDERAL SHARE.—The Federal share for program costs—

30 (1) shall not exceed 75 percent of the estimated program cost stated
31 in a cooperative agreement; and

32 (2) may be increased to 90 percent when 2 or more States having
33 a common interest in 1 or more listed species, the conservation of
34 which may be enhanced by cooperation of those States, enter jointly
35 into a cooperative agreement with the Secretary.

36 (e) AUTHORITY TO ADVANCE FUNDS.—The Secretary may, under such
37 regulations as the Secretary may prescribe, advance funds to a State for
38 financing the Federal pro rata share agreed on in the cooperative agree-
39 ment.

40 (f) FORMS OF NON-FEDERAL SHARE.—For the purposes of this sub-
41 chapter, the non-Federal share may, in the discretion of the Secretary, be—

- 1 (1) money; or
 2 (2) real property, the value of which shall be determined by the Sec-
 3 retary, whose decision shall not be subject to judicial review.

4 (g) REGULATIONS.—The Secretary may prescribe such regulations as
 5 may be appropriate to carry out the provisions of this subchapter relating
 6 to financial assistance to States.

7 **§ 201305. Periodic review of Secretarial action**

8 An action taken by the Secretary under this subchapter shall be reviewed
 9 by the Secretary at least annually.

10 **§ 201306. Preemption**

11 (a) IN GENERAL.—A State law (including a regulation) that applies with
 12 respect to the importation or exportation of, or interstate or foreign com-
 13 merce in, a listed species is void to the extent that it may effectively—

- 14 (1) permit what is prohibited by this chapter (including a regulation
 15 that implements this chapter); or
 16 (2) prohibit what is authorized pursuant to an exemption or permit
 17 provided for in this chapter (including a regulation that implements
 18 this chapter).

19 (b) EXCEPTIONS TO FEDERAL PREEMPTION.—Except as provided in sub-
 20 section (a), this chapter does not void a State law (including a regulation)
 21 that is intended to—

- 22 (1) conserve migratory, resident, or introduced fish or wildlife; or
 23 (2) permit or prohibit sale of migratory, resident, or introduced fish
 24 or wildlife.

25 (c) RESTRICTIVENESS OF STATE LAWS.—A State law (including a regula-
 26 tion) with respect to the taking of a listed species may be more restrictive
 27 than the exemptions or permits provided for in this chapter (including a
 28 regulation that implements this chapter), but not less restrictive than the
 29 prohibitions under this chapter.

30 **§ 201307. Inapplicability of prohibitions on taking listed**
 31 **species**

32 (a) IN GENERAL.—The prohibitions under sections 201206 and
 33 201801(a)(1)(B) of this title shall not apply with respect to the taking of
 34 a resident listed species in a State that is a party to a cooperative agree-
 35 ment, except to the extent that the taking of the listed species is contrary
 36 to the law of the State.

37 (b) EXCLUSIONS.—The listed species referred to in subsection (a) does
 38 not include species—

- 39 (1) listed in Appendix I of CITES; or
 40 (2) specifically covered by any other treaty or Federal law.

1 **§ 201308. Cooperative Endangered Species Conservation**
 2 **Fund; authorization of appropriations**

3 (a) IN GENERAL.—To carry out this subchapter, there shall be deposited
 4 in a fund known as the Cooperative Endangered Species Conservation
 5 Fund, to be administered by the Secretary, an amount equal to 5 percent
 6 of—

7 (1) the amounts deposited each fiscal year in the Federal Aid to
 8 Wildlife Restoration Fund under section 205203 of this title; and

9 (2) the amounts paid, transferred, or otherwise credited each fiscal
 10 year to the Sport Fish Restoration and Boating Trust Fund estab-
 11 lished in section 9504(a) of the Internal Revenue Code of 1986 (26
 12 U.S.C. 9504(a)).

13 (b) AUTHORIZATION OF APPROPRIATIONS.—Amounts deposited in the
 14 Cooperative Endangered Species Conservation Fund are authorized to be
 15 appropriated annually and allocated in accordance with section 201304 of
 16 this title.

17 **Subchapter IV—Interagency Cooperation**

18 **§ 201401. Definitions**

19 In this subchapter:

20 (1) AGENCY ACTION.—The term “agency action” means an action
 21 authorized, funded, or carried out by a Federal agency.

22 (2) AGENCY ACTION EXEMPTION.—The term “agency action exemp-
 23 tion” means an exemption for an agency action from the requirements
 24 of section 201403(a) of this title.

25 (3) COMMITTEE.—The term “Committee” means the Endangered
 26 Species Committee established in section 201407 of this title.

27 (4) EXEMPTION APPLICANT.—The term “exemption applicant”
 28 means an applicant for an agency action exemption under this sub-
 29 chapter.

30 **§ 201402. Duties of Federal agencies in the protection of**
 31 **listed species**

32 (a) REVIEW AND USE OF OTHER PROGRAMS BY SECRETARY.—The Sec-
 33 retary shall review other programs administered by the Secretary and utilize
 34 those programs in furtherance of this chapter.

35 (b) USE OF AUTHORITIES BY OTHER FEDERAL AGENCIES FOR CON-
 36 SERVATION PROGRAMS.—The heads of all other Federal agencies shall, in
 37 consultation with and with the assistance of the Secretary, utilize their au-
 38 thorities in furtherance of the purposes of this chapter by carrying out pro-
 39 grams for the conservation of listed species.

40 **§ 201403. Consultations and conferences on agency actions**

41 (a) GENERAL AGENCY ACTION REQUIREMENTS.—

1 (1) IN GENERAL.—A Federal agency shall, in consultation with and
2 with the assistance of the Secretary, ensure that any agency action is
3 not likely to jeopardize the continued existence of a listed species or
4 result in the destruction or adverse modification of critical habitat of
5 the listed species unless the Federal agency has been granted an agen-
6 cy action exemption by the Committee under section 201408(c) of this
7 title.

8 (2) BEST SCIENTIFIC AND COMMERCIAL DATA.—In fulfilling the re-
9 quirements of this subsection, a Federal agency shall use the best sci-
10 entific and commercial data available.

11 (3) CONSULTATION PERIOD.—

12 (A) IN GENERAL.—Consultation under this subsection with re-
13 spect to an agency action shall be concluded—

14 (i) within the 90-day period beginning on the date on which
15 the consultation is initiated; or

16 (ii) subject to subparagraph (B), within a period of time
17 that is agreeable to the Secretary and the Federal agency.

18 (B) CONSULTATION PERIOD LIMITATIONS FOR AGENCY ACTIONS
19 INVOLVING PERMIT OR LICENSE APPLICANTS.—

20 (i) IN GENERAL.—In the case of an agency action involving
21 a permit or license applicant, the Secretary and the Federal
22 agency may not agree to conclude consultation within a pe-
23 riod exceeding 90 days unless the Secretary, before the close
24 of the 90th day referred to in subparagraph (A)—

25 (I) if the consultation period proposed to be agreed to
26 will end before the 150th day after the date on which
27 consultation was initiated, submits to the permit or li-
28 cense applicant a written statement setting forth—

29 (aa) the reasons why a longer period is required;

30 (bb) the information that is required to complete
31 the consultation; and

32 (cc) the estimated date on which consultation will
33 be completed; or

34 (II) if the consultation period proposed to be agreed
35 to will end 150 or more days after the date on which
36 consultation was initiated, obtains the consent of the
37 permit or license applicant to that period.

38 (ii) EXTENSION.—The Secretary and the Federal agency
39 may agree to extend a consultation period established under
40 clause (i) if the Secretary, before the close of that period, ob-

1 tains the consent of the permit or license applicant to the ex-
2 tension.

3 (b) EARLY CONSULTATIONS.—

4 (1) IN GENERAL.—Subject to such guidelines as the Secretary may
5 establish, a Federal agency shall consult with the Secretary on a pro-
6 spective agency action at the request of, and in cooperation with, a pro-
7 spective permit or license applicant if the permit or license applicant
8 has reason to believe that—

9 (A) a listed species may be present in the area affected by the
10 applicant’s project; and

11 (B) implementation of the agency action will likely affect the
12 listed species.

13 (2) CONSULTATION PERIOD.—Consultation under this subsection
14 shall be concluded within a period that is agreeable to the Secretary,
15 the Federal agency, and the permit or license applicant.

16 (3) TREATMENT AS CONSULTATION UNDER SUBSECTION (a).—Con-
17 sultation under this subsection, and an opinion issued by the Secretary
18 incident to that consultation, regarding an agency action shall be treat-
19 ed respectively as a consultation under subsection (a), and as an opin-
20 ion issued after consultation under subsection (a) regarding that agen-
21 cy action if the Secretary—

22 (A) reviews the agency action before it is commenced by the
23 Federal agency; and

24 (B) finds, and notifies the Federal agency, that no significant
25 changes have been made with respect to the agency action and
26 that no significant change has occurred regarding the information
27 used during the initial consultation.

28 (c) CONFERENCES CONCERNING PROPOSED SPECIES.—

29 (1) IN GENERAL.—A Federal agency shall confer with the Secretary
30 on an agency action that is likely to—

31 (A) jeopardize the continued existence of a proposed species; or

32 (B) result in the destruction or adverse modification of proposed
33 critical habitat for the proposed species.

34 (2) INAPPLICABILITY OF LIMITATION ON COMMITMENT OF RE-
35 SOURCE.—This subsection does not require a limitation on the com-
36 mitment of resources as described in section 201406 of this title.

37 **§ 201404. Opinion of the Secretary**

38 (a) IN GENERAL.—Promptly after conclusion of consultation under sub-
39 section (a) or (b) of section 201403 of this title, the Secretary shall provide
40 to the Federal agency and any permit or license applicant a written state-
41 ment setting forth the Secretary’s opinion, and a summary of the informa-

1 tion on which the opinion is based, detailing how the agency action affects
2 the listed species or its critical habitat.

3 (b) FINDING OF JEOPARDY OR ADVERSE MODIFICATION.—If jeopardy or
4 adverse modification is found, the Secretary shall suggest reasonable and
5 prudent alternatives that the Secretary believes would not violate section
6 201403(a) of this title and that can be taken by the Federal agency or per-
7 mit or license applicant in implementing the agency action.

8 (c) FINDING OF NO VIOLATION OR OFFER OF ALTERNATIVES.—

9 (1) REQUIRED CONCLUSIONS FROM THE SECRETARY.—The Sec-
10 retary shall provide a Federal agency and any permit or license appli-
11 cant with a written statement as provided in paragraph (2) if, after
12 consultation under section 201403(a) of this title, the Secretary con-
13 cludes that—

14 (A) the agency action will not violate section 201403(a) of this
15 title, or offers reasonable and prudent alternatives that the Sec-
16 retary believes would not violate section 201403(a) of this title;

17 (B) the taking of listed species incidental to the agency action
18 will not violate section 201403(a) of this title; and

19 (C) if a listed species of a marine mammal is involved, the tak-
20 ing is authorized under subsections (f), (g), and (h) of section
21 221203 of this title.

22 (2) WRITTEN STATEMENT.—A written statement under paragraph
23 (1) shall—

24 (A) specify the impact of the incidental taking referred to in
25 paragraph (1)(B) on the listed species;

26 (B) specify reasonable and prudent measures that the Secretary
27 considers necessary or appropriate to minimize the impact;

28 (C) in the case of a marine mammal, specify measures that are
29 necessary to comply with subsections (f), (g), and (h) of section
30 221203 of this title with regard to the taking; and

31 (D) set forth the terms and conditions (including reporting re-
32 quirements) that must be complied with by the Federal agency or
33 any permit or license applicant, or both, to implement the meas-
34 ures specified under subparagraphs (B) and (C).

35 **§ 201405. Biological assessment**

36 (a) COMPLIANCE WITH CONSULTATION REQUIREMENTS.—

37 (1) INQUIRY ON PRESENCE OF LISTED SPECIES OR PROPOSED SPE-
38 CIES.—For each proposed agency action, to facilitate compliance with
39 section 201403(a) of this title, a Federal agency shall request of the
40 Secretary information whether listed species or proposed species may
41 be present in the area of the proposed agency action.

1 (2) BIOLOGICAL ASSESSMENT.—If the Secretary advises, based on
2 the best scientific and commercial data available, that listed species or
3 proposed species may be present, the Federal agency shall conduct a
4 biological assessment to identify any listed species that is likely to be
5 affected by the agency action.

6 (3) COMPLETION PERIOD.—

7 (A) IN GENERAL.—A biological assessment shall be completed—

8 (i) within—

9 (I) 180 days after the date on which the biological as-
10 sessment was initiated; or

11 (II) a period that is agreed to by the Secretary and
12 the Federal agency;

13 (ii) before a contract for construction is entered into; and

14 (iii) before construction is begun with respect to the agency
15 action.

16 (B) EXTENSION OF COMPLETION PERIOD FOR AGENCY ACTIONS
17 INVOLVING PERMIT OR LICENSE APPLICANTS.—If a permit or li-
18 cense applicant is involved, the 180-day period may not be ex-
19 tended unless the Federal agency provides the permit or license
20 applicant, before the close of the 180-day period, with a written
21 statement setting forth the estimated length of the proposed exten-
22 sion and the reasons for the proposed extension.

23 (4) NEPA COMPLIANCE.—A biological assessment under this sub-
24 section may be undertaken as part of a Federal agency's compliance
25 with the requirements of section 102 of the National Environmental
26 Policy Act of 1969 (42 U.S.C. 4332).

27 (b) BIOLOGICAL ASSESSMENT FOR AGENCY ACTION EXEMPTION.—

28 (1) IN GENERAL.—A person that wishes to apply for an agency ac-
29 tion exemption under section 201408(b) of this title may conduct a bio-
30 logical assessment to identify any listed species that is likely to be af-
31 fected by the agency action.

32 (2) COOPERATION.—A biological assessment under this subsection
33 shall be conducted in cooperation with the Secretary and under the su-
34 pervision of the appropriate Federal agency.

35 **§ 201406. Limitation on commitment of resources**

36 After initiation of consultation required under section 201403(a) of this
37 title, the Federal agency and the permit or license applicant shall not, with
38 respect to an agency action, make an irreversible or irretrievable commit-
39 ment of resources that has the effect of foreclosing the formulation or im-
40 plementation of any reasonable and prudent alternative measures that would
41 not violate section 201403(a) of this title.

1 **§ 201407. Endangered Species Committee**

2 (a) ESTABLISHMENT.—There is established the Endangered Species
3 Committee.

4 (b) DUTIES.—The Committee shall—

5 (1) review each application for an agency action exemption submitted
6 to the Committee under this subchapter; and

7 (2) determine whether to grant the agency action exemption in ac-
8 cordance with section 201408(c) of this title.

9 (c) MEMBERSHIP.—

10 (1) IN GENERAL.—The Committee shall be composed of—

11 (A) the Secretary of Agriculture;

12 (B) the Secretary of the Army;

13 (C) the Chairman of the Council of Economic Advisors;

14 (D) the Administrator of the Environmental Protection Agency;

15 (E) the Secretary of the Interior;

16 (F) the Administrator; and

17 (G) 1 or more individuals appointed by the President under
18 paragraph (2).

19 (2) INDIVIDUALS FROM AFFECTED STATES.—The President, after
20 consideration of any recommendations received under section
21 201408(b)(4) of this title, shall appoint 1 individual from each affected
22 State, as determined by the Secretary, to be a member of the Commit-
23 tee for the consideration of the application for agency action exemption
24 with respect to which the recommendations are made, not later than
25 30 days after an application is submitted under section 201408(b) of
26 this title.

27 (d) CHAIRMAN.—The Secretary of the Interior shall be the Chairman of
28 the Committee.

29 (e) PAY.—A member of the Committee shall receive no additional pay on
30 account of the member's service on the Committee.

31 (f) TRAVEL EXPENSES.—While away from the member's home or regular
32 place of business in the performance of services for the Committee, a mem-
33 ber of the Committee shall be allowed travel expenses, including per diem
34 in lieu of subsistence, in the same manner as an employee serving intermit-
35 tently in Government service is allowed expenses under section 5703 of title
36 5.

37 (g) QUORUM.—

38 (1) IN GENERAL.—Five members of the Committee or their rep-
39 representatives shall constitute a quorum for the transaction of a function
40 of the Committee.

1 (2) REPRESENTATIVES NOT COUNTED.—A representative of a mem-
2 ber of the Committee shall not be considered in determining the exist-
3 ence of a quorum for the transaction of a function of the Committee
4 that involves a vote by the Committee on a matter before the Commit-
5 tee.

6 (3) INELIGIBILITY OF REPRESENTATIVE TO VOTE.—A representative
7 of a member of the Committee, including a representative of a member
8 designated under subsection (c)(2), shall not be eligible to cast a vote
9 on behalf of the member.

10 (h) MEETINGS.—The Committee shall meet at the call of the Chairman
11 or 5 of its members.

12 (i) MEETINGS AND RECORDS OPEN TO PUBLIC.—All meetings and
13 records of the Committee shall be open to the public.

14 (j) DETAILING OF PERSONNEL.—On request of the Committee, the head
15 of a Federal agency may detail, on a nonreimbursable basis, any of the per-
16 sonnel of the Federal agency to the Committee to assist the Committee in
17 carrying out its duties under this subchapter.

18 (k) HEARINGS.—The Committee may, to carry out its duties under this
19 subchapter, hold such hearings, sit and act at such times and places, take
20 such testimony, and receive such evidence, as the Committee considers ad-
21 visable.

22 (l) OBTAINING INFORMATION.—

23 (1) AUTHORITY TO OBTAIN INFORMATION.—Subject to section 552a
24 of title 5, the Committee may obtain directly from a Federal agency
25 information necessary to enable the Committee to carry out its duties
26 under this subchapter.

27 (2) DUTY TO PROVIDE INFORMATION.—On request of the Chairman,
28 the head of the Federal agency shall provide the information to the
29 Committee.

30 (m) UNITED STATES MAIL.—The Committee may use the United States
31 mail system in the same manner and on the same conditions as a Federal
32 agency.

33 (n) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of Gen-
34 eral Services shall provide to the Committee on a reimbursable basis such
35 administrative support services as the Committee may request.

36 (o) AUTHORIZED AGENTS.—When authorized by the Committee, a mem-
37 ber or agent of the Committee may take any action the Committee may take
38 under subsections (k) through (n).

39 (p) SUBPOENAS.—For the purpose of obtaining information necessary for
40 the consideration of an application for agency action exemption, the Com-

1 mittee may issue subpoenas for the attendance and testimony of witnesses
2 and the production of relevant records.

3 (q) RULES, PROCEDURES, AND ORDERS.—In carrying out its duties
4 under this subchapter, the Committee may prescribe such rules and proce-
5 dures and issue such orders as the Committee considers necessary.

6 **§ 201408. Agency action exemptions**

7 (a) REGULATIONS.—

8 (1) IN GENERAL.—The Secretary shall prescribe regulations that set
9 forth—

10 (A) the form and manner in which an application for agency ac-
11 tion exemption shall be submitted to the Secretary; and

12 (B) the information to be contained in the application.

13 (2) REQUIREMENTS.—The regulations shall require that information
14 submitted in an application by the head of a Federal agency with re-
15 spect to an agency action include—

16 (A) a description of the consultation process carried out under
17 section 201403(a) of this title between the head of the Federal
18 agency and the Secretary; and

19 (B) a statement describing why the agency action cannot be al-
20 tered or modified to conform with the requirements of section
21 201403(a) of this title.

22 (b) APPLICATION PROCEDURES.—

23 (1) IN GENERAL.—A Federal agency, the Governor of the State in
24 which an agency action will occur, if any, or a permit or license appli-
25 cant may apply to the Secretary for an agency action exemption for
26 an agency action of the Federal agency if, after consultation under sec-
27 tion 201403(a) of this title, the Secretary’s opinion under section
28 201404 of this title indicates that the agency action would violate sec-
29 tion 201403(a) of this title.

30 (2) INITIAL AND FINAL CONSIDERATIONS.—An application for agen-
31 cy action exemption shall be considered initially by the Secretary in the
32 manner provided for in this subsection, and shall be considered by the
33 Committee for a final determination under subsection (c) after a report
34 is made under paragraph (7).

35 (3) SUBMISSION OF APPLICATION.—

36 (A) DEFINITION OF FINAL AGENCY ACTION.—In this para-
37 graph, the term “final agency action” means—

38 (i) a disposition by an agency with respect to the issuance
39 of a permit or license that is subject to administrative review,
40 whether or not the disposition is subject to judicial review; or

1 (ii) if administrative review is sought with respect to the
2 disposition, the decision resulting after the review.

3 (B) GENERAL DEADLINE.—An exemption applicant shall submit
4 a written application to the Secretary, in a form prescribed under
5 subsection (a), not later than 90 days after the completion of the
6 consultation process.

7 (C) DEADLINE FOR PERMIT OR LICENSE APPLICANTS.—In the
8 case of an agency action involving a permit or license applicant,
9 an application shall be submitted not later than 90 days after the
10 date on which the Federal agency takes final agency action with
11 respect to the issuance of the permit or license.

12 (D) CONTENTS.—An application for agency action exemption
13 shall set forth the reasons why the exemption applicant considers
14 that the agency action meets the requirements for an agency ac-
15 tion exemption under this subsection.

16 (4) RECEIPT OF APPLICATION BY SECRETARY.—On receipt of an ap-
17 plication for agency action exemption under paragraph (1), the Sec-
18 retary shall promptly—

19 (A) notify the Governor of each affected State, if any, as deter-
20 mined by the Secretary, and request the Governors notified to rec-
21 ommend individuals to be appointed to the Committee for consid-
22 eration of the application; and

23 (B) publish notice of receipt of the application in the Federal
24 Register, including a summary of the information contained in the
25 application and a description of the agency action with respect to
26 which the application for agency action exemption has been filed.

27 (5) DETERMINATIONS BY THE SECRETARY.—

28 (A) REQUIRED DETERMINATIONS AND DENIALS.—The Sec-
29 retary shall, not later than 20 days after the receipt of an applica-
30 tion for agency action exemption, or within a period of time that
31 is agreeable to the exemption applicant and the Secretary—

32 (i) determine that the Federal agency and the exemption
33 applicant have—

34 (I) carried out the consultation responsibilities de-
35 scribed in section 201403 of this title in good faith and
36 made a reasonable and responsible effort to develop and
37 fairly consider modifications or reasonable and prudent
38 alternatives to the proposed agency action that would not
39 violate section 201403(a) of this title;

40 (II) conducted a biological assessment required by sec-
41 tion 201405 of this title; and

1 (III) to the extent determinable within the time pro-
2 vided under this paragraph, refrained from making any
3 irreversible or irretrievable commitment of resources pro-
4 hibited by section 201406 of this title; or

5 (ii) deny the application for agency action exemption be-
6 cause the Federal agency or the exemption applicant has not
7 met each of the requirements set forth in clause (i).

8 (B) FINAL AGENCY ACTION.—The denial of an application
9 under subparagraph (A)(ii) shall be considered final agency action
10 for purposes of chapter 7 of title 5.

11 (6) HEARING.—If the Secretary determines that the Federal agency
12 and the exemption applicant have met each of the requirements set
13 forth in paragraph (5)(A)(i), the Secretary shall, in consultation with
14 the members of the Committee—

15 (A) hold a hearing on the application for agency action exemp-
16 tion in accordance with sections 554, 555, and 556 (other than
17 paragraphs (1) and (2) of section 556(b)) of title 5; and

18 (B) prepare the report to be submitted under paragraph (7).

19 (7) REPORT.—Not later than 140 days after making the determina-
20 tions under paragraph (5) or within a period of time that is agreeable
21 to the exemption applicant and the Secretary, the Secretary shall sub-
22 mit to the Committee a report that—

23 (A) discusses the availability of reasonable and prudent alter-
24 natives to the agency action, and the nature and extent of the ben-
25 efits of the agency action and of alternative courses of action con-
26 sistent with conserving the listed species or the critical habitat;

27 (B) contains a summary of the evidence concerning whether or
28 not the agency action is in the public interest and is of national
29 or regional significance;

30 (C) discusses appropriate reasonable mitigation and enhance-
31 ment measures that should be considered by the Committee; and

32 (D) discusses whether the Federal agency concerned and the ex-
33 emption applicant refrained from making any irreversible or irre-
34 retrievable commitment of resources prohibited by section 201406 of
35 this title.

36 (8) DETAILING OF PERSONNEL.—On request of the Secretary, the
37 head of a Federal agency may detail, on a nonreimbursable basis, any
38 of the personnel of the Federal agency to the Secretary to assist the
39 Secretary in carrying out the Secretary's duties under this subchapter.

1 (9) MEETINGS AND RECORDS OPEN TO PUBLIC.—All meetings and
2 records resulting from activities pursuant to this subsection shall be
3 open to the public.

4 (e) GRANT OF AGENCY ACTION EXEMPTION.—

5 (1) CONSIDERATION OF APPLICATION.—To the extent practicable
6 within the time required for action under subsection (b), and except to
7 the extent inconsistent with the requirements of this subchapter (in-
8 cluding the requirements of subsection (b)(6)), the consideration of an
9 application for agency action exemption under this subchapter shall be
10 in accordance with sections 554, 555, and 556 (other than subsection
11 (b)(3) of section 556) of title 5.

12 (2) FINAL DETERMINATION BY COMMITTEE.—

13 (A) IN GENERAL.—The Committee shall make a final deter-
14 mination whether to grant an agency action exemption not later
15 than 30 days after receiving the report of the Secretary under sub-
16 section (b)(7).

17 (B) REQUIREMENTS FOR GRANTING AN AGENCY ACTION EX-
18 EMPTION.—The Committee shall grant an agency action exemp-
19 tion if, by a vote of not less than 5 of its members voting in per-
20 son, the Committee—

21 (i) determines on the record, based on the report of the
22 Secretary, the record of the hearing held under subsection
23 (b)(6), and such other testimony or evidence as the Commit-
24 tee may receive, that—

25 (I) there are no reasonable and prudent alternatives to
26 the agency action;

27 (II) the benefits of the agency action clearly outweigh
28 the benefits of alternative courses of action consistent
29 with conserving the listed species or its critical habitat,
30 and the agency action is in the public interest;

31 (III) the agency action is of regional or national sig-
32 nificance; and

33 (IV) neither the Federal agency nor the exemption ap-
34 plicant made an irreversible or irretrievable commitment
35 of resources prohibited by section 201406 of this title;
36 and

37 (ii) establishes such reasonable mitigation and enhance-
38 ment measures (including live propagation, transplantation,
39 and habitat acquisition and improvement) as are necessary to
40 minimize the adverse effects of the agency action on the listed
41 species or critical habitat.

1 (C) FINAL AGENCY ACTION.—A final determination by the Com-
2 mittee under this subsection shall constitute final agency action
3 for purposes of chapter 7 of title 5.

4 (3) PERMANENCE OF AGENCY ACTION EXEMPTION.—

5 (A) IN GENERAL.—Except as provided in subparagraph (B), if
6 a biological assessment was conducted under section 201405 of
7 this title with respect to the agency action, an agency action ex-
8 emption granted under paragraph (2) shall constitute a permanent
9 exemption with respect to all listed species for the purposes of
10 completing the agency action regardless whether the listed species
11 was identified in the biological assessment.

12 (B) EXCEPTION.—An agency action exemption shall be perma-
13 nent under subparagraph (A) unless—

14 (i) the Secretary finds, based on the best scientific and
15 commercial data available, that the agency action exemption
16 would result in the extinction of a listed species or unlisted
17 species that was not the subject of consultation under section
18 201403(a) of this title or was not identified in any biological
19 assessment conducted under section 201405 of this title; and

20 (ii) the Committee determines not later than 60 days after
21 the date of the Secretary’s finding that the agency action ex-
22 emption should not be permanent.

23 (C) COMMITTEE MEETING.—If the Secretary makes a finding
24 described in subparagraph (B)(i), the Committee shall meet with
25 respect to the matter not later than 30 days after the date of the
26 finding.

27 (d) VIOLATION OF INTERNATIONAL OBLIGATION OF THE UNITED
28 STATES.—

29 (1) IN GENERAL.—Notwithstanding this section and section 201407
30 of this title, the Committee shall not consider an application for agency
31 action exemption if, within 60 days of the application being made, the
32 Secretary of State—

33 (A) reviews the proposed agency action and its potential impli-
34 cations;

35 (B) holds a hearing; and

36 (C) based on the review and hearing, certifies in writing to the
37 Committee that carrying out the proposed agency action would
38 violate an international treaty obligation or other international ob-
39 ligation of the United States.

1 (2) PUBLICATION.—The Secretary of State shall, at the time of the
2 certification under paragraph (1), publish a copy of the certification in
3 the Federal Register.

4 (e) AGENCY ACTION EXEMPTIONS FOR NATIONAL SECURITY REASONS.—
5 Notwithstanding this section, the Committee shall grant an agency action
6 exemption if the Secretary of Defense finds that the agency action exemp-
7 tion is necessary for reasons of national security.

8 (f) AGENCY ACTION EXEMPTION DECISION NOT A MAJOR FEDERAL AC-
9 TION.—An agency action exemption decision by the Committee under this
10 section is not a major Federal action for purposes of the National Environ-
11 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if an environmental im-
12 pact statement that discusses the impacts on listed species or their critical
13 habitats was previously prepared with respect to an agency action exempted
14 by the order of agency action exemption.

15 (g) COMMITTEE ORDER GRANTING AGENCY ACTION EXEMPTION.—If the
16 Committee determines under subsection (c) that an agency action exemption
17 should be granted with respect to an agency action, the Committee shall
18 issue an order granting the agency action exemption and specifying the
19 mitigation and enhancement measures established under subsection (c).

20 (h) MITIGATION AND ENHANCEMENT MEASURES.—

21 (1) AUTHORIZATION AND CONCURRENT FUNDING.—The mitigation
22 and enhancement measures established under subsection (c) shall be
23 authorized prior to the implementation of the agency action and funded
24 concurrently with all other project features.

25 (2) IMPLEMENTATION AND FUNDING BY EXEMPTION APPLICANTS.—
26 The mitigation and enhancement measures established under sub-
27 section (c) shall be carried out and paid for by the exemption applicant
28 in implementing the agency action.

29 (3) TREATMENT OF COST.—

30 (A) INCLUSION IN THE OVERALL COST.—The exemption appli-
31 cant shall include the costs of the mitigation and enhancement
32 measures within the overall costs of continuing the proposed ac-
33 tion.

34 (B) COMPUTATION OF RATIOS.—Notwithstanding subparagraph
35 (A), the costs of the mitigation and enhancement measures shall
36 not be treated as project costs for the purpose of computing bene-
37 fit-cost or other ratios for the proposed action.

38 (4) ROLE OF THE SECRETARY.—

39 (A) IMPLEMENTATION ON REQUEST.—An exemption applicant
40 may request the Secretary to carry out the mitigation and en-
41 hancement measures.

1 (B) COST INCURRED BY SECRETARY.—The costs incurred by
2 the Secretary in carrying out the mitigation and enhancement
3 measures shall be paid by the exemption applicant receiving the
4 agency action exemption.

5 (5) REPORT.—

6 (A) INITIAL REPORT.—Not later than 1 year after the granting
7 of an agency action exemption, the exemption applicant shall sub-
8 mit to the Council on Environmental Quality a report describing
9 the exemption applicant’s compliance with the mitigation and en-
10 hancement measures prescribed by this section.

11 (B) ANNUAL SUBMISSION.—A report under subparagraph (A)
12 shall be submitted annually until all the mitigation and enhance-
13 ment measures are complete.

14 (C) PUBLICATION IN THE FEDERAL REGISTER.—For each re-
15 port submitted under this paragraph, the Council on Environ-
16 mental Quality shall publish notice of public availability in the
17 Federal Register.

18 (i) JUDICIAL REVIEW.—

19 (1) IN GENERAL.—

20 (A) REVIEWING COURT.—A person may obtain judicial review
21 under chapter 7 of title 5 of a decision of the Committee under
22 subsection (e)—

23 (i) in the United States court of appeals for a circuit in
24 which the agency action concerned will be, or is being, carried
25 out; or

26 (ii) in the United States Court of Appeals for the District
27 of Columbia, if the agency action will be, or is being, carried
28 out outside of any circuit.

29 (B) FILING A PETITION FOR REVIEW.—Judicial review under
30 this paragraph may be obtained by filing a written petition for re-
31 view in the appropriate court specified in subparagraph (A) not
32 later than 90 days after the date of issuance of the decision.

33 (2) TRANSMISSION OF PETITION TO AND FILING OF RECORD BY
34 COMMITTEE.—A copy of the petition referred to in paragraph (1)(B)
35 shall be transmitted by the clerk of the court to the Committee and
36 the Committee shall file in the court the record in the proceeding, as
37 provided in section 2112 of title 28.

38 (3) COMMITTEE REPRESENTATION.—Attorneys designated by the
39 Committee may appear for and represent the Committee in any action
40 for review under this subsection.

1 (4) INAPPLICABILITY OF NOTICE REQUIREMENT FOR CITIZEN
2 SUITS.—The 60-day notice requirement of section 201812 of this title
3 does not apply to judicial review of the Committee’s final determination
4 under subsection (e) to grant an agency action exemption.

5 (j) CERTAIN AGENCY ACTIONS NOT CONSIDERED TO BE A TAKING;
6 CERTAIN TAKINGS NOT CONSIDERED TO BE A PROHIBITED TAKING.—
7 Notwithstanding sections 201206, 201801(a)(1)(B) and (C), 221201
8 through 221203, 221205, and 221222 of this title, or a regulation pre-
9 scribed to implement any of those provisions—

10 (1) any agency action for which an agency action exemption is grant-
11 ed under subsection (e) shall not be considered to be a taking of a list-
12 ed species with respect to an activity that is necessary to carry out the
13 agency action; and

14 (2) a taking that is in compliance with the terms and conditions
15 specified in a written statement provided under section
16 201404(e)(2)(D) of this title shall not be considered to be a prohibited
17 taking of the listed species.

18 (k) AGENCY ACTION EXEMPTIONS IN PRESIDENTIALLY DECLARED DIS-
19 ASTER AREAS.—

20 (1) IN GENERAL.—In an area that the President has declared to be
21 a major disaster area under the Robert T. Stafford Disaster Relief and
22 Emergency Assistance Act (42 U.S.C. 5121 et seq.), the President may
23 make the determinations required by subsections (b) and (c) for a
24 project described in paragraph (2) that the President determines—

25 (A) is necessary to prevent the recurrence of such a natural dis-
26 aster and to reduce the potential loss of human life; and

27 (B) involves an emergency situation that does not allow the or-
28 dinary procedures of this subchapter to be followed.

29 (2) PROJECT.—A project referred to in paragraph (1) is a project
30 for the repair or replacement of a public facility substantially as it ex-
31 isted prior to the disaster under section 405 or 406 of the Robert T.
32 Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.
33 5171, 5172).

34 (3) ACCEPTANCE OF PRESIDENT’S DETERMINATIONS.—Notwith-
35 standing this section and section 201407 of this title, the Committee
36 shall accept the determinations of the President under this subsection.

37 **Subchapter V—International Cooperation**

38 **§ 201501. Financial assistance**

39 (a) IN GENERAL.—The President may, subject to section 1306 of title
40 31, use foreign currencies accruing to the United States under the Food for
41 Peace Act (7 U.S.C. 1691 et seq.) or any other law to provide to a foreign

1 country (with its consent) assistance in the development and management
2 of programs in that country that the Secretary determines to be necessary
3 or useful for the conservation of a listed species.

4 (b) TERMS AND CONDITIONS.—The President shall provide assistance
5 (including the acquisition, by lease or otherwise, of areas of land or water,
6 or interests in areas of land or water) to foreign countries under this sub-
7 chapter under such terms and conditions as the President considers appro-
8 priate.

9 (c) PREFERRED SOURCE OF FUNDS.—When foreign currencies are avail-
10 able for the provision of assistance under this subchapter, those currencies
11 shall be used in preference to funds appropriated to carry out this chapter.

12 **§ 201502. Encouragement of foreign programs**

13 To carry out this chapter, the Secretary, through the Secretary of State,
14 shall—

15 (1) encourage foreign countries to provide for the conservation of
16 fish or wildlife and plants, including listed species;

17 (2) encourage the establishment of bilateral or multilateral agree-
18 ments with foreign countries to provide for the conservation of fish or
19 wildlife and plants, including listed species; and

20 (3) encourage foreign persons that directly or indirectly take fish or
21 wildlife or plants in foreign countries or on the high seas for importa-
22 tion into the United States for commercial or other purposes to develop
23 and carry out, with such assistance as the Secretary may provide, con-
24 servation practices designed to enhance the fish or wildlife or plants
25 and their habitat.

26 **§ 201503. Personnel**

27 After consultation with the Secretary of State, the Secretary may—

28 (1) assign or otherwise make available an officer or employee of the
29 Secretary's department for the purpose of cooperating with foreign
30 countries and international organizations in developing personnel re-
31 sources and programs that promote the conservation of fish or wildlife
32 and plants;

33 (2) conduct or provide financial assistance for the educational train-
34 ing of foreign personnel, in the United States or abroad, in manage-
35 ment, research, and law enforcement related to the conservation of fish
36 or wildlife and plants; and

37 (3) render professional assistance abroad in management, research,
38 and law enforcement matters related to the conservation of fish or wild-
39 life and plants.

1 **§ 201504. Investigations and research**

2 After consultation with the Secretary of State and the Secretary of the
3 Treasury, as appropriate, the Secretary may conduct or cause to be con-
4 ducted such law enforcement investigations and research abroad as the Sec-
5 retary considers necessary to carry out this chapter.

6 **§ 201505. Implementation of Convention on International**
7 **Trade in Endangered Species of Wild Fauna and**
8 **Flora**

9 (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—

10 (1) DESIGNATION.—The Secretary of the Interior is designated as
11 the Management Authority and the Scientific Authority for purposes of
12 CITES.

13 (2) ROLE OF USFWS.—The functions of the Management Authority
14 and the Scientific Authority shall be carried out through USFWS.

15 (b) DUTY TO CARRY OUT FUNCTIONS.—The Secretary of the Interior
16 shall do all things necessary and appropriate to carry out the functions of
17 the Management Authority and the Scientific Authority under CITES.

18 (c) DETERMINATIONS AND ADVICE UNDER ARTICLE IV OF CITES.—

19 (1) BEST AVAILABLE BIOLOGICAL INFORMATION.—The Secretary of
20 the Interior shall base the determinations made and advice given by the
21 Secretary of the Interior under article IV of CITES with respect to fish
22 or wildlife and plants on the best available biological information de-
23 rived from professionally accepted fish or wildlife and plant manage-
24 ment practices.

25 (2) ESTIMATES OF POPULATION SIZE.—In carrying out paragraph
26 (1), the Secretary of the Interior is not required to make, or to require
27 a State to make, estimates of population size in making the determina-
28 tions or giving the advice referred to in paragraph (1).

29 (d) REPORT RELATING TO RESERVATIONS UNDER CITES.—If the
30 United States votes against including a species in Appendix I or II of
31 CITES and does not enter a reservation pursuant to paragraph (3) of arti-
32 cle XV of CITES with respect to that species, the Secretary of State, before
33 the 90th day after the last day on which the reservation could be entered,
34 shall submit to the Committee on Natural Resources of the House of Rep-
35 resentatives, and to the Committee on the Environment and Public Works
36 of the Senate, a written report setting forth the reasons why the reservation
37 was not entered.

1 **§ 201506. Implementation of Convention on Nature Protec-**
2 **tion and Wildlife Preservation in the Western**
3 **Hemisphere**

4 (a) DEFINITION OF WESTERN HEMISPHERE CONVENTION.—In this sec-
5 tion, the term “Western Hemisphere Convention” means the Convention on
6 Nature Protection and Wild Life Preservation in the Western Hemisphere,
7 done at the Pan American Union, Washington October 12, 1940 (56 Stat.
8 1354; TS 981).

9 (b) REPRESENTATION OF THE UNITED STATES IN THE WESTERN HEMI-
10 SPHERE CONVENTION.—The Secretary of the Interior, in cooperation with
11 the Secretary of State, shall act on behalf of and represent the United
12 States in all regards as required by the Western Hemisphere Convention.

13 (c) CONSULTATION WITH OTHER AGENCIES.—In carrying out subsection
14 (b), the Secretary of the Interior and the Secretary of State shall consult
15 with the Secretary of Agriculture, the Secretary of Commerce, and the
16 heads of other agencies with respect to matters relating to or affecting their
17 areas of responsibility.

18 (d) NECESSARY STEPS FOR THE IMPLEMENTATION OF THE WESTERN
19 HEMISPHERE CONVENTION.—

20 (1) IN GENERAL.—The Secretary of the Interior and the Secretary
21 of State shall, in cooperation with the contracting parties to the West-
22 ern Hemisphere Convention and, to the extent feasible and appropriate,
23 with the participation of State agencies, take such steps as are nec-
24 essary to implement the Western Hemisphere Convention.

25 (2) INCLUSIONS.—The steps described in paragraph (1) shall in-
26 clude—

27 (A) cooperation with contracting parties and international orga-
28 nizations in developing personnel resources and programs that will
29 facilitate implementation of the Western Hemisphere Convention;

30 (B) identification of species of birds that migrate between the
31 United States and other contracting parties, and the habitats on
32 which those species depend, and the implementation of cooperative
33 measures to ensure that those species will not become endangered
34 or threatened; and

35 (C) identification of measures that are necessary and appro-
36 priate to implement the provisions of the Western Hemisphere
37 Convention that address the protection of wild plants.

38 (e) EFFECT OF SECTION.—This section does not affect the authority, ju-
39 risdiction, or responsibility of the States to manage, control, or regulate
40 resident fish or wildlife under State law (including regulations).

Subchapters VI and VII—Reserved
Subchapter VIII—Enforcement

§ 201801. Prohibitions

(a) IN GENERAL.—

(1) FISH OR WILDLIFE.—Except as provided in sections 201307 and 201802 of this title, it is unlawful for a person subject to the jurisdiction of the United States to—

(A) import an endangered species of fish or wildlife into or export an endangered species of fish or wildlife from the United States;

(B) take an endangered species of fish or wildlife within the United States or the territorial sea of the United States;

(C) take an endangered species of fish or wildlife on the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means, an endangered species of fish or wildlife taken in violation of subparagraph (B) or (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means and in the course of commercial activity, an endangered species of fish or wildlife;

(F) sell or offer for sale in interstate or foreign commerce an endangered species of fish or wildlife; or

(G) violate a regulation pertaining to an endangered species of fish or wildlife or a threatened species of fish or wildlife and prescribed by the Secretary under this chapter.

(2) PLANTS.—Except as provided in sections 201307 and 201802 of this title, it is unlawful for a person subject to the jurisdiction of the United States to—

(A) import an endangered species of plant into or export an endangered species of plant from the United States;

(B)(i) remove and reduce to possession an endangered species of plant from an area under Federal jurisdiction;

(ii) maliciously damage or destroy an endangered species of plant on an area under Federal jurisdiction; or

(iii) remove, cut, dig up, damage, or destroy an endangered species of plant on any other area in knowing violation of State law (including a regulation) or in the course of a violation of a State criminal trespass law;

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

1 (D) sell or offer for sale in interstate or foreign commerce an
2 endangered species of plant; or

3 (E) violate a regulation pertaining to an endangered species of
4 plant or to a threatened species of plant prescribed by the Sec-
5 retary under this chapter.

6 (b) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—

7 (1) EXEMPTION BASED ON LISTING DATE.—

8 (A) DEFINITION OF LISTING DATE.—In this paragraph, the
9 term “listing date” means—

10 (i) December 28, 1973; or

11 (ii) in the case of a fish or wildlife species listed after De-
12 cember 28, 1973, the date of publication in the Federal Reg-
13 ister of the final regulation adding the fish or wildlife species
14 to the list.

15 (B) EXEMPTION.—

16 (i) IN GENERAL.—Subparagraphs (A) and (G) of sub-
17 section (a)(1) do not apply to fish or wildlife held in captivity
18 or in a controlled environment on the listing date.

19 (ii) LIMITATION ON APPLICABILITY OF EXEMPTION.—
20 Clause (i) applies only if the holding on the listing date, and
21 any subsequent holding or use of the fish or wildlife, is not
22 done in the course of commercial activity.

23 (C) REBUTTABLE PRESUMPTION AFTER 180 DAYS.—If an act
24 prohibited by subparagraph (A) or (G) of subsection (a)(1) occurs
25 more than 180 days after the listing date, there is a rebuttable
26 presumption that the fish or wildlife involved in the act is not enti-
27 tled to the exemption in subparagraph (B).

28 (2) RAPTORS.—

29 (A) IN GENERAL.—Subject to subparagraph (B), subsection
30 (a)(1) shall not apply to—

31 (i) a raptor legally held in captivity or in a controlled envi-
32 ronment on November 10, 1978; or

33 (ii) any progeny of any raptor described in clause (i).

34 (B) LIMITATION.—Subparagraph (A) applies only until the
35 raptor or progeny described in subparagraph (A) is intentionally
36 returned to a wild state.

37 (C) RESPONSIBILITIES OF PERSON HOLDING RAPTOR OR PROG-
38 ENY.—To qualify for an exemption under this paragraph, a person
39 holding a raptor or progeny described in subparagraph (A) shall
40 demonstrate that the raptor or progeny qualifies under this para-
41 graph, and shall maintain and submit to the Secretary, on request,

1 such records as the Secretary may by regulation require as being
2 reasonably appropriate to carry out this paragraph. Those require-
3 ments shall not unnecessarily duplicate the requirements of other
4 regulations prescribed by the Secretary.

5 (e) VIOLATION OF CITES.—

6 (1) SPECIMENS.—It is unlawful for a person subject to the jurisdic-
7 tion of the United States to engage in a trade in any specimen contrary
8 to the provisions of CITES, or to possess a specimen traded contrary
9 to the provisions of CITES, (including the definitions of terms in arti-
10 cle I of CITES).

11 (2) IMPORTATION OF FISH OR WILDLIFE.—An importation into the
12 United States of fish or wildlife shall be presumed to be an importation
13 not in violation of this chapter or a regulation prescribed under this
14 chapter if—

15 (A) the fish or wildlife is not an endangered species listed under
16 subchapter II but is listed in Appendix II of CITES;

17 (B) the taking and exportation of the fish or wildlife is not con-
18 trary to the provisions of CITES and all other applicable require-
19 ments of CITES have been satisfied;

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

22 (D) the importation is not made in the course of a commercial
23 activity.

24 (d) IMPORTATIONS AND EXPORTATIONS.—

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

27 (A) as an importer or exporter of fish or wildlife (subject to
28 paragraph (2)) or plants; or

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

31 (2) EXCLUSIONS.—In paragraph (1)(A), the term “fish or wildlife”
32 does not include shellfish or fishery products that—

33 (A) are not listed; and

34 (B) are imported for human or animal consumption or taken for
35 recreational purposes in waters under the jurisdiction of the
36 United States or on the high seas.

37 (3) REQUIREMENTS.—A person required to obtain permission under
38 paragraph (1) shall—

39 (A) keep records that fully and correctly disclose—

40 (i) each importation or exportation of fish or wildlife,
41 plants, or African elephant ivory made by the person; and

1 (ii) the subsequent disposition made by the person with re-
2 spect to the fish or wildlife, plants, or ivory;

3 (B) at all reasonable times, on notice by an authorized rep-
4 resentative of the Secretary, afford the representative—

5 (i) access to the person’s place of business;

6 (ii) an opportunity to examine the person’s inventory of im-
7 ported fish or wildlife, plants, or African elephant ivory; and

8 (iii) an opportunity to examine the records required to be
9 kept under subparagraph (A) and to copy those records; and

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

11 (4) REGULATIONS.—The Secretary shall prescribe such regulations
12 as are necessary to carry out this subsection.

13 (5) NO VARIATION OF REQUIREMENTS BASED ON VALUE.—In grant-
14 ing permission under this subsection for importation or exportation of
15 African elephant ivory, the Secretary shall not vary the requirements
16 for obtaining permission based on the value or amount of ivory to be
17 imported or exported.

18 (e) REPORTS.—

19 (1) IN GENERAL.—It is unlawful for a person importing or exporting
20 fish or wildlife (subject to paragraph (2)) or plants to fail to file a dec-
21 laration or report that the Secretary considers necessary to facilitate
22 enforcement of this chapter or to meet the obligations of the United
23 States under CITES.

24 (2) EXCLUSIONS.—In paragraph (1), the term “fish or wildlife” does
25 not include shellfish or fishery products that—

26 (A) are not listed; and

27 (B) are imported for human or animal consumption or taken for
28 recreational purposes in waters under the jurisdiction of the
29 United States or on the high seas.

30 (f) DESIGNATION OF PORTS.—

31 (1) AUTHORITY TO DESIGNATE PORTS.—To facilitate enforcement of
32 this chapter and to reduce enforcement costs, the Secretary of the Inter-
33 rior, with approval of the Secretary of the Treasury and after notice
34 and opportunity for public hearing, may by regulation designate ports
35 and change those designations.

36 (2) IMPORTATION AND EXPORTATION IN DESIGNATED PORTS.—

37 (A) IN GENERAL.—Except as provided in paragraph (3), it is
38 unlawful for a person subject to the jurisdiction of the United
39 States to import into or export from the United States fish or
40 wildlife (subject to subparagraph (B)) or plants, except at a port
41 designated by the Secretary of the Interior under paragraph (1).

1 (B) EXCLUSIONS.—In subparagraph (A), the term “fish or
2 wildlife” does not include shellfish or fishery products that—

3 (i) are not listed; and

4 (ii) are imported for human or animal consumption or
5 taken for recreational purposes in waters under the jurisdic-
6 tion of the United States or on the high seas.

7 (3) IMPORTATION AND EXPORTATION IN NONDESIGNATED PORTS.—

8 The Secretary of the Interior, under such terms and conditions as the
9 Secretary of the Interior may prescribe, may permit the importation or
10 exportation of fish or wildlife or plants described under paragraph
11 (2)(A) at nondesignated ports. The Secretary of the Interior may per-
12 mit importation or exportation under this paragraph for the health or
13 safety of the fish or wildlife or plants or for other reasons, if, in the
14 discretion of the Secretary of the Interior, it is appropriate and consist-
15 ent with the purpose of this subsection to do so.

16 (4) PORTS DESIGNATED UNDER PRIOR LAW.—A port designated by
17 the Secretary of the Interior under section 4(d) of the Endangered
18 Species Conservation Act of 1969 (Public Law 91–135, 83 Stat. 277;
19 16 U.S.C. 668cc–4(d)) shall, if the designation was in effect on Decem-
20 ber 27, 1973, be considered to be a port designated by the Secretary
21 of the Interior under paragraph (1) until the Secretary of the Interior
22 otherwise provides.

23 (g) OTHER VIOLATIONS.—It is unlawful for a person subject to the juris-
24 diction of the United States to attempt to commit, solicit another to com-
25 mit, or cause to be committed, an offense under this section.

26 **§ 201802. Exemptions**

27 (a) EXEMPTION BY PERMIT.—

28 (1) SCIENTIFIC AND PROPAGATION OR SURVIVAL PURPOSES.—The
29 Secretary may issue a permit to authorize, under such terms and con-
30 ditions as the Secretary shall prescribe, an act prohibited by section
31 201801 of this title if the act is for—

32 (A) a scientific purpose; or

33 (B) enhancement of the propagation or survival of a species, in-
34 cluding an act necessary for the establishment and maintenance
35 of an experimental population under section 201805 of this title.

36 (2) INCIDENTAL TAKINGS.—

37 (A) IN GENERAL.—The Secretary may issue a permit to author-
38 ize, under such terms and conditions as the Secretary shall pre-
39 scribe, a taking prohibited by section 201801(a)(1)(B) of this title
40 if the taking is incidental to, and not the purpose of, the carrying
41 out of a lawful activity.

1 (B) REQUIREMENTS FOR ISSUANCE OF PERMIT FOR INCIDENT-
2 TAL TAKING.—

3 (i) CONSERVATION PLAN.—The Secretary may not issue a
4 permit under subparagraph (A) unless the applicant for the
5 permit submits to the Secretary a conservation plan that
6 specifies—

7 (I) the impact that will likely result from the taking;

8 (II) the steps that the applicant will take to minimize
9 and mitigate the impact, and the funding that will be
10 available to implement those steps;

11 (III) the alternative actions to the taking that the ap-
12 plicant considered and the reasons for not utilizing those
13 alternatives; and

14 (IV) such other measures as the Secretary may re-
15 quire as being necessary or appropriate for purposes of
16 the plan.

17 (ii) FINDINGS AND ASSURANCES.—The Secretary shall
18 issue a permit under subparagraph (A) if—

19 (I) the Secretary finds, after opportunity for public
20 comment, with respect to a permit application and the
21 related conservation plan, that—

22 (aa) the taking will be incidental;

23 (bb) the applicant will, to the maximum extent
24 practicable, minimize and mitigate the impact of the
25 taking;

26 (cc) the applicant will ensure that adequate fund-
27 ing for the conservation plan will be provided;

28 (dd) the taking will not appreciably reduce the
29 likelihood of the survival and recovery of the species
30 in the wild; and

31 (ee) any measures required under clause (i)(IV)
32 will be met; and

33 (II) the Secretary has received other assurances that
34 the Secretary may require that the conservation plan will
35 be implemented.

36 (iii) TERMS AND CONDITIONS AND REPORTING REQUIRE-
37 MENTS.—The permit shall contain such terms and conditions
38 as the Secretary considers appropriate to carry out this para-
39 graph, including such reporting requirements as the Secretary
40 considers necessary for determining whether compliance is
41 being made with the terms and conditions.

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

4 (b) UNDUE ECONOMIC HARDSHIP EXEMPTION.—

5 (1) DEFINITION OF UNDUE ECONOMIC HARDSHIP.—In this sub-
6 section, the term “undue economic hardship” includes—

7 (A) substantial economic loss resulting from inability, caused by
8 this chapter, to perform a contract with respect to a species of fish
9 or wildlife if the contract was entered into prior to the date of
10 publication in the Federal Register of a notice of consideration of
11 the species as an endangered species;

12 (B) substantial economic loss to a person resulting from a tak-
13 ing being made unlawful under this chapter if the person derived
14 a substantial portion of the person’s income from the lawful taking
15 of a listed species for the year prior to the date of publication in
16 the Federal Register of a notice of consideration of the species as
17 an endangered species; and

18 (C) curtailment of subsistence taking, made unlawful under this
19 chapter, by a person—

20 (i) not reasonably able to secure other sources of subsist-
21 ence;

22 (ii) dependent to a substantial extent on hunting and fish-
23 ing for subsistence; and

24 (iii) that must engage in the curtailed taking for subsist-
25 ence purposes.

26 (2) EXEMPTION FROM PROHIBITIONS.—

27 (A) IN GENERAL.—Subject to subparagraph (B), the Secretary,
28 to minimize a person’s undue economic hardship, may exempt the
29 person from section 201801(a) of this title, to the extent the Sec-
30 retary considers appropriate, if—

31 (i) the person enters into a contract with respect to a spe-
32 cies of fish or wildlife or plant before the date of the publica-
33 tion in the Federal Register of notice of consideration of that
34 species as an endangered species; and

35 (ii) the subsequent listing of that species as an endangered
36 species pursuant to subchapter II will cause undue economic
37 hardship to the person under the contract.

38 (B) APPLICATION.—The Secretary may exempt the person re-
39 ferred in to subparagraph (A) if the person—

40 (i) applies to the Secretary for the exemption; and

1 (ii) includes with the application such information as the
2 Secretary may require to prove the person's undue economic
3 hardship.

4 (3) LIMITATIONS.—

5 (A) DURATION.—No exemption under this subsection shall be
6 for a duration of more than 1 year from the date of publication
7 in the Federal Register of notice of consideration of the species
8 concerned.

9 (B) QUANTITY.—No exemption under this subsection shall
10 apply to a quantity of fish or wildlife or plants in excess of that
11 specified by the Secretary.

12 (C) CITES SPECIES.—No exemption under this subsection may
13 be granted for the importation or exportation of a specimen listed
14 in Appendix I of CITES that is to be used in a commercial activ-
15 ity.

16 (4) FURTHER REQUIREMENTS.—The Secretary may make further
17 requirements for a showing of undue economic hardship as the Sec-
18 retary considers appropriate.

19 (5) AUTHORITY OF SECRETARY TO LIMIT EXEMPTIONS.—The Sec-
20 retary may limit an exemption under this subsection as to time, area,
21 or any other factor.

22 (e) EXEMPTION FOR ALASKA NATIVES.—

23 (1) DEFINITIONS.—In this subsection:

24 (A) AUTHENTIC NATIVE ARTICLE OF HANDICRAFT OR CLOTH-
25 ING.—The term “authentic native article of handicraft or cloth-
26 ing” means an item that is—

27 (i) composed, wholly or in some significant respect, of natu-
28 ral material; and

29 (ii) produced, decorated, or fashioned in the exercise of a
30 traditional native handicraft without the use of a pantograph,
31 multiple carver, or other mass copying device.

32 (B) SUBSISTENCE.—The term “subsistence” includes selling an
33 edible portion of fish or wildlife in native villages and towns in
34 Alaska for native consumption within native villages or towns.

35 (C) TRADITIONAL NATIVE HANDICRAFT.—The term “traditional
36 native handicraft” includes weaving, carving, stitching, sewing,
37 lacing, beading, drawing, and painting.

38 (2) IN GENERAL.—Except as provided in paragraph (6), if a taking
39 is primarily for subsistence purposes, this chapter does not apply with
40 respect to the taking of a listed species, or the importation of a listed
41 species taken under this subsection, by—

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

3 (B) a non-native permanent resident of an Alaskan native vil-
4 lage.

5 (3) NONEDIBLE BYPRODUCTS OF SPECIES.—Nonedible byproducts of
6 species taken pursuant to this subsection may be sold in interstate
7 commerce when made into an authentic native article of handicraft or
8 clothing.

9 (4) INAPPLICABILITY OF EXEMPTION.—This subsection shall not
10 apply to a non-native resident of an Alaskan native village found by
11 the Secretary to be not primarily dependent on the taking of fish or
12 wildlife—

13 (A) for consumption; or

14 (B) for the creation and sale of authentic native articles of
15 handicrafts or clothing.

16 (5) WASTE.—A taking under this subsection shall not be accom-
17 plished in a wasteful manner.

18 (6) AUTHORITY OF SECRETARY TO REGULATE TAKING NOTWITH-
19 STANDING EXEMPTION.—

20 (A) IN GENERAL.—If the Secretary determines that a taking of
21 a listed species under paragraph (2) would materially and nega-
22 tively affect the listed species, the Secretary may prescribe regula-
23 tions on the taking.

24 (B) CONTENTS.—A regulation under subparagraph (A) may be
25 established with reference to species, geographical description of
26 the area included, the season for taking, or other factors relating
27 to the reason for establishing the regulation and consistent with
28 the policy of this chapter.

29 (C) NOTICE AND HEARINGS.—A regulation under subparagraph
30 (A) shall be prescribed after notice and hearings in the affected
31 judicial districts of Alaska and as otherwise required by section
32 221206 of this title.

33 (D) RESCISSION.—A regulation under subparagraph (A) shall be
34 rescinded as soon as the Secretary determines that the need for
35 the imposition of the regulation has disappeared.

36 (d) CERTAIN ANTIQUE ARTICLES.—

37 (1) IN GENERAL.—Subsections (a) and (c) of section 201801 and
38 section 201206 of this title do not apply to an article that—

39 (A) is 100 or more years old;

40 (B) is composed in whole or in part of a listed species;

1 (C) has not been repaired or modified with any part of a listed
2 species on or after December 28, 1973; and

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

4 (2) IMPORTATION DOCUMENTATION.—A person that wishes to im-
5 port an article under the exemption provided by this subsection shall
6 submit to the customs officer concerned, at the time of entry of the
7 article, such documentation as the Secretary of Homeland Security,
8 after consultation with the Secretary of the Interior, shall by regulation
9 require as being necessary to establish that the article meets the re-
10 quirements set forth in subparagraphs (A), (B), and (C) of paragraph
11 (1).

12 (3) DESIGNATION OF PORTS.—The Secretary of Homeland Security,
13 after consultation with the Secretary of the Interior, shall designate 1
14 port within each customs region at which articles that satisfy each of
15 subparagraphs (A), (B), and (C) of paragraph (1) shall be entered into
16 the customs territory of the United States.

17 (e) NONCOMMERCIAL TRANSSHIPMENTS.—An importation into the
18 United States of fish or wildlife shall be an importation not in violation of
19 this chapter (including a regulation prescribed under this chapter) while the
20 fish or wildlife remains in the control of the United States Customs Service
21 if—

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

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

27 (3) the exporter or owner of the fish or wildlife gave explicit instruc-
28 tions not to ship the fish or wildlife through a place subject to the ju-
29 risdiction of the United States, or did all that could have reasonably
30 been done to prevent transshipment, and the circumstances leading to
31 the transshipment were beyond the exporter's or owner's control;

32 (4) the applicable requirements of CITES are satisfied; and

33 (5) the importation is not made in the course of a commercial activ-
34 ity.

35 **§ 201803. Permit and undue economic hardship exemption**
36 **procedures**

37 (a) REQUIREMENTS FOR GRANTING PERMITS AND EXEMPTIONS.—The
38 Secretary may grant a permit under section 201802(a)(1) of this title or
39 an undue economic hardship exemption under section 201802(b) of this title
40 if the Secretary finds and publishes the Secretary's finding in the Federal
41 Register that—

- 1 (1) the permit or exemption was applied for in good faith;
- 2 (2) if granted and exercised, the permit or exemption will not operate
- 3 to the disadvantage of the endangered species subject to the permit or
- 4 exemption; and
- 5 (3) the permit or exemption will be consistent with the purposes and
- 6 policy set forth in section 201101 of this title.

7 (b) NOTICE AND REVIEW.—

8 (1) FEDERAL REGISTER.—The Secretary shall publish notice in the
9 Federal Register of each application for a permit under section
10 201802(a) of this title or undue economic hardship exemption under
11 section 201802(b) of this title.

12 (2) TIME REQUIREMENT.—

13 (A) IN GENERAL.—A notice under paragraph (1) shall invite the
14 submission from interested parties, not later than 30 days after
15 the date of the notice, of written data, views, or arguments with
16 respect to the application.

17 (B) WAIVER FOR EMERGENCY SITUATIONS.—The 30-day period
18 under subparagraph (A) may be waived by the Secretary in an
19 emergency situation if—

- 20 (i) the health or life of an animal listed as an endangered
- 21 species is threatened; and
- 22 (ii) no reasonable alternative is available to the applicant.

23 (C) WAIVER NOTICE.—Notice of a waiver under subparagraph
24 (B) shall be published by the Secretary in the Federal Register
25 not later than 10 days following the issuance of the permit or ex-
26 emption.

27 (3) PUBLIC RECORD.—Information received by the Secretary as part
28 of a permit or exemption application shall be available to the public as
29 a matter of public record at every stage of the proceeding.

30 (c) BURDEN OF PROOF.—In connection with an action alleging a viola-
31 tion of section 201801 of this title, a person claiming the benefit of a permit
32 or exemption under this chapter shall have the burden of proving that the
33 permit or exemption—

- 34 (1) is applicable;
- 35 (2) has been granted; and
- 36 (3) was valid and in force at the time of the alleged violation.

37 **§ 201804. Lawful approach no closer than 100 yards to**
38 **humpback whales**

39 Notwithstanding any provision of this chapter or any other law, in waters
40 of the United States surrounding the State of Hawaii, it is lawful for a per-
41 son subject to the jurisdiction of the United States to approach, by any

1 means other than an aircraft, no closer than 100 yards to a humpback
2 whale.

3 **§ 201805. Experimental populations**

4 (a) DEFINITION OF EXPERIMENTAL POPULATION.—In this section, the
5 term “experimental population” means a population (including any off-
6 spring arising solely from the population) authorized by the Secretary for
7 release under subsection (b), but only at such times as the population is
8 wholly separate geographically from nonexperimental populations of the
9 same species.

10 (b) RELEASE OF CERTAIN SPECIES.—

11 (1) IN GENERAL.—The Secretary may authorize the release (and the
12 related transportation) of a population (including eggs, propagules, or
13 individuals) of a listed species outside the current range of the listed
14 species if the Secretary determines that the release will further the con-
15 servation of the listed species.

16 (2) REQUIRED DETERMINATION BY SECRETARY.—Before authorizing
17 the release of a population under paragraph (1), the Secretary shall by
18 regulation identify the population and determine, on the basis of the
19 best available information, whether the population is essential to the
20 continued existence of a listed species.

21 (3) TREATMENT AS THREATENED SPECIES.—In this chapter, each
22 member of an experimental population shall be treated as a member
23 of a threatened species, except that—

24 (A) solely for purposes of subchapter IV (other than section
25 201402 of this title), an experimental population determined under
26 paragraph (2) to be not essential to the continued existence of a
27 species shall be treated, except when it occurs in an area within
28 the National Wildlife Refuge System or the National Park System,
29 as a proposed species; and

30 (B) critical habitat shall not be designated under this chapter
31 for an experimental population determined under paragraph (2) to
32 be not essential to the continued existence of a species.

33 **§ 201806. Civil penalties**

34 (a) PENALTY AMOUNTS.—

35 (1) PENALTY OF NOT MORE THAN \$25,000.—

36 (A) IN GENERAL.—A person that knowingly violates, or a per-
37 son engaged in business as an importer or exporter of fish or wild-
38 life or plants that violates, any of the provisions listed under sub-
39 paragraph (B) may be assessed a civil penalty by the Secretary
40 of not more than \$25,000 for each violation.

1 (B) PROVISIONS.—The provisions referred to in subparagraph
2 (A) are—
3 (i) a provision of this chapter;
4 (ii) a provision of a permit or certificate issued under this
5 chapter; and
6 (iii) a provision of a regulation prescribed to implement—
7 (I) subparagraph (A), (B), (C), (D), (E), or (F) of
8 section 201801(a)(1) of this title;
9 (II) subparagraph (A), (B), (C), or (D) of section
10 201801(a)(2) of this title; or
11 (III) subsection (e), (d) (other than a regulation relat-
12 ing to recordkeeping or filing of reports), (f), or (g) of
13 section 201801 of this title.

14 (2) PENALTY OF NOT MORE THAN \$12,000.—A person that knowingly
15 violates, or a person engaged in business as an importer or exporter
16 of fish or wildlife or plants that violates, a provision of a regulation
17 prescribed under this chapter other than a provision listed under para-
18 graph (1)(B)(iii) may be assessed a civil penalty by the Secretary of
19 not more than \$12,000 for each violation.

20 (3) PENALTY OF NOT MORE THAN \$500.—A person that violates a
21 provision of this chapter, or any regulation, permit, or certificate issued
22 under this chapter, otherwise than as described in paragraph (1) or
23 (2), may be assessed a civil penalty by the Secretary of not more than
24 \$500 for each violation.

25 (b) NOTICE AND HEARING.—A person may not be assessed a penalty
26 under this section unless the person is given notice and opportunity for a
27 hearing with respect to the violation.

28 (c) SEPARATE OFFENSE.—Each violation shall be a separate offense.

29 (d) REMISSION OR MITIGATION.—A civil penalty under this section may
30 be remitted or mitigated by the Secretary.

31 (e) FAILURE TO PAY PENALTY.—

32 (1) CIVIL ACTION.—On a failure to pay a penalty assessed under
33 this section, the Secretary may request the Attorney General to com-
34 mence a civil action to collect the penalty.

35 (2) JURISDICTION.—A civil action described in paragraph (1) shall
36 be commenced in a United States district court for any district in
37 which the person is found, resides, or transacts business, and the dis-
38 trict court shall have jurisdiction to hear and decide the civil action.

39 (3) SUBSTANTIAL EVIDENCE.—The district court shall hear the civil
40 action on the record made before the Secretary and shall sustain the

1 Secretary's civil action if the civil action is supported by substantial
2 evidence on the record considered as a whole.

3 (f) HEARING PROCEDURES.—

4 (1) COMPLIANCE WITH GENERAL ADMINISTRATIVE PROCEDURES.—

5 A hearing held during proceedings for the assessment of a civil penalty
6 under this section shall be conducted in accordance with section 554
7 of title 5.

8 (2) SUBPOENAS AND OATHS.—The Secretary may—

9 (A) issue subpoenas for the attendance and testimony of wit-
10 nesses and the production of relevant records; and

11 (B) administer oaths.

12 (3) PAYMENT OF WITNESSES.—A witness summoned shall be paid
13 the same fees and mileage that are paid to witnesses in United States
14 courts.

15 (4) CONTUMACY OR REFUSAL TO OBEY SUBPOENA.—

16 (A) ORDER.—In case of contumacy or refusal to obey a sub-
17 poena served on a person under this subsection, the United States
18 district court for any district in which the person is found, resides,
19 or transacts business, on application by the United States and
20 after notice to the person, shall have jurisdiction to issue an order
21 requiring the person to appear and give testimony before the Sec-
22 retary or to appear and produce documents before the Secretary,
23 or both.

24 (B) FAILURE TO OBEY ORDER.—Failure to obey an order of a
25 district court issued under subparagraph (A) may be punished by
26 the district court as contempt.

27 (g) EXCEPTION TO IMPOSITION OF CIVIL PENALTY.—Notwithstanding
28 subsection (a), no civil penalty shall be imposed if it can be shown by a pre-
29 ponderance of the evidence that the defendant committed an act based on
30 a good faith belief that the defendant was acting to protect the defendant,
31 a member of the defendant's family, or any other individual, from bodily
32 harm from a listed species.

33 **§ 201807. Criminal penalties**

34 (a) PENALTIES.—Criminal penalties for a violation of this chapter are
35 provided under section 50(a) of title 18.

36 (b) REVOCATION OF AGREEMENTS.—

37 (1) IN GENERAL.—The head of a Federal agency that has issued a
38 lease, license, permit, or other agreement described in paragraph (2)
39 to a person that is convicted of a criminal violation of this chapter or
40 a regulation, permit, or certificate issued under this chapter may imme-

1 diately modify, suspend, or revoke the lease, license, permit, or other
2 agreement.

3 (2) LEASE, LICENSE, PERMIT, OR OTHER AGREEMENT.—A lease, li-
4 cense, permit, or other agreement referred to in paragraph (1) is a
5 lease, license, permit, or other agreement—

6 (A) authorizing a person to import or export fish or wildlife or
7 plants;

8 (B) authorizing a person to operate a quarantine station for im-
9 ported wildlife; or

10 (C) authorizing the use of Federal land, including grazing of do-
11 mestic livestock.

12 (c) SUSPENSION OR CANCELLATION OF FEDERAL HUNTING OR FISHING
13 PERMITS OR STAMPS.—The Secretary shall suspend for a period of up to
14 1 year, or cancel, a Federal hunting or fishing permit or stamp issued to
15 a person that is convicted of a criminal violation of—

16 (1) a provision of this chapter; or

17 (2) a provision of a regulation, permit, or certificate issued under
18 this chapter.

19 (d) NO LIABILITY.—The United States shall not be liable for the pay-
20 ment of compensation, reimbursement, or damages in connection with the
21 modification, suspension, revocation, or cancellation of a lease, license, per-
22 mit, stamp, or other agreement under this section.

23 **§ 201808. Jurisdiction**

24 (a) IN GENERAL.—The United States district courts, including the courts
25 enumerated in section 460 of title 28, shall have jurisdiction over an action
26 arising under this chapter.

27 (b) AMERICAN SAMOA.—For purposes of this chapter, American Samoa
28 shall be included within the judicial district of the United States District
29 Court for the District of Hawaii.

30 **§ 201809. Rewards and incidental expenses**

31 (a) PAYMENT SOURCE.—The Secretary or the Secretary of the Treasury
32 shall pay, from sums received as penalties or fines, or from forfeitures of
33 fish or wildlife, plants, or other property, for a violation of this chapter (in-
34 cluding a regulation prescribed under this chapter)—

35 (1) a reward to a person that furnishes information that leads to an
36 arrest, criminal conviction, civil penalty assessment, or forfeiture of fish
37 or wildlife, or of a plant or other property, for a violation of this chap-
38 ter or a regulation prescribed under this chapter; and

39 (2) the reasonable and necessary costs incurred by a person in pro-
40 viding temporary care for any fish or wildlife or plant pending the dis-

1 position of a civil or criminal proceeding alleging a violation of this
2 chapter with respect to the fish or wildlife or plant.

3 (b) AMOUNT OF REWARD.—The amount of the reward, if any, is to be
4 designated by the Secretary or the Secretary of the Treasury, as appro-
5 priate.

6 (c) INELIGIBILITY FOR PAYMENT.—An officer or employee of the United
7 States or a State or local government who furnishes information or renders
8 service in the performance of the officer's or employee's official duties is in-
9 eligible for a reward under this section.

10 (d) EXCESS AMOUNT.—When the balance of sums received under this
11 subchapter and section 203108(e) of this title, as penalties or fines, or from
12 forfeitures of fish or wildlife, plants, or other property, exceeds \$500,000,
13 the Secretary of the Treasury shall deposit an amount equal to the excess
14 balance in the Cooperative Endangered Species Conservation Fund estab-
15 lished in section 201308 of this title.

16 **§ 201810. Enforcement**

17 (a) AUTHORITY TO ENFORCE.—

18 (1) IN GENERAL.—This chapter (including a regulation or permit is-
19 sued under this chapter) shall be enforced by the Secretary, the Sec-
20 retary of the Treasury, or the Secretary of the Department in which
21 the Coast Guard is operating, or all of those Secretaries.

22 (2) PERSONNEL, SERVICES, AND FACILITIES.—Any of the Secretar-
23 ies referred to in paragraph (1) may utilize by agreement, with or with-
24 out reimbursement, the personnel, services, and facilities of any other
25 Federal agency or a State agency to enforce this chapter.

26 (b) WARRANTS AND OTHER PROCESS.—United States district court
27 judges and United States magistrate judges may, within their respective ju-
28 risdictions, on proper oath or affirmation showing probable cause, issue war-
29 rants or other process required for enforcement of this chapter (including
30 a regulation prescribed under this chapter).

31 (c) GENERAL ENFORCEMENT AUTHORITIES.—

32 (1) DEFINITION OF LAW ENFORCEMENT AUTHORITY.—In this sub-
33 section, the term “law enforcement authority” means an individual au-
34 thorized by the Secretary, the Secretary of the Treasury, or the Sec-
35 retary of the Department in which the Coast Guard is operating to en-
36 force this chapter.

37 (2) IN GENERAL.—A law enforcement authority may—

38 (A) detain for inspection and inspect a package, crate, or other
39 container, including its contents, and all accompanying documents,
40 on importation or exportation;

1 (B) make an arrest without a warrant for a violation of this
2 chapter if the law enforcement authority has reasonable grounds
3 to believe that the individual to be arrested is committing the vio-
4 lation in the law enforcement authority's presence or view;

5 (C) execute and serve an arrest warrant, search warrant, or
6 other warrant or civil or criminal process issued by an officer or
7 court of competent jurisdiction for enforcement of this chapter;
8 and

9 (D) search and seize, with or without a warrant, as authorized
10 by law.

11 (d) PROPERTY SEIZED.—

12 (1) IN GENERAL.—Any fish or wildlife, plant, or other property
13 seized under subsection (e)(2)(D) shall be held by a person authorized
14 by the Secretary, the Secretary of the Treasury, or the Secretary of
15 the Department in which the Coast Guard is operating pending disposi-
16 tion of civil or criminal proceedings, or the institution of an action in
17 rem for forfeiture of the fish or wildlife, plant, or other property under
18 subsection (e).

19 (2) BOND.—The Secretary may, in lieu of holding the fish or wild-
20 life, plant, or other property seized, permit the owner or consignee to
21 post a bond or other surety satisfactory to the Secretary.

22 (3) DISPOSAL OF ITEMS.—Notwithstanding paragraph (2), the fish
23 or wildlife, plant, or other property shall be disposed of (other than by
24 sale to the general public) by the Secretary in such a manner, consist-
25 ent with this chapter, as the Secretary shall by regulation prescribe
26 on—

27 (A) forfeiture to the United States of the fish or wildlife, plant,
28 or other property; or

29 (B) the abandonment or waiver of a claim to the fish or wildlife,
30 plant, or other property.

31 (e) FORFEITURE.—

32 (1) IN GENERAL.—All fish or wildlife or plants taken, possessed,
33 sold, purchased, offered for sale or purchase, transported, delivered, re-
34 ceived, carried, shipped, exported, or imported contrary to this chapter
35 (including a regulation prescribed under this chapter) or a permit or
36 certificate issued under this chapter, shall be subject to forfeiture to
37 the United States.

38 (2) EQUIPMENT AND TRANSPORTATION.—All guns, traps, nets, and
39 other equipment, and vessels, vehicles, aircraft, and other means of
40 transportation used to aid the taking, possessing, selling, purchasing,
41 offering for sale or purchase, transporting, delivering, receiving, carry-

1 ing, shipping, exporting, or importing of any fish or wildlife or plants
2 in violation of this chapter (including a regulation prescribed under this
3 chapter) or a permit or certificate issued under this chapter shall be
4 subject to forfeiture to the United States on conviction of a criminal
5 violation under section 50(a) of title 18.

6 (f) APPLICABILITY OF CUSTOMS LAWS.—

7 (1) IN GENERAL.—All laws relating to—

8 (A) seizure, forfeiture, and condemnation of a vessel for viola-
9 tion of the customs laws of the United States;

10 (B) disposition of the vessel or the proceeds from the sale of
11 the vessel; and

12 (C) remission or mitigation of the forfeiture for violation of the
13 customs laws of the United States;

14 shall apply to the seizures and forfeitures incurred or alleged to have
15 been incurred under this chapter, to the extent that those laws are ap-
16 plicable and not inconsistent with this chapter.

17 (2) POWERS, RIGHTS, AND DUTIES OF SECRETARY RELATING TO
18 CUSTOMS LAWS.—All powers, rights, and duties conferred or imposed
19 by the customs laws on an officer or employee of the Department of
20 the Treasury or Department of Homeland Security shall, for the pur-
21 poses of this chapter, be exercised or performed by the Secretary or
22 by such persons as the Secretary may designate.

23 (g) INJUNCTION.—The Attorney General may seek to enjoin a person
24 that is alleged to be in violation of this chapter (including a regulation pre-
25 scribed under this chapter).

26 **§ 201811. Regulations and fees**

27 (a) IN GENERAL.—The Secretary, the Secretary of the Treasury, and the
28 Secretary of the Department in which the Coast Guard is operating, may—

29 (1) prescribe such regulations as may be appropriate to enforce this
30 chapter; and

31 (2) charge reasonable fees for expenses to the Federal Government
32 connected with—

33 (A) permits or certificates authorized by this chapter, including
34 processing applications and reasonable inspections; and

35 (B) the transfer, board, handling, or storage of fish or wildlife,
36 plants, and other property seized and forfeited under this chapter.

37 (b) DEPOSIT OF FEES.—All fees collected under this section shall be de-
38 posited in the Treasury to the credit of the appropriation that is current
39 and chargeable for the cost of furnishing the services under subsection (a).

40 (c) REIMBURSEMENT OF EXPENDED FUNDS.—Appropriated funds may
41 be expended pending reimbursement from parties in interest.

1 **§ 201812. Civil actions by citizens**

2 (a) IN GENERAL.—Except as provided in subsection (b), a person may
3 commence a civil action on the person’s own behalf—

4 (1) to enjoin a person, including the United States and any other
5 governmental instrumentality or agency (to the extent permitted by the
6 Eleventh Amendment to the Constitution), that is alleged to be in vio-
7 lation of any provision of this chapter (including a regulation pre-
8 scribed under this chapter); or

9 (2) against the Secretary where there is alleged a failure of the Sec-
10 retary to perform an act or duty under subchapter II that is not discre-
11 tionary with the Secretary.

12 (b) LIMITATIONS.—

13 (1) ACTIONS TO ENJOIN VIOLATORS.—No civil action may be com-
14 menced under subsection (a)(1)—

15 (A) prior to 60 days after written notice of the violation has
16 been given to the Secretary, and to any alleged violator of the pro-
17 vision or regulation concerned;

18 (B) if the Secretary has commenced action to impose a civil
19 penalty pursuant to section 201806 of this title; or

20 (C) if the United States has commenced and is diligently pros-
21 ecuting a criminal action in a court of the United States or a
22 State to redress a violation of the provision or regulation con-
23 cerned.

24 (2) ACTIONS AGAINST THE SECRETARY.—No civil action may be
25 commenced under subsection (a)(2) prior to 60 days after written no-
26 tice is given to the Secretary, except that an action under subsection
27 (a)(2) may be commenced immediately after the written notice is given
28 to the Secretary in the case of a civil action respecting an emergency
29 posing a significant risk to the well-being of a species of fish or wildlife
30 or plants.

31 (c) VENUE.—A civil action under this section may be commenced in the
32 judicial district in which the violation occurs.

33 (d) INTERVENTION BY ATTORNEY GENERAL.—In a civil action under this
34 section in which the United States is not a party, the Attorney General, at
35 the request of the Secretary, may intervene on behalf of the United States
36 as a matter of right.

37 (e) COSTS OF LITIGATION.—The court, in issuing a final order in a civil
38 action commenced under subsection (a), may award costs of litigation (in-
39 cluding reasonable attorney and expert witness fees) to a party, whenever
40 the court determines that such an award is appropriate.

1 (f) NO RESTRICTION ON RIGHTS.—The injunctive relief provided by this
2 section shall not restrict any right that a person (or class of persons) may
3 have under a statute or common law to seek enforcement of a standard or
4 limitation or to seek any other relief (including relief against the Secretary
5 or a State agency).

6 **Subchapter IX—Miscellaneous**

7 **§ 201901. Coordination with animal quarantine laws**

8 The Secretary of Agriculture, the Secretary of Homeland Security, and
9 the Secretary shall provide for appropriate coordination of the administra-
10 tion of this chapter with the administration of the animal quarantine laws
11 (as defined in section 2509(f) of the Food, Agriculture, Conservation, and
12 Trade Act of 1990 (21 U.S.C. 136a(f)).

13 **§ 201902. Effect of chapter**

14 (a) FUNCTIONS OF THE SECRETARY OF AGRICULTURE AND SECRETARY
15 OF HOMELAND SECURITY.—Nothing in this chapter or any amendment
16 made by section 13 of the Endangered Species Act of 1973 (Public Law
17 93–205, 87 Stat. 902) supersedes or limits the functions of the Secretary
18 of Agriculture or the Secretary of Homeland Security under any other law
19 relating to prohibited or restricted importations or possession of animals
20 and other articles.

21 (b) OTHER PROCEEDINGS.—No proceeding or determination under this
22 chapter shall preclude any proceeding or be considered determinative of any
23 issue of fact or law in any proceeding under any Federal statute adminis-
24 tered by the Secretary of Agriculture.

25 (c) FUNCTIONS OF THE SECRETARY OF THE TREASURY AND SECRETARY
26 OF HOMELAND SECURITY.—Nothing in this chapter supersedes or limits
27 the functions and responsibilities of the Secretary of the Treasury or the
28 Secretary of Homeland Security under the Tariff Act of 1930 (19 U.S.C.
29 1202 et seq.), including chapter 209 of this title.

30 (d) CHAPTER 221.—Except as otherwise provided in this chapter, no pro-
31 vision of this chapter shall take precedence over a more restrictive conflict-
32 ing provision of chapter 221 of this title.

33 **§ 201903. Annual cost analysis**

34 On or before January 15 of each year, the Secretary of the Interior, act-
35 ing through USFWS, shall submit to Congress a report covering the preced-
36 ing fiscal year that contains an accounting on a species-by-species basis of—

37 (1) all reasonably identifiable Federal expenditures made primarily
38 for the conservation of listed species under this chapter; and

39 (2) all reasonably identifiable expenditures made primarily for the
40 conservation of listed species under this chapter by States receiving
41 grants under subchapter III.

1 **Chapter 203—Protection of Fish or Wildlife**
2 **and Wild Plants Against Illegal Taking,**
3 **Possession, Transportation, or Sale**

Sec.

- 203101. Definitions.
- 203102. Offenses.
- 203103. Exceptions.
- 203104. Civil penalties.
- 203105. Criminal penalties.
- 203106. Permit, license, and stamp sanctions.
- 203107. Forfeiture.
- 203108. Enforcement.
- 203109. Authorities.
- 203110. Miscellaneous.

4 **§ 203101. Definitions**

5 In this chapter:

6 (1) FISH OR WILDLIFE.—

7 (A) IN GENERAL.—The term “fish or wildlife” means a wild
8 member of the animal kingdom whether alive or dead, and whether
9 bred, hatched, or born in captivity.

10 (B) INCLUSIONS.—The term “fish or wildlife” includes—

- 11 (i) a wild mammal, bird, reptile, amphibian, or fish;
- 12 (ii) a wild mollusk, crustacean, arthropod, coelenterate, or
13 other invertebrate; and
- 14 (iii) any part, product, egg, or offspring of a wild member
15 of the animal kingdom.

16 (2) FISH OR WILDLIFE OR WILD PLANT REGULATORY LAW.—The
17 term “fish or wildlife or wild plant regulatory law” means a treaty (to
18 which the United States is a party), statute, regulation, or other prohi-
19 bition or requirement that has the force of law and that regulates the
20 taking, possession, importation, exportation, transportation, or sale of
21 fish or wildlife or wild plants.

22 (3) IMPORT.—The term “import” means to land on, bring into, or
23 introduce into a place subject to the jurisdiction of the United States,
24 whether or not the landing, bringing, or introduction constitutes an im-
25 portation within the meaning of the customs laws of the United States.

26 (4) INDIAN TRIBAL FISH OR WILDLIFE OR WILD PLANT REGULATORY
27 LAW.—The term “Indian tribal fish or wildlife or wild plant regulatory
28 law” means a regulation of, or other rule of conduct enforceable by,
29 an Indian tribe, band, or group, to the extent that—

30 (A) the regulation or rule regulates the taking, possession, im-
31 portation, exportation, transportation, or sale of fish or wildlife or
32 wild plants; and

1 (B) the regulation or rule applies within Indian country (as de-
2 fined in section 1151 of title 18).

3 (5) PERSON.—The term “person” means—

4 (A) an individual, partnership, association, corporation, or trust;

5 (B) an officer, employee, agent, department, or instrumentality
6 of the Federal Government, a State, or a political subdivision of
7 a State; or

8 (C) any other entity subject to the jurisdiction of the United
9 States.

10 (6) PROHIBITED WILDLIFE SPECIES.—The term “prohibited wildlife
11 species” means a live species of—

12 (A) lion, tiger, leopard, cheetah, jaguar, or cougar; or

13 (B) any hybrid of the species listed in subparagraph (A).

14 (7) SECRETARY.—The term “Secretary”—

15 (A) means—

16 (i) the Secretary of the Interior; or

17 (ii) the Secretary of Commerce, as program responsibilities
18 are vested under section 107105 of this title; and

19 (B) with respect to the provisions of this chapter that pertain
20 to the importation or exportation of wild plants, and subject to
21 section 421 of the Homeland Security Act of 2002 (6 U.S.C. 231)
22 and the Department of Homeland Security Reorganization Plan of
23 November 25, 2002 (6 U.S.C. 542 note), means the Secretary of
24 Agriculture, concurrently with the Secretary of the Interior.

25 (8) STATE.—The term “State” means a State, the District of Co-
26 lumbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the
27 Northern Mariana Islands, and any other territory (including a posses-
28 sion) of the United States.

29 (9) TAKE.—The term “take”, with respect to any fish or wildlife or
30 wild plant, means to capture, kill, or collect the fish or wildlife or the
31 wild plant and, with respect to a wild plant, also means to harvest, cut,
32 log, or remove the wild plant.

33 (10) TRANSPORT.—The term “transport”, with respect to any fish
34 or wildlife or wild plant, means—

35 (A) to move, convey, carry, or ship the fish or wildlife or wild
36 plant by any means; or

37 (B) to deliver or receive the fish or wildlife or wild plant for the
38 purpose of movement, conveyance, carriage, or shipment.

39 (11) WILD PLANT.—

40 (A) IN GENERAL.—The term “wild plant” means a wild member
41 of the plant kingdom.

- 1 (B) INCLUSIONS.—The term “wild plant” includes—
- 2 (i) a root, seed, part, or product of a wild plant; and
- 3 (ii) a tree from a natural or planted forest stand.
- 4 (C) EXCLUSIONS.—The term “wild plant” does not include—
- 5 (i) a common cultivar, except a tree;
- 6 (ii) a common food crop (including a root, seed, part, or
- 7 product of a common food crop);
- 8 (iii) a scientific specimen of plant genetic material (includ-
- 9 ing a root, seed, germplasm, part, or product of plant genetic
- 10 material) that is to be used only for laboratory or field re-
- 11 search; or
- 12 (iv) a plant that is—
- 13 (I) to remain planted; or
- 14 (II) to be planted or replanted.
- 15 (D) EXCEPTIONS TO APPLICABILITY OF EXCLUSIONS.—The ex-
- 16 clusions made by clauses (iii) and (iv) of subparagraph (C) do not
- 17 apply if the plant is listed—
- 18 (i) in an appendix to the Convention on International
- 19 Trade in Endangered Species of Wild Fauna and Flora, done
- 20 at Washington March 3, 1973 (27 UST 1087; TIAS 8249);
- 21 (ii) as an endangered species or threatened species under
- 22 chapter 201 of this title; or
- 23 (iii) pursuant to a State law that provides for the conserva-
- 24 tion of species that are indigenous to the State and are
- 25 threatened with extinction.

26 **§ 203102. Offenses**

- 27 (a) GENERAL OFFENSES.—
- 28 (1) IN GENERAL.—It is unlawful for a person—
- 29 (A) to import, export, transport, sell, receive, acquire, or pur-
- 30 chase any fish or wildlife or wild plant taken, possessed, trans-
- 31 ported, or sold in violation of Federal fish or wildlife or wild plant
- 32 regulatory law or Indian tribal fish or wildlife or wild plant regu-
- 33 latory law;
- 34 (B) to import, export, transport, sell, receive, acquire, or pur-
- 35 chase in interstate or foreign commerce—
- 36 (i) any fish or wildlife taken, possessed, transported, or
- 37 sold in violation of State or foreign fish or wildlife or wild
- 38 plant regulatory law;
- 39 (ii) a wild plant taken, possessed, transported, or sold—

- 1 (I) in violation of State or foreign fish or wildlife or
- 2 wild plant regulatory law that protects wild plants or
- 3 that regulates—
- 4 (aa) the theft of wild plants;
- 5 (bb) the taking of wild plants from a park, forest
- 6 reserve, or other officially protected area;
- 7 (cc) the taking of wild plants from an officially
- 8 designated area; or
- 9 (dd) the taking of wild plants without, or con-
- 10 trary to, required authorization;
- 11 (II) without the payment of appropriate royalties,
- 12 taxes, or stumpage fees required for the wild plant by
- 13 State or foreign fish or wildlife or wild plant regulatory
- 14 law; or
- 15 (III) in violation of a limitation under State or foreign
- 16 fish or wildlife or wild plant regulatory law governing the
- 17 export or transshipment of wild plants; or
- 18 (iii) a member of a prohibited wildlife species;
- 19 (C) within the special maritime and territorial jurisdiction of the
- 20 United States (as defined in section 7 of title 18)—
- 21 (i) to possess any fish or wildlife taken, possessed, trans-
- 22 ported, or sold in violation of State or foreign fish or wildlife
- 23 or wild plant regulatory law, or Indian tribal fish or wildlife
- 24 or wild plant regulatory law; or
- 25 (ii) to possess a wild plant taken, possessed, transported,
- 26 or sold—
- 27 (I) in violation of State or foreign fish or wildlife or
- 28 wild plant regulatory law that protects wild plants or
- 29 that regulates—
- 30 (aa) the theft of wild plants;
- 31 (bb) the taking of wild plants from a park, forest
- 32 reserve, or other officially protected area;
- 33 (cc) the taking of wild plants from an officially
- 34 designated area; or
- 35 (dd) the taking of wild plants without, or con-
- 36 trary to, required authorization;
- 37 (II) without the payment of appropriate royalties,
- 38 taxes, or stumpage fees required for the wild plant by
- 39 State or foreign fish or wildlife or wild plant regulatory
- 40 law; or

1 (III) in violation of a limitation under State or foreign
2 fish or wildlife or wild plant regulatory law governing the
3 export or transshipment of wild plants; or

4 (D) to attempt to commit an act described in subparagraphs
5 (A) through (C).

6 (2) SALE AND PURCHASE OF GUIDING AND OUTFITTING SERVICES
7 AND INVALID LICENSES AND PERMITS.—

8 (A) SALE.—It is deemed to be a sale of fish or wildlife in viola-
9 tion of paragraph (1) for a person, for money or other consider-
10 ation, to offer or provide—

11 (i) guiding, outfitting, or any other service for the illegal
12 taking, acquiring, receiving, transporting, or possessing of
13 fish or wildlife; or

14 (ii) a hunting or fishing license or permit for the illegal
15 taking, acquiring, receiving, transporting, or possessing of
16 fish or wildlife.

17 (B) PURCHASE.—It is deemed to be a purchase of fish or wild-
18 life in violation of paragraph (1) for a person, for money or other
19 consideration, to obtain—

20 (i) guiding, outfitting, or any other service for the illegal
21 taking, acquiring, receiving, transporting, or possessing of
22 fish or wildlife; or

23 (ii) a hunting or fishing license or permit for the illegal
24 taking, acquiring, receiving, transporting, or possessing of
25 fish or wildlife.

26 (b) MARKING, LABELING, OR TAGGING OFFENSES.—It is unlawful for a
27 person to import, export, or transport in interstate commerce a container
28 or package containing any fish or wildlife unless the container or package
29 has previously been plainly marked, labeled, or tagged in accordance with
30 the regulations prescribed under section 203109(a)(2) of this title.

31 (c) FALSIFICATION OFFENSES.—It is unlawful for a person to make or
32 submit a false record, account, or label for, or a false identification of, any
33 fish or wildlife or wild plant that has been or is intended to be—

34 (1) imported, exported, transported, sold, purchased, or received
35 from a foreign country; or

36 (2) transported in interstate or foreign commerce.

37 (d) WILD PLANT DECLARATION OFFENSES.—

38 (1) IMPORT DECLARATION.—It is unlawful for a person to import a
39 wild plant unless the person files on importation a declaration that con-
40 tains—

1 (A) the scientific name of the wild plant (including the genus
2 and species of the wild plant) contained in the importation;

3 (B) a description of—

4 (i) the value of the importation; and

5 (ii) the quantity, including the unit of measure, of the wild
6 plant; and

7 (C) the name of the country from which the wild plant was
8 taken.

9 (2) DECLARATION RELATING TO WILD PLANT PRODUCTS.—Until the
10 date on which the Secretary prescribes a regulation under paragraph
11 (4), a declaration relating to a wild plant product shall—

12 (A) in a case in which the species of wild plant used to produce
13 the wild plant product that is the subject of the importation var-
14 ies, and the species used to produce the wild plant product is un-
15 known, contain the name of each species of wild plant that may
16 have been used to produce the wild plant product;

17 (B) in a case in which the species of wild plant used to produce
18 the wild plant product that is the subject of the importation is
19 commonly taken from more than 1 country, and the country from
20 which the wild plant was taken and used to produce the wild plant
21 product is unknown, contain the name of each country from which
22 the wild plant may have been taken; and

23 (C) in a case in which a paper or paperboard wild plant product
24 includes recycled wild plant product, contain the average percent-
25 age of recycled content without regard for the species or country
26 of origin of the recycled wild plant product, in addition to the in-
27 formation for the nonrecycled wild plant content otherwise re-
28 quired by this subsection.

29 (3) EXCLUSIONS.—Paragraphs (1) and (2) do not apply to a wild
30 plant used exclusively as packaging material to support, protect, or
31 carry another item, unless the packaging material itself is the item
32 being imported.

33 (4) REGULATIONS.—The Secretary may prescribe regulations—

34 (A) to limit the applicability of any requirement imposed by
35 paragraph (2) to specific wild plant products;

36 (B) to make any other necessary modification to any require-
37 ment imposed by paragraph (2), as determined by the Secretary
38 based on the review required by section 3(f)(4) of the Lacey Act
39 Amendments of 1981 (Pub. L. 97-79), as amended by the Food,
40 Conservation, and Energy Act of 2008 (Pub. L. 110-246, 122
41 Stat. 2055); and

1 (C) to limit the scope of the exclusion provided by paragraph
2 (3), if the limitations in scope are warranted as a result of the
3 review referred to in subparagraph (B).

4 **§ 203103. Exceptions**

5 (a) ACTIVITIES REGULATED BY PLAN UNDER MAGNUSON-STEVENSON
6 FISHERY CONSERVATION AND MANAGEMENT ACT.—Section
7 203102(a)(1)(A) of this title does not apply to an activity regulated by a
8 fishery management plan in effect under the Magnuson-Stevens Fishery
9 Conservation and Management Act (16 U.S.C. 1801 et seq.).

10 (b) ACTIVITIES REGULATED BY TUNA CONVENTION ACTS AND ACTIVI-
11 TIES INVOLVING HARVESTING OF HIGHLY MIGRATORY SPECIES TAKEN ON
12 HIGH SEAS.—Subparagraphs (A), (B)(i), and (C)(i) of section
13 203102(a)(1) of this title do not apply to—

14 (1) an activity regulated by the Tuna Conventions Act of 1950 (16
15 U.S.C. 951 et seq.) or the Atlantic Tunas Convention Act of 1975 (16
16 U.S.C. 971 et seq.); or

17 (2) an activity involving the harvesting of a highly migratory species
18 (as defined in section 3 of the Magnuson-Stevens Fishery Conservation
19 and Management Act (16 U.S.C. 1802)) taken on the high seas (as
20 defined in that section) if—

21 (A) the highly migratory species is taken in violation of foreign
22 fish or wildlife or wild plant regulatory law; and

23 (B) the United States does not recognize the jurisdiction of the
24 foreign country over the highly migratory species.

25 (c) INTERSTATE SHIPMENT OR TRANSSHIPMENT THROUGH INDIAN
26 COUNTRY OF FISH OR WILDLIFE OR WILD PLANTS.—Section
27 203102(a)(1)(B) of this title does not apply to interstate shipment or trans-
28 shipment through Indian country (as defined in section 1151 of title 18)
29 or a State of any fish or wildlife or wild plant legally taken if the shipment
30 is en route to a State in which the fish or wildlife or wild plant may be
31 legally possessed.

32 (d) PROHIBITED WILDLIFE SPECIES OFFENSE.—

33 (1) IN GENERAL.—Section 203102(a)(1)(B)(iii) of this title does not
34 apply to importation, exportation, transportation, sale, receipt, acquisi-
35 tion, or purchase of a member of a prohibited wildlife species, by a per-
36 son that, under regulations prescribed under paragraph (3), is de-
37 scribed in paragraph (2) with respect to that species.

38 (2) EXEMPTED PERSONS.—A person referred to in paragraph (1) is
39 a person that—

1 (A) is licensed or registered, and inspected, by the Animal and
2 Plant Health Inspection Service or any other Federal agency with
3 respect to the species;

4 (B) is a State college, university, or agency;

5 (C) is a State-licensed wildlife rehabilitator or State-licensed
6 veterinarian;

7 (D) is an accredited wildlife sanctuary that cares for a prohib-
8 ited wildlife species and—

9 (i) is a corporation that is exempt from taxation under sec-
10 tion 501(a) of the Internal Revenue Code of 1986 (26 U.S.C.
11 501(a)) and described in sections 501(c)(3) and
12 170(b)(1)(A)(vi) of the Internal Revenue Code of 1986 (26
13 U.S.C. 501(c)(3); 26 U.S.C. 170(b)(1)(A)(vi));

14 (ii) does not commercially trade in a prohibited wildlife spe-
15 cies, including an offspring, part, or byproduct of a prohibited
16 wildlife species;

17 (iii) does not propagate a prohibited wildlife species; and

18 (iv) does not allow direct contact between the public and
19 animals; or

20 (E) has custody of an animal solely for the purpose of expedi-
21 tiously transporting the animal to a person described in this para-
22 graph with respect to the prohibited wildlife species.

23 (3) REGULATIONS.—The Secretary, in cooperation with the Director
24 of the Animal and Plant Health Inspection Service, shall prescribe reg-
25 ulations describing the persons described in paragraph (2).

26 (4) STATE AUTHORITY.—Nothing in this subsection preempts or su-
27 persedes the authority of a State to regulate wildlife species within the
28 State.

29 **§ 203104. Civil penalties**

30 (a) GENERAL OFFENSES; FALSIFICATION OFFENSES; KNOWING WILD
31 PLANT DECLARATION OFFENSES.—

32 (1) IN GENERAL.—Subject to paragraph (2), the Secretary may as-
33 sess a civil penalty of not more than \$10,000 for each offense against
34 a person that—

35 (A)(i) engages in conduct prohibited by section 203102(a)(1) of
36 this title; and

37 (ii) in the exercise of due care, should know that the fish or
38 wildlife or wild plant was taken, possessed, transported, or sold in
39 violation of, or in a manner unlawful under, the underlying Fed-
40 eral, State, or foreign fish or wildlife or wild plant regulatory law
41 or Indian tribal fish or wildlife or wild plant regulatory law; or

1 (B) knowingly violates subsection (c) or (d) of section 203102
2 of this title.

3 (2) LIMITATION.—The applicable civil penalty for a person described
4 in paragraph (1) shall not exceed the maximum amount provided for
5 violation of the Federal, State, or foreign fish or wildlife or wild plant
6 regulatory law or Indian tribal fish or wildlife or wild plant regulatory
7 law or \$10,000, whichever is less, if the violation—

8 (A) involves fish or wildlife or wild plants with an aggregate
9 market value of less than \$350; and

10 (B) involves only the transportation, acquisition, or receipt of
11 fish or wildlife or wild plants taken or possessed in violation of
12 Federal, State, or foreign fish or wildlife or wild plant regulatory
13 law or Indian tribal fish or wildlife or wild plant regulatory law.

14 (b) MARKING OFFENSES; UNKNOWNING WILD PLANT DECLARATION OF-
15 FENSES.—The Secretary may assess a civil penalty of not more than \$250
16 against a person that violates subsection (b) of section 203102 of this title
17 or unknowingly violates subsection (d) of section 203102 of this title.

18 (c) NOTICE AND HEARING.—No civil penalty may be assessed under sub-
19 section (a) or (b) unless the person accused of the offense is given notice
20 and opportunity for a hearing with respect to the offense.

21 (d) SEPARATE OFFENSE.—Each violation shall be a separate offense.

22 (e) REMISSION OR MITIGATION OF CIVIL PENALTY.—A civil penalty as-
23 sessed under subsection (a) or (b) may be remitted or mitigated by the Sec-
24 retary.

25 (f) FACTORS TO CONSIDER IN DETERMINING AMOUNT.—In determining
26 the amount of a civil penalty assessed pursuant to subsection (a) or (b),
27 the Secretary shall take into account—

- 28 (1) the nature, circumstances, extent, and gravity of the offense;
- 29 (2) the violator's degree of culpability and ability to pay; and
- 30 (3) other matters that justice may require.

31 (g) HEARINGS.—

32 (1) PROCEDURE.—A hearing held during proceedings for the assess-
33 ment of a civil penalty shall be conducted in accordance with section
34 554 of title 5.

35 (2) AUTHORITIES OF THE ADMINISTRATIVE LAW JUDGE.—The ad-
36 ministrative law judge may—

37 (A) issue subpoenas for the attendance and testimony of wit-
38 nesses and the production of relevant records; and

39 (B) administer oaths.

1 (3) PAYMENT OF WITNESSES.—A witness summoned shall be paid
2 the same fees and mileage that are paid to a witness in a Federal
3 court.

4 (4) CONTUMACY OR REFUSAL TO OBEY SUBPOENA.—

5 (A) JURISDICTION TO ISSUE ORDER.—In case of contumacy or
6 refusal to obey a subpoena issued pursuant to this subsection and
7 served on a person, the United States district court for a district
8 in which the person is found, resides, or transacts business, on ap-
9 plication by the United States and after notice to the person, shall
10 have jurisdiction to issue an order requiring the person to appear
11 and give testimony before the administrative law judge, to appear
12 and produce records before the administrative law judge, or both.

13 (B) FAILURE TO OBEY ORDER.—A failure to obey an order de-
14 scribed in subparagraph (A) may be punished by the United
15 States district court as contempt.

16 (h) JUDICIAL REVIEW.—

17 (1) IN GENERAL.—A person against whom a civil penalty is assessed
18 under this section may obtain review of the civil penalty assessment in
19 a United States district court by—

20 (A) filing a complaint in that court not later than 30 days after
21 the date of the order of assessment; and

22 (B) simultaneously serving a copy of the complaint by certified
23 mail on the Secretary, the Attorney General, and the appropriate
24 United States attorney.

25 (2) VENUE.—For venue purposes, an offense is considered to have
26 been committed—

27 (A) in the district where the offense first occurred; and

28 (B) in any district to which a person may have taken, or in any
29 district in which a person may have been in possession of, the fish
30 or wildlife or wild plants involved in the offense.

31 (3) CERTIFIED COPY OF RECORD.—The Secretary shall promptly file
32 in the United States district court in which the complaint was filed
33 under paragraph (1) a certified copy of the record on which the offense
34 was found or the penalty imposed, as provided in section 2112 of title
35 28.

36 (4) FAILURE TO PAY ASSESSMENT.—

37 (A) CIVIL ACTION.—If a person fails to pay an assessment of
38 a civil penalty after it has become a final and unappealable order
39 or after the court has entered final judgment in favor of the Sec-
40 retary, the Secretary may request the Attorney General to com-

1 mence a civil action in a United States district court to collect the
2 penalty.

3 (B) AUTHORITY TO REVIEW THE OFFENSE AND ASSESSMENT.—
4 In hearing the civil action commenced under subparagraph (A),
5 the court may review the offense and the assessment of the civil
6 penalty de novo.

7 **§ 203105. Criminal penalties**

8 Criminal penalties for a violation of this chapter are provided under sec-
9 tion 50(b) of title 18.

10 **§ 203106. Permit, license, and stamp sanctions**

11 (a) IN GENERAL.—The Secretary may suspend, modify, or cancel a Fed-
12 eral hunting or fishing license, permit, or stamp, a license or permit author-
13 izing a person to import or export fish or wildlife or wild plants (other than
14 a license or permit issued pursuant to the Magnuson-Stevens Fishery Con-
15 servation and Management Act (16 U.S.C. 1801 et seq.)), or a license or
16 permit to operate a quarantine station or rescue center for imported wildlife
17 or wild plants, issued to a person that is convicted of a criminal violation
18 of—

- 19 (1) any provision of this chapter; or
20 (2) any regulation prescribed under this chapter.

21 (b) SECRETARY NOT LIABLE.—The Secretary shall not be liable for the
22 payment of any compensation, reimbursement, or damages in connection
23 with the suspension, modification, or cancellation pursuant to this section
24 of a license, permit, or stamp.

25 **§ 203107. Forfeiture**

26 (a) FORFEITURE OF FISH OR WILDLIFE OR WILD PLANTS.—

27 (1) IN GENERAL.—All fish or wildlife or wild plants imported, ex-
28 ported transported, sold, received, acquired, or purchased in violation
29 of subsection (a), (c), or (d) of section 203102 of this title, or a regula-
30 tion prescribed under any of those subsections, shall be subject to for-
31 feiture to the United States.

32 (2) APPLICABILITY.—Forfeiture under this subsection shall apply
33 notwithstanding any—

34 (A) culpability requirement for civil penalty assessment under
35 section 203104 of this title; or

36 (B) culpability requirement for criminal prosecution under sec-
37 tion 50(b) of title 18.

38 (b) FORFEITURE OF MODES OF TRANSPORTATION AND OTHER EQUIP-
39 MENT.—A mode of transportation (including a vessel, vehicle, or aircraft)
40 or piece of equipment that was used to aid in the importing, exporting,
41 transporting, selling, receiving, acquiring, or purchasing of fish or wildlife

1 or wild plants in a criminal offense under this chapter for which a felony
2 conviction is obtained shall be subject to forfeiture to the United States if—

3 (1) the owner of the mode of transportation or equipment—

4 (A) was, at the time of the offense, a consenting party or privy
5 to the offense; or

6 (B) should have known, in the exercise of due care, that the
7 mode of transportation or piece of equipment would be used in a
8 criminal offense under this chapter; and

9 (2) the offense involved the sale or purchase of, the offer of sale or
10 purchase of, or the intent to sell or purchase, fish or wildlife or wild
11 plants.

12 (c) APPLICABILITY OF CUSTOMS LAWS.—

13 (1) IN GENERAL.—All laws relating to—

14 (A) seizure, forfeiture, and condemnation of property for viola-
15 tion of the customs laws of the United States;

16 (B) the disposition of property seized, forfeited, or condemned
17 for violation of the customs laws of the United States;

18 (C) proceeds from the sale of property seized, forfeited, or con-
19 demned for violation of the customs laws of the United States; and

20 (D) remission or mitigation of forfeiture of property for viola-
21 tion of the customs laws of the United States;

22 shall apply to the seizures and forfeitures incurred, or alleged to have
23 been incurred, under this chapter to the extent that those laws are ap-
24 plicable and not inconsistent with this chapter.

25 (2) POWERS, RIGHTS, AND DUTIES OF SECRETARY RELATING TO
26 CUSTOMS LAWS.—All powers, rights, and duties conferred or imposed
27 by the customs laws of the United States on an officer or employee of
28 the Department of the Treasury or Department of Homeland Security
29 may, for the purposes of this chapter, also be exercised or performed
30 by the Secretary or by persons that the Secretary may designate.

31 (3) WARRANTS.—A warrant for search or seizure shall be issued in
32 accordance with rule 41 of the Federal Rules of Criminal Procedure
33 (18 U.S.C. App.).

34 (d) STORAGE COST.—A person assessed a civil penalty under section
35 203104 of this title or convicted of an offense under section 50(b) of title
36 18 shall be liable for the costs incurred in the storage, care, and mainte-
37 nance of any fish or wildlife or wild plants seized in connection with the
38 offense.

39 (e) APPLICABLE LAW IN CASES OF CIVIL FORFEITURE.—A civil forfeit-
40 ure under this section shall be governed by chapter 46 of title 18.

1 **§ 203108. Enforcement**

2 (a) IN GENERAL.—This chapter (including regulations prescribed under
3 this chapter) shall be enforced by the Secretary, the Secretary of Transpor-
4 tation, the Secretary of Homeland Security, or the Secretary of the Treas-
5 ury. Any of the Secretaries listed under this subsection may utilize by agree-
6 ment, with or without reimbursement, the personnel, services, and facilities
7 of any other Federal agency or any State agency or Indian tribe for pur-
8 poses of enforcing this chapter.

9 (b) GENERAL ENFORCEMENT AUTHORITIES.—An individual authorized
10 under subsection (a) to enforce this chapter may—

11 (1) carry a firearm;

12 (2) when enforcing this chapter, make an arrest without a warrant,
13 in accordance with any guidelines that may be issued by the Attorney
14 General, for—

15 (A) an offense under Federal law committed in the individual's
16 presence; or

17 (B) the commission of a felony under Federal law, if the indi-
18 vidual has reasonable grounds to believe that the person to be ar-
19 rested has committed or is committing a felony, except that an ar-
20 rest for a felony under this chapter shall require a warrant if the
21 felony—

22 (i) is not committed in the presence or view of the individ-
23 ual; and

24 (ii) involves only the transportation, acquisition, receipt,
25 purchase, or sale of fish or wildlife or wild plants taken or
26 possessed in violation of State fish or wildlife or wild plant
27 regulatory law;

28 (3) search and seize, with or without a warrant, in accordance with
29 any guidelines that may be issued by the Attorney General;

30 (4) make an arrest without a warrant for a misdemeanor under this
31 chapter if the individual has reasonable grounds to believe that the per-
32 son to be arrested is committing an offense in the individual's presence
33 or view;

34 (5) execute and serve a subpoena, arrest warrant, search warrant is-
35 sued in accordance with rule 41 of the Federal Rules of Criminal Pro-
36 cedure (18 U.S.C. App.), or other warrant of civil or criminal process
37 issued by an officer or court of competent jurisdiction for enforcement
38 of this chapter;

39 (6) in coordination with the Secretary of Homeland Security, detain
40 for inspection and inspect a vessel, vehicle, aircraft, or other transpor-
41 tation, or a package, crate, or other container, including its contents—

1 (A) on the arrival of the transportation or container in the
2 United States;

3 (B) on the arrival of the transportation or container in the cus-
4 toms waters of the United States from any point outside the
5 United States or its customs waters; or

6 (C) if the transportation or container is being used for expor-
7 tation purposes, prior to departure from the United States or the
8 customs waters of the United States; and

9 (7) inspect and demand the production of any documents and per-
10 mits required by the country of natal origin, birth, or reexportation of
11 the fish or wildlife.

12 (c) ITEMS SEIZED.—

13 (1) IN GENERAL.—Any fish or wildlife, wild plant, or other property
14 or item seized shall be held by a person authorized by the Secretary
15 pending—

16 (A) disposition of civil or criminal proceedings; or

17 (B) the bringing of an action in rem for forfeiture of the fish
18 or wildlife, wild plant, property, or item pursuant to section
19 203107 of this title.

20 (2) BOND.—The Secretary may, in lieu of holding the fish or wild-
21 life, wild plant, property, or item that is seized, permit the owner or
22 consignee to post a bond or other surety satisfactory to the Secretary.

23 (d) JURISDICTION OF DISTRICT COURTS.—

24 (1) IN GENERAL.—The United States district courts, including the
25 courts referred to in section 460 of title 28, have jurisdiction over an
26 action arising under this chapter.

27 (2) ISSUANCE OF WARRANTS OR OTHER PROCESS.—The judges of
28 the United States district courts and the United States magistrate
29 judges may, within their respective jurisdictions, on proper oath or af-
30 firmation showing probable cause, issue warrants or other process that
31 may be required for enforcement of this chapter (including regulations
32 prescribed under this chapter).

33 (e) REWARDS AND OTHER COSTS.—

34 (1) SOURCE OF PAYMENTS.—The Secretary or the Secretary of the
35 Treasury shall pay, from sums received as penalties, fines, or forfeit-
36 ures of property for any offense under this chapter (including regula-
37 tions prescribed under this chapter)—

38 (A) a reward to a person that furnishes information that leads
39 to an arrest, criminal conviction, civil penalty assessment, or forfeit-
40 ure of property for an offense under this chapter or a regula-
41 tion prescribed under this chapter; and

1 (B) the reasonable and necessary costs incurred by a person in
2 providing temporary care for any fish or wildlife or wild plant
3 pending the disposition of a civil or criminal proceeding alleging
4 an offense under this chapter with respect to the fish or wildlife
5 or wild plant.

6 (2) AMOUNT OF REWARD.—The amount of the reward, if any, shall
7 be designated by the Secretary or the Secretary of the Treasury, as ap-
8 propriate.

9 (3) INELIGIBILITY FOR PAYMENT.—An officer or employee of the
10 United States or any State or local government who furnishes informa-
11 tion or renders service in the performance of the officer's or employee's
12 official duties is ineligible for payment under this subsection.

13 **§ 203109. Authorities**

14 (a) REGULATIONS.—

15 (1) AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary, after
16 consultation with the Secretary of Homeland Security and the Sec-
17 retary of the Treasury, may prescribe such regulations as may be nec-
18 essary to carry out sections 203102(d), 203104, 203106, and 203107
19 of this title and section 50(b) of title 18.

20 (2) REGULATIONS FOR MARKING, LABELING, AND TAGGING OF CON-
21 TAINERS OR PACKAGES.—

22 (A) JOINT ISSUANCE OF REGULATIONS.—The Secretary of the
23 Interior and the Secretary of Commerce shall jointly prescribe spe-
24 cific regulations to implement section 203102(b) of this title for
25 the marking, labeling, and tagging of containers or packages con-
26 taining fish or wildlife.

27 (B) CONFORMITY WITH COMMERCIAL PRACTICES.—The regula-
28 tions prescribed under subparagraph (A) shall be in accordance
29 with commercial practices.

30 (3) JOINT ISSUANCE OF REGULATIONS TO CLARIFY EXCLUSIONS
31 FROM DEFINITION OF WILD PLANT.—The Secretary of Agriculture and
32 the Secretary of the Interior, after consultation with the appropriate
33 agencies, shall jointly prescribe regulations to define the terms used in
34 clauses (i) and (ii) of section 203101(11)(C) of this title for the pur-
35 poses of enforcement under this chapter.

36 (b) CONTRACT AUTHORITY.—To the extent and in the amounts provided
37 in advance in appropriations acts, the Secretary may enter into contracts,
38 leases, cooperative agreements, or other transactions with a Federal or
39 State agency, Indian tribe, public or private institution, or other person,
40 that may be necessary to carry out this chapter.

1 **§ 203110. Miscellaneous**

2 (a) EFFECT OF CHAPTER.—Nothing in this chapter—

3 (1) precludes a State or an Indian tribe from making or enforcing
4 laws (including regulations) not inconsistent with this chapter;

5 (2) repeals, supersedes, or modifies any provision of Federal law;

6 (3) repeals, supersedes, or modifies a right, privilege, or immunity
7 granted, reserved, or established pursuant to a treaty, a statute, or an
8 executive order pertaining to an Indian tribe, band, or community; or9 (4) enlarges or diminishes the authority of a State or Indian tribe
10 to regulate the activities of persons within Indian reservations.11 (b) INTERIOR APPROPRIATIONS BUDGET PROPOSAL.—The Secretary
12 shall identify the funds utilized to enforce this chapter (including regula-
13 tions prescribed under this chapter) as a specific appropriations item in the
14 Department of the Interior appropriations budget proposal to Congress.15 **Chapter 205—Wildlife Restoration****Subchapter I—General Provisions**

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Subchapter I—General Provisions

§ 205101. Definitions

In this chapter:

(1) COMPREHENSIVE PLAN.—The term “comprehensive plan” means a comprehensive fish and wildlife resource management plan under section 205208 of this title.

(2) OTHER ELIGIBLE JURISDICTION.—

(A) IN GENERAL.—The term “other eligible jurisdiction” means Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Northern Mariana Islands.

(B) INCLUSION OF THE DISTRICT OF COLUMBIA.—When used with respect to subchapter V or chapter 227 of this title, the term “other eligible jurisdiction” also means the District of Columbia.

(3) RESTORATION FUND.—The term “Restoration Fund” means the Federal Aid to Wildlife Restoration Fund authorized under section 205203 of this title.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(5) STATE.—The term “State” means a State only.

(6) STATE FISH AND WILDLIFE AGENCY.—The term “State fish and wildlife agency” means an agency or official of a State or other eligible jurisdiction empowered under the law of the State or other eligible jurisdiction to exercise the functions ordinarily exercised by a State fish and game department or State fish and wildlife department.

(7) WILDLIFE RESTORATION PROJECT.—

(A) IN GENERAL.—The term “wildlife restoration project” means a project for the selection, restoration, rehabilitation, improvement, and maintenance of an area of land or water adaptable as a feeding, resting, or breeding place for wildlife.

(B) INCLUSIONS.—The term “wildlife restoration project” includes—

(i) the acquisition of an area, estate, or interest in an area or estate that is suitable, or capable of being made suitable, as a feeding, resting, or breeding place for wildlife, and the construction on or in the area, estate, or interest in the area or estate of such works as may be necessary to make the area, estate, or interest in the area or estate available as a feeding, resting, or breeding place for wildlife;

(ii) research into problems of wildlife management that may be necessary to efficient administration affecting wildlife resources;

1 (iii) preliminary or incidental costs and expenses that may
2 be incurred in and about projects described in clauses (i) and
3 (ii); and

4 (iv) maintenance of a completed project.

5 (C) WILDLIFE CONSERVATION AND RESTORATION PROGRAM.—
6 For the purposes of the wildlife conservation and restoration pro-
7 gram, the term “wildlife restoration project” includes a project
8 under a wildlife conservation and restoration program under sub-
9 chapter V.

10 **Subchapter II—Wildlife Restoration**

11 **§ 205201. Cooperation with States**

12 (a) IN GENERAL.—The Secretary may cooperate with a State or other
13 eligible jurisdiction, through its State fish and wildlife agency, in the con-
14 duct of a comprehensive plan or wildlife restoration project.

15 (b) CONDITIONS FOR EXPENDITURE.—Amounts apportioned to a State
16 or other eligible jurisdiction under this chapter shall not be expended in the
17 State or other eligible jurisdiction until its legislature, or other agency of
18 the State or other eligible jurisdiction authorized by the constitution of the
19 State or other eligible jurisdiction to make laws governing the conservation
20 of wildlife—

21 (1) assents to the provisions of this chapter; and

22 (2) enacts laws for the conservation of wildlife that include a prohibi-
23 tion on the diversion of license fees paid by hunters for any other pur-
24 pose than the administration of the State fish and wildlife agency.

25 (c) AGREEMENT BETWEEN SECRETARY AND STATE FISH AND WILDLIFE
26 AGENCY.—The Secretary and the State fish and wildlife agency of a State
27 or other eligible jurisdiction accepting the benefits of this chapter shall
28 agree on the comprehensive plan or wildlife restoration project to be aided
29 in the State or other eligible jurisdiction under this chapter.

30 (d) CONFORMANCE TO STANDARDS.—A comprehensive plan or wildlife
31 restoration project shall conform to the standards fixed by the Secretary.

32 (e) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—Coordi-
33 nation with State fish and wildlife agency personnel or with personnel of
34 other agencies of States or other eligible jurisdictions pursuant to this chap-
35 ter shall not be subject to the Federal Advisory Committee Act (5 U.S.C.
36 App.).

37 **§ 205202. Cooperation with Puerto Rico, Guam, American**
38 **Samoa, the Northern Mariana Islands, and the Vir-**
39 **gin Islands**

40 (a) IN GENERAL.—The Secretary may cooperate with the Secretary of
41 Agriculture of Puerto Rico, the Governor of Guam, the Governor of Amer-

1 ican Samoa, the Governor of the Northern Mariana Islands, and the Gov-
 2 ernor of the Virgin Islands in the conduct of a comprehensive plan or wild-
 3 life restoration project on terms and conditions that the Secretary considers
 4 fair, just, and equitable.

5 (b) APPORTIONMENT.—The Secretary may apportion to Puerto Rico,
 6 Guam, American Samoa, the Northern Mariana Islands, and the Virgin Is-
 7 lands, out of the amounts available for apportionment under this chapter
 8 for comprehensive plans and wildlife restoration projects, amounts that the
 9 Secretary shall determine, not exceeding the following rates from the total
 10 amount apportioned in a year:

11 (1) For Puerto Rico, $\frac{1}{2}$ of 1 percent.

12 (2) For Guam, $\frac{1}{6}$ of 1 percent.

13 (3) For American Samoa, $\frac{1}{6}$ of 1 percent.

14 (4) For the Northern Mariana Islands, $\frac{1}{6}$ of 1 percent.

15 (5) For the Virgin Islands, $\frac{1}{6}$ of 1 percent.

16 (c) LIMITATION.—The Secretary shall not require any of the cooperating
 17 government representatives referred to in subsection (a) to pay more than
 18 25 percent of the cost of a comprehensive plan or wildlife restoration
 19 project.

20 (d) UNEXPENDED OR UNOBLIGATED BALANCE.—

21 (1) AVAILABILITY FOR APPROVED COMPREHENSIVE PLANS AND
 22 WILDLIFE RESTORATION PROJECTS.—An unexpended or unobligated
 23 balance of an apportionment made under this section shall be available
 24 for expenditure in Puerto Rico, Guam, American Samoa, the Northern
 25 Mariana Islands, or the Virgin Islands in the succeeding year on an
 26 approved comprehensive plan or wildlife restoration project.

27 (2) AVAILABILITY FOR MIGRATORY BIRD CONSERVATION.—If the
 28 balance remains unexpended or unobligated at the end of the succeed-
 29 ing year, the balance may be made available for expenditure by the
 30 Secretary to carry out subchapter III of chapter 261 of this title.

31 **§ 205203. Federal Aid to Wildlife Restoration Fund**

32 (a) IN GENERAL.—An amount equal to all revenues accruing each fiscal
 33 year from any tax imposed on specified articles by sections 4161(b) and
 34 4181 of the Internal Revenue Code of 1986 (26 U.S.C. 4161(b), 4181),
 35 shall, subject to the exemptions in section 4182 of the Code (26 U.S.C.
 36 4182), be deposited in a fund to be known as the Federal Aid to Wildlife
 37 Restoration Fund and may be appropriated and made available until ex-
 38 pended to carry out this chapter.

39 (b) INVESTMENT OF UNEXPENDED AMOUNTS.—

40 (1) INVESTMENT IN INTEREST-BEARING OBLIGATIONS.—The Sec-
 41 retary of the Treasury shall invest in interest-bearing obligations of the

1 United States the portion of the Restoration Fund that is not, in the
 2 Secretary of the Treasury's judgment, required for meeting a current
 3 year's withdrawals.

4 (2) AUTHORITIES OF THE SECRETARY OF THE TREASURY.—For pur-
 5 poses of investment under paragraph (1), the Secretary of the Treasury
 6 may—

7 (A) acquire obligations at the issue price and purchase out-
 8 standing obligations at the market price; and

9 (B) sell obligations held in the Restoration Fund at the market
 10 price.

11 (3) INTEREST.—The interest on obligations held in the Restoration
 12 Fund—

13 (A) shall be credited to the Restoration Fund;

14 (B) shall constitute sums available for allocation by the Sec-
 15 retary under section 8 of the North American Wetlands Conserva-
 16 tion Act (16 U.S.C. 4407); and

17 (C) shall become available for apportionment under this chapter
 18 at the beginning of fiscal year 2026.

19 **§ 205204. Set-aside for administrative expenses**

20 (a) IN GENERAL.—

21 (1) IN GENERAL.—Of the revenues (excluding interest accruing
 22 under section 205203(b) of this title) deposited in the Restoration
 23 Fund for a fiscal year, the Secretary may use not more than the
 24 amount specified in paragraph (2) for the fiscal year for administrative
 25 expenses incurred in implementation of this chapter, in accordance with
 26 this section and section 205205 of this title.

27 (2) AMOUNT.—The amount referred to in paragraph (1) is—

28 (A) for fiscal year 2003, \$8,212,000; and

29 (B) for each fiscal year after fiscal year 2003, the sum of—

30 (i) the available amount for the preceding fiscal year; and

31 (ii) the amount determined by multiplying—

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

33 and

34 (II) the change, relative to the preceding fiscal year,
 35 in the Consumer Price Index for All Urban Consumers
 36 published by the Secretary of Labor.

37 (b) PERIOD OF AVAILABILITY.—For each fiscal year, the amount under
 38 subsection (a) shall remain available for obligation for use under that sub-
 39 section until the end of the fiscal year.

40 (c) APPORTIONMENT OF UNOBLIGATED AMOUNTS.—Not later than 60
 41 days after the end of a fiscal year, the Secretary shall apportion among the

1 States and other eligible jurisdictions any of the amount under subsection
2 (a) that remains unobligated at the end of the fiscal year, on the same basis
3 and in the same manner as other amounts made available under this chap-
4 ter are apportioned among the States and other eligible jurisdictions for the
5 fiscal year.

6 **§ 205205. Requirements and restrictions concerning admin-**
7 **istrative expenses**

8 (a) AUTHORIZED EXPENSES FOR ADMINISTRATION.—Except as provided
9 in subsection (b), the Secretary may use amounts under section 205204(a)
10 of this title only for administrative expenses that directly support the imple-
11 mentation of this chapter that consist of—

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

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

19 (3) support costs directly associated with personnel costs authorized
20 under paragraphs (1) and (2), excluding costs associated with staffing
21 and operation of regional offices of USFWS and the Department of the
22 Interior other than for the purposes of this chapter;

23 (4) costs of determining under section 205208(b) of this title wheth-
24 er a comprehensive plan or wildlife restoration project of a State or
25 other eligible jurisdiction is substantial in character and design;

26 (5) overhead costs, including the costs of general administrative serv-
27 ices, that are directly attributable to administration of this chapter and
28 are based on—

29 (A) actual costs, as determined by a direct cost allocation meth-
30 odology approved by the Director of the Office of Management and
31 Budget for use by Federal agencies; or

32 (B) in the case of costs that are not determinable under sub-
33 paragraph (A), an amount per full-time equivalent employee au-
34 thorized under paragraphs (1) and (2) that does not exceed the
35 amount charged or assessed for costs per full-time equivalent em-
36 ployee for any other division or program of USFWS;

37 (6) costs incurred in auditing, every 5 years, the wildlife and sport
38 fish activities of each State fish and wildlife agency and the use of
39 funds under section 205208 of this title by each State fish and wildlife
40 agency;

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

1 (8) costs of necessary training of Federal and State full-time person-
2 nel and personnel of other eligible jurisdictions who administer this
3 chapter to improve administration of this chapter;

4 (9) costs of travel to States, the District of Columbia, territories,
5 and Canada by personnel who—

6 (A) administer this chapter on a full-time basis for purposes di-
7 rectly related to administration of comprehensive plans or wildlife
8 restoration projects; or

9 (B) administer grants under section 205208 or 205303 of this
10 title or subchapter IV;

11 (10) costs of travel outside the United States (except travel to Can-
12 ada), by personnel who administer this chapter on a full-time basis, for
13 purposes that directly relate to administration of this chapter and that
14 are approved directly by the Assistant Secretary for Fish and Wildlife
15 and Parks;

16 (11) relocation expenses for personnel who, after relocation, will ad-
17 minister this chapter on a full-time basis for at least 1 year, as cer-
18 tified by the Director at the time at which the relocation expenses are
19 incurred; and

20 (12) costs to audit, evaluate, approve, disapprove, and advise con-
21 cerning grants under section 205208 or 205303 of this title or sub-
22 chapter IV.

23 (b) REPORTING OF OTHER USES.—

24 (1) IN GENERAL.—Subject to paragraph (2), if the Secretary deter-
25 mines that amounts under section 205204(a) of this title should be
26 used for an administrative expense other than an administrative ex-
27 pense described in subsection (a), the Secretary—

28 (A) shall submit to the Committee on Environment and Public
29 Works of the Senate and the Committee on Natural Resources of
30 the House of Representatives a report describing the administra-
31 tive expense and stating the amount of the administrative expense;
32 and

33 (B) may use the amounts for the administrative expense only
34 after the end of the 30-day period beginning on the date of sub-
35 mission of the report under subparagraph (A).

36 (2) MAXIMUM AMOUNT.—The Secretary may use under paragraph
37 (1) not more than \$25,000 for a fiscal year.

38 (c) RESTRICTION ON USE TO SUPPLEMENT GENERAL APPROPRIA-
39 TIONS.—The Secretary shall not use amounts under subsection (b) to sup-
40 plement the funding of a function for which general appropriations are
41 made for USFWS or any other entity of the Department of the Interior.

1 (d) AUDIT REQUIREMENT.—

2 (1) IN GENERAL.—The Inspector General of the Department of the
3 Interior shall procure the performance of biennial audits, in accordance
4 with generally accepted auditing standards, of expenditures and obliga-
5 tions of amounts used by the Secretary for administrative expenses in-
6 curred in implementation of this chapter.

7 (2) AUDITOR.—

8 (A) IN GENERAL.—An audit under this subsection shall be per-
9 formed under a contract that is awarded under competitive proce-
10 dures (as defined in section 132 of title 41) by a person or entity
11 that is not associated with the Department of the Interior (except
12 by way of a contract for the performance of an audit or other re-
13 view).

14 (B) SUPERVISION OF AUDITOR.—The auditor selected under
15 subparagraph (A) shall report to, and be supervised by, the In-
16 spector General of the Department of the Interior, except that the
17 auditor shall submit a copy of the biennial audit findings to the
18 Secretary at the time that the findings are submitted to the In-
19 spector General of the Department of the Interior.

20 (3) REPORT TO CONGRESS.—The Inspector General of the Depart-
21 ment of the Interior shall promptly submit to the Committee on Envi-
22 ronment and Public Works of the Senate and the Committee on Natu-
23 ral Resources of the House of Representatives—

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

25 and

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

27 **§ 205206. Apportionment of amounts from Restoration**
28 **Fund**

29 (a) APPORTIONMENT TO STATES.—For each fiscal year, the Secretary,
30 after deducting the amounts listed in subsection (b), shall apportion the re-
31 mainder of the revenue in the Restoration Fund among the States in the
32 manner described in subsection (c).

33 (b) AMOUNTS FOR DEDUCTION.—The amounts referred to in subsection
34 (a) are—

35 (1) the amount apportioned under section 205202 of this title;

36 (2) the amount under section 205204(a) of this title;

37 (3) the amount apportioned under section 205301 of this title; and

38 (4) the amounts provided as grants under section 205303 of this
39 title and subchapter IV.

40 (c) MANNER OF APPORTIONMENT.—

1 (1) IN GENERAL.—The Secretary shall apportion the remainder of
2 the revenue as follows:

3 (A) One-half of the remainder shall be apportioned to each
4 State in the proportion in which the area of the State bears to
5 the total area of all the States.

6 (B) One-half of the remainder shall be apportioned to each
7 State in the proportion in which the number of paid hunting li-
8 cense holders of the State in the 2d fiscal year preceding the fiscal
9 year for which the apportionment is made, as certified to the Sec-
10 retary by the State fish and wildlife agencies of the States, bears
11 to the total number of paid hunting license holders of all the
12 States.

13 (2) DEFINITION OF FISCAL YEAR.—In paragraph (1)(B), the term
14 “fiscal year”, with respect to the period for enumeration of paid hunt-
15 ing license holders, means a State’s fiscal or license year.

16 (d) EQUITABLE APPORTIONMENTS.—The apportionments under this sec-
17 tion shall be adjusted equitably so that no State shall receive less than ½
18 percent nor more than 5 percent of the total amount apportioned.

19 (e) UNEXPENDED AMOUNTS.—

20 (1) AVAILABILITY OF UNEXPENDED AMOUNT.—The amount of ap-
21 propriations apportioned to a State for a fiscal year that remains unex-
22 pended at the close of the fiscal year may be made available for ex-
23 penditure in the State until the close of the succeeding fiscal year.

24 (2) AVAILABILITY OF UNEXPENDED AMOUNT TO MIGRATORY BIRD
25 CONSERVATION.—An amount apportioned to a State under this chapter
26 that is unexpended or unobligated at the end of the period during
27 which it is available for expenditure on a comprehensive plan or wildlife
28 restoration project may be made available for expenditure by the Sec-
29 retary in carrying out subchapter III of chapter 261 of this title.

30 **§ 205207. Certification and notification**

31 (a) CERTIFICATION BY SECRETARY.—For each fiscal year, the Secretary
32 shall certify, at the time at which a deduction or apportionment is made,
33 to the Secretary of the Treasury and to each State fish and wildlife agen-
34 cy—

35 (1) the amount that the Secretary estimates to be deducted for ad-
36 ministering this chapter and subchapter III of chapter 261 of this title;
37 and

38 (2) the amount that the Secretary apportions to each State or other
39 eligible jurisdiction.

40 (b) NOTIFICATION BY STATE.—A State or other eligible jurisdiction de-
41 siring to avail itself of the benefits of this chapter shall notify the Secretary

1 to that effect not later than 60 days after the State receives the certification
2 under subsection (a).

3 (c) USE OF FUNDS APPORTIONED TO STATE THAT FAILS TO NOTIFY.—
4 The amount apportioned to a State or other eligible jurisdiction that fails
5 to notify the Secretary under subsection (b) may be made available for ex-
6 penditure by the Secretary in carrying out subchapter III of chapter 261
7 of this title.

8 **§ 205208. Comprehensive plans and wildlife restoration**
9 **projects**

10 (a) SUBMISSION.—A State or other eligible jurisdiction desiring to avail
11 itself of the benefits of this chapter shall, by its State fish and wildlife agen-
12 cy, submit programs or projects for wildlife restoration in one of the follow-
13 ing ways:

14 (1) COMPREHENSIVE FISH AND WILDLIFE RESOURCE MANAGEMENT
15 PLAN.—

16 (A) IN GENERAL.—A State or other eligible jurisdiction may
17 submit to the Secretary a comprehensive fish and wildlife resource
18 management plan that ensures the perpetuation of wildlife for the
19 economic, scientific, and recreational enrichment of the people.

20 (B) COMPREHENSIVE PLAN PERIOD.—A comprehensive plan—
21 (i) shall be for a period of not less than 5 years;
22 (ii) shall be based on projections of desires and needs of
23 the people for a period of not less than 15 years; and
24 (iii) shall include provisions for updating at intervals of not
25 more than 3 years.

26 (C) COMPREHENSIVE PLAN FORMAT.—A comprehensive plan
27 shall be provided in such a format as the Secretary may require.

28 (D) COMPREHENSIVE PLAN APPROVAL.—If the Secretary finds
29 that a comprehensive plan conforms to standards established by
30 the Secretary and the Secretary approves the comprehensive plan,
31 the Secretary may finance up to 75 percent of the cost of imple-
32 menting segments of the comprehensive plan meeting the purposes
33 of this chapter from funds apportioned under this chapter on the
34 Secretary's approval of an annual agreement submitted to the Sec-
35 retary.

36 (2) SUBMISSION OF STATEMENTS REGARDING A WILDLIFE RESTORA-
37 TION PROJECT.—

38 (A) IN GENERAL.—A State or other eligible jurisdiction may
39 submit to the Secretary full and detailed statements of a wildlife
40 restoration project proposed for the State or other eligible jurisdic-
41 tion.

1 (B) WILDLIFE RESTORATION PROJECT APPROVAL.—If the Sec-
2 retary finds that a wildlife restoration project meets the standards
3 set by the Secretary and the Secretary approves the wildlife res-
4 toration project, the State fish and wildlife agency shall furnish to
5 the Secretary such surveys, plans, specifications, and estimates for
6 the wildlife restoration project as the Secretary may require.

7 (C) COST SHARING.—If the Secretary approves the surveys,
8 plans, specifications, and estimates for the wildlife restoration
9 project, the Secretary shall notify the State fish and wildlife agen-
10 cy and immediately set aside an amount in the Restoration Fund
11 that represents the share of the United States payable under this
12 chapter on account of the wildlife restoration project. The amount
13 set aside shall not exceed 75 percent of the total estimated cost
14 of the wildlife restoration project.

15 (b) CHARACTER AND DESIGN.—The Secretary shall approve only compre-
16 hensive plans or wildlife restoration projects that are substantial in char-
17 acter and design.

18 (c) EXPENDITURE OF FUNDS.—The expenditure of funds authorized
19 under this chapter shall be applied only to an approved comprehensive plan
20 or wildlife restoration project. If otherwise applied, the comprehensive plan
21 or wildlife restoration project shall be replaced by the State or other eligible
22 jurisdiction before the State or other eligible jurisdiction may participate in
23 any further apportionment under this chapter.

24 (d) AGREEMENT.—Payment of an amount apportioned under this chapter
25 shall not be made on a comprehensive plan or wildlife restoration project
26 until an agreement to participate in the comprehensive plan or wildlife res-
27 toration project is submitted to and approved by the Secretary.

28 (e) OVERHEAD OR INDIRECT COSTS.—Overhead or indirect costs for serv-
29 ices that are provided by central service activities of a State or other eligible
30 jurisdiction outside the agency of a State or other eligible jurisdiction hav-
31 ing primary jurisdiction over the wildlife resources of the State or other eli-
32 gible jurisdiction that may be charged against comprehensive plans or wild-
33 life restoration projects supported by the Restoration Fund shall not exceed,
34 in a fiscal year, 3 percent of the annual apportionment to the State or other
35 eligible jurisdiction.

36 **§ 205209. Payments**

37 (a) COMPREHENSIVE PLAN.—If a State or other eligible jurisdiction
38 elects to avail itself of the benefits of this chapter by preparing a compre-
39 hensive plan, and the comprehensive plan is approved by the Secretary, the
40 Secretary may, under such regulations as the Secretary may prescribe, ad-
41 vance payments to the State or other eligible jurisdiction for financing the

1 Federal pro rata share agreed on between the State fish and wildlife agency
2 and the Secretary.

3 (b) WILDLIFE RESTORATION PROJECTS.—

4 (1) PAYMENT REQUIRED ON PROJECT COMPLETION OR DURING THE
5 CONDUCT OF RESEARCH.—If the Secretary finds that a wildlife restora-
6 tion project approved by the Secretary has been completed, or if a wild-
7 life restoration project approved by the Secretary involving research re-
8 lating to wildlife is being conducted, in compliance with surveys, plans,
9 specifications, and estimates submitted and approved under section
10 205208(a)(2) of this title, the Secretary shall pay the proper authority
11 of the State or other eligible jurisdiction the amount set aside for the
12 wildlife restoration project.

13 (2) PARTIAL PAYMENTS OF FEDERAL SHARE.—The Secretary may
14 from time to time make payments on a wildlife restoration project as
15 it progresses, but the payments, including any previous payments, shall
16 not be more than the Federal pro rata share of the wildlife restoration
17 project in conformity with the surveys, plans, specifications, and esti-
18 mates submitted and approved under section 205208(a)(2) of this title.

19 (c) JOINT DETERMINATION OF PAYMENT TERMS.—The Secretary and
20 the State fish and wildlife agency of a State or other eligible jurisdiction
21 may jointly determine at what times and in what amounts payments shall
22 be made under this chapter.

23 (d) PAYMENTS BY SECRETARY OF THE TREASURY.—Payments made
24 under this chapter shall be made by the Secretary of the Treasury, on war-
25 rants drawn by the Secretary against the Restoration Fund, to an official
26 or depository designated by the State fish and wildlife agency and author-
27 ized under the law of a State or other eligible jurisdiction to receive public
28 funds of the State or other eligible jurisdiction.

29 **Subchapter III—Hunter Safety Program**

30 **§ 205301. Apportionment of certain taxes**

31 (a) IN GENERAL.—Subject to subsection (b), $\frac{1}{2}$ of the revenues accruing
32 to the Restoration Fund under this chapter each fiscal year from any tax
33 imposed on pistols, revolvers, bows, and arrows shall be apportioned to each
34 State in the proportion that the population of the State bears to the popu-
35 lation of all the States.

36 (b) LIMITATION.—A State shall be apportioned not more than 3 percent
37 and not less than 1 percent of the revenues under subsection (a).

38 (c) GUAM, THE VIRGIN ISLANDS, AMERICAN SAMOA, PUERTO RICO, AND
39 THE NORTHERN MARIANA ISLANDS.—Guam, the Virgin Islands, American
40 Samoa, Puerto Rico, and the Northern Mariana Islands shall each be appor-
41 tioned $\frac{1}{6}$ of 1 percent of the revenues under subsection (a).

1 (d) DETERMINATION OF POPULATION.—For the purpose of this section,
 2 population shall be determined on the basis of the latest decennial census
 3 for which figures are available, as certified by the Secretary of Commerce.

4 **§ 205302. Use of apportioned amounts**

5 (a) HUNTER SAFETY PROGRAM.—

6 (1) STATES.—A State may use the funds apportioned to it under
 7 section 205301 of this title to pay up to 75 percent of the costs of—

8 (A) a hunter safety program; and

9 (B) the construction, operation, and maintenance of public tar-
 10 get ranges as part of a hunter safety program.

11 (2) PUERTO RICO, GUAM, AMERICAN SAMOA, THE NORTHERN MARI-
 12 ANA ISLANDS, AND THE VIRGIN ISLANDS.—The Secretary may cooper-
 13 ate with the Secretary of Agriculture of Puerto Rico, the Governor of
 14 Guam, the Governor of American Samoa, the Governor of the Northern
 15 Mariana Islands, and the Governor of the Virgin Islands in the conduct
 16 of a hunter safety program as provided by this section, on such terms
 17 and conditions as the Secretary considers fair, just, and equitable.

18 (b) SOURCE OF NON-FEDERAL SHARE.—The non-Federal share of the
 19 costs of a hunter safety program may be derived from license fees paid by
 20 hunters, but not from other Federal grant programs.

21 (c) REGULATIONS.—The Secretary shall issue such regulations as the
 22 Secretary considers advisable relating to the criteria for the establishment
 23 of hunter safety programs and public target ranges under this section.

24 **§ 205303. Hunter safety grants**

25 (a) IN GENERAL.—

26 (1) GRANTS.—Of the revenues deposited in the Restoration Fund,
 27 the Secretary shall apportion \$8,000,000 each fiscal year among the
 28 States and other eligible jurisdictions in the manner specified in section
 29 205301 of this title and use that amount to make grants to the States
 30 and other eligible jurisdictions to be used for—

31 (A) in the case of a State or other eligible jurisdiction that has
 32 not used all of the amounts apportioned to the State or other eligi-
 33 ble jurisdiction under section 205301 of this title for the fiscal
 34 year in the manner described in section 205302 of this title—

35 (i) the enhancement of hunter education programs, hunter
 36 and sporting firearm safety programs, and hunter develop-
 37 ment programs;

38 (ii) the enhancement of interstate coordination and develop-
 39 ment of hunter education and shooting range programs;

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

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

5 (B) in the case of a State or other eligible jurisdiction that has
6 used all of the funds apportioned to the State or other eligible ju-
7 risdiction under section 205301 of this title for the fiscal year in
8 the manner described in section 205302 of this title, any use au-
9 thorized by this chapter (including hunter safety programs and the
10 construction, operation, and maintenance of public target ranges).

11 (2) LIMITATION ON USE.—Under paragraph (1), a State or other eli-
12 gible jurisdiction shall not be required to use more than the amount
13 described in section 205302 of this title for hunter safety programs and
14 the construction, operation, and maintenance of public target ranges.

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

18 (c) PERIOD OF AVAILABILITY AND REAPPORTIONMENT.—

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

22 (2) REAPPORTIONMENT.—At the end of the period of availability
23 under paragraph (1), the Secretary shall apportion amounts made
24 available that have not been used to make grants under this section
25 among the States and other eligible jurisdictions described in sub-
26 section (a)(1)(B) for use by those States and other eligible jurisdictions
27 in accordance with this chapter.

28 **Subchapter IV—Multistate Conservation** 29 **Grant Program**

30 **§ 205401. Multistate conservation project requirements**

31 (a) IN GENERAL.—

32 (1) MULTIPLE BENEFICIARIES.—A multistate conservation project
33 shall be eligible for a grant under this subchapter if the project bene-
34 fits—

35 (A) at least 26 States or other eligible jurisdictions;

36 (B) a majority of the States or other eligible jurisdictions in a
37 region of USFWS; or

38 (C) a regional association of State fish and wildlife agencies.

39 (2) PRIORITY PROJECTS.—

1 (A) IN GENERAL.—The Secretary may make grants under this
2 subchapter only for projects identified on a priority list of wildlife
3 restoration projects described in subparagraph (B).

4 (B) PRIORITY LIST.—A priority list referred to in subparagraph
5 (A) is a priority list of wildlife restoration projects that the Asso-
6 ciation of Fish and Wildlife Agencies—

7 (i) prepares through a committee comprised of the heads
8 of State fish and wildlife agencies (or their designees), in con-
9 sultation with—

10 (I) nongovernmental organizations that represent con-
11 servation organizations;

12 (II) sportsmen organizations; and

13 (III) industries that support or promote hunting, trap-
14 ping, recreational shooting, bow hunting, or archery;

15 (ii) approves by vote of a majority of the heads of State
16 fish and wildlife agencies (or their designees); and

17 (iii) not later than October 1 of each fiscal year, submits
18 to the Assistant Director for Wildlife and Sport Fish Restora-
19 tion Programs.

20 (C) PUBLICATION.—The Assistant Director for Wildlife and
21 Sport Fish Restoration Programs shall publish in the Federal
22 Register each priority list submitted under subparagraph (B)(iii).

23 (b) ELIGIBLE GRANTEES.—

24 (1) IN GENERAL.—The Secretary may make a grant under this sub-
25 chapter to—

26 (A) a State or other eligible jurisdiction, or a group of States
27 or other eligible jurisdictions;

28 (B) USFWS, or a State or other eligible jurisdiction, or a group
29 of States or other eligible jurisdictions, for the purpose of carrying
30 out the National Survey of Fishing, Hunting, and Wildlife-Associ-
31 ated Recreation; or

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

33 (2) NONGOVERNMENTAL ORGANIZATIONS.—

34 (A) IN GENERAL.—A nongovernmental organization that applies
35 for a grant under this subchapter shall submit with the application
36 to the Association of Fish and Wildlife Agencies a certification
37 that the nongovernmental organization—

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

1 (ii) will use the grant funds in compliance with section
2 205403 of this title.

3 (B) PENALTIES.—A nongovernmental organization that uses
4 grant funds in violation of subparagraph (A) shall return all funds
5 received under this subchapter and be subject to any other appli-
6 cable penalties under law.

7 **§ 205402. Funding**

8 (a) IN GENERAL.—Not more than \$3,000,000 of the revenues deposited
9 into the Restoration Fund for a fiscal year shall be available to the Sec-
10 retary for making multistate conservation project grants in accordance with
11 this subchapter.

12 (b) PERIOD OF AVAILABILITY.—Amounts made available under sub-
13 section (a) shall remain available for making grants only for the 1st fiscal
14 year for which the amount is made available and the following fiscal year.

15 (c) APPORTIONMENT OF UNUSED AMOUNTS.—At the end of the period
16 of availability under subsection (b), the Secretary shall apportion any
17 amounts that remain available among the States and other eligible jurisdic-
18 tions in the manner specified in section 205206 of this title, for use by the
19 States and other eligible jurisdictions in the same manner as funds appor-
20 tioned under section 205206 of this title.

21 **§ 205403. Limitations on use of grants**

22 A grant under this subchapter shall not be used, in whole or in part, for
23 an activity, project, or program that promotes or encourages opposition to
24 the regulated hunting or trapping of wildlife.

25 **§ 205404. Inapplicability of Federal Advisory Committee
26 Act**

27 The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to
28 an activity carried out under this subchapter.

29 **Subchapter V—Wildlife Conservation and
30 Restoration Program**

31 **§ 205501. Definitions**

32 In this subchapter:

33 (1) CONSERVATION.—

34 (A) IN GENERAL.—The term “conservation” means the use of
35 a method or procedure necessary or desirable to sustain a healthy
36 population of wildlife.

37 (B) INCLUSIONS.—The term “conservation” includes—

38 (i) an activity associated with scientific resources manage-
39 ment such as—

40 (I) research;

41 (II) census;

- 1 (III) monitoring of populations;
- 2 (IV) acquisition, improvement, and management of
- 3 habitat;
- 4 (V) live trapping and transplantation;
- 5 (VI) wildlife damage management; and
- 6 (VII) periodic or total protection of a species or popu-
- 7 lation; and
- 8 (ii) the taking of individual animals within wildlife stock or
- 9 population if the taking is permitted by applicable Federal or
- 10 State law or law of other eligible jurisdiction.
- 11 (2) WILD ANIMAL.—The term “wild animal” means an individual
- 12 member of wildlife.
- 13 (3) WILDLIFE.—
- 14 (A) IN GENERAL.—The term “wildlife” means a species of wild,
- 15 free-ranging fauna.
- 16 (B) INCLUSIONS.—The term “wildlife” includes—
- 17 (i) fish; and
- 18 (ii) fauna in a captive breeding program the object of which
- 19 is to reintroduce wild animals of a depleted indigenous species
- 20 into previously occupied range.
- 21 (4) WILDLIFE-ASSOCIATED RECREATION PROJECT.—
- 22 (A) IN GENERAL.—The term “wildlife-associated recreation
- 23 project” means a project intended to meet the demand for an out-
- 24 door activity associated with wildlife.
- 25 (B) INCLUSIONS.—The term “wildlife-associated recreation
- 26 project” includes—
- 27 (i) a project relating to hunting, fishing, or wildlife obser-
- 28 vation or photography;
- 29 (ii) a project such as construction or restoration of a wild-
- 30 life viewing area, observation tower, blind, platform, land or
- 31 water trail, water access, field trialing area, or trailhead; and
- 32 (iii) access for a project under this subparagraph.
- 33 (5) WILDLIFE CONSERVATION AND RESTORATION PROGRAM.—The
- 34 term “wildlife conservation and restoration program” means a program
- 35 developed by a State fish and wildlife agency and approved by the Sec-
- 36 retary under section 205504 of this title.
- 37 (6) WILDLIFE CONSERVATION EDUCATION PROJECT.—The term
- 38 “wildlife conservation education project” means a project (including a
- 39 public outreach project) that is intended to foster responsible natural
- 40 resource stewardship.

1 (7) WILDLIFE CONSERVATION PROJECT.—The term “wildlife con-
2 servation project” means a project that expands and supports an exist-
3 ing wildlife program, giving appropriate consideration to all wildlife.

4 **§ 205502. Wildlife Conservation and Restoration Account**

5 (a) IN GENERAL.—There is established in the Federal Aid to Wildlife
6 Restoration Fund a subaccount to be known as the “Wildlife Conservation
7 and Restoration Account”.

8 (b) INTEREST.—Interest on amounts transferred to the Wildlife Con-
9 servation and Restoration Account shall be treated in a manner consistent
10 with section 205203(b) of this title.

11 (c) AMOUNTS.—

12 (1) SUPPLEMENT TO OTHER FUNDS.—Amounts transferred to the
13 Wildlife Conservation and Restoration Account shall supplement, but
14 not replace, existing funds available to the States and other eligible ju-
15 risdictions from the Sport Fish Restoration and Boating Trust Fund
16 and the Restoration Fund.

17 (2) REQUIRED USES.—Amounts transferred to the Wildlife Con-
18 servation and Restoration Account shall be used—

19 (A) for the development, revision, and implementation of wildlife
20 conservation and restoration programs; and

21 (B) to address the unmet needs for a diverse array of wildlife
22 and associated habitats, including species that are not hunted or
23 fished, for wildlife conservation projects, wildlife conservation edu-
24 cation projects, and wildlife-associated recreation projects.

25 (3) AUTHORIZED USES.—Funds may be used by a State, other eligi-
26 ble jurisdiction, or Indian tribe for the planning and implementation
27 of its wildlife conservation and restoration program and wildlife con-
28 servation strategy, as provided in section 205504 of this title, including
29 wildlife conservation projects, wildlife conservation education projects,
30 and wildlife-associated recreation projects.

31 (4) ESTABLISHMENT OR ENHANCEMENT OF PROGRAMS OR
32 PROJECTS.—Amounts transferred to the Wildlife Conservation and
33 Restoration Account may be used to establish or enhance programs or
34 projects.

35 (5) PRIORITY FUNDING.—Priority for funding from the Wildlife Con-
36 servation and Restoration Account shall be for the species with the
37 greatest conservation need, as determined under the wildlife conserva-
38 tion and restoration program of a State or other eligible jurisdiction.

39 (6) UNEXPENDED AMOUNTS.—Notwithstanding sections 205203(b)
40 and 205206(e) of this title, with respect to amounts transferred to the
41 Wildlife Conservation and Restoration Account, an amount apportioned

1 to a State or other eligible jurisdiction for a fiscal year that remains
2 unexpended at the end of the fiscal year shall remain available for obli-
3 gation in that State or other eligible jurisdiction until the end of the
4 2d succeeding fiscal year.

5 **§ 205503. Apportionment of amounts from Wildlife Con-**
6 **servation and Restoration Account**

7 (a) INITIAL APPORTIONMENT.—The Secretary shall make the following
8 apportionment from the Wildlife Conservation and Restoration Account:

9 (1) An amount equal to not more than $\frac{1}{2}$ of 1 percent each to the
10 District of Columbia and to Puerto Rico.

11 (2) An amount equal to not more than $\frac{1}{4}$ of 1 percent each to
12 Guam, American Samoa, the Virgin Islands, and the Northern Mariana
13 Islands.

14 (b) APPORTIONMENT TO STATES.—

15 (1) IN GENERAL.—The Secretary, after making the apportionment
16 under subsection (a), shall apportion the remaining amount in the
17 Wildlife Conservation and Restoration Account for each fiscal year
18 among the States in the following manner:

19 (A) One-third of the remaining amount shall be based on the
20 ratio to which the land area of a State bears to the total land area
21 of all the States; and

22 (B) Two-thirds of the remaining amount shall be based on the
23 ratio to which the population of a State bears to the total popu-
24 lation of all the States.

25 (2) EQUITABLE APPORTIONMENTS.—The amounts apportioned under
26 this subsection shall be adjusted equitably so that for each fiscal year,
27 no State shall be apportioned an amount that is less than 1 percent
28 or more than 5 percent of the amount available for apportionment
29 under this subsection.

30 (3) ADMINISTRATIVE EXPENSES.—Of the amounts transferred to the
31 Wildlife Conservation and Restoration Account, not more than 3 per-
32 cent shall be available for Federal expenses incurred in the administra-
33 tion and execution of programs carried out with the amounts.

34 **§ 205504. Wildlife Conservation and Restoration Program**

35 (a) APPLICATION.—

36 (1) IN GENERAL.—A State or other eligible jurisdiction, through its
37 State fish and wildlife agency, may apply to the Secretary for approval
38 of a wildlife conservation and restoration program, or for funds from
39 the Wildlife Conservation and Restoration Account, to develop a pro-
40 gram.

1 (2) COMPREHENSIVE PLAN.—To apply, a State or other eligible ju-
2 risdiction shall submit a comprehensive plan that includes—

3 (A) provisions vesting in the State fish and wildlife agency over-
4 all responsibility and accountability for the program;

5 (B) provisions for the development and implementation of—

6 (i) wildlife conservation projects;

7 (ii) wildlife-associated recreation projects;

8 (iii) wildlife conservation education projects; and

9 (iv) maintenance of projects under this subparagraph; and

10 (C) provisions to ensure public participation in the development,
11 revision, and implementation of the program and the projects
12 under the program.

13 (3) PUBLIC PARTICIPATION.—A State or other eligible jurisdiction
14 shall provide an opportunity for public participation in the development
15 of the comprehensive plan under paragraph (2).

16 (b) IMPLEMENTATION THROUGH GRANTS AND CONTRACTS.—A project
17 under this section may be implemented in whole or part through a grant
18 or contract, from funds apportioned under this subchapter, by a State or
19 other eligible jurisdiction to or with—

20 (1) a Federal, State, or local agency (including an agency that gath-
21 ers, evaluates, and disseminates information on wildlife and wildlife
22 habitats);

23 (2) a wildlife conservation organization; or

24 (3) an outdoor recreation and conservation education entity.

25 (c) WILDLIFE CONSERVATION STRATEGY.—

26 (1) IN GENERAL.—Not later than 5 years after the date of the initial
27 apportionment, a State or other eligible jurisdiction shall develop and
28 begin implementation of a wildlife conservation strategy that is based
29 on the best available and appropriate scientific information and that—

30 (A) uses such information on the distribution and abundance of
31 species of wildlife (including low population and declining spe-
32 cies)—

33 (i) as the State fish and wildlife agency considers appro-
34 priate; and

35 (ii) as is indicative of the diversity and health of wildlife
36 of the State or other eligible jurisdiction;

37 (B) identifies the extent and condition of wildlife habitats and
38 community types essential to conservation of species identified
39 under subparagraph (A);

40 (C) identifies the problems that may adversely affect the species
41 identified under subparagraph (A) or their habitats, and provides

1 for priority research and surveys to identify factors that may as-
2 sist in restoration and more effective conservation of the species
3 and their habitats;

4 (D) determines the actions that should be taken to conserve the
5 species identified under subparagraph (A) and their habitats and
6 establishes priorities for implementing the conservation actions;

7 (E) provides for periodic monitoring of species identified under
8 subparagraph (A) and their habitats and the effectiveness of the
9 conservation actions determined under subparagraph (D), and for
10 adapting conservation actions as appropriate to respond to new in-
11 formation or changing conditions;

12 (F) provides for the review of the wildlife conservation strategy
13 of a State or other eligible jurisdiction and, if appropriate, revision
14 at intervals of not more than 10 years; and

15 (G) provides for coordination, to the extent feasible, during the
16 development, implementation, review, and revision of the wildlife
17 conservation strategy, of the State fish and wildlife agency with
18 Federal, State, and local agencies and Indian tribes that—

19 (i) manage significant areas of land or water in the State
20 or other eligible jurisdiction; or

21 (ii) administer programs that significantly affect the con-
22 servation of species identified under subparagraph (A) or
23 their habitats.

24 (d) APPROVAL AND FEDERAL SHARE.—If the Secretary finds that the
25 comprehensive plan submitted by a State or other eligible jurisdiction com-
26 plies with subsection (a), the Secretary shall—

27 (1) approve the wildlife conservation and restoration program of the
28 State or other eligible jurisdiction; and

29 (2) set aside from the apportionment to the State or other eligible
30 jurisdiction made pursuant to section 205503 of this title an amount
31 that is equal to not more than 75 percent of the estimated cost of de-
32 veloping and implementing the program.

33 (e) INCREMENTAL PAYMENTS.—

34 (1) IN GENERAL.—Except as provided in subsection (f), after the
35 Secretary approves a wildlife conservation and restoration program of
36 a State or other eligible jurisdiction, the Secretary may make payments
37 on a project under the wildlife conservation and restoration program
38 as the project progresses.

39 (2) PRO RATA SHARE.—Payments under paragraph (1), including
40 previous payments on the project, shall not be more than the Federal
41 pro rata share of the project.

1 (3) ADVANCE PAYMENTS.—The Secretary, under such regulations as
2 the Secretary may prescribe, may advance payments representing the
3 Federal pro rata share of a project that is a part of a wildlife conserva-
4 tion and restoration program, including payments to develop the pro-
5 gram.

6 (f) AMOUNTS FOR WILDLIFE-ASSOCIATED RECREATION PROJECTS.—Not
7 more than 10 percent of the amounts apportioned to a State or other eligi-
8 ble jurisdiction under section 205503 of this title for the wildlife conserva-
9 tion and restoration program of a State or other eligible jurisdiction may
10 be used for wildlife-associated recreation projects.

11 (g) AMOUNTS FOR WILDLIFE CONSERVATION EDUCATION.—Amounts
12 from the Wildlife Conservation and Restoration Account may be used for
13 a wildlife conservation education project, except that no such amounts shall
14 be used for education efforts, programs, or projects that promote or encour-
15 age opposition to the regulated taking of wildlife.

16 **§ 205505. Prohibition on diversion**

17 (a) IN GENERAL.—A State fish and wildlife agency of a State or other
18 eligible jurisdiction shall not be eligible to receive matching funds under this
19 subchapter if sources of revenue (including interest, dividends, or other in-
20 come earned on the revenue) available to the State fish and wildlife agency
21 after January 1, 2000, for conservation of wildlife, are diverted for any pur-
22 pose other than the administration of the State fish and wildlife agency.

23 (b) INTENT OF CONGRESS.—It is the intent of Congress under subsection
24 (a) that amounts available to a State or other eligible jurisdiction under this
25 subchapter be added to revenue from other sources of the State or other
26 eligible jurisdiction and not serve as a substitute for revenue from those
27 sources.

28 **Subchapter VI—Administrative Provisions**

29 **§ 205601. Regulations**

30 The Secretary may prescribe regulations to carry out this chapter.

31 **§ 205602. Construction work and labor**

32 Construction work and labor in a State or other eligible jurisdiction shall
33 be performed in accordance with the law of the State or other eligible juris-
34 diction and under the direct supervision of the State fish and wildlife agen-
35 cy, subject to the inspection and approval of the Secretary and in accord-
36 ance with regulations prescribed pursuant to this chapter.

37 **§ 205603. Duty to maintain wildlife restoration projects**

38 Maintenance of a wildlife restoration project established under this chap-
39 ter shall be the duty of a State or other eligible jurisdiction in accordance
40 with the law of the State or other eligible jurisdiction.

1 **§ 205604. Expenditure for management of areas and re-**
2 **sources**

3 Notwithstanding any other provision of this chapter, funds apportioned
4 to a State or other eligible jurisdiction under this chapter may be expended
5 by the State or other eligible jurisdiction for management (exclusive of law
6 enforcement and public relations) of wildlife areas and resources.

7 **§ 205605. Reports and certifications**

8 (a) PROJECTED SPENDING REPORT.—At the time that the President sub-
9 mits a budget request for the Department of the Interior for a fiscal year,
10 the Secretary shall report in writing to the Committee on Environment and
11 Public Works of the Senate and the Committee on Natural Resources of the
12 House of Representatives the amounts, for each category of administrative
13 expense, that are intended to be used for the fiscal year under sections
14 205204(a) and 227204(a)(2) of this title.

15 (b) SPENDING CERTIFICATION AND REPORT.—Not later than 60 days
16 after the end of each fiscal year, the Secretary shall submit to the Commit-
17 tee on Environment and Public Works of the Senate and the Committee on
18 Natural Resources of the House of Representatives a written certification
19 and report that—

20 (1) discloses the amounts, for each category of administrative ex-
21 pense, that were used for the fiscal year under sections 205204(a) and
22 227204(a)(2) of this title;

23 (2) discloses the amounts apportioned to States and other eligible ju-
24 risdictions for the fiscal year under sections 205204(c) and
25 227204(a)(5) of this title;

26 (3) discloses the results of the audits performed under sections
27 205205(d) and 227205(d) of this title;

28 (4) certifies that all amounts used for the fiscal year under sections
29 205204(a) and 227204(a)(2) of this title were necessary for adminis-
30 trative expenses incurred in implementation of this chapter and chapter
31 227 of this title;

32 (5) certifies that all amounts used for the fiscal year to administer
33 this chapter and chapter 227 of this title by agency headquarters and
34 by regional offices of USFWS were used in accordance with this chap-
35 ter and chapter 227 of this title; and

36 (6) certifies that the Secretary, the Assistant Secretary for Fish and
37 Wildlife and Parks, the Director, and the Assistant Director for Wild-
38 life and Sport Fish Restoration Programs each properly discharged
39 their duties under this chapter and chapter 227 of this title.

40 (c) CERTIFICATIONS BY STATES.—

1 (1) IN GENERAL.—Not later than 60 days after the end of each fis-
 2 cal year, each State and other eligible jurisdiction that received
 3 amounts apportioned under this chapter or chapter 227 of this title for
 4 the fiscal year shall certify to the Secretary in writing that the amounts
 5 were expended by the State or other eligible jurisdiction in accordance
 6 with this chapter or chapter 227 of this title, whichever one applies.

7 (2) TRANSMISSION TO CONGRESS.—Not later than December 31 of
 8 a fiscal year, the Secretary shall transmit all certifications under para-
 9 graph (1) for the previous fiscal year to the Committee on Natural Re-
 10 sources of the House of Representatives and the Committee on Envi-
 11 ronment and Public Works of the Senate.

12 (d) LIMITATION ON DELEGATION.—The Secretary shall not delegate the
 13 responsibility for making a certification under subsection (b) to an individ-
 14 ual other than the Assistant Secretary for Fish and Wildlife and Parks.

15 **Chapter 207—Great Lakes Area Fish and** 16 **Wildlife Conservation**

Subchapter I—Fish and Wildlife Restoration in the Great Lakes

Sec.

- 207101. Definitions.
- 207102. Restoration projects and proposals.
- 207103. Sea lamprey.
- 207104. Goals for programs related to the Great Lakes Basin.
- 207105. Establishment of offices.
- 207106. Report; continued monitoring and assessment.
- 207107. Authorization of appropriations.

Subchapter II—Great Lakes Fish and Wildlife Tissue Bank

Sec.

- 207201. Definitions.
- 207202. Establishment.
- 207203. Database.

17 **Subchapter I—Fish and Wildlife** 18 **Restoration in the Great Lakes**

19 **§ 207101. Definitions**

20 In this subchapter:

21 (1) 1995 REPORT.—The term “1995 Report” means the USFWS
 22 report entitled “Great Lakes Fishery Resources Restoration Study”,
 23 submitted to the President of the Senate and the Speaker of the House
 24 of Representatives on September 13, 1995.

25 (2) COMMITTEE.—The term “Committee” means the Great Lakes
 26 Fish and Wildlife Restoration Proposal Review Committee established
 27 in section 207102(c) of this title.

28 (3) GREAT LAKES BASIN.—The term “Great Lakes Basin” means
 29 the air, land, water, and living organisms within the drainage basin of
 30 the Saint Lawrence River at or upstream from the point at which the

1 river becomes the international boundary between Canada and the
2 United States.

3 (4) INDIAN TRIBE.—The term “Indian tribe” means an Indian tribe,
4 band, village, nation, or other organized group or community that—

5 (A) is recognized by the Bureau of Indian Affairs as eligible for
6 the special programs and services provided by the United States
7 to Indians because of their status as Indians; and

8 (B) has Great Lakes fish and wildlife management authority in
9 the Great Lakes Basin.

10 (5) LOWER GREAT LAKES.—The term “lower Great Lakes” means
11 the portion of the Great Lakes Basin that is downstream from the con-
12 fluence of the Saint Clair River and Lake Huron near Port Huron,
13 Michigan.

14 (6) NON-FEDERAL SOURCE.—The term “non-Federal source” in-
15 cludes a State government, local government, Indian tribe, other non-
16 Federal governmental entity, private entity, and individual.

17 (7) NONINDIGENOUS SPECIES.—The term “nonindigenous species”
18 means a species of plant, animal, or other organism that did not occur
19 in the Great Lakes Basin before European colonization of North Amer-
20 ica.

21 (8) REGIONAL PROJECT.—The term “regional project” means an au-
22 thorized activity of USFWS relating to fish and wildlife resource pro-
23 tection, restoration, maintenance, and enhancement affecting multiple
24 States or Indian tribes with fish and wildlife management authority in
25 the Great Lakes Basin.

26 (9) RESTORATION.—

27 (A) IN GENERAL.—The term “restoration” means rehabilitation
28 and maintenance of the structure, function, diversity, and dynam-
29 ics of a biological system.

30 (B) INCLUSION.— The term “restoration” includes reestablish-
31 ment of self-sustaining populations of fish and wildlife.

32 (10) STATE DIRECTOR.—The term “State Director” means the head
33 of the agency, department, board, commission, or other governmental
34 entity of each of the States of New York, Ohio, Indiana, Illinois, Michi-
35 gan, Wisconsin, Minnesota, and Pennsylvania that is responsible for
36 the management and conservation of fish and wildlife resources of the
37 State.

38 (11) UPPER GREAT LAKES.—The term “upper Great Lakes” means
39 the portion of the Great Lakes Basin that is upstream from the con-
40 fluence of the Saint Clair River and Lake Huron near Port Huron,
41 Michigan.

1 **§ 207102. Restoration projects and proposals**

2 (a) IN GENERAL.—Subject to subsection (b)(2), the Director—

3 (1) shall encourage the development and, subject to the availability
4 of appropriations, the implementation of fish and wildlife restoration
5 proposals and regional projects based on the results of the 1995 Re-
6 port; and

7 (2) in cooperation with the State Directors and Indian tribes, shall
8 identify, develop, and, subject to the availability of appropriations, im-
9 plement regional projects in the Great Lakes Basin to be administered
10 by the Director in accordance with this section.

11 (b) IDENTIFICATION OF PROPOSALS AND REGIONAL PROJECTS.—

12 (1) REQUEST BY THE DIRECTOR.—The Director shall annually re-
13 quest that State Directors and Indian tribes, in cooperation with other
14 interested entities and in accordance with subsection (a), submit pro-
15 posals or regional projects for the restoration of fish and wildlife re-
16 sources.

17 (2) REQUIREMENTS FOR PROPOSALS AND REGIONAL PROJECTS.—A
18 proposal or regional project under paragraph (1)—

19 (A) shall be submitted in the manner and form prescribed by
20 the Director; and

21 (B) shall be consistent with—

22 (i) the goals of the Great Lakes Water Quality Agreement;

23 (ii) the Convention on Great Lakes Fisheries, signed at
24 Washington September 10, 1954 (6 UST 2836, TIAS 3326);

25 (iii) the 1980 Joint Strategic Plan for Management of
26 Great Lakes Fisheries, as revised in 1997, and Fish Commu-
27 nity Objectives for each Great Lake and connecting water as
28 established under the plan;

29 (iv) the Nonindigenous Aquatic Nuisance Prevention and
30 Control Act of 1990 (16 U.S.C. 4701 et seq.);

31 (v) the North American Waterfowl Management Plan and
32 joint ventures established under the plan;

33 (vi) the strategies outlined through the Great Lakes Re-
34 gional Collaboration authorized under Executive Order 13340
35 (69 Fed. Reg. 29043);

36 (vii) the strategic action plan of the Great Lakes Restora-
37 tion Initiative; and

38 (viii) each applicable State wildlife action plan.

39 (c) GREAT LAKES FISH AND WILDLIFE RESTORATION PROPOSAL RE-
40 VIEW COMMITTEE.—

1 (1) ESTABLISHMENT OF COMMITTEE.—There is established the
2 Great Lakes Fish and Wildlife Restoration Proposal Review Commit-
3 tee, which shall operate under the guidance of the Director.

4 (2) MEMBERSHIP AND APPOINTMENT.—

5 (A) IN GENERAL.—The Committee shall consist of 2 representa-
6 tives of each of the State Directors and Indian Tribes, of whom—

7 (i) 1 representative shall be the individual appointed by the
8 State Director or Indian tribe to the Council of Lake Com-
9 mittees of the Great Lakes Fishery Commission; and

10 (ii) 1 representative shall have expertise in wildlife manage-
11 ment.

12 (B) APPOINTMENTS.—Each representative shall serve at the
13 pleasure of the appointing State Director or Tribal Chair.

14 (C) OBSERVER.—USFWS shall participate as an observer of
15 the Committee.

16 (D) RECUSAL.—A member of the Committee shall recuse him-
17 self or herself from consideration of a proposal that the member,
18 or the entity that the member represents, has submitted.

19 (3) FUNCTIONS.—The Committee shall—

20 (A) meet at least annually;

21 (B) review proposals and regional projects developed in accord-
22 ance with subsection (b) to assess the effectiveness and appro-
23 priateness of the proposals and regional projects in fulfilling the
24 purposes of this subchapter; and

25 (C) recommend to the Director any of the proposals and re-
26 gional projects that should be funded and implemented under this
27 section.

28 (d) IMPLEMENTATION OF PROPOSALS AND REGIONAL PROJECTS.—

29 (1) IN GENERAL.—After considering recommendations of the Com-
30 mittee and the goals specified in section 207104 of this title, the Direc-
31 tor shall—

32 (A) select proposals and regional projects to be implemented;
33 and

34 (B) subject to the availability of appropriations and subsection
35 (e), fund implementation of the proposals and regional projects.

36 (2) SELECTION CRITERIA.—In selecting and funding proposals and
37 regional projects, the Director shall take into account the effectiveness
38 and appropriateness of the proposals and regional projects in fulfilling
39 the purposes of other laws applicable to restoration of fish and wildlife
40 resources and habitat of the Great Lakes Basin.

41 (e) COST SHARING.—

1 (1) IN GENERAL.—

2 (A) NON-FEDERAL SHARE.—Except as provided in paragraphs
3 (3) and (5) and subject to paragraph (2), not less than 25 percent
4 of the cost of implementing a proposal or regional project selected
5 under subsection (d) (excluding the cost of establishing sea lam-
6 prey barriers) shall be paid in cash or in-kind contributions by
7 non-Federal sources.

8 (B) TIME PERIOD FOR PROVIDING MATCH.—The non-Federal
9 share of the cost of implementing a proposal or regional project
10 required under subparagraph (A) may be provided at any time
11 during the 2-year period preceding January 1 of the year in which
12 the Director receives the application for the proposal or regional
13 project.

14 (2) AUTHORIZED SOURCES OF NON-FEDERAL SHARE.—

15 (A) IN GENERAL.—The Director may determine the non-Fed-
16 eral share under paragraph (1) by taking into account—

17 (i) the appraised value of land or a conservation easement
18 as described in subparagraph (B); or

19 (ii) as described in subparagraph (C), the costs associated
20 with—

21 (I) securing a conservation easement; and

22 (II) restoration or enhancement of the conservation
23 easement.

24 (B) APPRAISAL OF CONSERVATION EASEMENT.—

25 (i) IN GENERAL.—The value of a conservation easement
26 may be used to satisfy the non-Federal share of the cost of
27 implementing a proposal or regional project required under
28 paragraph (1)(A) if the Director determines that the con-
29 servation easement—

30 (I) meets the requirements of subsection (b)(2);

31 (II) is acquired before the end of the grant period of
32 the proposal or regional project;

33 (III) is held in perpetuity for the conservation pur-
34 poses of the programs of USFWS related to the Great
35 Lakes Basin, as described in section 207104 of this title,
36 by an accredited land trust or conservancy or a Federal,
37 State, or tribal agency;

38 (IV) is connected either physically or through a con-
39 servation planning process to the proposal or regional
40 project; and

41 (V) is appraised in accordance with clause (ii).

1 (ii) APPRAISAL.—With respect to the appraisal of a con-
2 servation easement described in clause (i)—

3 (I) the appraisal valuation date shall be not later than
4 1 year after the price of the conservation easement was
5 set under a contract; and

6 (II) the appraisal shall—

7 (aa) conform to the Uniform Standards of Pro-
8 fessional Appraisal Practice (USPAP); and

9 (bb) be completed by a Federal- or State-certified
10 appraiser.

11 (C) COSTS OF SECURING CONSERVATION EASEMENTS.—

12 (i) IN GENERAL.—All costs associated with securing a con-
13 servation easement and restoration or enhancement of that
14 conservation easement may be used to satisfy the non-Federal
15 share of the cost of implementing a proposal or regional
16 project required under paragraph (1)(A) if the activities and
17 expenses associated with securing the conservation easement
18 and restoration or enhancement of that conservation ease-
19 ment meet the requirements of subparagraph (B)(i).

20 (ii) INCLUSIONS.—The costs referred to in clause (i) may
21 include cash, in-kind contributions, and indirect costs.

22 (iii) EXCLUSION.—The costs referred to in clause (i) shall
23 not be costs associated with mitigation or litigation (other
24 than costs associated with the Natural Resource Damage As-
25 sessment program).

26 (3) REGIONAL PROJECTS.—Regional projects selected under sub-
27 section (d) shall be exempt from cost sharing if the Director determines
28 that the authorization for the project does not require a non-Federal
29 cost share.

30 (4) EXCLUSION OF FEDERAL FUNDS FROM NON-FEDERAL SHARE.—
31 The Director may not consider the expenditure, directly or indirectly,
32 of Federal funds received by an entity to be a contribution by a non-
33 Federal source for purposes of this subsection.

34 (5) EFFECT ON CERTAIN INDIAN TRIBES.—Nothing in this sub-
35 section affects an Indian tribe affected by an alternative applicable cost
36 sharing requirement under the Indian Self-Determination and Edu-
37 cation Assistance Act (25 U.S.C. 450 et seq.).

38 **§ 207103. Sea lamprey**

39 The Great Lakes Fishery Commission shall formulate and implement a
40 comprehensive program to eradicate or minimize sea lamprey populations in
41 the Great Lakes Basin.

1 **§ 207104. Goals for programs related to the Great Lakes**
2 **Basin**

3 In administering programs of USFWS related to the Great Lakes Basin,
4 the Director shall seek to achieve the following goals:

5 (1) Restoring and maintaining self-sustaining fish and wildlife re-
6 sources.

7 (2) Minimizing the impacts of contaminants on fishery and wildlife
8 resources.

9 (3) Protecting, maintaining, and, where degraded and destroyed, re-
10 restoring fish and wildlife habitat, including enhancing and creating wet-
11 land areas that result in a net gain in the amount of those habitats.

12 (4) Stopping illegal activities adversely impacting fishery and wildlife
13 resources.

14 (5) Restoring listed species, as defined in section 201102 of this
15 title, to viable, self-sustaining levels.

16 (6) Protecting, managing, and conserving migratory birds.

17 **§ 207105. Establishment of offices**

18 (a) LOWER GREAT LAKES FISH AND WILDLIFE CONSERVATION OF-
19 FICE.—

20 (1) IN GENERAL.—The Director shall establish an office with nec-
21 essary administrative and technical support services to carry out all
22 USFWS operational activities related to fishery resource protection,
23 restoration, maintenance, and enhancement in the lower Great Lakes.

24 (2) NAME AND LOCATION.—The office—

25 (A) shall be known as the “Lower Great Lakes Fish and Wild-
26 life Conservation Office”; and

27 (B) shall be centrally located in the lower Great Lakes to facili-
28 tate fishery resource restoration and enhancement activities relat-
29 ing to the lower Great Lakes.

30 (3) RESPONSIBILITIES.—The responsibilities of the Lower Great
31 Lakes Fish and Wildlife Conservation Office include operational activi-
32 ties of USFWS related to fishery resource protection, restoration,
33 maintenance, and enhancement in the lower Great Lakes.

34 (b) UPPER GREAT LAKES FISH AND WILDLIFE CONSERVATION OF-
35 FICES.—

36 (1) IN GENERAL.—The Director shall establish 1 or more offices
37 with necessary administrative and technical support services to carry
38 out USFWS operational activities related to fishery resource protection,
39 restoration, maintenance, and enhancement in the upper Great Lakes.

40 (2) NAME AND LOCATION.—Each of the offices—

1 (A) shall be known as an “Upper Great Lakes Fish and Wildlife
2 Conservation Office”; and

3 (B) shall be appropriately located to facilitate fishery resource
4 activities in the upper Great Lakes.

5 (3) RESPONSIBILITIES.—The responsibilities of the Upper Great
6 Lakes Fish and Wildlife Conservation Offices include operational activi-
7 ties of USFWS related to fishery resource protection, restoration,
8 maintenance, and enhancement in the upper Great Lakes.

9 **§ 207106. Report; continued monitoring and assessment**

10 (a) IN GENERAL.—Not later than December 31, 2021, the Director shall
11 submit to the Committee on Natural Resources of the House of Representa-
12 tives and the Committee on Environment and Public Works of the Senate
13 a report that describes—

14 (1) actions taken to solicit and review proposals under section
15 207102 of this title;

16 (2) the results of proposals implemented under section 207102 of
17 this title; and

18 (3) progress toward the accomplishment of the goals specified in sec-
19 tion 207104 of this title.

20 (b) PUBLIC ACCESS TO DATA.—For each of fiscal years 2016 through
21 2020, the Director shall make available through a public access website of
22 the Department information that describes—

23 (1) actions taken to solicit and review proposals under section
24 207102 of this title;

25 (2) the results of proposals implemented under section 207102 of
26 this title;

27 (3) progress toward the accomplishment of the goals specified in sec-
28 tion 207104 of this title;

29 (4) the priorities proposed for funding in the annual budget process
30 under this subchapter; and

31 (5) actions taken in support of the Great Lakes Restoration Initia-
32 tive Action Plan based on the recommendations of the Great Lakes Re-
33 gional Collaboration authorized under Executive Order 13340 (69 Fed.
34 Reg. 29043).

35 (c) CONTINUED MONITORING AND ASSESSMENT OF STUDY FINDINGS
36 AND RECOMMENDATIONS.—The Director—

37 (1) shall continue to monitor the status, and the assessment, man-
38 agement, and restoration needs, of the fish and wildlife resources of the
39 Great Lakes Basin; and

40 (2) may reassess and update, as necessary, the findings and recom-
41 mendations of the 1995 Report.

1 **§ 207107. Authorization of appropriations**

2 (a) AUTHORIZATION.—There are authorized to be appropriated to the Di-
3 rector for each of fiscal years 2016 through 2021—

4 (1) \$6,000,000 to implement proposals and regional projects as se-
5 lected by the Director under section 207102(d) of this title, of which—

6 (A) not more than the lesser of 33⅓ percent or \$2,000,000
7 may be allocated to implement regional projects by USFWS, as se-
8 lected by the Director under section 207102(d) of this title; and

9 (B) the lesser of 5 percent or \$300,000 shall be allocated to
10 USFWS to cover costs incurred in administering the proposals by
11 any entity; and

12 (2) \$2,000,000, which shall be allocated for the activities, under sec-
13 tion 207105 of this title, of—

14 (A) the Upper Great Lakes Fish and Wildlife Conservation Of-
15 fices; and

16 (B) the Lower Great Lakes Fish and Wildlife Conservation Of-
17 fice.

18 (b) PROHIBITION ON USE OF FUNDS FOR FEDERAL ACQUISITION OF IN-
19 TERESTS IN LAND.—No funds appropriated or used to carry out this sub-
20 chapter may be used for acquisition by the Federal Government of any in-
21 terest in land.

22 **Subchapter II—Great Lakes Fish and**
23 **Wildlife Tissue Bank**

24 **§ 207201. Definitions**

25 In this subchapter:

26 (1) SECRETARY.—The term “Secretary” means the Secretary of the
27 Interior, acting through the Director.

28 (2) GREAT LAKES FISH AND WILDLIFE.—The term “Great Lakes
29 fish and wildlife” means fish, invertebrates, and other fauna that—

30 (A) are dependent on Great Lakes resources; and

31 (B) are located within the Great Lakes Basin.

32 **§ 207202. Establishment**

33 (a) IN GENERAL.—The Secretary shall coordinate facilities in existence
34 on October 23, 1992, for the storage, preparation, examination, and archiv-
35 ing of tissues from selected Great Lakes fish and wildlife.

36 (b) GREAT LAKES FISH AND WILDLIFE TISSUE BANK.—The coordinated
37 facilities under subsection (a) shall be known as the “Great Lakes Fish and
38 Wildlife Tissue Bank”.

39 (c) GUIDANCE.—

40 (1) IN GENERAL.—The Secretary shall, in consultation with appro-
41 priate Federal and State agencies and the Council of Great Lakes Re-

1 search Managers, issue guidance, after an opportunity for public review
 2 and comment, for Great Lakes fish and wildlife tissue collection, prepara-
 3 tion, archiving, quality control procedures, and access.

4 (2) REQUIREMENTS.—The guidance issued under paragraph (1)
 5 shall ensure—

6 (A) appropriate uniform methods and standards for the activi-
 7 ties listed in paragraph (1) to provide confidence in Great Lakes
 8 fish and wildlife tissue samples used for research;

9 (B) documentation of procedures used for collecting, preparing,
 10 and archiving the samples described in subparagraph (A); and

11 (C) appropriate scientific use of the tissues in the Great Lakes
 12 Fish and Wildlife Tissue Bank.

13 **§ 207203. Database**

14 (a) MAINTENANCE.—The Secretary shall maintain a central database
 15 that provides an effective means for tracking and assessing relevant refer-
 16 ence data on Great lakes fish and wildlife, including data on tissues col-
 17 lected for and maintained in the Great Lakes Fish and Wildlife Tissue
 18 Bank.

19 (b) CRITERIA FOR ACCESS.—The Secretary shall establish criteria, after
 20 an opportunity for public review and comment, for access to the database
 21 that provides for appropriate use of the information by the public.

22 **Chapter 209—Importation of Wild Mam-** 23 **mals and Birds in Violation of Foreign** 24 **Law**

Sec.

209101. Prohibition on importation.

209102. Forfeiture.

209103. Inapplicability of chapter.

25 **§ 209101. Prohibition on importation**

26 (a) DEFINITION OF FOREIGN COUNTRY.—In this section, the term “for-
 27 eign country” includes a dependency or a province or other subdivision of
 28 government of a foreign country.

29 (b) IN GENERAL.—Except as provided in subsection (c), no wild mammal
 30 or bird, or part or product of a wild mammal or bird, shall be imported
 31 into the United States from a foreign country, directly or indirectly, if the
 32 laws (including regulations) of the foreign country restrict—

33 (1) the taking, killing, possession, or exportation to the United
 34 States, of a wild mammal or bird, alive or dead; or

35 (2) the exportation to the United States of a part or product of a
 36 wild mammal or bird, whether raw or manufactured.

37 (c) INAPPLICABILITY WITH CONSULAR CERTIFICATION.—Subsection (b)
 38 shall not apply if the importation is accompanied by a certification, made

1 by the United States consul for the consular district in which is located the
2 port or place from which the wild mammal or bird, or part or product of
3 the wild mammal or bird, was exported, that the wild mammal or bird, or
4 part or product of the wild mammal or bird, has not been acquired or ex-
5 ported in violation of the laws (including regulations) of the foreign country.

6 **§ 209102. Forfeiture**

7 (a) IN GENERAL.—A wild mammal or bird, alive or dead, or a part or
8 product of a wild mammal or bird, whether raw or manufactured, imported
9 into the United States in violation of section 209101 of this title shall be
10 subject to seizure and forfeiture under the customs laws of the United
11 States.

12 (b) DISPOSITION OF FORFEITED ARTICLES.—An article forfeited under
13 subsection (a), in the discretion of the Secretary of Homeland Security and
14 under regulations that the Secretary of Homeland Security may prescribe,
15 may be—

16 (1) placed with departments or bureaus of the Federal or State gov-
17 ernments, or with societies or museums, for exhibition, scientific, or
18 educational purposes;

19 (2) destroyed; or

20 (3) sold in a manner provided by law (except in the case of heads
21 or horns of wild mammals).

22 **§ 209103. Inapplicability of chapter**

23 This chapter shall not apply in the case of—

24 (1) an article the importation of which is prohibited under—

25 (A) the Tariff Act of 1930 (19 U.S.C. 1202 et seq.);

26 (B) section 42(a) of title 18; or

27 (C) any other law;

28 (2) a wild mammal or bird, alive or dead, or a part or product of
29 a wild mammal or bird, whether raw or manufactured, imported for
30 scientific or educational purposes; or

31 (3) a migratory game bird if—

32 (A) an open season for the migratory game bird is provided
33 under Federal law and the law of any foreign country that is a
34 party to a treaty with the United States, in effect on the date of
35 importation, relating to the protection of the migratory game bird;
36 and

37 (B) the migratory game bird is brought into the United States
38 by a bona fide sport hunter returning from a hunting trip in the
39 foreign country, if, at the time of importation, the possession of
40 the bird is not prohibited by Federal law or the law of the foreign
41 country.

1 **Chapter 211—Airborne Hunting**

- 211101. Definitions.
- 211102. Offenses and criminal penalties.
- 211103. Inapplicability to certain persons.
- 211104. Enforcement.
- 211105. Forfeiture.

2 **§ 211101. Definitions**

3 In this chapter:

- 4 (1) AIRCRAFT.—The term “aircraft” means a contrivance used for
5 flight in the air.
- 6 (2) SECRETARY.—The term “Secretary” means the Secretary of the
7 Interior.
- 8 (3) WILD ANIMAL.—The term “wild animal” means an animal other
9 than a domestic or domesticated animal.

10 **§ 211102. Offenses and criminal penalties**

11 Offenses and criminal penalties under this chapter are provided under
12 section 50(c) of title 18.

13 **§ 211103. Inapplicability to certain persons**

14 (a) IN GENERAL.—Section 50(c) of title 18 shall not apply to a person
15 if the person is employed by, is an authorized agent of, or is operating
16 under a license or permit of, a State or the United States to administer
17 or protect, or aid in the administration or protection of, land, water, wild
18 animals, livestock, domesticated animals, human life, or crops.

19 (b) REPORTING BY LICENSE OR PERMIT HOLDERS.—A person operating
20 under a license or permit under subsection (a) shall report to the applicable
21 issuing authority each calendar quarter the number and type of wild ani-
22 mals that the person has taken as described in section 50(c) of title 18.

23 (c) REPORTING BY STATES.—A State or State agency that issues a li-
24 cense or permit described in subsection (a) shall file with the Secretary an
25 annual report containing such information as the Secretary shall prescribe,
26 including—

- 27 (1) the name and address of each person to whom a license or per-
28 mit was issued;
- 29 (2) a description of wild animals authorized to be taken under the
30 license or permit;
- 31 (3) the number of wild animals authorized to be taken under the li-
32 cense or permit;
- 33 (4) a description of the area from which wild animals are authorized
34 to be taken under the license or permit;
- 35 (5) the number and type of wild animals taken by a person to whom
36 a license or permit was issued; and
- 37 (6) the reason for issuing the license or permit.

1 **§ 211104. Enforcement**

2 (a) IN GENERAL.—The Secretary shall enforce this chapter and prescribe
3 such regulations as the Secretary considers necessary to carry out the en-
4 forcement.

5 (b) COOPERATIVE AGREEMENTS.—The Secretary may—

6 (1) enter into cooperative agreements with State fish and wildlife
7 agencies or other appropriate State authorities to facilitate enforcement
8 of this chapter; and

9 (2) in cooperative agreements under paragraph (1), delegate to State
10 law enforcement personnel such enforcement authority as the Secretary
11 considers appropriate for effective enforcement of this chapter.

12 (c) ENFORCEMENT AUTHORITY OF DEPARTMENT EMPLOYEES.—An em-
13 ployee of the Department of the Interior authorized by the Secretary to en-
14 force this chapter may—

15 (1) without warrant—

16 (A) arrest a person committing, in the employee’s presence or
17 view, a violation of this chapter or a regulation prescribed under
18 this chapter; and

19 (B) take the person arrested under subparagraph (A) imme-
20 diately for examination or trial before an officer or court of com-
21 petent jurisdiction;

22 (2) execute a warrant or other process issued by an officer or court
23 of competent jurisdiction for the enforcement of this chapter; and

24 (3) with or without a warrant, as authorized by law, search a place.

25 (d) AUTHORITY TO ISSUE WARRANTS.—A judge of a court established
26 under Federal law (including a United States magistrate judge) may, within
27 the judge’s jurisdiction, on oath or affirmation showing probable cause,
28 issue a warrant under this section.

29 **§ 211105. Forfeiture**

30 (a) IN GENERAL.—The following items shall be subject to forfeiture to
31 the United States:

32 (1) A wild animal shot or captured in violation of this chapter or
33 a regulation prescribed under this chapter.

34 (2) A gun, aircraft, or other piece of equipment used to aid in the
35 shooting, attempting to shoot, capturing, or harassing of a wild animal
36 in violation of this chapter or a regulation prescribed under this chap-
37 ter.

38 (b) APPLICABILITY OF CUSTOMS LAWS.—

39 (1) IN GENERAL.—All laws relating to—

40 (A) seizure, forfeiture, and condemnation of a vessel for viola-
41 tion of the customs laws of the United States;

1 (B) disposition of the vessel seized, forfeited, or condemned for
2 violation of the customs laws of the United States;

3 (C) proceeds from the sale of the vessel seized, forfeited, or con-
4 demned for violation of the customs laws of the United States; and

5 (D) remission or mitigation of forfeiture of the vessel for viola-
6 tion of the customs laws of the United States;

7 shall apply to the seizures and forfeitures incurred, or alleged to have
8 been incurred, under this chapter to the extent that those laws are ap-
9 plicable and not inconsistent with this chapter.

10 (2) POWERS, RIGHTS, AND DUTIES OF SECRETARY RELATING TO
11 CUSTOMS LAWS.—All powers, rights, and duties conferred or imposed
12 by the customs laws of the United States on an officer or employee of
13 the Department of the Treasury or Department of Homeland Security
14 shall, for the purposes of this chapter, be exercised or performed by
15 the Secretary or by a person that the Secretary may designate.

16 **Chapter 213—Continuing Studies and**
17 **Investigations**

- Sec.
- 213101. Investigations, information, and reports on fish and wildlife.
- 213102. Studies of effects of use of chemicals.
- 213103. Investigations to determine effect on wildlife of polluting substances.

18 **§ 213101. Investigations, information, and reports on fish**
19 **and wildlife**

20 The Secretary of the Interior or the Secretary of Commerce, as program
21 responsibilities are vested pursuant to section 107105 of this title, shall con-
22 duct continuing investigations, prepare and disseminate information, and
23 make periodic reports to the public and to the President with respect to—

- 24 (1) the production and flow to market of—
 - 25 (A) fish and fishery products domestically produced; and
 - 26 (B) fish and fishery products produced by foreign producers
 that affect the domestic fisheries;
- 27 (2) the availability and abundance and the biological requirements of
28 fish and wildlife resources;
- 29 (3) the competitive economic position of the various fish and fishery
30 products with respect to each other, and with respect to competitive do-
31 mestic and foreign-produced commodities;
- 32 (4) the collection and dissemination of statistics on commercial and
33 sport fishing;
- 34 (5) the collection and dissemination of statistics on—
 - 35 (A) the nature and availability of wildlife;
 - 36 (B) progress in acquisition of additional refuges; and
- 37

1 (C) measures being taken to foster a coordinated program to
2 encourage and develop wildlife values;

3 (6) the improvement of production and marketing practices in regard
4 to commercial species and the conduct of educational and extension
5 services relative to commercial and sport fishing and other wildlife mat-
6 ters; and

7 (7) any other matter that, in the judgment of the Secretary, is of
8 public interest in connection with any phase of fish and wildlife oper-
9 ations.

10 **§ 213102. Studies of effects of use of chemicals**

11 To prevent losses of fish and wildlife from the spraying, dusting, or other
12 treatment using insecticides, herbicides, fungicides, and pesticides, the Ad-
13 ministrator of the Environmental Protection Agency shall undertake com-
14 prehensive continuing studies on the effects of those chemicals on the fish
15 and wildlife resources of the United States, for the purpose of determin-
16 ing—

17 (1) the amounts, percentages, and formulations of those chemicals
18 that are lethal to or injurious to fish and wildlife; and

19 (2) the amounts, percentages, mixtures, or formulations that can be
20 used safely.

21 **§ 213103. Investigations to determine effect on wildlife of**
22 **polluting substances**

23 (a) DEFINITION OF WILDLIFE.—In this section, the term “wildlife” in-
24 cludes—

25 (1) birds, fishes, mammals, and all other classes of wild animals; and

26 (2) all types of aquatic and land vegetation on which wild animals
27 are dependent.

28 (b) IN GENERAL.—The Secretary of the Interior (through USFWS) or
29 the Secretary of Commerce, as appropriate, may—

30 (1) make such investigations as either Secretary considers necessary
31 to determine the effects on wildlife of—

32 (A) domestic sewage;

33 (B) mine, petroleum, and industrial wastes;

34 (C) erosion silt; and

35 (D) other polluting substances ; and

36 (2) submit to Congress reports—

37 (A) concerning the investigations; and

38 (B) containing recommendations for alleviating dangerous and
39 undesirable effects of the pollution.

40 (c) INCLUSIONS.—The investigations described in subsection (b) shall in-
41 clude—

- 1 (1) the determination of standards of water quality for the mainte-
- 2 nance of wildlife;
- 3 (2) the study of methods of abating and preventing pollution, includ-
- 4 ing methods for the recovery of useful or marketable products and by-
- 5 products of wastes; and
- 6 (3) the collation and distribution of data on the progress and results
- 7 of the investigations for the use of Federal, State, municipal, and pri-
- 8 vate agencies, individuals, organizations, or enterprises.

Chapter 215—Wildlife Trafficking

Subchapter I—General Provisions

Sec.

215101. Definitions.

215102. Purposes.

215103. Policy.

Subchapter II—Framework for Interagency Response

215201. Report.

215202. Presidential Task Force on Wildlife Trafficking.

Subchapter III—Programs to Address Wildlife Trafficking

215301. Wildlife law enforcement professional training and coordination activities.

215302. Investigative capacity building.

215303. Combating transnational trade in illegal wildlife.

215304. Community conservation.

215305. Implementation of recommendations in strategic plan.

Subchapter I—General Provisions

§ 215101. Definitions

In this chapter:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Relations and the Committee on Appropriations of the Senate; and

(B) the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives.

(2) CO-CHAIRS OF THE TASK FORCE.—The term “Co-Chairs of the Task Force” means the Co-Chairs of the Presidential Task Force on Wildlife Trafficking established under Executive Order 13648, which Co-Chairs consist of the Secretary of State, the Secretary of the Interior, and the Attorney General.

(3) COMMUNITY CONSERVATION.—

(A) IN GENERAL.—The term “community conservation” means an approach to conservation that recognizes the rights of local people to manage, or benefit directly or indirectly from, wildlife and other natural resources in a long-term biologically viable manner.

1 (B) INCLUSIONS.—The term “community conservation” in-
2 cludes—

3 (A) devolving management and governance to local commu-
4 nities to create positive conditions for resource use that takes
5 into account current and future ecological requirements; and

6 (B) building the capacity of communities for conservation
7 and natural resource management.

8 (4) COUNTRY OF CONCERN.—The term “country of concern” means
9 a foreign country specially designated by the Secretary of State as a
10 focus country the government of which has actively engaged in or
11 knowingly profited from the trafficking of endangered species or threat-
12 ened species under chapter 201 of this title.

13 (5) DEFENSE ARTICLE.—The term “defense article” has the mean-
14 ing given the term in section 47 of the Arms Export Control Act (22
15 U.S.C. 2794).

16 (6) DEFENSE SERVICE.—The term “defense service” has the mean-
17 ing given the term in section 47 of the Arms Export Control Act (22
18 U.S.C. 2794).

19 (7) FOCUS COUNTRY.—The term “focus country” means a foreign
20 country determined by the Secretary of State to be—

21 (A) a major source of wildlife trafficking products or their de-
22 rivatives;

23 (B) a major transit point of wildlife trafficking products or their
24 derivatives; or

25 (C) a major consumer of wildlife trafficking products.

26 (8) IMPLEMENTATION PLAN.—The term “Implementation Plan”
27 means the Implementation Plan for the National Strategy for Combat-
28 ing Wildlife Trafficking released on February 11, 2015, a modification
29 of that plan, or a successor plan.

30 (9) NATIONAL STRATEGY.—The term “National Strategy” means
31 the National Strategy for Combating Wildlife Trafficking published on
32 February 11, 2014, a modification of that strategy, or a successor
33 strategy.

34 (10) NATIONAL WILDLIFE SERVICES.—The term “national wildlife
35 services” means the ministries and government bodies designated to
36 manage matters pertaining to wildlife management, including poaching
37 or trafficking, in a focus country.

38 (11) SECURITY FORCE.—The term “security force” means a mili-
39 tary, law enforcement, gendarmerie, park ranger, or any other security
40 force with a responsibility for protecting wildlife and natural habitats.

1 (12) SIGNIFICANT MILITARY EQUIPMENT.—The term “significant
2 military equipment” has the meaning given the term in section 47 of
3 the Arms Export Control Act (22 U.S.C. 2794).

4 (13) TASK FORCE.—The term “Task Force” means the Presidential
5 Task Force on Wildlife Trafficking, as established by Executive Order
6 13648 (78 Fed. Reg. 40621) and modified by section 215202 of this
7 title.

8 (14) TRAINING.—The term “training” has the meaning given the
9 term in section 47 of the Arms Export Control Act (22 U.S.C. 2794).

10 (15) USAID.—The term “USAID” means the United State Agency
11 for International Development.

12 (16) WILDLIFE TRAFFICKING.—The term “wildlife trafficking”
13 means—

14 (A) poaching or other illegal taking of protected or managed
15 species; and

16 (B) illegal trade in wildlife, wildlife parts, or products from
17 wildlife.

18 **§ 215102. Purposes**

19 The purposes of this chapter are—

20 (1) to support a collaborative, interagency approach to address wild-
21 life trafficking;

22 (2) to protect and conserve the remaining populations of wild ele-
23 phants, rhinoceroses, and other species threatened by poaching and the
24 illegal wildlife trade;

25 (3) to disrupt regional and global transnational organized criminal
26 networks and to prevent the illegal wildlife trade from being used as
27 a source of financing for criminal groups that undermine United States
28 and global security interests;

29 (4) to prevent wildlife poaching and trafficking from being a means
30 to make a living in focus countries;

31 (5) to support the efforts of, and collaborate with, individuals, com-
32 munities, local organizations, and foreign governments to combat
33 poaching and wildlife trafficking;

34 (6) to assist focus countries in implementation of national wildlife
35 anti-trafficking and poaching laws; and

36 (7) to ensure that United States assistance to prevent and suppress
37 illicit wildlife trafficking—

38 (A) is carefully planned and coordinated; and

39 (B) is systematically and rationally prioritized on the basis of
40 detailed analysis of the nature and severity of threats to wildlife

1 and the willingness and ability of foreign partners to cooperate ef-
2 fectively toward these ends.

3 **§ 215103. Policy**

4 It is the policy of the United States—

5 (1) to take immediate actions to stop the illegal global trade in wild-
6 life and wildlife products and associated transnational organized crime;

7 (2) to provide technical and other forms of assistance to help focus
8 countries halt the poaching of elephants, rhinoceroses, and other imper-
9 iled species and end the illegal trade in wildlife and wildlife products,
10 including by providing training and assistance in—

11 (A) wildlife protection and management of wildlife populations;

12 (B) anti-poaching and effective management of protected areas
13 including community-managed and privately-owned lands;

14 (C) local engagement of security forces in anti-poaching respon-
15 sibilities, where appropriate;

16 (D) wildlife trafficking investigative techniques, including foren-
17 sic tools;

18 (E) transparency and corruption issues;

19 (F) management, tracking, and inventory of confiscated wildlife
20 contraband;

21 (G) demand reduction strategies in countries that lack the
22 means and resources to conduct them; and

23 (H) bilateral and multilateral agreements and cooperation;

24 (3) to employ appropriate assets and resources of the United States
25 Government in a coordinated manner to curtail poaching and disrupt
26 and dismantle illegal wildlife trade networks and the financing of those
27 networks in a manner appropriate for each focus country;

28 (4) to build upon the National Strategy and Implementation Plan to
29 further combat wildlife trafficking in a holistic manner and guide the
30 response of the United States Government to ensure progress in the
31 fight against wildlife trafficking; and

32 (5) to recognize the ties of wildlife trafficking to broader forms of
33 transnational organized criminal activities, including trafficking, and
34 where applicable, to focus on those crimes in a coordinated, cross-cut-
35 ting manner.

36 **Subchapter II—Framework for**
37 **Interagency Response**

38 **§ 215201. Report**

39 (a) REPORT.—Beginning on a date not later than October 7, 2017, the
40 Secretary of State, in consultation with the Secretary of the Interior and

1 the Secretary of Commerce, shall annually submit to Congress a report that
2 lists each focus country.

3 (b) IDENTIFICATION OF COUNTRY OF CONCERN.—In each report re-
4 quired under subsection (a), the Secretary of State, in consultation with the
5 Secretary of the Interior and the Secretary of Commerce, shall identify each
6 focus country that is also a country of concern.

7 (c) SUNSET.—This section shall terminate on October 7, 2021.

8 **§ 215202. Presidential Task Force on Wildlife Trafficking**

9 (a) RESPONSIBILITIES.—In addition to the functions required by Execu-
10 tive Order 13648 (78 Fed. Reg. 40621), the Task Force—

11 (1) shall be informed by the Secretary of State’s annual report re-
12 quired under section 215201 of this title; and

13 (2) considering all available information, shall ensure that relevant
14 United States Government agencies—

15 (A) collaborate, to the greatest extent practicable, with the na-
16 tional wildlife services, or other relevant bodies, of each focus
17 country to prepare, not later than 90 days after the date of sub-
18 mission of the report required under section 215201(a) of this
19 title—

20 (i) a United States mission assessment of the threats to
21 wildlife in that focus country; and

22 (ii) an assessment of the capacity of that focus country to
23 address wildlife trafficking;

24 (B) collaborate, to the greatest extent practicable, with relevant
25 ministries, national wildlife services, or other relevant bodies of
26 each focus country to prepare, not later than 180 days after prep-
27 aration of the assessment referred to in subparagraph (A), a
28 United States mission strategic plan that includes recommenda-
29 tions for addressing wildlife trafficking, taking into account any
30 regional or national strategies, developed before the preparation of
31 the assessment, for addressing wildlife trafficking in a focus coun-
32 try;

33 (C) coordinate efforts among Federal agencies and non-Federal
34 partners, including missions, domestic and international organiza-
35 tions, the private sector, and other global partners, to implement
36 the strategic plans required by subparagraph (B) in each focus
37 country;

38 (D) not less frequently than annually, consult and coordinate
39 with stakeholders qualified to provide advice, assistance, and infor-
40 mation regarding—

41 (i) effective support for anti-poaching activities;

- 1 (ii) coordination of regional law enforcement efforts;
- 2 (iii) development of and support for effective legal enforce-
- 3 ment mechanisms;
- 4 (iv) development of strategies—
- 5 (I) to reduce illicit trade; and
- 6 (II) to reduce consumer demand for illegally traded
- 7 wildlife and wildlife products; and
- 8 (v) other relevant topics under this chapter; and
- 9 (E) coordinate or carry out other functions as are necessary to
- 10 implement this chapter.

11 (b) DUPLICATION AND EFFICIENCY.—The Task Force shall—

- 12 (1) ensure that the activities of the Federal agencies involved in car-
- 13 rying out efforts under this chapter are coordinated and not duplicated;
- 14 and
- 15 (2) encourage efficiencies and coordination among the efforts of Fed-
- 16 eral agencies and interagency initiatives ongoing as of October 7, 2016,
- 17 to address—
- 18 (A) trafficking activities, including trafficking of wildlife, hu-
- 19 mans, weapons, and narcotics;
- 20 (B) illegal trade;
- 21 (C) transnational organized crime; or
- 22 (D) other illegal activities.

23 (c) CONSISTENCY WITH AGENCY RESPONSIBILITIES.—The Task Force

24 shall carry out its responsibilities under this chapter in a manner consistent

25 with the authorities and responsibilities of agencies represented on the Task

26 Force.

27 (d) TASK FORCE STRATEGIC REVIEW.—Beginning on October 7, 2017,

28 the Task Force shall annually—

- 29 (1) submit a strategic assessment of its work; and
- 30 (2) provide a briefing to the appropriate congressional committees
- 31 that includes—
- 32 (A) a review and assessment of the Task Force’s implementa-
- 33 tion of this chapter, identifying successes, failures, and gaps in its
- 34 work, or the work of agencies represented on the Task Force, in-
- 35 cluding detailed descriptions of—
- 36 (i) the approaches, initiatives, or programs—
- 37 (I) that have succeeded best in increasing the willing-
- 38 ness and capacity of focus countries to suppress and pre-
- 39 vent illegal wildlife trafficking; and

1 (II) that have not succeeded, as well as hoped, in in-
2 creasing the willingness and capacity of focus countries
3 to suppress and prevent illegal wildlife trafficking;
4 (ii) the focus countries—
5 (I) listed and identified under subsections (a) and (b)
6 of section 215201 of this title that have proven to be the
7 most successful partners in suppressing and preventing
8 illegal wildlife trafficking; and
9 (II) that have not proven to be partners as described
10 in subclause (I); and
11 (iii) the factors that contributed to the results in each
12 country described in subclauses (I) and (II) of clause (ii);
13 (B) a description of each Task Force member agency’s priorities
14 and objectives for combating wildlife trafficking;
15 (C) an account of total United States funding each year since
16 fiscal year 2014 for all government agencies and programs in-
17 volved in countering poaching and wildlife trafficking;
18 (D) an account of total United States funding since fiscal year
19 2014 to support the activities of the Task Force, including admin-
20 istrative overhead costs and congressional reporting; and
21 (E) recommendations for improving United States and inter-
22 national efforts to suppress and prevent illegal wildlife trafficking
23 in the future, based on the Task Force’s experience as of the time
24 of the review.
25 (e) TERMINATION OF TASK FORCE.—The statutory authorization for the
26 Task Force provided by this chapter shall terminate on October 7, 2021,
27 or such earlier date that the President terminates the Task Force by re-
28 scinding, superseding, or otherwise modifying relevant portions of Executive
29 Order 13648 (78 Fed. Reg. 40621).

30 **Subchapter III—Programs to Address**
31 **Wildlife Trafficking**

32 **§ 215301. Wildlife law enforcement professional training**
33 **and coordination activities**

34 The Secretary of State and the Administrator of USAID, in collaboration
35 with the heads of other relevant United States agencies and nongovern-
36 mental partners where appropriate, may provide assistance to focus coun-
37 tries to carry out the recommendations made in the strategic plan required
38 by section 215202(a)(2)(B) of this title, among other goals, to improve the
39 effectiveness of wildlife law enforcement in regions and countries that have
40 demonstrated capacity, willingness, and need for assistance.

1 **§ 215302. Investigative capacity building**

2 The Secretary of State and the Administrator of USAID, in collaboration
3 with the heads of other relevant United States agencies and communities,
4 regions, and governments in focus countries, may design and implement
5 programs in focus countries to carry out the recommendations made in the
6 strategic plan required under section 215202(a)(2)(B) of this title, among
7 other goals, with clear and measurable targets and indicators of success, to
8 increase the capacity of wildlife law enforcement and customs and border
9 security officers in focus countries.

10 **§ 215303. Combating transnational trade in illegal wildlife**

11 The Secretary of State and the Administrator of USAID, in collaboration
12 with other relevant United States agencies, nongovernmental partners, and
13 international bodies, and in collaboration with communities, regions, and
14 governments in focus countries, may design and implement programs, in-
15 cluding support for Wildlife Enforcement Networks, in focus countries to
16 carry out the recommendations made in the strategic plan required under
17 section 215202(a)(2)(B) of this title, among other goals, to better under-
18 stand and combat the transnational trade in illegal wildlife.

19 **§ 215304. Community conservation**

20 The Secretary of State, in collaboration with USAID, heads of other rel-
21 evant United States agencies, the private sector, nongovernmental organiza-
22 tions, and other development partners, may provide support in focus coun-
23 tries to carry out the recommendations made in the strategic plan required
24 under section 215202(a)(2)(B) of this title as such recommendations relate
25 to the development, scaling, and replication of community wildlife conser-
26 vancies and community conservation programs in focus countries to assist
27 with rural stability and greater security for people and wildlife, empower
28 and support communities to manage or benefit from their wildlife resources
29 in a long-term biologically viable manner, and reduce the threat of poaching
30 and trafficking, including through—

31 (1) promoting conservation-based enterprises and incentives, such as
32 ecotourism and stewardship-oriented agricultural production, that em-
33 power communities to manage wildlife, natural resources, and commu-
34 nity ventures where appropriate, by ensuring they benefit from well-
35 managed wildlife populations;

36 (2) helping create alternative livelihoods to poaching by mitigating
37 wildlife trafficking, helping support rural stability, greater security for
38 people and wildlife, responsible economic development, and economic in-
39 centives to conserve wildlife populations;

1 (3) engaging regional businesses and the private sector to develop
 2 goods and services to aid in anti-poaching and anti-trafficking meas-
 3 ures;

4 (4) working with communities to develop secure and safe methods of
 5 sharing information with enforcement officials;

6 (5) providing technical assistance to support land use stewardship
 7 plans to improve the economic, environmental, and social outcomes in
 8 community-owned or community-managed lands;

9 (6) supporting community anti-poaching efforts, including policing
 10 and informant networks;

11 (7) working with community and national governments to develop
 12 relevant policy and regulatory frameworks to enable and promote com-
 13 munity conservation programs, including supporting law enforcement
 14 engagement with wildlife protection authorities to promote information-
 15 sharing; and

16 (8) working with national governments to ensure that communities
 17 have timely and effective support from national authorities to mitigate
 18 risks that communities may face when engaging in anti-poaching and
 19 anti-trafficking activities.

20 **§ 215305. Implementation of recommendations in strategic**
 21 **plan**

22 As soon as practicable but not later than October 7, 2018, each chief of
 23 mission to a focus country should begin to implement the recommendations
 24 contained in the strategic plan required under section 215202(a)(2)(B) of
 25 this title, among other goals, for the focus country.

26 **Division B—Aquatic Wildlife**
 27 **Subdivision 1—Conservation Generally**
 28 **Chapter 221—Marine Mammal Protection**

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1 **Subchapter I—General Provisions**

2 **§ 221101. Findings; sense of Congress**

- 3 (a) FINDINGS.—Congress finds that—
- 4 (1) certain species and stocks of marine mammals are, or may be,
- 5 in danger of extinction or depletion as a result of human activities;
- 6 (2)(A) those species and stocks—
- 7 (i) should not be permitted to diminish beyond the point
- 8 at which they cease to be a significant functioning element in
- 9 the ecosystem of which they are a part; and
- 10 (ii) consistent with clause (i), should not be permitted to
- 11 diminish below their optimum sustainable population; and

1 (B) further measures should be immediately taken to replenish a
2 species or stock of marine mammal that has already diminished below
3 its optimum sustainable population; in particular, efforts should be
4 made to protect essential habitats, including the rookeries, mating
5 grounds, and areas of similar significance for each species of marine
6 mammal from the adverse effect of human actions;

7 (3) there is inadequate knowledge of the ecology and population dy-
8 namics of those marine mammals and of the factors that bear on their
9 ability to reproduce successfully;

10 (4) negotiations should be undertaken immediately to encourage the
11 development of international arrangements for research on, and con-
12 servation of, all marine mammals;

13 (5)(A) marine mammals and marine mammal products—

14 (i) move in interstate commerce; or

15 (ii) affect the balance of marine ecosystems in a manner
16 that is important to other animals and animal products that
17 move in interstate commerce; and

18 (B) the protection and conservation of marine mammals and their
19 habitats is necessary to ensure the continuing availability of marine
20 mammal products and other animal products that move in interstate
21 commerce; and

22 (6) marine mammals have proven to be of great international signifi-
23 cance as esthetic, recreational, and economic resources.

24 (b) SENSE OF CONGRESS.—It is the sense of Congress that—

25 (1) marine mammals should be protected and encouraged to develop
26 to the greatest extent feasible commensurate with sound policies of re-
27 source management;

28 (2) the primary objective of marine mammal management should be
29 to maintain the health and stability of the marine ecosystem; and

30 (3) when consistent with the primary objective described in para-
31 graph (2), it should be the goal to obtain an optimum sustainable pop-
32 ulation keeping in mind the carrying capacity of the habitat.

33 § 221102. Definitions

34 In this chapter:

35 (1) ALASKA NATIVE ORGANIZATION.—The term “Alaska Native or-
36 ganization” means a group, designated by law or formally chartered,
37 that represents or consists of Indians, Aleuts, or Eskimos residing in
38 Alaska.

39 (2) BONA FIDE SCIENTIFIC RESEARCH.—The term “bona fide sci-
40 entific research” means scientific research on marine mammals, the re-
41 sults of which—

1 (A) likely would be accepted for publication in a refereed sci-
2 entific journal;

3 (B) are likely to contribute to the basic knowledge of marine
4 mammal biology or ecology; or

5 (C) are likely to identify, evaluate, or resolve conservation prob-
6 lems.

7 (3) COMMISSION.—The term “Commission” means the Marine Mam-
8 mal Commission established in section 221301 of this title.

9 (4) COMMITTEE.—The term “Committee” means the Committee of
10 Scientific Advisors on Marine Mammals established in section 221303
11 of this title.

12 (5) COMPETENT REGIONAL ORGANIZATION.—The term “competent
13 regional organization”—

14 (A) for the tuna fishery in the eastern tropical Pacific Ocean,
15 means the Inter-American Tropical Tuna Commission; and

16 (B) for any other tuna fishery, means an organization consist-
17 ing of the nations participating in the tuna fishery, the purpose
18 of which is the conservation and management of the tuna fishery
19 and the management of issues relating to the tuna fishery.

20 (6) CONSERVATION AND MANAGEMENT.—

21 (A) IN GENERAL.—The term “conservation and management”,
22 with respect to marine mammals, means the collection and appli-
23 cation of biological information for the purposes of increasing and
24 maintaining the number of animals within species and stocks at
25 their optimum sustainable population.

26 (B) INCLUSIONS.—The term “conservation and management”
27 includes—

28 (i) the entire scope of activities that constitute a modern
29 scientific resource program, including research, census, law
30 enforcement, and habitat acquisition and improvement; and

31 (ii) when and where appropriate—

32 (I) the periodic or total protection of species or stocks;
33 and

34 (II) regulated taking.

35 (7) DECLARATION OF PANAMA.—The term “Declaration of Panama”
36 means the declaration signed in Panama City, Republic of Panama, on
37 October 4, 1995.

38 (8) DEPLETED.—The term “depleted”, in reference to a species or
39 stock of marine mammal, refers to a species or stock that—

1 (A) the Secretary, after consultation with the Commission and
2 the Committee, determines, by regulation, is below its optimum
3 sustainable population;

4 (B) a State, to which authority for the conservation and man-
5 agement of the species or stock is transferred under section
6 221212 of this title, determines that the species or stock is below
7 its optimum sustainable population; or

8 (C) is listed as an endangered species or threatened species
9 under chapter 201.

10 (9) FISHERY.—The term “fishery” means—

11 (A) 1 or more stocks of fish—

12 (i) that can be treated as a unit for purposes of conserva-
13 tion and management; and

14 (ii) that are identified on the basis of geographical, sci-
15 entific, technical, recreational, and economic characteristics;
16 and

17 (B) any fishing for a stock described in subparagraph (A).

18 (10) HARASSMENT.—

19 (A) IN GENERAL.—The term “harassment” means an act of
20 pursuit, torment, or annoyance that—

21 (i) has the potential to injure a marine mammal or stock
22 in the wild; or

23 (ii) has the potential to disturb a marine mammal or stock
24 in the wild by causing disruption of behavioral patterns, in-
25 cluding migration, breathing, nursing, breeding, feeding, and
26 sheltering.

27 (B) MILITARY READINESS ACTIVITIES; SCIENTIFIC RESEARCH
28 ACTIVITIES.—In the case of a military readiness activity or a sci-
29 entific research activity conducted by or on behalf of the Federal
30 Government consistent with section 221204(d)(4) of this title, the
31 term “harassment” means—

32 (i) an act that injures or has the significant potential to
33 injure a marine mammal or stock in the wild; or

34 (ii) an act that disturbs or is likely to disturb a marine
35 mammal or stock in the wild by causing disruption of natural
36 behavioral patterns, including migration, surfacing, nursing,
37 breeding, feeding, or sheltering, to a point at which the be-
38 havioral patterns are abandoned or significantly altered.

39 (C) LEVEL A HARASSMENT.—The term “Level A harassment”
40 means—

41 (i) harassment described in subparagraph (A)(i); or

1 (ii) in the case of a military readiness activity or scientific
2 research activity described in subparagraph (B), harassment
3 described in subparagraph (B)(i).

4 (D) LEVEL B HARASSMENT.—The term “Level B harassment”
5 means—

6 (i) harassment described in subparagraph (A)(ii); or

7 (ii) in the case of a military readiness activity or scientific
8 research activity described in subparagraph (B), harassment
9 described in subparagraph (B)(ii).

10 (11) HUMANE.—The term “humane”, with reference to a method of
11 taking a marine mammal, refers to the method of taking that involves
12 the least possible degree of pain and suffering practicable to the marine
13 mammal involved.

14 (12) INTERMEDIARY NATION.—The term “intermediary nation”
15 means a nation that—

16 (A) exports yellowfin tuna or yellowfin tuna products to the
17 United States; and

18 (B) imports yellowfin tuna or yellowfin tuna products that are
19 subject to a direct prohibition on importation into the United
20 States under section 221203(c)(5)(B) of this title.

21 (13) INTERNATIONAL DOLPHIN CONSERVATION PROGRAM.—The
22 term “International Dolphin Conservation Program” means the inter-
23 national program established by the agreement signed in La Jolla,
24 California, in June, 1992, as formalized, modified, and enhanced in ac-
25 cordance with the Declaration of Panama, and as modified by the
26 Agreement on the International Dolphin Conservation Program, done
27 at Washington May 21, 1998 (TIAS 12956).

28 (14) MARINE MAMMAL.—

29 (A) IN GENERAL.—The term “marine mammal” means a mam-
30 mal that—

31 (i) is morphologically adapted to the marine environment
32 (including sea otters and members of the orders Sirenia,
33 Pinnipedia, and Cetacea); or

34 (ii) primarily inhabits the marine environment (such as the
35 polar bear).

36 (B) INCLUSIONS.—The term “marine mammal” includes a part
37 of a marine mammal described in subparagraph (A), including its
38 raw, dressed, or dyed fur or skin.

39 (15) MARINE MAMMAL PRODUCT.—The term “marine mammal prod-
40 uct” means an item of merchandise that consists in whole or in part
41 of a marine mammal.

1 (16) MILITARY READINESS ACTIVITY.—The term “military readiness
2 activity” has the meaning given the term under section 261901(c)(1)
3 of this title.

4 (17) MINIMUM POPULATION ESTIMATE.—The term “minimum popu-
5 lation estimate” means an estimate of the number of animals in a stock
6 that—

7 (A) is based on the best available scientific information on
8 abundance, incorporating the precision and variability associated
9 with the information; and

10 (B) provides reasonable assurance that the stock size is equal
11 to or greater than the estimate.

12 (18) MORATORIUM.—The term “moratorium” means a complete ces-
13 sation of the taking of marine mammals and a complete prohibition on
14 the importation into the United States of marine mammals and marine
15 mammal products, except as provided in this chapter.

16 (19) NET PRODUCTIVITY RATE.—The term “net productivity rate”
17 means the annual per capita rate of increase in a stock resulting from
18 additions due to reproduction, less losses due to mortality.

19 (20) OPERATOR.—The term “operator”, with respect to a vessel,
20 means the master of the vessel or other individual aboard and in
21 charge of the operation of the vessel.

22 (21) OPTIMUM SUSTAINABLE POPULATION.—The term “optimum
23 sustainable population”, with respect to a species or stock, means the
24 number of animals that will result in the maximum productivity of the
25 species or stock, taking into consideration the carrying capacity of the
26 habitat and the health of the ecosystem of which the animals form a
27 constituent element.

28 (22) PERSON.—The term “person” includes—

29 (A) a private person or entity; and

30 (B) an officer, employee, agent, department, or instrumentality
31 of—

32 (i) the Federal Government;

33 (ii) a State or political subdivision of a State; or

34 (iii) a foreign government.

35 (23) POTENTIAL BIOLOGICAL REMOVAL LEVEL.—

36 (A) IN GENERAL.—The term “potential biological removal level”
37 means the maximum number of animals, not including natural
38 mortalities, that may be removed from a stock while allowing that
39 stock to reach or maintain its optimum sustainable population.

40 (B) CALCULATION.—The potential biological removal level is the
41 product of—

- 1 (i) the minimum population estimate of the stock;
- 2 (ii) ½ the maximum theoretical or estimated net productiv-
- 3 ity rate of the stock at a small population size; and
- 4 (iii) a recovery factor of between 0.1 and 1.0.

5 (24) REGIONAL FISHERY MANAGEMENT COUNCIL.—The term “re-

6 gional fishery management council” means a regional fishery manage-

7 ment council established in section 302 of the Magnuson-Stevens Fish-

8 ery Conservation and Management Act (16 U.S.C. 1852).

9 (25) SECRETARY.—The term “Secretary” means—

10 (A) the Secretary of Commerce, as to all responsibility, author-

11 ity, funding, and duties under this chapter with respect to mem-

12 bers of the order Cetacea and members, other than walruses, of

13 the order Pinnipedia; and

14 (B) the Secretary of the Interior as to all responsibility, author-

15 ity, funding, and duties under this chapter with respect to all

16 other marine mammals.

17 (26) SPECIES.—The term “species” means a species of marine mam-

18 mal, unless specified as any other animal.

19 (27) STOCK.—The term “stock” means a group of marine mammals,

20 unless specified as any other animal, of the same species or smaller

21 taxa—

22 (A) that are in a common spatial arrangement; and

23 (B) that interbreed when mature.

24 (28) STRATEGIC STOCK.—The term “strategic stock” means a

25 stock—

26 (A) for which the level of direct human-caused mortality exceeds

27 the potential biological removal level;

28 (B) that, based on the best available scientific information, is

29 declining and is likely to be listed as a threatened species under

30 chapter 201 of this title within the foreseeable future; or

31 (C) that is depleted.

32 (29) TAKE.—The term “take”, with respect to a marine mammal,

33 means to harass, hunt, capture, or kill, or attempt to harass, hunt,

34 capture, or kill the marine mammal.

35 (30) TAKE REDUCTION PLAN.—The term “take reduction plan”

36 means a plan developed under section 221216 of this title.

37 (31) TAKE REDUCTION TEAM.—The term “take reduction team”

38 means a team established under section 221216 of this title.

39 (32) UNITED STATES.—The term “United States” means the States,

40 the District of Columbia, Puerto Rico, Guam, American Samoa, the

1 Virgin Islands, the Northern Mariana Islands, and any other territory
2 (including a possession) of the United States.

3 (33) UNITED STATES DISTRICT COURT.—The term “United States
4 district court” includes—

5 (A) the United States District Court for the District of Puerto
6 Rico;

7 (B) the District Court for the Northern Mariana Islands;

8 (C) the District Court of Guam;

9 (D) the District Court of the Virgin Islands; and

10 (E) in the case of American Samoa, the United States District
11 Court for the District of Hawaii.

12 (34) WATERS UNDER THE JURISDICTION OF THE UNITED STATES.—
13 The term “waters under the jurisdiction of the United States”
14 means—

15 (A) the territorial sea of the United States;

16 (B) the waters included within a zone, contiguous to the terri-
17 torial sea of the United States, of which the inner boundary is a
18 line coterminous with the seaward boundary of each coastal State,
19 and the other boundary is a line drawn in such a manner that
20 each point on it is 200 nautical miles from the baseline from
21 which the territorial sea is measured; and

22 (C) beginning on the date on which the Agreement between the
23 United States and the Union of Soviet Socialist Republics on the
24 Maritime Boundary, signed at Washington June 1, 1990 (TIAS
25 11451), enters into force for the United States, the areas referred
26 to as eastern special areas in article 3(1) of that Agreement,
27 namely, the areas east of the maritime boundary, as defined in
28 that Agreement, that lie within 200 nautical miles of the baselines
29 from which the breadth of the territorial sea of Russia is measured
30 but beyond 200 nautical miles of the baselines from which the
31 breadth of the territorial sea of the United States is measured.

32 **Subchapter II—Conservation and**
33 **Management of Marine Mammals**

34 **§ 221201. Moratorium**

35 (a) ESTABLISHMENT.—There shall be a moratorium on the taking and
36 importation of marine mammals and marine mammal products.

37 (b) PERMITS.—During the moratorium established by subsection (a), no
38 permit may be issued for the taking of a marine mammal and no marine
39 mammal or marine mammal product may be imported into the United
40 States except as provided in section 221203 of this title.

1 (c) EXEMPTIONS.—Exemptions from this chapter are provided in section
2 221205 of this title.

3 **§ 221202. Prohibitions**

4 (a) IN GENERAL.—Except as provided in sections 221203, 221204,
5 221205, 221206, 221212, 221215, and 221216 of this title and subchapter
6 V, it is unlawful—

7 (1) for a person subject to the jurisdiction of the United States or
8 a vessel or other conveyance subject to the jurisdiction of the United
9 States to take a marine mammal on the high seas;

10 (2) except as expressly provided for by an international treaty, con-
11 vention, or agreement to which the United States is a party and that
12 was entered into before December 21, 1972, or by a statute implement-
13 ing any such treaty, convention, or agreement—

14 (A) for a person or vessel or other conveyance to take a marine
15 mammal in waters under the jurisdiction of the United States or
16 on land under the jurisdiction of the United States; or

17 (B) for a person to use a port, harbor, or other place under the
18 jurisdiction of the United States to take or import a marine mam-
19 mal or marine mammal product;

20 (3) for a person, with respect to a marine mammal taken in violation
21 of this subchapter, to possess that marine mammal or a marine mam-
22 mal product from that marine mammal;

23 (4) for a person to transport, purchase, sell, export, or offer to pur-
24 chase, sell, or export, a marine mammal or marine mammal product—

25 (A) that is taken in violation of this chapter; or

26 (B) for any purpose other than public display, scientific re-
27 search, or enhancement of the survival of a species or stock as
28 provided for under section 221204(d) of this title; or

29 (5) for a person to use, in a commercial fishery, a means or method
30 of fishing in contravention of a regulation or limitation issued by the
31 Secretary for that commercial fishery to achieve the purposes of this
32 chapter.

33 (b) CERTAIN IMPORTATIONS.—

34 (1) IN GENERAL.—Except pursuant to a permit for scientific re-
35 search, or for enhancement of the survival or recovery of a species or
36 stock, issued under section 221204(d) of this title, or pursuant to a
37 permit issued under paragraph (2), it is unlawful to import into the
38 United States a marine mammal if the marine mammal—

39 (A) was pregnant at the time of taking;

40 (B) was nursing at the time of taking;

41 (C) was less than 8 months old;

1 (D) was taken from a depleted species or stock; or

2 (E) was taken in a manner that the Secretary considers inhu-
3 mane.

4 (2) IMPORTATION FOR PROTECTION OR WELFARE.—Notwithstanding
5 subparagraph (A), (B), or (C) of paragraph (1), the Secretary may
6 issue a permit for the importation of a marine mammal if the Secretary
7 determines that the importation is necessary for the protection or wel-
8 fare of the marine mammal.

9 (c) IMPORTATIONS OF ILLEGALLY TAKEN MAMMALS.—It is unlawful to
10 import into the United States—

11 (1) a marine mammal that was—

12 (A) taken in violation of this subchapter; or

13 (B) taken in another country in violation of the law of that
14 country;

15 (2) a marine mammal product if—

16 (A) the importation into the United States of the marine mam-
17 mal from which the marine mammal product is made is unlawful
18 under paragraph (1); or

19 (B) the sale in commerce of the marine mammal product in the
20 country of origin of the marine mammal product is illegal; or

21 (3) a fish, whether fresh, frozen, or otherwise prepared, if the fish
22 was caught in a manner that the Secretary has proscribed for persons
23 subject to the jurisdiction of the United States, whether or not a ma-
24 rine mammal was taken incident to the catching of the fish.

25 (d) COMMERCIAL TAKING OF WHALES.—It is unlawful for a person or
26 vessel or other conveyance to take a species of whale incident to commercial
27 whaling in waters subject to the jurisdiction of the United States.

28 (e) INAPPLICABILITY OF PROHIBITIONS.—Subsections (b) and (c) shall
29 not apply—

30 (1) in the case of a marine mammal or marine mammal product to
31 which subsection (b)(1)(D) applies, if the marine mammal or marine
32 mammal product was imported into the United States before the date
33 on which the Secretary publishes notice in the Federal Register of the
34 Secretary's proposed rulemaking with respect to a determination that
35 the species or stock is depleted; or

36 (2) in the case of a marine mammal or marine mammal product to
37 which paragraph (1)(B) or (2)(B) of subsection (c) applies, if the ma-
38 rine mammal or marine mammal product was imported into the United
39 States before the effective date of the foreign law making the taking
40 or sale of the marine mammal or marine mammal product unlawful.

1 **§ 221203. Permits and authorizations that may be issued**
2 **during moratorium**

3 (a) IN GENERAL.—During the moratorium established by section 221201
4 of this title, a permit may be issued for the taking of a marine mammal,
5 and a marine mammal or marine mammal product may be imported, in ac-
6 cordance with this section.

7 (b) RESEARCH AND RECREATION.—

8 (1) IN GENERAL.—Consistent with section 221204 of this title, the
9 Secretary may issue a permit for—

10 (A) the taking or importation of a marine mammal or marine
11 mammal product for purposes of—

- 12 (i) scientific research;
- 13 (ii) public display;
- 14 (iii) photography for educational or commercial purposes;
- 15 or
- 16 (iv) enhancement of the survival or recovery of a species or
17 stock; or

18 (B) importation of a polar bear part (other than an internal
19 organ) taken in a sport hunt in Canada.

20 (2) REVIEW AND RECOMMENDATION BY COMMISSION AND COMMIT-
21 TEE.—

22 (A) REVIEW.—A permit under paragraph (1)(A) may be issued
23 if the taking or importation proposed to be made is first reviewed
24 by the Commission and the Committee.

25 (B) RECOMMENDATION.—The Commission and the Committee
26 shall recommend a proposed taking or importation under para-
27 graph (1)(A) that is consistent with the purposes and policies of
28 section 221101 of this title.

29 (3) CERTIFICATE.—

30 (A) ISSUANCE.—If the Secretary issues a permit for importa-
31 tion under paragraph (1), the Secretary shall issue to the importer
32 to which the permit is issued a certificate to that effect in such
33 form as the Secretary of Homeland Security and the Secretary of
34 the Treasury prescribe.

35 (B) PRESENTATION.—An importation under paragraph (1) may
36 be made on presentation of the certificate under subparagraph (A)
37 to the appropriate customs officer.

38 (c) INCIDENTAL TAKINGS IN THE COURSE OF COMMERCIAL FISHING OP-
39 ERATIONS.—

40 (1) PERMITS.—The Secretary may issue a permit under section
41 221204 of this title for the incidental taking of a marine mammal in

1 the course of a commercial fishing operation, subject to regulations pre-
2 scribed by the Secretary in accordance with section 221206 of this title.

3 (2) AUTHORIZATIONS.—In lieu of a permit under paragraph (1), the
4 Secretary may grant an authorization for the incidental taking of a ma-
5 rine mammal in the course of a commercial fishing operation—

6 (A) under section 221216 of this title, subject to regulations
7 prescribed under that section by the Secretary without regard to
8 section 221206 of this title; or

9 (B) under subchapter IV with respect to purse seine fishing for
10 yellowfin tuna in the eastern tropical Pacific Ocean, subject to reg-
11 ulations prescribed under that subchapter by the Secretary with-
12 out regard to section 221206 of this title.

13 (3) GOAL.—Whether a permit is issued under paragraph (1) or an
14 authorization is granted under paragraph (2), the immediate goal shall
15 be to reduce the incidental mortality or serious injury of marine mam-
16 mals permitted in the course of commercial fishing operations to insig-
17 nificant levels approaching a zero mortality and serious injury rate.

18 (4) IMPORTATIONS RELATING TO INCIDENTAL KILL OR SERIOUS IN-
19 JURY.—The Secretary of Homeland Security and the Secretary of the
20 Treasury shall prohibit the importation of commercial fish or products
21 from fish that have been caught with commercial fishing technology
22 that results in the incidental kill or incidental serious injury of marine
23 mammals in excess of United States standards.

24 (5) APPLICATION OF IMPORTATION PROHIBITION UNDER PARAGRAPH
25 (4).—For purposes of applying paragraph (4), the Secretary—

26 (A) shall insist on reasonable proof from the government of any
27 nation from which fish or fish products will be exported to the
28 United States of the effects on marine mammals of the commer-
29 cial fishing technology in use for the fish or fish products exported
30 from the nation to the United States;

31 (B) in the case of yellowfin tuna harvested with purse seine nets
32 in the eastern tropical Pacific Ocean, and products from those yel-
33 lowfin tuna, to be exported to the United States, shall require that
34 the government of the exporting nation provide documentary evi-
35 dence that—

36 (i)(I) the importation of yellowfin tuna or yellowfin tuna
37 products was not prohibited under paragraph (2) of section
38 101(a) of the Marine Mammal Protection Act of 1972 (Public
39 Law 92–522) prior to its amendment on March 3, 1999; or

40 (ii)(II) the yellowfin tuna or yellowfin tuna products were har-
41 vested by a vessel of a nation that participates in the Inter-

1 national Dolphin Conservation Program, and the harvesting
2 nation—

3 (aa) is a member of the Inter-American Tropical Tuna
4 Commission; or

5 (bb) has initiated (and not later than 6 months after
6 initiation, completed) all steps required of applicant na-
7 tions, in accordance with article V, paragraph 3 of the
8 Convention for the Establishment of an Inter-American
9 Tropical Tuna Commission, signed at Washington May
10 31, 1949 (1 UST 230; TIAS 2044), to become a mem-
11 ber of that organization;

12 (ii) the harvesting nation described in clause (i)(II) is
13 meeting the obligations of the International Dolphin Con-
14 servation Program and the obligations of membership in the
15 Inter-American Tropical Tuna Commission, including all fi-
16 nancial obligations; and

17 (iii) the total dolphin mortality limits, and per-stock per-
18 year dolphin mortality limits permitted for the harvesting na-
19 tion's vessels under the International Dolphin Conservation
20 Program do not exceed the limits determined for 1997, or for
21 any year after 1997, consistent with—

22 (I) the objective of progressively reducing dolphin mor-
23 tality to a level approaching zero through the setting of
24 annual limits, and the goal of eliminating dolphin mor-
25 tality and serious injury; and

26 (II) the requirements of the International Dolphin
27 Conservation Program;

28 (C) shall not accept documentary evidence described in subpara-
29 graph (B) if—

30 (i) the government of the harvesting nation does not pro-
31 vide directly, or authorize the Inter-American Tropical Tuna
32 Commission to release, complete and accurate information to
33 the Secretary in a timely manner—

34 (I) to allow determination of compliance with the
35 International Dolphin Conservation Program; and

36 (II) for the purposes of tracking and verifying compli-
37 ance with the minimum requirements established by the
38 Secretary in regulations prescribed under section 223105
39 of this title; or

40 (ii) after taking into consideration information described in
41 clause (i), findings of the Inter-American Tropical Tuna Com-

1 mission, and any other relevant information, including infor-
2 mation that a nation is consistently failing to take enforce-
3 ment actions on violations that diminish the effectiveness of
4 the International Dolphin Conservation Program, the Sec-
5 retary, in consultation with the Secretary of State, finds that
6 the harvesting nation is not in compliance with the Inter-
7 national Dolphin Conservation Program;

8 (D) shall require the government of any intermediary nation to
9 certify and provide reasonable proof to the Secretary that it has
10 not imported, within the preceding 6 months from the date of the
11 importation, a yellowfin tuna or yellowfin tuna product that is
12 subject to a direct prohibition on importation to the United States
13 under paragraph (4) as applied by subparagraph (B);

14 (E) shall, 6 months after importation of yellowfin tuna or tuna
15 products is prohibited under this section, certify the establishment
16 of the prohibition to the President, and that certification shall be
17 deemed to be a certification for the purposes of section 8(a) of the
18 Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)) for as
19 long as the prohibition is in effect; and

20 (F) in the case of—

21 (i) tuna or a product containing tuna harvested by a nation
22 whose fishing vessels engage in high seas driftnet fishing,
23 shall require that the government of the exporting nation pro-
24 vide documentary evidence that the tuna or tuna product was
25 not harvested with a large-scale driftnet anywhere on the high
26 seas; or

27 (ii) any other fish or a product containing any other fish
28 harvested by a nation whose fishing vessels engage in high
29 seas driftnet fishing, shall require that the government of the
30 exporting nation provide documentary evidence that the fish
31 or fish product was not harvested with a large-scale driftnet
32 in the South Pacific Ocean, or in any other water of the high
33 seas.

34 (6) DEFINITION OF DRIFTNET.—In paragraph (5)(F), the term
35 “driftnet” has the meaning given the term in section 4003 of the Drift-
36 net Impact Monitoring, Assessment, and Control Act of 1987 (16
37 U.S.C. 1822 note).

38 (d) WAIVER OF REQUIREMENTS.—

39 (1) IN GENERAL.—On the basis of the best scientific evidence avail-
40 able and in consultation with the Commission, and having due regard
41 to the distribution, abundance, breeding habits, and times and lines of

1 migratory movements of marine mammals, the Secretary shall from
2 time to time—

3 (A) determine when, to what extent (if at all), and by what
4 means it is consistent with this chapter to waive the moratorium
5 under section 221201 of this title so as to allow the taking or im-
6 porting of a marine mammal or a marine mammal product; and

7 (B) prescribe regulations, issue permits, and make determina-
8 tions under sections 221202, 221204, and 221206 of this title per-
9 mitting and governing the taking and importing described in sub-
10 paragraph (A), in accordance with those determinations.

11 (2) PRINCIPLES OF RESOURCE PROTECTION AND CONSERVATION.—
12 The Secretary, in making the determinations under paragraph (1),
13 shall be assured that the taking of the marine mammal is in accord-
14 ance with sound principles of resource protection and conservation.

15 (3) REQUIRED CERTIFICATION.—

16 (A) IN GENERAL.—A person shall not import into the United
17 States a marine mammal or marine mammal product unless the
18 Secretary certifies that the program for taking marine mammals
19 in the country of origin is consistent with this chapter.

20 (B) IMPORTATION PROHIBITED.—A person shall not import into
21 the United States a marine mammal product of a nation not cer-
22 tified under this paragraph for any purpose, including processing
23 for exportation.

24 (4) DEPLETED SPECIES OR STOCKS.—Except for scientific research
25 purposes, photography for educational or commercial purposes, or en-
26 hancement of the survival or recovery of a species or stock as provided
27 for in subsection (b), or for specified activities as provided for under
28 subsection (f)—

29 (A) the Secretary shall not issue a permit for the taking of a
30 marine mammal that is a member of a depleted species or stock;
31 and

32 (B) a person shall not import a marine mammal described in
33 subparagraph (A).

34 (e) DETERRENCE.—

35 (1) IN GENERAL.—This chapter does not apply to the use of a deter-
36 rence measure—

37 (A) by the owner of fishing gear or catch, or an employee or
38 agent of the owner, to deter a marine mammal from damaging the
39 gear or catch;

1 (B) by the owner of other private property, or an agent, bailee,
2 or employee of the owner, to deter a marine mammal from damag-
3 ing private property;

4 (C) by any person to deter a marine mammal from endangering
5 personal safety; or

6 (D) by a government employee to deter a marine mammal from
7 damaging public property;

8 so long as the deterrence measure does not result in the death or seri-
9 ous injury of the marine mammal.

10 (2) GUIDELINES AND RECOMMENDED SPECIFIC DETERRENCE MEAS-
11 URES.—

12 (A) GUIDELINES.—The Secretary shall, in consultation with ap-
13 propriate experts, and after notice and opportunity for public com-
14 ment, publish in the Federal Register a list of guidelines for use
15 in safely deterring marine mammals.

16 (B) SPECIFIC DETERRENCE MEASURES FOR ENDANGERED SPE-
17 CIES OR THREATENED SPECIES.—In the case of marine mammals
18 listed as endangered species or threatened species under chapter
19 201 of this title, the Secretary shall recommend specific nonlethal
20 deterrence measures that may be used to deter marine mammals.

21 (C) NONVIOLATIONS.—An action to deter marine mammals con-
22 sistent with the guidelines or specific deterrence measures under
23 this paragraph shall not be a violation of this chapter.

24 (3) PROHIBITION OF CERTAIN DETERRENCE METHODS.—If the Sec-
25 retary determines, using the best scientific information available, that
26 a deterrence measure has a significant adverse effect on marine mam-
27 mals, the Secretary may prohibit the deterrence measure, after notice
28 and opportunity for public comment, through regulation under this
29 chapter.

30 (4) APPLICABILITY TO ALL MARINE MAMMALS.—The authority to
31 deter marine mammals under paragraph (1) applies to all marine mam-
32 mals, including all depleted stocks.

33 (f) INCIDENTAL TAKINGS WHILE ENGAGING IN SPECIFIED ACTIVITIES
34 INCLUDING MILITARY READINESS ACTIVITIES.—

35 (1) IN GENERAL.—In accordance with this subsection, on request by
36 a United States citizen who engages in a specified activity (other than
37 commercial fishing) within a specified geographical region, the Sec-
38 retary shall authorize, for periods of not more than 5 consecutive years
39 each, the incidental, but not intentional, taking by the citizen, while en-
40 gaging in that activity within that region, of small numbers of marine
41 mammals of a species or stock.

1 (2) REGULATIONS.—

2 (A) IN GENERAL.—The Secretary shall authorize incidental tak-
3 ings under paragraph (1) if the Secretary, after notice (in the
4 Federal Register and in newspapers of general circulation, and
5 through appropriate electronic media, in the coastal areas that
6 may be affected by the activity) and opportunity for public com-
7 ment—

8 (i) finds that the total incidental takings under paragraph
9 (1) during the relevant 5-year (or less) period—

10 (I) will have a negligible impact on the species or
11 stock; and

12 (II) will not have an unmitigable adverse impact on
13 the availability of the species or stock for taking for sub-
14 sistence uses—

15 (aa) pursuant to section 221205(a) or 221212(g)
16 of this title; or

17 (bb) in the case of a cooperative agreement under
18 both this chapter and chapter 251 of this title, pur-
19 suant to section 221214(e) of this title; and

20 (ii) prescribes regulations setting forth—

21 (I) permissible methods of incidental taking pursuant
22 to the specified activity described in paragraph (1);

23 (II) other means of effecting the least practicable ad-
24 verse impact—

25 (aa) on the species or stock and its habitat, pay-
26 ing particular attention to rookeries, mating
27 grounds, and areas of similar significance; and

28 (bb) on the availability of the species or stock for
29 subsistence uses; and

30 (III) requirements pertaining to the monitoring and
31 reporting of incidental takings described in paragraph
32 (1).

33 (B) SUBSTANTIAL EVIDENCE.—

34 (i) IN GENERAL.—In making a finding regarding un-
35 mitigable adverse impacts under this subsection that affect
36 stocks or persons to which section 221205(a) of this title ap-
37 plies, the Secretary shall be responsible for demonstrating
38 that the finding is supported by substantial evidence on the
39 basis of the record as a whole.

1 (ii) APPLICABILITY.—Clause (i) shall apply only in an ac-
2 tion brought by an Alaska Native organization representing
3 persons to which section 221205(a) of this title applies.

4 (3) SUSPENSION OR REVOCATION OF AUTHORIZATION.—The Sec-
5 retary shall suspend for a time certain (on an individual or class basis)
6 or revoke the authorization to take marine mammals under paragraph
7 (1) pursuant to a specified activity within a specified geographical re-
8 gion if the Secretary finds, after notice and opportunity for public com-
9 ment (as required under paragraph (2) unless paragraph (4)(B) ap-
10 plies), that—

11 (A) the regulations prescribed under paragraph (2) regarding
12 methods of taking, monitoring, or reporting are not being substan-
13 tially complied with by a person engaging in the specified activity;
14 or

15 (B) the taking allowed under paragraph (1) pursuant to 1 or
16 more activities within 1 or more regions is having, or may have,
17 more than a negligible impact on the species or stock concerned.

18 (4) INAPPLICABLE PROVISIONS.—

19 (A) IN GENERAL.—Sections 221204 and 221206 of this title
20 shall not apply to the taking of marine mammals under the au-
21 thority of this subsection.

22 (B) EMERGENCY SUSPENSION.—In the case of a suspension of
23 authorization to take, if the Secretary determines that an emer-
24 gency exists that poses a significant risk to the well-being of the
25 species or stock concerned, the requirement for notice and oppor-
26 tunity for public comment in paragraph (3) shall not apply.

27 (5) MILITARY READINESS ACTIVITIES.—

28 (A) CONSIDERATIONS IN MAKING A DETERMINATION OF LEAST
29 PRACTICABLE ADVERSE IMPACT.—For a military readiness activ-
30 ity, a determination of least practicable adverse impact on the spe-
31 cies or stock under paragraph (2)(A)(ii)(II) shall include consider-
32 ation of personnel safety, practicality of implementation, and im-
33 pact on the effectiveness of the military readiness activity.

34 (B) CONSULTATION.—Before making the required determina-
35 tion in subparagraph (A), the Secretary shall consult with the De-
36 partment of Defense regarding personnel safety, practicality of im-
37 plementation, and impact on the effectiveness of the military read-
38 iness activity.

39 (C) FEDERAL REGISTER.—Notwithstanding paragraph (2), for
40 an authorization affecting a military readiness activity, the Sec-

1 retary shall publish the notice required by paragraph (2) only in
2 the Federal Register.

3 (D) MILITARY READINESS ACTIVITIES.—In the case of an au-
4 thorization under this subsection affecting a military readiness ac-
5 tivity—

6 (i) paragraph (1) shall be applied without regard to the
7 words “within a specified geographical region” and “within
8 that region, of small numbers of”; and

9 (ii) paragraph (3) shall be applied without regard to the
10 words “within a specified geographical region” and “within 1
11 or more regions”.

12 (g) INCIDENTAL TAKINGS BY HARASSMENT WHILE ENGAGING IN SPECI-
13 FIED ACTIVITIES.—

14 (1) IN GENERAL.— In accordance with this subsection, on request
15 by a United States citizen who engages in a specified activity (other
16 than commercial fishing) within a specific geographic region, the Sec-
17 retary shall authorize, for periods of not more than 1 year, subject to
18 such conditions as the Secretary may specify, the incidental, but not
19 intentional, taking by harassment by the citizen, while engaging in that
20 activity within that region, of small numbers of marine mammals of a
21 species or stock.

22 (2) REQUIRED FINDINGS.—

23 (A) IN GENERAL.—The Secretary shall authorize incidental tak-
24 ings by harassment under paragraph (1) if the Secretary finds
25 that the harassment, during the relevant 1-year period under
26 paragraph (1)—

27 (i) will have a negligible impact on the species or stock; and

28 (ii) will not have an unmitigable adverse impact on the
29 availability of the species or stock for taking for subsistence
30 uses pursuant to—

31 (I) section 221205(a) or 221212(g) of this title; or

32 (II) a cooperative agreement under section 221220 of
33 this title.

34 (B) SUBSTANTIAL EVIDENCE.—

35 (i) IN GENERAL.—In making a finding regarding un-
36 mitigable adverse impacts under this subsection that affect
37 stocks or persons to which section 221205(a) of this title ap-
38 plies, the Secretary shall be responsible for demonstrating
39 that the finding is supported by substantial evidence on the
40 basis of the record as a whole.

1 (ii) APPLICABILITY.—Clause (i) shall apply only in an ac-
2 tion brought by an Alaska Native organization representing
3 persons to which section 221205(a) of this title applies.

4 (3) AUTHORIZATION REQUIREMENTS.—An authorization under para-
5 graph (1) shall prescribe, where applicable—

6 (A)(i) permissible methods of taking by harassment pursuant to
7 the specified activity; and

8 (ii) other means of effecting the least practicable adverse im-
9 pact—

10 (I) on the species or stock and its habitat, paying particu-
11 lar attention to rookeries, mating grounds, and areas of simi-
12 lar significance; and

13 (II) on the availability of the species or stock for taking for
14 subsistence uses pursuant to—

15 (aa) section 221205(a) or 221212(g) of this title; or

16 (bb) a cooperative agreement under section 221220 of
17 this title;

18 (B) the measures that the Secretary determines are necessary
19 to ensure that the authorization would cause no unmitigable ad-
20 verse impact on the availability of the species or stock for taking
21 for subsistence uses pursuant to—

22 (i) section 221205(a) or 221212(g) of this title; or

23 (ii) a cooperative agreement under section 221220 of this
24 title; and

25 (C) requirements pertaining to the monitoring and reporting of
26 the taking by harassment, including requirements for the inde-
27 pendent peer review of proposed monitoring plans or other re-
28 search proposals where the proposed activity may affect the avail-
29 ability of a species or stock for taking for subsistence uses pursu-
30 ant to—

31 (i) section 221205(a) or 221212(g) of this title; or

32 (ii) a cooperative agreement under section 221220 of this
33 title.

34 (4) AUTHORIZATION ISSUANCE PROCEDURES.—

35 (A) PUBLICATION.—The Secretary shall—

36 (i) publish a proposed authorization not later than 45 days
37 after receiving an application under this subsection; and

38 (ii) request public comment through notice in the Federal
39 Register, newspapers of general circulation, and appropriate
40 electronic media and to all locally affected communities for a
41 period of 30 days after publication under clause (i).

1 (B) ISSUANCE.—Not later than 45 days after the close of the
2 public comment period, if the Secretary makes the findings set
3 forth in paragraph (2), the Secretary shall issue an authorization
4 with appropriate conditions to meet the requirements of paragraph
5 (3).

6 (5) MODIFICATION, SUSPENSION, OR REVOCATION OF AUTHORIZA-
7 TION.—The Secretary shall modify, suspend, or revoke an authorization
8 if the Secretary finds that paragraph (1), (2), or (3) is not being met.

9 (6) EFFECT OF AUTHORIZATION.—A person conducting an activity
10 for which an authorization has been granted under this subsection shall
11 not be subject to the penalties of this chapter for taking by harassment
12 that occurs in compliance with the authorization.

13 (7) MILITARY READINESS ACTIVITIES.—

14 (A) CONSIDERATIONS IN MAKING A DETERMINATION OF LEAST
15 PRACTICABLE ADVERSE IMPACT.—

16 (i) IN GENERAL.—For a military readiness activity, a de-
17 termination of least practicable adverse impact on the species
18 or stock under paragraph (3)(A)(ii) shall include consider-
19 ation of personnel safety, practicality of implementation, and
20 impact on the effectiveness of the military readiness activity.

21 (ii) CONSULTATION.—Before making the required deter-
22 mination in clause (i), the Secretary shall consult with the
23 Department of Defense regarding personnel safety, practical-
24 ity of implementation, and impact on the effectiveness of the
25 military readiness activity.

26 (B) FEDERAL REGISTER.—Notwithstanding paragraph (4)(A),
27 for an authorization affecting a military readiness activity, the
28 Secretary shall publish the notice required by paragraph (4)(A)
29 only in the Federal Register.

30 (C) MILITARY READINESS ACTIVITIES.—In the case of an au-
31 thorization under this subsection affecting a military readiness ac-
32 tivity, paragraph (1) shall be applied without regard to the words
33 “within a specific geographic region”, “within that region”, and
34 “of small numbers of”.

35 (h) INCIDENTAL TAKINGS DURING COMMERCIAL FISHING OPER-
36 ATIONS.—

37 (1) DEFINITIONS.—In this subsection:

38 (A) FISHERY.—The term “fishery” has the meaning given the
39 term in section 3 of the Magnuson-Stevens Fishery Conservation
40 and Management Act (16 U.S.C. 1802).

1 (B) VESSEL OF THE UNITED STATES.—The term “vessel of the
2 United States” has the meaning given the term in section 3 of the
3 Magnuson-Stevens Fishery Conservation and Management Act (16
4 U.S.C. 1802).

5 (2) IN GENERAL.—Subject to paragraph (3), the Secretary shall au-
6 thorize, for periods of not more than 3 consecutive years, the inciden-
7 tal, but not the intentional, taking by a person using a vessel of the
8 United States or a vessel that has a valid fishing permit issued by the
9 Secretary in accordance with section 204(b) of the Magnuson-Stevens
10 Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while
11 engaging in commercial fishing operations, of a marine mammal from
12 a species or stock that is depleted under section 221102(8)(C) of this
13 title by virtue of it being listed as an endangered species or threatened
14 species under chapter 201 of this title.

15 (3) REQUIRED DETERMINATIONS.—The Secretary shall authorize an
16 incidental taking under paragraph (2) if the Secretary, after notice and
17 opportunity for public comment, determines that—

18 (A) the incidental mortality and serious injury from commercial
19 fisheries will have a negligible impact on the species or stock de-
20 scribed in paragraph (2);

21 (B) a recovery plan has been developed or is being developed for
22 the species or stock described in paragraph (2) pursuant to chap-
23 ter 201 of this title; and

24 (C) when required under section 221216 of this title—

25 (i) a monitoring program is established under subsection
26 (f) of that section;

27 (ii) vessels engaged in commercial fisheries are registered
28 in accordance with that section; and

29 (iii) a take reduction plan has been developed or is being
30 developed for the species or stock described in paragraph (2).

31 (4) ACTION FOLLOWING DETERMINATION.—

32 (A) IN GENERAL.—On a determination by the Secretary that
33 the requirements of paragraphs (2) and (3) have been met, the
34 Secretary shall—

35 (i) publish in the Federal Register a list of commercial
36 fisheries for which the determination was made; and

37 (ii) for vessels required to register under section 221216 of
38 this title, issue an appropriate permit for each authorization
39 granted under that section to vessels to which this subsection
40 applies.

1 (B) INAPPLICABILITY OF PENALTIES TO CERTAIN VESSELS.—A
2 vessel engaged in a commercial fishery included in the list pub-
3 lished by the Secretary under subparagraph (A)(i) that is not re-
4 quired to register under section 221216 of this title shall not be
5 subject to the penalties of this chapter for the incidental taking
6 of a marine mammal to which this subsection applies, so long as
7 the owner or the operator of the vessel reports any incidental mor-
8 tality or injury of the marine mammal to the Secretary in accord-
9 ance with section 221216 of this title.

10 (5) EMERGENCY PROTECTION OF ENDANGERED SPECIES AND
11 THREATENED SPECIES.—If, during the course of the commercial fish-
12 ing season, the Secretary determines that the level of incidental mortal-
13 ity or serious injury from commercial fisheries for which a determina-
14 tion was made under paragraph (3) has resulted or is likely to result
15 in an impact that is more than negligible on the species or stock de-
16 scribed in paragraph (2), the Secretary shall use the emergency author-
17 ity granted under section 221216 of this title to protect the species or
18 stock, and may modify an authorization granted under this subsection
19 as necessary.

20 (6) SUSPENSION OR REVOCATION OF AUTHORIZATIONS AND AMEND-
21 MENT OF PUBLISHED FISHERIES LIST.—

22 (A) AUTHORIZATIONS.—The Secretary may suspend for a time
23 certain or revoke an authorization granted under this subsection
24 only if the Secretary determines that compliance is not being made
25 with the conditions or limitations set forth in the authorization.

26 (B) LIST.—After notice and opportunity for public comment,
27 the Secretary may amend the list of commercial fisheries published
28 under paragraph (4)(A)(i) if the Secretary determines that there
29 has been a significant change in the information or conditions
30 used to determine the list.

31 (7) INAPPLICABILITY OF CERTAIN PROVISIONS.—Sections 221204
32 and 221206 of this title shall not apply to the taking of a marine mam-
33 mal under this subsection.

34 (8) CALIFORNIA SEA OTTERS.—This subsection shall not govern the
35 incidental taking of California sea otters.

36 (i) ALLOWABLE IMPORTATIONS.—

37 (1) DEFINITIONS.—In this subsection:

38 (A) CULTURAL EXCHANGE.—

39 (i) IN GENERAL.—The term “cultural exchange” means the
40 sharing or exchange of ideas, information, gifts, clothing, or
41 handicrafts between an Indian, Aleut, or Eskimo residing in

1 Alaska and a Native inhabitant of Russia, Canada, or Green-
2 land.

3 (ii) INCLUSIONS.—The term “cultural exchange” includes
4 the rendering of raw marine mammal parts into clothing or
5 handicrafts through carving, painting, sewing, or decorating
6 as part of an exchange described in clause (i).

7 (B) NATIVE INHABITANT OF RUSSIA, CANADA, OR GREEN-
8 LAND.—The term “Native inhabitant of Russia, Canada, or
9 Greenland” means an individual residing in Russia, Canada, or
10 Greenland who is related by blood to, is a member of the same
11 clan or ethnological grouping as, or shares a common heritage
12 with an Indian, Aleut, or Eskimo residing in Alaska.

13 (2) IN GENERAL.—A marine mammal product may be imported into
14 the United States if the marine mammal product—

15 (A)(i) was legally possessed and exported by a United States
16 citizen in conjunction with travel outside the United States; and

17 (ii) is imported into the United States by the same citizen upon
18 the termination of travel;

19 (B) was acquired outside the United States as part of a cultural
20 exchange by an Indian, Aleut, or Eskimo residing in Alaska; or

21 (C)(i) is owned by a Native inhabitant of Russia, Canada, or
22 Greenland; and

23 (ii) is imported for a noncommercial purpose in conjunction with
24 travel within the United States or as part of a cultural exchange
25 with an Indian, Aleut, or Eskimo residing in Alaska.

26 **§ 221204. Permit requirements and procedures**

27 (a) IN GENERAL.—The Secretary may issue permits that authorize the
28 taking or importation of a marine mammal.

29 (b) REQUIREMENTS.—A permit under this section—

30 (1) shall be consistent with any applicable regulation prescribed by
31 the Secretary under section 221206 of this title; and

32 (2) shall specify—

33 (A) the number and kind of animals that may be taken or im-
34 ported;

35 (B) the location in which the animals may be taken, or from
36 which the animals may be imported;

37 (C) the manner (which shall be determined by the Secretary to
38 be humane) in which the animals may be taken;

39 (D) the period during which the permit is valid; and

40 (E) any other terms or conditions that the Secretary considers
41 appropriate.

1 (e) COMMERCIAL FISHING.—A permit for the incidental taking of marine
2 mammals in the course of commercial fishing operations may be issued only
3 as specifically provided for in subsection (g) or in section 221203(h) or
4 221405 of this title.

5 (d) SCIENTIFIC RESEARCH, PUBLIC DISPLAY, OR ENHANCEMENT OF
6 SURVIVAL OR RECOVERY OF SPECIES OR STOCK.—

7 (1) DEFINITION OF PROGENY.—In this subsection, the term “prog-
8 eny” means an offspring and all subsequent offspring.

9 (2) IN GENERAL.—

10 (A) PERMIT SPECIFICATIONS.—A permit issued by the Sec-
11 retary that authorizes the taking or importation of a marine mam-
12 mal for purposes of scientific research, public display, or enhance-
13 ment of the survival or recovery of a species or stock shall specify,
14 in addition to the requirements of subsection (b), the methods of
15 capture, supervision, care, and transportation that shall be ob-
16 served pursuant to the taking or importation.

17 (B) REPORT.—A person authorized to take or import a marine
18 mammal for purposes of scientific research, public display, or en-
19 hancement of the survival or recovery of a species or stock shall
20 submit to the Secretary a report on all activities carried out by
21 the person pursuant to that authority.

22 (C) CERTAIN MARINE MAMMALS.—

23 (i) IN GENERAL.—On request by a person for a permit
24 under this subsection for a marine mammal described in
25 clause (ii), the Secretary shall issue the permit to the person
26 requesting the permit if the person—

27 (I) meets the requirements of clauses (i), (ii), and (iii)
28 of paragraph (3)(A), in the case of a request for a per-
29 mit under paragraph (3);

30 (II) meets the requirements of paragraph (4), in the
31 case of a request for a permit under that paragraph; or

32 (III) meets the requirements of paragraph (5), in the
33 case of a request for a permit under that paragraph.

34 (ii) MARINE MAMMAL.—A marine mammal referred to in
35 clause (i) is a marine mammal that—

36 (I) is in the possession of a person authorized to pos-
37 sess the marine mammal under this chapter; and

38 (II) is determined under guidance under section
39 221503(a) of this title not to be releasable to the wild.

40 (D) PROGENY.—A permit or authorization shall not be required
41 for a person to possess, sell, purchase, transport, export, or offer

1 to sell or purchase the progeny of marine mammals that were le-
2 gally taken or imported under this subsection, if the possession,
3 sale, purchase, transport, export, or offer to sell or purchase is—

- 4 (i)(I) for the purpose of public display; and
- 5 (II) by or to, respectively, a person that meets the require-
6 ments of clauses (i), (ii), and (iii) of paragraph (3)(A);
- 7 (ii)(I) for the purpose of scientific research; and
- 8 (II) by or to, respectively, a person that meets the require-
9 ments of paragraph (4); or
- 10 (iii)(I) for the purpose of enhancement of the survival or
11 recovery of a species or stock; and
- 12 (II) by or to, respectively, a person that meets the require-
13 ments of paragraph (5).

14 (E) RECEIVING FACILITIES.—No marine mammal may be ex-
15 ported for the purpose of public display, scientific research, or en-
16 hancement of the survival or recovery of a species or stock unless
17 the receiving facility meets standards that are comparable to the
18 requirements that a person is required to meet to receive a permit
19 under this subsection for that purpose.

20 (3) PUBLIC DISPLAY PERMIT.—

21 (A) REQUIREMENTS.—The Secretary may issue a permit to
22 take or import a marine mammal for the purpose of public display
23 only to a person that the Secretary determines—

- 24 (i) offers a program for education or conservation purposes
25 that is based on professionally recognized standards of the
26 public display community;
- 27 (ii) is registered or holds a license issued under the Animal
28 Welfare Act (7 U.S.C. 2131 et seq.); and
- 29 (iii) maintains a facility for the public display of marine
30 mammals that is open to the public on a regularly scheduled
31 basis, access to which facility is not limited or restricted other
32 than by charging of an admission fee.

33 (B) RIGHTS OF PERMIT HOLDER.—A permit under subpara-
34 graph (A) shall grant to the person to which the permit is issued
35 the right, without obtaining an additional permit or authorization
36 under this chapter, to—

- 37 (i) take, import, purchase, offer to purchase, possess, or
38 transport the marine mammal that is the subject of the per-
39 mit; and

1 (ii) sell, export, or otherwise transfer possession of the ma-
2 rine mammal, or offer to sell, export, or otherwise transfer
3 possession of the marine mammal—

4 (I) for the purpose of public display, to a person that
5 meets the requirements of clauses (i), (ii), and (iii) of
6 subparagraph (A);

7 (II) for the purpose of scientific research, to a person
8 that meets the requirements of paragraph (4); or

9 (III) for the purpose of enhancement of the survival
10 or recovery of a species or stock, to a person that meets
11 the requirements of paragraph (5).

12 (C) RIGHTS AND RESPONSIBILITIES OF TRANSFEREES.—

13 (i) RIGHTS.—A person to which a marine mammal is sold
14 or exported or to which possession of a marine mammal is
15 otherwise transferred under subparagraph (B) shall have the
16 rights described in subparagraph (B) with respect to the ma-
17 rine mammal without obtaining an additional permit or au-
18 thorization under this chapter.

19 (ii) RESPONSIBILITIES.—A person described in clause (i)
20 shall have the responsibility only—

21 (I) for the purpose of public display, to meet the re-
22 quirements of clauses (i), (ii), and (iii) of subparagraph
23 (A);

24 (II) for the purpose of scientific research, to meet the
25 requirements of paragraph (4); and

26 (III) for the purpose of enhancement of the survival
27 or recovery of a species or stock, to meet the require-
28 ments of paragraph (5).

29 (D) REVOCATIONS, SEIZURES, AND DISPOSITIONS.—

30 (i) IN GENERAL.—The Secretary may revoke a permit in
31 accordance with subsection (j), seize a marine mammal, or co-
32 operate with other persons authorized to hold marine mam-
33 mals under this chapter for disposition of the marine mam-
34 mal if the Secretary—

35 (I) with the concurrence of the Secretary of Agri-
36 culture, finds that a person that holds a permit under
37 subparagraph (A) for the marine mammal, or a person
38 exercising rights under subparagraph (C), no longer
39 meets the requirements of subparagraph (A)(ii) and is
40 not reasonably likely to meet those requirements in the
41 near future; or

1 (II) finds that a person that holds a permit under sub-
2 paragraph (A) for the marine mammal, or a person exer-
3 cising rights under subparagraph (C), no longer meets
4 the requirements of subparagraph (A)(i) or (iii) and is
5 not reasonably likely to meet those requirements in the
6 near future.

7 (ii) RECOVERY OF EXPENSES.—The Secretary may recover,
8 from a person on whom a finding under clause (i) is made,
9 expenses incurred by the Secretary for a seizure under clause
10 (i).

11 (E) SALE, PURCHASE, EXPORTATION, OR TRANSPORTATION.—

12 (i) IN GENERAL.—No marine mammal held by a permit
13 holder pursuant to a permit under subparagraph (A), or by
14 a person exercising rights under subparagraph (C), may be
15 sold, purchased, exported, or transported unless—

16 (I) the Secretary is notified of the proposed sale, pur-
17 chase, exportation, or transportation not later than 15
18 days before the proposed sale, purchase, exportation, or
19 transportation; and

20 (II) the proposed sale, purchase, exportation, or trans-
21 portation is for purposes of public display, scientific re-
22 search, or enhancement of the survival or recovery of a
23 species or stock.

24 (ii) CONTENTS OF NOTIFICATION.—The Secretary shall not
25 require a notification under clause (i) to include any informa-
26 tion other than that required for the inventory under sub-
27 paragraph (H).

28 (F) NOTIFICATION OF MARINE MAMMAL BIRTH.—

29 (i) IN GENERAL.—A person that is issued a permit under
30 subparagraph (A), or a person exercising rights under sub-
31 paragraph (C), that has possession of a marine mammal that
32 gives birth to progeny shall—

33 (I) notify the Secretary of the birth of the progeny not
34 later than 30 days after the date of birth; and

35 (II) notify the Secretary of the sale, purchase, or
36 transport of the progeny not later than 15 days before
37 the sale, purchase, or transport.

38 (ii) CONTENTS OF NOTIFICATION.—The Secretary shall not
39 require a notification under clause (i) to include any informa-
40 tion other than that required for the inventory under sub-
41 paragraph (H).

1 (G) TREATMENT OF CERTAIN PROGENY.—The progeny of a ma-
2 rine mammal born in captivity before April 30, 1994, and held in
3 captivity for the purpose of public display, shall be subject to the
4 same permit and notification requirements as progeny of a marine
5 mammal born in captivity after April 30, 1994.

6 (H) INVENTORY.—

7 (i) IN GENERAL.—The Secretary shall maintain an inven-
8 tory of—

9 (I) all marine mammals possessed by permit holders
10 pursuant to permits issued under subparagraph (A) or
11 by persons exercising rights under subparagraph (C);
12 and

13 (II) all progeny of those marine mammals.

14 (ii) CONTENTS.—The inventory shall contain, for each ma-
15 rine mammal, only the following information, which shall be
16 provided by a person holding a marine mammal under this
17 chapter:

18 (I) The name of the marine mammal or other identi-
19 fication.

20 (II) The sex of the marine mammal.

21 (III) The actual or estimated birth date of the marine
22 mammal.

23 (IV) The date of acquisition or disposition of the ma-
24 rine mammal by the permit holder.

25 (V) The name of the person from which the marine
26 mammal was acquired and the location of the take from
27 the wild, if applicable.

28 (VI) If the marine mammal is transferred, the name
29 of the transferee.

30 (VII) A notation if the animal was acquired as the re-
31 sult of a stranding.

32 (VIII) The date of death of the marine mammal and,
33 if determined, the cause of death.

34 (4) SCIENTIFIC RESEARCH.—

35 (A) ISSUANCE.—

36 (i) IN GENERAL.—The Secretary may issue a permit under
37 this paragraph for the taking or importation of a marine
38 mammal for scientific research purposes to an applicant that
39 submits with its permit application information indicating
40 that the taking is required to further a bona fide scientific
41 research purpose.

1 (ii) ISSUANCE BEFORE END OF PUBLIC REVIEW AND COM-
2 MENT PERIOD.—The Secretary may issue a permit under this
3 paragraph before the end of the public review and comment
4 period required under subsection (i)(2) if delaying issuance of
5 the permit could result in injury to a species, stock, or indi-
6 vidual or in loss of a unique research opportunity.

7 (B) LETHAL TAKINGS.—

8 (i) LETHAL TAKING NOT AUTHORIZED.—No permit issued
9 for purposes of scientific research shall authorize the lethal
10 taking of a marine mammal unless the applicant dem-
11 onstrates that a nonlethal method of conducting the research
12 is not feasible.

13 (ii) LETHAL TAKING OF DEPLETED SPECIES OR STOCK.—
14 The Secretary shall not issue a permit for scientific research
15 that involves the lethal taking of a marine mammal from a
16 depleted species or stock, unless the Secretary determines
17 that—

18 (I) the results of the scientific research will directly
19 benefit that species or stock; or

20 (II) the scientific research fulfills a critically important
21 research need.

22 (C) TAKING BY LEVEL B HARASSMENT.—

23 (i) GENERAL AUTHORIZATION AND IMPLEMENTING REGU-
24 LATIONS.—The Secretary shall issue a general authorization
25 and implementing regulations allowing bona fide scientific re-
26 search that may result only in taking by Level B harassment
27 of a marine mammal.

28 (ii) LETTER OF INTENT.—The general authorization in
29 clause (i) applies to persons that submit, not later than 60
30 days before commencement of the scientific research de-
31 scribed in clause (i), a letter of intent via certified mail to the
32 Secretary that describes—

33 (I) the species or stocks that may be harassed;

34 (II) the geographic location of the scientific research;

35 (III) the period of time over which the scientific re-
36 search will be conducted;

37 (IV) the purpose of the scientific research, including
38 a description of how the definition of bona fide scientific
39 research as established under this chapter would apply;
40 and

1 (V) the methods to be used to conduct the scientific
2 research.

3 (iii) LETTER OF CONFIRMATION.—Not later than 30 days
4 after receipt of a letter of intent to conduct scientific research
5 under the general authorization, the Secretary—

6 (I) shall issue a letter to the applicant confirming that
7 the general authorization applies; or

8 (II) if the proposed scientific research is likely to re-
9 sult in the taking (including Level A harassment) of a
10 marine mammal, shall notify the applicant that subpara-
11 graph (A) applies.

12 (5) ENHANCEMENT OF SURVIVAL OR RECOVERY.—

13 (A) REQUIRED DETERMINATIONS FOR ISSUANCE.—The Sec-
14 retary may issue a permit for the taking or importation of a ma-
15 rine mammal for enhancement of the survival or recovery of a spe-
16 cies or stock only with respect to a species or stock for which the
17 Secretary, after consultation with the Commission and after notice
18 and opportunity for public comment, determines—

19 (i) that the taking or importation is likely to contribute sig-
20 nificantly to maintaining or increasing distribution or num-
21 bers necessary to ensure the survival or recovery of the spe-
22 cies or stock; and

23 (ii) that the taking or importation—

24 (I) is consistent with any conservation plan prepared
25 by the Secretary under section 221218 of this title or
26 any recovery plan developed under section 201208 of this
27 title for the species or stock; or

28 (II) if there is no conservation or recovery plan in
29 place, is consistent with the Secretary's evaluation of the
30 actions required to enhance the survival or recovery of
31 the species or stock in light of the factors that would be
32 addressed in a conservation plan or a recovery plan.

33 (B) CAPTIVE MAINTENANCE OF A MARINE MAMMAL FROM A DE-
34 PLETED SPECIES.—A permit issued under this paragraph may au-
35 thorize the captive maintenance of a marine mammal from a de-
36 pleted species or stock if the Secretary—

37 (i) determines that captive maintenance is likely to contrib-
38 ute to the survival or recovery of the species or stock by
39 maintaining a viable gene pool, increasing productivity, pro-
40 viding biological information, or establishing animal reserves;

1 (ii) determines that the expected benefit to the affected
2 species or stock outweighs the expected benefit of alternatives
3 that do not require removal of animals from the wild; and

4 (iii) requires that the marine mammal or its progeny be re-
5 turned to the natural habitat of the species or stock as soon
6 as feasible, consistent with the objectives of any applicable
7 conservation plan or recovery plan or of any evaluation by the
8 Secretary under subparagraph (A).

9 (C) PUBLIC DISPLAY.—The Secretary may authorize the public
10 display of a marine mammal in captive maintenance under sub-
11 paragraph (B) if the Secretary determines that the public display
12 is incidental to the authorized maintenance and will not interfere
13 with the attainment of the survival or recovery objectives.

14 (e) POLAR BEAR PARTS FROM CANADA.—

15 (1) IN GENERAL.—The Secretary may issue a permit for the impor-
16 tation of polar bear parts (other than internal organs) taken in sport
17 hunts in Canada to an applicant that submits with its permit applica-
18 tion proof that the polar bear was legally harvested in Canada by the
19 applicant.

20 (2) REQUIRED FINDINGS.—A permit under paragraph (1) shall be
21 issued if the Secretary, in consultation with the Commission and after
22 notice and opportunity for public comment, finds that—

23 (A) Canada has a monitored and enforced sport hunting pro-
24 gram consistent with the purposes of the Agreement on the Con-
25 servation of Polar Bears, done at Oslo November 15, 1973 (27
26 UST 3918; TIAS 8409);

27 (B) Canada has a sport hunting program based on scientifically
28 sound quotas ensuring the maintenance of the affected stock at a
29 sustainable level;

30 (C) the exportation from Canada and subsequent importation
31 into the United States are consistent with the Convention on
32 International Trade in Endangered Species of Wild Fauna and
33 Flora, done at Washington March 3, 1973 (27 UST 1087; TIAS
34 8249) and other international agreements and conventions; and

35 (D) the exportation from Canada and subsequent importation
36 into the United States are not likely to contribute to illegal trade
37 in bear parts.

38 (3) FEES.—

39 (A) IN GENERAL.—The Secretary shall charge a reasonable fee
40 for a permit issued under this subsection.

1 (B) AVAILABILITY OF FEES COLLECTED.—All fees collected
2 under this subsection shall be available to the Secretary until ex-
3 pended for use in developing and implementing cooperative re-
4 search and management programs for the conservation of polar
5 bears in Alaska and Russia pursuant to section 221215(d) of this
6 title.

7 (4) DETERMINATIONS AND REVIEWS AFFECTING ISSUANCE OF PER-
8 MITS.—

9 (A) NONISSUANCE OF PERMITS ON SIGNIFICANT ADVERSE IM-
10 PACT DETERMINATION.—The Secretary shall not issue permits
11 under this subsection if the Secretary determines, based on the
12 scientific review that was required by section 104(c)(5)(C)(i) of
13 the Marine Mammal Protection Act of 1972 (Public Law 92–522),
14 that the issuance of permits under this subsection is having a sig-
15 nificant adverse impact on the polar bear stocks in Canada.

16 (B) ANNUAL REVIEW OF DETERMINATION.—The Secretary may
17 review the determination under subparagraph (A) annually, in
18 light of the best scientific information available, and shall complete
19 the review not later than January 31 in any year a review is
20 undertaken.

21 (C) ISSUANCE OF PERMITS ON NO SIGNIFICANT ADVERSE IM-
22 PACT DETERMINATION.—The Secretary may issue a permit under
23 this subsection if the Secretary determines, on the basis of the an-
24 nual review under subparagraph (B), that the issuance of permits
25 under this subsection is not having a significant adverse impact
26 on the polar bear stocks in Canada.

27 (5) POLAR BEAR PARTS FROM POLAR BEARS TAKEN BEFORE FEB-
28 RUARY 18, 1997.—

29 (A) IN GENERAL.—The Secretary of the Interior shall, expedi-
30 tiously after the expiration of the applicable 30-day period under
31 subsection (i)(2), issue a permit for the importation of polar bear
32 parts (other than internal organs) from polar bears taken in sport
33 hunts in Canada before February 18, 1997, to an applicant who
34 submits, with the permit application, proof that the polar bear was
35 legally harvested in Canada by the applicant.

36 (B) INAPPLICABILITY OF CERTAIN PROVISIONS.—The Secretary
37 shall issue permits under subparagraph (A) without regard to
38 paragraph (2) or (4), subsection (i)(3), or section 221201 or
39 221202 of this title.

1 (C) POLAR BEAR PARTS IMPORTED BEFORE JUNE 12, 1997.—
2 This paragraph does not apply to polar bear parts that were im-
3 ported before June 12, 1997.

4 (f) PHOTOGRAPHY FOR EDUCATIONAL OR COMMERCIAL PURPOSES.—The
5 Secretary may issue a permit for photography for educational or commercial
6 purposes involving marine mammals in the wild to an applicant that submits
7 with its permit application information—

8 (1) indicating that the taking will be limited to Level B harassment;
9 and

10 (2) describing the manner in which the products of the photography
11 will be made available to the public.

12 (g) PURSE SEINE.—

13 (1) ANNUAL PERMITS FOR PURSE SEINE FISHING VESSELS.—Con-
14 sistent with section 221203 of this title and with the regulations pre-
15 scribed under section 221206 of this title, the Secretary—

16 (A) may issue an annual permit to a United States purse seine
17 fishing vessel for the taking of a marine mammal; and

18 (B) shall prescribe regulations to cover the use of annual per-
19 mits under subparagraph (A).

20 (2) ANNUAL PERMITS FOR COMMERCIAL PURSE SEINE FISHING FOR
21 YELLOWFIN TUNA.—An annual permit for the incidental taking of ma-
22 rine mammals in the course of commercial purse seine fishing for yel-
23 lowfin tuna in the eastern tropical Pacific Ocean shall be governed by
24 section 221405 of this title, subject to the regulations prescribed under
25 section 221402 of this title.

26 (h) POSSESSION OF PERMIT.—

27 (1) IN GENERAL.—A person to which a permit is issued under this
28 section (or an agent of the person) shall be in possession of the permit
29 during—

30 (A) the time of the authorized taking or importation;

31 (B) the period of any transit of the person or agent that is inci-
32 dent to the taking or importation; and

33 (C) any other time while a marine mammal taken or imported
34 under the permit is in the possession of the person or agent.

35 (2) DUPLICATE COPY OF PERMIT.—A duplicate copy of the permit
36 shall be physically attached to the container, package, enclosure, or
37 other means of containment in which the marine mammal is placed for
38 purposes of storage, transit, supervision, or care.

39 (i) APPLICATION PROCEDURES.—

40 (1) AUTHORITY OF THE SECRETARY TO PRESCRIBE PROCEDURES.—
41 The Secretary shall prescribe such procedures as are necessary to carry

1 out this section, including the form and manner in which an application
2 for a permit may be made.

3 (2) NOTICE.—The Secretary shall publish notice in the Federal Reg-
4 ister of an application made for a permit under this section. The notice
5 shall invite the submission from interested parties, not later than 30
6 days after the date of the notice, of written data or views, with respect
7 to the taking or importation proposed in the application.

8 (3) BURDEN OF APPLICANT.—An applicant for a permit under this
9 section shall demonstrate to the Secretary that the taking or importa-
10 tion of a marine mammal under the permit will be consistent with this
11 chapter and the regulations under section 221206 of this title.

12 (4) OVERPOPULATION AS REASON IN PERMIT APPLICATION.—In a
13 case in which an application for a permit cites as a reason for the pro-
14 posed taking the overpopulation of a species or stock, the Secretary
15 shall first consider whether or not it would be more desirable to trans-
16 plant a number of animals (but not more than the number requested
17 for taking in the application) of the species or stock to a location not
18 then inhabited by the species or stock but previously inhabited by the
19 species or stock.

20 (5) HEARING.—If, not later than 30 days after the date of publica-
21 tion of notice pursuant to paragraph (2), an interested party requests
22 a hearing in connection with the application for a permit under this
23 section, the Secretary may, not later than 60 days after the date of
24 publication, afford the interested party an opportunity for a hearing.

25 (6) ISSUANCE OR DENIAL OF PERMIT.—

26 (A) IN GENERAL.—As soon as practicable (but not later than
27 30 days) after the close of the hearing or, if no hearing is held,
28 after the last day on which data or views may be submitted under
29 paragraph (2), the Secretary shall—

30 (i) issue a permit containing such terms and conditions as
31 the Secretary considers appropriate; or

32 (ii) deny issuance of a permit.

33 (B) NOTICE.—Notice of the decision of the Secretary to issue
34 or to deny a permit under this paragraph shall be published in the
35 Federal Register not later than 10 days after the date of issuance
36 or denial.

37 (7) JUDICIAL REVIEW.—

38 (A) IN GENERAL.—An applicant for a permit, or a party op-
39 posed to a permit, may obtain judicial review of—

40 (i) the terms and conditions of a permit issued by the Sec-
41 retary under this section; or

1 (ii) the Secretary's refusal to issue a permit.

2 (B) PROCEDURE.—Judicial review under subparagraph (A) may
3 be commenced by bringing a civil action in the United States dis-
4 trict court for the district in which the applicant for a permit re-
5 sides or in which the applicant's principal place of business is lo-
6 cated, or in the United States District Court for the District of
7 Columbia, not later than 60 days after the date on which the per-
8 mit is issued or denied.

9 (j) MODIFICATION, SUSPENSION, AND REVOCATION.—

10 (1) IN GENERAL.—The Secretary may modify, suspend, or revoke in
11 whole or in part a permit issued by the Secretary under this section—

12 (A) to make the permit consistent with any change made after
13 the date of issuance of the permit with respect to any applicable
14 regulation prescribed under section 221206 of this title;

15 (B) in a case in which a violation of a term or condition of the
16 permit is found; or

17 (C) if, in the case of a permit under subsection (e) authorizing
18 importation of polar bear parts, the Secretary, in consultation with
19 the appropriate authority in Canada, determines that the sustain-
20 ability of Canada's polar bear stocks are being adversely affected
21 or that sport hunting may be having a detrimental effect on main-
22 taining polar bear stocks throughout their range.

23 (2) HEARING.—

24 (A) IN GENERAL.—If the Secretary proposes a modification,
25 suspension, or revocation of a permit under this subsection, the
26 Secretary shall afford an opportunity, after notice, for a hearing,
27 with respect to the proposed modification, suspension, or revoca-
28 tion.

29 (B) REQUIRED DECISION.—The proposed action by the Sec-
30 retary shall not take effect until a decision is issued by the Sec-
31 retary after a hearing under subparagraph (A).

32 (C) JUDICIAL REVIEW.—Judicial review of an action taken by
33 the Secretary after a hearing under subparagraph (A) may be
34 commenced by bringing a civil action in the United States district
35 court for the district in which the permit holder resides or in
36 which the permit holder's principal place of business is located, or
37 in the United States District Court for the District of Columbia,
38 not later than 60 days after the date on which the Secretary takes
39 the action.

40 (3) NOTICE OF PERMIT MODIFICATION, SUSPENSION, OR REVOCATION.—
41 Notice of the modification, suspension, or revocation of a per-

1 mit by the Secretary shall be published in the Federal Register not
2 later than 10 days after the date of the Secretary's decision.

3 (k) FEES.—The Secretary shall charge a reasonable fee for a permit is-
4 sued under this section.

5 **§ 221205. Exemptions**

6 (a) ALASKA NATIVES.—

7 (1) DEFINITIONS.—In this subsection:

8 (A) AUTHENTIC NATIVE ARTICLE OF HANDICRAFT OR CLOTH-
9 ING.—The term “authentic native article of handicraft or cloth-
10 ing” means an item that is—

11 (i) composed, wholly or in some significant respect, of natu-
12 ral material; and

13 (ii) produced, decorated, or fashioned in the exercise of a
14 traditional native handicraft without the use of a pantograph,
15 multiple carver, or other mass copying device.

16 (B) TRADITIONAL NATIVE HANDICRAFT.—The term “traditional
17 native handicraft” includes weaving, carving, stitching, sewing,
18 lacing, beading, drawing, and painting.

19 (2) IN GENERAL.—

20 (A) INAPPLICABILITY OF CHAPTER.—Except as provided in sec-
21 tion 221212 of this title and subject to paragraph (3), this chapter
22 shall not apply with respect to the taking of a marine mammal
23 by an Indian, Aleut, or Eskimo who resides in Alaska and who
24 dwells on the coast of the North Pacific Ocean or the Arctic Ocean
25 if—

26 (i) the taking—

27 (I) is for a subsistence purpose; or

28 (II) is done for the purpose of creating and selling an
29 authentic native article of handicraft or clothing; and

30 (ii) the taking is not accomplished in a wasteful manner.

31 (B) SALE OF EDIBLE PORTIONS.—For a taking under subpara-
32 graph (A)(i)(I), an edible portion of a marine mammal may be
33 sold—

34 (i) in a native village or town in Alaska; or

35 (ii) for consumption by an Alaska native.

36 (C) SALE OF ARTICLES IN INTERSTATE COMMERCE.—For a tak-
37 ing under subparagraph (A)(i)(II), only authentic native articles of
38 handicrafts or clothing may be sold in interstate commerce.

39 (3) DEPLETED SPECIES OR STOCKS.—

40 (A) IN GENERAL.—If the Secretary determines, under this
41 chapter, that a species or stock subject to taking by an Indian,

1 Aleut, or Eskimo is depleted, the Secretary may prescribe regula-
2 tions on the taking of the marine mammals by an Indian, Aleut,
3 or Eskimo described in this subsection.

4 (B) FACTORS.—The regulations may be established with ref-
5 erence to a species or stock, geographical description of the regu-
6 lated area, the season for taking, or any other factor related to
7 the reason for prescribing the regulations and consistent with this
8 chapter.

9 (C) NOTICE AND HEARING.—The regulations shall be prescribed
10 after notice and hearing under section 221206 of this title.

11 (D) RESCISSION OF REGULATIONS.—The Secretary shall rescind
12 the regulations as soon as the Secretary determines that the need
13 for the regulations no longer exists.

14 (E) SUBSTANTIAL EVIDENCE.—

15 (i) IN GENERAL.—In prescribing a regulation pursuant to
16 a hearing under this paragraph or in making a determination
17 of depletion under this paragraph that affects stocks or per-
18 sons to which this subsection applies, the Secretary shall be
19 responsible for demonstrating that the regulation or deter-
20 mination is supported by substantial evidence on the basis of
21 the record as a whole.

22 (ii) APPLICABILITY.—Clause (i) shall apply only in an ac-
23 tion brought by an Alaska Native organization representing
24 persons to which this subsection applies.

25 (b) DEFENSE OF SELF OR OTHERS.—

26 (1) IN GENERAL.—It is not a violation of this chapter to take a ma-
27 rine mammal if—

28 (A) the taking is imminently necessary in self-defense or to save
29 the life of an individual in immediate danger; and

30 (B) the taking is reported to the Secretary not later than 48
31 hours after the taking.

32 (2) CARCASS.—The Secretary may seize and dispose of the carcass
33 of a marine mammal taken under this subsection.

34 (c) AVOIDANCE OF INJURY TO MARINE MAMMAL.—It is not a violation
35 of this chapter to take a marine mammal if—

36 (1) the taking is imminently necessary to avoid serious injury, addi-
37 tional injury, or death to a marine mammal entangled in fishing gear
38 or debris;

39 (2) reasonable care is taken to ensure the safe release of the marine
40 mammal, taking into consideration the equipment, expertise, and condi-
41 tions at hand;

1 (3) reasonable care is exercised to prevent further injury to the ma-
2 rine mammal; and

3 (4) the taking is reported to the Secretary not later than 48 hours
4 after the taking.

5 (d) INCIDENTAL TAKINGS BY CITIZENS EMPLOYED ON FOREIGN VES-
6 SELS.—This chapter does not apply to a United States citizen who incident-
7 tally takes a marine mammal during fishing operations outside the United
8 States exclusive economic zone (as defined in section 3 of the Magnuson-
9 Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) when
10 employed on a foreign fishing vessel of a harvesting nation that is in compli-
11 ance with the International Dolphin Conservation Program.

12 (e) ACTIONS NECESSARY FOR NATIONAL DEFENSE.—

13 (1) INITIAL EXEMPTION.—

14 (A) IN GENERAL.—The Secretary of Defense, after conferring
15 with the Secretary of Commerce, the Secretary of the Interior, or
16 both, may exempt an action or category of actions undertaken by
17 the Department of Defense or its components from compliance
18 with a requirement of this chapter if the Secretary of Defense de-
19 termines that it is necessary for national defense.

20 (B) EFFECTIVE PERIOD.—An exemption under subparagraph
21 (A) shall be effective for a period specified by the Secretary of De-
22 fense of not more than 2 years.

23 (2) ADDITIONAL EXEMPTIONS.—

24 (A) IN GENERAL.—The Secretary of Defense may issue addi-
25 tional exemptions under this subsection for the same action or cat-
26 egory of actions, after—

27 (i) conferring with the Secretary of Commerce, the Sec-
28 retary of the Interior, or both; and

29 (ii) making a new determination that the additional exemp-
30 tion is necessary for national defense.

31 (B) EFFECTIVE PERIOD.—Each additional exemption under this
32 paragraph shall be effective for a period specified by the Secretary
33 of Defense of not more than 2 years.

34 (3) NOTICE TO CONGRESSIONAL COMMITTEES.—

35 (A) IN GENERAL.—Not later than 30 days after issuing an ini-
36 tial exemption under paragraph (1) or an additional exemption
37 under paragraph (2), the Secretary of Defense shall submit to the
38 Committee on Armed Services of the House of Representatives
39 and the Committee on Armed Services of the Senate notice de-
40 scribing the exemption and the reasons for the exemption.

1 (B) CLASSIFIED FORM.—The notice may be provided in classi-
2 fied form if the Secretary of Defense determines that use of the
3 classified form is necessary for reasons of national security.

4 **§ 221206. Regulations on taking and importing of marine**
5 **mammals**

6 (a) IN GENERAL.—The Secretary, on the basis of the best scientific evi-
7 dence available and in consultation with the Commission, shall prescribe
8 such regulations with respect to the taking and importing of animals from
9 each species of marine mammal (including regulations on the taking and im-
10 porting of animals within stocks) as the Secretary considers necessary to en-
11 sure that the taking will not be to the disadvantage of those species and
12 stocks and will be consistent with section 221101 of this title.

13 (b) FACTORS.—In prescribing regulations under subsection (a), the Sec-
14 retary shall consider all factors that may affect the extent to which the ani-
15 mals may be taken or imported, including the effect of the regulations on—

- 16 (1) existing and future levels of species and stocks;
- 17 (2) existing international treaty and agreement obligations of the
18 United States;
- 19 (3) the marine ecosystem and related environmental considerations;
- 20 (4) the conservation, development, and utilization of fishery re-
21 sources; and
- 22 (5) the economic and technological feasibility of implementation.

23 (c) ALLOWABLE RESTRICTIONS.—The regulations prescribed under sub-
24 section (a) for a species or stock may include restrictions with respect to—

- 25 (1) the number of animals that may be taken or imported in a cal-
26 endar year pursuant to permits issued under section 221204 of this
27 title;
- 28 (2) the age, size, or sex of animals that may be taken or imported,
29 whether or not a restriction prescribed under paragraph (1) applies
30 with respect to the animals;
- 31 (3) the season or other period of time within which animals may be
32 taken or imported;
- 33 (4) the manner and locations in which animals may be taken or im-
34 ported; and
- 35 (5) fishing techniques that have been found to cause undue fatalities
36 to any species of marine mammal in a fishery.

37 (d) PROCEDURE.—

- 38 (1) HEARINGS.—Regulations prescribed to carry out this section
39 with respect to a species or stock shall be made on the record after
40 opportunity for an agency hearing on—

1 (A) the Secretary's determination to waive the moratorium pur-
2 suant to section 221203(d)(1) of this title; and

3 (B) the proposed regulations.

4 (2) PUBLICATION OF STATEMENTS AND STUDIES.—In addition to
5 any other requirements imposed by law with respect to agency rule-
6 making, the Secretary shall publish and make available to the public
7 before or concurrently with the publication of notice in the Federal
8 Register of the Secretary's intention to prescribe regulations under this
9 section—

10 (A) a statement of the estimated existing levels of the species
11 and stocks concerned;

12 (B) a statement of the expected impact of the proposed regula-
13 tions on the optimum sustainable population of the species or
14 stock;

15 (C) a statement describing the evidence before the Secretary on
16 which the Secretary proposes to base the regulations; and

17 (D) any studies made by or for the Secretary or any recom-
18 mendations made by or for the Secretary or the Commission that
19 relate to the establishment of the regulations.

20 (e) PERIODIC REVIEW.—A regulation prescribed under this section shall
21 be periodically reviewed, and may be modified from time to time in such
22 manner as the Secretary considers necessary to carry out this chapter.

23 (f) REPORT.—

24 (1) IN GENERAL.—The Secretary shall annually publish in the Fed-
25 eral Register a report that discloses the current status of all species
26 and stocks subject to this chapter.

27 (2) CONTENTS.—The report shall describe the actions taken and the
28 measures believed necessary, including, where appropriate, the issuance
29 of permits under this subchapter, to ensure the well-being of the ma-
30 rine mammals.

31 **§ 221207. Penalties**

32 (a) CIVIL PENALTY.—

33 (1) IN GENERAL.—Except as provided in section 221216 of this title,
34 the Secretary may assess a person that violates this subchapter or a
35 permit or regulation issued under this subchapter a civil penalty of not
36 more than \$10,000 for each violation.

37 (2) NOTICE AND HEARING.—No civil penalty shall be assessed unless
38 the person is given notice and opportunity for a hearing with respect
39 to the violation.

40 (3) SEPARATE OFFENSE.—Each unlawful taking or importation shall
41 be a separate offense.

1 (4) REMISSION OR MITIGATION.—The Secretary may remit or miti-
2 gate a civil penalty under this subsection for good cause shown.

3 (5) CIVIL ACTION.—On a failure of a person to pay a civil penalty
4 under this subsection, the Secretary may request the Attorney General
5 to commence a civil action in a United States district court for a dis-
6 trict in which the person is found, resides, or transacts business to col-
7 lect the civil penalty.

8 (6) ABANDONMENT IN LIEU OF CIVIL PENALTY PROCEEDING.—In a
9 case involving an alleged unlawful importation of a marine mammal or
10 marine mammal product, if the importation is made by an individual
11 for the individual's own personal or family use (which does not include
12 importation as an accommodation to others or for sale or other com-
13 mercial use), the Secretary may, in lieu of assessing a civil penalty
14 under paragraph (1), allow the individual to abandon the marine mam-
15 mal or marine mammal product, under procedures prescribed by the
16 Secretary, to the enforcement officer at the port of entry.

17 (b) CIVIL PENALTY FOR VESSELS.—

18 (1) IN GENERAL.—A vessel subject to the jurisdiction of the United
19 States that is employed in the unlawful taking of a marine mammal
20 shall be liable for a civil penalty of not more than \$25,000.

21 (2) ASSESSMENT BY DISTRICT COURT.—A civil penalty under para-
22 graph (1) shall be assessed by the United States district court having
23 jurisdiction over the vessel.

24 (3) VESSEL CLEARANCE.—Clearance of a vessel against which a civil
25 penalty under paragraph (1) is assessed from a port of the United
26 States may be withheld until the civil penalty is paid or until a bond
27 or otherwise satisfactory surety is posted.

28 (4) MARITIME LIEN.—A civil penalty under paragraph (1) shall con-
29 stitute a maritime lien on a vessel described in paragraph (1) that may
30 be recovered by an action in rem in the United States district court
31 having jurisdiction over the vessel.

32 (c) CRIMINAL PENALTY.—Criminal penalties for a violation of this sub-
33 chapter are provided under section 51(a)(2) of title 18.

34 **§ 221208. Use of fines**

35 All fines collected by USFWS for violations of subchapters I through III
36 and implementing regulations shall be available to the Secretary, without
37 further appropriation, to be used for the expenses of USFWS in administer-
38 ing activities for the protection and recovery of manatees, polar bears, sea
39 otters, and walrus, and shall remain available until expended.

1 **§ 221209. Reward for information leading to conviction**

2 (a) IN GENERAL.—On the recommendation of the Secretary, the Sec-
3 retary of the Treasury may pay an amount equal to ½ of the fine imposed
4 but not more than \$2,500 to a person that furnishes information that leads
5 to a conviction for a violation of this subchapter.

6 (b) INELIGIBILITY FOR PAYMENT.—An officer or employee of the United
7 States or of a State or local government who furnishes information or ren-
8 ders service in the performance of the officer's or employee's official duties
9 shall not be eligible for payment under this section.

10 **§ 221210. Enforcement**

11 (a) AUTHORITY OF THE SECRETARY.—

12 (1) IN GENERAL.—Except as provided in this section and section
13 221212 of this title, the Secretary shall enforce this subchapter.

14 (2) UTILIZATION OF PERSONNEL.—The Secretary may utilize, by
15 agreement, the personnel, services, and facilities of any other Federal
16 agency to enforce this subchapter.

17 (b) STATE OFFICERS AND EMPLOYEES.—

18 (1) DESIGNATION.—The Secretary may designate officers and em-
19 ployees of a State or territory of the United States to enforce this sub-
20 chapter.

21 (2) FEDERAL LAW ENFORCEMENT AGENT FUNCTION.—When des-
22 ignated under paragraph (1), an officer or employee may function as
23 a Federal law enforcement agent for the enforcement of this sub-
24 chapter but shall not be held or considered to be a United States em-
25 ployee for the purposes of laws administered by the Director of the Of-
26 fice of Personnel Management.

27 (c) WARRANTS AND OTHER PROCESS.—The United States district court
28 judges and the United States magistrate judges may, within their respective
29 jurisdictions, on proper oath or affirmation showing probable cause, issue
30 such warrants or other process, including warrants or other process issued
31 in admiralty proceedings in United States district courts, as may be re-
32 quired for the enforcement of this subchapter (including a regulation pre-
33 scribed under this subchapter).

34 (d) AUTHORIZED INDIVIDUALS.—In addition to any other authority con-
35 ferred by law, an individual authorized by the Secretary to enforce this sub-
36 chapter—

37 (1) may execute a warrant or process issued by an officer or court
38 of competent jurisdiction for the enforcement of this subchapter;

39 (2) with or without warrant or other process, may arrest a person
40 committing in the individual's presence or view a violation of this sub-
41 chapter (including a regulation prescribed under this subchapter);

1 (3) with a warrant or other process, or without a warrant if the indi-
2 vidual has reasonable cause to believe that a vessel, other conveyance,
3 or container subject to the jurisdiction of the United States or a person
4 on board is in violation of this subchapter (including a regulation pre-
5 scribed under this subchapter), may search the vessel, conveyance, or
6 container and arrest the person;

7 (4) may seize the cargo of a vessel or other conveyance subject to
8 the jurisdiction of the United States—

9 (A) that was used or employed contrary to this subchapter (in-
10 cluding a regulation prescribed under this subchapter); or

11 (B) that reasonably appears to have been used or employed con-
12 trary to this subchapter (including a regulation prescribed under
13 this subchapter); and

14 (5) may seize, whenever and wherever found, a marine mammal or
15 marine mammal product taken or possessed in violation of this sub-
16 chapter (including a regulation prescribed under this subchapter) and
17 shall dispose of it, in accordance with regulations prescribed by the
18 Secretary.

19 (e) CARGO.—

20 (1) SEIZURE AND FORFEITURE.—The entire cargo of a vessel or
21 other conveyance subject to the jurisdiction of the United States that
22 is employed in the unlawful taking of a marine mammal, or the mone-
23 tary value of the cargo, shall be subject to seizure and forfeiture.

24 (2) APPLICABILITY OF OTHER LAW.—All laws relating to—

25 (A) the seizure, judicial forfeiture, and condemnation of cargo
26 for violation of the customs laws;

27 (B) the disposition of the cargo and of the proceeds from the
28 sale of the cargo; and

29 (C) the remission or mitigation of the forfeiture;

30 shall apply with respect to the cargo of a vessel or other conveyance
31 seized in connection with the unlawful taking of a marine mammal to
32 the extent that those laws are applicable and not inconsistent with this
33 subchapter.

34 (3) DISPOSITION OF SEIZED CARGO.—

35 (A) IN GENERAL.—

36 (i) EXPEDITED PROCEEDINGS.—When a cargo, marine
37 mammal, or marine mammal product is seized under this sec-
38 tion, the Secretary shall expedite proceedings under section
39 221207(a) of this title or section 51(a)(2) of title 18.

40 (ii) CUSTODY.—All marine mammal or marine mammal
41 products or other cargo seized under this section shall be held

1 by a person authorized by the Secretary pending disposition
2 of the proceedings.

3 (iii) NOTIFICATION OF OWNER OR CONSIGNEE.—The owner
4 or consignee of a marine mammal or marine mammal product
5 or other cargo seized under this section shall, as soon as prac-
6 ticable following the seizure, be notified of the seizure in ac-
7 cordance with regulations prescribed by the Secretary.

8 (B) BOND.—The Secretary may, with respect to a proceeding
9 under section 221207(a) of this title or section 51(a)(2) of title
10 18, in lieu of holding a marine mammal or marine mammal prod-
11 uct or other cargo, permit the person concerned to post bond or
12 other surety satisfactory to the Secretary pending the disposition
13 of the proceeding.

14 (C) FORFEITURE AND DISPOSITION OF SEIZED ITEMS.—

15 (i) CIVIL PROCEEDINGS.—On the assessment of a civil pen-
16 alty under section 221207(a) of this title, all marine mam-
17 mals and marine mammal products or other cargo seized in
18 connection with the proceeding may be proceeded against in
19 a court of competent jurisdiction and forfeited to the Sec-
20 retary for disposition by the Secretary in such manner as the
21 Secretary considers appropriate.

22 (ii) CRIMINAL PROCEEDINGS.—On conviction for violation
23 of section 51(a)(2) of title 18, all marine mammals and ma-
24 rine mammal products seized in connection with the proceed-
25 ing shall be forfeited to the Secretary for disposition by the
26 Secretary in such manner as the Secretary considers appro-
27 priate. Any other property or item seized in connection with
28 the proceeding may, at the discretion of the court, be for-
29 feited to the United States or otherwise disposed of.

30 (D) RETURN OF SEIZED ITEMS.—

31 (i) CIVIL PROCEEDINGS.—With respect to a marine mam-
32 mal or marine mammal product or other cargo seized in con-
33 nection with a civil proceeding, the marine mammal or marine
34 mammal product or other cargo shall be immediately returned
35 to the owner or the consignee, if—

36 (I) a civil penalty is assessed under section 221207(a)
37 of this title; and

38 (II) no judicial action is commenced to obtain the for-
39 feiture of the marine mammal or marine mammal prod-
40 uct or other cargo within 30 days after the civil penalty
41 assessment.

1 (ii) CRIMINAL PROCEEDINGS.—With respect to a marine
2 mammal or marine mammal product or other cargo seized in
3 connection with a criminal proceeding, the marine mammal or
4 marine mammal product or other cargo shall immediately be
5 returned to the owner or consignee if—

6 (I) no conviction results from an alleged violation of
7 section 51(a)(2) of title 18; and

8 (II) the Secretary, not later than 30 days after the
9 final disposition of the case involving the alleged viola-
10 tion, does not commence proceedings for the assessment
11 of a civil penalty under section 221207(a) of this title.

12 **§ 221211. International program**

13 (a) TREATIES AND AGREEMENTS.—The Secretary, through the Secretary
14 of State, shall—

15 (1) initiate negotiations for the development of bilateral or multi-
16 lateral agreements with other countries for the protection and conserva-
17 tion of all marine mammals protected by this chapter;

18 (2)(A) initiate negotiations with all foreign countries that are en-
19 gaged in, or that have persons or companies engaged in, commercial
20 fishing operations that the Secretary finds to be unduly harmful to a
21 species or stock of marine mammal, for the purpose of entering into
22 bilateral or multilateral treaties with the foreign countries to protect
23 marine mammals, with the Secretary of State to prepare a draft agen-
24 da relating to the protection of marine mammals for discussion at ap-
25 propriate international meetings and forums;

26 (B) initiate discussions with foreign countries whose vessels harvest
27 yellowfin tuna with purse seines in the eastern tropical Pacific Ocean,
28 for the purpose of concluding, through the Inter-American Tropical
29 Tuna Commission or such other bilateral or multilateral institutions as
30 may be appropriate, international arrangements for the conservation of
31 marine mammals taken incidentally in the course of harvesting yellow-
32 fin tuna, which should include provisions for—

33 (i) cooperative research into alternative methods of locating and
34 catching yellowfin tuna that do not involve the taking of marine
35 mammals;

36 (ii) cooperative research on the status of affected marine mam-
37 mal stocks;

38 (iii) reliable monitoring of the number, rate, and species of ma-
39 rine mammals taken by vessels of harvesting nations;

40 (iv) limitations on incidental take levels based on the best sci-
41 entific information available; and

1 (v) the use of the best marine mammal safety techniques and
2 equipment that are economically and technologically practicable to
3 reduce the incidental mortality and serious injury of marine mam-
4 mals to insignificant levels approaching a zero mortality and seri-
5 ous injury rate;

6 (C) initiate negotiations to revise the Convention for the Establish-
7 ment of an Inter-American Tropical Tuna Commission, signed at
8 Washington May 31, 1949 (1 UST 230; TIAS 2044) to incorporate—

9 (i) the conservation and management provisions—

10 (I) agreed to by the countries that have signed the Declara-
11 tion of Panama; and

12 (II) in the Agreement for the Implementation of the Provi-
13 sions of the United Nations Convention on the Law of the
14 Sea of 10 December 1982 Relating to the Conservation and
15 Management of Straddling Fish Stocks and Highly Migratory
16 Fish Stocks (U.N. Conf. 164/37, 8 September 1995), as
17 opened for signature on December 4, 1995; and

18 (ii) a revised schedule of annual contributions to the expenses
19 of the Inter-American Tropical Tuna Commission that is equitable
20 to participating countries; and

21 (D) initiate discussions with those countries participating, or likely
22 to participate, in the International Dolphin Conservation Program, for
23 the purpose of identifying sources of funds needed for research and
24 other measures promoting effective protection of dolphins, other marine
25 species, and the marine ecosystem;

26 (3) encourage other agreements that promote the purposes of this
27 chapter with other countries for the protection of specific ocean and
28 land regions that are of special significance to the health and stability
29 of marine mammals; and

30 (4) initiate the amendment of any international treaty existing on
31 October 21, 1972, for the protection and conservation of any species
32 of marine mammal to which the United States is a party to make the
33 treaty consistent with the purposes and policies of this chapter.

34 (b) DESCRIPTION OF ANNUAL RESULTS OF DISCUSSIONS AND PROPOS-
35 ALS FOR FURTHER ACTION.—The Secretary shall include in the report re-
36 quired under section 221206(f) of this title—

37 (1) a description of the annual results of discussions initiated and
38 conducted under subsection (a)(2)(B); and

39 (2) any proposals for further action to achieve the purposes of sub-
40 section (a)(2)(B).

1 **§ 221212. Transfer of management authority**

2 (a) DEFINITIONS.—In this section:

3 (1) MANAGEMENT AUTHORITY.—The term “management authority”
4 means the authority for the conservation and management of a species
5 or stock.

6 (2) STATE AGENCY.—The term “State agency” means the State
7 agency with management authority for a species or stock after a trans-
8 fer of management authority under this section.

9 (b) PROHIBITION ON ENFORCEMENT OF STATE LAWS RELATED TO TAK-
10 ING OF MARINE MAMMALS.—A State shall not enforce or attempt to en-
11 force a State law (including a regulation) relating to the taking of a species
12 or stock within the State unless the Secretary transfers management au-
13 thority for that species or stock to the State under subsection (c)(1).

14 (c) STATE PROGRAM FOR CONSERVATION AND MANAGEMENT OF MARINE
15 MAMMALS.—

16 (1) REQUIREMENTS.—Subject to paragraph (2) and subsection (g),
17 the Secretary shall transfer management authority to a State if the
18 Secretary finds, after notice and opportunity for public comment, that
19 the State has developed and will implement a program for the con-
20 servation and management of the species or stock that—

21 (A) is consistent with the purposes, policies, and goals of this
22 chapter and with international treaty obligations;

23 (B) requires that all taking of the species or stock be humane;

24 (C) does not permit the taking of the species or stock unless—

25 (i) under a process consistent with the standards set forth
26 in subsection (d)—

27 (I) the State determines that the species or stock is
28 at its optimum sustainable population; and

29 (II) the State determines the maximum number of
30 animals of that species or stock that may be taken with-
31 out reducing the species or stock below its optimum sus-
32 tainable population; and

33 (ii) the determination under clause (i) is final and imple-
34 mented under State law, and, if a cooperative allocation
35 agreement for the species or stock is required under sub-
36 section (e)(1), a cooperative allocation agreement is imple-
37 mented;

38 (D)(i) does not permit the taking of a number of animals of the
39 species or stock that exceeds the maximum number determined
40 pursuant to subparagraph (C)(i)(II); and

1 (ii) in the case of taking for subsistence uses (as defined in sub-
2 section (g)(1)), does not permit the taking of a number of animals
3 that would be inconsistent with the maintenance of the species or
4 stock at its optimum sustainable population;

5 (E) does not permit the taking of the species or stock for sci-
6 entific research, public display, or enhancement of the survival or
7 recovery of a species or stock, except for taking for those purposes
8 that is undertaken by, or on behalf of, the State;

9 (F) provides procedures for—

10 (i) acquiring data and evaluating the data and other new
11 evidence relating to the optimum sustainable population of
12 the species or stock and the maximum take that would main-
13 tain the species or stock at the optimum sustainable popu-
14 lation; and

15 (ii) amending determinations under subparagraph (C)(i), if
16 required on the basis of the evaluation under clause (i);

17 (G) provides procedures for the resolution of differences between
18 the State and the Secretary that arise during the development of
19 a cooperative allocation agreement under subsection (e)(1); and

20 (H) provides for the submission of an annual report to the Sec-
21 retary regarding the administration of the program during the re-
22 porting period.

23 (2) TRANSITION PERIOD.—During the period between the transfer of
24 management authority for a species or stock to a State under para-
25 graph (1) and the time at which the implementation requirements
26 under paragraph (1)(C)(ii) are complied with—

27 (A) the State program shall not apply with respect to the taking
28 of the species or stock in the State for any purpose, or under any
29 condition, provided for under section 221203 or 221205 of this
30 title; and

31 (B) the Secretary shall continue to regulate, under this sub-
32 chapter, all takings of the species or stock in the State.

33 (3) EFFECT OF IMPLEMENTATION OF DETERMINATION UNDER
34 STATE LAW AND COOPERATIVE ALLOCATION AGREEMENT.—After a de-
35 termination required under paragraph (1)(C)(i) regarding a species or
36 stock is final and implemented under State law and after a cooperative
37 allocation agreement described in subsection (e)(1), if required, is im-
38 plemented for the species or stock—

39 (A) the determination shall be treated, for purposes of applying
40 this subchapter beyond the territory of the State, as a determina-

1 tion made in accordance with section 221206 of this title and as
2 a waiver under section 221203(d) of this title;

3 (B) the Secretary shall regulate, without regard to this section
4 other than the allocations specified under the cooperative alloca-
5 tion agreement, the taking of the species or stock—

6 (i) incidentally in the course of commercial fishing oper-
7 ations (as provided under subsection (c) or (e) of section
8 221203 of this title), or in the course of other specified activi-
9 ties provided for under subsection (f), (g), or (h) of that sec-
10 tion, in the zone described in section 221102(34)(B) of this
11 title; and

12 (ii) for scientific research, public display, or enhancement
13 of the survival or recovery of a species or stock (other than
14 by, or on behalf of, the State), except that a taking author-
15 ized under a permit issued pursuant to section 221203(b) of
16 this title, allowing the removal of live animals from habitat
17 in the State, shall not be effective if the State agency dis-
18 approves, on or before the date of issuance of the permit, the
19 taking as being inconsistent with the State program; and

20 (C) section 221205(a) of this title shall not apply.

21 (d) STANDARDS FOR STATE PROCESS.—The State process under sub-
22 section (e)(1)(C) shall comply with the following standards:

23 (1) INITIAL DETERMINATION.—

24 (A) IN GENERAL.—The State agency shall make an initial de-
25 termination regarding the factors described in subclauses (I) and
26 (II) of subsection (e)(1)(C)(i).

27 (B) AVAILABILITY OF DOCUMENTATION.—The State agency
28 shall identify, and make available to the public under reasonable
29 circumstances, the documentation supporting the initial determina-
30 tion.

31 (C) FINAL.—Unless request for a hearing under paragraph (2)
32 regarding the initial determination is timely made, the initial de-
33 termination shall be treated as final under State law.

34 (2) HEARINGS.—

35 (A) IN GENERAL.—The State agency shall provide opportunity,
36 at the request of any interested party, for a hearing with respect
37 to the initial determination made by the State agency under para-
38 graph (1) at which the interested party may—

39 (i) present oral and written evidence in support of or
40 against the initial determination; and

1 (ii) cross-examine persons presenting evidence at the hear-
2 ing.

3 (B) NOTICE.—The State agency shall give public notice of the
4 hearing and make available to the public, within a reasonable time
5 before commencing the hearing, a list of the witnesses for the
6 State and a general description of the documentation and other
7 evidence that will be relied on by the witnesses.

8 (3) RECORDS.—The State agency, solely on the basis of the record
9 developed at a hearing held under paragraph (2), shall—

10 (A) make a decision regarding its initial determination under
11 paragraph (1); and

12 (B) include with the record a statement of the findings and con-
13 clusions, and the reason or basis for the findings and conclusions,
14 on all material issues.

15 (4) JUDICIAL REVIEW.—

16 (A) IN GENERAL.—Opportunity for judicial review of a decision
17 made by the State agency on the record under paragraph (3),
18 under scope of review equivalent to that provided for in subpara-
19 graphs (A) through (E) of section 706(2) of title 5, shall be avail-
20 able under State law.

21 (B) INITIATION OF JUDICIAL REVIEW BY SECRETARY.—The
22 Secretary may not initiate judicial review of a decision under para-
23 graph (3)(A).

24 (e) COOPERATIVE ALLOCATION AGREEMENTS.—

25 (1) IN GENERAL.—If the range of a species or stock with respect to
26 which a determination under subsection (c)(1)(C)(i) is made extends
27 beyond the territorial waters of the State, the State agency and the
28 Secretary (who shall first coordinate with the Commission and the ap-
29 propriate regional fishery management council established in section
30 302 of the Magnuson-Stevens Fishery Conservation and Management
31 Act (16 U.S.C. 1852)) shall enter into a cooperative allocation agree-
32 ment providing procedures for allocating, on a timely basis, the number
33 of animals, as determined under subsection (c)(1)(C)(i)(II), that may
34 be appropriate for taking, with priority of allocation being given—

35 (A) first, to taking for subsistence uses in the case of the State
36 of Alaska; and

37 (B) second, to taking for purposes provided for under section
38 221203 of this title within the zone described in section
39 221102(34)(B) of this title.

40 (2) REQUEST BY STATE AGENCY FOR SECRETARY TO REGULATE.—

1 (A) IN GENERAL.—If the State agency requests the Secretary
2 to regulate the taking of a species or stock to which paragraph
3 (1) applies within the zone described in section 221102(34)(B) of
4 this title for subsistence uses or for hunting, or both, in a manner
5 consistent with the regulation by the State agency of the taking
6 within the State, the Secretary shall adopt, and enforce within the
7 zone, the State agency’s regulatory provisions that the Secretary
8 considers to be consistent with the Secretary’s administration of
9 sections 221201 and 221203 of this title within the zone.

10 (B) RULEMAKING PROCEDURE.—

11 (i) IN GENERAL.—The Secretary shall adopt the State
12 agency’s regulatory provisions referred to in subparagraph
13 (A) through the issuance of regulations under section 553 of
14 title 5.

15 (ii) INAPPLICABILITY OF CERTAIN PROVISIONS.—With re-
16 spect to the issuance of regulations under clause (i), chapter
17 6 of title 5, chapter 35 of title 44, and the 30-day notice re-
18 quirement under section 553(d) of title 5 shall not apply.

19 (iii) TREATMENT OF REGULATIONS.—For purposes of sec-
20 tions 221207, 221209, and 221210 of this title and section
21 51(a)(2) of title 18, the regulations prescribed under clause
22 (i) shall be treated as having been prescribed under this sub-
23 chapter.

24 (f) REVOCATION OR VOLUNTARY RETURN OF TRANSFER OF MANAGE-
25 MENT AUTHORITY.—

26 (1) IN GENERAL.—

27 (A) REQUIRED FINDINGS.—Subject to paragraph (2), the Sec-
28 retary shall revoke, after opportunity for a hearing, a transfer of
29 management authority for a species or stock made to a State
30 under subsection (c)(1) if the Secretary finds that the State pro-
31 gram for the conservation and management of the species or
32 stock—

33 (i) is not being implemented; or

34 (ii) is being implemented in a manner that is inconsistent
35 with this section or the State program.

36 (B) VOLUNTARY RETURN OF MANAGEMENT AUTHORITY.—The
37 Secretary shall establish a procedure for the voluntary return by
38 a State to the Secretary of management authority that was pre-
39 viously transferred to the State under subsection (c)(1).

1 (2) CONDITIONS REQUIRED FOR REVOCATION.—The Secretary shall
2 not revoke a transfer of management authority under paragraph (1)
3 unless—

4 (A) the Secretary provides the State a written notice of intent
5 to revoke, including a statement, in detail, of the actions or fail-
6 ures to act on which the intent is based; and

7 (B) during the 90-day period after the date on which the notice
8 of intent to revoke is provided—

9 (i) the Secretary provides opportunity for consultation be-
10 tween the Secretary and the State concerning the State ac-
11 tions or failures to act and the remedial measures that should
12 be taken by the State; and

13 (ii) the State does not take such remedial measures as are
14 necessary, in the judgment of the Secretary, to bring the
15 State’s conservation and management program, or the admin-
16 istration or enforcement of the program, into compliance with
17 this section.

18 (3) EFFECT OF REVOCATION.—

19 (A) IN GENERAL.—When a revocation by the Secretary of a
20 transfer of management authority to a State becomes final, or the
21 State voluntarily returns management authority to the Secretary,
22 the Secretary shall regulate the taking, and provide for the con-
23 servation and management, of the species or stock in the State in
24 accordance with this chapter.

25 (B) ALASKA NATIVES.—On revocation or return of management
26 authority as described in subparagraph (A), in the case of Alaska
27 Natives, section 221205(a) of this title and subsection (j) shall
28 apply.

29 (g) TRANSFER OF MANAGEMENT AUTHORITY TO STATE OF ALASKA.—

30 (1) DEFINITION OF SUBSISTENCE USE.—

31 (A) IN GENERAL.—In this subsection, the term “subsistence
32 use” means a customary and traditional use by rural Alaska resi-
33 dents of a marine mammal—

34 (i) for direct personal or family consumption as food, shel-
35 ter, fuel, clothing, tools, or transportation;

36 (ii) for the making and selling of handicraft articles out of
37 nonedible byproducts of marine mammals taken for personal
38 or family consumption; or

39 (iii) for barter, or sharing for personal or family consump-
40 tion.

1 (B) DEFINITIONS OF TERMS IN SUBPARAGRAPH (A).—In sub-
2 paragraph (A):

3 (i) FAMILY.—The term “family” means all individuals re-
4 lated by blood, marriage, or adoption, or an individual living
5 within a household on a permanent basis.

6 (ii) BARTER.—The term “barter” means the exchange of
7 marine mammals or their parts, taken for subsistence uses—

8 (I) for other wildlife or fish or their parts; or

9 (II) for other food or nonedible items other than
10 money if the exchange is of a limited and noncommercial
11 nature.

12 (2) CONDITIONS FOR TRANSFER.—The Secretary shall not transfer
13 management authority to the State of Alaska under subsection (c)(1)
14 for a species or stock unless—

15 (A) the State of Alaska adopts and will implement a statute and
16 regulations that ensure that the taking of the species or stock for
17 subsistence uses—

18 (i) is accomplished in a nonwasteful manner;

19 (ii) will be the priority consumptive use of the species or
20 stock; and

21 (iii) if required to be restricted, the restriction will be based
22 on—

23 (I) the customary and direct dependence on the spe-
24 cies or stock as the mainstay of livelihood;

25 (II) local residency; and

26 (III) the availability of alternative resources; and

27 (B) the State of Alaska adopts a statute or regulation that re-
28 quires that any consumptive use of the species or stock, other than
29 for subsistence uses, will be authorized during a regulatory year
30 only if the appropriate agency first makes findings, based on an
31 administrative record before it, that—

32 (i) the consumptive use will have no significant adverse im-
33 pact on subsistence uses of the species or stock; and

34 (ii) the regulation of the consumptive use, including licens-
35 ing of marine mammal hunting guides and the assignment of
36 guiding areas, will, to the maximum extent practicable, pro-
37 vide economic opportunities for the residents of the rural
38 coastal villages of Alaska who engage in subsistence uses of
39 that species or stock.

1 (h) ENVIRONMENTAL IMPACT STATEMENT NOT REQUIRED.—An environ-
2 mental impact statement under section 102 of the National Environmental
3 Policy Act of 1969 (42 U.S.C. 4332) shall not be required for—

4 (1) a transfer of management authority to a State under subsection
5 (e)(1); or

6 (2) a revocation or voluntary return of management authority under
7 subsection (f).

8 (i) TAKING OF MARINE MAMMALS AS PART OF OFFICIAL DUTIES.—

9 (1) IN GENERAL.—Nothing in this subchapter or subchapter V pre-
10 cludes a Federal, State, or local government official or employee, or a
11 person designated under a transaction under section 221214(c) of this
12 title, from taking, in the course of his or her duties as an official, em-
13 ployee, or designee, a marine mammal in a humane manner (including
14 euthanasia) if the taking is for—

15 (A) the protection or welfare of the marine mammal;

16 (B) the protection of the public health and welfare; or

17 (C) the nonlethal removal of nuisance animals.

18 (2) IMPORTATION FOR MEDICAL TREATMENT.—Nothing in this sub-
19 chapter precludes the Secretary or a person designated under a trans-
20 action under section 221214(c) of this title from importing a marine
21 mammal into the United States if the importation is necessary to
22 render medical treatment that is not otherwise available.

23 (3) RETURN OF MARINE MAMMAL TO NATURAL HABITAT.—In a case
24 in which it is feasible to return to its natural habitat a marine mammal
25 taken or imported under circumstances described in this subsection,
26 steps to achieve that result shall be taken.

27 (j) REGULATIONS GOVERNING TAKING OF MARINE MAMMALS BY ALASKA
28 NATIVES.—The Secretary may prescribe regulations requiring the marking,
29 tagging, and reporting of marine mammals taken under section 221205(a)
30 of this title after—

31 (1) providing, in the affected area, notice of the proposed regula-
32 tions—

33 (A) in the Federal Register and in newspapers of general cir-
34 culation; and

35 (B) through appropriate electronic media; and

36 (2) providing opportunity for a hearing on the proposed regulations
37 in the affected area.

38 (k) GRANTS FOR DEVELOPMENT OR ADMINISTRATION OF STATE CON-
39 SERVATION AND MANAGEMENT PROGRAMS.—

40 (1) IN GENERAL.—The Secretary may make grants to States to as-
41 sist the States in—

1 (A) developing programs to be submitted for approval under
2 subsection (c) for the conservation and management of species or
3 stocks; and

4 (B) administering the programs if management authority for
5 the species or stocks is transferred to a State under subsection (c).

6 (2) LIMITATION ON GRANT AMOUNT.—A grant under this subsection
7 shall not exceed 50 percent of the costs of—

8 (A) developing a State program before approval by the Sec-
9 retary; or

10 (B) administering the program after approval by the Secretary.

11 (l) DELEGATION OF ADMINISTRATION AND ENFORCEMENT TO STATES.—

12 (1) IN GENERAL.—The Secretary shall enter into cooperative ar-
13 rangements with the appropriate officials of a State for the delegation
14 to the State of the administration and enforcement of this subchapter.

15 (2) REQUIRED PROVISIONS.—A cooperative arrangement under para-
16 graph (1) shall contain such provisions as the Secretary considers ap-
17 propriate to ensure that the purposes and policies of this chapter will
18 be carried out.

19 (m) ENFORCEMENT OF STATE LAW BY HAWAII.—Notwithstanding any
20 other Federal law related to the conservation and management of marine
21 mammals, the State of Hawaii may enforce a State law (including a regula-
22 tion) with respect to the operation in State waters of recreational and com-
23 mercial vessels, for the purpose of conservation and management of hump-
24 back whales, to the extent that the State law (including a regulation) is not
25 less restrictive than Federal law.

26 (n) EFFECT OF COOPERATIVE ARRANGEMENTS.—Nothing in this section
27 affects a cooperative agreement entered into by a State under section
28 201303 of this title before, on, or after October 9, 1981.

29 **§ 221213. Marine mammal research**

30 (a) FINANCIAL ASSISTANCE.—

31 (1) IN GENERAL.—The Secretary may provide grants or financial as-
32 sistance in such other form as the Secretary considers appropriate, to
33 any Federal or State agency, public institution, or private institution
34 or other person for the purpose of assisting the agency, institution, or
35 person in undertaking research in subjects that are relevant to the pro-
36 tection and conservation of marine mammals.

37 (2) RESEARCH ON LOCATING AND CATCHING YELLOWFIN TUNA.—In
38 carrying out this subsection, the Secretary shall undertake a program
39 of, and shall provide financial assistance for, research into new methods
40 of locating and catching yellowfin tuna without the incidental taking
41 of marine mammals.

1 (3) REPORT.—The Secretary shall include in the report under sec-
2 tion 221206(f) of this title a description of the annual results of re-
3 search carried out under this subsection.

4 (4) TERMS AND CONDITIONS.—A grant or other financial assistance
5 under this subsection—

6 (A) shall be subject to such terms and conditions as the Sec-
7 retary considers necessary to protect the interests of the United
8 States; and

9 (B) shall be provided after review by the Commission.

10 (b) SCIENTIFIC RESEARCH PROGRAM.—

11 (1) IN GENERAL.—The Secretary of Commerce, in consultation with
12 the Secretary of the Interior, the Commission, the State of Alaska, and
13 Alaska Native organizations, shall undertake a scientific research pro-
14 gram—

15 (A) to monitor the health and stability of the Bering Sea marine
16 ecosystem; and

17 (B) to resolve uncertainties concerning the causes of population
18 declines of marine mammals, sea birds, and other living resources
19 of that marine ecosystem.

20 (2) CONTENTS.—The program under paragraph (1) shall—

21 (A) address the research recommendations developed by pre-
22 vious workshops on Bering Sea living marine resources; and

23 (B) include research on—

24 (i) subsistence uses of Bering Sea living marine resources;
25 and

26 (ii) ways to provide for the continued opportunity for sub-
27 sistence uses under clause (i).

28 (3) SITE.—To the maximum extent practicable, the program under
29 paragraph (1) shall be conducted in Alaska. The Secretary of Com-
30 merce shall utilize, where appropriate, traditional local knowledge and
31 may contract with a qualified Alaska Native organization to conduct
32 the research.

33 **§ 221214. Regulations; administration**

34 (a) CONSULTATION WITH FEDERAL AGENCIES.—The Secretary, in con-
35 sultation with a Federal agency to the extent that the Federal agency may
36 be affected, shall prescribe such regulations as are necessary to carry out
37 this subchapter.

38 (b) COOPERATION BY FEDERAL AGENCIES.—A Federal agency shall co-
39 operate with the Secretary, in such manner as may be agreeable to the Fed-
40 eral agency and the Secretary, in carrying out this subchapter.

1 (c) CONTRACTS, LEASES, COOPERATIVE AGREEMENTS, AND OTHER
 2 TRANSACTIONS.—The Secretary may enter into, with any Federal or State
 3 agency, public institution, or private institution or other person, on such
 4 terms as the Secretary considers appropriate, such contracts, leases, cooper-
 5 ative agreements, or other transactions as are necessary to carry out this
 6 subchapter or subchapter V.

7 (d) PROGRAMS INVOLVING TAKING OF MARINE MAMMALS ON LAND.—

8 (1) REVIEW.—The Secretary shall annually review the operation of
 9 each program in which the United States participates involving the tak-
 10 ing of marine mammals on land.

11 (2) SUSPENSION.—If the Secretary finds that a program described
 12 in paragraph (1) cannot be administered on land owned by the United
 13 States or in which the United States has an interest in a manner con-
 14 sistent with this chapter, the Secretary shall—

15 (A) suspend the operation of the program; and

16 (B) include in a report under section 221206(f) of this title the
 17 Secretary's reasons for the suspension, together with recommenda-
 18 tions for such legislation as the Secretary considers necessary to
 19 resolve the problem.

20 (e) MEASURES TO ALLEVIATE IMPACTS ON STRATEGIC STOCKS.—

21 (1) IN GENERAL.—If the Secretary determines, based on a stock as-
 22 sessment under section 221219 of this title or other significant new in-
 23 formation obtained under this chapter, that impacts on rookeries, mat-
 24 ing grounds, or other areas of similar ecological significance to marine
 25 mammals may be causing the decline or impeding the recovery of a
 26 strategic stock, the Secretary may develop and implement conservation
 27 and management measures to alleviate those impacts.

28 (2) CONSULTATION AND PUBLIC COMMENT.—The conservation and
 29 management measures under paragraph (1) shall be developed and im-
 30 plemented—

31 (A) after consultation with the Commission and the appropriate
 32 Federal agencies; and

33 (B) after notice and opportunity for public comment.

34 **§ 221215. Relationship of chapter to treaties and conven-**
 35 **tions**

36 (a) EFFECT OF SUBCHAPTER.—This subchapter is in addition to and not
 37 in contravention of—

38 (1) an international agreement existing on October 21, 1972; or

39 (2) a statute implementing an international agreement existing on
 40 October 21, 1972;

41 that may otherwise apply to the taking of marine mammals.

1 (b) INAPPLICABILITY OF PENALTIES.—On a finding by the Secretary
2 that an international agreement or a statute implementing an international
3 agreement has been made applicable to persons subject to this subchapter
4 in order to effect essential compliance with the regulatory provisions of this
5 chapter so as to reduce, to the lowest practicable level, the taking of marine
6 mammals incidental to commercial fishing operations, section 221207(a) of
7 this title and section 51(a)(2) of title 18 shall not apply to those persons.

8 (c) REVIEW OF EFFECTIVENESS OF AGREEMENT ON THE CONSERVATION
9 OF POLAR BEARS.—The Secretary of the Interior, in consultation with the
10 contracting parties as provided for in article IX of the Agreement on the
11 Conservation of Polar Bears, done at Oslo November 15, 1973 (27 UST
12 3918; TIAS 8409), shall establish a process by which reviews of the effective-
13 ness of the Agreement shall be conducted.

14 (d) REPORT.—The Secretary shall periodically submit to the Committee
15 on Natural Resources of the House of Representatives and the Committee
16 on Commerce, Science and Transportation of the Senate a report on the
17 progress of the enhanced cooperative research and management programs
18 described in section 113(d) of the Marine Mammal Protection Act of 1972
19 (Public Law 92–522), as amended by the Marine Mammal Protection Act
20 Amendments of 1994 (Public Law 103–238, 108 Stat. 542).

21 **§ 221216. Commercial fisheries**

22 (a) DEFINITIONS.—In this section:

23 (1) FISHERY.—The term “fishery” has the meaning given the term
24 in section 3 of the Magnuson-Stevens Fishery Conservation and Man-
25 agement Act (16 U.S.C. 1802).

26 (2) SECRETARY.—The term “Secretary” means the Secretary of
27 Commerce.

28 (3) VESSEL OF THE UNITED STATES.—The term “vessel of the
29 United States” has the meaning given the term in section 3 of the
30 Magnuson-Stevens Fishery Conservation and Management Act (16
31 U.S.C. 1802).

32 (b) IN GENERAL.—

33 (1) GOVERNING PROVISIONS.—Except as provided in paragraphs (3),
34 (4), and (5), this section shall govern the incidental taking of marine
35 mammals in the course of commercial fishing operations by persons
36 using vessels of the United States or vessels that have valid fishing per-
37 mits issued by the Secretary in accordance with section 204(b) of the
38 Magnuson-Stevens Fishery Conservation and Management Act (16
39 U.S.C. 1824(b)).

40 (2) GOAL.—In any event, the immediate goal shall be to reduce the
41 incidental mortality or serious injury of marine mammals occurring in

1 the course of commercial fishing operations to insignificant levels ap-
2 proaching a zero mortality and serious injury rate within 7 years after
3 April 30, 1994.

4 (3) DEPLETED SPECIES OR STOCK.—In the case of the incidental
5 taking of a marine mammal from a species or stock that is depleted
6 under section 221102(8)(C) of this title by virtue of it being listed as
7 an endangered species or threatened species under chapter 201 of this
8 title, both this section and section 221203(h) of this title apply.

9 (4) YELLOWFIN TUNA.—Section 221204(g) of this title and sub-
10 chapter IV, and not this section, govern the taking of marine mammals
11 in the course of commercial purse seine fishing for yellowfin tuna in
12 the eastern tropical Pacific Ocean.

13 (5) CALIFORNIA SEA OTTERS.—This section does not govern the inci-
14 dental taking of California sea otters and is not deemed to amend or
15 repeal section 1 of Public Law 99-625 (100 Stat. 3500).

16 (6) INTENTIONAL LETHAL TAKING.—Except as provided in section
17 221205(b) of this title, the intentional lethal taking of a marine mam-
18 mal in the course of commercial fishing operations is prohibited.

19 (7) INAPPLICABLE LAWS.—Sections 221204 and 221206 of this title
20 shall not apply to the incidental taking of marine mammals under the
21 authority of this section.

22 (c) ZERO MORTALITY RATE GOAL.—

23 (1) IN GENERAL.—A commercial fishery shall reduce incidental mor-
24 tality and serious injury of marine mammals to insignificant levels ap-
25 proaching a zero mortality and serious injury rate within 7 years after
26 April 30, 1994.

27 (2) FURTHER REDUCTION NOT REQUIRED.—A commercial fishery
28 that maintains insignificant incidental mortality and serious injury lev-
29 els approaching a zero rate shall not be required to further reduce its
30 incidental mortality and serious injury rates.

31 (3) PROGRESS REVIEW OF COMMERCIAL FISHERIES.—

32 (A) IN GENERAL.—Three years after April 30, 1994, the Sec-
33 retary shall review the progress of all commercial fisheries, by fish-
34 ery, toward reducing incidental mortality and serious injury to in-
35 significant levels approaching a zero rate.

36 (B) ADDITIONAL INFORMATION REQUIRED FOR ACCURATE AS-
37 SESSMENT.—The Secretary shall note any commercial fishery for
38 which additional information is required to accurately assess the
39 level of incidental mortality and serious injury of marine mammals
40 in the commercial fishery.

1 (C) TAKE REDUCTION PLANS FOR CERTAIN COMMERCIAL FISH-
2 ERIES.—If the Secretary determines after review under subpara-
3 graph (A) that the rate of incidental mortality and serious injury
4 of marine mammals in a commercial fishery is not consistent with
5 paragraph (1), the Secretary shall take appropriate action under
6 subsection (i).

7 (d) LIST OF COMMERCIAL FISHERIES.—The Secretary shall—

8 (1) publish in the Federal Register for public comment, for a period
9 of not less than 90 days, any necessary changes to the Secretary's list
10 of commercial fisheries (including an explanation of the changes and
11 a statement describing the stocks interacting with, and the approximate
12 number of vessels or persons actively involved in, each of the commer-
13 cial fisheries) published under section 114(b)(1) of the Marine Mammal
14 Protection Act of 1972 (Public Law 92–522) and in existence on
15 March 31, 1994, with respect to commercial fisheries that have—

16 (A) frequent incidental mortality and serious injury of marine
17 mammals;

18 (B) occasional incidental mortality and serious injury of marine
19 mammals; or

20 (C) a remote likelihood of or no known incidental mortality or
21 serious injury of marine mammals;

22 (2) after the close of the period for public comment under paragraph
23 (1), publish in the Federal Register a revised list of commercial fish-
24 eries and an update of information required by paragraph (1), includ-
25 ing a summary of this section and information sufficient to advise ves-
26 sel owners on how to obtain an authorization and otherwise comply
27 with the requirements of this section; and

28 (3) at least once each year after publication under paragraph (2),
29 and at such other times as the Secretary considers appropriate—

30 (A) reexamine, based on information gathered under this chap-
31 ter and other relevant sources and after notice and opportunity for
32 public comment, the classification of commercial fisheries and
33 other determinations required under paragraph (1); and

34 (B) publish in the Federal Register any necessary changes.

35 (e) AUTHORIZATIONS.—

36 (1) IN GENERAL.—

37 (A) GRANT OF AUTHORIZATION.—The Secretary shall grant an
38 authorization for a vessel described in paragraph (2) that is en-
39 gaged in a commercial fishery listed under subparagraph (A) or
40 (B) of subsection (d)(1) on receipt by the Secretary of a registra-
41 tion form providing—

- 1 (i) the names of the vessel owner and the vessel operator;
- 2 (ii) the name and description of the vessel;
- 3 (iii) the commercial fisheries in which the vessel will be en-
- 4 gaged;
- 5 (iv) the approximate time, duration, and location of the
- 6 commercial fishery operations; and
- 7 (v) the general type and nature of use of the fishing gear
- 8 and techniques used.

9 (B) INFORMATION FORMAT.—The information under subpara-

10 graph (A) shall be in a readily usable format that can be effi-

11 ciently entered into and utilized by an automated or computerized

12 data processing system.

13 (C) DECAL OR OTHER PHYSICAL EVIDENCE.—A decal or other

14 physical evidence that the authorization is current and valid—

- 15 (i) shall be issued by the Secretary at the time an author-
- 16 ization is granted; and
- 17 (ii) so long as the authorization remains current and valid,
- 18 shall be reissued annually.

19 (2) VESSELS THAT CAN BE GRANTED AUTHORIZATION.—An author-

20 ization may be granted under this section to the owner of a vessel

21 that—

- 22 (A) is a vessel of the United States; or
- 23 (B) has a valid fishing permit issued by the Secretary under
- 24 section 204(b) of the Magnuson-Stevens Fishery Conservation and
- 25 Management Act (16 U.S.C. 1824(b)).

26 (3) SCOPE OF AUTHORIZATION.—Except as provided in subsection

27 (b), an authorization under this section shall allow the incidental taking

28 of all species and stocks to which this chapter applies.

29 (4) OWNERS AND OPERATORS OF VESSELS.—

30 (A) REQUIRED ACTIONS FROM VESSEL OWNERS.—An owner of

31 a vessel engaged in a commercial fishery listed under subpara-

32 graph (A) or (B) of subsection (d)(1) shall, in order to engage in

33 the lawful incidental taking of marine mammals in a commercial

34 fishery—

- 35 (i) register under paragraph (1) with the Secretary to ob-
- 36 tain for each vessel owned and used in the commercial fishery
- 37 an authorization for the purpose of incidentally taking marine
- 38 mammals in accordance with this section;
- 39 (ii) ensure that a decal or other physical evidence of a cur-
- 40 rent and valid authorization as the Secretary may require is

1 displayed on or is in the possession of the operator of each
2 vessel owned and used in the commercial fishery;

3 (iii) report as required by subsection (h); and

4 (iv) comply with any applicable take reduction plan and
5 emergency regulations prescribed under this section.

6 (B) REQUIREMENT TO TAKE OBSERVERS.—An owner of a vessel
7 receiving an authorization under this section for a commercial
8 fishery listed under subparagraph (A) or (B) of subsection (d)(1)
9 shall, as a condition of the authorization, take on board an ob-
10 server if requested to do so by the Secretary.

11 (C) VIOLATIONS AND PENALTIES.—

12 (i) IN GENERAL.—If the owner of a vessel engaged in a
13 commercial fishery listed under subparagraph (A) or (B) of
14 subsection (d)(1)—

15 (I) fails to obtain from the Secretary an authorization
16 for the vessel under this section;

17 (II) fails to maintain a current and valid authorization
18 for the vessel; or

19 (III) fails to ensure that a decal or other physical evi-
20 dence of the authorization issued by the Secretary is dis-
21 played on or is in possession of the operator of the ves-
22 sel;

23 both the owner and the operator of the vessel shall be in vio-
24 lation of this subchapter.

25 (ii) PENALTIES FOR FAILING TO OBTAIN OR MAINTAIN AU-
26 THORIZATION.—For violations of subclause (I) or (II) of
27 clause (i), the owner and the operator shall be subject to the
28 penalties under section 221207(a) of this title and section
29 51(a)(2) of title 18.

30 (iii) PENALTY FOR FAILING TO ENSURE DISPLAY OF
31 DECAL.—For violations of clause (i)(III), the owner and the
32 operator shall be subject to a civil penalty of not more than
33 \$100 for each violation.

34 (D) EFFECT OF AUTHORIZATION.—If the owner of a vessel ob-
35 tains and maintains a current and valid authorization from the
36 Secretary under this section and meets the requirements set forth
37 in this section, including compliance with any regulations to imple-
38 ment a take reduction plan under this section, the owner of the
39 vessel, and the operator and crew members of the vessel, shall not
40 be subject to the penalties under section 221207(a) of this title
41 and section 51(a)(2) of title 18 for the incidental taking of a ma-

1 rine mammal while the vessel is engaged in a commercial fishery
2 to which the authorization applies.

3 (E) REPORTING OF INSTANCES OF INCIDENTAL MORTALITY OR
4 INJURY OF MARINE MAMMALS BY CERTAIN VESSELS.—Neither an
5 owner of a vessel engaged in a commercial fishery not listed under
6 subparagraph (A) or (B) of subsection (d)(1) nor the operator or
7 crew members of such a vessel shall be subject to the penalties
8 under section 221207(a) of this title and section 51(a)(2) of title
9 18 for the incidental taking of a marine mammal if the owner or
10 the operator reports to the Secretary, in the form and manner re-
11 quired under subsection (h), instances of incidental mortality or
12 injury of marine mammals in the course of the commercial fishery.

13 (5) SUSPENSION OR REVOCATION OF AUTHORIZATION.—

14 (A) NONCOMPLIANCE WITH REPORTING REQUIREMENTS AND
15 REQUIREMENT TO TAKE ON BOARD AN OBSERVER.—

16 (i) IN GENERAL.—The Secretary shall suspend or revoke
17 an authorization under this subsection and shall not issue a
18 decal or other physical evidence of the authorization for a ves-
19 sel until the owner of the vessel complies with the reporting
20 requirements under subsection (h) and such requirements to
21 take on board an observer under paragraph (4)(B) as are ap-
22 plicable to the vessel.

23 (ii) PREVIOUS NONCOMPLIANCE.—Previous failure to com-
24 ply with the requirements of section 114 of the Marine Mam-
25 mal Protection Act of 1972 (Public Law 92–522) shall not
26 bar authorization under this subsection for an owner that
27 complies with the requirements of this section.

28 (B) NONCOMPLIANCE WITH TAKE REDUCTION PLAN OR EMER-
29 GENCY REGULATIONS.—The Secretary may suspend or revoke an
30 authorization under this subsection and shall not issue a decal or
31 other physical evidence of the authorization for a vessel that fails
32 to comply with a take reduction plan or emergency regulations
33 prescribed under this section.

34 (C) PENALTIES FOR NONCOMPLIANCE WITH TAKE REDUCTION
35 PLAN.—The owner and the operator of a vessel that fails to com-
36 ply with a take reduction plan—

37 (i) shall be subject to the penalties of section 221207(a) of
38 this title and section 51(a)(2) of title 18 and the enforcement
39 provisions of subsections (a) through (d) and (e)(3) of section
40 221210 of this title; and

1 (ii) may be subject to sections 221207(b), 221209, and
2 paragraphs (1) and (2) of 221210(e) of this title.

3 (6) ADMINISTRATION OF AUTHORIZATIONS.—

4 (A) INTEGRATION AND COORDINATION WITH EXISTING PRO-
5 GRAMS.—The Secretary shall develop, in consultation with the ap-
6 propriate States, affected regional fishery management councils,
7 and other interested persons, the means by which the granting and
8 administration of authorizations under this subsection shall be in-
9 tegrated and coordinated, to the maximum extent practicable, with
10 fishery licenses, registrations, and related programs existing at the
11 time of the development.

12 (B) ADVISING OF COMMERCIAL FISHERS.—The Secretary shall
13 utilize newspapers of general circulation, fishery trade associa-
14 tions, electronic media, and other means to advise commercial fish-
15 ers of—

- 16 (i) the provisions of this section; and
- 17 (ii) the means by which commercial fishers may comply
18 with the requirements of this section.

19 (C) FEES.—

20 (i) IN GENERAL.—The Secretary may charge a fee for the
21 granting of an authorization under this subsection.

22 (ii) LIMITATION ON FEES CHARGED.—The level of fees
23 charged under this subparagraph shall not exceed the admin-
24 istrative costs incurred in granting an authorization.

25 (iii) AVAILABILITY OF FEES.—Fees collected under this
26 subparagraph shall be available to the Under Secretary of
27 Commerce for Oceans and Atmosphere for expenses incurred
28 in the granting and administration of authorizations under
29 this subsection.

30 (f) MONITORING OF INCIDENTAL TAKES.—

31 (1) ESTABLISHMENT OF MONITORING PROGRAM.—

32 (A) IN GENERAL.—The Secretary shall establish a program to
33 monitor incidental mortality and serious injury of marine mam-
34 mals during the course of commercial fishing operations.

35 (B) PURPOSES.—The purposes of the monitoring program shall
36 be to—

- 37 (i) obtain statistically reliable estimates of incidental mor-
38 tality and serious injury;
- 39 (ii) determine the reliability of reports of incidental mortal-
40 ity and injury under subsection (h); and

1 (iii) identify changes in fishing methods or technology that
2 may increase or decrease incidental mortality and serious in-
3 jury.

4 (2) OBSERVERS.—

5 (A) IN GENERAL.—Pursuant to paragraph (1), the Secretary
6 may place observers on board vessels as necessary, subject to this
7 section.

8 (B) FUNCTIONS.—Observers may, among other tasks—

9 (i) record incidental mortality and injury or bycatch of
10 other nontarget species;

11 (ii) record numbers of marine mammals sighted; and

12 (iii) perform other scientific investigations.

13 (3) STANDARDS FOR DETERMINING DISTRIBUTION OF OBSERVERS.—

14 In determining the distribution of observers among commercial fish-
15 eries and vessels within a commercial fishery, the Secretary shall be
16 guided by—

17 (A) the requirement to obtain statistically reliable information;

18 (B) the requirement that assignment of observers be fair and
19 equitable among commercial fisheries and among vessels in a com-
20 mercial fishery;

21 (C) the requirement that no individual or vessel, or group of in-
22 dividuals or vessels, be subject to excessive or overly burdensome
23 observer coverage; and

24 (D) to the extent practicable, the need to minimize costs and
25 avoid duplication.

26 (4) ORDER OF PRIORITY IN ALLOCATION OF OBSERVERS.—To the
27 extent practicable, the Secretary shall allocate observers among com-
28 mercial fisheries in accordance with the following priority:

29 (A) First, commercial fisheries that have incidental mortality or
30 serious injury of marine mammals from stocks listed as endan-
31 gered species or threatened species under chapter 201 of this title.

32 (B) Second, commercial fisheries that have incidental mortality
33 and serious injury of marine mammals from strategic stocks.

34 (C) Third, commercial fisheries that have incidental mortality or
35 serious injury of marine mammals from stocks for which the level
36 of incidental mortality and serious injury is uncertain.

37 (5) ALTERNATIVE OBSERVER PROGRAM.—The Secretary may estab-
38 lish an alternative observer program to provide statistically reliable in-
39 formation on the species and number of marine mammals incidentally
40 taken in the course of commercial fishing operations. The alternative

1 observer program may include direct observation of fishing activities
2 from vessels, airplanes, or points on shore.

3 (6) WHEN OBSERVERS ARE NOT REQUIRED.—The Secretary is not
4 required to place an observer on a vessel in a commercial fishery if the
5 Secretary finds that—

6 (A) in a situation in which harvesting vessels are delivering fish
7 to a processing vessel and the catch is not taken on board the har-
8 vesting vessel, statistically reliable information can be obtained
9 from an observer on board the processing vessel to which the fish
10 are delivered;

11 (B) the facilities on a vessel for quartering of an observer, or
12 for carrying out observer functions, are so inadequate or unsafe
13 that the health or safety of the observer or the safe operation of
14 the vessel would be jeopardized; or

15 (C) for reasons beyond the control of the Secretary, an observer
16 is not available.

17 (7) OBSERVERS ON UNLISTED VESSELS.—The Secretary may, with
18 the consent of the vessel owner, station an observer on board a vessel
19 engaged in a commercial fishery not listed under subparagraph (A) or
20 (B) of subsection (d)(1).

21 (8) CONFIDENTIALITY OF INFORMATION.—

22 (A) IN GENERAL.—Proprietary information collected under this
23 subsection shall be confidential and shall not be disclosed except—

24 (i) to Federal employees whose duties require access to the
25 information;

26 (ii) to State or tribal employees pursuant to an agreement
27 with the Secretary that prevents public disclosure of the iden-
28 tity or business of a person;

29 (iii) when required by court order; or

30 (iv) in the case of scientific information involving commer-
31 cial fisheries, to employees of regional fishery management
32 councils who are responsible for fishery management plan de-
33 velopment and monitoring.

34 (B) PROCEDURES TO PRESERVE CONFIDENTIALITY.—The Sec-
35 retary shall prescribe such procedures as may be necessary to pre-
36 serve confidentiality as required under subparagraph (A), except
37 that the Secretary shall release or make public on request any pro-
38 prietary information collected under this subsection in aggregate,
39 summary, or other form that does not directly or indirectly dis-
40 close the identity or business of a person.

41 (g) EMERGENCY REGULATIONS.—

1 (1) ACTIONS ON FINDING OF IMMEDIATE AND SIGNIFICANT ADVERSE
2 IMPACT.—If the Secretary finds that the incidental mortality and seri-
3 ous injury of marine mammals from commercial fisheries is having, or
4 is likely to have, an immediate and significant adverse impact on a spe-
5 cies or stock, the Secretary shall take action as follows:

6 (A) TAKE REDUCTION PLAN IN EFFECT.—In the case of a spe-
7 cies or stock for which a take reduction plan is in effect, the Sec-
8 retary shall—

9 (i) prescribe emergency regulations that, consistent with
10 the take reduction plan to the maximum extent practicable,
11 reduce incidental mortality and serious injury in that com-
12 mercial fishery; and

13 (ii) approve and implement, on an expedited basis, any
14 amendments to the take reduction plan that are rec-
15 ommended by the take reduction team to address the adverse
16 impact.

17 (B) TAKE REDUCTION PLAN BEING DEVELOPED.—In the case
18 of a species or stock for which a take reduction plan is being de-
19 veloped, the Secretary shall—

20 (i) prescribe emergency regulations to reduce the incidental
21 mortality and serious injury in that commercial fishery; and

22 (ii) approve and implement, on an expedited basis, the take
23 reduction plan, which shall provide methods to address the
24 adverse impact if still necessary.

25 (C) NO TAKE REDUCTION PLAN.—In the case of a species or
26 stock for which a take reduction plan does not exist and is not
27 being developed, or in the case of a commercial fishery listed
28 under subsection (d)(1)(C) that the Secretary believes may be con-
29 tributing to the adverse impact, the Secretary shall—

30 (i) prescribe emergency regulations to reduce the incidental
31 mortality and serious injury in that commercial fishery, to the
32 extent necessary to mitigate the adverse impact;

33 (ii) immediately review the stock assessment for the species
34 or stock and the classification of the commercial fishery
35 under subsection (d) to determine whether a take reduction
36 team should be established; and

37 (iii) may, where necessary to address the adverse impact on
38 a species or stock listed as a threatened species or endan-
39 gered species under chapter 201 of this title, place observers
40 on vessels in a commercial fishery listed under subsection
41 (d)(1)(C), if the Secretary has reason to believe that the ves-

1 sels may be causing the incidental mortality and serious in-
2 jury of marine mammals from the stock.

3 (2) CONSULTATION.—Before taking action under subparagraph (A),
4 (B), or (C) of paragraph (1), the Secretary shall consult with the Com-
5 mission, all appropriate regional fishery management councils, State
6 fishery managers, and the appropriate take reduction team (if estab-
7 lished).

8 (3) PUBLICATION, EFFECTIVE PERIOD, AND EARLY TERMINATION.—
9 Emergency regulations prescribed under this subsection—

10 (A) shall be published in the Federal Register, with an expla-
11 nation of the emergency regulations;

12 (B) shall remain in effect for not more than 180 days or until
13 the end of the applicable commercial fishing season, whichever is
14 earlier; and

15 (C) may be terminated by the Secretary at an earlier date by
16 publication in the Federal Register of a notice of termination, if
17 the Secretary determines that the reasons for emergency regula-
18 tions no longer exist.

19 (4) EXTENSION OF EFFECTIVE PERIOD.—If the Secretary finds that
20 incidental mortality and serious injury of marine mammals in a com-
21 mercial fishery is continuing to have an immediate and significant ad-
22 verse impact on a species or stock, the Secretary may extend the emer-
23 gency regulations for an additional period of not more than 90 days
24 or until reasons for the emergency no longer exist, whichever is earlier.

25 (h) REPORTING REQUIREMENT.—

26 (1) IN GENERAL.—The owner or the operator of a commercial fish-
27 ing vessel subject to this chapter shall report all incidental mortality
28 and injury of marine mammals in the course of commercial fishing op-
29 erations to the Secretary by mail or other means acceptable to the Sec-
30 retary not later than 48 hours after the end of each fishing trip on
31 a standard postage-paid form to be developed by the Secretary under
32 this section.

33 (2) FORMAT AND CONTENT.—The form shall be capable of being
34 readily entered into and being usable by an automated or computerized
35 data processing system and shall require the owner or the operator of
36 the vessel to provide—

37 (A) the vessel name, and Federal, State, or tribal registration
38 numbers of the registered vessel;

39 (B) the name and address of the owner or the operator of the
40 vessel;

41 (C) the name and description of the commercial fishery; and

1 (D) the species of each marine mammal incidentally killed or in-
2 jured, and the date, time, and approximate geographic location of
3 the occurrence.

4 (i) TAKE REDUCTION PLANS.—

5 (1) IN GENERAL.—The Secretary—

6 (A) shall develop and implement a take reduction plan designed
7 to assist in the recovery or prevent the depletion of each strategic
8 stock that interacts with a commercial fishery listed under sub-
9 paragraph (A) or (B) of subsection (d)(1); and

10 (B) may develop and implement a take reduction plan for any
11 other stocks that interact with a commercial fishery listed under
12 subsection (d)(1)(A) that the Secretary determines, after notice
13 and opportunity for public comment, has a high level of mortality
14 and serious injury across a number of the stocks.

15 (2) GOALS.—

16 (A) IMMEDIATE GOAL.—The immediate goal of a take reduction
17 plan for a strategic stock shall be to reduce, within 6 months after
18 its implementation, the incidental mortality or serious injury of
19 marine mammals incidentally taken in the course of commercial
20 fishing operations to levels less than the potential biological re-
21 moval level established for that strategic stock under section
22 221219 of this title.

23 (B) LONG-TERM GOAL.—The long-term goal of a take reduction
24 plan for a strategic stock shall be to reduce, not later than 5 years
25 after its implementation, the incidental mortality or serious injury
26 of marine mammals incidentally taken in the course of commercial
27 fishing operations to insignificant levels approaching a zero mor-
28 tality and serious injury rate, taking into account the economics
29 of the commercial fishery, the availability of existing technology,
30 and existing State or regional fishery management plans.

31 (3) INSUFFICIENT FUNDING.—If there is insufficient funding avail-
32 able to develop and implement a take reduction plan for all strategic
33 stocks and other stocks described in paragraph (1), the Secretary shall
34 give highest priority to the development and implementation of take re-
35 duction plans for species or stocks whose level of incidental mortality
36 and serious injury exceeds the potential biological removal level, those
37 that have a small population size, and those that are declining most
38 rapidly.

39 (4) CONTENTS.—Each take reduction plan shall include—

1 (A) a review of the information in the final stock assessment
2 published under section 221219(d) of this title and any substantial
3 new information;

4 (B) an estimate of the total number and, if possible, age and
5 gender, of animals from the stock that are being incidentally killed
6 or seriously injured each year during the course of commercial
7 fishing operations, by commercial fishery;

8 (C) recommended regulatory or voluntary measures for the re-
9 duction of incidental mortality and serious injury; and

10 (D) recommended dates for achieving the specific objectives of
11 the take reduction plan.

12 (5) MEASURES TO REDUCE INCIDENTAL MORTALITY AND SERIOUS
13 INJURY.—

14 (A) INCIDENTAL MORTALITY AND SERIOUS INJURY THAT EX-
15 CEEDS POTENTIAL BIOLOGICAL REMOVAL LEVEL.—For a stock in
16 which incidental mortality and serious injury from commercial
17 fisheries exceeds the potential biological removal level established
18 under section 221219 of this title, the take reduction plan shall
19 include measures that the Secretary expects will reduce, not later
20 than 6 months after the take reduction plan's implementation, the
21 incidental mortality and serious injury to a level below the poten-
22 tial biological removal level.

23 (B) HUMAN-CAUSED MORTALITY AND SERIOUS INJURY THAT
24 EXCEEDS POTENTIAL BIOLOGICAL REMOVAL LEVEL.—For a stock
25 in which human-caused mortality and serious injury exceeds the
26 potential biological removal level, other than a stock to which sub-
27 paragraph (A) applies, the take reduction plan shall include meas-
28 ures that the Secretary expects will reduce to the lowest level fea-
29 sible, not later than 6 months after the take reduction plan's im-
30 plementation, the incidental mortality and serious injury by the
31 commercial fisheries from that stock.

32 (6) TAKE REDUCTION TEAMS.—

33 (A) IN GENERAL.—At the earliest possible time (not later than
34 30 days) after the Secretary publishes a final stock assessment
35 under section 221219(d) of this title for a strategic stock, the Sec-
36 retary shall, and for stocks that interact with a commercial fishery
37 listed under subsection (d)(1)(A) for which the Secretary has
38 made a determination under paragraph (1), the Secretary may—

39 (i) establish a take reduction team for the strategic stock
40 or other stock and appoint the members of the take reduction
41 team in accordance with subparagraph (C); and

- 1 (ii) publish in the Federal Register—
- 2 (I) a notice of the take reduction team’s establish-
- 3 ment;
- 4 (II) the names of the take reduction team’s appointed
- 5 members;
- 6 (III) the full geographic range of the strategic stock
- 7 or other stock; and
- 8 (IV) a list of all commercial fisheries that cause inci-
- 9 dental mortality and serious injury of marine mammals
- 10 from the strategic stock or other stock.
- 11 (B) EXTENDED STOCKS; MULTIPLE STOCKS.—The Secretary
- 12 may request a take reduction team to address a stock that extends
- 13 over 1 or more regions or commercial fisheries, or multiple stocks
- 14 within a region or commercial fishery, if the Secretary determines
- 15 that doing so would facilitate the development and implementation
- 16 of a take reduction plan required under this subsection.
- 17 (C) QUALIFICATIONS OF MEMBERS OF TAKE REDUCTION
- 18 TEAMS.—
- 19 (i) EXPERTISE.—A member of a take reduction team shall
- 20 have expertise regarding—
- 21 (I) the conservation or biology of the marine mammal
- 22 species that the take reduction plan will address; or
- 23 (II) the fishing practices that result in the incidental
- 24 mortality and serious injury of the marine mammal spe-
- 25 cies.
- 26 (ii) REPRESENTATION OF CERTAIN AGENCIES AND ORGANI-
- 27 ZATIONS.—The members of a take reduction team shall in-
- 28 clude representatives of Federal agencies, each coastal State
- 29 that has commercial fisheries that interact with the species or
- 30 stock, appropriate regional fishery management councils,
- 31 interstate fisheries commissions, academic and scientific orga-
- 32 nizations, environmental groups, all commercial and rec-
- 33 reational fisheries groups and gear types that incidentally
- 34 take the species or stock, Alaska Native organizations or In-
- 35 dian tribal organizations, and others as the Secretary consid-
- 36 ers appropriate.
- 37 (iii) BALANCE OF INTERESTS.—A take reduction team
- 38 shall, to the maximum extent practicable, consist of an equi-
- 39 table balance among representatives of resource user interests
- 40 and nonuser interests.

1 (D) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE
2 ACT.—A take reduction team shall not be subject to the Federal
3 Advisory Committee Act (5 App. U.S.C.).

4 (E) PUBLIC ACCESS TO MEETINGS.—A meeting of a take reduc-
5 tion team shall be open to the public and public notice of a meet-
6 ing shall be made in a timely fashion.

7 (F) COMPENSATION AND REIMBURSEMENT.—A member of a
8 take reduction team shall serve without compensation but may be
9 reimbursed by the Secretary, on request, for reasonable travel ex-
10 penses incurred in performing the member’s duties as a member
11 of the take reduction team.

12 (7) STRATEGIC STOCKS IN WHICH HUMAN-CAUSED MORTALITY AND
13 SERIOUS INJURY ARE EQUAL TO OR GREATER THAN POTENTIAL BIO-
14 LOGICAL REMOVAL LEVEL.—Where human-caused mortality and seri-
15 ous injury in a strategic stock are estimated to be equal to or greater
16 than the potential biological removal level established under section
17 221219 of this title for the strategic stock and the strategic stock
18 interacts with a commercial fishery listed under subparagraph (A) or
19 (B) of subsection (d)(1), the following procedures shall apply in the de-
20 velopment of the take reduction plan for the strategic stock:

21 (A) DRAFT TAKE REDUCTION PLAN.—

22 (i) SUBMISSION.—Not later than 6 months after the date
23 of establishment of a take reduction team for the strategic
24 stock, the team shall submit to the Secretary a draft take re-
25 duction plan for the strategic stock that is consistent with the
26 other provisions of this section.

27 (ii) REQUIREMENT TO REACH CONSENSUS.—The draft take
28 reduction plan shall be developed by consensus. If consensus
29 cannot be reached, the take reduction team shall advise the
30 Secretary in writing on the range of possibilities considered
31 by the take reduction team, and the views of all members of
32 the take reduction team.

33 (B) PUBLICATION.—

34 (i) PROPOSED TAKE REDUCTION PLAN BY THE TAKE RE-
35 DUCION TEAM.—The Secretary shall—

36 (I) take the draft take reduction plan into consider-
37 ation; and

38 (II) not later than 60 days after the submission of the
39 draft take reduction plan by the take reduction team,
40 publish in the Federal Register the take reduction plan
41 proposed by the take reduction team, any changes pro-

1 posed by the Secretary with an explanation of the rea-
2 sons for the changes, and proposed regulations to imple-
3 ment the take reduction plan, for public review and com-
4 ment during a period of not more than 90 days.

5 (ii) PROPOSED TAKE REDUCTION PLAN BY THE SEC-
6 RETARY.—If the take reduction team does not submit a draft
7 take reduction plan to the Secretary within 6 months, the
8 Secretary shall, not later than 8 months after the establish-
9 ment of the take reduction team, publish in the Federal Reg-
10 ister a proposed take reduction plan and implementing regu-
11 lations, for public review and comment during a period of not
12 more than 90 days.

13 (C) FINAL TAKE REDUCTION PLAN.—Not later than 60 days
14 after the close of the comment period under subparagraph (B), the
15 Secretary shall issue a final take reduction plan and implementing
16 regulations that are consistent with the other provisions of this
17 section.

18 (D) ADVISING OF COMMERCIAL FISHERS.—During a period of
19 30 days after publication of a final take reduction plan, the Sec-
20 retary shall utilize newspapers of general circulation, fishery trade
21 associations, electronic media, and other means to advise commer-
22 cial fishers of—

- 23 (i) the requirements of the take reduction plan; and
24 (ii) the means by which to comply with the requirements.

25 (E) MONITORING OF IMPLEMENTATION.—The Secretary and
26 the take reduction team shall meet every 6 months, or at such
27 other intervals as the Secretary determines are necessary, to mon-
28 itor the implementation of the final take reduction plan until such
29 time as the Secretary determines that the objectives of the take
30 reduction plan have been met.

31 (F) AMENDMENTS OF TAKE REDUCTION PLANS AND REGULA-
32 TIONS.—The Secretary shall amend a take reduction plan and im-
33 plementing regulations as necessary to meet the requirements of
34 this section, in accordance with the procedures in this section for
35 the issuance of take reduction plans and regulations.

36 (8) STRATEGIC STOCKS IN WHICH HUMAN-CAUSED MORTALITY AND
37 SERIOUS INJURY ARE LESS THAN POTENTIAL BIOLOGICAL REMOVAL
38 LEVEL.—Where human-caused mortality and serious injury in a strate-
39 gic stock are estimated to be less than the potential biological removal
40 level established under section 221219 of this title for the strategic
41 stock and the strategic stock interacts with a commercial fishery listed

1 under subparagraph (A) or (B) of subsection (d)(1), or for any stock
2 that interacts with a commercial fishery listed under subsection
3 (d)(1)(A) for which the Secretary has made a determination under
4 paragraph (1), the following procedures shall apply in the development
5 of the take reduction plan for the strategic stock or other stock:

6 (A) DRAFT TAKE REDUCTION PLAN.—

7 (i) SUBMISSION.—Not later than 11 months after the date
8 of establishment of a take reduction team for the strategic
9 stock or other stock, the take reduction team shall submit to
10 the Secretary a draft take reduction plan for the strategic
11 stock or other stock that is consistent with the other provi-
12 sions of this section.

13 (ii) REQUIREMENT TO REACH CONSENSUS.—The draft take
14 reduction plan shall be developed by consensus. If consensus
15 cannot be reached, the take reduction team shall advise the
16 Secretary in writing on the range of possibilities considered
17 by the take reduction team, and the views of all members of
18 the take reduction team.

19 (B) PUBLICATION.—

20 (i) PROPOSED TAKE REDUCTION PLAN BY THE TAKE RE-
21 DUCION TEAM.—The Secretary shall—

22 (I) take the draft take reduction plan into consider-
23 ation; and

24 (II) not later than 60 days after the submission of the
25 draft take reduction plan by the take reduction team,
26 publish in the Federal Register the take reduction plan
27 proposed by the take reduction team, any changes pro-
28 posed by the Secretary with an explanation of the rea-
29 sons for the changes, and proposed regulations to imple-
30 ment the take reduction plan, for public review and com-
31 ment during a period of not more than 90 days.

32 (ii) PROPOSED TAKE REDUCTION PLAN BY THE SEC-
33 RETARY.—If the take reduction team does not submit a draft
34 take reduction plan to the Secretary within 11 months, the
35 Secretary shall, not later than 13 months after the establish-
36 ment of the take reduction team, publish in the Federal Reg-
37 ister a proposed take reduction plan and implementing regu-
38 lations, for public review and comment during a period of not
39 more than 90 days.

40 (C) FINAL TAKE REDUCTION PLAN.—Not later than 60 days
41 after the close of the comment period under subparagraph (B), the

1 Secretary shall issue a final take reduction plan and implementing
2 regulations that are consistent with the other provisions of this
3 section.

4 (D) ADVISING OF COMMERCIAL FISHERS.—The Secretary shall,
5 during a period of 30 days after publication of a final take reduc-
6 tion plan, utilize newspapers of general circulation, fishery trade
7 associations, electronic media, and other means to advise commer-
8 cial fishers of—

9 (i) the requirements of the take reduction plan; and

10 (ii) the means by which to comply with the requirements.

11 (E) MONITORING OF IMPLEMENTATION.—The Secretary and
12 the take reduction team shall meet on an annual basis, or at such
13 other intervals as the Secretary determines are necessary, to mon-
14 itor the implementation of the final take reduction plan until such
15 time as the Secretary determines that the objectives of the take
16 reduction plan have been met.

17 (F) AMENDMENT OF TAKE REDUCTION PLANS AND REGULA-
18 TIONS.—The Secretary shall amend a take reduction plan and im-
19 plementing regulations as necessary to meet the requirements of
20 this section, in accordance with the procedures in this section for
21 the issuance of the take reduction plans and regulations.

22 (9) REGULATIONS.—In implementing a take reduction plan devel-
23 oped under this subsection, the Secretary may, if necessary to imple-
24 ment a take reduction plan to protect or restore a stock or species cov-
25 ered by the take reduction plan, prescribe regulations that include
26 measures to—

27 (A) establish fishery-specific limits on incidental mortality and
28 serious injury of marine mammals in commercial fisheries or re-
29 strict commercial fisheries by time or area;

30 (B) require the use of alternative commercial fishing gear or
31 techniques and new technologies, encourage the development of al-
32 ternative commercial fishing gear or techniques and new tech-
33 nologies, or convene expert skippers' panels;

34 (C) educate commercial fishers, through workshops and other
35 means, on the importance of reducing the incidental mortality and
36 serious injury of marine mammals in affected commercial fisheries;
37 and

38 (D) monitor, in accordance with subsection (f), the effectiveness
39 of measures taken to reduce the level of incidental mortality and
40 serious injury of marine mammals in the course of commercial
41 fishing operations.

1 (10) CONSISTENCY WITH RECOVERY PLANS.—A take reduction plan
2 developed under this section for a species or stock listed as a threat-
3 ened species or endangered species under chapter 201 of this title shall
4 be consistent with any recovery plan developed for the species or stock
5 under section 201208 of this title.

6 (j) ASSISTANCE.—The Secretary shall provide assistance to regional fish-
7 ery management councils, States, interstate fishery commissions, and Indian
8 tribal organizations in meeting the goal of reducing incidental mortality and
9 serious injury to insignificant levels approaching a zero mortality and seri-
10 ous injury rate.

11 (k) GIFTS, DEVISES, AND BEQUESTS.—In carrying out this section, the
12 Secretary may accept, solicit, receive, hold, administer, and use gifts, de-
13 vises, and bequests.

14 (l) CONSULTATION WITH SECRETARY OF THE INTERIOR.—The Secretary
15 shall consult with the Secretary of the Interior before taking an action or
16 making a determination under this section that affects or relates to a spe-
17 cies or stock for which the Secretary of the Interior is responsible under
18 this subchapter.

19 (m) PENALTIES.—Except as provided in subsection (e), a person that vio-
20 lates this section shall be subject to section 221207(a) of this title and sec-
21 tion 51(a)(2) of title 18 and subsections (a) through (d) and (e)(3) of sec-
22 tion 221210 of this title, and may be subject to sections 221207(b),
23 221209, and paragraphs (1) and (2) of section 221210(e) of this title as
24 the Secretary shall establish by regulation.

25 **§221217. Status review**

26 (a) DETERMINATION OF DEPLETION BY REGULATION.—In an action by
27 the Secretary to determine whether a species or stock is depleted or is no
28 longer depleted, regardless of whether the action is taken on the initiative
29 of the Secretary or in response to a petition for a status review, the Sec-
30 retary shall make the determination only by prescribing a regulation, after
31 notice and opportunity for public comment and after a call for information
32 in accordance with subsection (b).

33 (b) BEST SCIENTIFIC INFORMATION.—

34 (1) IN GENERAL.—The Secretary shall make a determination de-
35 scribed in subsection (a) solely on the basis of the best scientific infor-
36 mation available.

37 (2) CALL FOR INFORMATION.—Before issuing a proposed regulation
38 concerning a determination described in subsection (a), the Secretary
39 shall publish in the Federal Register a call to assist the Secretary in
40 obtaining scientific information from—

1 (A) individuals and organizations concerned with the conserva-
2 tion of marine mammals;

3 (B) persons in any industry that might be affected by the deter-
4 mination; and

5 (C) academic institutions.

6 (3) INFORMAL WORKING GROUPS.—The Secretary shall utilize, to the
7 extent the Secretary determines to be feasible, informal working groups
8 of interested parties and other methods to gather the necessary sci-
9 entific information.

10 (e) PETITION.—

11 (1) NOTICE OF RECEIPT OF PETITION AND AVAILABILITY FOR PUB-
12 LIC REVIEW.—If the Secretary receives a petition for a status review
13 under subsection (a), the Secretary shall publish a notice in the Fed-
14 eral Register that the petition has been received and is available for
15 public review.

16 (2) PUBLICATION OF FINDING WHETHER SUBSTANTIAL INFORMA-
17 TION IS PRESENTED.—Not later than 60 days after receipt of the peti-
18 tion, the Secretary shall publish a finding in the Federal Register as
19 to whether the petition presents substantial information indicating that
20 the petitioned action may be warranted.

21 (3) AFFIRMATIVE FINDING.—

22 (A) IN GENERAL.—If the Secretary makes an affirmative find-
23 ing under paragraph (2), the Secretary shall include in the Fed-
24 eral Register notice under paragraph (2), a finding that—

25 (i) a review of the status of the species or stock will be
26 commenced promptly; or

27 (ii) a prompt review of the petition is precluded by other
28 pending status determination petitions and that expeditious
29 progress is being made to process pending status determina-
30 tion petitions under this subchapter.

31 (B) REVIEW OF STATUS.—After making a finding under this
32 paragraph, the Secretary shall not delay commencing a review of
33 the status of a species or stock for more than 120 days after re-
34 ceipt of the petition.

35 (4) PROPOSED REGULATION.—

36 (A) PUBLICATION IN THE FEDERAL REGISTER.—Not later than
37 210 days after the receipt of the petition, the Secretary shall pub-
38 lish in the Federal Register a proposed regulation determining the
39 status of the species or stock, with the reasons underlying the pro-
40 posed status determination.

1 (B) COMMENT PERIOD.—Persons shall have at least 60 days to
2 submit comments on the proposed regulation.

3 (5) FINAL REGULATION.—

4 (A) IN GENERAL.—Not later than 90 days after the close of the
5 comment period on a proposed regulation prescribed under para-
6 graph (4), the Secretary shall prescribe a final regulation on the
7 status of the species or stock involved, with the reasons for the
8 status determination.

9 (B) ALLOWABLE DELAY TO SOLICIT ADDITIONAL INFORMA-
10 TION.—If the Secretary finds with respect to a proposed regula-
11 tion that there is substantial disagreement regarding the suffi-
12 ciency or accuracy of the available information relevant to a status
13 determination, the Secretary may delay prescribing a final regula-
14 tion for a period of not more than 6 months for purposes of solici-
15 ting additional information.

16 (6) EXPEDITED ISSUANCE OF FINAL REGULATION.—

17 (A) IN GENERAL.—Notwithstanding paragraphs (4) and (5) of
18 this subsection and section 553 of title 5, the Secretary may pre-
19 scribe a final regulation as to the status of a species or stock any
20 time 60 or more days after the Secretary makes an affirmative
21 finding under paragraph (2) if the Secretary determines that—

22 (i) there is substantial information available to warrant the
23 final status determination; and

24 (ii) further delay would pose a significant risk to the well-
25 being of a species or stock.

26 (B) REASONS FOR EXPEDITED DETERMINATION.—With the
27 final regulation, the Secretary shall publish in the Federal Reg-
28 ister detailed reasons for the expedited determination.

29 **§ 221218. Conservation plans**

30 (a) IN GENERAL.—The Secretary shall prepare conservation plans—

31 (1) for North Pacific fur seals;

32 (2) for Steller sea lions; and

33 (3) as soon as possible, for a depleted species or stock, except that
34 a conservation plan need not be prepared if the Secretary determines
35 that it will not promote the conservation of the species or stock.

36 (b) PURPOSE.—Each conservation plan under subsection (a) shall have
37 the purpose of conserving and restoring the species or stock to its optimum
38 sustainable population.

39 (c) MODEL PLANS.—The Secretary shall model conservation plans under
40 subsection (a) on recovery plans under section 201208 of this title.

41 (d) IMPLEMENTATION OF CONSERVATION PLANS.—

1 (1) IN GENERAL.—The Secretary shall act expeditiously to imple-
2 ment a conservation plan prepared under subsection (a).

3 (2) REPORT.—Each year, the Secretary shall describe in the annual
4 report under section 221206(f) of this title the measures that have
5 been taken to prepare and implement conservation plans.

6 (e) INCORPORATION OF TAKE REDUCTION PLAN.—A conservation plan
7 under this section shall incorporate the take reduction plan under section
8 221216 of this title if the Secretary determines that a take reduction plan
9 is necessary—

10 (1) to reduce the incidental taking of marine mammals in the course
11 of commercial fishing operations from a strategic stock; or

12 (2) for species or stocks that interact with a commercial fishery for
13 which the Secretary has made a determination under section
14 221216(i)(1)(B) of this title.

15 **§ 221219. Stock assessments**

16 (a) DRAFT STOCK ASSESSMENT.—

17 (1) IN GENERAL.—The Secretary shall, in consultation with the ap-
18 propriate regional scientific review group established under subsection
19 (f), prepare a draft stock assessment for each stock that occurs in wa-
20 ters under the jurisdiction of the United States.

21 (2) CONTENTS.—A draft stock assessment, based on the best sci-
22 entific information available, shall—

23 (A) describe the geographic range of the affected stock, includ-
24 ing any seasonal or temporal variation in the range;

25 (B) provide for the stock the minimum population estimate, cur-
26 rent and maximum net productivity rates, and current population
27 trend, including a description of the information on which they are
28 based;

29 (C) estimate the annual human-caused mortality and serious in-
30 jury of the stock by source and, for a strategic stock, other factors
31 that may be causing a decline or impeding recovery of the strate-
32 gic stock, including effects on marine mammal habitat and prey;

33 (D) describe commercial fisheries that interact with the stock,
34 including—

35 (i) the approximate number of vessels actively participating
36 in each of the commercial fisheries;

37 (ii) the estimated level of incidental mortality and serious
38 injury of the stock by each of the commercial fisheries on an
39 annual basis;

40 (iii) seasonal or area differences in the incidental mortality
41 or serious injury; and

1 (iv) the rate, based on the appropriate standard unit of
2 fishing effort, of the incidental mortality and serious injury,
3 and an analysis stating whether the rate level is insignificant
4 and is approaching a zero mortality and serious injury rate;

5 (E) categorize the status of the stock as one that—

6 (i) has a level of human-caused mortality and serious in-
7 jury that is not likely to cause the stock to be reduced below
8 its optimum sustainable population; or

9 (ii) is a strategic stock, with a description of the reasons
10 for the stock being categorized as a strategic stock; and

11 (F) estimate the potential biological removal level for the stock,
12 describing the information used to calculate it, including the recov-
13 ery factor.

14 (b) NOTICE AND PUBLIC COMMENT.—

15 (1) IN GENERAL.—The Secretary shall publish in the Federal Reg-
16 ister a notice of the availability of a draft stock assessment or a revi-
17 sion of a draft stock assessment and provide an opportunity for public
18 review and comment during a period of 90 days.

19 (2) NOTICE CONTENTS.—A notice under paragraph (1) shall include
20 a summary of the draft stock assessment and a list of the sources of
21 information or published reports on which the draft stock assessment
22 is based.

23 (c) PROCEEDING REQUESTED BY ALASKA NATIVES.—

24 (1) IN GENERAL.—Subsequent to the notice of availability required
25 under subsection (b), if requested by a person to which section
26 221205(a) of this title applies, the Secretary shall conduct a proceeding
27 on the record prior to publishing a final stock assessment or a revision
28 of a final stock assessment for a stock subject to taking under section
29 221205(a) of this title.

30 (2) SUBSTANTIAL EVIDENCE.—

31 (A) IN GENERAL.—In making a final stock assessment pursuant
32 to a proceeding under paragraph (1), the Secretary shall be re-
33 sponsible for demonstrating that the final stock assessment is sup-
34 ported by substantial evidence on the basis of the record as a
35 whole.

36 (B) APPLICABILITY.—Subparagraph (A) shall apply only in an
37 action brought by an Alaska Native organization representing per-
38 sons to which section 221205(a) of this title applies.

39 (d) PUBLICATION OF FINAL STOCK ASSESSMENT.—After consideration of
40 the best scientific information available, the advice of the appropriate re-
41 gional scientific review group established under subsection (f), and the com-

1 ments of the public, the Secretary shall publish in the Federal Register a
2 notice of availability and a summary of a final stock assessment or a revi-
3 sion of a final stock assessment, not later than 90 days after—

4 (1) the close of the public comment period on a draft stock assess-
5 ment or revision of a draft stock assessment; or

6 (2) final action on an agency proceeding under subsection (e).

7 (e) REVIEW AND REVISION.—

8 (1) REVIEW.—The Secretary shall review a stock assessment in ac-
9 cordance with this subsection—

10 (A) at least annually for strategic stocks;

11 (B) at least annually for stocks for which significant new infor-
12 mation is available; and

13 (C) at least once every 3 years for all other stocks.

14 (2) REVISION.—If a review under paragraph (1) indicates that the
15 status of a stock has changed or can be more accurately determined,
16 the Secretary shall revise the stock assessment in accordance with sub-
17 sections (b), (e), and (d).

18 (f) REGIONAL SCIENTIFIC REVIEW GROUPS.—

19 (1) ESTABLISHMENT.—The Secretary of Commerce shall, in con-
20 sultation with the Secretary of the Interior (with respect to marine
21 mammals under the Secretary of the Interior's jurisdiction), the Com-
22 mission, the Governors of affected adjacent coastal States, regional
23 fishery and wildlife management authorities, Alaska Native organiza-
24 tions and Indian tribes, and environmental and fishery groups, estab-
25 lish 3 independent regional scientific review groups representing Alas-
26 ka, the Pacific Coast (including Hawaii), and the Atlantic Coast (in-
27 cluding the Gulf of Mexico), consisting of individuals with expertise in
28 marine mammal biology and ecology, population dynamics and model-
29 ing, commercial fishing technology and practices, and stocks taken
30 under section 221205(a) of this title.

31 (2) BALANCED REPRESENTATION.—The Secretary of Commerce
32 shall, to the maximum extent practicable, attempt to achieve a balanced
33 representation of viewpoints among the individuals in each regional sci-
34 entific review group.

35 (3) FUNCTION.—A regional scientific review group shall advise the
36 Secretary on—

37 (A) population estimates and the population status and trends
38 of stocks;

39 (B) uncertainties and research needed regarding stock separa-
40 tion, abundance, or trends, and factors affecting the distribution,
41 size, or productivity of a stock;

1 (C) uncertainties and research needed regarding the species,
2 number, ages, gender, and reproductive status of marine mam-
3 mals;

4 (D) research needed to identify modifications in fishing gear
5 and practices likely to reduce the incidental mortality and serious
6 injury of marine mammals in commercial fishing operations;

7 (E) the actual, expected, or potential impacts of habitat destruc-
8 tion, including marine pollution and natural environmental change,
9 on specific species or stocks, and for strategic stocks, appropriate
10 conservation and management measures to alleviate any of the im-
11 pacts; and

12 (F) any other issue that the Secretary or the groups consider
13 appropriate.

14 (4) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—
15 Each regional scientific review group established under this subsection
16 shall not be subject to the Federal Advisory Committee Act (5 App.
17 U.S.C.).

18 (5) COMPENSATION AND REIMBURSEMENTS.—Each member of a re-
19 gional scientific review group shall serve without compensation, but
20 may be reimbursed by the Secretary, on request, for reasonable travel
21 costs and expenses incurred in performing the member's obligations.

22 (6) APPOINTMENTS AND REAPPOINTMENTS AS NEEDED.—The Sec-
23 retary may appoint or reappoint individuals to a regional scientific re-
24 view group as needed.

25 (g) EFFECT ON SECTION 221205(a).—This section does not affect section
26 221205(a) of this title.

27 **§ 221220. Marine mammal cooperative agreements in Alas-**
28 **ka**

29 (a) IN GENERAL.—The Secretary may enter into cooperative agreements
30 with Alaska Native organizations to conserve marine mammals and provide
31 comanagement of subsistence use by Alaska Natives.

32 (b) GRANTS.—A cooperative agreement under this section may include a
33 grant to an Alaska Native organization for—

- 34 (1) collecting and analyzing data on marine mammal populations;
35 (2) monitoring the harvest of marine mammals for subsistence use;
36 (3) participating in marine mammal research conducted by the Fed-
37 eral Government, States, academic institutions, or private organiza-
38 tions;
39 (4) developing marine mammal comanagement structures with Fed-
40 eral and State agencies; or
41 (5) other appropriate purposes.

1 (e) EFFECT OF SECTION.—Nothing in this section—

2 (1) authorizes an expansion or change in the respective jurisdictions
3 of Federal, State, or tribal governments over fish and wildlife re-
4 sources; or

5 (2) alters the political or legal status of Alaska Natives, or the gov-
6 ernmental or jurisdictional status of Alaska Native communities or
7 Alaska Native entities as they existed on April 30, 1994.

8 **§ 221221. Pinniped removal**

9 (a) PINNIPED REMOVAL AUTHORITY.—Notwithstanding any other provi-
10 sion of this subchapter, the Secretary may authorize the intentional lethal
11 taking of pinnipeds, other than a pinniped that is a member of a depleted
12 species or a strategic stock, in accordance with this section.

13 (b) APPLICATION.—

14 (1) IN GENERAL.—A State may apply to the Secretary to authorize
15 the intentional lethal taking of individually identifiable pinnipeds that
16 are having a significant negative impact on the decline or recovery of
17 a salmonid fishery stock that—

18 (A) is listed as threatened species or endangered species under
19 chapter 201 of this title;

20 (B) the Secretary finds is approaching threatened species or en-
21 dangered species status (as those terms are defined in section
22 201102 of this title); or

23 (C) migrates through the Ballard Locks at Seattle, Washington.

24 (2) CONTENTS.—An application under paragraph (1) shall include—

25 (A) a means of identifying the individual pinnipeds; and

26 (B) a detailed description of the problem interaction and ex-
27 pected benefits of the taking.

28 (c) ACTIONS IN RESPONSE TO APPLICATION.—

29 (1) PINNIPED-FISHERY INTERACTION TASK FORCE.—

30 (A) SUFFICIENT EVIDENCE FOR ESTABLISHMENT.—Not later
31 than 15 days after receiving an application, the Secretary shall de-
32 termine whether the application provides sufficient evidence to
33 warrant establishing a Pinniped-Fishery Interaction Task Force to
34 address the situation described in the application.

35 (B) ESTABLISHMENT OF TASK FORCE AND NOTICE REQUESTING
36 COMMENT ON APPLICATION.—If the Secretary determines suffi-
37 cient evidence is provided, the Secretary shall establish a
38 Pinniped-Fishery Interaction Task Force and publish a notice in
39 the Federal Register requesting public comment on the applica-
40 tion.

41 (C) TASK FORCE MEMBERS.—

1 (i) IN GENERAL.—A Pinniped-Fishery Interaction Task
2 Force shall consist of—

3 (I) designated employees of the Department of Com-
4 merce;

5 (II) scientists who are knowledgeable about the
6 pinniped interaction that the application addresses; and

7 (III) representatives of—

8 (aa) affected conservation and fishing community
9 organizations;

10 (bb) Indian Treaty tribes;

11 (cc) the States; and

12 (dd) other organizations that the Secretary con-
13 siders appropriate.

14 (ii) BALANCE OF INTERESTS.—A Pinniped-Fishery Inter-
15 action Task Force shall, to the maximum extent practicable,
16 consist of an equitable balance among representatives of re-
17 source user interests and nonuser interests.

18 (iii) PUBLIC ACCESS TO MEETINGS.—A meeting of a
19 Pinniped-Fishery Interaction Task Force shall be open to the
20 public, and prior notice of the meeting shall be given to the
21 public by the task force in a timely fashion.

22 (D) RECOMMENDATIONS OF THE TASK FORCE.—Not later than
23 60 days after establishment and after reviewing public comments
24 in response to a notice under subparagraph (B), a Pinniped-Fish-
25 ery Interaction Task Force shall—

26 (i) recommend to the Secretary whether to approve or deny
27 the proposed intentional lethal taking of the pinnipeds de-
28 scribed in subsection (b)(1), including with the recommenda-
29 tion a description of the specific pinniped individuals, the pro-
30 posed location, time, and method of the taking, criteria for
31 evaluating the success of the action, and the duration of the
32 intentional lethal taking authority; and

33 (ii) suggest nonlethal alternatives, if available and prac-
34 ticable, including a recommended course of action.

35 (2) APPROVAL OR DENIAL.—

36 (A) IN GENERAL.—Not later than 30 days after receipt of rec-
37 ommendations from a Pinniped-Fishery Interaction Task Force,
38 the Secretary shall approve or deny the application.

39 (B) IMPLEMENTATION.—If the application is approved, the Sec-
40 retary shall immediately take steps to implement the intentional
41 lethal taking, which shall be performed by a Federal or State

1 agency, or qualified individuals under contract to a Federal or
2 State agency.

3 (3) EVALUATION OF EFFECTIVENESS OF INTENTIONAL TAKING.—

4 (A) IN GENERAL.—After implementation of an approved appli-
5 cation, the Pinniped-Fishery Interaction Task Force shall evaluate
6 the effectiveness of the permitted intentional lethal taking or alter-
7 native actions implemented.

8 (B) INEFFECTIVE IMPLEMENTATION.—If implementation was
9 ineffective in eliminating the problem interaction, the Pinniped-
10 Fishery Interaction Task Force shall recommend additional ac-
11 tions.

12 (C) EFFECTIVE IMPLEMENTATION.—If the implementation was
13 effective, the Pinniped-Fishery Interaction Task Force shall advise
14 the Secretary that the implementation was effective, and the Sec-
15 retary shall terminate the Pinniped-Fishery Interaction Task
16 Force.

17 (d) CONSIDERATIONS.—In considering whether an application should be
18 approved or denied, a Pinniped-Fishery Interaction Task Force and the Sec-
19 retary shall consider—

20 (1) population trends, feeding habits, the location of the problem
21 interaction, how and when the problem interaction occurs, and how
22 many individual pinnipeds are involved;

23 (2) past efforts to nonlethally deter the pinnipeds, and whether the
24 applicant has demonstrated that no feasible and prudent alternatives
25 exist and that the applicant has taken all reasonable nonlethal steps
26 without success;

27 (3) the extent to which the pinnipeds are causing undue injury to,
28 impact on, or imbalance with other species in the ecosystem, including
29 fish populations; and

30 (4) the extent to which the pinnipeds are exhibiting behavior that
31 presents an ongoing threat to public safety.

32 (e) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—A
33 Pinniped-Fishery Interaction Task Force shall not be subject to the Federal
34 Advisory Committee Act (5 App. U.S.C.).

35 (f) REGIONWIDE PINNIPED-FISHERY INTERACTION STUDY.—

36 (1) IN GENERAL.—The Secretary may conduct a study, of not less
37 than 3 high predation areas in anadromous fish migration corridors
38 within the Northwest Region of the National Marine Fisheries Service,
39 on the interaction between fish and pinnipeds.

1 (2) CONSULTATIONS.—In conducting the study under paragraph (1),
2 the Secretary shall consult with other State and Federal agencies with
3 expertise in pinniped-fishery interaction.

4 (3) ISSUES FOR EVALUATION.—The study under paragraph (1) shall
5 evaluate—

6 (A) fish behavior in the presence of predators generally;

7 (B) holding times and passage rates of anadromous fish stocks
8 in areas where the fish are vulnerable to predation;

9 (C) whether additional facilities exist, or could be reasonably de-
10 veloped, that could improve escapement for anadromous fish; and

11 (D) other issues the Secretary considers relevant.

12 (4) REPORT.—The Secretary may, not later than 18 months after
13 the commencement of the study under this subsection, submit to the
14 Committee on Commerce, Science, and Transportation of the Senate
15 and the Committee on Natural Resources of the House of Representa-
16 tives a report on the results of the study.

17 (5) STUDY NOT A REASON TO DELAY.—The study under this sub-
18 section shall not be used by the Secretary as a reason for delaying a
19 determination or consideration under subsection (c) or (d).

20 **§ 221222. Inapplicability of subchapter**

21 This subchapter does not apply with respect to a marine mammal taken
22 before December 21, 1972, or to a marine mammal product consisting of,
23 or composed in whole or in part of, a marine mammal taken before that
24 date.

25 **Subchapter III—Marine Mammal**
26 **Commission**

27 **§ 221301. Establishment**

28 (a) IN GENERAL.—There is established the Marine Mammal Commission.

29 (b) MEMBERSHIP.—

30 (1) IN GENERAL.—The Commission shall be composed of 3 members
31 who shall be appointed by the President, by and with the advice and
32 consent of the Senate.

33 (2) QUALIFICATIONS.—

34 (A) IN GENERAL.—The President shall select members from a
35 list of individuals knowledgeable in the fields of marine ecology
36 and resource management, and who are not in a position to profit
37 from the taking of marine mammals.

38 (B) LIST.—The list under subparagraph (A) shall be submitted
39 to the President by the Chairman of the Council on Environmental
40 Quality and unanimously agreed to by the Chairman, the Sec-
41 retary of the Smithsonian Institution, the Director of the National

1 Science Foundation, and the Chairman of the National Academy
2 of Sciences.

3 (3) LIMITATION.—A member of the Commission shall not, during
4 the member’s period of service on the Commission, hold any other posi-
5 tion as an officer or employee of the United States except as a retired
6 officer or retired civilian employee of the United States.

7 (e) TERM.—

8 (1) IN GENERAL.—Except as provided in paragraph (2), the term of
9 office of a member shall be 3 years.

10 (2) INITIAL APPOINTMENT AND STAGGERED TERMS.—For members
11 initially appointed to the Commission, the term of 1 member shall be
12 for 1 year, the term of 1 member shall be for 2 years, and the term
13 of 1 member shall be for 3 years.

14 (3) REAPPOINTMENT.—A member shall not be eligible for reappoint-
15 ment, except that a member appointed to fill a vacancy occurring be-
16 fore the expiration of the term for which the member’s predecessor was
17 appointed—

18 (A) shall be appointed for the remainder of the term; and

19 (B) is eligible for reappointment for 1 full term.

20 (4) SERVICE AFTER EXPIRATION OF TERM.—A member may serve
21 after the expiration of the member’s term until the member’s successor
22 takes office.

23 (d) CHAIRMAN.—The President shall designate a Chairman of the Com-
24 mission (referred to in this subchapter as “Chairman”) from among its
25 members.

26 (e) COMPENSATION AND REIMBURSEMENT FOR TRAVEL EXPENSES.—

27 (1) COMPENSATION.—Each member of the Commission shall be com-
28 pensated at a rate equal to the daily equivalent of the maximum rate
29 payable under section 5376 of title 5 for each day the member is en-
30 gaged in the actual performance of duties vested in the Commission.

31 (2) REIMBURSEMENT FOR TRAVEL EXPENSES.—Each member shall
32 be reimbursed for travel expenses, including per diem in lieu of subsist-
33 ence, as authorized by section 5703 of title 5 for employees in Govern-
34 ment service employed intermittently.

35 (f) EXECUTIVE DIRECTOR.—

36 (1) IN GENERAL.—The Commission shall have an Executive Direc-
37 tor, who shall be appointed (without regard to the provisions of title
38 5 governing appointments in the competitive service) by the Chairman
39 with the approval of the Commission.

40 (2) PAY.—The Executive Director shall be paid at a rate not in ex-
41 cess of the maximum rate payable under section 5376 of title 5.

1 (3) DUTIES.—The Executive Director shall have such duties as the
2 Chairman may assign.

3 **§ 221302. Duties**

4 (a) REPORTS AND RECOMMENDATIONS.—The Commission shall—

5 (1) conduct a continuing review of the condition of stocks, methods
6 for protection and conservation of the stocks, humane means of taking
7 marine mammals, research programs conducted or proposed to be con-
8 ducted under this chapter, and all applications for permits for scientific
9 research, public display, or enhancement of the survival or recovery of
10 a species or stock;

11 (2) undertake or cause to be undertaken such other studies as the
12 Commission considers necessary or desirable in connection with the
13 Commission's duties relating to the protection and conservation of ma-
14 rine mammals;

15 (3) recommend to the Secretary and to other Federal officials such
16 steps as the Commission considers desirable for the protection and con-
17 servation of marine mammals;

18 (4) recommend to the Secretary such revisions of the endangered
19 species list and threatened species list published under section
20 201204(a) of this title, as may be appropriate with regard to marine
21 mammals; and

22 (5) recommend to the Secretary, other appropriate Federal officials,
23 and Congress such additional measures as the Commission considers
24 desirable to further the policies of this chapter, including provisions for
25 the protection of the Indians, Eskimos, and Aleuts whose livelihood
26 may be adversely affected by actions taken under this chapter.

27 (b) CONSULTATION WITH SECRETARY.—The Commission shall consult
28 with the Secretary at such intervals as the Commission or the Secretary
29 considers desirable.

30 (c) PUBLIC AVAILABILITY OF REPORTS AND RECOMMENDATIONS.—The
31 reports and recommendations that the Commission makes shall be available
32 to the public at all reasonable times. All other activities of the Commission
33 shall be matters of public record and available to the public in accordance
34 with section 552 of title 5.

35 (d) ACTIONS BY FEDERAL OFFICIALS RELATING TO COMMISSION REC-
36 COMMENDATIONS.—The Secretary and other Federal officials, to whom the
37 Commission made a recommendation, shall respond not later than 120 days
38 after receipt of the recommendation. A recommendation that is not adopted
39 shall be referred to the Commission with a detailed explanation of the rea-
40 sons why the recommendation was not adopted.

1 **§ 221303. Committee of Scientific Advisors on Marine Mam-**
2 **mals**

3 (a) ESTABLISHMENT.—The Commission shall establish a Committee of
4 Scientific Advisors on Marine Mammals.

5 (b) MEMBERSHIP.—

6 (1) IN GENERAL.—The Committee shall consist of 9 scientists knowl-
7 edgeable in marine ecology and marine mammal affairs.

8 (2) APPOINTMENT.—The members of the Committee shall be ap-
9 pointed by the Chairman after consultation with the Chairman of the
10 Council on Environmental Quality, the Secretary of the Smithsonian
11 Institution, the Director of the National Science Foundation, and the
12 Chairman of the National Academy of Sciences.

13 (c) COMPENSATION AND REIMBURSEMENT FOR TRAVEL EXPENSES.—

14 (1) COMPENSATION.—Except for United States Government employ-
15 ees, each member of the Committee shall be compensated at a rate
16 equal to the daily equivalent of the maximum rate payable under sec-
17 tion 5376 of title 5 for each day the member is engaged in the per-
18 formance of duties vested in the Committee.

19 (2) REIMBURSEMENT FOR TRAVEL EXPENSES.—Each member shall
20 be reimbursed for travel expenses, including per diem in lieu of subsist-
21 ence, as authorized by section 5703 of title 5 for employees in Govern-
22 ment service employed intermittently.

23 (d) CONSULTATION ON STUDIES AND RECOMMENDATIONS OF THE COM-
24 MISSION.—

25 (1) IN GENERAL.—The Commission shall consult with the Commit-
26 tee on—

27 (A) all studies that the Commission funds or carries out and all
28 recommendations that the Commission makes;

29 (B) research programs conducted or proposed to be conducted
30 under this chapter; and

31 (C) all applications for permits for scientific research.

32 (2) RECOMMENDATION NOT ADOPTED.—The Commission shall
33 transmit to the appropriate Federal agency and to the appropriate
34 committees of Congress a recommendation made by the Committee or
35 any of the Committee's members that is not adopted by the Commis-
36 sion, with a detailed explanation of the Commission's reasons for not
37 adopting the recommendation.

38 **§ 221304. Coordination with other Federal agencies**

39 (a) ACCESS TO MARINE MAMMAL STUDIES AND DATA.—The Commission
40 shall have access to all studies and data compiled by Federal agencies re-
41 garding marine mammals.

1 (b) UTILIZATION OF FACILITIES AND SERVICES OF OTHER FEDERAL
2 AGENCIES.—The Commission—

3 (1) with the consent of the agency head, may utilize the facilities or
4 services of any Federal agency; and

5 (2) shall take every feasible step to avoid duplication of research and
6 to carry out this chapter.

7 **§ 221305. Administration**

8 (a) AUTHORITIES OF THE COMMISSION.—The Commission, in carrying
9 out its responsibilities under this subchapter, may—

10 (1) employ and fix the compensation of personnel;

11 (2) acquire, furnish, and equip office space;

12 (3) enter into agreements with, or provide grants to, other organiza-
13 tions, both public and private;

14 (4) procure the services of such experts or consultants or an organi-
15 zation of experts or consultants as is authorized under section 3109 of
16 title 5 (but at rates for individuals not more than \$100 per diem); and

17 (5) incur such necessary expenses and exercise such other powers as
18 are consistent with and reasonably required to perform the Commis-
19 sion's functions under this subchapter.

20 (b) MINIMUM NUMBER OF PERSONNEL.—No fewer than 11 employees
21 shall be employed under subsection (a)(1) at any time.

22 (c) FINANCIAL AND ADMINISTRATIVE SERVICES.—Financial and adminis-
23 trative services (including those related to budgeting, accounting, financial
24 reporting, personnel, and procurement) shall be provided to the Commission
25 by the Administrator of General Services, for which payment shall be made
26 in advance, or by reimbursement from funds of the Commission in such
27 amounts as may be agreed on by the Chairman and the Administrator of
28 General Services.

29 **Subchapter IV—International Dolphin**
30 **Conservation Program**

31 **§ 221401. Findings and policy**

32 (a) FINDINGS.—Congress finds that—

33 (1) the yellowfin tuna fishery of the eastern tropical Pacific Ocean
34 has resulted in the deaths of millions of dolphins;

35 (2) significant awareness and increased concern for the health and
36 safety of dolphin populations have encouraged a change in fishing
37 methods worldwide;

38 (3) United States tuna fishing vessels have led the world in the de-
39 velopment of fishing methods to reduce dolphin mortalities in the east-
40 ern tropical Pacific Ocean, and United States tuna processing compa-

1 nies have voluntarily promoted the marketing of tuna that is dolphin
2 safe;

3 (4) nations harvesting yellowfin tuna in the eastern tropical Pacific
4 Ocean have demonstrated their willingness to participate in multilateral
5 agreements to reduce dolphin mortality progressively to a level ap-
6 proaching zero through the setting of annual limits, with the goal of
7 eliminating dolphin mortality in that fishery;

8 (5) recognition of the International Dolphin Conservation Program
9 will ensure that—

10 (A) the trend of reduced dolphin mortality continues;

11 (B) stocks of dolphins are adequately protected; and

12 (C) the goal of eliminating all dolphin mortality will continue to
13 be a priority.

14 (b) POLICY.—It is the policy of the United States to—

15 (1) eliminate the marine mammal mortality resulting from the inten-
16 tional encirclement of dolphins and other marine mammals in tuna
17 purse seine fisheries;

18 (2) support the International Dolphin Conservation Program and ef-
19 forts within the Program to reduce, with the goal of eliminating, the
20 mortality described in paragraph (1);

21 (3) ensure that the market of the United States does not act as an
22 incentive to the harvest of tuna caught with driftnets or caught by
23 purse seine vessels in the eastern tropical Pacific Ocean not operating
24 in compliance with the International Dolphin Conservation Program;

25 (4) secure appropriate multilateral agreements to ensure that United
26 States tuna fishing vessels shall have continued access to productive
27 tuna fishing grounds in the South Pacific Ocean and elsewhere; and

28 (5) encourage observer coverage on purse seine vessels fishing for
29 tuna outside the eastern tropical Pacific Ocean in a fishery in which
30 the Secretary has determined that a regular and significant association
31 occurs between marine mammals and tuna, and in which tuna is har-
32 vested through the use of purse seine nets deployed on or to encircle
33 marine mammals.

34 **§ 221402. Regulations**

35 (a) REGULATIONS.—

36 (1) IN GENERAL.—The Secretary shall prescribe regulations to carry
37 out the International Dolphin Conservation Program.

38 (2) REQUIRED REGULATORY PROVISIONS.—

39 (A) TAKING OF MARINE MAMMALS IN THE EASTERN TROPICAL
40 PACIFIC OCEAN.—The Secretary shall prescribe regulations to au-
41 thorize and govern the taking of marine mammals in the eastern

1 tropical Pacific Ocean, including any species or stock that is de-
2 pleted but not listed as an endangered species or threatened spe-
3 cies under chapter 201 of this title, by vessels of the United States
4 participating in the International Dolphin Conservation Program.

5 (B) OTHER PROVISIONS.—Regulations under this section shall
6 include provisions that—

7 (i) require observers on each vessel;

8 (ii) require use of the backdown procedure or other proce-
9 dure equally or more effective in avoiding mortality of, or se-
10 rious injury to, marine mammals in fishing operations;

11 (iii) prohibit intentional sets on stocks and schools in ac-
12 cordance with the International Dolphin Conservation Pro-
13 gram;

14 (iv) require the use of special equipment, including—

15 (I) dolphin safety panels in nets;

16 (II) monitoring devices as identified by the Inter-
17 national Dolphin Conservation Program to detect unsafe
18 fishing conditions that may cause high incidental dolphin
19 mortality before nets are deployed by a tuna vessel;

20 (III) operable rafts;

21 (IV) speedboats with towing bridles;

22 (V) floodlights in operable condition; and

23 (VI) diving masks and snorkels;

24 (v) ensure that, not later than 30 minutes before sundown,
25 the backdown procedure during sets of purse seine net on ma-
26 rine mammals is completed and rolling of the net to sack up
27 begins;

28 (vi) prohibit the use of explosive devices in all purse seine
29 operations;

30 (vii) establish, in accordance with the International Dolphin
31 Conservation Program—

32 (I) per-vessel maximum annual dolphin mortality lim-
33 its;

34 (II) total dolphin mortality limits; and

35 (III) per-stock per-year mortality limits;

36 (viii) prohibit the making of intentional sets on dolphins
37 after reaching—

38 (I) the vessel maximum annual dolphin mortality lim-
39 its;

40 (II) total dolphin mortality limits; or

41 (III) per-stock per-year mortality limits;

1 (ix) prohibit fishing on dolphins by a vessel without an as-
2 signed vessel dolphin mortality limit;

3 (x) allowing for the authorization and conduct of experi-
4 mental fishing operations, under such terms and conditions as
5 the Secretary may prescribe, for the purpose of testing pro-
6 posed improvements in fishing techniques and equipment
7 that—

8 (I) may reduce or eliminate dolphin mortality or seri-
9 ous injury; and

10 (II) do not require the encirclement of dolphins in the
11 course of commercial yellowfin tuna fishing;

12 (xi) authorize fishing within the area covered by the Inter-
13 national Dolphin Conservation Program by vessels of the
14 United States without the use of special equipment or nets
15 if the vessel takes an observer and does not intentionally de-
16 ploy nets on, or encircle, dolphins, under such terms and con-
17 ditions as the Secretary may prescribe; and

18 (xii) contain such other restrictions and requirements as
19 the Secretary determines are necessary to carry out the Inter-
20 national Dolphin Conservation Program with respect to ves-
21 sels of the United States.

22 (3) ADJUSTMENTS TO REQUIREMENTS.—The Secretary may make
23 such adjustments as are appropriate to the requirements of paragraph
24 (2)(B) that pertain to fishing gear, vessel equipment, and fishing prac-
25 tices to the extent the adjustments are consistent with the Inter-
26 national Dolphin Conservation Program.

27 (b) CONSULTATION.—In developing a regulation under this section, the
28 Secretary shall consult with the Secretary of State, the Commission, and the
29 United States Commissioners to the Inter-American Tropical Tuna Commis-
30 sion appointed under section 3 of the Tuna Conventions Act of 1950 (16
31 U.S.C. 952).

32 (c) EMERGENCY REGULATIONS.—

33 (1) IN GENERAL.—If the Secretary determines, on the basis of the
34 best scientific information available (including research conducted
35 under section 221403 of this title and information obtained under the
36 International Dolphin Conservation Program) that the incidental mor-
37 tality and serious injury of marine mammals authorized under this sub-
38 chapter is having, or is likely to have, a significant adverse impact on
39 a species or stock, the Secretary shall—

40 (A) notify the Inter-American Tropical Tuna Commission of the
41 Secretary's determination, with recommendations to the Inter-

1 American Tropical Tuna Commission concerning actions necessary
2 to reduce incidental mortality and serious injury and mitigate the
3 adverse impact; and

4 (B) prescribe emergency regulations to reduce incidental mortal-
5 ity and serious injury and mitigate the adverse impact.

6 (2) CONSULTATION.—Before taking action under subparagraph (A)
7 or (B) of paragraph (1), the Secretary shall consult with the Secretary
8 of State, the Commission, and the United States Commissioners to the
9 Inter-American Tropical Tuna Commission.

10 (3) PUBLICATION; EFFECTIVE PERIOD; TERMINATION.—Emergency
11 regulations prescribed under this subsection—

12 (A) shall be published in the Federal Register, with an expla-
13 nation of the emergency regulations;

14 (B) shall remain in effect for the duration of the applicable
15 year; and

16 (C) may be terminated by the Secretary at an earlier date by
17 publication in the Federal Register of a notice of termination if
18 the Secretary determines that the reasons for the emergency ac-
19 tion no longer exist.

20 (4) EXTENSION OF EFFECTIVE PERIOD.—If the Secretary finds that
21 the incidental mortality and serious injury of marine mammals in the
22 yellowfin tuna fishery in the eastern tropical Pacific Ocean is continu-
23 ing to have a significant adverse impact on a species or stock, the Sec-
24 retary may extend the emergency regulations for such additional peri-
25 ods as are necessary.

26 (5) INTER-AMERICAN TROPICAL TUNA COMMISSION.—

27 (A) SPECIAL MEETING.—Not later than 120 days after the Sec-
28 retary notifies the United States Commissioners to the Inter-
29 American Tropical Tuna Commission of the Secretary's deter-
30 mination under paragraph (1)(A), the United States Commis-
31 sioners shall call for a special meeting of the Inter-American Trop-
32 ical Tuna Commission to address the actions necessary to reduce
33 incidental mortality and serious injury and mitigate the adverse
34 impact that resulted in the determination.

35 (B) REPORT ON SPECIAL MEETING.—The United States Com-
36 missioners shall report the results of the special meeting in writing
37 to the Secretary and to the Secretary of State. In their report, the
38 Commissioners shall—

39 (i) include—

40 (I) a description of the actions taken by the harvesting
41 nations or under the International Dolphin Conservation

- 1 Program to reduce the incidental mortality and serious
2 injury; and
- 3 (II) measures to mitigate the adverse impact on the
4 species or stock;
- 5 (ii) indicate whether, in their judgment, the actions taken
6 address the problem adequately; and
- 7 (iii) if they indicate that the actions taken do not address
8 the problem adequately, include recommendations for such
9 additional action to be taken as may be necessary.

10 **§ 221403. Research**

11 (a) IN GENERAL.—In consultation with the Commission and in coopera-
12 tion with the nations participating in the International Dolphin Conserva-
13 tion Program and the Inter-American Tropical Tuna Commission, the Sec-
14 retary shall undertake or support appropriate scientific research to further
15 the goals of the International Dolphin Conservation Program.

16 (b) AREAS OF RESEARCH.—Research carried out under subsection (a)
17 may include—

18 (1) projects to devise cost-effective fishing methods and gear so as
19 to reduce, with the goal of eliminating, the incidental mortality and se-
20 rious injury of marine mammals in connection with commercial purse
21 seine fishing in the eastern tropical Pacific Ocean;

22 (2) projects to develop cost-effective methods of fishing for mature
23 yellowfin tuna without setting nets on dolphins or other marine mam-
24 mals;

25 (3) projects to carry out stock assessments for marine mammal spe-
26 cies and stocks taken in the purse seine fishery for yellowfin tuna in
27 the eastern tropical Pacific Ocean, including species or stocks not with-
28 in waters under the jurisdiction of the United States; and

29 (4) projects to determine—

30 (A) the extent to which the incidental take of nontarget species,
31 including juvenile tuna, occurs in the course of purse seine fishing
32 for yellowfin tuna in the eastern tropical Pacific Ocean;

33 (B) the geographic location of the incidental take; and

34 (C) the impact of the incidental take on tuna stocks and nontar-
35 get species.

36 **§ 221404. Reports**

37 The Secretary shall annually submit to Congress a report that includes—

38 (1) results of research conducted under section 221403 of this title;

39 (2) a description of the status and trends of stocks of tuna;

40 (3) a description of the efforts to assess, avoid, reduce, and minimize
41 the bycatch of juvenile yellowfin tuna and bycatch of nontarget species;

1 (4) a description of the activities of the International Dolphin Con-
2 servation Program and of the efforts of the United States in support
3 of the Program's goals and objectives, including the protection of dol-
4 phin stocks in the eastern tropical Pacific Ocean, and an assessment
5 of the effectiveness of the Program;

6 (5) actions taken by the Secretary under sections 221203(c)(5)(B)
7 and 221205(c) of this title;

8 (6) copies of any relevant resolutions and decisions of the Inter-
9 American Tropical Tuna Commission, and any regulations prescribed
10 by the Secretary under this subchapter; and

11 (7) any other information that the Secretary considers relevant.

12 **§ 221405. Permits**

13 (a) IN GENERAL.—Consistent with the regulations prescribed under sec-
14 tion 221402 of this title, the Secretary—

15 (1) shall issue a permit to a vessel of the United States authorizing
16 participation in the International Dolphin Conservation Program; and

17 (2) may require a permit for the operator of the vessel.

18 (b) PROCEDURES.—The Secretary shall prescribe such procedures as are
19 necessary to carry out this subsection, including requiring the submission
20 of—

21 (1) the name and official number or other identification of each fish-
22 ing vessel for which a permit is sought, with the name and address of
23 the owner of the vessel; and

24 (2) the tonnage, hold capacity, speed, processing equipment, and
25 type and quantity of gear, including an inventory of special equipment
26 required under section 221402 of this title, with respect to each vessel.

27 (c) FEES.—

28 (1) IN GENERAL.—The Secretary may charge a fee for issuing a per-
29 mit under this section.

30 (2) LIMITATION ON FEES.—The amount of fees charged under this
31 subsection shall not exceed the amount of administrative costs incurred
32 in issuing permits under this section.

33 (3) AVAILABILITY OF FEES COLLECTED.—Fees collected under this
34 subsection shall be available to the Under Secretary of Commerce for
35 Oceans and Atmosphere for expenses incurred in issuing permits under
36 this section.

37 (d) PROHIBITION.—A vessel of the United States shall not operate in the
38 yellowfin tuna fishery in the eastern tropical Pacific Ocean without a permit
39 issued under this section.

40 (e) SANCTIONS.—

1 (1) IN GENERAL.—The Secretary may impose a sanction described
2 in paragraph (2) in a case in which—

3 (A) a vessel for which a permit is issued under this section is
4 used in the commission of an act prohibited under section 221406
5 of this title;

6 (B) the owner or the operator of a vessel for which a permit
7 is issued under this section or any other person that has applied
8 for or been issued a permit under this section has acted in viola-
9 tion of section 221406 of this title; or

10 (C) a civil penalty or criminal fine imposed on a vessel, owner
11 or operator of a vessel, or other person that has applied for or
12 been issued a permit under this section has not been paid.

13 (2) SANCTIONS.—A sanction referred to in paragraph (1) is—

14 (A) revocation of a permit with respect to a vessel for which a
15 permit is issued under this section, with or without prejudice to
16 the issuance of a subsequent permit;

17 (B) suspension of a permit for such period of time as the Sec-
18 retary considers appropriate;

19 (C) denial of a permit; or

20 (D) imposition of additional conditions or restrictions on a per-
21 mit issued to, or applied for by, a vessel, owner, operator, or other
22 person referred to in paragraph (1).

23 (3) FACTORS TO CONSIDER.—In imposing a sanction under para-
24 graph (1), the Secretary shall take into account—

25 (A) the nature, circumstances, extent, and gravity of the prohib-
26 ited act for which the sanction is imposed; and

27 (B) with respect to the violator, the degree of culpability, any
28 history of prior offenses, and other such matters as justice re-
29 quires.

30 (4) TRANSFER OF VESSEL OWNERSHIP.—

31 (A) IN GENERAL.—Transfer of ownership of a vessel, by sale or
32 otherwise, shall not extinguish a permit sanction that is in effect
33 or is pending at the time of transfer of ownership.

34 (B) DISCLOSURE.—Before executing a transfer of ownership of
35 a vessel, by sale or otherwise, the owner shall disclose in writing
36 to the prospective transferee the existence of a permit sanction
37 that will be in effect or pending with respect to the vessel at the
38 time of transfer.

39 (5) PAYMENT OF CIVIL PENALTY OR CRIMINAL FINE.—In the case
40 of a permit that is suspended for the failure to pay a civil penalty or
41 criminal fine, the Secretary shall reinstate the permit on payment of

1 the civil penalty or criminal fine and interest on the civil penalty or
2 criminal fine at the prevailing rate.

3 (6) HEARING.—A sanction shall not be imposed under this section
4 unless there has been an opportunity for a hearing on the facts under-
5 lying the violation for which the sanction is imposed in conjunction
6 with a civil penalty proceeding under this subchapter or otherwise.

7 **§ 221406. Prohibitions**

8 (a) IN GENERAL.—It is unlawful—

9 (1) for a person to sell, purchase, offer for sale, transport, or ship,
10 in the United States, a tuna or tuna product unless the tuna or tuna
11 product—

12 (A) is dolphin safe, as described under section 223103(b) of this
13 title; or

14 (B) has been harvested in compliance with the International
15 Dolphin Conservation Program by a country that—

16 (i) is a member of the Inter-American Tropical Tuna Com-
17 mission; or

18 (ii) has initiated, and not later than 6 months after the ini-
19 tiation, completed all steps required of applicant nations in
20 accordance with article V, paragraph 3 of the Convention for
21 the Establishment of an Inter-American Tropical Tuna Com-
22 mission, signed at Washington May 31, 1949 (1 UST 230;
23 TIAS 2044), to become a member of that organization;

24 (2) subject to section 221205(c) of this title, for a person or vessel
25 subject to the jurisdiction of the United States intentionally to set a
26 purse seine net on or to encircle a marine mammal in the course of
27 tuna fishing operations in the eastern tropical Pacific Ocean except in
28 accordance with this subchapter and regulations under this subchapter;

29 (3) for a person to import a yellowfin tuna or yellowfin tuna product
30 or any other fish or fish product in violation of a prohibition on impor-
31 tation under section 221203(c) of this title;

32 (4) for a person to violate a regulation under this subchapter;

33 (5) for a person to refuse to permit an authorized officer to board
34 a vessel subject to that person's control for purposes of conducting a
35 search or inspection in connection with the enforcement of this sub-
36 chapter; or

37 (6) for a person to assault, resist, oppose, impede, intimidate, or
38 interfere with an authorized officer in the conduct of a search or in-
39 spection described in paragraph (5).

40 (b) PENALTIES.—

1 (1) CIVIL PENALTY.—A person that knowingly and willfully violates
2 paragraphs (1), (2), (3), (4), or (5) of subsection (a) shall be subject
3 to a civil penalty under section 221207(a) of this title.

4 (2) CRIMINAL PENALTY.—Criminal penalties for a violation of this
5 section are provided under section 51(a)(3) of title 18.

6 (c) CIVIL FORFEITURE.—A vessel (including its fishing gear, appur-
7 tenances, stores, and cargo) used and a fish (or its fair market value) taken
8 or retained in connection with or as a result of the commission of an act
9 prohibited by this section shall be subject to forfeiture to the United States
10 in the manner provided in section 310 of the Magnuson-Stevens Fishery
11 Conservation and Management Act (16 U.S.C. 1860).

12 **Subchapter V—Marine Mammal Health**
13 **and Stranding Response**

14 **§ 221501. Definitions**

15 In this subchapter:

16 (1) FUND.—The term “Fund” means the Marine Mammal Unusual
17 Mortality Event Fund established in section 221506(a) of this title.

18 (2) OFFICE.—The term “Office” means the Office of Protected Re-
19 sources in the National Marine Fisheries Service.

20 (3) PROGRAM.—The term “Program” means the Marine Mammal
21 Health and Stranding Response Program established under section
22 221502 of this title.

23 (4) SECRETARY.—The term Secretary means the Secretary of Com-
24 merce.

25 (5) STRANDING.—The term “stranding” means an event in the wild
26 in which—

27 (A) a marine mammal is dead and—

28 (i) is on a beach or shore of the United States; or

29 (ii) is in waters under the jurisdiction of the United States
30 (including any navigable waters); or

31 (B) a marine mammal is alive and—

32 (i) is on a beach or shore of the United States and is un-
33 able to return to the water;

34 (ii) is on a beach or shore of the United States and, al-
35 though able to return to the water, is in apparent need of
36 medical attention; or

37 (iii) is in waters under the jurisdiction of the United States
38 (including any navigable waters), but is unable to return to
39 its natural habitat without assistance.

40 (6) STRANDING NETWORK PARTICIPANT.—The term “stranding net-
41 work participant” means a person that is authorized by an agreement

1 under section 221214(e) of this title to take marine mammals as de-
2 scribed in section 221212(i)(1) of this title in response to a stranding.

3 (7) TISSUE BANK.—The term “Tissue Bank” means the National
4 Marine Tissue Bank provided for under section 221509(a) of this title.

5 (8) UNUSUAL MORTALITY EVENT.—The term “unusual mortality
6 event” means a stranding that—

7 (A) is unexpected;

8 (B) involves a significant die-off of a marine mammal popu-
9 lation; and

10 (C) demands immediate response.

11 (9) UNUSUAL MORTALITY EVENT WORKING GROUP.—The term “un-
12 usual mortality event working group” means the unusual mortality
13 event working group established under section 221505(a)(1) of this
14 title.

15 **§ 221502. Establishment of Program**

16 (a) ESTABLISHMENT.—In consultation with the Secretary of the Interior,
17 the Commission, and individuals with knowledge and experience in marine
18 science, marine mammal science, marine mammal veterinary and husbandry
19 practices, and marine conservation, including stranding network partici-
20 pants, the Secretary shall establish a program to be known as the Marine
21 Mammal Health and Stranding Response Program.

22 (b) PURPOSES.—The purposes of the Program are—

23 (1) to facilitate the collection and dissemination of reference data on
24 the health of marine mammals and health trends of stocks in the wild;

25 (2) to correlate the health of marine mammals and stocks in the wild
26 with available data on physical, chemical, and biological environmental
27 parameters; and

28 (3) to coordinate effective responses to unusual mortality events by
29 establishing a process in the Department of Commerce in accordance
30 with section 221505 of this title.

31 **§ 221503. Determination for marine mammal release; data**
32 **collection relating to marine mammal health**

33 (a) DETERMINATION FOR RELEASE.—In consultation with the Secretary
34 of the Interior, the Commission, and individuals with knowledge and experi-
35 ence in marine science, marine mammal science, marine mammal veterinary
36 and husbandry practices, and marine conservation, including stranding net-
37 work participants, and after an opportunity for public review and comment,
38 the Secretary shall develop objective criteria to provide guidance for deter-
39 mining at what point a rehabilitated marine mammal is releasable to the
40 wild.

1 (b) COLLECTION.—In consultation with the Secretary of the Interior, the
2 Secretary shall collect and periodically update existing information on—

3 (1) procedures and practices for—

4 (A) rescuing and rehabilitating stranded marine mammals, in-
5 cluding criteria used by stranding network participants, on a spe-
6 cies-by-species basis, for determining at what point a marine mam-
7 mal undergoing rescue and rehabilitation is releasable to the wild;
8 and

9 (B) collecting, preserving, labeling, and transporting marine
10 mammal tissues for physical, chemical, and biological analyses;

11 (2) scientific literature on marine mammal health, disease, and reha-
12 bilitation;

13 (3) strandings, which the Secretary shall compile and analyze, by re-
14 gion, to monitor species, numbers, conditions, and causes of illnesses
15 and deaths of stranded marine mammals; and

16 (4) other life history and reference level data, including marine mam-
17 mal tissue analyses, that would allow comparison of the causes of ill-
18 ness and deaths in stranded marine mammals with physical, chemical,
19 and biological environmental parameters.

20 (c) AVAILABILITY.—The Secretary shall make information collected under
21 this section available to stranding network participants and other qualified
22 scientists.

23 **§ 221504. Stranding response agreements**

24 (a) IN GENERAL.—The Secretary may enter into an agreement under
25 section 221214(c) of this title with a person to take marine mammals under
26 section 221212(i)(1) of this title in response to a stranding.

27 (b) REQUIRED PROVISION.—An agreement under subsection (a) shall—

28 (1) specify each person that is authorized to perform activities under
29 the agreement; and

30 (2) specify terms and conditions under which a person specified
31 under paragraph (1) may delegate that authority to another person.

32 (c) REVIEW.—The Secretary shall periodically review agreements under
33 section 221214(c) of this title that are entered into under this section for
34 performance adequacy and effectiveness.

35 **§ 221505. Unusual mortality event response**

36 (a) RESPONSE.—

37 (1) UNUSUAL MORTALITY EVENT WORKING GROUP.—

38 (A) IN GENERAL.—In consultation with the Secretary of the In-
39 terior, the Secretary, acting through the Office, shall establish a
40 marine mammal unusual mortality event working group, consisting
41 of individuals with knowledge and experience in marine science,

1 marine mammal science, marine mammal veterinary and hus-
2 bandry practices, marine conservation, and medical science, to pro-
3 vide guidance to the Secretary and the Secretary of the Interior
4 for—

5 (i) determining whether an unusual mortality event is oc-
6 ccurring;

7 (ii) determining, after an unusual mortality event begins,
8 whether response actions with respect to that unusual mortal-
9 ity event are no longer necessary; and

10 (iii) developing the contingency plan under subsection (b),
11 to assist the Secretary in responding to unusual mortality
12 events.

13 (B) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE
14 ACT.—The Federal Advisory Committee Act (5 App. U.S.C.) shall
15 not apply to the marine mammal unusual mortality event working
16 group established under this paragraph.

17 (2) RESPONSE TIMING.—In consultation with the Secretary of the
18 Interior, the Secretary shall, to the extent necessary and practicable—

19 (A) not later than 24 hours after receiving notification from a
20 stranding network participant that an unusual mortality event
21 might be occurring, contact as many members as is possible of the
22 unusual mortality event working group for guidance; and

23 (B) not later than 48 hours after receiving the notification—

24 (i) make a determination whether an unusual mortality
25 event is occurring;

26 (ii) inform the stranding network participant of that deter-
27 mination; and

28 (iii) if the Secretary determines that an unusual mortality
29 event is occurring, designate an onsite coordinator for the un-
30 usual mortality event in accordance with subsection (c).

31 (b) CONTINGENCY PLAN.—

32 (1) IN GENERAL.—In consultation with the Secretary of the Interior
33 and the unusual mortality event working group and after an oppor-
34 tunity for public review and comment, the Secretary shall issue a de-
35 tailed contingency plan for responding to an unusual mortality event.

36 (2) CONTENTS.—The contingency plan shall include—

37 (A) a list of persons, including stranding network participants,
38 at regional, State, and local levels, that can assist the Secretary
39 in implementing a coordinated and effective response to an un-
40 usual mortality event;

1 (B) the types of marine mammal tissues and analyses necessary
2 to assist in diagnosing causes of unusual mortality events;

3 (C) training, mobilization, and utilization procedures for avail-
4 able personnel, facilities, and other resources necessary to conduct
5 a rapid and effective response to unusual mortality events; and

6 (D) such requirements as are necessary to—

7 (i) minimize death of marine mammals in the wild and pro-
8 vide appropriate care of marine mammals during an unusual
9 mortality event;

10 (ii) assist in identifying the cause of an unusual mortality
11 event;

12 (iii) determine the effects of an unusual mortality event on
13 the size estimates of the affected stocks; and

14 (iv) identify roles played in an unusual mortality event by
15 physical, chemical, and biological factors, including contami-
16 nants.

17 (e) ONSITE COORDINATORS.—

18 (1) DESIGNATION.—

19 (A) IN GENERAL.—In consultation with the Secretary of the In-
20 terior, the Secretary shall designate 1 or more onsite coordinators
21 for an unusual mortality event, who shall make immediate recom-
22 mendations to the stranding network participants on how to pro-
23 ceed with response activities.

24 (B) REGIONAL DIRECTORS OR DESIGNEES AS ONSITE COORDI-
25 NATORS.—An onsite coordinator shall be an appropriate regional
26 director of the National Marine Fisheries Service or the USFWS
27 or a designee of a regional director.

28 (C) ONSITE COORDINATOR WITH PRIMARY RESPONSIBILITY.—
29 If, because of the wide geographic distribution of, the number of
30 species of marine mammals involved in, or the magnitude of an
31 unusual mortality event, more than 1 onsite coordinator is des-
32 ignated, the Secretary, in consultation with the Secretary of the
33 Interior, shall designate which of the onsite coordinators shall have
34 primary responsibility with respect to the unusual mortality event.

35 (2) FUNCTIONS.—

36 (A) COORDINATION.—An onsite coordinator shall coordinate
37 and direct the activities of all persons responding to an unusual
38 mortality event in accordance with the contingency plan issued
39 under subsection (b), except that—

1 (i) with respect to a matter that is not covered by the con-
2 tingency plan, an onsite coordinator shall use the onsite
3 coordinator's best professional judgment; and

4 (ii) the contingency plan may be temporarily modified by
5 an onsite coordinator, consulting as expeditiously as possible
6 with the Secretary, the Secretary of the Interior, and the un-
7 usual mortality event working group.

8 (B) DELEGATION.—An onsite coordinator may delegate to a
9 qualified person authority to act as an onsite coordinator under
10 this subchapter.

11 **§ 221506. Unusual mortality event activity funding**

12 (a) ESTABLISHMENT OF FUND.—There is established in the Treasury an
13 interest-bearing fund to be known as the Marine Mammal Unusual Mortal-
14 ity Event Fund, which shall consist of amounts deposited in the Fund under
15 subsection (c).

16 (b) USES.—

17 (1) IN GENERAL.—Amounts in the Fund—

18 (A) shall be available for use by the Secretary, in consultation
19 with the Secretary of the Interior—

20 (i) to compensate persons for special costs incurred in act-
21 ing in accordance with the contingency plan under section
22 221505(b) of this title or under the direction of an onsite co-
23 ordinator for an unusual mortality event;

24 (ii) for reimbursing a stranding network participant for
25 costs incurred in preparing and transporting tissues collected
26 with respect to an unusual mortality event for the Tissue
27 Bank; and

28 (iii) for care and maintenance of a marine mammal seized
29 under section 221204(d)(3)(D)(i) of this title; and

30 (B) shall remain available until expended.

31 (2) PENDING CLAIMS.—If sufficient amounts are not available in the
32 Fund to satisfy an authorized pending claim, the claim shall remain
33 pending until such time as sufficient amounts are available. All author-
34 ized pending claims shall be satisfied in the order received.

35 (c) DEPOSITS IN THE FUND.—There shall be deposited in the Fund—

36 (1) amounts appropriated to the Fund;

37 (2) other amounts appropriated to the Secretary for use with respect
38 to unusual mortality events; and

39 (3) amounts received by the United States in the form of gifts, de-
40 vises, and bequests under section 221507 of this title.

1 **§ 221507. Donations**

2 To carry out this subchapter and section 221204(d)(3)(D) of this title,
3 the Secretary may—

- 4 (1) accept, solicit, and use the services of volunteers; and
5 (2) accept, solicit, receive, hold, administer, and use gifts, devises,
6 and bequests.

7 **§ 221508. Liability**

8 (a) IN GENERAL.—A person that is authorized to respond to a stranding
9 pursuant to an agreement entered into under section 221214(c) of this title
10 is deemed to be an employee of the government for purposes of chapter 171
11 of title 28, with respect to an action of the person that is—

- 12 (1) in accordance with the agreement; and
13 (2) in the case of an unusual mortality event, in accordance with—
14 (A) the contingency plan issued under section 221505(b) of this
15 title and the instructions of an onsite coordinator designated
16 under section 221505(c) of this title; or
17 (B) in the case of a matter that is not covered by the contin-
18 gency plan, the best professional judgment of an onsite coordina-
19 tor.

20 (b) LIMITATION.—Subsection (a) does not apply to an action of a person
21 that is grossly negligent or that constitutes willful misconduct.

22 **§ 221509. National Marine Mammal Tissue Bank and tissue**
23 **analysis**

24 (a) TISSUE BANK.—

25 (1) IN GENERAL.—The Secretary shall provide for the storage, prep-
26 aration, examination, and archiving of marine mammal tissues. Tissues
27 archived under this subsection shall be known as the National Marine
28 Mammal Tissue Bank.

29 (2) GUIDANCE FOR MARINE MAMMAL TISSUE COLLECTION, PREPARA-
30 TION, AND ARCHIVING.—In consultation with individuals with knowl-
31 edge and expertise in marine science, marine mammal science, marine
32 mammal veterinary and husbandry practices, and marine conservation,
33 and after an opportunity for public review and comment, the Secretary
34 shall issue guidance for marine mammal tissue collection, preparation,
35 archiving, and quality control procedures regarding—

- 36 (A) appropriate and uniform methods and standards for those
37 activities to provide confidence in marine mammal tissue samples
38 used for research; and
39 (B) documentation of procedures used for collecting, preparing,
40 and archiving those samples.

1 (3) SOURCE OF TISSUE.—In addition to tissues taken during marine
2 mammal unusual mortality events, the Tissue Bank shall incorporate
3 tissue samples taken from other sources in the wild, including—

4 (A) samples from marine mammals taken incidental to commer-
5 cial fishing operations;

6 (B) samples from marine mammals taken for subsistence pur-
7 poses;

8 (C) biopsy samples; and

9 (D) any other samples properly collected.

10 (b) TISSUE ANALYSIS.—In consultation with the Commission, the Sec-
11 retary of the Interior, and individuals with knowledge and experience in ma-
12 rine science, marine mammal science, marine mammal veterinary and hus-
13 bandry practices, and marine conservation, and after an opportunity for
14 public review and comment, the Secretary shall issue guidance for analyzing
15 tissue samples (by use of the most effective and advanced diagnostic tech-
16 nologies and tools practicable) as a means by which to monitor and measure
17 overall health trends in representative species or stocks, including—

18 (1) the levels of, and if possible, the effects of, potentially harmful
19 contaminants; and

20 (2) the frequency of, and if possible, the causes and effects of abnor-
21 mal lesions or anomalies.

22 (c) DATABASE.—

23 (1) IN GENERAL.—The Secretary shall maintain a central database
24 that provides an effective means for tracking and accessing data on
25 marine mammals, including relevant data on marine mammal tissues
26 collected for and maintained in the Tissue Bank.

27 (2) CONTENTS.—The database shall include—

28 (A) reference data on the health of marine mammals and
29 stocks; and

30 (B) data on species that are subject to unusual mortality events.

31 (d) ACCESS.—In consultation with the Secretary of the Interior, and after
32 an opportunity for public review and comment, the Secretary shall establish
33 criteria for access to—

34 (1) marine mammal tissues in the Tissue Bank;

35 (2) analyses conducted under subsection (b); and

36 (3) marine mammal data in the database under subsection (c);

37 that provide for appropriate uses of the tissues, analyses, and data by quali-
38 fied scientists, including stranding network participants.

39 **§ 221510. John H. Prescott Marine Mammal Rescue Assist-**
40 **ance Grant Program**

41 (a) DEFINITIONS.—In this section:

1 (1) DESIGNATED STRANDING REGION.—The term “designated
2 stranding region” means a geographic region designated by the Sec-
3 retary for purposes of administration of this subchapter.

4 (2) GRANT PROGRAM.—The term “Grant Program” means the John
5 H. Prescott Marine Mammal Rescue Assistance Grant Program con-
6 ducted by the Secretary under subsection (b).

7 (3) SECRETARY.—The term “Secretary” has the meaning given the
8 term in section 221102 of this title.

9 (b) IN GENERAL.—Subject to the availability of appropriations, the Sec-
10 retary shall conduct a grant program to be known as the John H. Prescott
11 Marine Mammal Rescue Assistance Grant Program, to provide grants to eli-
12 gible stranding network participants for—

13 (1) the recovery or treatment of marine mammals;

14 (2) the collection of data from living or dead stranded marine mam-
15 mals for scientific research regarding marine mammal health; and

16 (3) facility operation costs that are directly related to the purposes
17 described in paragraphs (1) and (2).

18 (c) DISTRIBUTION OF GRANT FUNDS.—

19 (1) EQUITABLE DISTRIBUTION.—The Secretary shall ensure that, to
20 the greatest extent practicable, funds provided as grants under sub-
21 section (b) are distributed equitably among the stranding regions des-
22 ignated as of December 21, 2000.

23 (2) PREFERENCE.—In making the grants, the Secretary shall give
24 preference to facilities that have established records for rescuing or re-
25 habilitating sick and stranded marine mammals in each of the respec-
26 tive regions or subregions.

27 (3) PRIORITIES AMONG REGIONS OR SUBREGIONS.—In determining
28 priorities among the regions, the Secretary may consider—

29 (A) an episodic stranding or a mortality event, other than an
30 unusual mortality event, that occurred in a region in the preceding
31 calendar year;

32 (B) data regarding average annual strandings and mortality
33 events per region; and

34 (C) the size of the marine mammal populations inhabiting a ge-
35 ographic area within a region.

36 (d) APPLICATION.—To receive a grant under this section, a stranding
37 network participant shall submit an application in such form and manner
38 as the Secretary may prescribe.

39 (e) CONSULTATION.—The Secretary shall consult with the Commission,
40 a representative from each of the designated stranding regions, and other
41 individuals who represent public and private organizations that are actively

1 involved in rescue, rehabilitation, release, scientific research, marine con-
 2 servation, and forensic science regarding stranded marine mammals, regard-
 3 ing the development of criteria for the implementation of the Grant Pro-
 4 gram and the awarding of grants under the Grant Program.

5 (f) LIMITATION.—The amount of a grant under this section shall not ex-
 6 ceed \$100,000.

7 (g) COST SHARING.—

8 (1) IN GENERAL.—The non-Federal share of the costs of an activity
 9 conducted with a grant under this section shall be 25 percent of the
 10 costs.

11 (2) IN-KIND CONTRIBUTIONS.—The Secretary may apply to the non-
 12 Federal share of an activity conducted with a grant under this section
 13 the amount of funds and the fair market value of property and services
 14 provided by non-Federal sources and used for the activity.

15 (h) ADMINISTRATIVE EXPENSES.—Of amounts available each fiscal year
 16 to carry out this section, the Secretary may expend not more than 6 percent
 17 or \$80,000, whichever is greater, to pay the administrative expenses nec-
 18 essary to carry out this section.

19 **Subchapter VI—Polar Bears**

20 **§ 221601. Definitions**

21 In this subchapter:

22 (1) AGREEMENT.—The term “Agreement” means the Agreement Be-
 23 tween the Government of the United States of America and the Gov-
 24 ernment of the Russian Federation on the Conservation and Manage-
 25 ment of the Alaska-Chukotka Polar Bear Population, signed at Wash-
 26 ington, D.C. October 16, 2000.

27 (2) ALASKA NANUUQ COMMISSION.—The term “Alaska Nanuuq
 28 Commission” means the Alaska Native entity in existence on January
 29 12, 2007, that represents all villages in the State of Alaska that engage
 30 in the annual subsistence taking of polar bears from the Alaska-
 31 Chukotka population, and any successor entity.

32 (3) IMPORT.—The term “import” means to land on, bring into, or
 33 introduce into, or attempt to land on, bring into, or introduce into, a
 34 place subject to the jurisdiction of the United States, without regard
 35 to whether the landing, bringing, or introduction constitutes an impor-
 36 tation within the meaning of the customs laws of the United States.

37 (4) PART OR PRODUCT OF A POLAR BEAR.—The term “part or prod-
 38 uct of a polar bear” means a polar bear part or product, including the
 39 gall bile and gall bladder.

1 (5) POLAR BEAR COMMISSION.—The term “Polar Bear Commission”
2 means the U.S.-Russia Polar Bear Commission established in article
3 VIII of the Agreement.

4 (6) SECRETARY.—The term “Secretary” means the Secretary of the
5 Interior.

6 (7) TAKING.—The term “taking” has the meaning given the term
7 in the Agreement.

8 **§ 221602. Prohibitions**

9 (a) IN GENERAL.—It is unlawful for a person that is subject to the juris-
10 diction of the United States or a person in waters under the jurisdiction
11 of the United States or on land under the jurisdiction of the United
12 States—

13 (1) to take a polar bear in violation of the Agreement;

14 (2) to take a polar bear in violation of an annual taking limit or
15 other restriction on the taking of polar bears that is adopted by the
16 Polar Bear Commission pursuant to the Agreement;

17 (3) to import, export, possess, transport, sell, receive, acquire, or
18 purchase, exchange, barter, or offer to sell, purchase, exchange, or bar-
19 ter a polar bear, or a part or product of a polar bear, that is taken
20 in violation of paragraphs (1) and (2);

21 (4) to import, export, sell, purchase, exchange, barter, or offer to
22 sell, purchase, exchange, or barter, a polar bear gall bile or polar bear
23 gall bladder;

24 (5) to attempt to commit, solicit another person to commit, or cause
25 to be committed, an offense under this subsection; or

26 (6) to violate a regulation prescribed by the Secretary to implement
27 any of the prohibitions under this subsection.

28 (b) EXCEPTIONS.—The Secretary, a Federal law enforcement official, or
29 a State or local law enforcement official authorized by the Secretary may
30 import a polar bear or a part or product of a polar bear for the purpose
31 of forensic testing or any other law enforcement purpose.

32 **§ 221603. Administration**

33 (a) IN GENERAL.—The Secretary, acting through the Director, shall do
34 all things necessary and appropriate, including the promulgation of regula-
35 tions, to implement, enforce, and administer the Agreement on behalf of the
36 United States. The Secretary shall consult with the Secretary of State and
37 the Alaska Nanuuq Commission on matters involving the implementation of
38 the Agreement.

39 (b) UTILIZATION OF OTHER GOVERNMENT RESOURCES AND AUTHORI-
40 TIES.—

1 (1) OTHER GOVERNMENT RESOURCES.—The Secretary may utilize
 2 by agreement, with or without reimbursement, the personnel, services,
 3 and facilities of any other Federal agency, a State agency, or the Alas-
 4 ka Nanuuq Commission for purposes of carrying out this subchapter
 5 or the Agreement.

6 (2) OTHER POWERS AND AUTHORITIES.—A person authorized by the
 7 Secretary under this subsection to enforce this subchapter or the
 8 Agreement shall have the authorities enumerated in section 203108(b)
 9 of this title.

10 (e) COMPLIANCE.—

11 (1) SUBCHAPTER II AUTHORITIES.—The Secretary may use authori-
 12 ties under subchapter II for enforcement, imposition of penalties, and
 13 the seizure of cargo for violations under this subchapter, except that
 14 a polar bear or a part or product of a polar bear taken, imported, ex-
 15 ported, possessed, transported, sold, received, acquired, purchased, ex-
 16 changed, or bartered, or offered for sale, purchase, exchange, or barter
 17 in violation of this subchapter shall be subject to seizure and forfeiture
 18 to the United States without any showing that may be required for as-
 19 sessment of a civil penalty or for criminal prosecution under this chap-
 20 ter.

21 (2) ADDITIONAL AUTHORITIES.—A gun, trap, net, or other equip-
 22 ment used, and a vessel, aircraft, or other means of transportation
 23 used, to aid in a violation or attempted violation of this subchapter
 24 shall be subject to seizure and forfeiture under paragraphs (1) and (2)
 25 of section 221210(e) of this title.

26 (d) REGULATIONS.—

27 (1) IN GENERAL.—The Secretary shall prescribe such regulations as
 28 are necessary to carry out this subchapter and the Agreement.

29 (2) ORDINANCES AND REGULATIONS.—If necessary to carry out this
 30 subchapter or the Agreement, and to improve compliance with an an-
 31 nual taking limit or other restriction on taking adopted by the Polar
 32 Bear Commission and implemented by the Secretary in accordance with
 33 this subchapter, the Secretary may prescribe regulations that adopt an
 34 ordinance or regulation that restricts the taking of polar bears for sub-
 35 sistence purposes if the ordinance or regulation has been prescribed by
 36 the Alaska Nanuuq Commission.

37 **§ 221604. Cooperative management agreement; authority to**
 38 **delegate enforcement authority**

39 (a) IN GENERAL.—The Secretary, acting through the Director, may share
 40 authority under this subchapter for the management of the taking of polar

1 bears for subsistence purposes with the Alaska Nanuuq Commission if the
2 Alaska Nanuuq Commission is eligible under subsection (b).

3 (b) DELEGATION.—To be eligible for the management authority described
4 in subsection (a), the Alaska Nanuuq Commission shall—

5 (1) enter into a cooperative agreement with the Secretary under sec-
6 tion 221220 of this title for the conservation of polar bears;

7 (2) meaningfully monitor compliance with this subchapter and the
8 Agreement by Alaska Natives; and

9 (3) administer its comanagement program for polar bears in accord-
10 ance with—

11 (A) this subchapter; and

12 (B) the Agreement.

13 **§ 221605. Commissioners; United States Section Members**

14 (a) APPOINTMENT OF UNITED STATES COMMISSIONERS.—

15 (1) IN GENERAL.—The United States Commissioners on the Polar
16 Bear Commission shall be appointed by the President, in accordance
17 with paragraph 2 of article VIII of the Agreement, after taking into
18 consideration the recommendations of—

19 (A) the Secretary;

20 (B) the Secretary of State; and

21 (C) the Alaska Nanuuq Commission.

22 (2) QUALIFICATIONS.—Of the United States Commissioners ap-
23 pointed under this subsection—

24 (A) 1 shall be an official of the Federal Government;

25 (B) 1 shall be a representative of the Native people of Alaska,
26 and, in particular, the Native people for whom polar bears are an
27 integral part of their culture; and

28 (C) both shall be knowledgeable of, or have expertise in, polar
29 bears.

30 (3) SERVICE AND TERM.—Each United States Commissioner shall
31 serve—

32 (A) at the pleasure of the President; and

33 (B) for an initial 4-year term and such additional terms as the
34 President shall determine.

35 (4) VACANCIES.—

36 (A) IN GENERAL.—An individual appointed to fill a vacancy oc-
37 curring before the expiration of a term of office of a United States
38 Commissioner shall be appointed for the remainder of that term.

39 (B) MANNER.—A vacancy on the Polar Bear Commission shall
40 be filled in the same manner as the original appointment.

41 (b) ALTERNATE COMMISSIONERS.—

1 (1) IN GENERAL.—The Secretary, in consultation with the Secretary
2 of State and the Alaska Nanuuq Commission, shall designate an alter-
3 nate United States Commissioner for each member of the United
4 States Section.

5 (2) DUTIES.—In the absence of a United States Commissioner, an
6 alternate United States Commissioner may exercise all functions of the
7 United States Commissioner at a meeting of the Polar Bear Commis-
8 sion or of the United States Section.

9 (3) REAPPOINTMENT.—An alternate United States Commissioner—

10 (A) shall be eligible for reappointment by the President; and

11 (B) may attend all meetings of the United States Section.

12 (c) DUTIES OF MEMBERS OF THE UNITED STATES SECTION.—The mem-
13 bers of the United States Section may carry out the functions and respon-
14 sibilities described in article VIII of the Agreement in accordance with this
15 subchapter and the Agreement.

16 (d) COMPENSATION AND EXPENSES.—

17 (1) COMPENSATION.—A member of the United States Section shall
18 serve without compensation.

19 (2) TRAVEL EXPENSES.—A member of the United States Section
20 shall be allowed travel expenses, including per diem in lieu of subsist-
21 ence, at rates authorized for an employee of an agency under sub-
22 chapter I of chapter 57 of title 5 while away from the home or regular
23 place of business of the member in the performance of the duties of
24 the Polar Bear Commission.

25 (e) AGENCY DESIGNATION.—For the purpose of title 28 relating to
26 claims against the United States and tort claims procedure, the United
27 States Section shall be considered to be a Federal agency.

28 **§ 221606. Votes taken by the United States Section on mat-**
29 **ters before the Polar Bear Commission**

30 In accordance with paragraph 3 of article VIII of the Agreement, the
31 United States Section, made up of United States Commissioners appointed
32 by the President, shall vote on any issue before the Polar Bear Commission
33 only if there is no disagreement between the United States Commissioners
34 regarding the vote.

35 **§ 221607. Implementation of actions taken by the Polar**
36 **Bear Commission**

37 (a) IN GENERAL.—The Secretary shall take all necessary actions to im-
38 plement the decisions and determinations of the Polar Bear Commission
39 under paragraph 7 of article VIII of the Agreement.

40 (b) TAKING LIMITATION OR OTHER RESTRICTION.—Not later than 60
41 days after the date on which the Secretary receives notice of the determina-

1 tion of the Polar Bear Commission of an annual taking limit, or of the
 2 adoption by the Polar Bear Commission of other restriction on the taking
 3 of polar bears for subsistence purposes, the Secretary shall publish a notice
 4 in the Federal Register announcing the determination or restriction.

5 **§ 221608. Effect of subchapter**

6 (a) IN GENERAL.—The authority of the Secretary under this subchapter
 7 is in addition to, and shall not affect—

- 8 (1) the authority of the Secretary under—
 9 (A) other subchapters of this chapter;
 10 (B) chapter 203 of this title; or
 11 (C) the exemption for Alaska natives under section 221205(a)
 12 of this title as applied to other marine mammal populations; or
 13 (2) the authorities under subchapter III.

14 (b) INAPPLICABILITY OF CERTAIN SUBCHAPTERS.—Subchapters II
 15 through V do not apply with respect to the implementation or administra-
 16 tion of this subchapter, except as specified in section 221603 of this title.

17 **§ 221609. Authorization of appropriations**

18 (a) IN GENERAL.—There are authorized to be appropriated to the Sec-
 19 retary to carry out the functions and responsibilities of the Secretary under
 20 this subchapter and the Agreement \$1,000,000 for each of fiscal years 2006
 21 through 2010.

22 (b) POLAR BEAR COMMISSION.—There are authorized to be appropriated
 23 to the Secretary to carry out functions and responsibilities of the United
 24 States Section \$150,000 for each of fiscal years 2006 through 2010.

25 (c) ALASKAN COOPERATIVE MANAGEMENT PROGRAM.—There are author-
 26 ized to be appropriated to the Secretary to carry out this subchapter and
 27 the Agreement in Alaska \$150,000 for each of fiscal years 2006 through
 28 2010.

29 **Chapter 223—Dolphin Protection**

Sec.

223101. Definitions.
 223102. Violations of the Federal Trade Commission Act.
 223103. Non-dolphin safe tuna products.
 223104. Official dolphin safe mark.
 223105. Regulations.
 223106. Additional prohibitions and enforcement.

30 **§ 223101. Definitions**

31 In this chapter:

- 32 (1) DRIFTNET.—The term “driftnet” means a gillnet composed of
 33 a panel of plastic webbing 1½ miles or more in length.
 34 (2) DRIFTNET FISHING.—The term “driftnet fishing” means a fish-
 35 harvesting method in which a driftnet is placed in water and allowed

1 to drift with the current and wind for the purpose of entangling fish
2 in the webbing.

3 (3) EASTERN TROPICAL PACIFIC OCEAN.—The term “eastern tropi-
4 cal Pacific Ocean” means the area of the Pacific Ocean bounded by
5 40 degrees north latitude, 40 degrees south latitude, 160 degrees west
6 longitude, and the western coastlines of North, Central, and South
7 America.

8 (4) LABEL.—The term “label” means a display of written, printed,
9 or graphic matter on the immediate container of a product.

10 (5) NON-DOLPHIN SAFE TUNA PRODUCT.—The term “non-dolphin
11 safe tuna product” means a tuna product described in section 223103
12 of this title.

13 (6) OFFICIAL DOLPHIN SAFE MARK.—The term “official dolphin safe
14 mark” means the mark developed by the Secretary under section
15 223104 of this title.

16 (7) SECRETARY.—The term “Secretary” means the Secretary of
17 Commerce.

18 (8) TUNA PRODUCT.—

19 (A) IN GENERAL.—The term “tuna product” means a food item
20 that—

21 (i) contains tuna; and

22 (ii) has been processed for retail sale.

23 (B) EXCLUSIONS.—The term “tuna product” does not include
24 a perishable sandwich, salad, or other product with a shelf life of
25 less than 3 days.

26 **§ 223102. Violations of the Federal Trade Commission Act**

27 (a) LABELS THAT SUGGEST TUNA FISHING NOT HARMFUL TO DOL-
28 PHINS.—It is a violation of section 5 of the Federal Trade Commission Act
29 (15 U.S.C. 45) for a producer, importer, exporter, distributor, or seller of
30 a non-dolphin safe tuna product that is exported from or offered for sale
31 in the United States to include on the label of the tuna product—

32 (1) the term “dolphin safe”; or

33 (2) any other term or symbol that falsely claims or suggests that the
34 tuna contained in the tuna product were harvested using a method of
35 fishing that is not harmful to dolphins.

36 (b) LABELS REFERRING TO MARINE MAMMALS.—

37 (1) IN GENERAL.—It is a violation of section 5 of the Federal Trade
38 Commission Act (15 U.S.C. 45) to display on a tuna product a label
39 that refers to dolphins, porpoises, or marine mammals if the label does
40 not display the official dolphin safe mark, or to display on a tuna prod-

1 uct a label that displays a mark other than the official dolphin safe
2 mark that refers to dolphins, porpoises, or marine mammals, unless—

3 (A) no dolphins were killed or seriously injured in the sets or
4 other gear deployments in which the tuna were caught;

5 (B) the label is supported by a tracking and verification pro-
6 gram that is comparable in effectiveness to the program estab-
7 lished under section 223105 of this title; and

8 (C) the label complies with all applicable labeling, marketing,
9 and advertising laws (including regulations) of the Federal Trade
10 Commission, including any guidelines for environmental labeling.

11 (2) REPORT.—If the Secretary determines that the use of a label or
12 mark described in paragraph (1) is substantially undermining the con-
13 servation goals of the International Dolphin Conservation Program, the
14 Secretary shall submit to the Committee on Commerce, Science, and
15 Transportation of the Senate and the Committee on Energy and Com-
16 merce and the Committee on Natural Resources of the House of Rep-
17 resentatives a report that describes the determination and includes rec-
18 ommendations to correct the undermining of the conservation goals.

19 (e) WILLING AND KNOWING VIOLATIONS.—It is a violation of section 5
20 of the Federal Trade Commission Act (15 U.S.C. 45) willingly and know-
21 ingly to use a label or mark described in subsection (b)(1) in a campaign
22 or effort to mislead or deceive consumers about the level of protection af-
23 forded dolphins under the International Dolphin Conservation Program.

24 **§ 223103. Non-dolphin safe tuna products**

25 (a) IN GENERAL.—A tuna product is a non-dolphin safe tuna product if
26 the tuna product contains tuna harvested—

27 (1) on the high seas by a vessel engaged in driftnet fishing;

28 (2)(A) in the eastern tropical Pacific Ocean by a vessel using a purse
29 seine net unless the tuna meet the requirements for being considered
30 dolphin safe under subsection (b); or

31 (B) outside the eastern tropical Pacific Ocean by a vessel using
32 purse seine nets—

33 (i) in a fishery in which the Secretary determines that a regular
34 and significant association occurs between dolphins and tuna
35 (similar to the association between dolphins and tuna in the east-
36 ern tropical Pacific Ocean), unless the tuna product is accom-
37 panied by a written statement, executed by the captain of the ves-
38 sel and an observer participating in a national or international
39 program acceptable to the Secretary, certifying that—

40 (I) during the trip on which the tuna were caught, no
41 purse seine net was—

- 1 (aa) intentionally deployed on dolphins; or
- 2 (bb) used to encircle dolphins; and
- 3 (II) no dolphins were killed or seriously injured in the sets
- 4 in which the tuna were caught; or
- 5 (ii) in any other fishery (other than a fishery described in para-
- 6 graph (3)) unless the tuna product is accompanied by a written
- 7 statement executed by the captain of the vessel certifying that,
- 8 during the trip on which the tuna were caught, no purse seine net
- 9 was—
- 10 (I) intentionally deployed on dolphins; or
- 11 (II) used to encircle dolphins; or
- 12 (3) by a vessel in a fishery that is not engaged in driftnet fishing
- 13 on the high seas and that is not a purse seine fishery, but that the
- 14 Secretary identifies as having a regular and significant mortality or se-
- 15 rious injury of dolphins, unless the tuna product is accompanied by a
- 16 written statement—
- 17 (A) that is executed by—
- 18 (i) the captain of the vessel; and
- 19 (ii) an observer participating in a national or international
- 20 program acceptable to the Secretary, if the Secretary deter-
- 21 mines that an observer statement is necessary; and
- 22 (B) that certifies that no dolphins were killed or seriously in-
- 23 jured in the sets or other gear deployments in which the tuna were
- 24 caught.
- 25 (b) DOLPHIN SAFE.—For purposes of subsection (a)(2)(A), a tuna prod-
- 26 uct that contains tuna harvested in the eastern tropical Pacific Ocean by
- 27 a vessel using purse seine nets is considered dolphin safe if—
- 28 (1) the vessel is of a type and size that the Secretary determines,
- 29 consistent with the International Dolphin Conservation Program, is not
- 30 capable of—
- 31 (A) deploying its purse seine nets on dolphins; or
- 32 (B) encircling dolphins with purse seine nets; or
- 33 (2) the tuna product is—
- 34 (A) accompanied by a written statement executed by the captain
- 35 of the vessel providing the certification required under subsection
- 36 (e); and
- 37 (B) accompanied by a written statement that—
- 38 (i) is executed by—
- 39 (I) the Secretary or the Secretary’s designee;
- 40 (II) a representative of the Inter-American Tropical
- 41 Tuna Commission; or

1 (III) an authorized representative of a participating
2 nation whose national program meets the requirements
3 of the International Dolphin Conservation Program; and
4 (ii) states that there was an observer approved by the
5 International Dolphin Conservation Program on board the
6 vessel during the entire trip and that the observer provided
7 the certification required under subsection (e).

8 (e) ENDORSEMENT OF WRITTEN STATEMENTS.—The written statements
9 under subparagraphs (A) and (B) of subsection (b)(2) shall be endorsed in
10 writing by each exporter, importer, and processor of the tuna product.

11 (d) COMPLIANCE WITH REGULATIONS.—The written statements under
12 subparagraphs (A) and (B) of subsection (b)(2) and the endorsements
13 under subsection (e) shall comply with regulations prescribed by the Sec-
14 retary that provide for the verification of tuna products as dolphin safe.

15 (e) CONTENT OF CERTIFICATIONS.—

16 (1) IN GENERAL.—Unless otherwise required by paragraph (2), the
17 certification by the captain under subsection (b)(2)(A) and the certifi-
18 cation by the observer under subsection (b)(2)(B)(ii) shall state that
19 no dolphins were killed or seriously injured during the sets in which
20 the tuna were caught.

21 (2) SIGNIFICANT ADVERSE IMPACT FINDING.—A certification by the
22 captain under subsection (b)(2)(A) and a certification by the observer
23 under subsection (b)(2)(B)(ii) shall state that no tuna were caught on
24 the trip in which a purse seine net was intentionally deployed on or
25 used to encircle dolphins, and that no dolphins were killed or seriously
26 injured during the sets in which the tuna were caught, if the tuna were
27 caught on a trip commencing before the effective date of the initial
28 finding by the Secretary under subsection (g)(1) of the Dolphin Protec-
29 tion Consumer Information Act (Public Law 101–627, § 901(g)(1)), as
30 amended by the International Dolphin Conservation Program Act
31 (Public Law 105–42, 111 Stat. 1128).

32 **§ 223104. Official dolphin safe mark**

33 (a) IN GENERAL.—The Secretary shall develop an official mark that may
34 be used to label tuna products as dolphin safe in accordance with this chap-
35 ter.

36 (b) PROHIBITION OF OTHER LABEL OR MARK.—A tuna product that
37 bears the official dolphin safe mark shall not bear any other label or mark
38 that refers to dolphins, porpoises, or marine mammals.

39 **§ 223105. Regulations**

40 (a) IN GENERAL.—The Secretary, in consultation with the Secretary of
41 the Treasury, shall prescribe regulations to carry out this chapter, including

1 regulations to establish a domestic tracking and verification program that
2 provides for the effective tracking of tuna product labeled under sections
3 223102 through 223104 of this title.

4 (b) PROCEDURES TO ENSURE CONFIDENTIALITY.—In the development of
5 the regulations under subsection (a), the Secretary shall establish appro-
6 priate procedures for ensuring the confidentiality of proprietary information
7 the submission of which is voluntary or mandatory.

8 (c) CONTENTS.—The regulations under subsection (a) shall address each
9 of the following:

10 (1) The use of weight calculation for purposes of tracking tuna
11 caught, landed, processed, and exported.

12 (2) Additional measures to enhance current (as of August 15, 1997)
13 observer coverage, including the establishment of criteria for training,
14 and for improving monitoring and reporting capabilities and proce-
15 dures.

16 (3)(A) The designation of well location, procedures for sealing holds,
17 and procedures for monitoring and certifying both above and below
18 deck; or

19 (B) through equally effective methods, the tracking and verification
20 of tuna product labeled under sections 223102 through 223104 of this
21 title.

22 (4) The reporting, receipt, and database storage of radio and fac-
23 simile transmittals from fishing vessels containing information related
24 to the tracking and verification of tuna product, and the definition of
25 set.

26 (5) The shore-based verification and tracking throughout the fishing,
27 transshipment, and canning process by means of Inter-American Tropi-
28 cal Tuna Commission trip records or otherwise.

29 (6)(A) The use of periodic audits and spot checks for caught, landed,
30 and processed tuna products labeled under sections 223102 through
31 223104 of this title; and

32 (B) the provision of timely access to data required under this section
33 by the Secretary from harvesting nations to undertake the actions re-
34 quired in under subparagraph (A).

35 (d) AUTHORITY TO ADJUST REGULATIONS.—The Secretary may make
36 such adjustments as may be appropriate to the regulations prescribed under
37 this section to implement an international tracking and verification program
38 that meets or exceeds the minimum requirements established by the Sec-
39 retary under this section.

1 **§ 223106. Additional prohibitions and enforcement**

2 For additional prohibitions relating to this chapter and enforcement of
3 this chapter, see section 606 of the High Seas Driftnet Fishing Moratorium
4 Protection Act (16 U.S.C. 1826g).

5 **Chapter 225—North Pacific Fur Seals**

Subchapter I—Fur Seal Management

Sec.

- 225101. Definitions.
- 225102. Prohibitions.
- 225103. Permitted taking of fur seals.
- 225104. Regulations; agreements; preference.
- 225105. Federal agency consultation and technical assistance.

Subchapter II—Administration of the Pribilof Islands

- 225201. Administration of fur seal rookeries and Federal property.
- 225202. Other authorities of the Secretary.
- 225203. Disposal of Federal property.
- 225204. Financial assistance.
- 225205. Educational needs of Pribilof Islands citizens.
- 225206. Medical and dental care for natives of the Pribilof Islands and other individuals.
- 225207. Recomputation of annuities and survivor annuities.
- 225208. Agreements and permits.
- 225209. Use of local entities.
- 225210. Regulations.

Subchapters III Through VII—Reserved

Subchapter VIII—Enforcement

- 225801. Seizure and forfeiture.
- 225802. Procedure.
- 225803. Penalties.
- 225804. Regulations.

Subchapter IX—Miscellaneous

- 225901. Authorization of appropriations.

6 **Subchapter I—Fur Seal Management**

7 **§ 225101. Definitions**

8 In this chapter:

9 (1) CURE.—

10 (A) IN GENERAL.—The term “cure”, with respect to fur seals,
11 means to perform post-harvest activities traditionally performed on
12 the Pribilof Islands.

13 (B) ACTIVITIES.—The activities referred to in subparagraph (A)
14 include cooling, washing, removal of blubber, soaking in brine,
15 draining, treating with salt or boric acid, and packing in contain-
16 ers for shipment of fur seal skins.

17 (2) FUR SEAL.—The term “fur seal” means the North Pacific fur
18 seal, *Callorhinus Ursinus*.

19 (3) IMPORT.—The term “import” means to land on, bring into, or
20 introduce into, or attempt to land on, bring into, or introduce into, a
21 place subject to the jurisdiction of the United States, whether the land-

1 ing, bringing, or introduction constitutes an importation within the
2 meaning of the customs laws of the United States.

3 (4) JURISDICTION OF THE UNITED STATES.—Beginning on the date
4 on which the Agreement between the United States and the Union of
5 Soviet Socialist Republics on the Maritime Boundary, signed at Wash-
6 ington June 1, 1990 (TIAS 11451), enters into force for the United
7 States, the term “jurisdiction of the United States” includes jurisdic-
8 tion over the areas referred to as eastern special areas in article 3(1)
9 of the Agreement, in particular, the areas east of the maritime bound-
10 ary, as defined in the Agreement, that lie within 200 nautical miles of
11 the baselines from which the breadth of the territorial sea of Russia
12 is measured but beyond 200 nautical miles of the baselines from which
13 the breadth of the territorial sea of the United States is measured.

14 (5) NATIVE OF THE PRIBILOF ISLANDS.—The term “native of the
15 Pribilof Islands” means an Aleut who is a permanent resident of the
16 Pribilof Islands.

17 (6) NORTH PACIFIC OCEAN.—The term “North Pacific Ocean”
18 means the waters of the Pacific Ocean north of the 30th parallel of
19 north latitude, including the Bering, Okhotsk, and Japan Seas.

20 (7) PERSON.—The term “person” means—

21 (A) an individual, partnership, corporation, trust, association, or
22 any other private entity; or

23 (B) an officer, employee, agent, department, or instrumentality
24 of—

25 (i) the Federal Government;

26 (ii) a State or political subdivision of a State; or

27 (iii) a foreign government.

28 (8) PRIBILOF ISLANDS.—The term “Pribilof Islands” means the is-
29 lands of Saint Paul and Saint George, Walrus and Otter Islands, and
30 Sea Lion Rock.

31 (9) SEALING.—The term “sealing” means the taking of fur seals.

32 (10) SECRETARY.—The term “Secretary” means the Secretary of
33 Commerce.

34 (11) TAKE.—The term “take”, with respect to fur seals, means to
35 harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or
36 kill.

37 **§ 225102. Prohibitions**

38 Except as provided in this chapter or by regulation of the Secretary, it
39 is unlawful—

40 (1) for a person or vessel subject to the jurisdiction of the United
41 States—

1 (A) to engage in the taking of fur seals in the North Pacific
2 Ocean or on land or waters under the jurisdiction of the United
3 States; or

4 (B) to use a port or harbor or other place under the jurisdiction
5 of the United States for any purpose connected in any way with
6 a taking described in subparagraph (A); or

7 (2) for a person to transport, import, offer for sale, or possess at
8 a port or place or on a vessel, subject to the jurisdiction of the United
9 States, fur seals or parts of fur seals, including raw, dressed, or dyed
10 fur seal skins, taken contrary to the provisions of this chapter.

11 **§ 225103. Permitted taking of fur seals**

12 (a) INDIANS, ALEUTS, AND ESKIMOS.—

13 (1) IN GENERAL.—

14 (A) PERMISSION TO TAKE.—Subject to subparagraph (B), an
15 Indian, Aleut, or Eskimo who dwells on the coast of the North Pa-
16 cific Ocean is permitted to take a fur seal and dispose of its skin
17 after the skin has been officially marked and certified by a person
18 authorized by the Secretary.

19 (B) CONDITIONS.—The permission under subparagraph (A) ap-
20 plies only if the seals are—

21 (i) taken for subsistence uses (as defined in section
22 221212(g)(1) of this title); and

23 (ii) taken only in canoes—

24 (I) not transported by or used in connection with
25 other vessels;

26 (II) propelled entirely by oars, paddles, or sails; and

27 (III) manned, by not more than 5 individuals each, in
28 the way practiced before November 2, 1966, without the
29 use of firearms.

30 (C) INAPPLICABILITY TO INDIANS, ALEUTS, AND ESKIMOS EM-
31 PLOYED TO TAKE FUR SEALS.—The authority under this para-
32 graph shall not apply to an Indian, Aleut, or Eskimo while the In-
33 dian, Aleut, or Eskimo—

34 (i) is employed by a person for the purpose of taking fur
35 seals; or

36 (ii) is under contract to deliver fur seal skin to any person.

37 (2) INDIANS, ALEUTS, AND ESKIMOS IN THE PRIBILOF ISLANDS.—
38 An Indian, Aleut, or Eskimo who lives on the Pribilof Islands may take
39 fur seals for subsistence uses (as defined in section 221212(g)(1) of
40 this title) pursuant to regulations prescribed by the Secretary.

1 (b) EDUCATIONAL, SCIENTIFIC, AND EXHIBITION PURPOSES.—The Sec-
2 retary shall permit, subject to such terms and conditions as the Secretary
3 considers desirable, the taking, transportation, importation, exportation, or
4 possession of fur seals or parts of fur seals for educational, scientific, or
5 exhibition purposes.

6 **§ 225104. Regulations; agreements; preference**

7 (a) REGULATIONS.—The Secretary shall prescribe such regulations with
8 respect to the taking of fur seals on the Pribilof Islands and on land subject
9 to the jurisdiction of the United States as the Secretary considers appro-
10 priate—

11 (1) for the conservation, management, and protection of the fur seal
12 population; and

13 (2) to dispose of any fur seals seized or forfeited pursuant to this
14 chapter.

15 (b) AGREEMENTS.—The Secretary may enter into an agreement with a
16 public or private person for the purpose of carrying out this subchapter, in-
17 cluding the taking of fur seals on the Pribilof Islands.

18 (c) PREFERENCE.—The Secretary shall give preference to the village cor-
19 porations of Saint Paul Island and Saint George Island established under
20 section 8 of the Alaska Native Claims Settlement Act (43 U.S.C. 1607) for
21 the taking of fur seals on the village corporations' respective islands.

22 **§ 225105. Federal agency consultation and technical assist-**
23 **ance**

24 (a) IN GENERAL.—The head of a Federal agency may consult with and
25 provide technical assistance to the Secretary when technical assistance is
26 needed and reasonably can be furnished in carrying out this subchapter.

27 (b) EXPENDITURE OF FUNDS.—A Federal agency furnishing assistance
28 under this section may expend its own funds for that purpose, with or with-
29 out reimbursement.

30 **Subchapter II—Administration of the**
31 **Pribilof Islands**

32 **§ 225201. Administration of fur seal rookeries and Federal**
33 **property**

34 The Secretary—

35 (1) shall administer the fur seal rookeries and other Federal prop-
36 erty on the Pribilof Islands, with the exception of—

37 (A) land purchased by USFWS under section 1417 of the Alas-
38 ka National Interest Lands Conservation Act (Public Law 96-487,
39 94 Stat. 2500); and

40 (B) land acquired or purchased by any other authority after Oc-
41 tober 14, 1983; and

1 (2) in consultation with the Secretary of the Interior, shall ensure
2 that activities on the property are—

3 (A) consistent with the purposes of conserving, managing, and
4 protecting the North Pacific fur seals and other wildlife; and

5 (B) for other purposes consistent with the purposes described
6 in subparagraph (A).

7 **§ 225202. Other authorities of the Secretary**

8 In carrying out this subchapter, the Secretary may—

9 (1) operate, maintain, and repair such Federal property and other
10 facilities held by the Secretary on the Pribilof Islands as may be nec-
11 essary; and

12 (2) provide the employees of the Department of Commerce and other
13 Federal agencies and their dependents, at reasonable rates to be deter-
14 mined by the Secretary, with such facilities, services, and equipment as
15 the Secretary considers necessary, including food, fuel, shelter, and
16 transportation.

17 **§ 225203. Disposal of Federal property**

18 (a) **AUTHORITY TO CONVEY FEDERAL PROPERTY.**—Notwithstanding any
19 provision of law relating to the transfer and disposal of Federal property
20 contrary to the provisions of this subsection, the Secretary, after consulta-
21 tion with the Secretary of the department in which the Coast Guard is oper-
22 ating, may bargain, grant, sell or otherwise convey, on such terms as the
23 Secretary considers to be in the best interests of the United States and in
24 furtherance of the purposes of this chapter, any and all right, title, and in-
25 terest of the United States in and to the Federal property, both real and
26 personal, held by the Secretary on the Pribilof Islands.

27 (b) **SPECIFICATION IN DOCUMENT.**—The Federal property described in
28 subsection (a) shall be specified in a document entitled “Transfer of Prop-
29 erty on the Pribilof Islands: Descriptions, Terms and Conditions”.

30 (c) **CONTENTS OF PROPERTY TRANSFER DOCUMENT.**—The property
31 transfer document described in subsection (b) shall include—

32 (1) a description of each conveyance;

33 (2) the terms to be imposed on each conveyance;

34 (3) designation of the recipient of each conveyance;

35 (4) a statement noting acceptance of each conveyance, including the
36 terms, if any, under which it is accepted; and

37 (5) an identification of all Federal property to be retained by the
38 Federal Government on the Pribilof Islands to meet its responsibilities
39 as described in this chapter and under the Interim Convention on the
40 Conservation of North Pacific Fur Seals, signed at Washington Feb-
41 ruary 9, 1957 (8 UST 2283; TIAS 3948).

1 (d) MEMORANDUM OF UNDERSTANDING.—

2 (1) IN GENERAL.—A memorandum of understanding shall be entered
3 into by the Secretary, a representative of the local governmental au-
4 thority on each Island, the trustee or trustees of the Pribilof Islands
5 Trust established under section 206 of the Fur Seal Act of 1966 (Pub-
6 lic Law 89–702) (as in effect before December 21, 2000) (referred to
7 in this subsection as the “Trust”), and the appropriate officer of the
8 State of Alaska setting forth the respective responsibilities of the Fed-
9 eral Government, the Trust, and the State regarding—

10 (A) application of Federal retirement benefits, severance pay,
11 and insurance benefits with respect to natives of the Pribilof Is-
12 lands;

13 (B) funding to be allocated by the State of Alaska for the con-
14 struction of boat harbors on Saint Paul Island and Saint George
15 Island;

16 (C) assumption of the State of Alaska of traditional State re-
17 sponsibilities for facilities and services on Saint Paul Island and
18 Saint George Island in accordance with applicable laws (including
19 regulations);

20 (D) preservation of wildlife resources within the Secretary’s ju-
21 risdiction;

22 (E) continued activities relating to the implementation of the
23 Interim Convention on the Conservation of North Pacific Fur
24 Seals, signed at Washington February 9, 1957 (8 UST 2283;
25 TIAS 3948);

26 (F) oversight of the operation of the Trust to further progress
27 toward creation of a stable, diversified, and enduring economy not
28 dependent on commercial fur sealing;

29 (G) the cooperation of government agencies, rendered through
30 existing programs, in assisting with an orderly transition from
31 Federal management and the creation of a private enterprise econ-
32 omy on the Pribilof Islands as described in this chapter; and

33 (H) such other matters as may be necessary and appropriate for
34 carrying out this chapter, including the assumption of responsibil-
35 ities to ensure an orderly transition from Federal management of
36 the Pribilof Islands.

37 (2) DEADLINE.—The memorandum under paragraph (1) shall be
38 submitted to Congress on or before October 31, 1983.

39 (e) TAXATION.—

1 (1) IN GENERAL.—The grant, sale, transfer or conveyance of any
 2 real or personal property under this section shall not be subject to any
 3 form of Federal, State, or local taxation.

4 (2) COMPUTATION OF GAIN OR LOSS.—The basis for computing gain
 5 or loss on subsequent sale or disposition of the real or personal prop-
 6 erty referred to in paragraph (1) for purposes of any Federal, State,
 7 or local tax imposed on revenue or measured by revenue shall be the
 8 fair market value of the real or personal property at the time of re-
 9 ceipt.

10 (f) AGREEMENTS WITH GOVERNMENT AGENCIES AND 3D PARTIES.—

11 (1) IN GENERAL.—In carrying out this chapter, the Secretary may
 12 enter into agreements (including land exchange agreements) with other
 13 Federal and State agencies and with 3d parties, notwithstanding any
 14 provision of law relating to the transfer and disposal of Federal prop-
 15 erty contrary to this paragraph.

16 (2) EFFECT OF SECTION.—The authority of the Secretary of the In-
 17 terior regarding exchanges involving land in the National Wildlife Ref-
 18 uge System on October 14, 1983, is not affected by this section.

19 (g) TRANSFER OF PROPERTY IN SAINT PAUL IN EXCESS OF FEDERAL
 20 USE.—

21 (1) APPLICABILITY OF CERTAIN PROVISIONS.—

22 (A) REFERENCES TO THIS CHAPTER.—Except as provided in
 23 subparagraph (B), a reference to this chapter or a provision of
 24 this chapter does not include this subsection.

25 (B) DEFINITIONS.—

26 (i) IN GENERAL.—Section 225101 of this title applies to
 27 this subsection.

28 (ii) NATIVE OF THE PRIBILOF ISLANDS.—In this sub-
 29 section, the term “native of the Pribilof Islands” includes the
 30 Tanadgusix Corporation, the St. George Tanaq Corporation,
 31 and the city governments and tribal councils of Saint Paul
 32 and Saint George, Alaska.

33 (2) NOTIFICATIONS.—

34 (A) IN GENERAL.—Not later than 30 days after the Secretary
 35 makes a determination under paragraph (3) that land on St. Paul
 36 Island, Alaska, not specified for transfer in the document entitled
 37 “Transfer of Property on the Pribilof Islands: Descriptions, Terms
 38 and Conditions” or section 522 of the Pribilof Island Transition
 39 Completion Act of 2016 (Pub. L. 114–120, 130 Stat. 70), as
 40 amended by section 3532 of the Pribilof Islands Transition Com-
 41 pletion Amendments Act of 2016 (Pub. L. 114–328, 130 Stat.

1 2795), or transferred to the Secretary of the department in which
2 the Coast Guard is operating under section 524 of the Pribilof Is-
3 land Transition Completion Act of 2016 (Pub. L. 114–120, 130
4 Stat. 72), as amended by section 3533 of the Pribilof Islands
5 Transition Completion Amendments Act of 2016 (Pub. L. 114–
6 328, 130 Stat. 2795), is in excess of the needs of the Secretary
7 and the Federal Government, the Secretary shall notify the Alaska
8 native village corporation for Saint Paul Island of the determina-
9 tion.

10 (B) ELECTION TO RECEIVE.—Not later than 60 days after the
11 date of receipt of the notification of the Secretary under subpara-
12 graph (A), the Alaska native village corporation for Saint Paul Is-
13 land shall notify the Secretary in writing whether the Alaska na-
14 tive village corporation elects to receive all right, title, and interest
15 in the land or a portion of the land described in subparagraph (A).

16 (C) TRANSFER.—If the Alaska native village corporation pro-
17 vides notice under subparagraph (B) that the Alaska native village
18 corporation elects to receive all right, title, and interest in the land
19 or a portion of the land described in subparagraph (A), the Sec-
20 retary shall transfer all right, title, and interest in the land or por-
21 tion to the Alaska native village corporation at no cost.

22 (D) OTHER DISPOSITION.—If the Alaska native village corpora-
23 tion does not provide notice under subparagraph (B) that the
24 Alaska native village corporation elects to receive all right, title,
25 and interest in the land or a portion of the land described in sub-
26 paragraph (A), the Secretary may dispose of the land in accord-
27 ance with other applicable law.

28 (3) DETERMINATION.—

29 (A) IN GENERAL.—The Secretary shall determine, not later
30 than February 8, 2018, and not less than once every 5 years after
31 the date of the initial determination, whether property located on
32 Saint Paul Island and not transferred to the Secretary of the de-
33 partment in which the Coast Guard is operating under section 524
34 of the Pribilof Island Transition Completion Act of 2016 (Pub. L.
35 114–120, 130 Stat. 72), as amended by section 3533 of the Pribi-
36 lof Islands Transition Completion Amendments Act of 2016 (Pub.
37 L. 114–328, 130 Stat. 2795), or to the natives of the Pribilof Is-
38 lands is in excess of the smallest practicable tract enclosing land—

39 (i) needed by the Secretary for the purposes of carrying out
40 this chapter;

1 (ii) in the case of land withdrawn by the Secretary on be-
2 half of other Federal agencies, needed for carrying out the
3 missions of those Federal agencies for which the land was
4 withdrawn; or

5 (iii) actually used by the Federal Government in connection
6 with the administration of any Federal installation on Saint
7 Paul Island.

8 (B) REPORT OF DETERMINATION.—When a determination is
9 made under subparagraph (A), the Secretary shall report the de-
10 termination to—

11 (i) the Committee on Natural Resources of the House of
12 Representatives;

13 (ii) the Committee on Commerce, Science, and Transpor-
14 tation of the Senate; and

15 (iii) the Alaska native village corporation for Saint Paul Is-
16 land.

17 (h) PROSPECTIVE REPEALS.—Effective on the date on which the Sec-
18 retary publishes the notice of certification required by section 105(b)(5) of
19 the Pribilof Islands Transition Act (Public Law 106–562, title I), the fol-
20 lowing provisions are repealed:

21 (1) Subsections (a), (b), (c), and (d).

22 (2) Section 205(e) of the Fur Seal Act of 1966 (Public Law 89–
23 702).

24 **§ 225204. Financial assistance**

25 (a) CITY GOVERNMENT, VILLAGE CORPORATION, AND TRIBAL COUN-
26 CIL.—

27 (1) IN GENERAL.—Subject to the availability of appropriations, the
28 Secretary shall provide financial assistance to any city government, vil-
29 lage corporation, or tribal council of Saint Paul Island or Saint George
30 Island.

31 (2) USE AS NON-FEDERAL MATCHING FUND.—Notwithstanding any
32 other law relating to matching funds, funds provided by the Secretary
33 as assistance under this subsection may be used by the entity as non-
34 Federal matching funds under any Federal program that requires non-
35 Federal matching funds.

36 (3) RESTRICTION ON USE.—The Secretary shall not use financial as-
37 sistance authorized by this chapter—

38 (A) to settle any debt owed to the United States;

39 (B) for administrative or overhead expenses; or

1 (C) for contributions sought or required from any person for
2 costs or fees to clean up any matter that was caused or contrib-
3 uted to by the person on or after March 15, 2000.

4 (4) FUNDING INSTRUMENTS AND PROCEDURES.—In providing assist-
5 ance under this subsection, the Secretary shall transfer any funds ap-
6 propriated to carry out this section to the Secretary of the Interior,
7 who shall obligate the funds through instruments and procedures that
8 are equivalent to the instruments and procedures required to be used
9 by the Bureau of Indian Affairs pursuant to title IV of the Indian Self-
10 Determination and Education Assistance Act (25 U.S.C. 458aa et
11 seq.).

12 (5) PRO RATA DISTRIBUTION OF ASSISTANCE.—In any fiscal year for
13 which less than all of the funds authorized under subsection (e)(1) are
14 appropriated, the appropriated funds shall be distributed under this
15 subsection on a pro rata basis among the entities referred to in sub-
16 section (e)(1) in the same proportions in which amounts are authorized
17 by that subsection for grants to those entities.

18 (b) STATE OF ALASKA.—

19 (1) IN GENERAL.—Subject to the availability of appropriations, the
20 Secretary shall provide assistance to the State of Alaska for designing,
21 locating, constructing, redeveloping, permitting, or certifying solid
22 waste management facilities on the Pribilof Islands to be operated
23 under permits issued to the city of Saint George and the city of Saint
24 Paul by the State of Alaska under section 46.03.100 of the Alaska
25 Statutes.

26 (2) TRANSFER.—The Secretary shall transfer any appropriations re-
27 ceived under paragraph (1) to the State of Alaska for the benefit of
28 rural and Native villages in Alaska for obligation under section 303 of
29 the Safe Drinking Water Act Amendments of 1996 (33 U.S.C. 1263a),
30 except that subsection (b) of that section shall not apply to those
31 funds.

32 (3) LIMITATION.—To be eligible to receive financial assistance under
33 this subsection, not later than 180 days after December 23, 2000, the
34 city of Saint Paul and the city of Saint George shall have a written
35 agreement with the State of Alaska under which each city identifies by
36 its legal boundaries the tract of land that each city selected as the site
37 for its solid waste management facility and any supporting infrastruc-
38 ture.

39 (c) AUTHORIZATION OF APPROPRIATIONS.—

40 (1) IN GENERAL.—There are authorized to be appropriated to the
41 Secretary—

1 (A) for assistance under subsection (a), for fiscal years 2001,
2 2002, 2003, 2004, 2005, 2006, and 2007, a total of—

- 3 (i) \$9,000,000 for grants to the city of Saint Paul;
- 4 (ii) \$6,300,000 for grants to the Tanadgusix Corporation;
- 5 (iii) \$1,500,000 for grants to the Saint Paul Tribal Council;
- 6
- 7 (iv) \$6,000,000 for grants to the city of Saint George;
- 8 (v) \$4,200,000 for grants to the Saint George Tanaq Corporation; and
- 9
- 10 (vi) \$1,000,000 for grants to the Saint George Tribal Council; and
- 11

12 (B) for assistance under subsection (b), for fiscal years 2001,
13 2002, 2003, 2004, and 2005, a total of—

- 14 (i) \$6,500,000 for the city of Saint Paul; and
- 15 (ii) \$3,500,000 for the city of Saint George.

16 (2) CONGRESSIONAL INTENT.—Amounts authorized under paragraph
17 (1) are intended by Congress to be provided in addition to the base
18 funding appropriated to NOAA in fiscal year 2000.

19 (d) LIMITATION ON USE OF ASSISTANCE FOR LOBBYING ACTIVITIES.—

20 (1) IN GENERAL.—None of the funds authorized by this section may
21 be available for any activity a purpose of which is to influence Congress.
22

23 (2) COMMUNICATION WITH MEMBERS OF CONGRESS.—This subsection
24 does not preclude Federal officers or employees or Federal
25 agencies from communicating to members of Congress, through proper
26 channels, requests for legislation or appropriations that they consider
27 necessary for the efficient conduct of public business.

28 (e) IMMUNITY FROM LIABILITY.—Neither the United States nor any
29 Federal agencies, officers, or employees shall have any liability under this
30 chapter or any other law associated with or resulting from the designing,
31 locating, contracting for, redeveloping, permitting, certifying, operating, or
32 maintaining any solid waste management facility on the Pribilof Islands as
33 a consequence of—

- 34 (1) having provided assistance to the State of Alaska under subsection (b); or
- 35
- 36 (2) providing funds for, or planning, constructing, or operating, any
37 interim solid waste management facilities that may be required by the
38 State of Alaska before permanent solid waste management facilities
39 constructed with assistance provided under subsection (b) are complete
40 and operational.

1 **§ 225205. Educational needs of Pribilof Islands citizens**

2 The State of Alaska will be responsible for meeting the educational needs
3 of the citizens of the Pribilof Islands.

4 **§ 225206. Medical and dental care for natives of the Pribilof**
5 **Islands and other individuals**

6 (a) NATIVES OF THE PRIBILOF ISLANDS.—The Secretary of Health and
7 Human Services shall provide medical and dental care to the natives of the
8 Pribilof Islands with or without reimbursement, as provided by other law.

9 (b) FEDERAL EMPLOYEES AND OTHER INDIVIDUALS IN THE PRIBILOF
10 ISLANDS.—The Secretary of Health and Human Services may provide medi-
11 cal and dental care to Federal employees and their dependents, tourists, and
12 other individuals in the Pribilof Islands at reasonable rates to be determined
13 by the Secretary of Health and Human Services.

14 (c) FACILITIES, SUPPLIES, AND EQUIPMENT.—

15 (1) IN GENERAL.—The Secretary of Health and Human Services
16 may purchase, lease, construct, operate, and maintain such facilities,
17 supplies, and equipment as the Secretary of Health and Human Serv-
18 ices considers necessary to carry out this section.

19 (2) COSTS.—The costs of the actions described in paragraph (1),
20 and the provision of medical and dental care described in subsections
21 (a) and (b), shall be charged to the budget of the Secretary of Health
22 and Human Services.

23 (d) EFFECT OF SUBCHAPTER.—Nothing in this subchapter supersedes or
24 limits the authority and responsibility of the Secretary of Health and
25 Human Services under the Act of August 5, 1954 (42 U.S.C. 2001 et seq.),
26 or any other law with respect to medical and dental care of natives of the
27 Pribilof Islands and other individuals in the Pribilof Islands.

28 **§ 225207. Recomputation of annuities and survivor annu-**
29 **ities**

30 (a) DEFINITIONS.—In this section:

31 (1) EMPLOYEE.—The term “employee” has the meaning given the
32 term under section 8331 of title 5.

33 (2) MEMBER.—The term “Member” has the meaning given the term
34 “Member” under section 8331 of title 5.

35 (b) IN GENERAL.—An annuity or survivor annuity based on the service
36 of an employee or Member who performed service described in subsection
37 (b)(14) or subsection (l)(1)(C) of section 8332 of title 5 shall, on application
38 to the Office of Personnel Management, be recomputed in accordance with
39 subsection (b)(14) and subsection (l), respectively, of section 8332 of title
40 5, regardless of whether the employee or Member retires before, on, or after
41 October 14, 1983.

1 (c) APPLICABILITY OF RECOMPUTATION.—Each recomputation of annuity
2 under subsection (b) shall apply with respect to months beginning more
3 than 30 days after the date on which application for the recomputation is
4 received by the Office of Personnel Management.

5 **§ 225208. Agreements and permits**

6 To carry out this chapter, the Secretary may—

- 7 (1) enter into agreements, including leases, with a person; or
8 (2) issue permits to a person.

9 **§ 225209. Use of local entities**

10 (a) IN GENERAL.—Notwithstanding any other law, the Secretary shall, to
11 the maximum extent practicable, fulfill obligations under Federal and State
12 law relating to the Pribilof Islands through grants or other agreements with
13 local entities and residents of the Pribilof Islands, unless—

- 14 (1) specialized skills are needed for an activity; and
15 (2) the Secretary specifies in writing that those skills are not avail-
16 able through local entities and residents of the Pribilof Islands.

17 (b) CLEANUP ACTIVITIES.—

18 (1) IN GENERAL.—Subsection (a) shall apply to the activities of the
19 Secretary in carrying out section 3(a) of Public Law 104–91 (16
20 U.S.C. 1165 note).

21 (2) REPEAL OF SUBSECTION.—This subsection is repealed effective
22 on the date on which the Secretary publishes the notice of certification
23 required by section 105(b)(5) of the Pribilof Islands Transition Act
24 (Public Law 106–562, title I).

25 **§ 225210. Regulations**

26 The Secretary may prescribe such regulations as the Secretary considers
27 necessary to carry out this subchapter.

28 **Subchapters III Through VII—Reserved**
29 **Subchapter VIII—Enforcement**

30 **§ 225801. Seizure and forfeiture**

31 (a) IN GENERAL.—

32 (1) VESSELS.—A vessel subject to the jurisdiction of the United
33 States that is employed in connection with a violation of this chapter,
34 including its tackle, apparel, furniture, appurtenances, cargo, and
35 stores, shall be subject to forfeiture.

36 (2) FUR SEALS.—A fur seal or part of a fur seal taken or retained
37 in violation of this chapter, or the monetary value of the fur seal or
38 part of the fur seal, shall be forfeited.

39 (b) APPLICABILITY OF CUSTOMS LAWS.—All laws relating to—

1 (1) seizure, summary and judicial forfeiture, and condemnation of a
2 vessel, including its tackle, apparel, furniture, appurtenances, cargo,
3 and stores, for violation of the customs laws;

4 (2) disposition of a vessel described in paragraph (1), including its
5 tackle, apparel, furniture, appurtenances, cargo, and stores, or the pro-
6 ceeds from the sale of the vessel, including its tackle, apparel, fur-
7 niture, appurtenances, cargo, and stores; and

8 (3) remission or mitigation of the forfeiture described in paragraph
9 (1);

10 shall apply to seizures and forfeitures incurred, or alleged to have been in-
11 curred, under this chapter, to the extent that those laws are applicable and
12 not inconsistent with this chapter.

13 **§ 225802. Procedure**

14 (a) ENFORCEMENT AUTHORITY—

15 (1) IN GENERAL.—Enforcement of this chapter is the joint respon-
16 sibility of the Secretary, the Secretary of Homeland Security, the Sec-
17 retary of the Treasury, and the Secretary of the department in which
18 the Coast Guard is operating.

19 (2) DESIGNATION OF STATE OFFICERS AND EMPLOYEES.—

20 (A) IN GENERAL.—The Secretary may designate State officers
21 and employees to enforce the provisions of this chapter that relate
22 to persons or vessels subject to the jurisdiction of the United
23 States.

24 (B) FEDERAL LAW ENFORCEMENT FUNCTIONS.—An officer or
25 employee designated under subparagraph (A) may function as a
26 Federal law enforcement agent to enforce the provisions described
27 in subparagraph (A).

28 (C) NOT A FEDERAL EMPLOYEE.—Notwithstanding subpara-
29 graph (B), an officer or employee designated under subparagraph
30 (A) shall not be considered a Federal employee for the purpose of
31 any laws administered by the Director of the Office of Personnel
32 Management.

33 (b) ISSUANCE OF WARRANTS AND OTHER PROCESS.—The United States
34 district court judges and United States magistrate judges may, within their
35 respective jurisdictions, on proper oath or affirmation showing probable
36 cause, issue such warrants or other process, including warrants or other
37 process issued in admiralty proceedings in Federal district courts, as may
38 be required for enforcement of this chapter (including a regulation pre-
39 scribed under this chapter).

40 (c) AUTHORIZED ACTIVITIES.—An individual authorized to carry out en-
41 forcement activities under this section may—

1 (1) execute a warrant or process issued by an officer or court of
2 competent jurisdiction for the enforcement of this chapter;

3 (2) with or without a warrant or other process, arrest a person com-
4 mitting in the authorized individual's presence or view a violation of
5 this chapter (including a regulation prescribed under this chapter);

6 (3) with or without a warrant or other process, search a vessel sub-
7 ject to the jurisdiction of the United States or arrest a person, if the
8 authorized individual has reasonable cause to believe that the vessel or
9 the person onboard the vessel is in violation of this chapter (including
10 a regulation prescribed under this chapter);

11 (4) seize a vessel subject to the jurisdiction of the United States, in-
12 cluding its tackle, apparel, furniture, appurtenances, cargo, and stores,
13 that is used or employed, or that reasonably appears to have been used
14 or employed, contrary to this chapter (including a regulation prescribed
15 under this chapter); and

16 (5) seize, whenever and wherever lawfully found, all fur seals taken
17 or retained in violation of this chapter (including a regulation pre-
18 scribed under this chapter).

19 (d) DISPOSITION OF FUR SEALS.—A fur seal seized under subsection
20 (c)(5) or forfeited to the United States under this chapter shall be disposed
21 of in accordance with section 225104 of this title.

22 **§ 225803. Penalties**

23 (a) CIVIL PENALTIES.—

24 (1) IN GENERAL.—A person that violates this chapter (including a
25 regulation or permit issued under this chapter) may be assessed a civil
26 penalty by the Secretary of not more than \$10,000 for each violation.

27 (2) NOTICE AND OPPORTUNITY FOR HEARING.—No penalty shall be
28 assessed unless the person is given notice and opportunity for a hearing
29 with respect to the violation.

30 (3) PROCEDURE.—A hearing held during a proceeding for the as-
31 sessment of a civil penalty authorized by this subsection shall be con-
32 ducted in accordance with section 554 of title 5.

33 (4) SUBPOENAS AND OATHS.—The Secretary may—

34 (A) issue subpoenas for the attendance and testimony of wit-
35 nesses and the production of relevant records; and

36 (B) administer oaths.

37 (5) PAYMENT OF WITNESSES.—A witness summoned shall be paid
38 the same fees and mileage that are paid to a witness in a Federal
39 court.

40 (6) CONTUMACY.—In case of contumacy or refusal to obey a sub-
41 poena served on a person pursuant to this subsection, the United

1 States district court for any district in which the person is found, re-
 2 sides, or transacts business, on application by the United States and
 3 after notice to the person, shall have jurisdiction to issue an order re-
 4 quiring the person to appear and give testimony before the Secretary,
 5 to appear and produce documents before the Secretary, or both, and
 6 any failure to obey the order of the United States district court may
 7 be punished by the United States district court as a contempt of court.

8 (7) REMISSION OR MITIGATION.—A civil penalty assessed under this
 9 subsection may be remitted or mitigated by the Secretary for good
 10 cause shown.

11 (8) FAILURE TO PAY.—On a failure to pay a civil penalty assessed
 12 under this subsection, the Secretary may request the Attorney General
 13 to commence a civil action in a United States district court for any dis-
 14 trict in which the person is found, resides, or transacts business to col-
 15 lect the penalty, and the United States district court shall have juris-
 16 diction to hear and decide the civil action.

17 (b) CRIMINAL PENALTIES.—Criminal penalties for a violation of this
 18 chapter are provided under section 51(b) of title 18.

19 **§ 225804. Regulations**

20 The Secretary may prescribe such regulations as the Secretary considers
 21 necessary to carry out this subchapter.

22 **Subchapter IX—Miscellaneous**

23 **§ 225901. Authorization of appropriations**

24 (a) IN GENERAL.—There are authorized to be appropriated such sums
 25 as may be necessary for each fiscal year for the purposes of section
 26 225103(b) of this title.

27 (b) CONTRACT AUTHORITY.—The contract authority of the Secretary
 28 under this chapter is effective for any fiscal year only to the extent that
 29 appropriations are available for the purposes referred to in subsection (a).

30 **Chapter 227—Fish Restoration and**
 31 **Management**

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Sec.

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- 227501. Regulations.
- 227502. Construction work and labor.
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- 227504. Title to property.
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1 **Subchapter I—General Provisions**

2 **§ 227101. Definitions**

3 In this chapter:

4 (1) AQUATIC RESOURCE EDUCATION PROGRAM.—The term “aquatic
5 resource education program” means a program designed to—

6 (A) enhance the public’s understanding of aquatic resources and
7 sportfishing; and

8 (B) promote the development of responsible attitudes and ethics
9 toward the aquatic environment.

10 (2) COMPREHENSIVE PLAN.—The term “comprehensive plan” means
11 a comprehensive fish and wildlife resource management plan described
12 in section 227211 of this title.

13 (3) FISH RESTORATION AND MANAGEMENT PROJECT.—

14 (A) IN GENERAL.—The term “fish restoration and management
15 project” means a project designed for the restoration and manage-
16 ment of all species of fish that have material value in connection
17 with sport or recreation in the marine or fresh waters of the
18 United States.

19 (B) INCLUSIONS.—The term “fish restoration and management
20 project” includes—

21 (i) such research into problems of fish management and
22 culture as may be necessary to efficient administration affect-
23 ing fish resources;

- 1 (ii) the acquisition of facts that are necessary to guide and
- 2 direct the regulation of fishing by law, including—
- 3 (I) the extent of the fish population;
- 4 (II) the drain on the fish supply from fishing or natu-
- 5 ral causes;
- 6 (III) the necessity of regulation of fishing; and
- 7 (IV) the effects of any measure of regulation that is
- 8 applied;
- 9 (iii)(I) the formulation and adoption of plans of restocking
- 10 bodies of water with food and game fishes according to natu-
- 11 ral areas or districts to which the plans are applicable; and
- 12 (II) the acquisition of facts that are necessary to the for-
- 13 mulation, execution, and testing of the efficacy of the plans;
- 14 and
- 15 (iv) the selection, restoration, rehabilitation, and improve-
- 16 ment of areas of water or land adaptable as hatching, feed-
- 17 ing, resting, or breeding places for fish, including—
- 18 (I) the acquisition by purchase, condemnation, lease,
- 19 or gift of such areas of water or land or interests in
- 20 areas of water or land as are suitable, or capable of
- 21 being made suitable, as hatching, feeding, resting, or
- 22 breeding places for fish; and
- 23 (II) the construction, on or in areas of water or land,
- 24 of such works as may be necessary to make the areas of
- 25 water or land available for hatching, feeding, resting, or
- 26 breeding of fish, and the preliminary or incidental ex-
- 27 penses that may be incurred in and about the works.
- 28 (C) MAINTENANCE OF PROJECTS.—Maintenance of a fish res-
- 29 toration and management project completed under this chapter be-
- 30 fore October 23, 1970, may be considered as a fish restoration
- 31 and management project under this chapter.
- 32 (4) OTHER ELIGIBLE JURISDICTION.—The term “other eligible juris-
- 33 diction” means the District of Columbia, Puerto Rico, Guam, American
- 34 Samoa, the Virgin Islands, or the Northern Mariana Islands.
- 35 (5) OUTREACH AND COMMUNICATIONS PROGRAM.—The term “out-
- 36 reach and communications program” means a program to improve
- 37 communications with anglers, boaters, and the general public regarding
- 38 angling and boating opportunities to—
- 39 (A) reduce barriers to participation in angling and boating;
- 40 (B) advance adoption of sound fishing and boating practices;

1 (C) promote conservation and the responsible use of the Na-
2 tion's aquatic resources; and

3 (D) further safety in fishing and boating.

4 (6) SECRETARY.—The term “Secretary” means the Secretary of the
5 Interior.

6 (7) STATE.—The term “State” means a State only.

7 (8) STATE FISH AND WILDLIFE AGENCY.—The term “State fish and
8 wildlife agency” means an agency or official of a State or other eligible
9 jurisdiction empowered under the law of the State or other eligible ju-
10 risdiction to exercise the functions ordinarily exercised by a State fish
11 and game department.

12 (9) TRUST FUND.—The term “Trust Fund” means the Sport Fish
13 Restoration and Boating Trust Fund established in section 9504(a) of
14 the Internal Revenue Code of 1986 (26 U.S.C. 9504(a)).

15 **Subchapter II—Fish Restoration and** 16 **Management**

17 **§ 227201. Cooperation with States**

18 (a) IN GENERAL.—The Secretary shall cooperate with a State or other
19 eligible jurisdiction through its State fish and wildlife agency in compre-
20 hensive plans or fish restoration and management projects as set forth in this
21 chapter.

22 (b) CONDITIONS FOR EXPENDITURE.—Amounts apportioned to a State
23 or other eligible jurisdiction under this chapter shall not be expended in the
24 State or other eligible jurisdiction until its legislature, or other agency of
25 the State or other eligible jurisdiction authorized by the constitution of the
26 State or other eligible jurisdiction to make laws governing the conservation
27 of fish—

28 (1) assents to the provisions of this chapter; and

29 (2) enacts laws for the conservation of fish that include a prohibition
30 on the diversion of license fees paid by anglers for any other purpose
31 than the administration of the State fish and wildlife agency.

32 (c) AGREEMENT BETWEEN SECRETARY AND STATE FISH AND WILDLIFE
33 AGENCY.—The Secretary and the State fish and wildlife agency of a State
34 or other eligible jurisdiction accepting the benefits of this chapter shall
35 agree on the comprehensive plan or fish restoration and management
36 project to be aided in the State or other eligible jurisdiction under this chap-
37 ter.

38 (d) CONFORMANCE TO STANDARDS.—A comprehensive plan or fish res-
39 toration and management project shall conform to the standards fixed by
40 the Secretary.

1 (e) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—Coordi-
 2 nation with State fish and wildlife agency personnel or with personnel of
 3 other agencies of States or other eligible jurisdictions pursuant to this chap-
 4 ter shall not be subject to the Federal Advisory Committee Act (5 U.S.C.
 5 App.).

6 **§ 227202. Cooperation with Puerto Rico, the District of Co-**
 7 **lumbia, Guam, American Samoa, the Northern**
 8 **Mariana Islands, and the Virgin Islands**

9 (a) IN GENERAL.—The Secretary may cooperate with the Secretary of
 10 Agriculture of Puerto Rico, the Mayor of the District of Columbia, the Gov-
 11 ernor of Guam, the Governor of American Samoa, the Governor of the
 12 Northern Mariana Islands, and the Governor of the Virgin Islands in the
 13 conduct of a comprehensive plan or fish restoration and management project
 14 on terms and conditions that the Secretary considers fair, just, and equi-
 15 table.

16 (b) APPORTIONMENT.—The Secretary may apportion to Puerto Rico, the
 17 District of Columbia, Guam, American Samoa, the Northern Mariana Is-
 18 lands, and the Virgin Islands, out of the amounts available for apportion-
 19 ment under this chapter, amounts that the Secretary shall determine, not
 20 exceeding the following rates from the total amount apportioned in a year:

- 21 (1) For Puerto Rico, 1 percent.
- 22 (2) For the District of Columbia, $\frac{1}{3}$ of 1 percent.
- 23 (3) For Guam, $\frac{1}{3}$ of 1 percent.
- 24 (4) For American Samoa, $\frac{1}{3}$ of 1 percent.
- 25 (5) For the Northern Mariana Islands, $\frac{1}{3}$ of 1 percent.
- 26 (6) For the Virgin Islands, $\frac{1}{3}$ of 1 percent.

27 (c) LIMITATION.—The Secretary shall not require any of the cooperating
 28 government representatives referred to in subsection (a) to pay more than
 29 25 percent of the cost of a comprehensive plan or fish restoration and man-
 30 agement project.

31 (d) UNEXPENDED OR UNOBLIGATED BALANCE.—

32 (1) AVAILABILITY FOR APPROVED COMPREHENSIVE PLANS AND FISH
 33 RESTORATION AND MANAGEMENT PROJECTS.—An unexpended or unob-
 34 ligated balance of an apportionment made under this section shall be
 35 available for expenditure in Puerto Rico, the District of Columbia,
 36 Guam, American Samoa, the Northern Mariana Islands, or the Virgin
 37 Islands in the succeeding year on an approved comprehensive plan or
 38 fish restoration and management project.

39 (2) AVAILABILITY FOR APPORTIONMENT TO STATES AND OTHER ELI-
 40 GIBLE JURISDICTIONS.—If the balance remains unexpended or unobli-
 41 gated at the end of the succeeding year, the balance may be made

1 available for expenditure by the Secretary to supplement the 58.012
 2 percent of the balance of each annual appropriation to be apportioned
 3 among the States and other eligible jurisdictions under this section and
 4 section 227207 of this title.

5 **§ 227203. Authorization of appropriations from Sport Fish**
 6 **Restoration and Boating Trust Fund**

7 (a) IN GENERAL.—To carry out this chapter, there are authorized to be
 8 appropriated from the Trust Fund the amounts paid, transferred, or other-
 9 wise credited to the Trust Fund, except as provided in section 9504(c) of
 10 the Internal Revenue Code of 1986 (26 U.S.C. 9504(c)).

11 (b) AVAILABILITY OF APPROPRIATIONS.—The appropriation made under
 12 this section for each fiscal year shall continue to be available during suc-
 13 ceeding fiscal years.

14 **§ 227204. Set-aside for administration of this chapter and**
 15 **recreational boating safety programs**

16 (a) ADMINISTRATION OF THIS CHAPTER.—

17 (1) IN GENERAL.—From the annual appropriation made under sec-
 18 tion 227203 of this title, for each fiscal year through fiscal year 2021,
 19 the Secretary may use not more than the amount specified in para-
 20 graph (2) for the fiscal year for administrative expenses incurred in the
 21 implementation of this chapter.

22 (2) AMOUNT.—The amount referred to in paragraph (1) for each fis-
 23 cal year is—

24 (A) for fiscal year 2003, \$8,212,000; and

25 (B) for each fiscal year after fiscal year 2003, the sum of—

26 (i) the available amount for the preceding fiscal year; and

27 (ii) the amount determined by multiplying—

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

29 and

30 (II) the change, relative to the preceding fiscal year,

31 in the Consumer Price Index for All Urban Consumers

32 published by the Secretary of Labor.

33 (3) LIMITATION OF USE.—The amount specified in paragraph (2) for
 34 a fiscal year shall not be included in the amount of the annual appro-
 35 priation distributed under section 227206(a) of this title for the fiscal
 36 year.

37 (4) PERIOD OF AVAILABILITY.—For each fiscal year, the available
 38 amount under paragraph (2) shall remain available for obligation for
 39 use under that paragraph until the end of the subsequent fiscal year.

40 (5) APPORTIONMENT OF UNOBLIGATED AMOUNTS.—Not later than
 41 60 days after the end of a fiscal year, the Secretary shall apportion

1 among the States and other eligible jurisdictions any of the amount
2 under paragraph (2) that remains unobligated at the end of the fiscal
3 year, on the same basis and in the same manner as other amounts
4 made available under this chapter are apportioned among the States
5 and other eligible jurisdictions under sections 227202 and 227207 of
6 this title for the fiscal year.

7 (b) ADMINISTRATION OF RECREATIONAL BOATING SAFETY PROGRAMS.—

8 (1) IN GENERAL.—From the annual appropriation made under sec-
9 tion 227203 of this title, for each of fiscal years 2016 through 2021,
10 the Secretary of the department in which the Coast Guard is operating
11 may use no more than the amount specified in paragraph (2) for the
12 fiscal year for the purposes set forth in section 13107(c) of title 46.

13 (2) AMOUNTS.—The amount referred to in paragraph (1) is—

14 (A) for fiscal year 2016, \$7,700,000; and

15 (B) for fiscal year 2017 and each fiscal year after fiscal year
16 2017, the sum of—

17 (i) the available amount for the preceding fiscal year; and

18 (ii) the amount determined by multiplying—

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

20 and

21 (II) the change, relative to the preceding fiscal year,

22 in the Consumer Price Index for All Urban Consumers

23 published by the Department of Labor.

24 (3) LIMITATION OF USE.—The amount specified in paragraph (2) for
25 a fiscal year shall not be included in the amount of the annual appro-
26 priation distributed under section 227206(a) of this title for the fiscal
27 year.

28 **§ 227205. Requirements and restrictions concerning admin-**
29 **istrative expenses**

30 (a) AUTHORIZED EXPENSES FOR ADMINISTRATION.—Except as provided
31 in subsection (b), the Secretary may use amounts under section 227204(a)
32 of this title only for administrative expenses that directly support the imple-
33 mentation of this chapter that consist of—

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

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

1 (3) support costs directly associated with personnel costs authorized
2 under paragraphs (1) and (2), excluding costs associated with staffing
3 and operation of regional offices of USFWS and the Department of the
4 Interior other than for the purposes of this chapter;

5 (4) costs of determining under section 227211(b) of this title wheth-
6 er a comprehensive plan or a fish restoration and management project
7 of a State or other eligible jurisdiction is substantial in character and
8 design;

9 (5) overhead costs, including the costs of general administrative serv-
10 ices, that are directly attributable to administration of this chapter and
11 are based on—

12 (A) actual costs, as determined by a direct cost allocation meth-
13 odology approved by the Director of the Office of Management and
14 Budget for use by Federal agencies; or

15 (B) in the case of costs that are not determinable under sub-
16 paragraph (A), an amount per full-time equivalent employee au-
17 thorized under paragraphs (1) and (2) that does not exceed the
18 amount charged or assessed for costs per full-time equivalent em-
19 ployee for any other division or program of USFWS;

20 (6) costs incurred in auditing, every 5 years, the wildlife and sport
21 fish activities of each State fish and wildlife agency and the use of
22 funds under section 227211 of this title by each State fish and wildlife
23 agency;

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

25 (8) costs of necessary training of Federal and State full-time person-
26 nel and personnel of other eligible jurisdictions who administer this
27 chapter to improve administration of this chapter;

28 (9) costs of travel to States, the District of Columbia, territories,
29 and Canada by personnel who—

30 (A) administer this chapter on a full-time basis for purposes di-
31 rectly related to administration of comprehensive plans or fish res-
32 toration and management projects; or

33 (B) administer grants under section 227211 of this title or sub-
34 chapter III;

35 (10) costs of travel outside the United States (except travel to Can-
36 ada), by personnel who administer this chapter on a full-time basis, for
37 purposes that directly relate to administration of this chapter and that
38 are approved directly by the Assistant Secretary for Fish and Wildlife
39 and Parks;

40 (11) relocation expenses for personnel who, after relocation, will ad-
41 minister this chapter on a full-time basis for at least 1 year, as cer-

1 tified by the Director at the time at which the relocation expenses are
2 incurred; and

3 (12) costs to audit, evaluate, approve, disapprove, and advise con-
4 cerning grants under section 227211 of this title or subchapter III.

5 (b) REPORTING OF OTHER USES.—

6 (1) IN GENERAL.—Subject to paragraph (2), if the Secretary deter-
7 mines that amounts under section 227204(a) of this title should be
8 used for an administrative expense other than an administrative ex-
9 pense described in subsection (a), the Secretary—

10 (A) shall submit to the Committee on Environment and Public
11 Works of the Senate and the Committee on Natural Resources of
12 the House of Representatives a report describing the administra-
13 tive expense and stating the amount of the administrative expense;
14 and

15 (B) may use the available amounts for the administrative ex-
16 pense only after the end of the 30-day period beginning on the
17 date of submission of the report under subparagraph (A).

18 (2) MAXIMUM AMOUNT.—The Secretary may use under paragraph
19 (1) not more than \$25,000 for a fiscal year.

20 (c) RESTRICTION ON USE TO SUPPLEMENT GENERAL APPROPRIA-
21 TIONS.—The Secretary shall not use amounts under subsection (b) to sup-
22 plement the funding of a function for which general appropriations are
23 made for USFWS or any other entity of the Department of the Interior.

24 (d) AUDIT REQUIREMENT.—

25 (1) IN GENERAL.—The Inspector General of the Department of the
26 Interior shall procure the performance of biennial audits, in accordance
27 with generally accepted auditing standards, of expenditures and obliga-
28 tions of amounts used by the Secretary for administrative expenses in-
29 curred in implementation of this chapter.

30 (2) AUDITOR.—

31 (A) IN GENERAL.—An audit under this subsection shall be per-
32 formed under a contract that is awarded under competitive proce-
33 dures (as defined in section 132 of title 41) by a person or entity
34 that is not associated with the Department of the Interior (except
35 by way of a contract for the performance of an audit or other re-
36 view).

37 (B) SUPERVISION OF AUDITOR.—The auditor selected under
38 subparagraph (A) shall report to, and be supervised by, the In-
39 spector General of the Department of the Interior, except that the
40 auditor shall submit a copy of the biennial audit findings to the

1 Secretary at the time that the findings are submitted to the In-
2 spector General of the Department of the Interior.

3 (3) REPORT TO CONGRESS.—The Inspector General of the Depart-
4 ment of the Interior shall promptly submit to the Committee on Envi-
5 ronment and Public Works of the Senate and the Committee on Natu-
6 ral Resources of the House of Representatives—

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

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

10 **§ 227206. Apportionment among programs**

11 (a) IN GENERAL.—For each fiscal year through fiscal year 2021, the bal-
12 ance of each annual appropriation made in accordance with section 227203
13 of this title remaining after the distributions for expenses relating to this
14 chapter and recreational boating safety programs under section 227204 of
15 this title and for activities under section 227303 of this title shall be distrib-
16 uted as follows:

17 (1) COASTAL WETLAND.—An amount equal to 18.673 percent to the
18 Secretary for distribution as provided in the Coastal Wetlands Plan-
19 ning, Protection and Restoration Act (16 U.S.C. 3951 et seq.).

20 (2) BOATING SAFETY.—An amount equal to 17.315 percent to the
21 Secretary of the department in which the Coast Guard is operating for
22 State recreational boating safety programs under section 13107 of title
23 46.

24 (3) BOATING INFRASTRUCTURE IMPROVEMENT.—

25 (A) IN GENERAL.—An amount equal to 4 percent to the Sec-
26 retary for qualified projects under section 227406(c) of this title
27 and section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C.
28 1322note).

29 (B) LIMITATION.—Not more than 75 percent of the amount
30 under subparagraph (A) shall be available for projects under ei-
31 ther of section 227406(c) of this title or section 5604(c) of the
32 Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

33 (4) NATIONAL OUTREACH AND COMMUNICATIONS.—An amount
34 equal to 2 percent to the Secretary for the National Outreach and
35 Communications Program under section 227403 of this title. The
36 amount under this paragraph shall remain available for 3 fiscal years,
37 after which any portion of the amount that is unobligated by the Sec-
38 retary for the program may be expended by the Secretary under section
39 227207 of this title.

40 (b) ADMINISTRATIVE EXPENSES OF CERTAIN PROGRAMS.—

1 (1) IN GENERAL.—For each fiscal year, of the amounts appropriated
 2 under section 227203 of this title, the Secretary shall use only funds
 3 authorized for use under paragraphs (1), (3), and (4) of subsection (a)
 4 to pay the administrative expenses incurred in carrying out the provi-
 5 sions of law referred to in those paragraphs, respectively.

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

8 (c) TRANSFER OF CERTAIN FUNDS.—Amounts available under subsection
 9 (a)(3) that are unobligated by the Secretary after 3 fiscal years shall be
 10 transferred to the Secretary of the department in which the Coast Guard
 11 is operating and shall be expended for State recreational boating safety pro-
 12 grams under section 13107(a) of title 46.

13 **§ 227207. Apportionment among States**

14 (a) MANNER OF APPORTIONMENT.—

15 (1) IN GENERAL.—After the distributions for expenses relating to
 16 this chapter and recreational boating safety programs under section
 17 227204 of this title and for activities under section 227303 of this title,
 18 the Secretary shall apportion 58.012 percent of the balance of the an-
 19 nual appropriation made in accordance with section 227203 of this title
 20 among the States in the following manner:

21 (A) Forty percent in the proportion that the area of each State,
 22 including coastal and Great Lakes waters (as determined by the
 23 Secretary), bears to the total area of all the States.

24 (B) Sixty percent in the proportion that the number of persons
 25 holding paid licenses to fish for sport or recreation in each State
 26 in the 2d fiscal year preceding the fiscal year for which the appor-
 27 tionment is made, as certified to the Secretary by the State fish
 28 and wildlife agencies, bears to the number of those persons in all
 29 the States.

30 (2) MULTISTATE CONSERVATION PROJECT GRANTS.—The Secretary
 31 shall deduct from the amount to be apportioned under paragraph (1)
 32 the amounts available for grants under section 227302 of this title.

33 (3) DEFINITION OF FISCAL YEAR.—In paragraph (1)(B), the term
 34 “fiscal year”, with respect to the period for enumeration of persons
 35 holding licenses to fish, means a State’s fiscal or license year.

36 (b) EQUITABLE APPORTIONMENTS.—The apportionments in subsection
 37 (a) shall be adjusted equitably so that no State receives less than 1 percent
 38 nor more than 5 percent of the total amount apportioned.

39 (c) MINIMUM ALLOCATION.—When the apportionment to a State under
 40 this section is less than \$4,500 annually, the Secretary may allocate not
 41 more than \$4,500 of the appropriation under this section to the State to

1 carry out this chapter when the State certifies to the Secretary that it has
2 set aside not less than \$1,500 from its fish and wildlife funds or has made,
3 through its legislature, an appropriation of not less than \$1,500 to carry
4 out this chapter.

5 (d) AVAILABILITY OF APPORTIONED AMOUNTS.—

6 (1) UNEXPENDED AMOUNTS.—The appropriation apportioned to a
7 State for a fiscal year that remains unexpended at the close of the fis-
8 cal year may be made available for expenditure in that State until the
9 close of the succeeding fiscal year.

10 (2) APPORTIONMENT TO STATES.—An amount apportioned to a
11 State under this chapter that is unexpended or unobligated at the end
12 of the period during which it is available for expenditure on a fish res-
13 toration and management project may be made available for expendi-
14 ture by the Secretary to supplement the 58.012 percent of the balance
15 of each annual appropriation to be apportioned among the States and
16 other eligible jurisdictions under this section and section 227202 of this
17 title.

18 **§ 227208. Allocation of amounts by coastal States between**
19 **marine fish projects and freshwater fish projects**

20 (a) DEFINITION OF COASTAL STATE.—In this section, the term “coastal
21 State” means—

22 (1) the State of Alabama, Alaska, California, Connecticut, Delaware,
23 Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts,
24 Mississippi, New Hampshire, New Jersey, New York, North Carolina,
25 Oregon, Rhode Island, South Carolina, Texas, Virginia, or Washington;
26 or

27 (2) Puerto Rico, the Virgin Islands, Guam, American Samoa, or the
28 Northern Mariana Islands.

29 (b) IN GENERAL.—Subject to subsection (c), a coastal State, to the ex-
30 tent practicable, shall equitably allocate amounts apportioned to the coastal
31 State under this chapter—

32 (1) to marine fish projects in the same proportion as the estimated
33 number of resident marine anglers bears to the estimated number of
34 all resident anglers in that coastal State; and

35 (2) to freshwater fish projects in the same proportion as the esti-
36 mated number of resident freshwater anglers bears to the estimated
37 number of all resident anglers in that coastal State.

38 (c) PRESERVATION OF FRESHWATER PROJECT ALLOCATION AT 1988
39 LEVEL.—

40 (1) IN GENERAL.—Subject to paragraph (2), the amount allocated
41 by a coastal State pursuant to this section to freshwater fish projects

1 for each fiscal year shall not be less than the amount allocated by the
2 coastal State to the freshwater fish projects for fiscal year 1988.

3 (2) INAPPLICABILITY OF PARAGRAPH.—Paragraph (1) shall not
4 apply to a coastal State with respect to a fiscal year for which the
5 amount apportioned to the coastal State under this chapter is less than
6 the amount apportioned to the coastal State under this chapter for fis-
7 cal year 1988.

8 **§ 227209. Unallocated funds**

9 Any sum not allocated under sections 227206 and 227207 of this title
10 for a fiscal year may be made available for expenditure to carry out the pur-
11 poses of this chapter until the close of the succeeding fiscal year.

12 **§ 227210. Certification**

13 For each fiscal year, at the time at which a deduction or apportionment
14 is made, the Secretary shall certify to the Secretary of the Treasury and
15 to each State fish and wildlife agency—

16 (1) the amount that the Secretary estimates to be deducted for ad-
17 ministering this chapter; and

18 (2) the amount that the Secretary apportions to each State or other
19 eligible jurisdiction for the fiscal year.

20 **§ 227211. Comprehensive plans and fish restoration and
21 management projects**

22 (a) SUBMISSIONS.—A State or other eligible jurisdiction desiring to avail
23 itself of the benefits of this chapter shall, by its State fish and wildlife agen-
24 cy, submit programs or projects for fish restoration in one of the following
25 ways:

26 (1) COMPREHENSIVE FISH AND WILDLIFE RESOURCE MANAGEMENT
27 PLAN.—

28 (A) IN GENERAL.—A State or other eligible jurisdiction may
29 submit to the Secretary a comprehensive fish and wildlife resource
30 management plan that ensures the perpetuation of wildlife for the
31 economic, scientific, and recreational enrichment of the people.

32 (B) COMPREHENSIVE PLAN PERIOD.—A comprehensive plan—

33 (i) shall be for a period of not less than 5 years;

34 (ii) shall be based on projections of desires and needs of
35 the people for a period of not less than 15 years; and

36 (iii) shall include provisions for updating at intervals of not
37 more than 3 years.

38 (C) COMPREHENSIVE PLAN FORMAT.—A comprehensive plan
39 shall be provided in such a format as the Secretary may require.

40 (D) COMPREHENSIVE PLAN APPROVAL.—If the Secretary finds
41 that a comprehensive plan conforms to standards established by

1 the Secretary and the Secretary approves the comprehensive plan,
2 the Secretary may finance up to 75 percent of the cost of imple-
3 menting segments of the comprehensive plan meeting the purposes
4 of this chapter from funds apportioned under this chapter on the
5 Secretary's approval of an annual agreement submitted to the Sec-
6 retary.

7 (2) SUBMISSION OF STATEMENTS REGARDING A FISH RESTORATION
8 AND MANAGEMENT PROJECT.—

9 (A) IN GENERAL.—A State or other eligible jurisdiction may
10 submit to the Secretary full and detailed statements of a fish res-
11 toration and management project proposed for the State or other
12 eligible jurisdiction.

13 (B) FISH RESTORATION AND MANAGEMENT PROJECT AP-
14 PROVAL.—If the Secretary finds that a fish restoration and man-
15 agement project meets the standards set by the Secretary and the
16 Secretary approves the fish restoration and management project,
17 the State fish and wildlife agency shall furnish to the Secretary
18 such surveys, plans, specifications, and estimates for the fish res-
19 toration and management project as the Secretary may require.

20 (C) COST SHARING.—If the Secretary approves the surveys,
21 plans, specifications, and estimates for the fish restoration and
22 management project, the Secretary shall notify the State fish and
23 wildlife agency and immediately set aside an amount from the ap-
24 propriation made under section 227203 of this title that rep-
25 represents the share of the United States payable under this chapter
26 on account of the fish restoration and management project. The
27 amount set aside shall not exceed 75 percent of the total estimated
28 cost of the fish restoration and management project.

29 (b) CHARACTER AND DESIGN.—The Secretary shall approve only compre-
30 hensive plans or fish restoration and management projects that are substan-
31 tial in character and design.

32 (c) EXPENDITURE OF FUNDS.—The expenditure of funds authorized
33 under this chapter shall be applied only to an approved comprehensive plan
34 or fish restoration and management project. If otherwise applied, the com-
35 prehensive plan or fish restoration and management project shall be re-
36 placed by the State or other eligible jurisdiction before the State or other
37 eligible jurisdiction may participate in any further apportionment under this
38 chapter.

39 (d) AGREEMENT.—Payment of an amount apportioned under this chapter
40 shall not be made on a comprehensive plan or fish restoration and manage-
41 ment project until an agreement to participate in the comprehensive plan

1 or fish restoration and management project is submitted to and approved
2 by the Secretary.

3 (e) OVERHEAD OR INDIRECT COSTS.—Overhead or indirect costs for serv-
4 ices provided by central service activities of a State or other eligible jurisdic-
5 tion outside the State fish and wildlife agency charged against comprehen-
6 sive plans or fish restoration and management projects supported by funds
7 made available under this chapter shall not exceed, in a fiscal year, 3 per-
8 cent of the annual apportionment to the State or other eligible jurisdiction.

9 (f) AGREEMENTS TO FINANCE INITIAL COSTS OF ACQUISITION OF LAND
10 AND CONSTRUCTION OF STRUCTURES.—

11 (1) IN GENERAL.—The Secretary may enter into an agreement—

12 (A) to finance up to 75 percent of the initial costs of the acqui-
13 sition of land or interest in land and the construction of a struc-
14 ture or facility from appropriations currently available for the pur-
15 poses of this chapter; and

16 (B) to finance up to 75 percent of the remaining costs over such
17 a period of time as the Secretary may consider necessary.

18 (2) CONDITIONAL LIABILITY.—The liability of the United States in
19 an agreement under paragraph (1) is contingent on the continued
20 availability of funds for the purposes of this chapter.

21 **§ 227212. Payments**

22 (a) COMPREHENSIVE PLAN.—If a State or other eligible jurisdiction
23 elects to avail itself of the benefits of this chapter by preparing a compre-
24 hensive plan, and the comprehensive plan is approved by the Secretary, the
25 Secretary may, under such regulations as the Secretary may prescribe, ad-
26 vance payments to the State or other eligible jurisdiction for financing the
27 Federal pro rata share agreed on between the State fish and wildlife agency
28 and the Secretary.

29 (b) FISH RESTORATION AND MANAGEMENT PROJECTS.—

30 (1) PAYMENT REQUIRED ON PROJECT COMPLETION OR DURING THE
31 CONDUCT OF RESEARCH.—If the Secretary finds that a fish restoration
32 and management project approved by the Secretary has been com-
33 pleted, or if a fish restoration and management project approved by the
34 Secretary involving research relating to fish is being conducted, in com-
35 pliance with surveys, plans, specifications, and estimates submitted and
36 approved under section 227211(a)(2) of this title, the Secretary shall
37 pay the proper authority of the State or other eligible jurisdiction the
38 amount set aside for the fish restoration and management project.

39 (2) PARTIAL PAYMENTS OF FEDERAL SHARE.—The Secretary may
40 from time to time make payments on a fish restoration and manage-
41 ment project approved by the Secretary as it progresses, but the pay-

1 ments, including any previous payments, shall not be more than the
2 Federal pro rata share of the fish restoration and management project
3 in conformity with the surveys, plans, specifications, and estimates sub-
4 mitted and approved under section 227211(a)(2) of this title.

5 (e) **JOINT DETERMINATION OF PAYMENT TERMS.**—The Secretary and
6 the State fish and wildlife agency of a State or other eligible jurisdiction
7 may jointly determine at what times and in what amounts payments shall
8 be made under this chapter.

9 (d) **PAYMENTS BY SECRETARY OF THE TREASURY.**—Payments made
10 under this chapter shall be made from the appropriation made under section
11 227203 of this title to an official or depository designated by the State fish
12 and wildlife agency and authorized under the law of a State or other eligible
13 jurisdiction to receive public funds of the State or other eligible jurisdiction.

14 **Subchapter III—Multistate Conservation** 15 **Grant Program**

16 **§ 227301. Multistate conservation project requirements**

17 (a) **IN GENERAL.**—

18 (1) **MULTIPLE BENEFICIARIES.**—A multistate conservation project
19 shall be eligible for a grant under this subchapter if the project bene-
20 fits—

21 (A) at least 26 States or other eligible jurisdictions;

22 (B) a majority of the States or other eligible jurisdictions in a
23 region of USFWS; or

24 (C) a regional association of State fish and wildlife agencies.

25 (2) **PRIORITY PROJECTS.**—

26 (A) **IN GENERAL.**—The Secretary may make grants under this
27 subchapter only for projects identified on a priority list of fish res-
28 toration and management projects described in subparagraph (B).

29 (B) **PRIORITY LIST.**—A priority list referred to in subparagraph
30 (A) is a priority list of fish restoration and management projects
31 that the Association of Fish and Wildlife Agencies—

32 (i) prepares through a committee comprised of the heads
33 of State fish and wildlife agencies (or their designees), in con-
34 sultation with—

35 (I) nongovernmental organizations that represent con-
36 servation organizations;

37 (II) sportsmen organizations; and

38 (III) industries that fund the comprehensive plans and
39 fish restoration and management projects under this
40 chapter;

1 (ii) approves by vote of a majority of the heads of State
2 fish and wildlife agencies (or their designees); and

3 (iii) not later than October 1 of each fiscal year, submits
4 to the Assistant Director for Wildlife and Sport Fish Restora-
5 tion Programs.

6 (C) PUBLICATION.—The Assistant Director for Wildlife and
7 Sport Fish Restoration Programs shall publish in the Federal
8 Register each priority list submitted under subparagraph (B)(iii).

9 (b) ELIGIBLE GRANTEES.—

10 (1) IN GENERAL.—The Secretary may make a grant under this sub-
11 chapter to—

12 (A) a State or other eligible jurisdiction, or a group of States
13 or other eligible jurisdictions;

14 (B) USFWS, or a State or other eligible jurisdiction, or a group
15 of States or other eligible jurisdictions, for the purpose of carrying
16 out the National Survey of Fishing, Hunting, and Wildlife-Associ-
17 ated Recreation; or

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

19 (2) NONGOVERNMENTAL ORGANIZATIONS.—

20 (A) IN GENERAL.—A nongovernmental organization that applies
21 for a grant under this subchapter shall submit with the application
22 to the Association of Fish and Wildlife Agencies a certification
23 that the nongovernmental organization—

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

27 (ii) will use the grant funds in compliance with section
28 227304 of this title.

29 (B) PENALTIES.—A nongovernmental organization that uses
30 grant funds in violation of subparagraph (A) shall return all funds
31 received under this subchapter and be subject to any other appli-
32 cable penalties under law.

33 **§ 227302. Funding for multistate conservation project**
34 **grants**

35 (a) IN GENERAL.—Not more than \$3,000,000 shall be available to the
36 Secretary for making multistate conservation project grants in accordance
37 with this subchapter.

38 (b) PERIOD OF AVAILABILITY.—Amounts made available under sub-
39 section (a) shall remain available for making grants only for the 1st fiscal
40 year for which the amount is made available and the following fiscal year.

1 (c) APPORTIONMENT OF UNUSED AMOUNTS.—At the end of the period
 2 of availability under subsection (b), the Secretary shall apportion any
 3 amounts that remain available among the States and other eligible jurisdic-
 4 tions in the manner specified in section 227207 of this title, for use by the
 5 States and other eligible jurisdictions in the same manner as funds appor-
 6 tioned under section 227207 of this title.

7 **§ 227303. Funding for other activities**

8 (a) IN GENERAL.—Not more than \$1,200,000 of each annual appropria-
 9 tion under section 227203 of this title shall be distributed to the Secretary
 10 for use as provided in this section.

11 (b) FISHERIES COMMISSIONS.—Of the amount under subsection (a),
 12 \$200,000 shall be made available for each of—

- 13 (1) the Atlantic States Marine Fisheries Commission;
- 14 (2) the Gulf States Marine Fisheries Commission;
- 15 (3) the Pacific States Marine Fisheries Commission; and
- 16 (4) the Great Lakes Fisheries Commission.

17 (c) SPORT FISHING AND BOATING PARTNERSHIP COUNCIL.—Of the
 18 amount under subsection (a), \$400,000 shall be made available for the
 19 Sport Fishing and Boating Partnership Council established by USFWS.

20 **§ 227304. Limitations on use of grants**

21 A grant under this subchapter shall not be used, in whole or in part, for
 22 an activity, project, or program that promotes or encourages opposition to
 23 the regulated taking of fish.

24 **§ 227305. Inapplicability of Federal Advisory Committee
 25 Act**

26 The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to
 27 an activity carried out under this subchapter.

28 **Subchapter IV—Recreational Boating,
 29 Aquatic Resource Education, and Other
 30 Programs**

31 **§ 227401. Funding for recreational boating purposes**

32 (a) ALLOCATION OF APPORTIONED FUNDS.—

33 (1) IN GENERAL.—A State or other eligible jurisdiction shall allocate
 34 15 percent of the funds apportioned to the State or other eligible jurisdic-
 35 tion for each fiscal year under sections 227202 and 227207 of this
 36 title for the payment of up to 75 percent of the costs of the acquisition,
 37 development, renovation, or improvement of facilities (and auxiliary fa-
 38 cilities necessary to ensure the safe use of the facilities) that create or
 39 add to public access to the waters of the United States to improve the
 40 suitability of the waters for recreational boating purposes.

1 (2) INAPPLICABILITY OF REQUIRED AMOUNT FOR ALLOCATION.—
2 Notwithstanding paragraph (1), a State or other eligible jurisdiction
3 within a USFWS administrative region may allocate more or less than
4 15 percent in a fiscal year for the payments described in paragraph
5 (1), if the total regional allocation averages 15 percent over a 5-year
6 period.

7 (b) PERIOD OF AVAILABILITY.—Funds that are allocated by a State or
8 other eligible jurisdiction under subsection (a) in a fiscal year that remain
9 unexpended or unobligated at the close of the fiscal year may be made avail-
10 able for the purposes described in subsection (a) during the succeeding 4
11 fiscal years, but any portion of the funds that remain unexpended or unobli-
12 gated at the close of the 4-fiscal year period may be made available for ex-
13 penditure by the Secretary to supplement the 58.012 percent of the balance
14 of each annual appropriation to be apportioned among the States and other
15 eligible jurisdictions under sections 227202 and 227207 of this title.

16 **§ 227402. Aquatic resource education program and out-**
17 **reach and communications program**

18 (a) FUNDING.—A State or other eligible jurisdiction may use not more
19 than 15 percent of the funds apportioned to the State or other eligible jurisdic-
20 tion under sections 227202 and 227207 of this title to pay up to 75 per-
21 cent of the costs of an aquatic resource education program and outreach
22 and communications program for the purpose of increasing public under-
23 standing of the Nation's water resources and associated aquatic life forms.

24 (b) NON-FEDERAL SHARE.—The non-Federal share of the costs referred
25 to in subsection (a) may not be derived from other Federal grant programs.

26 (c) REGULATIONS.—The Secretary shall prescribe such regulations as the
27 Secretary considers advisable regarding the criteria for the programs under
28 this section.

29 **§ 227403. National outreach and communications program**

30 (a) NATIONAL PLAN.—The Secretary shall develop and implement, in co-
31 operation and consultation with the Sport Fishing and Boating Partnership
32 Council, a national plan for outreach and communications.

33 (b) CONTENTS.—The national plan shall—

34 (1) provide guidance, including guidance on the development of an
35 administrative process and funding priorities, for outreach and commu-
36 nications programs; and

37 (2) provide for the establishment of a national program.

38 (c) FUNDING FOR OUTREACH AND COMMUNICATIONS PROGRAMS.—
39 Under the national plan, the Secretary may obligate amounts available
40 under sections 227204(a) or 227206(a)(4) of this title—

1 (1) to make a grant to a State, other eligible jurisdiction, or private
2 entity to pay all or a portion of the cost of carrying out an outreach
3 and communications program under the national plan; or

4 (2) to fund a contract with a State, other eligible jurisdiction, or pri-
5 vate entity to carry out an outreach and communications program
6 under the national plan.

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

9 **§ 227404. State outreach and communications programs**

10 (a) DEFINITION OF STATE PLAN.—In this section, the term “State plan”
11 means a plan for an outreach and communications program developed by
12 a State or other eligible jurisdiction under subsection (b).

13 (b) IN GENERAL.—A State or other eligible jurisdiction shall develop a
14 plan for an outreach and communications program and submit the State
15 plan to the Secretary.

16 (c) STATE PLAN REQUIREMENTS.—In developing the State plan, a State
17 or other eligible jurisdiction shall—

18 (1) review the national plan developed under section 227403 of this
19 title;

20 (2) consult with anglers, boaters, the sportfishing and boating indus-
21 tries, and the general public; and

22 (3) establish priorities for the outreach and communications program
23 of the State or other eligible jurisdiction proposed for implementation.

24 **§ 227405. Pumpout stations and waste reception facilities**

25 Amounts apportioned to States and other eligible jurisdictions under sec-
26 tions 227202 and 227207 of this title may be used to pay not more than
27 75 percent of the costs of constructing, renovating, operating, or maintain-
28 ing pumpout stations and waste reception facilities (as those terms are de-
29 fined in the Clean Vessel Act of 1992 (33 U.S.C. 1322 note)).

30 **§ 227406. Boating infrastructure**

31 (a) DEFINITIONS.—In this section:

32 (1) NONTRAILERABLE RECREATIONAL VESSEL.—The term
33 “nontrailerable recreational vessel” means a recreational vessel 26 feet
34 in length or longer that—

35 (A) is operated primarily for pleasure by the owner of the ves-
36 sel; or

37 (B) is leased, rented, or chartered by the owner of the vessel
38 to another person for the person’s pleasure.

39 (2) FACILITY FOR TRANSIENT NONTRAILERABLE RECREATIONAL
40 VESSELS.—The term “facility for transient nontrailerable recreational
41 vessels” includes a mooring buoy, day-dock, navigational aid, seasonal

1 slip, safe harbor, or similar structure located on any navigable water,
2 that is available to the general public (as determined by the Secretary)
3 and designed for temporary use by nontrailerable recreational vessels.

4 (b) PLAN.—A State or other eligible jurisdiction may develop and submit
5 to the Secretary a plan for the construction, renovation, and maintenance
6 of a facility for transient nontrailerable recreational vessels, and access to
7 the facility, to meet the needs of nontrailerable recreational vessels operat-
8 ing on navigable waters in the State or other eligible jurisdiction.

9 (c) GRANT PROGRAM.—

10 (1) MATCHING GRANTS—The Secretary shall obligate amounts made
11 available under section 227206(a)(3) of this title to make grants to any
12 State or other eligible jurisdiction to pay not more than 75 percent of
13 the cost to a State or other eligible jurisdiction of constructing, ren-
14 ovating, or maintaining a facility for transient nontrailerable rec-
15 reational vessels.

16 (2) PRIORITIES.—In awarding a grant under paragraph (1), the Sec-
17 retary shall give priority to a project that—

18 (A) consists of the construction, renovation, or maintenance of
19 a facility for transient nontrailerable recreational vessels in accord-
20 ance with a plan submitted by a State or other eligible jurisdiction
21 under subsection (b);

22 (B) provides for public/private partnership efforts to develop,
23 maintain, and operate a facility for transient nontrailerable rec-
24 reational vessels; and

25 (C) proposes innovative ways to increase the availability of fa-
26 cilities for transient nontrailerable recreational vessels.

27 **Subchapter V—Administrative Provisions**

28 **§ 227501. Regulations**

29 The Secretary may prescribe regulations for carrying out this chapter.

30 **§ 227502. Construction work and labor**

31 Construction work and labor on a fish restoration and management
32 project in a State or other eligible jurisdiction shall be performed in accord-
33 ance with the law of the State or other eligible jurisdiction and under the
34 direct supervision of the State fish and wildlife agency, subject to the in-
35 spection and approval of the Secretary and in accordance with regulations
36 prescribed under this chapter.

37 **§ 227503. Maintenance of projects**

38 Maintenance of a fish restoration and management project established
39 under this chapter shall be the duty of a State or other eligible jurisdiction
40 in accordance with the law of the State or other eligible jurisdiction.

1 **§ 227504. Title to property**

2 Title to real or personal property acquired by a State or other eligible
3 jurisdiction, and title to an improvement placed on land owned by a State
4 or other eligible jurisdiction, through the use of funds paid to the State or
5 other eligible jurisdiction under this chapter, shall be vested in the State
6 or other eligible jurisdiction.

7 **§ 227505. State use of contributions**

8 (a) IN GENERAL.—A State or other eligible jurisdiction may use contribu-
9 tions of funds, real property, materials, and services to carry out an activity
10 under this chapter in lieu of the State’s or other eligible jurisdiction’s pay-
11 ment of the share of the State or other eligible jurisdiction of the cost of
12 the activity.

13 (b) FAIR MARKET VALUE.—The share of the State or other eligible juris-
14 diction referred to in subsection (a) shall be considered to be paid in an
15 amount equal to the fair market value of the contribution used under sub-
16 section (a).

17 **Chapter 229—New England Fishery**
18 **Resources Restoration**

Sec.

229101. Purpose.

229102. Restoration programs.

229103. Restoration plans.

19 **§ 229101. Purpose**

20 The purpose of this chapter is to ensure timely and effective implementa-
21 tion of restoration plans and programs for Atlantic salmon and other fishery
22 resources of selected river systems in New England.

23 **§ 229102. Restoration programs**

24 (a) IN GENERAL.—The Director, in consultation with the Assistant Ad-
25 ministrator for Fisheries of NOAA, shall formulate, establish, and imple-
26 ment programs to restore and maintain nationally significant interjurisdic-
27 tional fishery resources originating in New England river systems, including
28 the Connecticut, Thames, Pawcatuck, Merrimack, Saco, Androscoggin, Ken-
29 nebec, Sheepscot, Duck Trap, St. George, Penobscot, Union, Narraguagus,
30 Pleasant, Machias, Dennys, St. Croix, Meduxnekeag, and Aroostook and
31 their tributaries.

32 (b) CONFORMITY WITH OTHER PLANS.—The programs under subsection
33 (a) shall be in accordance with the schedule and responsibilities established
34 in comprehensive basin-wide restoration plans prepared by the Director in
35 cooperation with State, local, and other entities involved and interested in
36 the conservation and management of the affected fishery resources.

1 **§ 229103. Restoration plans**

2 (a) IN GENERAL.—Preparation and periodic revision of restoration plans
3 and their implementation shall be based on a memorandum of agreement
4 for each restoration program entered into by the Director and cooperating
5 entities.

6 (b) ANNUAL REPORT.—The Director shall prepare and submit to the
7 Committee on Natural Resources of the House of Representatives and the
8 Committee on Environment and Public Works of the Senate an annual re-
9 port documenting activities undertaken and accomplishments achieved in
10 fulfillment of this chapter, including an assessment of the prognosis for res-
11 toration of each of the stocks and species involved.

12 **Chapter 231—Conservation of Anadromous**
13 **Fishery Resources**

Sec.

- 231101. Definitions.
- 231102. Cooperative agreements with States.
- 231103. Authorities of the Secretary.
- 231104. Activities on land administered by other Federal agencies.
- 231105. Recommendations to Secretary of Health and Human Services.
- 231106. Miscellaneous.
- 231107. Authorization of appropriations.

14 **§ 231101. Definitions**

15 In this chapter:

16 (1) BASIN.—The term “basin” includes a river and its tributary, a
17 lake, and any other body of water or portion of a body of water.

18 (2) COOPERATIVE AGREEMENT.—The term “cooperative agreement”
19 means a cooperative agreement under section 231102(a) of this title.

20 (3) INTERSTATE COMMISSION.—The term “interstate commission”
21 means—

22 (A) the Commission established by the Atlantic States Marine
23 Fisheries Compact (as consented to and approved by Act of May
24 4, 1942 (ch. 283, 56 Stat. 267));

25 (B) the Commission established by the Pacific Marine Fisheries
26 Compact (as consented to and approved by Act of July 24, 1947
27 (ch. 316, 61 Stat. 419)); or

28 (C) the Commission established by the Gulf States Marine Fish-
29 eries Compact (as consented to and approved by Act of May 19,
30 1949 (ch. 128, 63 Stat. 70)).

31 (4) SECRETARY.—The term “Secretary” means the Secretary of the
32 Interior or the Secretary of Commerce, as program responsibilities are
33 vested under section 107105 of this title.

34 **§ 231102. Cooperative agreements with States**

35 (a) COOPERATIVE AGREEMENTS RELATING TO CONSERVATION.—

1 (1) IN GENERAL.—The Secretary may enter into a cooperative agree-
2 ment with 1 or more States acting jointly or severally, and when the
3 Secretary considers it appropriate, with other non-Federal interests, to
4 conserve, develop, and enhance—

5 (A) the anadromous fishery resources of the Nation—
6 (i) that are subject to depletion from water resources devel-
7 opments and other causes; or

8 (ii) with respect to which the United States has made con-
9 servation commitments by international agreements; and

10 (B) the fish in the Great Lakes and Lake Champlain that as-
11 cend streams to spawn.

12 (2) CONTENTS.—A cooperative agreement shall describe—

13 (A) the actions to be taken by the Secretary and the cooperating
14 parties;

15 (B) the benefits that are expected to be derived by the States
16 and other non-Federal interests;

17 (C) the estimated cost of the actions described in subparagraph
18 (A);

19 (D) the share of the cost to be borne by the Federal Govern-
20 ment and by the States and other non-Federal interests;

21 (E) the term of the cooperative agreement;

22 (F) the terms and conditions for disposing of any real or per-
23 sonal property acquired by the Secretary during or at the end of
24 the term of the cooperative agreement; and

25 (G) such other terms and conditions as the Secretary considers
26 desirable.

27 (b) OTHER AGREEMENTS.—The Secretary may enter into an agreement
28 with a State for—

29 (1) the operation of a facility constructed pursuant to this chapter;
30 or

31 (2) the management and administration of—

32 (A) land or an interest in land acquired pursuant to this chap-
33 ter; or

34 (B) a facility constructed pursuant to this chapter.

35 (c) COST SHARING.—

36 (1) FEDERAL SHARE.—Except as provided in paragraph (3), the
37 Federal share referred to in subsection (a)(2)(D), including the oper-
38 ation and maintenance costs of a facility constructed by the Secretary
39 under this chapter, which the Secretary annually determines to be a
40 proper Federal cost, shall not exceed 50 percent of the cost exclusive
41 of the value of any Federal land involved.

1 (2) NON-FEDERAL SHARE.—The non-Federal share may be in the
2 form of—

3 (A) money; or

4 (B) real or personal property, the value of which is to be deter-
5 mined by the Secretary.

6 (3) INCREASE OF FEDERAL SHARE.—

7 (A) COOPERATIVE AGREEMENTS WITH 2 OR MORE STATES.—If
8 2 or more States having a common interest in a basin jointly enter
9 into a cooperative agreement to carry out a research and develop-
10 ment program to conserve, develop, and enhance anadromous fish-
11 ery resources of the Nation or fish in the Great Lakes and Lake
12 Champlain that ascend streams to spawn, the Federal share of the
13 program costs shall be increased to a maximum of 66²/₃ percent.

14 (B) STATES WITH INTERSTATE FISHERIES MANAGEMENT
15 PLAN.—In the case of a State that implements an interstate fish-
16 eries management plan for anadromous fishery resources prepared
17 by an interstate commission, the Federal share of a grant made
18 under this section to carry out activities required by the plan shall
19 be up to 90 percent.

20 (d) REQUIRED RESEARCH.—In carrying out responsibilities under this
21 section, the Secretary shall conduct, promote, and encourage research in
22 preparation for the implementation of the use of ecosystems and interspecies
23 approaches to the conservation and management of anadromous and Great
24 Lakes fishery resources.

25 **§ 231103. Authorities of the Secretary**

26 (a) IN GENERAL.—The Secretary, in accordance with a cooperative agree-
27 ment, may—

28 (1) conduct investigations, engineering and biological surveys, and
29 research that may be desirable to carry out the conservation program
30 pursuant to the cooperative agreement;

31 (2) carry out stream clearance activities;

32 (3) construct, install, maintain, and operate devices and structures
33 for—

34 (A) the improvement of feeding and spawning conditions;

35 (B) the protection of fishery resources;

36 (C) the facilitation of free migration of fish; and

37 (D) the control of sea lamprey;

38 (4) construct, operate, and maintain fish hatcheries where necessary
39 to accomplish the purposes of this chapter;

40 (5) conduct such studies, make such reports on the studies, and
41 make such recommendations as the Secretary determines to be appro-

1 Secretary of Health and Human Services pursuant to the recommenda-
2 tions—

3 (1) shall be designed to enhance the quality of any interstate or navi-
4 gable waters or a tributary of any interstate or navigable waters; and

5 (2) shall take into consideration all other legitimate uses of any
6 interstate or navigable waters or a tributary of any interstate or navi-
7 gable waters.

8 **§ 231106. Miscellaneous**

9 (a) WATER RESOURCES PROJECTS.—

10 (1) IN GENERAL.—This chapter does not authorize the formulation
11 or construction of water resources projects, except that water resources
12 projects that the Secretary determines are needed solely for the con-
13 servation, protection, and enhancement of anadromous fishery re-
14 sources and the fish in the Great Lakes and Lake Champlain that as-
15 cend streams to spawn may be planned and constructed by—

16 (A) the Bureau of Reclamation in the geographic area of re-
17 sponsibility of the Bureau as of October 30, 1965;

18 (B) the Corps of Engineers;

19 (C) the Department of Agriculture; or

20 (D) the States.

21 (2) FUNDING.—The water resources projects that may be planned
22 and constructed under paragraph (1) may be planned and constructed
23 with funds made available by the Secretary under this chapter and sub-
24 ject to the cost-sharing and appropriations provisions of this chapter.

25 (b) INAPPLICABILITY TO COLUMBIA RIVER BASIN.—This chapter does
26 not affect, modify, or apply to the Columbia River Basin in Oregon, Wash-
27 ington, or Idaho.

28 (c) STATE OF IDAHO.—The State of Idaho is eligible on an equal stand-
29 ing with other States for Federal funding for purposes authorized by this
30 chapter.

31 **§ 231107. Authorization of appropriations**

32 There are authorized to be appropriated to carry out this chapter
33 \$4,500,000 for each of fiscal years 2007 through 2012.

34 **Chapter 233—Marine Turtle Conservation**

Sec.

233101. Definitions.

233102. Marine turtle conservation assistance.

233103. Marine Turtle Conservation Fund.

233104. Advisory group.

233105. Authorization of appropriations.

35 **§ 233101. Definitions**

36 In this chapter:

1 (1) CITES.—The term “CITES” means the Convention on Inter-
2 national Trade in Endangered Species of Wild Fauna and Flora, done
3 at Washington March 3, 1973 (27 UST 1087; TIAS 8249).

4 (2) CONSERVATION.—

5 (A) IN GENERAL.—The term “conservation” means the use of
6 all methods and procedures necessary to protect nesting habitats
7 and marine turtles in nesting habitats.

8 (B) INCLUSIONS.—The term “conservation” includes—

9 (i) protection, restoration, and management of nesting
10 habitats;

11 (ii) onsite research and monitoring of nesting populations,
12 nesting habitats, annual reproduction, and species population
13 trends;

14 (iii) assistance in the development, implementation, and im-
15 provement of national and regional management plans for
16 nesting habitat ranges;

17 (iv) enforcement and implementation of CITES and laws of
18 foreign countries to—

19 (I) protect and manage nesting populations and nest-
20 ing habitats; and

21 (II) prevent illegal trade of marine turtles;

22 (v) training of local law enforcement officials in the inter-
23 diction and prevention of—

24 (I) the illegal killing of marine turtles on nesting habi-
25 tat; and

26 (II) illegal trade in marine turtles;

27 (vi) initiatives to resolve conflicts between humans and ma-
28 rine turtles over nesting habitats;

29 (vii) community outreach and education; and

30 (viii) strengthening of the ability of local communities to
31 implement nesting population and nesting habitat conserva-
32 tion programs.

33 (3) CONSERVATION PROJECT.—The term “conservation project”
34 means a project for the conservation of marine turtles.

35 (4) MARINE TURTLE.—

36 (A) IN GENERAL.—The term “marine turtle” means a turtle of
37 the family Cheloniidae or Dermochelyidae.

38 (B) INCLUSIONS.—The term “marine turtle” includes—

39 (i) a part, product, egg, or offspring of a turtle described
40 in subparagraph (A); and

41 (ii) a carcass of a turtle described in subparagraph (A).

1 (5) MULTINATIONAL SPECIES CONSERVATION FUND.—The term
2 “Multinational Species Conservation Fund” means the fund established
3 in section 299101 of this title.

4 (6) NESTING HABITAT.—The term “nesting habitat” means nesting
5 habitat of marine turtles in a foreign country.

6 (7) SECRETARY.—The term “Secretary” means the Secretary of the
7 Interior.

8 (8) TURTLE FUND.—The term “Turtle Fund” means the Marine
9 Turtle Conservation Fund established in section 233103 of this title.

10 **§ 233102. Marine turtle conservation assistance**

11 (a) IN GENERAL.—Subject to the availability of funds and in consultation
12 with other Federal officials, the Secretary shall use amounts in the Turtle
13 Fund to provide financial assistance for conservation projects for which pro-
14 posals are approved by the Secretary in accordance with this section.

15 (b) CONSERVATION PROJECT PROPOSALS.—

16 (1) ELIGIBLE APPLICANTS.—A proposal for a conservation project
17 may be submitted to the Secretary by—

18 (A) a wildlife management authority of a foreign country that
19 has within its boundaries nesting habitat if the activities of the au-
20 thority directly or indirectly affect marine turtle conservation; or

21 (B) any other person with the demonstrated expertise required
22 for the conservation of marine turtles.

23 (2) REQUIRED ELEMENTS.—A conservation project proposal shall in-
24 clude—

25 (A) a statement of the purposes of the conservation project;

26 (B) the name of the individual with overall responsibility for the
27 conservation project;

28 (C) a description of the qualifications of the individuals who will
29 conduct the conservation project;

30 (D) a description of—

31 (i) methods for conservation project implementation and
32 outcome assessment;

33 (ii) staff and community management for the conservation
34 project; and

35 (iii) the logistics of the conservation project;

36 (E) an estimate of the amount of funds and length of time re-
37 quired to complete the conservation project;

38 (F) evidence of support for the conservation project by appro-
39 priate governmental entities of the countries in which the con-
40 servation project will be conducted, if the Secretary determines

1 that the support is required for the success of the conservation
2 project;

3 (G) information regarding the source and amount of matching
4 funds available for the conservation project; and

5 (H) any other information that the Secretary considers nec-
6 essary for evaluating the eligibility of the conservation project for
7 funding under this chapter.

8 (e) CONSERVATION PROJECT REVIEW, CONSULTATION, AND AP-
9 PROVAL.—

10 (1) REVIEW.—The Secretary shall—

11 (A) not later than 30 days after receiving a conservation project
12 proposal, provide a copy of the proposal to other Federal officials,
13 as appropriate; and

14 (B) review each conservation project proposal in a timely man-
15 ner to determine whether the proposal meets the criteria specified
16 in subsection (d).

17 (2) CONSULTATION AND APPROVAL.—Not later than 180 days after
18 receiving a conservation project proposal and subject to the availability
19 of funds, the Secretary, after consulting with other Federal officials,
20 as appropriate, shall—

21 (A) consult on the proposal with the government of each coun-
22 try in which the conservation project is to be conducted;

23 (B) after taking into consideration any comments resulting from
24 the consultation, approve or disapprove the conservation project
25 proposal; and

26 (C) provide written notification of the approval or disapproval
27 to the person that submitted the conservation project proposal,
28 other Federal officials, and each country described in subpara-
29 graph (A).

30 (d) CRITERIA FOR APPROVAL.—The Secretary may approve a conserva-
31 tion project proposal under this section if the conservation project will help
32 recover and sustain viable populations of marine turtles in the wild by as-
33 sisting efforts in foreign countries to implement marine turtle conservation
34 programs.

35 (e) CONSERVATION PROJECT SUSTAINABILITY.—To the maximum extent
36 practicable, in determining whether to approve conservation project propos-
37 als under this section, the Secretary shall give preference to conservation
38 projects that are designed to ensure effective, long-term conservation of ma-
39 rine turtles and nesting habitats.

1 (f) MATCHING FUNDS.—In determining whether to approve conservation
2 project proposals under this section, the Secretary shall give preference to
3 conservation projects for which matching funds are available.

4 (g) REPORTS.—

5 (1) IN GENERAL.—A person that receives assistance under this sec-
6 tion for a conservation project shall submit to the Secretary periodic
7 reports (at such intervals as the Secretary may require) that include
8 all information that the Secretary, after consultation with other govern-
9 ment officials, determines is necessary to evaluate the progress and
10 success of the conservation project for the purposes of ensuring positive
11 results, assessing problems, and fostering improvements.

12 (2) AVAILABILITY TO THE PUBLIC.—A report under paragraph (1)
13 and any other document relating to a conservation project for which
14 financial assistance is provided under this chapter shall be made avail-
15 able to the public.

16 **§ 233103. Marine Turtle Conservation Fund**

17 (a) ESTABLISHMENT.—There is established in the Multinational Species
18 Conservation Fund a separate account to be known as the “Marine Turtle
19 Conservation Fund”, consisting of—

20 (1) amounts transferred to the Secretary of the Treasury for deposit
21 in the Turtle Fund under subsection (e);

22 (2) amounts appropriated to the Turtle Fund under section 233105
23 of this title; and

24 (3) any interest earned on investment of amounts in the Turtle Fund
25 under subsection (e).

26 (b) EXPENDITURES FROM TURTLE FUND.—

27 (1) IN GENERAL.—Subject to paragraph (2), on request by the Sec-
28 retary, the Secretary of the Treasury shall transfer from the Turtle
29 Fund to the Secretary, without further appropriation, the amounts that
30 the Secretary determines are necessary to carry out section 233102 of
31 this title.

32 (2) ADMINISTRATIVE EXPENSES.—Of the amounts in the Turtle
33 Fund available for each fiscal year, the Secretary may expend not more
34 than 3 percent, or up to \$80,000, whichever is greater, to pay the ad-
35 ministrative expenses necessary to carry out this chapter.

36 (c) INVESTMENT OF AMOUNTS.—

37 (1) IN GENERAL.—The Secretary of the Treasury shall invest the
38 portion of the Turtle Fund that is not, in the judgment of the Sec-
39 retary of the Treasury, required to meet current withdrawals. Invest-
40 ments may be made only in interest-bearing obligations of the United
41 States.

1 (2) ACQUISITION OF OBLIGATIONS.—For the purpose of investments
2 under paragraph (1), an obligation may be acquired—

- 3 (A) on original issue at the issue price; or
4 (B) by purchase of an outstanding obligation at the market
5 price.

6 (3) SALE OF OBLIGATIONS.—An obligation acquired by use of the
7 Turtle Fund may be sold by the Secretary of the Treasury at the mar-
8 ket price.

9 (4) CREDITS TO TURTLE FUND.—The interest on, and the proceeds
10 from the sale or redemption of, an obligation held in the Turtle Fund
11 shall be credited to the Turtle Fund.

12 (d) TRANSFERS OF AMOUNTS.—

13 (1) IN GENERAL.—The amounts required to be transferred to the
14 Turtle Fund under this section shall be transferred at least monthly
15 from the general fund of the Treasury to the Turtle Fund on the basis
16 of estimates made by the Secretary of the Treasury.

17 (2) ADJUSTMENTS.—Proper adjustment shall be made in amounts
18 subsequently transferred to the extent prior estimates were in excess
19 of or less than the amounts required to be transferred.

20 (e) ACCEPTANCE AND USE OF DONATIONS.—The Secretary may accept
21 and use donations to provide assistance under section 233102 of this title.
22 Amounts received by the Secretary in the form of donations shall be trans-
23 ferred to the Secretary of the Treasury for deposit in the Turtle Fund.

24 **§ 233104. Advisory group**

25 (a) IN GENERAL.—To assist in carrying out this chapter, the Secretary
26 may convene an advisory group (referred to in this section as “advisory
27 group”) consisting of individuals representing public and private organiza-
28 tions actively involved in the conservation of marine turtles.

29 (b) PUBLIC PARTICIPATION.—

30 (1) MEETINGS.—The advisory group shall—

31 (A) ensure that each meeting of the advisory group is open to
32 the public; and

33 (B) provide, at each meeting, an opportunity for interested per-
34 sons to present oral or written statements concerning items on the
35 agenda.

36 (2) NOTICE.—The Secretary shall provide to the public timely notice
37 of each meeting of the advisory group.

38 (3) MINUTES.—Minutes of each meeting of the advisory group shall
39 be kept by the Secretary and shall be made available to the public.

1 (e) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The
2 Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the ad-
3 visory group.

4 **§ 233105. Authorization of appropriations**

5 There is authorized to be appropriated to the Turtle Fund \$5,000,000
6 for each of fiscal years 2005 through 2009.

7 **Chapters 235 Through 247—Reserved**
8 **Chapter 249—Miscellaneous**

Sec.

249101. Expenditure of appropriations for propagation of food fishes.

249102. Research and development to improve fish survival.

9 **§ 249101. Expenditure of appropriations for propagation of**
10 **food fishes**

11 Appropriations for propagation of food fishes shall not be expended for
12 hatching or planting fish or eggs in a State—

13 (1) in which, in the judgment of the Secretary of the Interior or Sec-
14 retary of Commerce, as appropriate, there is no adequate law for the
15 protection of food fishes; or

16 (2) in which either Secretary referred to in paragraph (1) and au-
17 thorized agents of either Secretary are not accorded full and free right
18 to conduct fish cultural operations and all fishing and other operations
19 necessary for fish cultural operations, in such manner and at such
20 times as are considered necessary and proper by either Secretary or the
21 agents.

22 **§ 249102. Research and development to improve fish sur-**
23 **vival**

24 (a) SALMON SURVIVAL ACTIVITIES.—

25 (1) IN GENERAL.—In conjunction with the Secretary of Commerce
26 and the Secretary of the Interior, the Secretary of the Army shall carry
27 out research and development activities ongoing as of August 17, 1999,
28 and may carry out or participate in additional research and develop-
29 ment activities, for the purpose of developing innovative methods and
30 technologies for improving the survival of salmon, especially salmon in
31 the Columbia/Snake River Basin.

32 (2) ONGOING ACTIVITIES.—Ongoing research and development ac-
33 tivities under paragraph (1) may include research and development re-
34 lated to—

35 (A) impacts from water resources projects and other impacts on
36 salmon life cycles;

37 (B) juvenile and adult salmon passage;

38 (C) light and sound guidance systems;

- 1 (D) surface-oriented collector systems;
- 2 (E) transportation mechanisms; and
- 3 (F) dissolved gas monitoring and abatement.

4 (3) ADDITIONAL ACTIVITIES.—Additional research and development
5 activities under paragraph (1) may include research and development
6 related to—

- 7 (A) studies of juvenile salmon survival in spawning and rearing
8 areas;
- 9 (B) estuary and near-ocean juvenile and adult salmon survival;
- 10 (C) impacts on salmon life cycles from sources other than water
11 resource projects;
- 12 (D) cryopreservation of fish gametes and formation of a germ
13 plasma repository for threatened and endangered populations of
14 native fish; and
- 15 (E) other innovative technologies and actions to improve fish
16 survival, including the survival of resident fish.

17 (4) COORDINATION.—The Secretary of the Army shall coordinate ac-
18 tivities under this subsection with Federal, State, and local agencies,
19 Indian tribes, and the Northwest Power Planning Council.

20 (5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to
21 be appropriated \$43,400,000 to carry out research and development ac-
22 tivities under paragraph (3).

23 (b) ADVANCED TURBINE DEVELOPMENT.—

24 (1) IN GENERAL.—In conjunction with the Secretary of Energy, the
25 Secretary of the Army shall carry out efforts toward developing and in-
26 stallng in dams operated by the Secretary of the Army innovative, effi-
27 cient, and environmentally safe hydropower turbines, including design
28 of fish-friendly turbines, for use on the Columbia/Snake River
29 hydrosystem.

30 (2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to
31 be appropriated \$35,000,000 to carry out this subsection.

32 (c) MANAGEMENT OF PREDATION ON COLUMBIA/SNAKE RIVER SYSTEM
33 NATIVE FISHES.—

34 (1) NESTING AVIAN PREDATORS.—In conjunction with the Secretary
35 of Commerce and the Secretary of the Interior, and consistent with a
36 management plan to be developed by USFWS, the Secretary of the
37 Army shall carry out methods to reduce nesting populations of avian
38 predators on dredge spoil islands in the Columbia River under the ju-
39 risdiction of the Secretary of the Army.

1 (2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to
2 be appropriated \$10,000,000 to carry out research and development ac-
3 tivities under this subsection.

4 (d) IMPLEMENTATION.—Nothing in this section affects the authority of
5 the Secretary of the Army to implement the results of the research and de-
6 velopment carried out under this section or any other law.

7 **Subdivision 2—International Agreements**
8 **Chapter 251—Whaling Convention**

Sec.

- 251101. Definitions.
- 251102. United States Commissioner; Deputy United States Commissioner.
- 251103. Authorities of the Secretary of State.
- 251104. Unlawful acts.
- 251105. Licenses.
- 251106. Criminal penalties.
- 251107. Allocation of responsibility for administration and enforcement.
- 251108. Enforcement.
- 251109. Cooperation relating to scientific and other programs.
- 251110. Effect of chapter on biological experiments and duties of Commission.
- 251111. Regulations of the Commission.
- 251112. Activities for which amounts may be appropriated.

9 **§ 251101. Definitions**

10 In this chapter:

11 (1) COMMISSION.—The term “Commission” means the International
12 Whaling Commission established in article III of the Convention.

13 (2) CONVENTION.—The term “Convention” means the International
14 Convention for the Regulation of Whaling, signed at Washington De-
15 cember 2, 1946 (TIAS 1849).

16 (3) FACTORY SHIP.—The term “factory ship” means a vessel in
17 which or on which whales are treated or processed, whether the treat-
18 ment or processing is performed wholly or in part.

19 (4) LAND STATION.—The term “land station” means a factory on
20 land where whales are treated or processed, whether the treatment or
21 processing is performed wholly or in part.

22 (5) PERSON.—The term “person” means an individual, partnership,
23 corporation, or association subject to the jurisdiction of the United
24 States.

25 (6) REGULATIONS OF THE COMMISSION.—The term “regulations of
26 the Commission” means the whaling regulations in the schedule an-
27 nexed to and constituting a part of the Convention in their original
28 form or as modified, revised, or amended by the Commission from time
29 to time, under article V of the Convention.

30 (7) REGULATIONS OF THE SECRETARY OF COMMERCE.—The term
31 “regulations of the Secretary of Commerce” means such regulations as

1 may be issued by the Secretary of Commerce, from time to time, in
2 accordance with sections 251107 and 251110 of this title.

3 (8) UNITED STATES COMMISSIONER.—The term “United States
4 Commissioner” means the member of the International Whaling Com-
5 mission representing the United States appointed under article III of
6 the Convention and section 251102 of this title.

7 (9) VESSEL.—The term “vessel” includes all kinds, types, or descrip-
8 tions of a watercraft or contrivance subject to the jurisdiction of the
9 United States used, or capable of being used, as a means of transpor-
10 tation.

11 (10) WHALE CATCHER.—The term “whale catcher” means a vessel
12 used for hunting, killing, taking, towing, holding onto, or scouting for
13 whales.

14 (11) WHALE PRODUCT.—The term “whale product” means—
15 (A) an unprocessed part of a whale; or
16 (B) blubber, meat, bones, whale oil, sperm oil, spermaceti, meal,
17 or baleen.

18 (12) WHALING.—The term “whaling” means—
19 (A) the scouting for, hunting, killing, taking, towing, holding
20 onto, or flensing of a whale; or
21 (B) the possession, treatment, or processing of a whale or whale
22 product.

23 (13) WHALING LAWS.—The term “whaling laws” means the Conven-
24 tion, the regulations of the Commission, this chapter, and the regula-
25 tions of the Secretary of Commerce.

26 **§ 251102. United States Commissioner; Deputy United**
27 **States Commissioner**

28 (a) UNITED STATES COMMISSIONER.—

29 (1) APPOINTMENT.—The United States Commissioner shall be ap-
30 pointed by the President, on the concurrent recommendations of the
31 Secretary of State and the Secretary of Commerce.

32 (2) SERVICE.—The United States Commissioner shall serve at the
33 pleasure of the President.

34 (b) DEPUTY UNITED STATES COMMISSIONER.—

35 (1) APPOINTMENT.—The President may appoint a Deputy United
36 States Commissioner, on the concurrent recommendations of the Sec-
37 retary of State and the Secretary of Commerce.

38 (2) SERVICE AND RESPONSIBILITIES.—The Deputy United States
39 Commissioner—

40 (A) shall serve at the pleasure of the President;

1 (B) shall be the principal technical adviser to the United States
2 Commissioner; and

3 (C) shall be empowered to perform the duties of the United
4 States Commissioner in case of death, resignation, absence, or ill-
5 ness of the United States Commissioner.

6 (c) COMPENSATION.—The United States Commissioner and Deputy
7 United States Commissioner, although officers of the Federal Government,
8 shall not receive compensation for their services under this chapter.

9 **§ 251103. Authorities of the Secretary of State**

10 (a) PRESENTATION AND WITHDRAWAL OF OBJECTIONS.—The Secretary
11 of State may, with the concurrence of the Secretary of Commerce, present
12 or withdraw an objection on behalf of the Federal Government to such regu-
13 lations or amendments of the schedule to the Convention as are adopted by
14 the Commission and submitted to the Federal Government in accordance
15 with article V of the Convention.

16 (b) RECEIPT OF COMMUNICATIONS.—The Secretary of State may—

17 (1) receive, on behalf of the Federal Government, reports, requests,
18 recommendations, and other communications of the Commission; and

19 (2) act on the reports, requests, recommendations, and other commu-
20 nications received under paragraph (1) directly or by reference to the
21 appropriate authority.

22 **§ 251104. Unlawful acts**

23 (a) IN GENERAL.—It is unlawful for a person—

24 (1) to engage in whaling in violation of any of the whaling laws;

25 (2) to ship, transport, purchase, sell, offer for sale, import, or export
26 a whale or whale product taken or processed in violation of any of the
27 whaling laws;

28 (3) to fail to make, keep, submit, or furnish a record or report re-
29 quired of the person by the Convention, a regulation of the Commis-
30 sion, or a regulation of the Secretary of Commerce; or

31 (4) to refuse to permit an officer authorized to enforce any of the
32 whaling laws to inspect the record or report described in paragraph (3)
33 at any reasonable time.

34 (b) OTHER UNLAWFUL ACTS.—It is unlawful for a person or vessel to
35 do an act prohibited or to fail to do an act required by any of the whaling
36 laws.

37 (c) EMERGENCY ASSISTANCE FOR SUBSISTENCE WHALE HUNTERS.—

38 (1) IN GENERAL.—Notwithstanding any law, the use of a vessel to
39 tow a whale taken in a traditional subsistence whale hunt permitted by
40 Federal law and conducted in water off the coast of Alaska is author-

1 ized, if the towing is performed to prevent the loss of a whale on a
2 request for emergency assistance made by—

3 (A) a subsistence whale hunting organization formally recog-
4 nized by a Federal agency; or

5 (B) a member of a subsistence whale hunting organization de-
6 scribed in subparagraph (A).

7 (2) REFERENCES.—References to this subchapter do not apply to
8 this subsection.

9 **§ 251105. Licenses**

10 (a) IN GENERAL.—

11 (1) IN GENERAL.—A person shall not engage in whaling without first
12 having obtained an appropriate license or scientific permit.

13 (2) ISSUING AUTHORITY.—A license or scientific permit under para-
14 graph (1) shall be issued by the Secretary of Commerce or such officer
15 of the Department of Commerce as the Secretary of Commerce may
16 designate.

17 (3) WAIVERS FOR SALVAGES OF UNCLAIMED DEAD WHALES.—The
18 Secretary of Commerce may by regulation waive the payment of a li-
19 cense fee or the requirement that a license first be obtained, in connec-
20 tion with the salvage of an unclaimed dead whale found floating or
21 stranded.

22 (b) REQUIRED LICENSES AND FEES.—

23 (1) IN GENERAL.—The following licenses and fees shall be required
24 for each calendar year or a fraction of a calendar year:

25 (A) Land station license for primary processing of whales, \$250.

26 (B) Land station license for secondary processing of parts of
27 whales delivered to the land station by a land station licensed as
28 a primary processor, \$100.

29 (C) Factory ship license for primary processing of whales deliv-
30 ered by whale catchers, \$250.

31 (D) License for a vessel used exclusively for transporting whale
32 products from a factory ship to a port during the whaling season,
33 \$100.

34 (E) Whale catcher license, \$100.

35 (2) NONTRANSFERABILITY OF LICENSES.—The licenses listed under
36 paragraph (1) shall be nontransferable except under such conditions as
37 the Secretary may prescribe.

38 (c) FEE REFUNDS.—A license fee shall not be refunded for failure of a
39 person to whom a license has been issued to utilize the facility in whaling
40 for which the license was issued.

1 (d) APPLICATION REQUIREMENTS FOR OPERATION OF WHALE CATCH-
2 ERS.—In addition to conforming to other applicable laws (including regula-
3 tions), a person applying for a license to operate a whale catcher shall fur-
4 nish evidence or an affidavit, satisfactory to the Secretary of Commerce,
5 that—

6 (1) the whale catcher is adequately equipped and competently
7 manned to engage in whaling in accordance with the Convention, the
8 regulations of the Commission, and the regulations of the Secretary of
9 Commerce;

10 (2) gunners and crews will be compensated on a basis that does not
11 depend primarily on the number of whales taken; and

12 (3) bonus or other partial remuneration related to the number of
13 whales taken shall not be paid to gunners and crews with respect to
14 the taking of whales the taking of which is prohibited.

15 (e) APPLICATION REQUIREMENTS FOR OPERATION OF LAND STATIONS
16 AND FACTORY SHIPS.—In addition to conforming to other applicable laws
17 (including regulations), a person applying for a license to operate a land
18 station or a factory ship shall furnish evidence or an affidavit satisfactory
19 to the Secretary of Commerce that the land station or factory ship is ade-
20 quately equipped to comply with the Convention, the regulations of the
21 Commission, and the regulations of the Secretary of Commerce with respect
22 to the processing of whales or the manufacture of whale products.

23 **§ 251106. Criminal penalties**

24 Criminal penalties for a violation of this chapter are provided under sec-
25 tion 51(e) of title 18.

26 **§ 251107. Allocation of responsibility for administration
27 and enforcement**

28 (a) ADMINISTRATION AND GENERAL ENFORCEMENT.—

29 (1) IN GENERAL.—The Secretary of Commerce shall administer and
30 enforce the whaling laws except to the extent otherwise provided for in
31 this chapter, the Convention, or the regulations of the Commission.

32 (2) REGULATIONS AND COOPERATION WITH FOREIGN GOVERN-
33 MENTS.—In carrying out the functions under paragraph (1), the Sec-
34 retary of Commerce may—

35 (A) prescribe such regulations as may be necessary to carry out
36 the purposes and objectives of the Convention, the regulations of
37 the Commission, and this chapter; and

38 (B) with the concurrence of the Secretary of State, cooperate
39 with the authorized officials of the government of any party to the
40 Convention.

1 (b) ENFORCEMENT RELATING TO WHALING VESSELS.—The Secretary of
2 the Treasury, in cooperation with the Secretary of Commerce, shall be pri-
3 marily responsible for enforcement activities under this chapter relating to
4 vessels engaged in whaling.

5 (c) ENFORCEMENT BY OFFICERS AND EMPLOYEES OF COASTAL
6 STATES.—

7 (1) IN GENERAL.—The Secretary of Commerce may authorize offi-
8 cers and employees of the coastal States of the United States to en-
9 force the whaling laws.

10 (2) FEDERAL LAW ENFORCEMENT FUNCTION.—The authorized offi-
11 cers and employees under paragraph (1) may function as Federal law
12 enforcement officers for the purposes of this chapter.

13 **§ 251108. Enforcement**

14 (a) AUTHORIZED ENFORCEMENT ACTIVITIES.—

15 (1) DEFINITION OF LAW ENFORCEMENT AUTHORITY.—In this sub-
16 section, the term “law enforcement authority” means—

- 17 (A) an authorized enforcement officer or employee of the De-
18 partment of Commerce;
- 19 (B) a Coast Guard officer;
- 20 (C) a United States marshal or deputy United States marshal;
- 21 (D) a customs officer; or
- 22 (E) any other person authorized to enforce the whaling laws.

23 (2) WARRANTLESS ARRESTS AND SEARCHES.—A law enforcement
24 authority may—

- 25 (A) without warrant or other process but subject to the provi-
26 sions of the Convention—
 - 27 (i) arrest a person committing in the law enforcement
28 authority’s presence or view a violation of any of the whaling
29 laws; and
 - 30 (ii) take the person immediately for examination before a
31 justice or judge or any other official designated under section
32 3041 of title 18; and
- 33 (B) without warrant or other process, search a vessel or land
34 station when the law enforcement authority has reasonable cause
35 to believe that the vessel or land station is engaged in whaling in
36 violation of any of the whaling laws.

37 (3) WARRANT EXECUTIONS AND SEARCHES REQUIRING WAR-
38 RANTS.—

39 (A) IN GENERAL.—A law enforcement authority may—

1 (i) execute a warrant or process issued by an officer or
2 court of competent jurisdiction for the enforcement of this
3 chapter; and

4 (ii) with a search warrant, search a vessel, person, or place
5 at any time.

6 (B) ISSUANCE OF WARRANTS.—A judge of a United States dis-
7 trict court or a United States magistrate judge may, within the
8 judge’s jurisdiction, on proper oath or affirmation showing prob-
9 able cause, issue a warrant referred to in subparagraph (A).

10 (4) SEIZURES.—

11 (A) IN GENERAL.—Subject to the provisions of the Convention,
12 a law enforcement authority may seize, if lawfully found, all
13 whales or whale products taken, processed, or possessed contrary
14 to any of the whaling laws.

15 (B) DISPOSITION.—A whale or whale product seized under sub-
16 paragraph (A) shall not be disposed of except—

17 (i) pursuant to the order of a court of competent jurisdic-
18 tion;

19 (ii) pursuant to subsection (b); or

20 (iii) if perishable, in the manner prescribed by regulations
21 of the Secretary of Commerce.

22 (b) BOND.—

23 (1) STAY OF EXECUTION OR DISCHARGE OF SEIZED PROPERTY.—
24 Notwithstanding section 2464 of title 28, when a warrant of arrest or
25 other process in rem is issued in any cause under this section, on re-
26 ceiving from the claimant of the property a bond or stipulation for dou-
27 ble the value of the property with sufficient surety to be approved by
28 a judge of the district court having jurisdiction, the law enforcement
29 authority shall—

30 (A) stay the execution of the warrant or other process; or

31 (B) discharge any property seized if the warrant or other proc-
32 ess has been levied.

33 (2) BOND AND STIPULATION REQUIREMENTS.—The bond or stipula-
34 tion described in paragraph (1) shall be conditioned—

35 (A) on the delivery of the property seized, if condemned, without
36 impairment in value; or

37 (B) in the discretion of the court, on the payment of the prop-
38 erty’s equivalent value in money or otherwise answering the decree
39 of the court in the cause.

40 (3) BREACH.—The bond or stipulation shall be returned to the
41 court, and judgment on the bond or stipulation against both the prin-

1 cial and sureties may be recovered in event of any breach of the condi-
2 tions in paragraph (2), as determined by the court.

3 **§ 251109. Cooperation relating to scientific and other pro-**
4 **grams**

5 (a) SECRETARY OF STATE.—To avoid duplication in scientific and other
6 programs, the Secretary of State, with the concurrence of the agency, insti-
7 tution, or organization concerned, may direct the United States Commis-
8 sioner to arrange for the cooperation of Federal agencies and State and pri-
9 vate institutions and organizations in carrying out article IV of the Conven-
10 tion.

11 (b) FEDERAL AGENCIES.—A Federal agency, on request of the Commis-
12 sion may—

- 13 (1) cooperate in the conduct of scientific and other programs; or
- 14 (2) furnish facilities and personnel to assist the Commission in the
- 15 performance of the Commission’s duties as prescribed by the Conven-
- 16 tion.

17 **§ 251110. Effect of chapter on biological experiments and**
18 **duties of Commission**

19 Nothing in this chapter—

- 20 (1) precludes the taking of whales and the conducting of biological
- 21 experiments for purposes of scientific investigation in accordance with
- 22 scientific permits and regulations prescribed by the Secretary of Com-
- 23 merce; or
- 24 (2) precludes the Commission from discharging its duties as pre-
- 25 scribed by the Convention.

26 **§ 251111. Regulations of the Commission**

27 Regulations of the Commission approved and effective in accordance with
28 article V of the Convention and section 251103 of this title—

- 29 (1) shall be submitted by the Secretary of Commerce for appropriate
- 30 action or publication in the Federal Register; and
- 31 (2) shall become effective with respect to persons and vessels in ac-
- 32 cordance with the regulations of the Commission and article V of the
- 33 Convention.

34 **§ 251112. Activities for which amounts may be appro-**
35 **priated**

36 Amounts may be appropriated for activities to carry out the Convention
37 and this chapter, including—

- 38 (1) contributions to the Commission for the United States share of
- 39 any joint expenses of the Commission agreed to by the United States
- 40 and any of the other contracting governments; and

1 (2) the expenses of the United States Commissioner and the United
2 States Commissioner’s staff, including—

3 (A) personal services in the District of Columbia and elsewhere,
4 without regard to the civil service laws, chapter 51 of title 5, and
5 subchapter III of chapter 53 of title 5;

6 (B) travel expenses without regard to subchapter I of chapter
7 57 of title 5 and section 5731(a) of title 5;

8 (C) transportation of things and communication services;

9 (D) rent of offices;

10 (E) printing and binding without regard to section 501 of title
11 44 and section 6101 of title 41;

12 (F) stenographic and other services by contract, if considered
13 necessary, without regard to section 6101 of title 41;

14 (G) supplies and materials;

15 (H) equipment; and

16 (I) purchase, hire, operation, maintenance, and repair of air-
17 craft, motor vehicles (including passenger-carrying vehicles), boats,
18 and research vessels.

19 **Chapter 252—Antarctic Marine Living**
20 **Resources Convention**

- 21 Sec.
- 22 252101. Definitions.
- 23 252102. Representatives.
- 24 252103. Authorities of the Secretary of State.
- 25 252104. Offenses.
- 26 252105. Civil penalties.
- 27 252106. Criminal penalties.
- 28 252107. Enforcement.
- 29 252108. Exclusive jurisdiction of United States district courts.
- 30 252109. Federal agency cooperation.
- 31 252110. Regulations.
- 32 252111. Relationship to treaties and statutes.
- 252112. Activities for which amounts may be appropriated.

21 **§ 252101. Definitions**

22 In this chapter:

23 (1) ANTARCTIC CONVERGENCE.—The term “Antarctic Convergence”
24 means a line joining the following points along the parallels of latitude
25 and meridians of longitude: 50 degrees south, 0 degrees; 50 degrees
26 south, 30 degrees east; 45 degrees south, 30 degrees east; 45 degrees
27 south, 80 degrees east; 55 degrees south, 80 degrees east; 55 degrees
28 south, 150 degrees east; 60 degrees south, 150 degrees east; 60 de-
29 grees south, 50 degrees west; 50 degrees south, 50 degrees west; and
30 50 degrees south, 0 degrees.

31 (2) ANTARCTIC MARINE LIVING RESOURCE.—The term “Antarctic
32 marine living resource” means finfish, molluscs, crustaceans and any

1 other species of living organism, including birds, found south of the
2 Antarctic Convergence.

3 (3) COMMISSION.—The term “Commission” means the Commission
4 for the Conservation of Antarctic Marine Living Resources established
5 in article VII of the Convention.

6 (4) CONVENTION.—The term “Convention” means the Convention
7 on the Conservation of Antarctic Marine Living Resources, done at
8 Canberra, Australia May 20, 1980 (33 UST 3476; TIAS 10240), and
9 entered into force with respect to the United States on April 7, 1982.

10 (5) HARVEST.—The term “harvest” means—

11 (A) to harass, molest, harm, pursue, hunt, shoot, wound, kill,
12 trap, or capture an Antarctic marine living resource;

13 (B) to attempt to engage in an activity set forth in subpara-
14 graph (A);

15 (C) to engage in any other activity that can reasonably be ex-
16 pected to result in an activity described in subparagraph (A); and

17 (D) to engage in an operation at sea in support of, or in prepa-
18 ration for, an activity described in subparagraphs (A) through (C).

19 (6) IMPORT.—The term “import” means to land on, bring into, or
20 introduce into, or attempt to land on, bring into, or introduce into, a
21 place subject to the jurisdiction of the United States, whether or not
22 the landing, bringing, or introduction constitutes an importation within
23 the meaning of the customs laws of the United States.

24 (7) PERSON.—The term “person” means an individual, partnership,
25 corporation, trust, association, or any other entity subject to the juris-
26 diction of the United States.

27 (8) SCIENTIFIC COMMITTEE.—The term “Scientific Committee”
28 means the Scientific Committee for the Conservation of Antarctic Ma-
29 rine Living Resources established in article XIV of the Convention.

30 (9) VESSEL OF THE UNITED STATES.—

31 (A) IN GENERAL.—The term “vessel of the United States”
32 means—

33 (i) a vessel documented under chapter 121 of title 46 or
34 a vessel numbered as provided in chapter 123 of title 46;

35 (ii) a vessel owned in whole or in part by—

36 (I) the United States or a territory, commonwealth, or
37 possession of the United States;

38 (II) a State or political subdivision of a State;

39 (III) a citizen or national of the United States; or

40 (IV) a corporation created under the laws of the
41 United States or a State, the District of Columbia, or a

1 territory, commonwealth, or possession of the United
2 States; or

3 (iii) a vessel that was once documented under Federal law
4 and, in violation of Federal law, was sold to a person not a
5 citizen of the United States or placed under foreign registry
6 or a foreign flag, whether or not the vessel has been granted
7 the nationality of a foreign nation in accordance with article
8 5 of the Convention on the High Seas, done at Geneva April
9 29, 1958 (13 UST 2312; TIAS 5200).

10 (B) EXCEPTION.—A vessel described in clause (i) or (ii) of sub-
11 paragraph (A) is not a vessel of the United States if the vessel
12 has been granted the nationality of a foreign nation in accordance
13 with article 5 of the Convention on the High Seas, done at Geneva
14 April 29, 1958 (13 UST 2312; TIAS 5200).

15 (10) VESSEL SUBJECT TO THE JURISDICTION OF THE UNITED
16 STATES.—The term “vessel subject to the jurisdiction of the United
17 States” includes a vessel without nationality or a vessel assimilated to
18 a vessel without nationality, in accordance with paragraph (2) of article
19 6 of the Convention on the High Seas, done at Geneva April 29, 1958
20 (13 UST 2312; TIAS 5200).

21 **§ 252102. Representatives**

22 (a) REPRESENTATIVE TO THE COMMISSION.—The Secretary of State,
23 with the concurrence of the Secretary of Commerce and the Director of the
24 National Science Foundation, shall appoint an officer or employee of the
25 United States as the United States representative to the Commission.

26 (b) REPRESENTATIVE TO THE SCIENTIFIC COMMITTEE.—The Secretary
27 of Commerce and the Director of the National Science Foundation, with the
28 concurrence of the Secretary of State, shall designate an individual as the
29 United States representative to the Scientific Committee.

30 (c) COMPENSATION.—The United States representatives to the Commis-
31 sion and the Scientific Committee shall not receive additional compensation
32 for their services as representatives under subsections (a) and (b).

33 **§ 252103. Authorities of the Secretary of State**

34 (a) CONSERVATION MEASURES.—

35 (1) DECISION OF NONACCEPTANCE OF CONSERVATION MEASURES.—
36 The Secretary of State, with the concurrence of the Secretary of Com-
37 merce and the Director of the National Science Foundation, may—

38 (A) decide, on behalf of the United States, whether the United
39 States is unable to accept or can no longer accept a conservation
40 measure adopted by the Commission under article IX of the Con-
41 vention; and

1 (B) notify the Commission of a decision under subparagraph
2 (A) in accordance with article IX of the Convention.

3 (2) NOTICE.—The Secretary of State shall—

4 (A) publish in the Federal Register, if practicable, timely notice
5 of each proposed decision under paragraph (1) and invite written
6 public comment regarding the proposed decision; and

7 (B) publish in the Federal Register notice of each notification
8 made to the Commission under paragraph (1).

9 (b) SYSTEM OF OBSERVATION AND INSPECTION.—Pursuant to article
10 XXIV of the Convention, the Secretary of State, on behalf of the United
11 States, and with the concurrence of the Secretary of Commerce, the Direc-
12 tor of the National Science Foundation, and the Secretary of the depart-
13 ment in which the Coast Guard is operating, may agree—

14 (1) to the establishment (including modification) of a system of ob-
15 servation and inspection; and

16 (2) to interim arrangements pending establishment (including modi-
17 fication) of the system under paragraph (1).

18 (c) COMMUNICATIONS FROM THE COMMISSION.—The Secretary of State
19 may—

20 (1) receive, on behalf of the United States, reports, requests, and
21 other communications from the Commission; and

22 (2) take appropriate action on the reports, requests, and other com-
23 munications from the Commission, directly or by reference to the ap-
24 propriate authority.

25 **§ 252104. Offenses**

26 A person shall not—

27 (1) engage in harvesting in violation of—

28 (A) the Convention; or

29 (B) a conservation measure in force with respect to the United
30 States pursuant to article IX of the Convention;

31 (2) violate a regulation prescribed under this chapter;

32 (3) ship, transport, offer for sale, sell, purchase, import, export, or
33 have custody, control, or possession of an Antarctic marine living re-
34 source (or part or product of an Antarctic marine living resource) har-
35 vested in violation of a conservation measure in force with respect to
36 the United States pursuant to article IX of the Convention or in viola-
37 tion of a regulation prescribed under this chapter, without regard to
38 the citizenship of the person that harvested, or vessel that was used
39 in the harvesting of, the Antarctic marine living resource (or part or
40 product of an Antarctic marine living resource);

1 (4) refuse to permit an authorized officer or employee of the United
2 States to board a vessel of the United States or a vessel subject to the
3 jurisdiction of the United States to conduct a search, investigation, or
4 inspection in connection with the enforcement of the Convention, this
5 chapter, or a regulation prescribed under this chapter;

6 (5) assault, resist, oppose, impede, intimidate, or interfere with an
7 authorized officer or employee of the United States in the conduct of
8 a search, investigation, or inspection described in paragraph (4);

9 (6) resist a lawful arrest or detention for an act prohibited by this
10 section; or

11 (7) interfere with, delay, or prevent the apprehension, arrest, or de-
12 tention of another person, knowing that the other person has commit-
13 ted an act prohibited by this section.

14 **§ 252105. Civil penalties**

15 (a) IN GENERAL.—A person that commits an act that is unlawful under
16 section 252104 of this title shall be liable to the United States for a civil
17 penalty, and may be subject to a permit sanction under section 308 of the
18 Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C.
19 1858).

20 (b) HEARINGS.—

21 (1) PROCEDURE.—A hearing for the assessment of a civil penalty
22 under subsection (a) shall be conducted in accordance with section 554
23 of title 5.

24 (2) SUBPOENAS AND OATHS.—To conduct a hearing under this sub-
25 section, the Secretary of Commerce may—

26 (A) issue subpoenas for the attendance and testimony of wit-
27 nesses and the production of relevant records; and

28 (B) administer oaths.

29 (3) PAYMENT OF WITNESSES.—A witness summoned under this sub-
30 section shall be paid the same fees and mileage that are paid to a wit-
31 ness in Federal court.

32 (4) CONTUMACY OR REFUSAL TO OBEY SUBPOENA.—

33 (A) COURT ORDER.—In case of contumacy or refusal to obey a
34 subpoena served on a person under this subsection, the United
35 States district court for a district in which the person is found,
36 resides, or transacts business, on application by the Attorney Gen-
37 eral and after notice to the person, shall issue an order requiring
38 the person to appear and—

39 (i) give testimony before the Secretary of Commerce;

40 (ii) produce documents before the Secretary of Commerce;

41 or

1 (iii) both.

2 (B) FAILURE TO OBEY ORDER.—A failure to obey an order of
3 the court under subparagraph (A) may be punished by the court
4 as contempt.

5 (c) JUDICIAL REVIEW.—

6 (1) IN GENERAL.—A person against whom a civil penalty is assessed
7 under subsection (a) may obtain review of the civil penalty in a United
8 States district court by—

9 (A) filing a notice of appeal in the court; and

10 (B) sending a copy of the notice by certified mail to the Sec-
11 retary of Commerce, the Attorney General, and the appropriate
12 United States Attorney;

13 not later than 30 days after the date of the order assessing the civil
14 penalty.

15 (2) CERTIFIED COPY OF RECORD.—The Secretary of Commerce shall
16 promptly refer the matter to the Attorney General, who shall file in the
17 United States district court a certified copy of the record on which the
18 violation was found or the penalty imposed, as provided in section 2112
19 of title 28.

20 (3) AUTHORITY TO SET ASIDE.—The United States district court
21 shall set aside the findings and order of the Secretary of Commerce
22 if the findings and order are found to be unsupported by substantial
23 evidence, as provided in section 706(2)(E) of title 5.

24 (d) RECOVERY OF CIVIL PENALTIES.—The Attorney General may seek
25 to recover in a United States district court—

26 (1) a civil penalty imposed under this section that has become a final
27 and unappealable order and has been referred to the Attorney General
28 by the Secretary of Commerce; or

29 (2) a final judgment rendered by the court under this section in
30 favor of the United States.

31 (e) PENALTIES UNDER OTHER LAWS.—The assessment of a civil penalty
32 under subsection (a) for an act does not preclude the assessment of a civil
33 penalty for the act under any other law.

34 **§ 252106. Criminal penalties**

35 Criminal penalties for a violation of this chapter are provided under sec-
36 tion 51(d) of title 18.

37 **§ 252107. Enforcement**

38 (a) IN GENERAL.—This chapter shall be enforced by the Secretary of
39 Commerce and the Secretary of the department in which the Coast Guard
40 is operating. The Secretaries may utilize by agreement, on a reimbursable

1 basis or otherwise, the personnel, services, and facilities of any other Fed-
2 eral agency in the performance of enforcement duties under this chapter.

3 (b) POWERS OF AUTHORIZED OFFICERS AND EMPLOYEES.—An officer or
4 employee of the United States who is authorized (by the Secretary of Com-
5 merce, the Secretary of the department in which the Coast Guard is operat-
6 ing, or the head of a Federal agency that enters into an agreement with
7 either Secretary under subsection (a)) to enforce this chapter (including a
8 regulation prescribed under this chapter), may—

9 (1) secure, execute, and serve an order, warrant, subpoena, or other
10 process that is issued under the authority of the United States;

11 (2) search without warrant a person, place, vehicle, or aircraft sub-
12 ject to the jurisdiction of the United States if there is reason to believe
13 that a person has committed or is attempting to commit an act prohib-
14 ited by section 252104 of this title;

15 (3) with or without a warrant, board and search or inspect a vessel
16 of the United States or vessel subject to the jurisdiction of the United
17 States;

18 (4) seize without warrant—

19 (A) an evidentiary item, if there is reason to believe that a per-
20 son has committed or is attempting to commit an act prohibited
21 by section 252104 of this title;

22 (B) an Antarctic marine living resource (or part or product of
23 an Antarctic marine living resource) with respect to which an act
24 prohibited by section 252104 of this title is committed;

25 (C) a vessel of the United States (including its gear, furniture,
26 appurtenances, stores, and cargo), a vessel subject to the jurisdic-
27 tion of the United States (including its gear, furniture, appur-
28 tenances, stores, and cargo), or a vehicle, aircraft, or other means
29 of transportation subject to the jurisdiction of the United States
30 used in connection with an act prohibited by section 252104 of
31 this title; and

32 (D) a gun, trap, net, or other equipment used in connection
33 with an act prohibited by section 252104 of this title;

34 (5) offer and pay a reward for services or information that may lead
35 to the apprehension of a person violating this chapter (including a reg-
36 ulation prescribed under this chapter);

37 (6) make inquiries and administer to or take from a person an oath,
38 affirmation, or affidavit concerning a matter that is related to the en-
39 forcement of this chapter (including a regulation prescribed under this
40 chapter);

1 (7) in coordination with the Secretary of Homeland Security, detain
2 for inspection and inspect a package, crate, or other container, includ-
3 ing its contents, and all accompanying documents, on importation into
4 or exportation from the United States;

5 (8) make an arrest with or without a warrant with respect to an act
6 prohibited by paragraph (4), (5), (6), or (7) of section 252104 of this
7 title if the officer or employee has reason to believe that the person to
8 be arrested is committing or has committed the act;

9 (9) exercise enforcement powers conferred on the officer or employee
10 under a system of observation and inspection, or interim arrangements
11 pending the establishment of such a system, that the Secretary of State
12 has agreed to on behalf of the United States pursuant to section
13 252103(b) of this title; and

14 (10) exercise any other authority that the officer or employee is per-
15 mitted by law to exercise.

16 (c) SEIZURE.—

17 (1) CUSTODY OF PROPERTY OR ITEM.—An officer or employee of the
18 United States authorized by the Secretary of Commerce or the Sec-
19 retary of the department in which the Coast Guard is operating shall
20 hold each property or item seized under subsection (b), pending—

21 (A) the disposition of civil or criminal proceedings concerning
22 the violation relating to the property or item; or

23 (B) the institution of an action in rem for the forfeiture of the
24 property or item.

25 (2) RELEASE OR DESTRUCTION OF PROPERTY OR ITEM.—If the cost
26 of maintenance of the property or item seized under subsection (b)
27 pending the disposition of the case is greater than the legitimate mar-
28 ket value of the property or item, the authorized officer or employee
29 under paragraph (1) may, on the order of a court of competent juris-
30 diction—

31 (A) release the seized property or item to the wild; or

32 (B) destroy the property or item.

33 (3) INDEMNIFICATION.—The authorized officer or employee under
34 paragraph (1) and all officers or employees acting by or under the offi-
35 cer or employee's direction shall be indemnified from any penalty or ac-
36 tion for damages for releasing or destroying the property or item under
37 paragraph (2).

38 (4) BOND.—The authorized officer or employee under paragraph (1)
39 may, in lieu of holding the property or item, permit the owner or con-
40 signee of the owner to post a bond or other satisfactory surety.

41 (d) FORFEITURE.—

1 (1) IN GENERAL.—The following shall be subject to forfeiture to the
2 United States:

3 (A) An Antarctic marine living resource (or part or product of
4 an Antarctic marine living resource) with respect to which an act
5 prohibited by section 252104 of this title is committed.

6 (B) A vessel of the United States (including its gear, furniture,
7 appurtenances, stoves, and cargo), vessel subject to the jurisdic-
8 tion of the United States (including its gear, furniture, appur-
9 tenances, stoves, and cargo), or vehicle, aircraft, or other means
10 of transportation subject to the jurisdiction of the United States
11 that is used in connection with an act prohibited by section
12 252104 of this title.

13 (C) A gun, trap, net, or other equipment used in connection
14 with an act prohibited by section 252104 of this title.

15 (2) DISPOSITION OF FORFEITED PROPERTY OR ITEM.—Each prop-
16 erty or item described in paragraph (1) shall be disposed of by the Sec-
17 retary of Commerce or the Secretary of the department in which the
18 Coast Guard is operating, in such a manner, consistent with this chap-
19 ter, as may be prescribed by regulation—

20 (A) on the forfeiture to the United States of the property or
21 item; or

22 (B) on the abandonment or waiver of a claim to the property
23 or item.

24 (e) APPLICABILITY OF CUSTOMS LAWS.—

25 (1) IN GENERAL.—All laws relating to—

26 (A) seizure, forfeiture, and condemnation of property (including
27 vessels) for violation of the customs laws of the United States;

28 (B) disposition of the property or the proceeds from the sale of
29 the property; and

30 (C) remission or mitigation of the forfeiture;

31 shall apply to the seizures and forfeitures incurred (or alleged to have
32 been incurred) and to the compromise of claims, under this chapter,
33 to the extent that those laws are applicable and not inconsistent with
34 this chapter.

35 (2) POWERS, RIGHTS, AND DUTIES RELATING TO CUSTOMS LAWS.—

36 All powers, rights, and duties conferred or imposed by the customs laws
37 of the United States on an officer or employee of the Bureau of Cus-
38 toms and Border Protection may, for the purposes of this chapter, be
39 exercised or performed by the Secretary of Commerce or the Secretary
40 of the department in which the Coast Guard is operating, or by such

1 officers or employees of the United States as either Secretary may des-
2 ignate.

3 **§ 252108. Exclusive jurisdiction of United States district**
4 **courts**

5 The United States district courts shall have exclusive jurisdiction over a
6 case or controversy arising under this chapter (including a regulation pre-
7 scribed under this chapter).

8 **§ 252109. Federal agency cooperation**

9 (a) RESPONSIBILITIES.—To carry out the policies and objectives of the
10 Convention or to implement a decision of the Commission—

11 (1) the Director of the National Science Foundation, in consultation
12 with the Secretary of State and the heads of other Federal agencies,
13 shall support basic research investigations of the Antarctic marine eco-
14 system as a part of the United States Antarctic Program; and

15 (2) the Secretary of Commerce and the Director of the National
16 Science Foundation, in consultation with the Secretary of State, may
17 furnish facilities and personnel to the Commission to assist the Com-
18 mission in carrying out its functions.

19 (b) CONSULTATION WITH OTHER AGENCIES.—In carrying out their func-
20 tions under this section, the Secretary of State, the Secretary of Commerce,
21 and the Director of the National Science Foundation shall consult, as ap-
22 propriate, with the Marine Mammal Commission and with other Federal
23 agencies.

24 (c) ICEBREAKING.—The Department of Homeland Security shall facilitate
25 planning for the design, procurement, maintenance, deployment, and oper-
26 ation of icebreakers needed to provide a platform for Antarctic research. All
27 funds necessary to support icebreaking operations, except for recurring in-
28 cremental costs associated with specific projects, shall be allocated to the
29 United States Coast Guard.

30 **§ 252110. Regulations**

31 (a) IN GENERAL.—The Secretary of Commerce, after consultation with
32 the Secretary of State, the Secretary of the department in which the Coast
33 Guard is operating, and the heads of other Federal agencies, shall prescribe
34 such regulations as are necessary to carry out this chapter.

35 (b) REGULATIONS TO IMPLEMENT CONSERVATION MEASURES.—

36 (1) IN GENERAL.—Notwithstanding subsections (b), (c), and (d) of
37 section 553 of title 5, the Secretary of Commerce may publish in the
38 Federal Register a final regulation to implement a conservation meas-
39 ure—

40 (A) with respect to which—

- 1 (i) the Secretary of State complies with the notification re-
- 2 quirements of section 252103(a)(1) of this title; and
- 3 (ii) the Secretary of State does not notify the Commission
- 4 under section 252103(a)(1) of this title within the period al-
- 5 lotted for objections under Article IX of the Convention;
- 6 (B) that has been in effect for 12 months or less; and
- 7 (C) that is adopted by the Commission.

8 (2) ENTERING INTO FORCE.—On publication of the regulation in the
 9 Federal Register, the conservation measure shall enter into force with
 10 respect to the United States.

11 **§ 252111. Relationship to treaties and statutes**

12 (a) TREATIES, CONVENTIONS, AGREEMENTS, AND IMPLEMENTING STAT-
 13 UTES.—Nothing in this chapter contravenes or supersedes—

14 (1) an international treaty, convention, or agreement, if the treaty,
 15 convention or agreement is in force with respect to the United States
 16 on November 8, 1984;

17 (2) a statute that implements a treaty, convention, or agreement de-
 18 scribed in paragraph (1); or

19 (3) a statute enacted before November 8, 1984, that applies to Ant-
 20 arctic marine living resources.

21 (b) APPLICATION OF MORE RESTRICTIVE PROVISIONS.—Nothing in this
 22 section precludes the application of the Convention, conservation measures
 23 adopted by the Commission pursuant to article IX of the Convention, or
 24 regulations prescribed under this chapter, that are more restrictive than the
 25 provisions of, measures adopted under, or regulations prescribed under the
 26 treaties or statutes described in subsection (a).

27 **§ 252112. Activities for which amounts may be appro-**
 28 **riated**

29 Amounts may be appropriated for activities to carry out this chapter, in-
 30 cluding—

31 (1) necessary travel expenses of the United States representatives de-
 32 scribed in section 252102 of this title, alternate United States rep-
 33 resentatives, and authorized advisers and experts, in accordance with
 34 sections 5701 through 5708, 5731, and 5733 of title 5, and the regula-
 35 tions prescribed under those sections;

36 (2) the United States contribution to the budget of the Commission
 37 as provided in article XIX of the Convention; and

38 (3) the furnishing of facilities and personnel to the Commission
 39 under section 252109 of this title.

40 **Chapter 253—Conservation of Sea Turtles**

Sec.

253101. Definition of sea turtle.
253102. International negotiations.
253103. Restriction on importation of shrimp.

1 **§ 253101. Definition of sea turtle**

2 In this chapter, the term “sea turtle” means a sea turtle of one of the
3 following species:

- 4 (1) loggerhead (*Caretta caretta*);
5 (2) Kemp’s ridley (*Lepidochelys kemp*);
6 (3) green (*Chelonia mydas*);
7 (4) leatherback (*Dermochelys coriacea*); and
8 (5) hawksbill (*Eretmochelys imbricata*).

9 **§ 253102. International negotiations**

10 The Secretary of State, in consultation with the Secretary of Commerce,
11 shall, with respect to sea turtles—

12 (1) initiate negotiations for the development of bilateral or multi-
13 lateral agreements with other nations for the protection and conserva-
14 tion of sea turtles;

15 (2) initiate negotiations with all foreign governments that are en-
16 gaged in, or that have persons engaged in, commercial fishing oper-
17 ations that, as determined by the Secretary of Commerce, may ad-
18 versely affect sea turtles, for the purpose of entering into bilateral or
19 multilateral treaties with the foreign governments to protect sea turtles;

20 (3) encourage other agreements or treaties to promote the purposes
21 of this chapter with other nations for the protection of specific ocean
22 and land regions that are of special significance to the health and sta-
23 bility of sea turtles; and

24 (4) initiate the amendment of any treaty existing on November 21,
25 1989, to which the United States is a party, for the protection and con-
26 servation of sea turtles to make the treaty consistent with the purposes
27 and policies of this chapter.

28 **§ 253103. Restriction on importation of shrimp**

29 (a) IN GENERAL.—The importation of shrimp or products from shrimp
30 that have been harvested with commercial fishing technology that may ad-
31 versely affect sea turtles is prohibited, except as provided in subsection (b).

32 (b) CERTIFICATION.—The prohibition on importation of shrimp or prod-
33 ucts from shrimp pursuant to subsection (a) shall not apply if the President
34 determines and certifies to Congress not later than May 1 of each year
35 that—

36 (1)(A) the government of a harvesting nation has provided documen-
37 tary evidence of the adoption of a regulatory program, comparable to
38 that of the United States, governing the incidental taking of sea turtles
39 in the course of harvesting; and

1 (B) the average rate of incidental taking of sea turtles by the vessels
2 of the harvesting nation is comparable to the average rate of incidental
3 taking of sea turtles by United States vessels in the course of harvest-
4 ing; or

5 (2) the particular fishing environment of a harvesting nation does
6 not pose a threat of the incidental taking of sea turtles in the course
7 of harvesting.

8 **Chapter 254—Prohibition on Shark**
9 **Finning**

Sec.

254101. Definition of shark finning.

254102. International negotiations.

254103. Annual report.

254104. Research.

254105. Western Pacific Longline Fisheries Cooperative Research Program.

10 **§ 254101. Definition of shark finning**

11 In this chapter, the term “shark finning” means taking a shark, remov-
12 ing a fin or tail of the shark, and returning the remainder of the shark to
13 the sea.

14 **§ 254102. International negotiations**

15 The Secretary of Commerce, acting through the Secretary of State,
16 shall—

17 (1) initiate discussions for the purpose of developing bilateral or
18 multilateral agreements with other nations for the prohibition on shark
19 finning;

20 (2) initiate discussions with all foreign governments that are engaged
21 in or that have persons engaged in shark finning, for the purposes of—

22 (A) collecting information on the nature and extent of shark fin-
23 ning by the persons and the landing or transshipment of shark
24 fins through foreign ports; and

25 (B) entering into bilateral and multilateral treaties with the for-
26 eign governments to protect species of sharks;

27 (3) through the United Nations, the Food and Agriculture Organiza-
28 tion’s Committee on Fisheries, and appropriate regional fishery man-
29 agement bodies, seek agreements calling for an international prohibi-
30 tion on shark finning and other fishing practices adversely affecting
31 species of sharks;

32 (4) initiate the amendment of any treaty existing on December 21,
33 2000, to which the United States is a party, for the protection and con-
34 servation of species of sharks to make the treaty consistent with the
35 purposes and policies of this section; and

36 (5) urge other governments involved in fishing for or importation of
37 shark or shark products to fulfill their obligations to collect biological

1 data, such as stock abundance and by-catch levels, as well as trade
2 data, on shark species as called for in the 1995 Resolution by ICCAT
3 on Cooperation with the Food & Agriculture Organization of the
4 United Nations (FAO) With Regard to Study on the Status of Stocks
5 and By-Catches of Shark Species.

6 **§ 254103. Annual report**

7 The Secretary of Commerce, in consultation with the Secretary of State,
8 shall annually provide to Congress a report that—

9 (1) includes a list that—

10 (A) identifies nations whose vessels conduct shark finning; and

11 (B) details the extent of the international trade in shark fins,
12 including estimates of value and information on harvesting of
13 shark fins, and landings or transshipment of shark fins through
14 foreign ports;

15 (2) describes the efforts taken to carry out this chapter and evalu-
16 ates the progress of those efforts;

17 (3) sets forth a plan of action to adopt international measures for
18 the conservation of sharks; and

19 (4) includes recommendations for measures to ensure that United
20 States actions are consistent with national, international, and regional
21 obligations relating to shark populations, including those listed under
22 the Convention on International Trade in Endangered Species of Wild
23 Fauna and Flora, done at Washington March 3, 1973 (27 UST 1087;
24 TIAS 8249).

25 **§ 254104. Research**

26 Subject to the availability of appropriations, the Secretary of Commerce
27 shall establish, for Pacific sharks and Atlantic sharks, a research program
28 to engage in the following data collection and research:

29 (1) The collection of data to support stock assessments of shark pop-
30 ulations subject to incidental or directed harvesting by commercial ves-
31 sels, giving priority to species according to vulnerability of the species
32 to fishing gear and fishing mortality, and population status of the spe-
33 cies.

34 (2) Research to identify fishing gear and practices that prevent or
35 minimize incidental catch of sharks in commercial and recreational
36 fishing.

37 (3) Research on fishing methods that will ensure maximum likelihood
38 of survival of captured sharks after release.

39 (4) Research on methods for releasing sharks from fishing gear that
40 minimize risk of injury to fishing vessel operators and crews.

1 (5) Research on methods to maximize the utilization of, and funding
 2 to develop the market for, sharks not taken in violation of a fishery
 3 management plan approved under section 303 of the Magnuson-Stevens
 4 Fishery Conservation and Management Act (16 U.S.C. 1853) or a pro-
 5 hibition under section 307(1)(P) of that Act (16 U.S.C. 1857(1)(P)).

6 (6) Research on the nature and extent of the harvest of sharks and
 7 shark fins by foreign fleets and the international trade in shark fins
 8 and other shark products.

9 **§ 254105. Western Pacific Longline Fisheries Cooperative**
 10 **Research Program**

11 (a) IN GENERAL.—The National Marine Fisheries Service, in consulta-
 12 tion with the Western Pacific Fishery Management Council, shall initiate a
 13 cooperative research program with the commercial longlining industry to
 14 carry out activities consistent with this chapter, including research described
 15 in section 254104 of this title.

16 (b) COOPERATIVE RESEARCH PROGRAMS BY REQUEST.—The National
 17 Marine Fisheries Service may initiate cooperative research programs de-
 18 scribed in subsection (a) on the request of any other fishery management
 19 council.

20 **Division C—Avian Wildlife**
 21 **Chapter 261—Migratory Bird Treaties,**
 22 **Conservation, and Stamps**

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1 **Subchapter I—General Provisions**

2 **§ 261101. Definitions**

3 In this chapter:

4 (1) COMMISSION.—The term “Commission” means the Migratory
5 Bird Conservation Commission established in section 261301 of this
6 title.

7 (2) CONVENTIONS.—The term “Conventions” means—

8 (A) the Convention Between the United States of America and
9 Great Britain for the Protection of Migratory Birds in Canada
10 and the United States, signed at Washington August 16, 1916 (39
11 Stat. 1702; TS 628);

12 (B) the Convention Between the United States of America and
13 the United Mexican States for the Protection of Migratory Birds
14 and Game Mammals, signed at Mexico City February 7, 1936 (50
15 Stat. 1311; TS 912);

16 (C) the Convention Between the United States of America and
17 Japan for the Protection of Migratory Birds and Birds in Danger
18 of Extinction, and Their Environment, signed at Tokyo March 4,
19 1972 (25 UST 3329; TIAS 7990); and

20 (D) the Convention Between the United States of America and
21 the Union of Soviet Socialist Republics Concerning the Conserva-
22 tion of Migratory Birds and Their Environment, signed at Moscow
23 November 19, 1976 (29 UST 4647; TIAS 9073).

1 (3) MIGRATORY BIRD.—The term “migratory bird” means a bird
2 that is included in the terms of any of the Conventions.

3 (4) MIGRATORY BIRD RESERVATION.—The term “migratory bird res-
4 ervation” means an area that is used as an inviolate sanctuary, or for
5 any other management purpose, for migratory birds.

6 (5) SECRETARY.—The term “Secretary” means the Secretary of the
7 Interior.

8 **§ 261102. Applicability of subchapters II, III, and IV to mi-**
9 **gratory birds native to the United States or its ter-**
10 **ritories**

11 (a) IN GENERAL.—Except in subsections (c) and (d) of section 261201
12 of this title, subchapters II, III, and IV apply only to migratory bird species
13 that are native to the United States or its territories.

14 (b) DEFINITION OF NATIVE TO THE UNITED STATES OR ITS TERRI-
15 TORIES.—

16 (1) IN GENERAL.—Subject to paragraph (2), the term “native to the
17 United States or its territories” means occurring in the United States
18 or its territories as the result of natural biological or ecological proces-
19 ses.

20 (2) TREATMENT OF INTRODUCED SPECIES.—For purposes of sub-
21 section (a), a migratory bird species that occurs in the United States
22 or its territories solely as a result of intentional or unintentional
23 human-assisted introduction shall not be considered native to the
24 United States or its territories unless—

25 (A) the species was native to the United States or its territories
26 and extant in 1918;

27 (B) the species was extirpated after 1918 throughout its range
28 in the United States and its territories; and

29 (C) after its extirpation, the species was reintroduced in the
30 United States or its territories as part of a program carried out
31 by a Federal agency.

32 **Subchapter II—Migratory Bird Treaties**

33 **§ 261201. Unlawful acts**

34 (a) GENERAL OFFENSES.—Except as permitted by regulations under this
35 subchapter, it is unlawful for a person to—

36 (1) pursue, hunt, take, capture, or kill;

37 (2) attempt to take, capture, or kill;

38 (3) possess;

39 (4) offer for sale, sell, offer to barter, barter, offer to purchase, or
40 purchase;

41 (5) deliver for shipment, ship, export, or import;

- 1 (6) cause to be shipped, exported, or imported;
 - 2 (7) deliver for transportation, transport, or cause to be transported;
 - 3 (8) carry or cause to be carried; or
 - 4 (9) receive for shipment, transportation, carriage, or export;
- 5 a migratory bird, a part, nest, or egg of a migratory bird, or a product,
6 whether or not manufactured, that consists in whole or in part of a migra-
7 tory bird or a part, nest, or egg of a migratory bird.

- 8 (b) BAITING OFFENSE.—It is unlawful for a person to—
- 9 (1) take a migratory game bird by the aid of baiting, or on or over
10 a baited area, if the person knows or reasonably should know that the
11 area is a baited area; or
 - 12 (2) place or direct the placement of bait on or adjacent to an area
13 for the purpose of causing, inducing, or allowing a person to take or
14 attempt to take a migratory game bird by the aid of baiting on or over
15 the baited area.

- 16 (c) SHIPMENT, TRANSPORTATION, AND CARRYING OFFENSES RELATING
17 TO STATE LAW VIOLATIONS.—It is unlawful for a person to ship, transport,
18 or carry from 1 State or territory or the District of Columbia to or
19 through—

- 20 (1) another State or territory or the District of Columbia; or
 - 21 (2) a foreign country;
- 22 a bird, or a part, nest, or egg of a bird, captured, killed, taken, shipped,
23 transported, or carried contrary to the law of the State or territory or the
24 District of Columbia in which it was captured, killed, or taken, or from
25 which it was shipped, transported, or carried.

- 26 (d) IMPORTATION OFFENSE RELATING TO CANADIAN LAW VIOLA-
27 TIONS.—It is unlawful for a person to import a bird, or a part, nest, or
28 egg of a bird, captured, killed, taken, shipped, transported, or carried con-
29 trary to the law of a Province of Canada in which the bird was captured,
30 killed, or taken, or from which it was shipped, transported, or carried.

31 **§ 261202. Regulations**

- 32 (a) IN GENERAL.—Subject to the Conventions, the Secretary shall from
33 time to time, after considering the factors described in subsection (b)—
- 34 (1) determine when, to what extent, and by what means, it is com-
35 patible with the terms of the Conventions to allow hunting, taking, cap-
36 ture, killing, possession, sale, purchase, shipment, transportation, car-
37 riage, or export of a migratory bird, or a part, nest, or egg of a migra-
38 tory bird; and
 - 39 (2) prescribe regulations allowing and governing the actions listed
40 under paragraph (1), in accordance with the determinations under

1 paragraph (1), which regulations shall become effective when approved
2 by the President.

3 (b) FACTORS.—The factors referred to in subsection (a) are—

4 (1) zones of temperature; and

5 (2) the distribution, abundance, economic value, breeding habits, and
6 times and lines of migratory flight of migratory birds.

7 **§ 261203. Inapplicability; authorizations**

8 (a) INAPPLICABILITY TO LIST OF NONNATIVE HUMAN-INTRODUCED
9 BIRD SPECIES.—

10 (1) PUBLICATION.—

11 (A) IN GENERAL.—The Secretary shall publish in the Federal
12 Register a list of all nonnative, human-introduced bird species to
13 which this subchapter does not apply.

14 (B) UPDATES.—The Secretary may update and publish the list
15 of species exempted from the protection of this subchapter.

16 (2) PUBLIC COMMENT.—Before publishing the list under paragraph
17 (1), the Secretary shall provide adequate time for public comment.

18 (b) AUTHORIZATION RELATING TO IMPROVEMENT OF BRIDGES.—The
19 Secretary, in consultation with the Secretary of Transportation, shall pre-
20 scribe a regulation under section 261202 of this title authorizing the take
21 of nesting swallows to facilitate bridge repair, maintenance, or construc-
22 tion—

23 (1) without individual permit requirements; and

24 (2) under terms and conditions determined to be consistent with
25 treaties relating to migratory birds that protect swallow species occur-
26 ring in the United States.

27 **§ 261204. Criminal penalties**

28 Criminal penalties for a violation of this subchapter are provided under
29 section 52(a) of title 18.

30 **§ 261205. Enforcement**

31 (a) IN GENERAL.—An employee of the Department of the Interior au-
32 thorized by the Secretary to enforce this subchapter may—

33 (1) without warrant, arrest a person committing a violation of this
34 subchapter in the employee's presence or view and take the person im-
35 mediately for examination or trial before an officer or court of com-
36 petent jurisdiction;

37 (2) execute a warrant or other process issued by an officer or court
38 of competent jurisdiction for the enforcement of this subchapter; and

39 (3) with a search warrant, search a place.

40 (b) ISSUANCE OF WARRANTS.—The judges of the courts of the United
41 States and United States magistrate judges may, within their respective ju-

1 jurisdictions, on proper oath or affirmation showing probable cause, issue war-
 2 rants for the enforcement of this subchapter.

3 (c) SEIZURES AND FORFEITURES.—

4 (1) BIRDS.—A bird, or part, nest, or egg of a bird, captured, killed,
 5 taken, sold or offered for sale, bartered or offered for barter, pur-
 6 chased, shipped, transported, carried, imported, exported, or possessed
 7 in violation of this subchapter (including a regulation prescribed under
 8 this subchapter) shall be seized and, on conviction of the offender or
 9 on judgment of a United States court that the bird, or the part, nest,
 10 or egg of a bird, was captured, killed, taken, sold or offered for sale,
 11 bartered or offered for barter, purchased, shipped, transported, carried,
 12 imported, exported, or possessed in violation of this subchapter (includ-
 13 ing a regulation prescribed under this subchapter), be forfeited to the
 14 United States and disposed of by the Secretary in such manner as the
 15 Secretary considers appropriate.

16 (2) EQUIPMENT AND TRANSPORTATION.—

17 (A) IN GENERAL.—A gun, trap, net or other equipment, and a
 18 vessel, vehicle, or other means of transportation used by a person
 19 when engaged in pursuing, hunting, taking, trapping, ensnaring,
 20 capturing, killing, or attempting to take, capture, or kill a migra-
 21 tory bird in violation of this subchapter with the intent to offer
 22 for sale, or sell, or offer for barter, or barter the migratory bird
 23 in violation of this subchapter—

24 (i) shall be forfeited to the United States; and

25 (ii) may be seized and held pending the prosecution of a
 26 person arrested for violating this subchapter.

27 (B) FORFEITURE AS ADDITIONAL PENALTY.—For a violation of
 28 this subchapter, a forfeiture under subparagraph (A) shall be ad-
 29 judicated as a penalty in addition to any other penalty provided
 30 for a violation of this subchapter.

31 (C) DISPOSITION OF FORFEITED PROPERTY.—Property for-
 32 feited under subparagraph (A) shall be disposed of and accounted
 33 for by the Secretary.

34 **§ 261206. Authorities of the Secretary**

35 (a) EMPLOYMENT OF PERSONS AND MEANS.—The Secretary may employ
 36 such persons and means as the Secretary considers necessary to carry out
 37 the Conventions and this subchapter (including regulations prescribed under
 38 this subchapter).

39 (b) COOPERATION WITH LOCAL AUTHORITIES AND INVESTIGATIONS.—
 40 The Secretary may cooperate with local authorities in the protection of mi-

1 migratory birds and make the necessary investigations connected with the pro-
2 tection of migratory birds.

3 **§ 261207. Preemption**

4 Nothing in this subchapter precludes a State, territory, or the District
5 of Columbia from—

6 (1) making or enforcing laws (including regulations) not inconsistent
7 with the Conventions or this subchapter; or

8 (2) making or enforcing laws (including regulations) that give fur-
9 ther protection to migratory birds, their nests, and eggs, if the laws
10 do not extend the open seasons for migratory birds beyond the dates
11 approved by the President in accordance with section 261202 of this
12 title.

13 **§ 261208. Breeding and sale for food supply**

14 Nothing in this subchapter precludes the breeding of migratory game
15 birds on farms and preserves and the sale of the bred migratory game birds,
16 pursuant to regulations, for the purpose of increasing the food supply.

17 **§ 261209. Authorization of appropriations**

18 (a) IN GENERAL.—There is authorized to be appropriated such amounts
19 as may be necessary to carry out the Conventions and this subchapter (in-
20 cluding regulations prescribed under this subchapter).

21 (b) PERMANENT APPROPRIATION.—All fees collected for Federal migra-
22 tory bird permits shall be available to the Secretary, without further appro-
23 priation, to be used for the expenses of USFWS in administering the Fed-
24 eral migratory bird permits, and shall remain available until expended.

25 **Subchapter III—Migratory Bird**
26 **Conservation**

27 **§ 261301. Migratory Bird Conservation Commission**

28 (a) ESTABLISHMENT.—

29 (1) IN GENERAL.—There is established a commission to be known
30 as the Migratory Bird Conservation Commission.

31 (2) MEMBERS.—The Commission shall be composed of—

32 (A) the Secretary, as chairman;

33 (B) the Administrator of the Environmental Protection Agency;

34 (C) the Secretary of Agriculture;

35 (D) 2 members of the Senate, to be selected by the President
36 of the Senate; and

37 (E) 2 members of the House of Representatives, to be selected
38 by the Speaker of the House of Representatives.

39 (3) HEAD OF STATE AGENCY.—The head of a State agency that ad-
40 ministers the State game laws, or in a State having no State agency
41 that administers the State game laws, the Governor of the State, shall

1 be a member of the Commission for the purpose of considering and vot-
2 ing on all questions relating to the acquisition, under this subchapter,
3 of areas in the State.

4 (b) AUTHORITIES.—

5 (1) IN GENERAL.—The Commission may—

6 (A) consider and approve or disapprove an area of land or water
7 or an interest in an area of land or water that may be rec-
8 ommended by the Secretary for purchase or rental under this sub-
9 chapter; and

10 (B) set the price at which the area may be purchased or rented.

11 (2) REQUIRED APPROVAL OF COMMISSION.—No purchase or rental
12 shall be made of an area described in paragraph (1) until it has been
13 approved for purchase or rental by the Commission.

14 (c) REELECTION.—A member of the House of Representatives who is a
15 member of the Commission, if reelected to the succeeding Congress, may
16 serve on the Commission notwithstanding the expiration of a Congress.

17 (d) VACANCY.—A vacancy on the Commission shall be filled in the same
18 manner as the original appointment.

19 **§ 261302. Areas recommended for approval**

20 The Secretary shall not recommend an area for purchase or rental under
21 this subchapter unless the Secretary—

22 (1) determines that the area is necessary for the conservation of mi-
23 gratory birds; and

24 (2) consults with—

25 (A) the county or other unit of local government in which the
26 area is located; and

27 (B) the Governor of the State concerned or the appropriate
28 State agency.

29 **§ 261303. Purchase, rent, and other acquisition of areas**

30 (a) IN GENERAL.—The Secretary may, with respect to an area that the
31 Secretary determines to be suitable for use as a migratory bird reserva-
32 tion—

33 (1) purchase or rent the area or an interest in the area if approved
34 for purchase or rental by the Commission at the price set by the Com-
35 mission; or

36 (2) acquire, by gift or devise, the area or interest in the area.

37 (b) PAYMENTS.—The Secretary may pay—

38 (1) the purchase or rental price of an area or an interest in an area
39 described in subsection (a)(1); and

1 (2) the expenses incident to the location, examination, survey, and
2 acquisition of title (including options) of the area or interest in the
3 area.

4 **§ 261304. Titles and easements**

5 (a) SECURING SAFE TITLE.—The Secretary may do all things and make
6 all expenditures necessary to secure safe title in the United States to an
7 area or an interest in an area that may be acquired under this subchapter.

8 (b) SATISFACTION OF ATTORNEY GENERAL.—No payment shall be made
9 for an area or an interest in an area that may be acquired under this sub-
10 chapter until the title to the area or the interest in an area is satisfactory
11 to the Attorney General.

12 (c) ACQUISITION OF AREAS WITH EASEMENTS AND RESERVATIONS.—
13 The acquisition of an area or an interest in an area under this subchapter
14 by the United States shall not be defeated because of an easement or res-
15 ervation that, from its nature, will not, in the opinion of the Secretary,
16 interfere with the use of the encumbered area for the purposes of this sub-
17 chapter.

18 (d) EASEMENTS AND RESERVATIONS SUBJECT TO REGULATIONS.—

19 (1) IN GENERAL.—An easement or reservation retained by the grant-
20 or or lessor from whom the United States receives title under this sub-
21 chapter or any other Act for the acquisition by the Secretary of an area
22 for migratory bird reservation or wildlife refuge shall be subject to reg-
23 ulations prescribed by the Secretary for the occupation, use, operation,
24 protection, and administration of the area as a migratory bird reserva-
25 tion or as a wildlife refuge.

26 (2) DEEDS AND LEASES.—The deed or lease shall express that the
27 use, occupation, and operation of an easement or reservation under
28 paragraph (1) shall be subject to such regulations as are set out in the
29 deed or lease or, if considered necessary by the Secretary, to such regu-
30 lations as the Secretary may prescribe from time to time.

31 **§ 261305. Consent of State to conveyance in fee**

32 The Secretary shall not accept, under this subchapter, a deed or instru-
33 ment of conveyance in fee unless the State in which the area lies consents
34 by law to the acquisition by the United States of land in that State.

35 **§ 261306. National forests and power sites**

36 Nothing in this subchapter authorizes the Commission, the Secretary, or
37 any other board, commission, or officer—

38 (1) to designate, except as designated before February 18, 1929, any
39 part of a national forest or power site (as reserved or classified under
40 section 24 of the Federal Power Act (16 U.S.C. 818)) to be a migra-
41 tory bird reservation under this subchapter; or

1 (2) to withdraw any part of a national forest or power site from a
2 migratory bird reservation under this subchapter;
3 except by the consent of the legislature of the State in which the national
4 forest or power site is located.

5 **§ 261307. Administration**

6 (a) TREATY OBLIGATIONS.—An area of land or water or an interest in
7 an area of land or water acquired or reserved pursuant to this subchapter
8 shall, unless otherwise provided by law, be administered by the Secretary,
9 under regulations prescribed by the Secretary, to—

10 (1) conserve and protect—

11 (A) migratory birds in accordance with the Conventions; and

12 (B) other species of wildlife found on the area, including listed
13 species, as defined in section 201102 of this title; and

14 (2) restore or develop adequate wildlife habitat.

15 (b) MANAGEMENT OF RESOURCES AND AGREEMENTS.—In administering
16 an area described in subsection (a), the Secretary may—

17 (1) manage timber, range, and agricultural crops;

18 (2) manage other species of animals, including fenced range animals,
19 with the objectives of perpetuating, distributing, and utilizing the ani-
20 mals; and

21 (3) enter into agreements with public and private agencies.

22 **§ 261308. Jurisdiction of State over areas acquired**

23 The civil and criminal jurisdiction of a State over persons on areas ac-
24 quired under this subchapter shall not be affected by the acquisition and
25 administration by the United States of the areas as migratory bird reserva-
26 tions.

27 **§ 261309. Cooperation of State in enforcement of sub-**
28 **chapter**

29 If a State enacts legislation that adequately provides for the enforcement
30 of this subchapter (including regulations prescribed under this sub-
31 chapter)—

32 (1) the Secretary may certify the enactment; and

33 (2) after certification, the State may cooperate with the Secretary in
34 the enforcement of this subchapter (including regulations prescribed
35 under this subchapter).

36 **§ 261310. Inapplicability to military land**

37 Land acquired, held, or used by the United States for military purposes
38 shall not be subject to this subchapter.

1 **§ 261311. State game laws**

2 Nothing in this subchapter affects the operation of State game laws appli-
3 cable to migratory game birds to the extent that the State game laws do
4 not permit anything that is prohibited by Federal law.

5 **§ 261312. Authorization of appropriations**

6 (a) GENERAL EXPENSES.—

7 (1) IN GENERAL.—There is authorized to be appropriated \$200,000
8 for each fiscal year for—

9 (A) the acquisition (including the location, examination, and
10 survey) of suitable areas of land or water or interests in areas of
11 land or water for use as migratory bird reservations, and nec-
12 essary expenses incident to the acquisition;

13 (B) the administration, maintenance, and development of the
14 areas described under subparagraph (A) and other preserves, res-
15 ervations, or breeding grounds frequented by migratory birds and
16 under the administration of the Secretary, including the construc-
17 tion of dams, dikes, ditches, flumes, spillways, buildings, and other
18 necessary improvements;

19 (C) the elimination of the loss of migratory birds from alkali
20 poisoning, oil pollution of water, or other causes;

21 (D) cooperation with local authorities in wildlife conservation;

22 (E) investigations and publications relating to North American
23 birds;

24 (F) personal services, printing, engraving, and issuance of circu-
25 lars, posters, and other necessary matter for the implementation
26 of this subchapter; and

27 (G) the enforcement of this subchapter.

28 (2) LIMITATION RELATING TO LAW ENFORCEMENT AUTHORITIES.—

29 (A) DEFINITION OF WILDLIFE LAW ENFORCEMENT AUTHOR-
30 ITY.—In this paragraph, the term “wildlife law enforcement au-
31 thority” means a law enforcement authority of the Department of
32 the Interior who has the authorities that a United States game
33 protector had prior to the effective date of Reorganization Plan
34 No. II of 1939 (5 U.S.C. App.).

35 (B) IN GENERAL.—No part of any appropriation authorized by
36 this subsection shall be used for payment of the salary, compensa-
37 tion, or expenses of a law enforcement authority, except a wildlife
38 law enforcement authority of a reservation for the administration,
39 maintenance, and protection of the reservation and the birds on
40 the reservation.

1 (C) APPOINTMENT OF WILDLIFE LAW ENFORCEMENT AUTHORI-
2 TIES OF A RESERVATION.—A wildlife law enforcement authority of
3 a reservation appointed under this subchapter shall be selected,
4 when practicable, from among qualified citizens of the State in
5 which the wildlife law enforcement authority is to be employed.

6 (3) OTHER AUTHORITIES OF THE SECRETARY.—The Secretary shall
7 make such expenditures and employ such means, including personal
8 services, as may be necessary to carry out the activities for which ap-
9 propriations are authorized under this subsection.

10 (b) COMMISSION EXPENSES.—

11 (1) IN GENERAL.—There is authorized to be appropriated for each
12 fiscal year an amount sufficient to pay the necessary expenses of the
13 Commission and its members, not more than \$7,500.

14 (2) PAYOUT OF APPROPRIATION.—An appropriation under para-
15 graph (1) shall be paid out on the audit and order of the chairman
16 of the Commission.

17 (3) CONCLUSIVENESS OF AUDIT AND ORDER.—An audit and order
18 under paragraph (2) shall be conclusive and binding on the Govern-
19 ment Accountability Office as to the correctness of the accounts of the
20 Commission.

21 **Subchapter IV—Migratory Bird Hunting**
22 **and Conservation Stamps**
23 **Part A—General Provisions**

24 **§ 261401. Definitions**

25 In this part:

26 (1) FUND.—The term “Fund” means the Migratory Bird Conserva-
27 tion Fund” established in section 261406 of this title.

28 (2) HUNTING YEAR.—The term “hunting year” means the 1-year pe-
29 riod beginning on July 1 of each year.

30 (3) MIGRATORY WATERFOWL.—The term “migratory waterfowl”
31 means Anatidae or waterfowl, including brant, wild ducks, geese, and
32 swans.

33 (4) STAMP.—The term “Stamp” means the Migratory Bird Hunting
34 and Conservation Stamp described in section 261402 of this title.

35 (5) STATE.—The term “State” means—

- 36 (A) a State;
- 37 (B) the District of Columbia;
- 38 (C) Puerto Rico;
- 39 (D) Guam;
- 40 (E) American Samoa;
- 41 (F) the Northern Mariana Islands; and

1 (G) the Virgin Islands.

2 (6) TAKE.—The term “take”, with respect to a migratory waterfowl,
3 means—

4 (A) to pursue, hunt, shoot, capture, collect, or kill the migratory
5 waterfowl; or

6 (B) to attempt to pursue, hunt, shoot, capture, collect, or kill
7 the migratory waterfowl.

8 **§ 261402. Prohibition on taking**

9 (a) PROHIBITION.—

10 (1) IN GENERAL.—Except as provided in paragraph (2), an individ-
11 ual who has attained the age of 16 years old shall not take a migratory
12 waterfowl unless, at the time of the taking, the individual carries on
13 the person of the individual a valid Migratory Bird Hunting and Con-
14 servation Stamp, validated by the signature of the individual written
15 in ink across the face of the Stamp prior to the time of the taking of
16 the migratory waterfowl by the individual.

17 (2) EXCEPTION.—A Stamp shall not be required for the taking of
18 migratory waterfowl—

19 (A) by an officer or employee of a Federal or State agency;

20 (B) by an individual for the purpose of propagation;

21 (C) by the resident owner, tenant, or sharecropper of the land
22 or water on which the migratory waterfowl is taken, under such
23 restrictions as the Secretary may by regulation prescribe, in a case
24 in which the migratory waterfowl is damaging crops or other prop-
25 erty; or

26 (D) by a rural Alaska resident for subsistence uses (as defined
27 in section 803 of the Alaska National Interest Lands Conservation
28 Act (16 U.S.C. 3113)).

29 (b) DISPLAY OF STAMP.—An individual to whom a Stamp has been sold
30 under this part shall, on request, display the Stamp for inspection to—

31 (1) an officer or employee of the Department of the Interior who is
32 authorized to enforce this part; or

33 (2) an officer or employee of a State or political subdivision of a
34 State who is authorized to enforce State game laws.

35 (c) OTHER LICENSES.—Nothing in this section requires an individual to
36 affix the Stamp to any other license prior to taking 1 or more migratory
37 waterfowl.

38 **§ 261403. Stamp sales**

39 (a) AUTHORIZED SELLERS.—Stamps shall be sold by the Postal Service
40 and may be sold by the Secretary, pursuant to regulations prescribed jointly
41 by the Postal Service and the Secretary, at—

1 (1) any post office; and
2 (2) such other establishments, facilities, or locations as the Postal
3 Service or the Secretary may direct or authorize.

4 (b) MINIMUM AND MAXIMUM VALUES.—Except as provided in subsection
5 (f), the Postal Service shall collect the full face value of each Stamp sold
6 under this section for the applicable hunting year.

7 (c) VALIDITY.—A Stamp sold under this part shall not be valid to author-
8 ize the taking of migratory waterfowl except—

9 (1) in compliance with Federal and State laws (including regula-
10 tions);

11 (2) on the condition that the individual taking the migratory water-
12 fowl wrote the signature of the individual in ink across the face of the
13 Stamp prior to the taking; and

14 (3) during the hunting year for which the Stamp was issued.

15 (d) UNUSED STAMPS.—

16 (1) DEFINITION OF RETAIL DEALER.—In this subsection, the term
17 “retail dealer” means—

18 (A) an individual or entity that is regularly engaged in the busi-
19 ness of selling hunting or fishing equipment at retail; and

20 (B) an individual or entity authorized to act as an agent of a
21 State or political subdivision of a State for the sale of State or
22 county hunting or fishing licenses.

23 (2) REDEMPTION OF UNUSED STAMPS.—The Secretary, under regu-
24 lations prescribed by the Secretary, shall provide for the redemption,
25 on or before the 30th day of June of each year, of unused Stamps is-
26 sued for the year under this part that—

27 (A) were sold on consignment to a person authorized by the
28 Secretary to sell stamps on consignment (including retail dealers
29 for resale to customers); and

30 (B) have not been resold by the person.

31 (e) PROHIBITION ON CERTAIN STAMP SALES.—The Postal Service shall
32 not—

33 (1) sell on consignment a Stamp issued under this part to any per-
34 son; or

35 (2) redeem Stamps issued under this part that are sold on consig-
36 nement by the Secretary (or an agent of the Secretary).

37 (f) COST OF STAMPS.—The Postal Service shall collect \$15 for each
38 Stamp sold under this section through hunting year 2013 and \$25 for each
39 hunting year after hunting year 2013 if the Secretary determines, at any
40 time before February 1 of the calendar year in which the hunting year be-

1 gins, that all amounts in the Fund available for obligation and attributable
2 to—

3 (1) amounts appropriated under this part for the fiscal year ending
4 in the immediately preceding calendar year; and

5 (2) the sale of Stamps under this section during the fiscal year de-
6 scribed in paragraph (1);

7 have been obligated for expenditure.

8 (g) REDUCTION IN PRICE OF STAMP.—The Secretary may reduce the
9 price of each Stamp sold under this section for a hunting year if the Sec-
10 retary determines that the increase in the price of the Stamp after hunting
11 year 2013 resulted in a reduction in revenues deposited in the Fund.

12 **§ 261404. Disposition of unsold Stamps**

13 (a) IN GENERAL.—A Stamp shall be transferred to the Postal Service or
14 the Secretary for sale to a collector if the Stamp—

15 (1) has not been sold by the end of the hunting year during which
16 the Stamp is issued; and

17 (2) as determined by the Postal Service or the Secretary—

18 (A) is appropriate to supply a market for sale to collectors; and

19 (B) is in suitable condition for sale to a collector.

20 (b) SURPLUS STOCK.—The Postal Service or the Secretary may destroy
21 any surplus stock of Stamps at such time and in such manner as the Postal
22 Service or the Secretary determines to be appropriate.

23 **§ 261405. Effect of part**

24 Nothing in this part—

25 (1) authorizes a person to take a migratory waterfowl otherwise than
26 in accordance with regulations prescribed pursuant to a treaty entered
27 into between the United States and any other country for the protec-
28 tion of migratory birds; or

29 (2) exempts a person from complying with the game laws of a State.

30 **§ 261406. Expenditure of amounts**

31 (a) FUND.—

32 (1) IN GENERAL.—All amounts received for Stamps sold under this
33 part shall be—

34 (A) accounted for by the Postal Service or the Secretary, as ap-
35 propriate;

36 (B) deposited in the Treasury of the United States; and

37 (C) reserved and set aside as a special fund, to be known as
38 the “Migratory Bird Conservation Fund”, to be administered by
39 the Secretary.

40 (2) USE OF AMOUNTS.—

1 (A) IN GENERAL.—Except as provided in subsection (b), all
2 amounts received in the Fund are appropriated for the following
3 purposes, to remain available until expended:

4 (i) ADVANCE ALLOTMENTS.—So much as may be necessary
5 shall be used by the Secretary for—

6 (I) engraving, printing, issuing, and selling Stamps;

7 (II) accounting for Stamps and amounts received from
8 the sale of the Stamps;

9 (III) expenses for personnel services; and

10 (IV) such other expenses as may be necessary in exe-
11 cuting the duties and functions required of the Postal
12 Service.

13 (ii) AREAS FOR REFUGES.—Except as provided in clauses
14 (iii) and (iv), the remaining amount from clause (i) shall be
15 available for the location, ascertainment, and acquisition of
16 suitable areas for migratory bird refuges under subchapter
17 III and for the administrative costs incurred in the acquisi-
18 tion of the areas.

19 (iii) WATERFOWL PRODUCTION AREAS.—

20 (I) IN GENERAL.—The Secretary may use amounts
21 made available under clause (ii) and such other amounts
22 as may be appropriated for the purposes of clause (ii) or
23 this clause to acquire, or defray the expense incident to
24 the acquisition by gift, devise, lease, purchase, or ex-
25 change of, small wetland and pothole areas, interests in
26 those areas, and rights-of-way to provide access to those
27 areas.

28 (II) EFFECT OF SUBCHAPTER III ON ACQUISITION.—
29 The small wetland and pothole areas referred to in sub-
30 clause (I), to be designated as “Waterfowl Production
31 Areas”, may be acquired without regard to the limita-
32 tions and requirements of subchapter III.

33 (III) EFFECT OF SUBCHAPTER III ON ADMINISTRA-
34 TION AND PROTECTION.—The provisions of subchapter
35 III that govern the administration and protection of land
36 acquired under subchapter III, except the migratory bird
37 reservation provisions of subchapter III, shall be applica-
38 ble to areas acquired under this clause.

39 (iv) PROMOTION OF STAMP SALES.—

40 (I) IN GENERAL.—The Secretary may use amounts
41 from the sale of Stamps for the promotion of additional

1 sales of Stamps in accordance with an annual marketing
2 plan approved by the Commission.

3 (II) INCLUSIONS.—The promotion shall include the
4 preparation of reports, brochures, or other materials, to
5 be made available to the public, that describe the bene-
6 fits to wildlife derived from Stamp sales.

7 (b) SUBACCOUNT.—

8 (1) IN GENERAL.—There is established a subaccount in the Fund to
9 which the Secretary of the Treasury shall transfer all amounts in ex-
10 cess of \$15 that are received from the sale of each Stamp sold for each
11 hunting year after hunting year 2013.

12 (2) USE OF AMOUNTS FOR CONSERVATION EASEMENTS.—Amounts
13 in the subaccount established in paragraph (1) shall be used by the
14 Secretary solely to acquire easements in real property in the United
15 States for conservation of migratory birds.

16 (c) ANNUAL REPORT.—The Secretary shall annually submit to Congress
17 a report that includes—

18 (1) a description of activities conducted under subsection
19 (a)(2)(A)(iv) in the year covered by the report;

20 (2) an annual assessment of the status of wetland conservation
21 projects for migratory bird conservation purposes, including a clear and
22 accurate accounting of—

23 (A) all expenditures by Federal and State agencies under this
24 section; and

25 (B) all expenditures made for fee-simple acquisition of Federal
26 land in the United States, including the amount paid and acreage
27 of each parcel acquired in each acquisition;

28 (3) an analysis of National Wildlife Refuge System land opened and
29 closed for hunting and fishing in the year covered by the report, includ-
30 ing—

31 (A) identification of the specific areas of land in each national
32 wildlife refuge and the reasons for the closure or opening; and

33 (B) a detailed description of each closure including detailed jus-
34 tification for the closure;

35 (4) the total number of acres of National Wildlife Refuge System
36 land open for hunting and fishing, and the total number of acres of
37 National Wildlife Refuge System land closed for hunting and fishing,
38 in the year covered by the report; and

39 (5) a separate report on the hunting and fishing status of land
40 added to the National Wildlife Refuge System in the year covered by
41 the report.

1 (d) LIMITATION ON USE OF FUNDS.—No land shall be acquired with
 2 amounts from the Fund unless the acquisition of the land has been ap-
 3 proved by the Governor or an appropriate State agency of the State in
 4 which the land is situated.

5 **§ 261407. Loans and transfers; alterations; reproductions of**
 6 **stamps**

7 (a) LOANS AND TRANSFERS OF VALID STAMPS.—

8 (1) IN GENERAL.—An individual to whom has been sold a Stamp,
 9 validated as provided in section 261402 of this title, shall not loan or
 10 transfer the Stamp to another individual during the period of the
 11 Stamp's validity.

12 (2) USE OF STAMP BY ANOTHER INDIVIDUAL.—An individual, other
 13 than the individual validating the Stamp, shall not use a Stamp for any
 14 purpose during the period of the Stamp's validity.

15 (b) ALTERATION.—Except as provided in clauses (i) and (ii) of section
 16 504(1) of title 18, a person shall not—

17 (1) alter, mutilate, imitate, or counterfeit a Stamp;

18 (2) imitate or counterfeit a die, plate, or engraving for a Stamp;

19 (3) make or print a counterfeit, die, plate, or engraving for a Stamp;

20 or

21 (4) knowingly use, sell, or have in the person's possession a counter-
 22 feit, die, plate, or engraving for a Stamp.

23 (c) REPRODUCTION.—

24 (1) IN GENERAL.—Notwithstanding subsection (b), the prohibition in
 25 section 474 of title 18, or any other provision of law, the Secretary may
 26 authorize, with the concurrence of the Secretary of the Treasury—

27 (A) the color reproduction; or

28 (B) the black and white reproduction;

29 of Stamps the reproduction of which satisfies the requirements of
 30 clauses (ii) and (iii) of section 504(1) of title 18.

31 (2) TERMS AND CONDITIONS.—A reproduction under this subsection
 32 shall be subject to terms and conditions considered necessary by the
 33 Secretary by regulation or otherwise.

34 (3) FUND.—Amounts received by the Federal Government as a re-
 35 sult of reproduction under this subsection, after deducting expenses for
 36 marketing, shall be deposited in the Fund.

37 **§ 261408. Enforcement**

38 (a) IN GENERAL.—The judges of the courts established under Federal
 39 law, United States magistrate judges, and persons appointed by the Sec-
 40 retary to enforce this part shall have, with respect to the enforcement of
 41 this part, like powers and duties as are conferred on those judges, mag-

1 istrate judges, and employees of the Department of the Interior by sub-
2 chapter II or any other Act of Congress to carry into effect any treaty for
3 the protection of migratory birds with respect to that Act.

4 (b) DISPOSITION OF SEIZED BIRDS.—A bird or part of a bird taken or
5 possessed contrary to this part shall, when seized, be disposed of by the Sec-
6 retary in accordance with law.

7 **§ 261409. Violations**

8 A person that violates this part (including a regulation prescribed under
9 this part) shall be subject to the penalties described in section 52(a) of title
10 18 and section 261205(c)(2) of this title.

11 **§ 261410. Cooperation**

12 The Secretary may cooperate with States and territories (including a pos-
13 session) of the United States in the enforcement of this part.

14 **§ 261411. Use of contest fees**

15 Notwithstanding any other provision of law, amounts received by the Di-
16 rector in the form of fees for entering a Stamp contest shall be credited—

17 (1) to the appropriation account from which expenditures for the ad-
18 ministration of the contest are made; and

19 (2) to the extent any amounts remain, to the Fund.

20 **Part B—Permanent Electronic Duck**
21 **Stamps**

22 **§ 261421. Definitions**

23 In this part:

24 (1) ACTUAL STAMP.—The term “actual stamp” means a Migratory
25 Bird Hunting and Conservation Stamp that is—

26 (A) required under part A;

27 (B) printed on paper; and

28 (C) sold through the means established by the authority of the
29 Secretary immediately before December 18, 2014.

30 (2) AUTOMATED LICENSING SYSTEM.—

31 (A) IN GENERAL.—The term “automated licensing system”
32 means an electronic, computerized licensing system used by a
33 State fish and wildlife agency to issue hunting, fishing, and other
34 associated licenses and products.

35 (B) INCLUSION.—The term “automated licensing system” in-
36 cludes a point-of-sale, internet, telephonic system, or other elec-
37 tronic application used for a purpose described in subparagraph
38 (A).

39 (3) ELECTRONIC STAMP.—The term “electronic stamp” means an
40 electronic version of an actual stamp that—

41 (A) is a unique identifier for the individual to whom it is issued;

1 (B) can be printed on paper or produced through an electronic
2 application with the same indicators as the State endorsement pro-
3 vides;

4 (C) is issued through a State automated licensing system that
5 is authorized, under State law and by the Secretary under this
6 part, to issue electronic stamps;

7 (D) is compatible with the hunting licensing system of the State
8 that issues the electronic stamp; and

9 (E) is described in the State application approved by the Sec-
10 retary under section 261423(b) of this title.

11 (4) ELECTRONIC STAMP PROGRAM.—The term “electronic stamp
12 program” means the program under which the Secretary authorizes
13 States to issue electronic stamps under this part.

14 **§ 261422. Authorization by Secretary for States to issue**
15 **electronic stamps**

16 (a) IN GENERAL.—The Secretary may authorize a State to issue elec-
17 tronic stamps in accordance with this part.

18 (b) CONSULTATION.—The Secretary shall implement subsection (a) in
19 consultation with State management agencies.

20 (c) LIMITATION ON NUMBER OF APPROVED STATES.—The Secretary may
21 determine the number of new States per year to participate in the electronic
22 stamp program.

23 **§ 261423. State application**

24 (a) APPROVAL OF APPLICATION REQUIRED.—The Secretary shall not au-
25 thorize a State to issue electronic stamps under this part unless the Sec-
26 retary has received and approved an application submitted by the State in
27 accordance with this section.

28 (b) CONTENTS OF APPLICATION.—The Secretary shall not approve a
29 State application unless the application contains—

30 (1) a description of the format of the electronic stamp that the State
31 will issue under this part, including identifying features of the licensee
32 that will be specified on each electronic stamp;

33 (2) a description of any fee the State will charge for issuance of an
34 electronic stamp;

35 (3) a description of the process the State will use to account for and
36 to transfer to the Secretary the amounts collected by the State that
37 are required to be transferred to the Secretary under the electronic
38 stamp program;

39 (4) the manner by which the State will transmit electronic stamp
40 customer data to the Secretary;

41 (5) the manner by which actual stamps will be delivered;

1 (6) the policies and procedures under which the State will issue du-
2 plicate electronic stamps; and

3 (7) such other policies, procedures, and information as may be rea-
4 sonably required by the Secretary.

5 (e) PUBLICATION OF DEADLINES, ELIGIBILITY REQUIREMENTS, AND SE-
6 LECTION CRITERIA.—Not later than 30 days before the date on which the
7 Secretary begins accepting applications under this section, the Secretary
8 shall publish—

- 9 (1) deadlines for submission of applications;
- 10 (2) eligibility requirements for submitting applications; and
- 11 (3) criteria for approving applications.

12 **§ 261424. State obligations and authorities**

13 (a) DELIVERY OF ACTUAL STAMP.—The Secretary shall require that each
14 individual to whom a State sells an electronic stamp under this part receive
15 an actual stamp—

- 16 (1) by not later than the date on which the electronic stamp expires
17 under section 261425(e) of this title; and
- 18 (2) in a manner agreed on by the State and Secretary.

19 (b) COLLECTION AND TRANSFER OF ELECTRONIC STAMP REVENUE AND
20 CUSTOMER INFORMATION.—

21 (1) REQUIREMENT TO TRANSMIT.—The Secretary shall require each
22 State authorized to issue electronic stamps to collect and submit to the
23 Secretary in accordance with this section—

- 24 (A) the first name, last name, and complete mailing address of
25 each individual that purchases an electronic stamp from the State;
- 26 (B) the face value amount of each electronic stamp sold by the
27 State; and
- 28 (C) the amount of the Federal portion of any fee required by
29 the written agreement under paragraph (2) for each stamp sold.

30 (2) TIME OF TRANSMITTAL.—The Secretary shall require the sub-
31 mission under paragraph (1) to be made with respect to sales of elec-
32 tronic stamps by a State according to a written agreement between the
33 Secretary and the State agency.

34 (3) ADDITIONAL FEES NOT AFFECTED.—This section shall not apply
35 to the State portion of any fee collected by a State under subsection
36 (e).

37 (e) ELECTRONIC STAMP ISSUANCE FEE.—A State authorized to issue
38 electronic stamps may charge a reasonable fee to cover costs incurred by
39 the State and the Department of the Interior in issuing electronic stamps
40 under this part, including costs of delivery of actual stamps.

1 (d) DUPLICATE ELECTRONIC STAMPS.—A State authorized to issue elec-
2 tronic stamps may issue a duplicate electronic stamp to replace an electronic
3 stamp issued by the State that is lost or damaged.

4 (e) LIMITATION ON AUTHORITY TO REQUIRE PURCHASE OF STATE LI-
5 CENSE.—A State may not require that an individual purchase a State hunt-
6 ing license as a condition of issuing an electronic stamp under this part.

7 **§ 261425. Electronic stamp requirements; recognition of**
8 **electronic stamp**

9 (a) STAMP REQUIREMENTS.—The Secretary shall require an electronic
10 stamp issued by a State under this part—

11 (1) to have the same format as any other license, validation, or privi-
12 lege the State issues under the automated licensing system of the
13 State; and

14 (2) to specify identifying features of the licensee that are adequate
15 to enable Federal, State, and other law enforcement officers to identify
16 the licensee.

17 (b) RECOGNITION OF ELECTRONIC STAMP.—An electronic stamp, during
18 the effective period of the electronic stamp—

19 (1) shall bestow on the licensee the same privileges as are bestowed
20 by an actual stamp;

21 (2) shall be recognized nationally as a valid Migratory Bird Hunting
22 and Conservation Stamp under part A; and

23 (3) shall authorize the licensee to hunt migratory waterfowl in any
24 other State, in accordance with the laws of the other State governing
25 hunting.

26 (c) DURATION.—An electronic stamp issued by a State shall be valid for
27 a period agreed to by the State and the Secretary, which shall not exceed
28 45 days.

29 **§ 261426. Termination of State participation**

30 The authority of a State to issue electronic stamps under this part may
31 be terminated—

32 (1) by the Secretary, if the Secretary—

33 (A) finds that the State violated the terms of the application of
34 the State approved by the Secretary under section 261423 of this
35 title; and

36 (B) provides to the State written notice of the termination by
37 not later than the date that is 30 days before the date of termi-
38 nation; or

39 (2) by the State, by providing written notice to the Secretary by not
40 later than the date that is 30 days before the termination date.

Subchapters V Through VIII—Reserved
Subchapter IX—Miscellaneous

§ 261901. Regulations

(a) IN GENERAL.—The Secretary may prescribe such regulations as may be necessary to carry out the Conventions.

(b) SEASONAL TAKING FOR INDIGENOUS INHABITANTS OF ALASKA.—In accordance with the Conventions, the Secretary may prescribe such regulations as may be necessary to ensure that the taking of migratory birds and the collection of their eggs by the indigenous inhabitants of the State of Alaska shall be permitted for the indigenous inhabitants' nutritional and other essential needs, as determined by the Secretary, during seasons established to provide for the preservation and maintenance of stocks of migratory birds.

(c) MILITARY READINESS ACTIVITIES.—

(1) DEFINITION OF MILITARY READINESS ACTIVITY.—

(A) INCLUSIONS.—In this subsection, the term “military readiness activity” includes—

(i) training and operations of the Armed Forces that relate to combat; and

(ii) adequate and realistic testing of a piece of military equipment, vehicle, weapon, or sensor for proper operation and suitability for combat use.

(B) EXCLUSIONS.—In this subsection, the term “military readiness activity” does not include—

(i) the routine operation of an installation operating support function, such as an administrative office, military exchange, commissary, water treatment facility, storage facility, school, housing, motor pool, laundry, shop, mess hall, and morale, welfare, and recreation activity;

(ii) the operation of an industrial activity; or

(iii) the construction or demolition of a facility used for a purpose described in clause (i) or (ii).

(2) IN GENERAL.—The Secretary shall exercise the authority of the Secretary under section 261202 of this title to prescribe regulations to exempt the Armed Forces for the incidental taking of migratory birds during military readiness activities authorized by the Secretary of Defense or the Secretary of the military department concerned.

(3) CONCURRENCE OF SECRETARY OF DEFENSE.—The Secretary shall exercise the authority under paragraph (2) with the concurrence of the Secretary of Defense.

1 (4) LIMITATION ON JUDICIAL REVIEW.—There shall be no judicial
2 review of—

3 (A) the regulations prescribed under this subsection; or

4 (B) the manner of the promulgation of the regulations.

5 **§ 261902. Expenditures for personal services**

6 In the execution of the Act of June 15, 1935 (ch. 261, 49 Stat. 378),
7 the Secretary may make such expenditures for personal services as the Sec-
8 retary considers necessary.

9 **§ 261903. Migratory nongame bird research and conserva-**
10 **tion**

11 (a) IN GENERAL.—The Secretary shall undertake the research and con-
12 servation activities listed under subsection (b), in coordination with other
13 Federal or State agencies and international or private organizations, to as-
14 sist in fulfilling the Secretary's responsibilities to conserve migratory non-
15 game birds under—

16 (1) subchapter II;

17 (2) subchapter III; and

18 (3) section 201506 of this title.

19 (b) RESEARCH AND CONSERVATION ACTIVITIES.—The research and con-
20 servation activities referred to in subsection (a) are the following:

21 (1) Monitoring and assessment of population trends and status of
22 species, subspecies, and populations of all migratory nongame birds.

23 (2) Identification of the effects of environmental changes and human
24 activities on species, subspecies, and populations of all migratory non-
25 game birds.

26 (3) Identification of species, subspecies, and populations of all migra-
27 tory nongame birds that, without additional conservation actions, are
28 likely to become candidates for listing under chapter 201 of this title.

29 (4) Identification of conservation actions to ensure that species, sub-
30 species, and populations of migratory nongame birds identified under
31 paragraph (3) do not reach the point at which the measures provided
32 pursuant to chapter 201 of this title become necessary.

33 (5) Identification of areas of land and water in the United States
34 and other countries in the Western Hemisphere, the protection, man-
35 agement, or acquisition of which will foster the conservation of species,
36 subspecies, and populations of migratory nongame birds, including
37 those identified in paragraph (3).

38 (c) REPORTS.—Every 5 years, the Secretary shall submit to the Commit-
39 tee on Environment and Public Works of the Senate and to the Committee
40 on Natural Resources of the House of Representatives a report that pre-
41 sents the results of the activities taken pursuant to subsection (a) and that

1 describes any effort to carry out those conservation actions identified under
2 subsection (b)(4).

3 **Chapter 263—Bald Eagles and Golden**
4 **Eagles**

- Sec.
- 263101. Definitions.
- 263102. Offenses and penalties.
- 263103. Permits.
- 263104. Enforcement.
- 263105. Availability of appropriations.

5 **§ 263101. Definitions**

6 In this chapter:

- 7 (1) EAGLE.—
 - 8 (A) IN GENERAL.—The term “eagle” means—
 - 9 (i) a bald eagle (commonly known as the American eagle);
 - 10 and
 - 11 (ii) a golden eagle.
 - 12 (B) INCLUSIONS.—The term “eagle” includes—
 - 13 (i) an eagle described in subparagraph (A), alive or dead;
 - 14 and
 - 15 (ii) a part, nest, or egg of an eagle described in subpara-
 - 16 graph (A).
- 17 (2) SECRETARY.—The term “Secretary” means the Secretary of the
18 Interior.
- 19 (3) TAKE.—The term “take”, with respect to an eagle, includes pur-
20 sue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest
21 or disturb the eagle.
- 22 (4) TRANSPORT.—The term “transport” includes—
 - 23 (A) ship, convey, carry, or transport by any means; and
 - 24 (B) deliver or receive or cause to be delivered or received for
 - 25 shipment, conveyance, carriage, or transportation.

26 **§ 263102. Offenses and penalties**

- 27 (a) CRIMINAL OFFENSES AND PENALTIES.—Criminal penalties for a vio-
28 lation of this chapter are provided under section 52(b) of title 18.
- 29 (b) CIVIL OFFENSES AND PENALTIES.—
 - 30 (1) IN GENERAL.—A person that, within the United States or a
31 place subject to the jurisdiction of the United States, without being
32 permitted to do so as provided in this chapter—
 - 33 (A) takes, possesses, sells, purchases, barter, offers to sell, pur-
34 chase, or barter, transports, exports, or imports an eagle; or
 - 35 (B) violates a permit issued or regulation prescribed under this
36 chapter;

1 may be assessed a civil penalty by the Secretary of not more than
2 \$5,000 for each violation.

3 (2) SEPARATE OFFENSE.—Each violation shall be a separate offense.

4 (3) NOTICE AND HEARING.—A civil penalty shall not be assessed
5 under this subsection unless a person is given notice and opportunity
6 for a hearing with respect to a violation under this subsection.

7 (4) AMOUNT OF PENALTY.—

8 (A) FACTORS.—In determining the amount of a civil penalty,
9 the Secretary shall consider—

10 (i) the gravity of the violation; and

11 (ii) the demonstrated good faith of the person charged.

12 (B) REMISSION OR MITIGATION.—For good cause shown, the
13 Secretary may remit or mitigate a civil penalty.

14 (5) FAILURE TO PAY.—

15 (A) IN GENERAL.—On a failure to pay a civil penalty assessed
16 under this subsection, the Secretary may request the Attorney
17 General to commence a civil action in the United States district
18 court for any district in which the person is found, resides, or
19 transacts business to collect the civil penalty.

20 (B) SUBSTANTIAL EVIDENCE.—In hearing a civil action under
21 subparagraph (A), the United States district court shall sustain
22 the Secretary's action if the action is supported by substantial evi-
23 dence.

24 (c) CANCELLATION OF GRAZING AGREEMENTS.—

25 (1) IN GENERAL.—The head of a Federal agency who has issued a
26 lease, license, permit, or other agreement authorizing the grazing of do-
27 mestic livestock on Federal land to a person that is convicted of a vio-
28 lation of this chapter or of a permit issued or regulation prescribed
29 under this chapter may immediately cancel the lease, license, permit,
30 or other agreement.

31 (2) NO LIABILITY.—The United States shall not be liable for the
32 payment of any compensation, reimbursement, or damages in connec-
33 tion with the cancellation of a lease, license, permit, or other agreement
34 under this subsection.

35 **§ 263103. Permits**

36 (a) IN GENERAL.—The Secretary may authorize the taking of an eagle
37 under regulations that the Secretary may prescribe if, after investigation,
38 the Secretary determines that—

39 (1) it is compatible with the preservation of the eagle to permit the
40 taking, possession, and transportation of a specimen of the eagle for—

1 (A) the scientific or exhibition purposes of public museums, sci-
2 entific societies, and zoological parks; or

3 (B) the religious purposes of Indian tribes; or

4 (2) it is necessary to permit the taking of the eagle for—

5 (A) the protection of wildlife; or

6 (B) the protection of agricultural or other interests in a locality.

7 (b) PROTECTION OF DOMESTICATED ANIMALS.—On request of the Gov-
8 ernor of a State, the Secretary shall authorize the taking of golden eagles
9 for the purpose of seasonally protecting livestock in the State, in accordance
10 with regulations prescribed under this section, in a part of the State and
11 for a period that the Secretary determines to be necessary to protect the
12 livestock.

13 (c) PERMIT FOR TAKING BALD EAGLES.—A bald eagle, or a part, nest,
14 or egg of a bald eagle, shall not be taken for any purpose unless, prior to
15 the taking, a permit to take is procured from the Secretary.

16 (d) TAKING OF GOLDEN EAGLES FOR FALCONRY.—The Secretary, under
17 such regulations as the Secretary may prescribe, may permit the taking,
18 possession, or transportation of golden eagles for the purposes of falconry,
19 except that only golden eagles that would be taken because of depredations
20 on livestock or wildlife may be taken for purposes of falconry.

21 (e) TAKING OF GOLDEN EAGLE NESTS.—The Secretary, under such reg-
22 ulations as the Secretary may prescribe, may permit the taking of a golden
23 eagle nest that interferes with resource development or recovery operations.

24 **§ 263104. Enforcement**

25 (a) IN GENERAL.—An employee of the Department of the Interior au-
26 thorized by the Secretary to enforce this chapter may—

27 (1) without warrant—

28 (A) arrest a person committing in the employee's presence or
29 view a violation of this chapter or of a permit issued or regulation
30 prescribed under this chapter; and

31 (B) take the person immediately for examination or trial before
32 an officer or court of competent jurisdiction;

33 (2) execute a warrant or other process issued by an officer or court
34 of competent jurisdiction for the enforcement of this chapter; or

35 (3) with or without a warrant, as authorized by law, search a place.

36 (b) COOPERATIVE AGREEMENTS.—The Secretary may enter into a coop-
37 erative agreement with a State fish and wildlife agency or other appropriate
38 State authority to—

39 (1) facilitate enforcement of this chapter; and

1 (2) delegate such enforcement authority to State law enforcement
2 personnel as the Secretary considers appropriate for effective enforce-
3 ment of this chapter.

4 (e) ISSUANCE OF WARRANTS.—A judge of a court established under Fed-
5 eral law, or a United States magistrate judge, may, within the judge's re-
6 spective jurisdiction, on proper oath or affirmation showing probable cause,
7 issue a warrant for the enforcement of this chapter.

8 (d) FORFEITURE.—

9 (1) IN GENERAL.—An eagle taken, possessed, sold, purchased, bar-
10 tered, offered for sale, purchase, or barter, transported, exported, or
11 imported in violation of this chapter, or a permit issued or regulation
12 prescribed under this chapter, shall be subject to forfeiture to the
13 United States.

14 (2) EQUIPMENT AND TRANSPORTATION.—A gun, trap, net, or other
15 equipment, vessel, vehicle, aircraft, or other means of transportation
16 used to aid in the taking, possessing, selling, purchasing, bartering, of-
17 fering for sale, purchase, or barter, transporting, exporting, or import-
18 ing of an eagle in violation of this chapter, or a permit issued or regu-
19 lation prescribed under this chapter, shall be subject to forfeiture to
20 the United States.

21 (e) APPLICABILITY OF CUSTOMS LAWS.—

22 (1) IN GENERAL.—All laws relating to—

23 (A) the seizure, forfeiture, and condemnation of a vessel for vio-
24 lation of the customs laws;

25 (B) the disposition of the vessel or the proceeds from the sale
26 of the vessel; and

27 (C) the remission or mitigation of forfeitures described in sub-
28 paragraph (A);

29 shall apply to the seizures and forfeitures incurred, or alleged to have
30 been incurred, under this chapter, to the extent that those laws are ap-
31 plicable and not inconsistent with this chapter.

32 (2) POWERS, RIGHTS, AND DUTIES OF SECRETARY RELATING TO
33 CUSTOMS LAWS.—All powers, rights, and duties conferred or imposed
34 by the customs laws on an officer or employee of the Department of
35 the Treasury or Department of Homeland Security shall, for the pur-
36 poses of this chapter, be exercised or performed by the Secretary or
37 by such persons as the Secretary may designate.

38 **§ 263105. Availability of appropriations**

39 Amounts available to the Secretary for the administration and enforce-
40 ment of subchapter II of chapter 261 of this title, shall be equally available
41 for the administration and enforcement of this chapter.

1

Chapter 265—Wild Exotic Birds

Sec.

- 265101. Definitions.
- 265102. Moratoria; suspensions of importations.
- 265103. List of approved species.
- 265104. Qualifying facilities.
- 265105. Moratoria or quotas for species not covered by Convention.
- 265106. Petitions.
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- 265108. Permits.
- 265109. Burden of proof for permits.
- 265110. Penalties and enforcement.
- 265111. Exotic Bird Conservation Fund.
- 265112. Exotic bird conservation assistance.
- 265113. Marking and recordkeeping.
- 265114. Relationship to other law.
- 265115. Regulations.

2

§ 265101. Definitions

3

In this chapter:

4

(1) CONVENTION.—The term “Convention” means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington March 3, 1973 (27 UST 1087; TIAS 8249).

8

(2) EXOTIC BIRD.—

9

(A) IN GENERAL.—The term “exotic bird” means a live or dead member of the class Aves that is not indigenous to the 50 States or the District of Columbia, including an egg or offspring of the member.

10

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(B) EXCLUSIONS.—The term “exotic bird” does not include—

14

(i) domestic poultry, dead sport-hunted birds, dead museum bird specimens, dead scientific bird specimens, or products manufactured from the birds under this clause; or

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17

(ii) birds in the Phasianidae, Numididae, Cracidae, Meleagrididae, Megapodiidae, Anatidae, Struthionidae, Rheidae, Dromaiidae, or Gruidae family.

18

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(3) FUND.—The term “Fund” means the Exotic Bird Conservation Fund established in section 265111 of this title.

21

22

(4) IMPORT.—The term “import” means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, a place subject to the jurisdiction of the United States.

23

24

25

(5) PERSON.—The term “person” means—

26

27

(A) an individual, corporation, partnership, trust, association, or any other private entity;

28

29

(B) an officer, employee, agent, department, or instrumentality of—

30

(i) the Federal Government;

- 1 (ii) a State;
- 2 (iii) a municipality or political subdivision of a State; or
- 3 (iv) a foreign government;
- 4 (C) a State;
- 5 (D) a municipality or political subdivision of a State; or
- 6 (E) any other entity subject to the jurisdiction of the United
- 7 States.

8 (6) QUALIFYING FACILITY.—The term “qualifying facility” means an
9 exotic bird breeding facility that is included in a list published by the
10 Secretary under section 265104 of this title.

11 (7) SECRETARY.—The term “Secretary” means the Secretary of the
12 Interior.

13 (8) SPECIES.—

14 (A) IN GENERAL.—The term “species” means a species, sub-
15 species, or distinct population segment of a species or subspecies.

16 (B) INCLUSIONS.—The term “species” includes hybrids of any
17 species or subspecies.

18 (9) UNITED STATES.—The term “United States” means a State, the
19 District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin
20 Islands, and the Northern Mariana Islands.

21 **§ 265102. Moratoria; suspensions of importations**

22 (a) MORATORIUM ON SPECIES IDENTIFIED IN REPORT.—

23 (1) ESTABLISHMENT OF MORATORIUM.—The importation of an ex-
24 otic bird of a species identified as a category B species in the report
25 from the Animals Committee entitled “Interpretation and Implementa-
26 tion of the Convention, Significant Trade in Appendix-II Species”,
27 adopted by the 8th meeting of the Conference of the Parties to the
28 Convention, is prohibited.

29 (2) TERMINATION OF MORATORIUM.—A species of exotic bird shall
30 be subject to the prohibition on importation established under para-
31 graph (1) until the Secretary, after notice and an opportunity for pub-
32 lic comment—

33 (A) determines that appropriate remedial measures have been
34 taken in the countries of origin for that species so as to eliminate
35 the threat of trade to the conservation of the species; and

36 (B) makes the findings described in section 265103(c) of this
37 title for the species and includes the species in the list published
38 under section 265103(a) of this title.

39 (b) MORATORIUM ON SPECIES LISTED IN APPENDICES.—The importation
40 of any exotic bird of a species that is listed in an Appendix to the Con-
41 vention is prohibited unless the Secretary makes the findings described in sec-

1 tion 265103(e) of this title and includes the species in the list published
2 under section 265103(a) of this title.

3 (c) EMERGENCY AUTHORITY TO SUSPEND IMPORTATIONS OF SPECIES
4 LISTED IN APPENDIX.—

5 (1) AUTHORITY TO SUSPEND IMPORTATION.—The Secretary may
6 suspend the importation of exotic birds of a species that is listed in
7 an Appendix to the Convention, and if applicable, remove the species
8 from the list under section 265103(a) of this title, if the Secretary de-
9 termines that—

10 (A)(i) trade in that species is detrimental to the species;

11 (ii) sufficient information on which to base a judgment that the
12 species is not detrimentally affected by trade in that species is not
13 available; or

14 (iii) remedial measures that have been recommended by the
15 Standing Committee of the Convention have not been imple-
16 mented; and

17 (B) the suspension might be necessary for the conservation of
18 the species.

19 (2) TERMINATION OF SUSPENSION.—A species of exotic bird shall be
20 subject to a suspension of importation under paragraph (1) until the
21 Secretary, after notice and an opportunity for public comment, makes
22 the findings described in section 265103(e) of this title and includes
23 the species in the list published under section 265103(a) of this title.

24 **§ 265103. List of approved species**

25 (a) LISTING.—

26 (1) IN GENERAL.—The Secretary shall periodically, after notice and
27 an opportunity for public comment, publish in the Federal Register a
28 list of species of exotic birds—

29 (A) that are listed in an Appendix to the Convention; and

30 (B) that are not subject to a prohibition or suspension of impor-
31 tation otherwise applicable under section 265102 of this title.

32 (2) MANNER OF LISTING.—The Secretary shall list a species under
33 paragraph (1) with respect to—

34 (A) the countries of origin from which the species may be im-
35 ported; and

36 (B) if appropriate, the qualifying facilities in those countries
37 from which the species may be imported.

38 (3) BASES FOR DETERMINATIONS.—In deciding whether a species
39 should be included in the list under this subsection, the Secretary
40 shall—

41 (A) use the best scientific information available; and

1 (B) consider the adequacy of regulatory and enforcement mech-
2 anisms in all countries of origin for the species, including regu-
3 latory and enforcement mechanisms for control of illegal trade.

4 (b) CAPTIVE BRED SPECIES.—The Secretary shall include a species of
5 exotic birds in the list under subsection (a) if the Secretary determines
6 that—

7 (1) the species is regularly bred in captivity and no wild-caught birds
8 of the species are in trade; or

9 (2) the species is bred in a qualifying facility.

10 (c) NONCAPTIVE BRED SPECIES.—The Secretary shall include in the list
11 under subsection (a) a species of exotic birds that is listed in an Appendix
12 to the Convention if the Secretary finds that the Convention is being effec-
13 tively implemented with respect to the species because of each of the follow-
14 ing:

15 (1) EFFECTIVE IMPLEMENTATION OF THE CONVENTION.—Each
16 country of origin for which the species is listed is effectively implement-
17 ing the Convention, particularly with respect to—

18 (A) the establishment of a scientific authority or other equiva-
19 lent authority;

20 (B) the requirements of article IV of the Convention with re-
21 spect to the species; and

22 (C) remedial measures recommended by the Parties to the Con-
23 vention with respect to the species.

24 (2) DEVELOPMENT OF MANAGEMENT PLAN.—A scientifically-based
25 management plan for the species has been developed that—

26 (A) provides for the conservation of the species and its habitat
27 and includes incentives for conservation;

28 (B) ensures that the use of the species—

29 (i) is biologically sustainable and maintained throughout
30 the range of the species in the country to which the plan ap-
31 plies at a level that is consistent with the role of the species
32 in the ecosystem; and

33 (ii) is well above the level at which the species might be-
34 come threatened with extinction; and

35 (C) addresses factors relevant to the conservation of the species,
36 including illegal trade, domestic trade, subsistence use, disease,
37 and habitat loss.

38 (3) IMPLEMENTATION AND ENFORCEMENT OF MANAGEMENT
39 PLAN.—The management plan is implemented and enforced.

1 (4) METHODS THAT MINIMIZE RISK TO INJURY.—The methods of
2 capture, transport, and maintenance of the species minimizes the risk
3 of injury or damage to health, including inhumane treatment.

4 **§ 265104. Qualifying facilities**

5 (a) DETERMINATION.—

6 (1) IN GENERAL.—On submission of a petition under section 265106
7 of this title by any person, the Secretary shall determine whether an
8 exotic bird breeding facility is a qualifying facility.

9 (2) PERIOD.—The determination in paragraph (1) shall be effective
10 for a period specified by the Secretary, not more than 3 years.

11 (3) PUBLICATION.—The Secretary shall from time to time publish a
12 list of qualifying facilities in the Federal Register.

13 (b) CRITERIA.—The Secretary shall determine under subsection (a) that
14 a facility is a qualifying facility for a species of exotic birds if the Secretary
15 finds each of the following:

16 (1) PRODUCTION CAPABILITY.—The facility has demonstrated the
17 capability of producing captive bred birds of the species in the numbers
18 to be imported into the United States from that facility.

19 (2) NONDETRIMENTAL OPERATIONS.—The facility is operated in a
20 manner that is not detrimental to the survival of the species in the
21 wild.

22 (3) HUMANE OPERATIONS.—The facility is operated in a humane
23 manner.

24 (4) CAPABILITY TO BREED SPECIES IN CAPTIVITY.—The appropriate
25 governmental authority of the country in which the facility is located
26 has certified in writing, and the Secretary is satisfied, that the facility
27 has the capability of breeding the species in captivity.

28 (5) PARTY TO THE CONVENTION.—The country in which the facility
29 is located is a Party to the Convention.

30 (6) EXPORTS BRED AT FACILITY.—All birds exported from the facil-
31 ity are bred at the facility.

32 **§ 265105. Moratoria or quotas for species not covered by**
33 **Convention**

34 (a) IN GENERAL.—The Secretary shall—

35 (1) review periodically the trade in species of exotic birds that are
36 not listed in an Appendix to the Convention; and

37 (2) after notice and an opportunity for public comment, establish a
38 moratorium or quota on—

39 (A) importation of a species of exotic bird from 1 or more coun-
40 tries of origin for the species, if the Secretary determines that—

1 (i) the findings described in paragraphs (2), (3), and (4)
2 of section 265103(e) of this title cannot be made with respect
3 to the species; and

4 (ii) the moratorium or quota is necessary for the conserva-
5 tion of the species or is consistent with the purpose of this
6 chapter; or

7 (B) the importation of all species of exotic birds from a particu-
8 lar country, if the Secretary determines that—

9 (i) the country has not developed and implemented a man-
10 agement program for exotic birds in trade generally that en-
11 sures both the conservation and the humane treatment of ex-
12 otic birds during capture, transport, and maintenance; and

13 (ii) the moratorium or quota is necessary for the conserva-
14 tion of the species or is consistent with the purpose of this
15 chapter.

16 (b) TERMINATION OF MORATORIUM OR QUOTA.—The Secretary shall ter-
17 minate a moratorium or quota established under subsection (a) if the Sec-
18 retary finds that the reasons for establishing the moratorium or quota no
19 longer exist.

20 **§ 265106. Petitions**

21 (a) IN GENERAL.—Any person may submit to the Secretary a petition
22 in writing requesting that the Secretary exercise the authority of the Sec-
23 retary under this chapter to—

24 (1) establish, modify, or terminate a prohibition, suspension, or
25 quota under this chapter on importation of a species of exotic bird;

26 (2) add a species of exotic bird to, or remove the species from, the
27 list under section 265103 of this title; or

28 (3) determine under section 265104 of this title whether an exotic
29 bird breeding facility is a qualifying facility.

30 (b) CONSIDERATION AND RULING.—For each petition submitted to the
31 Secretary under subsection (a), the Secretary shall—

32 (1) not later than 90 days after receiving the petition, issue and pub-
33 lish in the Federal Register a preliminary ruling regarding whether the
34 petition presents sufficient information indicating that the action re-
35 quested in the petition might be warranted; and

36 (2) for each petition determined to present sufficient information de-
37 scribed in paragraph (1)—

38 (A) provide an opportunity for the submission of public com-
39 ment on the petition; and

1 (B) issue and publish in the Federal Register a final ruling on
2 the petition by not later than 90 days after the end of the period
3 for public comment.

4 **§ 265107. Unlawful acts**

5 (a) IN GENERAL.—Subject to subsection (b), it is unlawful for a person
6 to—

7 (1) import an exotic bird in violation of a prohibition, suspension,
8 or quota on importation under section 265102 or 265105 of this title;

9 (2) import an exotic bird of a species that, under section
10 265103(b)(2) of this title, is included in the list under section 265103
11 of this title, if the bird was not captive bred at a qualifying facility;
12 or

13 (3) violate a regulation prescribed by the Secretary under this chap-
14 ter.

15 (b) IMPORTATION INCIDENT TO TRANSIT.—Paragraphs (1) and (2) of
16 subsection (a) do not apply to importations made incident to the transit of
17 exotic birds through the United States to foreign countries if the applicable
18 requirements of the Convention are satisfied with respect to the trade in
19 those exotic birds.

20 **§ 265108. Permits**

21 Notwithstanding a prohibition, suspension, or quota under this chapter on
22 the importation of a species of exotic bird, the Secretary may, through the
23 issuance of import permits, authorize the importation of a bird of the spe-
24 cies if the Secretary—

25 (1) determines that the importation is not detrimental to the survival
26 of the species; and

27 (2) the bird is being imported exclusively for the purpose of—

28 (A) scientific research;

29 (B) being a personally owned pet of an individual who is return-
30 ing to the United States after being continuously out of the coun-
31 try for a minimum of 1 year, except that an individual may not
32 import more than 2 exotic birds under this paragraph during a
33 12-month period;

34 (C) a zoological breeding or display program; or

35 (D) a cooperative breeding program that is—

36 (i) designed to promote the conservation of the species and
37 maintain the species in the wild by enhancing the propagation
38 and survival of the species; and

39 (ii) developed and administered by or in conjunction with
40 an avicultural, conservation, or zoological organization that
41 meets standards developed by the Secretary.

1 **§ 265109. Burden of proof for permits**

2 A person claiming the benefit of a permit under this chapter shall have
3 the burden of proving that the permit is applicable or has been granted and
4 was valid and in force at the time of an alleged violation.

5 **§ 265110. Penalties and enforcement**

6 (a) PENALTIES.—

7 (1) CIVIL PENALTIES.—

8 (A) KNOWING VIOLATIONS RELATING TO IMPORTATIONS AND
9 PERMITS.—A person that knowingly violates, or a person engaged
10 in business as an importer of exotic birds that violates, paragraph
11 (1) or (2) of section 265107(a) of this title or a permit issued
12 under section 265108 of this title may be assessed a civil penalty
13 by the Secretary of not more than \$25,000 for each violation.

14 (B) KNOWING VIOLATIONS OF REGULATIONS.—A person that
15 knowingly violates, or a person engaged in business as an importer
16 of exotic birds that violates, section 265107(a)(3) of this title may
17 be assessed a civil penalty by the Secretary of not more than
18 \$12,000 for each violation.

19 (C) OTHER VIOLATIONS.—A person that otherwise violates sec-
20 tion 265107(a) of this title or a permit issued under section
21 265108 of this title may be assessed a civil penalty by the Sec-
22 retary of not more than \$500 for each violation.

23 (D) MANNER OF ASSESSMENT.—A civil penalty under this sec-
24 tion shall be assessed, and may be collected, in the manner in
25 which a civil penalty under chapter 201 of this title may be as-
26 sessed and collected under section 201806 of this title.

27 (2) CRIMINAL PENALTIES.—Criminal penalties for a violation of this
28 chapter are provided under section 52(e) of title 18.

29 (b) JURISDICTION.—

30 (1) IN GENERAL.—The United States district courts, and any court
31 created by Act of Congress in a territory of the United States that is
32 invested with any jurisdiction of a United States district court, shall
33 have jurisdiction over an action arising under this chapter.

34 (2) AMERICAN SAMOA AND THE NORTHERN MARIANA ISLANDS.—For
35 the purposes of this chapter, American Samoa shall be under the juris-
36 diction of the United States District Court for the District of Hawaii
37 and the Northern Mariana Islands shall be under the jurisdiction of the
38 District Court of Guam.

39 (c) OTHER ENFORCEMENT.—The importation of an exotic bird is deemed
40 to be transportation of wildlife for purposes of section 203102(a)(1) of this

1 title, and the enforcement provisions of chapter 203 of this title apply to
2 this chapter.

3 **§ 265111. Exotic Bird Conservation Fund**

4 (a) FUND.—There is established in the Treasury an account to be known
5 as the “Exotic Bird Conservation Fund”.

6 (b) CONTENTS.—The Fund shall consist of—

7 (1) all amounts received by the United States in the form of pen-
8 alties, fines, or forfeiture of property collected under this chapter in ex-
9 cess of the cost of paying rewards under section 203108(e) of this title
10 pursuant to section 265110(e) of this title;

11 (2) donations received by the Secretary for exotic bird conservation;
12 and

13 (3) such amounts as are appropriated to the Secretary for conserving
14 exotic birds.

15 **§ 265112. Exotic bird conservation assistance**

16 (a) IN GENERAL.—The Secretary, subject to the availability of appropria-
17 tions, shall use amounts in the Fund to provide financial and technical as-
18 sistance for projects to conserve exotic birds in their native countries.

19 (b) SELECTION OF PROJECTS.—In selecting projects for assistance, the
20 Secretary shall give particular attention to species that are subject to an
21 import moratorium or quota under this chapter to assist exotic birds’ native
22 countries in the development and implementation of conservation manage-
23 ment programs or law enforcement.

24 **§ 265113. Marking and recordkeeping**

25 (a) REGULATIONS.—The Secretary may prescribe regulations to require
26 marking or recordkeeping that the Secretary determines will contribute sig-
27 nificantly to the ability of the Secretary to ensure compliance with the pro-
28 hibitions under section 265107 of this title for—

29 (1) any exotic bird that is imported after October 23, 1992; or

30 (2) any other exotic bird that—

31 (A) is hatched after October 23, 1992;

32 (B) is offered for sale; and

33 (C) is of a species—

34 (i) the export of which from any country of origin is pro-
35 hibited; and

36 (ii) that is subject to a high level of illegal trade.

37 (b) AVOIDANCE OF DETERRENCE TO CAPTIVE BREEDING.—The Sec-
38 retary shall ensure that regulations prescribed under this section will not
39 have the effect of deterring captive breeding of exotic birds.

1 **§ 265114. Relationship to other law**

2 (a) STATE LAW.—Nothing in this chapter precludes the regulation under
3 State law of the sale, transfer, or possession of exotic birds if the regula-
4 tion—

5 (1) does not authorize any sale, transfer, or possession of an exotic
6 bird that is prohibited under this chapter; and

7 (2) is consistent with the international obligations of the United
8 States.

9 (b) OTHER FEDERAL LAW.—

10 (1) IN GENERAL.—Nothing in this chapter repeals, supersedes, or
11 modifies any provision of Federal law.

12 (2) AUTHORITY OF THE SECRETARY.—The authority of the Sec-
13 retary under this chapter is in addition to and shall not—

14 (A) affect the authority of the Secretary under chapter 201 of
15 this title; or

16 (B) diminish the authority of the Secretary under chapter 203
17 of this title.

18 **§ 265115. Regulations**

19 The Secretary shall prescribe regulations that are necessary to carry out
20 this chapter.

21 **Chapter 267—Neotropical Migratory Bird**
22 **Conservation**

- 23 Sec.
- 24 267101. Definitions.
- 25 267102. Financial assistance.
- 26 267103. Duties of the Secretary.
- 27 267104. Advisory group.
- 28 267105. Neotropical Migratory Bird Conservation Fund.
- 29 267106. Authorization of appropriations.

23 **§ 267101. Definitions**

24 In this chapter:

25 (1) CONSERVATION.—

26 (A) IN GENERAL.—The term “conservation” means the use of
27 methods and procedures necessary to bring a species of neotropical
28 migratory bird to the point at which there are sufficient popu-
29 lations in the wild to ensure the long-term viability of the species.

30 (B) INCLUSIONS.—The term “conservation” includes—

31 (i) protection and management of neotropical migratory
32 bird populations;

33 (ii) maintenance, management, protection, and restoration
34 of neotropical migratory bird habitat;

35 (iii) research and monitoring;

36 (iv) law enforcement; and

1 (v) community outreach and education.

2 (2) FUND.—The term “Fund” means the Neotropical Migratory
3 Bird Conservation Fund established in section 267105(a) of this title.

4 (3) SECRETARY.—The term “Secretary” means the Secretary of the
5 Interior.

6 (4) STATE.—The term “State” means a State, the District of Co-
7 lumbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the
8 Northern Mariana Islands, and any other territory (including a posses-
9 sion) of the United States.

10 (5) UNITED STATES.—The term “United States” means all of the
11 States.

12 **§ 267102. Financial assistance**

13 (a) IN GENERAL.—The Secretary shall establish a program to provide fi-
14 nancial assistance for projects to promote the conservation of neotropical
15 migratory birds.

16 (b) PROJECT APPLICANTS.—A project proposal may be submitted by—

17 (1) an individual, corporation, partnership, trust, association, or
18 other private entity;

19 (2) an officer, employee, agent, department, or instrumentality of—

20 (A) the Federal Government;

21 (B) a State or political subdivision of a State; or

22 (C) a foreign government;

23 (3) a State or political subdivision of a State;

24 (4) any other entity subject to the jurisdiction of—

25 (A) the United States; or

26 (B) a foreign country; or

27 (5) an international organization (as defined in section 1 of the
28 International Organizations Immunities Act (22 U.S.C. 288)).

29 (c) PROJECT PROPOSALS.—To be considered for financial assistance for
30 a project under this chapter, an applicant shall submit a project proposal
31 that—

32 (1) includes—

33 (A) the name of the individual responsible for the project;

34 (B) a succinct statement of the purposes of the project;

35 (C) a description of the qualifications of individuals conducting
36 the project; and

37 (D) an estimate of the amount of funds and time necessary to
38 complete the project, including sources and amounts of matching
39 funds;

1 (2) demonstrates that the project will enhance the conservation of
2 neotropical migratory bird species in the United States, Canada, Latin
3 America, or the Caribbean;

4 (3) includes mechanisms to ensure adequate local public participation
5 in project development and implementation;

6 (4) contains assurances that the project will be implemented in con-
7 sultation with wildlife management authorities and other government
8 officials with jurisdiction over the resources addressed by the project;

9 (5) demonstrates sensitivity to local historic and cultural resources
10 and complies with applicable laws;

11 (6) describes how the project will promote sustainable, effective,
12 long-term programs to conserve neotropical migratory birds; and

13 (7) provides any other information that the Secretary considers nec-
14 essary for evaluating the proposal.

15 (d) PROJECT REPORTING.—

16 (1) IN GENERAL.—A recipient of assistance for a project under this
17 chapter shall submit to the Secretary such periodic reports as the Sec-
18 retary considers necessary.

19 (2) CONTENTS.—A report shall include all information required by
20 the Secretary for evaluating the progress and outcome of the project.

21 (e) COST SHARING.—

22 (1) FEDERAL SHARE.—The Federal share of the cost of a project
23 shall not be greater than 25 percent.

24 (2) NON-FEDERAL SHARE.—

25 (A) SOURCE.—The non-Federal share required to be paid for a
26 project shall not be derived from a Federal grant program.

27 (B) FORM OF PAYMENT.—

28 (i) PROJECTS IN THE UNITED STATES AND CANADA.—The
29 non-Federal share required to be paid for a project carried
30 out in the United States (except Puerto Rico and the Virgin
31 Islands) or Canada shall be paid in cash.

32 (ii) PROJECTS IN LATIN AMERICA AND THE CARIBBEAN.—
33 The non-Federal share required to be paid for a project car-
34 ried out in Latin America, the Caribbean, Puerto Rico, or the
35 Virgin Islands may be paid in cash or in kind.

36 **§ 267103. Duties of the Secretary**

37 (a) IN GENERAL.—In carrying out this chapter, the Secretary shall—

38 (1) develop guidelines for the solicitation of proposals for projects eli-
39 gible for financial assistance under section 267102 of this title;

1 (2) encourage submission of proposals for projects eligible for finan-
2 cial assistance under section 267102 of this title, particularly proposals
3 from wildlife management authorities; and

4 (3) select proposals for financial assistance that satisfy the require-
5 ments of section 267102 of this title, giving preference to proposals—

6 (A) that address conservation needs not adequately addressed
7 by existing efforts; and

8 (B) that are supported by wildlife management authorities.

9 (b) DUTIES OF THE SECRETARY RELATING TO COOPERATION.—In carry-
10 ing out this chapter, the Secretary shall—

11 (1) support and coordinate efforts existing on July 20, 2000, to con-
12 serve neotropical migratory bird species, through—

13 (A) facilitating meetings among persons involved in the con-
14 servation efforts;

15 (B) promoting the exchange of information among persons de-
16 scribed in subparagraph (A);

17 (C) developing and entering into agreements with other Federal
18 agencies, foreign, State, and local governmental agencies, and non-
19 governmental organizations; and

20 (D) conducting other activities that the Secretary considers ap-
21 propriate; and

22 (2) coordinate activities and projects under this chapter with efforts
23 existing on July 20, 2000, in order to enhance conservation of
24 neotropical migratory bird species.

25 **§ 267104. Advisory group**

26 (a) IN GENERAL.—To assist in carrying out this chapter, the Secretary
27 may convene an advisory group consisting of individuals representing public
28 and private organizations actively involved in the conservation of neotropical
29 migratory birds.

30 (b) EXPERTISE.—The advisory group as a whole shall have expertise in
31 conservation in each country and region of the Western Hemisphere.

32 (c) PUBLIC PARTICIPATION.—

33 (1) MEETINGS.—The advisory group shall—

34 (A) ensure that each meeting of the advisory group is open to
35 the public; and

36 (B) provide, at each meeting, an opportunity for interested per-
37 sons to present oral or written statements concerning items on the
38 agenda.

39 (2) NOTICE.—The Secretary shall provide to the public timely notice
40 of a meeting of the advisory group.

1 (3) MINUTES.—Minutes of a meeting of the advisory group shall be
2 kept by the Secretary and shall be made available to the public.

3 (d) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The
4 Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the ad-
5 visory group.

6 **§ 267105. Neotropical Migratory Bird Conservation Fund**

7 (a) ESTABLISHMENT.—There is established in the Treasury an account
8 to be known as the “Neotropical Migratory Bird Conservation Fund”. The
9 Fund shall consist of amounts deposited in the Fund under subsection (b).

10 (b) DEPOSITS IN THE FUND.—The Secretary of the Treasury shall de-
11 posit in the Fund—

12 (1) all amounts received by the Secretary in the form of donations
13 under subsection (d); and

14 (2) other amounts appropriated to the Fund.

15 (c) USE.—

16 (1) IN GENERAL.—Subject to paragraph (2), the Secretary may use
17 amounts in the Fund, without further appropriation, to carry out this
18 chapter.

19 (2) ADMINISTRATIVE EXPENSES.—Of amounts in the Fund available
20 for each fiscal year, the Secretary may expend not more than 3 percent
21 or up to \$100,000, whichever is greater, to pay the administrative ex-
22 penses necessary to carry out this chapter.

23 (d) ACCEPTANCE AND USE OF DONATIONS.—

24 (1) IN GENERAL.—The Secretary may accept and use donations to
25 carry out this chapter.

26 (2) DEPOSIT.—Amounts received by the Secretary in donations
27 under this subsection shall be transferred to the Secretary of the
28 Treasury for deposit in the Fund.

29 **§ 267106. Authorization of appropriations**

30 (a) IN GENERAL.—There is authorized to be appropriated to the Fund
31 to carry out this chapter—

32 (1) \$5,000,000 for each of fiscal years 2006 and 2007;

33 (2) \$5,500,000 for fiscal year 2008;

34 (3) \$6,000,000 for fiscal year 2009; and

35 (4) \$6,500,000 for fiscal year 2010.

36 (b) AVAILABILITY.—Amounts appropriated under this section shall re-
37 main available until expended.

38 (c) ALLOCATION.—Of amounts appropriated under this section for each
39 fiscal year, not less than 75 percent shall be expended for projects carried
40 out outside the United States.

Chapters 269 Through 277—Reserved

Chapter 279—Miscellaneous

Subchapter I—Game Birds and Other Wild Birds

Sec.

279101. Definition of Secretary.

279102. Preservation, distribution, introduction, and restoration of game and wild birds.

279103. Importation of eggs of game birds for propagation.

Subchapter II—Junior Duck Stamp Conservation and Design Program

279201. Definitions.

279202. Junior Duck Stamp Conservation and Design Program.

279203. Junior Duck Stamps.

279204. Acceptance of gifts, devises, and bequests.

279205. Authorization of appropriations.

Subchapter I—Game Birds and Other Wild Birds

§ 279101. Definition of Secretary

In this subchapter, the term “Secretary” means the Secretary of the Interior.

§ 279102. Preservation, distribution, introduction, and restoration of game and wild birds

(a) PURPOSES.—The purposes of this section are—

(1) to aid in the restoration of game birds and other wild birds in the parts of the United States adapted to the game birds and other wild birds where the game birds and other wild birds have become scarce or extinct; and

(2) to regulate the introduction of American or foreign birds in localities where they did not exist before May 25, 1900.

(b) IN GENERAL.—The Secretary shall carry out the preservation, distribution, introduction, and restoration of game birds and other wild birds.

(c) AUTHORITIES OF THE SECRETARY.—The Secretary may—

(1) adopt such measures as may be necessary to carry out this section; and

(2) purchase such game birds and other wild birds as may be required to carry out this section, subject to the laws of the States, the District of Columbia, and the territories.

(d) COLLECTION AND PUBLICATION OF INFORMATION.—The Secretary shall from time to time collect and publish useful information as to the propagation, uses, and preservation of game birds and other wild birds.

(e) REGULATIONS AND EXPENDITURES.—The Secretary shall—

(1) make and publish regulations for carrying out this section; and

(2) expend for the purposes of this section such sums as Congress may appropriate to carry out this section.

1 **§ 279103. Importation of eggs of game birds for propagation**

2 (a) IN GENERAL.—The Secretary may authorize the importation of eggs
3 of game birds for purposes of propagation.

4 (b) REGULATIONS.—The Secretary shall prescribe regulations governing
5 the importation of eggs of game birds for purposes of propagation.

6 **Subchapter II—Junior Duck Stamp**
7 **Conservation and Design Program**

8 **§ 279201. Definitions**

9 In this subchapter:

10 (1) PROGRAM.—The term “Program” means the Junior Duck
11 Stamp Conservation and Design Program established under section
12 279202 of this title.

13 (2) SECRETARY.—The term “Secretary” means the Secretary of the
14 Interior.

15 (3) STATE.—The term “State” means a State, the District of Co-
16 lumbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the
17 Northern Mariana Islands, and any other territory (including a posses-
18 sion) of the United States.

19 **§ 279202. Junior Duck Stamp Conservation and Design Pro-**
20 **gram**

21 (a) IN GENERAL.—The Secretary may carry out a program to be known
22 as the “Junior Duck Stamp Conservation and Design Program”.

23 (b) GOALS.—The Program shall accomplish the goals of—

24 (1) providing to school children environmental education opportuni-
25 ties relating to the conservation and management of migratory birds;
26 and

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

29 (c) ACTIVITIES.—The Program shall consist of—

30 (1) conducting in all interested States the activities that on the day
31 before October 6, 1994, were conducted under the Program as it ex-
32 isted on that day;

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

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

37 (d) EFFORT TO CONDUCT PROGRAM IN ALL STATES.—

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

40 (2) ANNUAL REPORT.—The Secretary shall annually submit to Con-
41 gress a report on the status of the Program in each of the States.

1 **§ 279203. Junior Duck Stamps**

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

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

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

8 (b) LICENSING AND MARKETING OF DESIGN OF JUNIOR DUCK
9 STAMPS.—

10 (1) IN GENERAL.—As part of the Program, the Secretary may—

11 (A) license and market winning designs selected in competitions
12 under subsection (a); and

13 (B) license and market stamps bearing those designs.

14 (2) STAMP NAME.—The stamps licensed and marketed under para-
15 graph (1) shall be known as “Junior Duck Stamps”.

16 (c) USE OF PROCEEDS.—Amounts received under subsection (b)—

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

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

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

22 (ii) otherwise determined in such a competition to be supe-
23 rior;

24 (B) awards and prizes to schools, students, teachers, and other
25 participants to further education activities related to the conserva-
26 tion education goals of the Program;

27 (C) award ceremonies for winners of national and State Junior
28 Duck Stamp competitions;

29 (D) travel expenses for winners of national and State Junior
30 Duck Stamp competitions to award ceremonies, if—

31 (i) the event is intended to honor students for winning a
32 national competition; or

33 (ii) the event is intended to honor students for winning a
34 State competition;

35 (E) expenses for licensing and marketing under subsection (b);

36 (F) expenses for migratory bird reference materials or supplies
37 awarded to schools that participate in the Program; and

38 (G) expenses for marketing and educational materials developed
39 to promote the Program;

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

1 **§ 279204. Acceptance of gifts, devises, and bequests**

2 The Secretary may accept and use a gift, devise, or bequest of personal
3 property, or proceeds of a gift, devise, or bequest of personal property, for
4 the purpose of funding the activities described in subparagraphs (A) and
5 (B) of section 279203(e)(1) of this title.

6 **§ 279205. Authorization of appropriations**

7 (a) IN GENERAL.—There is authorized to be appropriated to the Sec-
8 retary for administrative expenses of the Program \$350,000 for each of fis-
9 cal years 2006 through 2010.

10 (b) LIMITATIONS ON USE OF APPROPRIATED AMOUNT.—Of the amount
11 appropriated under this section for a fiscal year—

12 (1) not more than \$100,000 may be used by the Secretary to admin-
13 ister the Program; and

14 (2) not more than \$250,000 may be distributed to State and re-
15 gional coordinators to implement competitions under the Program.

16 **Division D—Other Wildlife**
17 **Chapter 281—Elephants**

Subchapter I—African Elephants

Sec.

- 281101. Definitions.
- 281102. Provision of assistance.
- 281103. Acceptance and use of donations.
- 281104. Advisory group.
- 281105. Moratoria.
- 281106. Prohibited acts.
- 281107. Penalties and enforcement.
- 281108. Rewards.
- 281109. Nonadherence to CITES Ivory Control System.
- 281110. Authorization of appropriations.

Subchapter II—Asian Elephants

- 281201. Definitions.
- 281202. Provision of assistance.
- 281203. Advisory group.
- 281204. Authorization of appropriations.

18 **Subchapter I—African Elephants**

19 **§ 281101. Definitions**

20 In this subchapter:

21 (1) AFRICAN ELEPHANT.—The term “African elephant” means an
22 animal of the species *Loxodonta africana*.

23 (2) CITES.—The term “CITES” means the Convention on Inter-
24 national Trade in Endangered Species of Wild Fauna and Flora, done
25 at Washington March 3, 1973 (27 UST 1087; TIAS 8249).

26 (3) CITES IVORY CONTROL SYSTEM.—The term “CITES Ivory Con-
27 trol System” means the ivory quota and marking system established by
28 CITES to curtail illegal trade in African elephant ivory.

1 (4) FUND.—The term “Fund” means the account established in sec-
2 tion 299101 of this title;

3 (5) IMPORT.—The term “import” has the meaning given the term
4 in section 201102 of this title.

5 (6) INTERMEDIARY COUNTRY.—The term “intermediary country”
6 means a country that exports raw or worked ivory that does not origi-
7 nate in that country.

8 (7) IVORY PRODUCING COUNTRY.—The term “ivory producing coun-
9 try” means an African country within which is located a part of the
10 range of a population of African elephants.

11 (8) IVORY QUOTA.—The term “ivory quota” means a quota submit-
12 ted by an ivory producing country to the CITES Secretariat in accord-
13 ance with the CITES Ivory Control System.

14 (9) PERSONAL EFFECTS.—The term “personal effects” means arti-
15 cles that—

16 (A) are not intended for sale and are part of a shipment of the
17 household effects of an individual who is moving his or her resi-
18 dence to or from the United States; or

19 (B) are included in personal accompanying baggage.

20 (10) RAW IVORY.—The term “raw ivory” means an African elephant
21 tusk, or a part of an African elephant tusk, the surface of which, pol-
22 ished or unpolished, is unaltered or minimally carved.

23 (11) SECRETARY.—The term “Secretary” means the Secretary of
24 the Interior.

25 (12) UNITED STATES.—The term “United States” means the 50
26 States, the District of Columbia, Guam, the Northern Mariana Islands,
27 Puerto Rico, and the territories (including possessions) of the United
28 States.

29 (13) WORKED IVORY.—The term “worked ivory” means an African
30 elephant tusk, or a part of an African elephant tusk, that is not raw
31 ivory.

32 **§ 281102. Provision of assistance**

33 (a) IN GENERAL.—The Secretary may provide financial assistance from
34 the Fund for approved projects for research, conservation, management, or
35 protection of African elephants.

36 (b) PROJECT PROPOSALS.—

37 (1) ELIGIBLE APPLICANTS.—A project proposal may be submitted to
38 the Secretary by—

39 (A) an African government agency responsible for African ele-
40 phant conservation and protection;

41 (B) the CITES Secretariat; or

1 (C) a person with experience in African elephant conservation.

2 (2) CONTENTS.—A project proposal shall contain—

3 (A) the name of the person responsible for conducting the
4 project;

5 (B) a succinct statement of the need for and purposes of the
6 project;

7 (C) a description of the qualifications of the individuals who will
8 be conducting the project;

9 (D) an estimate of the amount of funds and length of time re-
10 quired to complete the project;

11 (E) evidence of support of the project by governmental entities
12 of countries within which the project will be conducted, if the sup-
13 port may be important for the success of the project; and

14 (F) any other information that the Secretary considers to be ap-
15 propriate for evaluating the eligibility of the project for funding
16 under this subchapter.

17 (c) PROJECT REVIEW AND APPROVAL.—

18 (1) REVIEW.—The Secretary shall review each project proposal to
19 determine whether it meets the criteria set forth in subsection (d) and
20 merits assistance under this subchapter.

21 (2) APPROVAL.—Not later than 6 months after receiving a project
22 proposal, and subject to the availability of funds, the Secretary shall—

23 (A) approve or disapprove the proposal; and

24 (B) provide written notification to the person that submitted the
25 proposal.

26 (d) CRITERIA FOR APPROVAL.—The Secretary may approve a project if
27 the project will enhance programs for African elephant research, conserva-
28 tion, management, or protection by—

29 (1) developing in a usable form sound scientific information on Afri-
30 can elephant habitat condition and carrying capacity, total elephant
31 numbers and population trends, or annual reproduction and mortality;
32 or

33 (2) assisting efforts to—

34 (A) ensure that a taking of African elephants in the country is
35 effectively controlled and monitored;

36 (B) implement conservation programs to provide for healthy,
37 sustainable African elephant populations; or

38 (C) enhance compliance with the CITES Ivory Control System.

39 (e) PROJECT SUSTAINABILITY.—To the maximum extent practicable, in
40 determining whether to approve project proposals, the Secretary shall give

1 consideration to projects that will enhance sustainable conservation pro-
2 grams to ensure effective long-term conservation of African elephants.

3 (f) PROJECT REPORTING.—

4 (1) IN GENERAL.—An entity that receives assistance under this sec-
5 tion shall provide such periodic reports to the Director as the Director
6 considers appropriate.

7 (2) CONTENTS.—A report under paragraph (1) shall include all in-
8 formation requested by the Director for evaluating the progress and
9 success of the project.

10 **§ 281103. Acceptance and use of donations**

11 (a) IN GENERAL.—The Secretary may accept and use donations of funds
12 to provide assistance under section 281102 of this title.

13 (b) DEPOSIT.—Amounts received by the Secretary in the form of a dona-
14 tion under subsection (a) shall be transferred by the Secretary to the Sec-
15 retary of the Treasury for deposit in the Fund.

16 **§ 281104. Advisory group**

17 (a) IN GENERAL.—To assist in carrying out this subchapter, the Sec-
18 retary may convene an advisory group consisting of individuals representing
19 public and private organizations actively involved in the conservation of Af-
20 rican elephants.

21 (b) PUBLIC PARTICIPATION.—

22 (1) MEETINGS.—The advisory group shall—

23 (A) ensure that each meeting of the advisory group is open to
24 the public; and

25 (B) provide, at each meeting, an opportunity for interested per-
26 sons to present oral or written statements concerning items on the
27 agenda.

28 (2) NOTICE.—The Secretary shall provide to the public timely notice
29 of a meeting of the advisory group.

30 (3) MINUTES.—Minutes of a meeting of the advisory group shall be
31 kept by the Secretary and shall be made available to the public.

32 (c) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The
33 Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the ad-
34 visory group.

35 **§ 281105. Moratoria**

36 (a) IVORY PRODUCING COUNTRIES.—

37 (1) IN GENERAL.—The Secretary shall establish a moratorium on
38 the importation of raw ivory and worked ivory from an ivory producing
39 country that, on a determination made by the Secretary, did not meet
40 all the criteria set forth in section 2201(b)(1) of the African Elephant
41 Conservation Act (Public Law 100–478, 102 Stat. 2318).

1 (2) LATER ESTABLISHMENT.—With regard to an ivory producing
2 country for which the Secretary had insufficient information to make
3 a determination pursuant to section 2201(b) of the African Elephant
4 Conservation Act (Public Law 100–478, 102 Stat. 2318), the Secretary
5 shall establish a moratorium on the importation of raw ivory and
6 worked ivory from the country not later than January 1, 1990, unless,
7 based on new information, the Secretary concludes before that date
8 that the country meets all of the criteria set forth in section 2201(b)(1)
9 of the African Elephant Conservation Act (Public Law 100–478, 102
10 Stat. 2318).

11 (b) INTERMEDIARY COUNTRIES.—The Secretary shall establish a morato-
12 rium on the importation of raw ivory and worked ivory from an inter-
13 mediary country on making a determination that the country—

- 14 (1) is not a party to CITES;
- 15 (2) does not adhere to the CITES Ivory Control System;
- 16 (3) imports raw ivory from a country that is not an ivory producing
17 country;
- 18 (4) imports raw ivory or worked ivory from a country that is not a
19 party to CITES;
- 20 (5) imports raw ivory or worked ivory that originates in an ivory pro-
21 ducing country in violation of the law of the ivory producing country;
- 22 (6) substantially increases its imports of raw ivory or worked ivory
23 from a country that is subject to a moratorium under this subchapter
24 during the 1st 3 months of that moratorium; or
- 25 (7) imports raw ivory or worked ivory from a country that is subject
26 to a moratorium under this subchapter after the 1st 3 months of that
27 moratorium, unless the ivory is imported by vessel during the 1st 6
28 months of that moratorium and is accompanied by shipping documents
29 that show that the ivory was exported before the establishment of the
30 moratorium.

31 (c) SUSPENSION OF MORATORIUM.—The Secretary shall suspend a mora-
32 torium under this section if, after notice and public comment, the Secretary
33 determines that the reasons for establishing the moratorium no longer exist.

34 (d) PETITION.—

35 (1) SUBMISSION.—

36 (A) IN GENERAL.—A person may submit a petition in writing
37 requesting that the Secretary establish or suspend a moratorium
38 under this section.

39 (B) SUBSTANTIAL INFORMATION.—A petition under subpara-
40 graph (A) shall include such substantial information as may be

1 necessary to demonstrate the need for the action requested by the
2 petition.

3 (2) NOTICE OF RECEIPT AND OPPORTUNITY FOR PUBLIC COM-
4 MENT.—The Secretary shall publish a notice of receipt of a petition
5 under paragraph (1) in the Federal Register and shall provide an op-
6 portunity for the public to comment on the petition.

7 (3) RULING.—The Secretary shall rule on the petition not later than
8 90 days after the close of the public comment period.

9 (e) SPORT-HUNTED TROPHIES.—

10 (1) IN GENERAL.—An individual may import a sport-hunted ele-
11 phant trophy that the individual has legally taken in an ivory producing
12 country that has submitted an ivory quota.

13 (2) NO MORATORIUM.—The Secretary shall not establish a morato-
14 rium under this section, pursuant to a petition or otherwise, that pro-
15 hibits the importation into the United States of a sport-hunted trophy
16 from an elephant that is legally taken by the importer or the importer's
17 principal in an ivory producing country that has submitted an ivory
18 quota.

19 (f) CONFISCATED IVORY.—

20 (1) IN GENERAL.—Trade in raw ivory or worked ivory that is con-
21 fiscated by an ivory producing country or an intermediary country and
22 is disposed of pursuant to the CITES Ivory Control System shall not
23 be the sole cause for the establishment of a moratorium under this sec-
24 tion if all proceeds from the disposal of the confiscated ivory are used
25 solely to enhance wildlife conservation programs or conservation pur-
26 poses of CITES.

27 (2) INAPPLICABILITY.—With respect to a country that was not a
28 party to CITES at the time of a confiscation described in paragraph
29 (1), this subsection shall not apply until the country develops appro-
30 priate measures to ensure that persons with a history of illegal dealings
31 in ivory do not benefit from the disposal of confiscated ivory.

32 **§ 281106. Prohibited acts**

33 Except as provided in section 281105(e) of this title, it is unlawful for
34 a person—

35 (1) to import raw ivory from a country other than an ivory produc-
36 ing country;

37 (2) to export raw ivory from the United States;

38 (3) to import raw ivory or worked ivory that was exported from an
39 ivory producing country in violation of that country's law or of the
40 CITES Ivory Control System;

1 (4) to import worked ivory, other than personal effects, from a coun-
2 try unless that country has certified that the worked ivory was derived
3 from a legal source; or

4 (5) to import raw ivory or worked ivory from a country for which
5 a moratorium is in effect under section 281105 of this title.

6 **§ 281107. Penalties and enforcement**

7 (a) CIVIL PENALTIES.—

8 (1) IN GENERAL.—A person that violates section 281106 of this title
9 may be assessed a civil penalty by the Secretary of not more than
10 \$5,000 for each violation.

11 (2) PROCEDURE.—Proceedings for the assessment of a civil penalty
12 under this section shall be conducted in accordance with the procedure
13 provided in section 201806 of this title.

14 (b) CRIMINAL PENALTIES.—Criminal penalties for a violation of this sub-
15 chapter are provided under section 53(a) of title 18.

16 (c) USE OF PENALTIES.—Subject to appropriations, the amount of civil
17 penalties and criminal fines collected under this section—

18 (1) may be used by the Secretary of the Treasury to pay rewards
19 under section 281108 of this title; and

20 (2) to the extent not used to pay the rewards, shall be deposited by
21 the Secretary of the Treasury in the Fund.

22 (d) ENFORCEMENT.—

23 (1) IN GENERAL.—The Secretary, the Secretary of the Treasury,
24 and the Secretary of the department in which the Coast Guard is oper-
25 ating shall enforce this subchapter in the same manner as the Secretar-
26 ies carry out enforcement activities under section 201810 of this title.

27 (2) JURISDICTION.—Section 201808 of this title applies to actions
28 arising under this subchapter.

29 **§ 281108. Rewards**

30 (a) IN GENERAL.—On the recommendation of the Secretary, the Sec-
31 retary of the Treasury may pay a reward to an individual who furnishes
32 information that leads to a civil penalty or a criminal conviction under this
33 subchapter.

34 (b) AMOUNT.—The amount of a reward under this section shall be equal
35 to not more than $\frac{1}{2}$ of the amount of any civil penalty or criminal fine with
36 respect to which the reward is paid, or \$25,000, whichever is less.

37 (c) LIMITATION ON ELIGIBILITY.—An officer or employee of the United
38 States or of a State or local government who furnishes information or ren-
39 ders service in the performance of the officer's or employee's official duties
40 shall not be eligible for a reward under this section.

1 **§ 281109. Nonadherence to CITES Ivory Control System**

2 If the Secretary finds in administering this subchapter that a country
3 does not adhere to the CITES Ivory Control System, that country is
4 deemed, for purposes of section 8(a)(2) of the Fishermen’s Protective Act
5 of 1967 (22 U.S.C. 1978(a)(2)), to be diminishing the effectiveness of an
6 international program for endangered or threatened species.

7 **§ 281110. Authorization of appropriations**

8 (a) IN GENERAL.—There is authorized to be appropriated to the Fund
9 and to the Secretary a total of not more than \$5,000,000 for each of fiscal
10 years 2007 through 2012 to carry out this subchapter, to remain available
11 until expended.

12 (b) ADMINISTRATIVE EXPENSES.—Of amounts available each fiscal year
13 to carry out this subchapter, the Secretary may expend not more than 3
14 percent or \$100,000, whichever is greater, to pay the administrative ex-
15 penses necessary to carry out this subchapter.

16 **Subchapter II—Asian Elephants**

17 **§ 281201. Definitions**

18 In this subchapter:

19 (1) ADMINISTRATOR.—The term “Administrator” means the Admin-
20 istrator of the Agency for International Development.

21 (2) CITES.—The term “CITES” means the Convention on Inter-
22 national Trade in Endangered Species of Wild Fauna and Flora, done
23 at Washington March 3, 1973 (27 UST 1087; TIAS 8249).

24 (3) CONSERVATION—

25 (A) IN GENERAL.—The term “conservation” means the use of
26 methods and procedures necessary to bring Asian elephants to the
27 point at which there are sufficient populations in the wild to en-
28 sure that the species does not become extinct.

29 (B) INCLUSIONS.—The term “conservation” includes all activi-
30 ties associated with scientific resource management, such as—

31 (i) conservation, protection, restoration, acquisition, and
32 management of habitat;

33 (ii) research and monitoring of known populations;

34 (iii) assistance in the development of management plans for
35 managed elephant ranges;

36 (iv) CITES enforcement;

37 (v) law enforcement through community participation;

38 (vi) translocation of elephants;

39 (vii) conflict resolution initiatives; and

40 (viii) community outreach and education.

1 (4) FUND.—The term “Fund” means the account established in sec-
2 tion 299101 of this title.

3 (5) SECRETARY.—The term “Secretary” means the Secretary of the
4 Interior.

5 **§ 281202. Provision of assistance**

6 (a) IN GENERAL.—The Secretary, subject to the availability of funds and
7 in consultation with the Administrator, shall use amounts in the Fund to
8 provide financial assistance for projects for the conservation of Asian ele-
9 phants for which final project proposals are approved by the Secretary in
10 accordance with this section.

11 (b) PROJECT PROPOSALS.—

12 (1) ELIGIBLE APPLICANTS.—A project proposal may be submitted to
13 the Secretary by—

14 (A) a wildlife management authority of a country within the
15 range of Asian elephants, the activities of which wildlife manage-
16 ment authority directly or indirectly affect Asian elephant popu-
17 lations;

18 (B) the CITES Secretariat; or

19 (C) a person with demonstrated expertise in the conservation of
20 Asian elephants.

21 (2) CONTENTS.—A project proposal under paragraph (1) shall in-
22 clude—

23 (A) the name of the individual responsible for conducting the
24 project;

25 (B) a succinct statement of the purposes of the project;

26 (C) a description of the qualifications of the individuals who will
27 conduct the project;

28 (D) an estimate of the amount of funds and length of time re-
29 quired to complete the project;

30 (E) evidence of support of the project by governmental entities
31 of countries in which the project will be conducted, if the Sec-
32 retary determines that the support is required for the success of
33 the project;

34 (F) information regarding the source and amount of matching
35 funding available to the applicant; and

36 (G) any other information that the Secretary considers to be
37 necessary for evaluating the eligibility of the project for funding
38 under this subchapter.

39 (c) PROJECT REVIEW AND APPROVAL.—

40 (1) REVIEW.—Not later than 30 days after receiving a final project
41 proposal, the Secretary shall provide a copy of the proposal to the Ad-

1 administrator. The Secretary shall review each final project proposal to
2 determine whether the proposal meets the criteria set forth in sub-
3 section (d).

4 (2) CONSULTATION AND APPROVAL.—Not later than 6 months after
5 receiving a final project proposal, and subject to the availability of
6 funds, the Secretary, after consulting with the Administrator, shall—

7 (A) request written comments on the proposal from each coun-
8 try within which the project is to be conducted;

9 (B) after requesting those comments, approve or disapprove the
10 proposal; and

11 (C) provide written notification of the approval or disapproval
12 to the person that submitted the proposal and the Administrator.

13 (d) CRITERIA FOR APPROVAL.—The Secretary may approve a final
14 project proposal under this section if the project will enhance programs for
15 conservation of Asian elephants by assisting efforts to—

16 (1) implement conservation programs;

17 (2) address the conflicts between humans and elephants that arise
18 from competition for the same habitat;

19 (3) enhance compliance with—

20 (A) CITES; and

21 (B) Federal law or laws of a foreign country that prohibit or
22 regulate the taking or trade of Asian elephants or regulate the use
23 and management of Asian elephant habitat;

24 (4) develop sound scientific information on—

25 (A) the condition of Asian elephant habitat;

26 (B) Asian elephant population numbers and trends; or

27 (C) the threats to Asian elephant habitat, numbers, or trends;

28 or

29 (5) promote cooperative projects on the topics described in para-
30 graph (4) with other foreign governments, affected local communities,
31 nongovernmental organizations, or others in the private sector.

32 (e) PROJECT SUSTAINABILITY.—To the maximum extent practicable, in
33 determining whether to approve project proposals under this section, the
34 Secretary shall give consideration to projects that will enhance sustainable,
35 integrated conservation development programs to ensure effective, long-term
36 conservation of Asian elephants.

37 (f) PROJECT REPORTING.—

38 (1) IN GENERAL.—A person that receives assistance under this sec-
39 tion for a project shall provide periodic reports, as the Secretary con-
40 siders necessary, to the Secretary and the Administrator.

1 (2) CONTENTS.—A report under paragraph (1) shall include all in-
2 formation required by the Secretary, after consulting with the Adminis-
3 trator, for evaluating the progress and success of the project.

4 (g) MATCHING FUNDS.—In determining whether to approve project pro-
5 posals under this section, the Secretary shall give priority to projects for
6 which there exists some measure of matching funds.

7 (h) LIMITATION ON USE FOR CAPTIVE BREEDING.—Amounts provided as
8 a grant under this subchapter shall not be used for captive breeding of
9 Asian elephants other than for release in the wild.

10 (i) ACCEPTANCE AND USE OF DONATIONS.—

11 (1) IN GENERAL.—The Secretary may accept and use donations to
12 provide assistance under this section.

13 (2) DEPOSIT IN FUND.—Amounts received by the Secretary in the
14 form of donations shall be transferred to the Secretary of the Treasury
15 for deposit in the Fund.

16 **§ 281203. Advisory group**

17 (a) IN GENERAL.—To assist in carrying out this subchapter, the Sec-
18 retary may convene an advisory group consisting of individuals representing
19 public and private organizations actively involved in the conservation of
20 Asian elephants.

21 (b) PUBLIC PARTICIPATION.—

22 (1) MEETINGS.—The advisory group shall—

23 (A) ensure that each meeting of the advisory group is open to
24 the public; and

25 (B) provide, at each meeting, an opportunity for interested per-
26 sons to present oral or written statements concerning items on the
27 agenda.

28 (2) NOTICE.—The Secretary shall provide to the public timely notice
29 of a meeting of the advisory group.

30 (3) MINUTES.—Minutes of a meeting of the advisory group shall be
31 kept by the Secretary and shall be made available to the public.

32 (c) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The
33 Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the ad-
34 visory group.

35 **§ 281204. Authorization of appropriations**

36 (a) IN GENERAL.—There is authorized to be appropriated to the Fund
37 \$5,000,000 for each of fiscal years 2007 through 2012 to carry out this
38 subchapter, to remain available until expended.

39 (b) ADMINISTRATIVE EXPENSES.—Of amounts available for a fiscal year
40 to carry out this subchapter, the Secretary may expend not more than 3

1 percent or \$100,000, whichever is greater, to pay the administrative ex-
 2 penses necessary to carry out this subchapter.

3 **Chapter 283—Great Apes**

Sec.

283101. Definitions.
 283102. Provision of assistance.
 283103. Great Ape Conservation Fund.
 283104. Authorization of appropriations.

4 **§ 283101. Definitions**

5 In this chapter:

6 (1) CITES.—The term “CITES” means the Convention on Inter-
 7 national Trade in Endangered Species of Wild Fauna and Flora, done
 8 at Washington March 3, 1973 (27 UST 1087; TIAS 8249).

9 (2) CONSERVATION.—

10 (A) IN GENERAL.—The term “conservation” means the use of
 11 methods and procedures necessary to prevent the diminution of,
 12 and to sustain viable populations of, a species.

13 (B) INCLUSIONS.—The term “conservation” includes all activi-
 14 ties associated with wildlife management, such as—

15 (i) conservation, protection, restoration, acquisition, and
 16 management of habitat;

17 (ii) in-situ research and monitoring of populations and
 18 habitats;

19 (iii) assistance in the development, implementation, and im-
 20 provement of management plans for managed habitat ranges;

21 (iv) enforcement and implementation of CITES;

22 (v) enforcement and implementation of domestic laws relat-
 23 ing to resource management;

24 (vi) development and operation of sanctuaries for members
 25 of a species rescued from the illegal trade in live animals;

26 (vii) training of local law enforcement officials in the inter-
 27 diction and prevention of the illegal killing of great apes;

28 (viii) programs for the rehabilitation of members of a spe-
 29 cies in the wild and release of the members into the wild in
 30 ways that do not threaten existing wildlife populations by
 31 causing displacement or the introduction of disease;

32 (ix) conflict resolution initiatives;

33 (x) community outreach and education; and

34 (xi) strengthening the capacity of local communities to im-
 35 plement conservation programs.

36 (3) FUND.—The term “Fund” means the Great Ape Conservation
 37 Fund established in section 283103 of this title.

1 (4) GREAT APE.—The term “great ape” means a chimpanzee, go-
2 rilla, bonobo, orangutan, or gibbon.

3 (5) MULTINATIONAL SPECIES CONSERVATION FUND.—The term
4 “Multinational Species Conservation Fund” means the fund established
5 in section 299101 of this title.

6 (6) SECRETARY.—The term “Secretary” means the Secretary of the
7 Interior.

8 **§ 283102. Provision of assistance**

9 (a) IN GENERAL.—Subject to the availability of funds and in consultation
10 with other appropriate Federal officials, the Secretary shall use amounts in
11 the Fund to provide financial assistance for projects for the conservation
12 of great apes for which project proposals are approved by the Secretary in
13 accordance with this section.

14 (b) PROJECT PROPOSALS.—

15 (1) ELIGIBLE APPLICANTS.—A project proposal for the conservation
16 of great apes may be submitted to the Secretary by—

17 (A) a wildlife management authority of a country that has with-
18 in its boundaries a part of the range of a great ape if the activities
19 of the wildlife management authority directly or indirectly affect
20 a great ape population;

21 (B) the CITES Secretariat; or

22 (C) a person with the demonstrated expertise required for the
23 conservation of great apes.

24 (2) CONTENTS.—A project proposal described in paragraph (1) shall
25 include—

26 (A) a concise statement of the purposes of the project;

27 (B) the name of the individual responsible for conducting the
28 project;

29 (C) a description of the qualifications of the individuals who will
30 conduct the project;

31 (D) a concise description of—

32 (i) methods for project implementation and outcome assess-
33 ment;

34 (ii) staff and community management for the project; and

35 (iii) the logistics of the project;

36 (E) an estimate of the amount of funds and length of time re-
37 quired to complete the project;

38 (F) evidence of support for the project by governmental entities
39 of the countries in which the project will be conducted, if the Sec-
40 retary determines that the support is required for the success of
41 the project;

1 (G) information regarding the source and amount of matching
2 funding available for the project; and

3 (H) any other information that the Secretary considers to be
4 necessary for evaluating the eligibility of the project for funding
5 under this chapter.

6 (c) PROJECT REVIEW AND APPROVAL.—

7 (1) REVIEW.—The Secretary shall—

8 (A) not later than 30 days after receiving a project proposal,
9 provide a copy of the proposal to other appropriate Federal offi-
10 cials; and

11 (B) review each project proposal in a timely manner to deter-
12 mine if the proposal meets the criteria specified in subsection (d).

13 (2) CONSULTATION AND APPROVAL.—Not later than 180 days after
14 receiving a project proposal, and subject to the availability of funds, the
15 Secretary, after consulting with other appropriate Federal officials,
16 shall—

17 (A) consult on the proposal with the government of each coun-
18 try in which the project is to be conducted;

19 (B) after taking into consideration any comments resulting from
20 the consultation, approve or disapprove the proposal; and

21 (C) provide written notification of the approval or disapproval
22 to the person that submitted the proposal, other appropriate Fed-
23 eral officials, and each country in which the project is to be con-
24 ducted.

25 (d) CRITERIA FOR APPROVAL.—The Secretary may approve a project pro-
26 posal if the project will enhance programs for conservation of great apes by
27 assisting efforts to—

28 (1) implement conservation programs;

29 (2) address the conflicts between humans and great apes that arise
30 from competition for the same habitat;

31 (3) enhance compliance with CITES and other applicable laws that
32 prohibit or regulate the taking or trade of great apes or regulate the
33 use and management of great ape habitat;

34 (4) develop sound scientific information on, or methods for monitor-
35 ing—

36 (A) the condition and health of great ape habitat;

37 (B) great ape population numbers and trends; or

38 (C) the current and projected threats to the habitat, current
39 and projected numbers, or current and projected trends;

1 (5) promote cooperative projects on the issues described in para-
2 graph (4) among government entities, affected local communities, non-
3 governmental organizations, or other persons in the private sector; or

4 (6) address root causes of threats to great apes in range states, in-
5 cluding illegal bushmeat trade, diseases, lack of regional or local capac-
6 ity for conservation, and habitat loss due to natural disasters.

7 (e) PROJECT SUSTAINABILITY.—To the maximum extent practicable, in
8 determining whether to approve project proposals under this section, the
9 Secretary shall give preference to conservation projects that are designed to
10 ensure effective, long-term conservation of great apes and their habitats.

11 (f) MATCHING FUNDS.—In determining whether to approve project pro-
12 posals under this section, the Secretary shall give preference to projects for
13 which matching funds are available.

14 (g) PROJECT REPORTING.—

15 (1) IN GENERAL.—A person that receives assistance under this sec-
16 tion for a project shall submit to the Secretary periodic reports (at
17 such intervals as the Secretary considers necessary) that include all in-
18 formation that the Secretary, after consultation with other appropriate
19 government officials, determines is necessary to evaluate the progress
20 and success of the project for the purposes of ensuring positive results,
21 assessing problems, and fostering improvements.

22 (2) AVAILABILITY TO THE PUBLIC.—A report under paragraph (1),
23 and any other document relating to a project for which financial assist-
24 ance is provided under this chapter, shall be made available to the pub-
25 lic.

26 (h) LIMITATIONS ON USE FOR CAPTIVE BREEDING.—Amounts provided
27 as a grant under this chapter—

28 (1) shall not be used for captive breeding of great apes other than
29 for captive breeding for release into the wild; and

30 (2) may be used for captive breeding of a species for release into the
31 wild only if no other conservation method for the species is biologically
32 feasible.

33 (i) PANEL.—

34 (1) IN GENERAL.—Every 2 years, the Secretary may convene a panel
35 of experts to identify the greatest needs for the conservation of great
36 apes.

37 (2) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The
38 Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to a
39 panel convened under paragraph (1).

1 **§ 283103. Great Ape Conservation Fund**

2 (a) ESTABLISHMENT.—There is established in the Multinational Species
3 Conservation Fund a separate account to be known as the “Great Ape Con-
4 servation Fund”, consisting of—

5 (1) amounts transferred to the Secretary of the Treasury for deposit
6 in the Fund under subsection (e);

7 (2) amounts appropriated to the Fund under section 283104 of this
8 title; and

9 (3) any interest earned on investment of amounts in the Fund under
10 subsection (e).

11 (b) EXPENDITURES FROM FUND.—

12 (1) IN GENERAL.—Subject to paragraph (2), on request by the Sec-
13 retary, the Secretary of the Treasury shall transfer from the Fund to
14 the Secretary, without further appropriation, such amounts as the Sec-
15 retary determines are necessary to provide assistance under section
16 283102 of this title.

17 (2) ADMINISTRATIVE EXPENSES.—Of the amounts in the account
18 available for each fiscal year, the Secretary may expend not more than
19 3 percent, or up to \$100,000, whichever is greater, to pay the adminis-
20 trative expenses necessary to carry out this chapter.

21 (c) INVESTMENT OF AMOUNTS.—

22 (1) IN GENERAL.—The Secretary of the Treasury shall invest such
23 portion of the Fund as is not, in the judgment of the Secretary of the
24 Treasury, required to meet current withdrawals. Investments may be
25 made only in interest-bearing obligations of the United States.

26 (2) ACQUISITION OF OBLIGATIONS.—For the purpose of investments
27 under paragraph (1), obligations may be acquired—

28 (A) on original issue at the issue price; or

29 (B) by purchase of outstanding obligations at the market price.

30 (3) SALE OF OBLIGATIONS.—An obligation acquired by the Fund
31 may be sold by the Secretary of the Treasury at the market price.

32 (4) CREDITS TO FUND.—The interest on, and the proceeds from the
33 sale or redemption of, any obligations held in the Fund shall be cred-
34 ited to the Fund.

35 (d) TRANSFERS OF AMOUNTS.—

36 (1) IN GENERAL.—The amounts required to be transferred to the
37 Fund under this section shall be transferred at least monthly from the
38 general fund of the Treasury to the Fund on the basis of estimates
39 made by the Secretary of the Treasury.

1 (2) ADJUSTMENTS.—Proper adjustment shall be made in amounts
2 subsequently transferred to the extent prior estimates were in excess
3 of or less than the amounts required to be transferred.

4 (e) ACCEPTANCE AND USE OF DONATIONS.—

5 (1) IN GENERAL.—The Secretary may accept and use donations to
6 provide assistance under section 283102 of this title.

7 (2) DEPOSIT.—Amounts received by the Secretary in the form of do-
8 nations shall be transferred to the Secretary of the Treasury for de-
9 posit in the Fund.

10 **§ 283104. Authorization of appropriations**

11 There are authorized to be appropriated to the Fund \$5,000,000 for each
12 of fiscal years 2006 through 2010.

13 **Chapter 285—Rhinoceroses and Tigers**

Sec.

- 285101. Definitions.
- 285102. Provision of assistance.
- 285103. Acceptance and use of donations.
- 285104. Prohibitions, penalties, and enforcement.
- 285105. Educational outreach program.
- 285106. Advisory group.
- 285107. Authorization of appropriations.

14 **§ 285101. Definitions**

15 In this chapter:

16 (1) ADMINISTRATOR.—The term “Administrator” means the Admin-
17 istrator of the Agency for International Development.

18 (2) CITES.—The term “CITES” means the Convention on Inter-
19 national Trade in Endangered Species of Wild Fauna and Flora, done
20 at Washington March 3, 1973 (27 UST 1087; TIAS 8249).

21 (3) CONSERVATION.—

22 (A) IN GENERAL.—The term “conservation” means the use of
23 all methods and procedures necessary to bring rhinoceroses and ti-
24 gers to the point at which there are sufficient populations to en-
25 sure that those species do not become extinct.

26 (B) INCLUSIONS.—The term “conservation” includes all activi-
27 ties associated with scientific resource management, such as—

- 28 (i) research;
- 29 (ii) census;
- 30 (iii) law enforcement;
- 31 (iv) habitat protection, acquisition, and management;
- 32 (v) propagation;
- 33 (vi) live trapping; and
- 34 (vii) transportation.

1 (4) FUND.—The term “Fund” means the account established in sec-
2 tion 299101 of this title.

3 (5) PERSON.—The term “person” means—

4 (A) an individual;

5 (B) a corporation, partnership, trust, association, or other pri-
6 vate entity;

7 (C) an officer, employee, agent, department, or instrumentality
8 of—

9 (i) the Federal Government;

10 (ii) a State, municipality, or political subdivision of a State;

11 or

12 (iii) a foreign government;

13 (D) a State, municipality, or political subdivision of a State; or

14 (E) any other entity subject to the jurisdiction of the United
15 States.

16 (6) SECRETARY.—The term “Secretary” means the Secretary of the
17 Interior.

18 **§ 285102. Provision of assistance**

19 (a) IN GENERAL.—The Secretary, subject to the availability of appropria-
20 tions and in consultation with the Administrator, shall use amounts in the
21 Fund to provide financial assistance for projects for the conservation of rhi-
22 noceroses and tigers.

23 (b) PROJECT PROPOSALS.—

24 (1) ELIGIBLE APPLICANTS.—A project proposal may be submitted to
25 the Secretary under this section by—

26 (A) a country whose activities directly or indirectly affect rhi-
27 noceros or tiger populations;

28 (B) the CITES Secretariat; or

29 (C) any other person.

30 (2) CONTENTS.—A project proposal described in paragraph (1)
31 shall—

32 (A) name the individual responsible for conducting the project;

33 (B) state the purposes of the project succinctly;

34 (C) describe the qualifications of the individuals who will con-
35 duct the project;

36 (D) estimate the amount of funds and length of time required
37 to complete the project;

38 (E) provide evidence of support of the project by appropriate
39 governmental entities of countries in which the project will be con-
40 ducted, if the Secretary determines that the support is required
41 for the success of the project; and

1 (F) provide any other information the Secretary considers to be
2 necessary for evaluating the eligibility of the project for funding
3 under this chapter.

4 (e) PROJECT REVIEW AND APPROVAL.—

5 (1) REVIEW.—Not later than 30 days after receiving a final project
6 proposal, the Secretary shall provide a copy of the proposal to the Ad-
7 ministrator. The Secretary shall review each final project proposal to
8 determine whether the proposal meets the criteria set forth in sub-
9 section (d).

10 (2) CONSULTATION AND APPROVAL.—Not later than 6 months after
11 receiving a final project proposal, and subject to the availability of
12 funds, the Secretary, after consulting with the Administrator, shall ap-
13 prove or disapprove the proposal and provide written notification to the
14 person that submitted the proposal and to the Administrator.

15 (d) CRITERIA FOR APPROVAL.—The Secretary may approve a project if
16 the project will enhance programs for conservation of rhinoceroses or tigers
17 by assisting efforts to—

18 (1) implement conservation programs;

19 (2) enhance compliance with CITES and Federal law or the law of
20 a foreign country that prohibit or regulate the taking or trade of rhi-
21 noceroses or tigers or the use of rhinoceros or tiger habitat; or

22 (3) develop sound scientific information on rhinoceros or tiger habi-
23 tat condition and carrying capacity, total numbers and population
24 trends, or annual reproduction and mortality.

25 (e) PROJECT SUSTAINABILITY.—To the maximum extent practicable, in
26 determining whether to approve project proposals under this section, the
27 Secretary shall give consideration to projects that will enhance sustainable
28 conservation programs to ensure effective long-term conservation of rhinoc-
29 eroses and tigers.

30 (f) PROJECT REPORTING.—

31 (1) IN GENERAL.—A person that receives assistance under this sec-
32 tion for a project shall provide periodic reports, as the Secretary con-
33 siders necessary, to the Secretary and the Administrator.

34 (2) INCLUSIONS.—A report shall include all information requested by
35 the Secretary, after consulting with the Administrator, for evaluating
36 the progress and success of the project.

37 **§ 285103. Acceptance and use of donations**

38 (a) IN GENERAL.—The Secretary may accept and use donations to pro-
39 vide assistance under section 285102 of this title.

1 (b) DEPOSIT.—Amounts received by the Secretary in the form of dona-
2 tions shall be transferred to the Secretary of the Treasury for deposit in
3 the Fund.

4 **§ 285104. Prohibitions, penalties, and enforcement**

5 (a) IN GENERAL.—A person shall not sell, import, or export, or attempt
6 to sell, import, or export, a product, item, or substance intended for human
7 consumption or application containing, or labeled or advertised as contain-
8 ing, a substance derived from a species of rhinoceros or tiger.

9 (b) PENALTIES.—

10 (1) CIVIL PENALTIES.—

11 (A) IN GENERAL.—The Secretary may assess a person a civil
12 penalty of not more than \$12,000 for each violation if the per-
13 son—

14 (i) knowingly violates subsection (a); or

15 (ii) being engaged in business as an importer, exporter, or
16 distributor, violates subsection (a).

17 (B) MANNER OF ASSESSMENT AND COLLECTION.—A civil pen-
18 alty under this paragraph shall be assessed, and may be collected,
19 in the manner in which a civil penalty may be assessed and col-
20 lected under section 201806 of this title.

21 (2) CRIMINAL PENALTIES.—Criminal penalties for a violation of sub-
22 section (a) are provided under section 53(b) of title 18.

23 (c) SEIZURES AND FORFEITURES.—A product, item, or substance sold,
24 imported, or exported, or attempted to be sold, imported, or exported, in
25 violation of this section (including a regulation prescribed under this sec-
26 tion), shall be subject to seizure and forfeiture to the United States.

27 (d) USE OF PENALTY AMOUNTS.—Amounts received as penalties, fines,
28 or forfeiture of property under this section shall be used in accordance with
29 section 203108(e) of this title.

30 (e) ENFORCEMENT.—The Secretary, the Secretary of the Treasury, and
31 the Secretary of the department in which the Coast Guard is operating shall
32 enforce this section in the same manner as the Secretaries carry out en-
33 forcement activities under section 201810 of this title.

34 (f) REGULATIONS.—After consultation with the Secretary of the Treas-
35 ury, the Secretary of Health and Human Services, and the United States
36 Trade Representative, the Secretary shall prescribe such regulations as are
37 appropriate to carry out this section.

38 **§ 285105. Educational outreach program**

39 (a) IN GENERAL.—The Secretary shall develop and implement an edu-
40 cational outreach program in the United States for the conservation of rhi-
41 noceros and tiger species.

1 (b) GUIDELINES.—The Secretary shall publish in the Federal Register
2 guidelines for the program.

3 (c) INFORMATION FOR DISSEMINATION.—Under the program, the Sec-
4 retary shall publish and disseminate information regarding—

5 (1) laws protecting rhinoceros and tiger species, in particular laws
6 prohibiting trade in products containing, or labeled or advertised as
7 containing, rhinoceros and tiger parts;

8 (2) use of traditional medicines that contain parts or products of rhi-
9 noceros and tiger species, health risks associated with their use, and
10 available alternatives to the medicines; and

11 (3) the status of rhinoceros and tiger species and the reasons for
12 protecting the species.

13 **§ 285106. Advisory group**

14 (a) IN GENERAL.—To assist in carrying out this chapter, the Secretary
15 may convene an advisory group consisting of individuals representing public
16 and private organizations actively involved in the conservation of rhinoceros
17 and tiger species.

18 (b) PUBLIC PARTICIPATION.—

19 (1) MEETINGS.—The advisory group shall—

20 (A) ensure that each meeting of the advisory group is open to
21 the public; and

22 (B) provide, at each meeting, an opportunity for interested per-
23 sons to present oral or written statements concerning items on the
24 agenda.

25 (2) NOTICE.—The Secretary shall provide to the public timely notice
26 of a meeting of the advisory group.

27 (3) MINUTES.—Minutes of a meeting of the advisory group shall be
28 kept by the Secretary and shall be made available to the public.

29 (c) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The
30 Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the ad-
31 visory group.

32 **§ 285107. Authorization of appropriations**

33 (a) IN GENERAL.—There is authorized to be appropriated to the Fund
34 \$10,000,000 for each of fiscal years 2007 through 2012 to carry out this
35 chapter, to remain available until expended.

36 (b) ADMINISTRATIVE EXPENSES.—Of amounts available for a fiscal year
37 to carry out this chapter, the Secretary may expend not more than 3 per-
38 cent or \$100,000, whichever is greater, to pay the administrative expenses
39 necessary to carry out this chapter.

40 **Chapter 287—Elk**

Sec.

287101. National goal.
 287102. Cooperation of Federal agencies with State of California.
 287103. Tule elk restoration and conservation.

1 **§ 287101. National goal**

2 (a) IN GENERAL.—Subject to subsection (b), the restoration and con-
 3 servation of a Tule elk population in California of at least 2,000 is an ap-
 4 propriate national goal.

5 (b) OWENS RIVER WATERSHED AREA.—The number of Tule elk in the
 6 Owens River Watershed area shall not exceed 490 or a greater number that
 7 is determined by the State of California to be the maximum holding capac-
 8 ity of the Owens River Watershed area.

9 **§ 287102. Cooperation of Federal agencies with State of**
 10 **California**

11 The Secretary of the Interior, the Secretary of Agriculture, and the Sec-
 12 retary of Defense shall cooperate with the State of California in making
 13 land under their respective jurisdictions reasonably available for the preser-
 14 vation and grazing of Tule elk in such manner and to such extent as are
 15 consistent with Federal law.

16 **§ 287103. Tule elk restoration and conservation**

17 (a) PLAN.—The Secretary of the Interior, in coordination with all Fed-
 18 eral, State, and other officers having jurisdiction over land on which Tule
 19 elk herds are located or land that would provide suitable Tule elk habitat,
 20 shall develop a plan for Tule elk restoration and conservation, including
 21 habitat management.

22 (b) INTEGRATION.—The plan under subsection (a) shall be integrated
 23 with the comparable plans of State and local authorities in California.

24 **Chapter 289—Wild Horses and Burros**

Sec.

289101. Definitions.
 289102. Management and protection.
 289103. Inventory; excess animals.
 289104. Sale of excess animals.
 289105. Wild free-roaming horses and burros on private land.
 289106. Recovery rights.
 289107. Cooperative agreements and regulations.
 289108. Advisory board.
 289109. Use of transportation.
 289110. Relocation of wild free-roaming horses or burros.
 289111. Coordinated implementation and enforcement; studies of habits of wild free-roaming
 horses and burros.
 289112. Criminal penalties.
 289113. Enforcement.

25 **§ 289101. Definitions**

26 In this chapter:

27 (1) EXCESS ANIMALS.—The term “excess animals” means wild free-
 28 roaming horses or burros—

1 (A) that have been removed from an area by the Secretary pur-
2 suant to applicable law; or

3 (B) that shall be removed from an area in order to preserve and
4 maintain a thriving natural ecological balance and multiple-use re-
5 lationship in that area.

6 (2) HERD.—The term “herd” means 1 or more stallions and his
7 mares.

8 (3) PUBLIC LAND.—The term “public land” means land adminis-
9 tered by the Secretary of the Interior through the Bureau of Land
10 Management or by the Secretary of Agriculture through the Forest
11 Service.

12 (4) RANGE.—

13 (A) IN GENERAL.—The term “range” means the amount of
14 land necessary to sustain an existing herd of wild free-roaming
15 horses and burros.

16 (B) EXISTING HERD.—In this paragraph, the term “existing
17 herd” means a herd in existence on December 15, 1971, and the
18 progeny of that herd.

19 (C) LIMITATIONS.—The amount of land referred to in subpara-
20 graph (A)—

21 (i) shall not exceed the known territorial limits of an exist-
22 ing herd; and

23 (ii) shall be devoted principally but not necessarily exclu-
24 sively to the welfare of the existing herd in keeping with the
25 multiple-use management concept for public land.

26 (5) SECRETARY.—The term “Secretary” means—

27 (A) the Secretary of the Interior with respect to public land ad-
28 ministered by the Secretary of the Interior through the Bureau of
29 Land Management; or

30 (B) the Secretary of Agriculture with respect to public land ad-
31 ministered by the Secretary of Agriculture through the Forest
32 Service.

33 (6) WILD FREE-ROAMING HORSE OR BURRO.—The term “wild free-
34 roaming horse or burro” means an unbranded and unclaimed horse or
35 burro on public land.

36 **§ 289102. Management and protection**

37 (a) JURISDICTION.—The Secretary shall have jurisdiction over wild free-
38 roaming horses and burros for the purpose of management and protection
39 in accordance with this chapter.

1 (b) PROTECTION AND MANAGEMENT AS PUBLIC LAND COMPONENTS.—
2 The Secretary shall protect and manage wild free-roaming horses and bur-
3 ros as components of public land.

4 (c) DESIGNATION OF RANGES.—The Secretary may designate and main-
5 tain ranges on public land as sanctuaries for the protection and preservation
6 of wild free-roaming horses and burros, where the Secretary, after consulta-
7 tion with the wildlife agency of the State where a range is proposed and
8 with the Advisory Board established under section 289108 of this title, con-
9 siders the action desirable.

10 (d) ECOLOGICAL BALANCE.—The Secretary shall manage wild free-roam-
11 ing horses and burros in a manner that is designed to achieve and maintain
12 a thriving natural ecological balance on public land.

13 (e) RECOMMENDATIONS OF SCIENTISTS.—The Secretary shall consider
14 the recommendations of qualified scientists in the fields of biology and ecol-
15 ogy, some of whom shall be independent of both Federal and State agencies
16 and may include members of the Advisory Board established under section
17 289108 of this title.

18 (f) REQUIREMENTS FOR MANAGEMENT ACTIVITIES.—All management ac-
19 tivities under this section—

20 (1) shall be at the minimal feasible level; and

21 (2) shall be carried out in consultation with the wildlife agency of
22 the State in which the public land is located in order to protect the
23 natural ecological balance of all wildlife species that inhabit the public
24 land, particularly endangered species (as defined in section 201102 of
25 this title) of wildlife.

26 (g) FORAGE ALLOCATION ADJUSTMENTS.—Each adjustment in forage al-
27 locations on public land on which wild free-roaming horses or burros are
28 managed shall take into consideration the needs of other wildlife species
29 that inhabit the public land.

30 **§ 289103. Inventory; excess animals**

31 (a) INVENTORY.—

32 (1) IN GENERAL.—The Secretary shall maintain an up-to-date inven-
33 tory of wild free-roaming horses and burros on areas of public land
34 where wild free-roaming horses and burros are located.

35 (2) PURPOSE.—The purpose of the inventory described in paragraph
36 (1) shall be to—

37 (A) make determinations as to whether and in which areas of
38 public land an overpopulation of wild free-roaming horses or bur-
39 ros exists and whether action should be taken to remove excess
40 animals;

1 (B) determine appropriate management levels of wild free-roam-
2 ing horses and burros in those areas; and

3 (C) determine whether appropriate management levels should be
4 achieved by the removal or destruction of excess animals or other
5 options (such as sterilization or natural controls on population lev-
6 els).

7 (3) CONSULTATIONS.—In making determinations under paragraph
8 (2), the Secretary shall consult with—

9 (A) USFWS;

10 (B) wildlife agencies of the States in which wild free-roaming
11 horses and burros are located;

12 (C) such individuals independent of Federal and State govern-
13 ment as are recommended by the National Academy of Sciences;
14 and

15 (D) other individuals who the Secretary determines have sci-
16 entific expertise and special knowledge of wild horse and burro
17 protection, wildlife management, and animal husbandry as related
18 to rangeland management.

19 (b) REMOVAL OF EXCESS ANIMALS.—

20 (1) IN GENERAL.—The Secretary shall immediately remove excess
21 animals from an area of public land in which wild free-roaming horses
22 or burros are located so as to achieve appropriate management levels
23 if the Secretary determines on the basis of the factors described in
24 paragraph (2) that—

25 (A) an overpopulation of wild free-roaming horses or burros ex-
26 ists on the area; and

27 (B) action is necessary to remove excess animals.

28 (2) FACTORS.—The factors referred to in paragraph (1) are—

29 (A) the inventory of land within the Secretary's jurisdiction;

30 (B) information contained in any land use planning completed
31 under section 202 of the Federal Land Policy and Management
32 Act of 1976 (43 U.S.C. 1712);

33 (C) information contained in court-ordered environmental im-
34 pact statements (as defined in section 3 of the Public Rangelands
35 Improvement Act of 1978 (43 U.S.C. 1902)); and

36 (D) such additional information as becomes available to the Sec-
37 retary from time to time, including the information developed in
38 the research study under section 3(b)(3) of the Wild Free-Roam-
39 ing Horses and Burros Act (Public Law 92-195), as amended by
40 the Public Rangelands Improvement Act of 1978 (Public Law 95-
41 514, 92 Stat. 1809).

1 (3) OTHER BASES.—In the absence of the information contained in
2 subparagraphs (A) through (D) of paragraph (2), the Secretary may
3 make a determination under paragraph (1) on the basis of all informa-
4 tion available to the Secretary at the time of the determination.

5 (4) ORDER AND PRIORITY OF ACTIONS RELATING TO REMOVAL OF
6 EXCESS ANIMALS.—The removal of excess animals shall be accom-
7 plished by performing the following actions in the following order and
8 priority until all excess animals have been removed so as to restore a
9 thriving natural ecological balance to the area described in paragraph
10 (1) and protect the area from the deterioration associated with over-
11 population:

12 (A) DESTRUCTION OF OLD, SICK, AND LAME ANIMALS.—The
13 Secretary shall order old, sick, or lame animals to be destroyed in
14 the most humane manner possible.

15 (B) ADOPTIONS.—

16 (i) IN GENERAL.—The Secretary shall cause a number of
17 additional excess animals to be humanely captured and re-
18 moved for private maintenance and care for which the Sec-
19 retary determines that—

20 (I) an adoption demand exists by qualified individuals;

21 and

22 (II) the Secretary can ensure humane treatment and
23 care (including proper transportation, feeding, and han-
24 dling).

25 (ii) LIMITATION.—Not more than 4 excess animals may be
26 adopted per year by an individual unless the Secretary deter-
27 mines in writing that the individual is capable of humanely
28 caring for more than 4 excess animals, including the trans-
29 portation of the excess animals by the individual.

30 (C) DESTRUCTION OF EXCESS ANIMALS WITH NO ADOPTION DE-
31 MAND.—The Secretary shall cause additional excess animals for
32 which an adoption demand by qualified individuals does not exist
33 to be destroyed in the most humane and cost efficient manner pos-
34 sible.

35 (e) TITLE TO EXCESS ANIMALS.—If an excess animal has been trans-
36 ferred to a qualified individual for adoption and private maintenance pursu-
37 ant to this chapter and the Secretary determines that the individual has
38 provided humane conditions, treatment, and care for the excess animal for
39 a period of 1 year, the Secretary may, on application by the individual,
40 grant title to not more than 4 animals to the individual at the end of the
41 1-year period.

1 (d) LOSS OF STATUS AS WILD FREE-ROAMING HORSES AND BURROS.—
2 A wild free-roaming horse or burro or its remains shall lose its status as
3 a wild free-roaming horse or burro and shall no longer be considered as fall-
4 ing within the purview of this chapter—

5 (1) on passage of title pursuant to subsection (c) except for the limi-
6 tation in subsection (c);

7 (2) if the animal is transferred for private maintenance or adoption
8 pursuant to this chapter and dies of natural causes before passage of
9 title;

10 (3) on destruction by the Secretary or the Secretary's designee pur-
11 suant to subsection (b);

12 (4) if the animal dies of natural causes on public land or on private
13 land on which the animal is maintained pursuant to section 289105 of
14 this title and disposal is authorized by the Secretary or the Secretary's
15 designee; or

16 (5) on destruction or death for purposes of or incident to the pro-
17 gram authorized by this section.

18 **§ 289104. Sale of excess animals**

19 (a) IN GENERAL.—An excess animal or the remains of an excess animal
20 shall be sold if—

21 (1) the excess animal is more than 10 years of age; or

22 (2) the excess animal has been offered unsuccessfully for adoption
23 at least 3 times.

24 (b) METHOD OF SALE.—An excess animal that meets either of the cri-
25 teria in paragraph (1) shall be made available for sale without limitation,
26 including through auction to the highest bidder, at a local sale yard or other
27 convenient livestock selling facility, until such time as—

28 (1) all excess animals offered for sale are sold; or

29 (2) the appropriate management level, as determined by the Sec-
30 retary, is attained in all areas inhabited by wild free-roaming horses
31 and burros.

32 (c) DISPOSITION OF FUNDS.—Funds generated from the sale of excess
33 animals under this section shall be—

34 (1) credited as an offsetting collection to the Management of Lands
35 and Resources appropriation for the Bureau of Land Management; and

36 (2) used for the costs relating to the adoption of wild free-roaming
37 horses and burros, including the costs of marketing the adoption.

38 (d) EFFECT OF SALE.—An excess animal sold under this section shall no
39 longer be considered to be a wild free-roaming horse or burro for purposes
40 of this chapter.

1 **§ 289105. Wild free-roaming horses and burros on private**
2 **land**

3 (a) STRAYS.—

4 (1) IN GENERAL.—If a wild free-roaming horse or burro strays from
5 public land to privately owned land, the owner of the private land may
6 inform the nearest Federal marshal or agent of the Secretary, who
7 shall arrange to have the wild free-roaming horse or burro removed.

8 (2) AUTHORITY TO DESTROY.—In no event shall a wild free-roaming
9 horse or burro referred to in paragraph (1) be destroyed except by an
10 agent of the Secretary.

11 (b) MAINTENANCE.—

12 (1) IN GENERAL.—Nothing in this section prohibits a private land-
13 owner from maintaining wild free-roaming horses or burros on the
14 landowner's private land, or land leased from the Government, if—

15 (A) the landowner does so in a manner that protects the wild
16 free-roaming horses or burros from harassment; and

17 (B) the wild free-roaming horses or burros were not willfully re-
18 moved or enticed from public land.

19 (2) NOTIFICATION.—An individual who maintains wild free-roaming
20 horses or burros on the individual's private land or land leased from
21 the Government shall—

22 (A) notify the appropriate agent of the Secretary; and

23 (B) supply the agent with a reasonable approximation of the
24 number of wild free-roaming horses or burros maintained by the
25 individual.

26 **§ 289106. Recovery rights**

27 A person claiming ownership of a horse or burro on public land shall be
28 entitled to recover the horse or burro only if recovery is permissible under
29 the branding and estray laws of the State in which the horse or burro is
30 found.

31 **§ 289107. Cooperative agreements and regulations**

32 (a) IN GENERAL.—In furtherance of the purposes of this chapter, the
33 Secretary may—

34 (1) enter into cooperative agreements with landowners and with the
35 State and local governmental agencies; and

36 (2) prescribe such regulations as the Secretary considers necessary.

37 (b) MULTIYEAR AGREEMENTS.—

38 (1) IN GENERAL.—For the long-term care and maintenance of excess
39 wild free roaming horses and burros by nonprofit organizations or
40 other entities on private land, the Secretary of the Interior may—

1 (A) enter into multiyear cooperative agreements with those enti-
2 ties; and

3 (B) enter into multiyear contracts in accordance with section
4 3903 of title 41 (except that the 5-year term restriction in sub-
5 section (a) of that section shall not apply).

6 (2) LIMITATION.—The cooperative agreements and contracts under
7 paragraph (1) may not exceed 10 years, subject to renewal at the dis-
8 cretion of the Secretary.

9 (3) AUTHORITY TO RECORD OBLIGATIONS.—In carrying out work in-
10 volving cooperation with any State or political subdivision thereof, the
11 Bureau of Land Management may record obligations against accounts
12 receivable from entities under paragraph (1).

13 **§ 289108. Advisory board**

14 (a) ESTABLISHMENT.—The Secretary of the Interior and the Secretary
15 of Agriculture shall appoint a joint advisory board of not more than 9 mem-
16 bers to advise them on any matter relating to wild free-roaming horses and
17 burros and their management and protection.

18 (b) ADVISER REQUIREMENTS.—The Secretary of the Interior and the
19 Secretary of Agriculture shall select as advisers individuals—

20 (1) who are not employees of the Federal or State Governments; and

21 (2) who they consider to have special knowledge of wild horse and
22 burro protection, wildlife management, animal husbandry, or natural
23 resources management.

24 (c) BOARD EXPENDITURES.—A member of the board shall not receive re-
25 imbursement except for travel and other expenditures necessary in connec-
26 tion with the member's services.

27 **§ 289109. Use of transportation**

28 (a) IN GENERAL.—In administering this chapter, the Secretary may use
29 or contract for the use of helicopters or, for the purpose of transporting
30 captured animals, motor vehicles.

31 (b) HEARING AND SUPERVISION.—The use of helicopters or motor vehi-
32 cles described in subsection (a) shall be undertaken—

33 (1) only after a public hearing; and

34 (2) under the direct supervision of the Secretary.

35 (c) INAPPLICABILITY OF CRIMINAL PROVISION.—Section 47(a) of title 18
36 shall not apply to the use of helicopters or motor vehicles under subsection
37 (a).

38 (d) HUMANE PROCEDURES.—The use of helicopters and motor vehicles
39 under subsection (a) shall be in accordance with humane procedures pre-
40 scribed by the Secretary.

41 (e) NATIONAL PARK SYSTEM.—

1 (1) EFFECT OF CHAPTER.—Nothing in this chapter is deemed to
2 limit the authority of the Secretary in the management of units of the
3 National Park System.

4 (2) MANAGEMENT OF THE NATIONAL PARK SYSTEM.—The Secretary
5 may, without regard to this chapter or section 47(a) of title 18, use
6 motor vehicles, fixed-wing aircraft, or helicopters, or contract for the
7 use, in furtherance of the management of the National Park System.

8 **§ 289110. Relocation of wild free-roaming horses or burros**

9 Nothing in this chapter authorizes the Secretary to relocate wild free-
10 roaming horses or burros to public land areas where they did not exist on
11 December 15, 1971.

12 **§ 289111. Coordinated implementation and enforcement;**
13 **studies of habits of wild free-roaming horses and**
14 **burros**

15 (a) CONSULTATION AND COORDINATION.—The Secretary of the Interior
16 and the Secretary of Agriculture shall—

17 (1) consult with respect to the implementation and enforcement of
18 this chapter; and

19 (2) to the maximum extent feasible, coordinate—

20 (A) the activities of their respective departments; and

21 (B) in the implementation and enforcement of this chapter.

22 (b) STUDIES.—The Secretary of the Interior and the Secretary of Agri-
23 culture shall each undertake studies of the habits of wild free-roaming
24 horses and burros that each Secretary considers necessary to carry out this
25 chapter.

26 **§ 289112. Criminal penalties**

27 Criminal penalties for a violation of this chapter are provided under sec-
28 tion 53(c) of title 18.

29 **§ 289113. Enforcement**

30 (a) UNITED STATES MAGISTRATE JUDGES.—A person charged with an
31 offense under section 53(c) of title 18 may be tried and sentenced by a
32 United States magistrate judge designated for that purpose by the court by
33 which the United States magistrate judge was appointed, in the same man-
34 ner and subject to the same conditions as provided in section 3401 of title
35 18.

36 (b) ENFORCEMENT AUTHORITIES.—An employee designated by the Sec-
37 retary of the Interior or the Secretary of Agriculture may—

38 (1) without warrant, arrest a person committing in the presence of
39 the employee a violation of this chapter (including a regulation pre-
40 scribed pursuant to this chapter) and take the person immediately for

1 examination or trial before an officer or court of competent jurisdiction;
2 and

3 (2) execute a warrant or other process issued by an officer or court
4 of competent jurisdiction to enforce this chapter (including a regulation
5 prescribed pursuant to this chapter).

6 (c) WARRANTS.—A judge of a court established under Federal law or a
7 United States magistrate judge may, within the judge’s respective jurisdic-
8 tion, on proper oath or affirmation showing probable cause, issue warrants
9 under this section.

10 **Chapters 291 Through 297—Reserved**
11 **Chapter 299—Miscellaneous**

Sec.

299101. Multinational Species Conservation Fund.

12 **§ 299101. Multinational Species Conservation Fund**

13 (a) DEFINITION OF FUND.—In this section, the term “Fund” means the
14 Multinational Species Conservation Fund established under subsection (b).

15 (b) ESTABLISHMENT.—There is established a Multinational Species Con-
16 servation Fund.

17 (c) DONATIONS.—Donations to provide assistance under section 281102
18 of this title, section 281202 of this title, and section 285102 of this title
19 shall be deposited in the Fund and shall be available without further appro-
20 priation.

21 (d) PENALTIES.—The amounts of civil penalties and criminal fines re-
22 ceived by the United States under section 281107 of this title and section
23 53(a) of title 18, respectively, that are not used to pay rewards under sec-
24 tion 281108 of this title shall be deposited in the Fund to provide assistance
25 under section 281102 of this title and shall be available without further ap-
26 propriation.

27 (e) AMOUNT FOR ADMINISTRATION OF FUND.—Not more than 3 percent
28 of amounts appropriated to the Fund may be used by the Secretary of the
29 Interior to administer the Fund.

30 **SEC. 4. AMENDMENT OF TITLE 18, UNITED STATES CODE.**

31 (a) TABLE OF CONTENTS.—The table of contents of chapter 3 of title
32 18, United States Code, is amended by adding at the end the following:

“50. Wildlife generally (division A of subtitle II of title 56).

“51. Aquatic wildlife (division B of subtitle II of title 56).

“52. Avian wildlife (division C of subtitle II of title 56).

“53. Other wildlife (division D of subtitle II of title 56).”.

33 (b) IN GENERAL.—Chapter 3 of title 18, United States Code, is amended
34 by adding at the end the following:

35 **“§ 50. Wildlife generally (division A of subtitle II of title 56)**

36 **“(a) ENDANGERED SPECIES (CHAPTER 201).—**

1 “(1) DEFINITIONS.—In this subsection:
2 “(A) LISTED SPECIES.—The term “listed species” has the
3 meaning given the term under section 201102 of title 56.
4 “(B) PERSON.—The term “person” has the meaning given the
5 term under section 201102 of title 56.
6 “(2) IMPRISONMENT OF NOT MORE THAN 1 YEAR.—A person shall
7 be imprisoned not more than 1 year, fined under this title, or both,
8 if the person knowingly violates—
9 “(A) a provision of chapter 201 of title 56;
10 “(B) a provision of a permit or certificate issued under chapter
11 201 of title 56; or
12 “(C) a provision of a regulation prescribed to implement—
13 “(i) subparagraph (A), (B), (C), (D), (E), or (F) of section
14 201801(a)(1) of title 56;
15 “(ii) subparagraph (A), (B), (C), or (D) of section
16 201801(a)(2) of title 56; or
17 “(iii) subsection (e), (d) (other than a regulation relating
18 to recordkeeping or filing of reports), (f), or (g) of section
19 201801 of title 56.
20 “(3) IMPRISONMENT OF NOT MORE THAN 6 MONTHS.—A person that
21 knowingly violates a provision of a regulation prescribed under chapter
22 201 of title 56 other than a provision listed under paragraph (2)(C)
23 shall be imprisoned not more than 6 months, fined under this title, or
24 both.
25 “(4) DEFENSE.—It shall be a defense to prosecution under this sub-
26 section if the defendant committed the offense under this subsection
27 based on a good faith belief that the defendant was acting to protect
28 himself or herself, a member of his or her family, or any other individ-
29 ual, from bodily harm from a listed species.
30 “(b) PROTECTION OF FISH OR WILDLIFE AND WILD PLANTS AGAINST
31 ILLEGAL TAKING, POSSESSION, TRANSPORTATION, OR SALE (CHAPTER
32 203).—
33 “(1) DEFINITIONS.—In this subsection:
34 “(A) FISH OR WILDLIFE.—The term “fish or wildlife” has the
35 meaning given the term under section 203101 of title 56.
36 “(B) FISH OR WILDLIFE OR WILD PLANT REGULATORY LAW.—
37 The term “fish or wildlife or wild plant regulatory law” has the
38 meaning given the term under section 203101 of title 56.
39 “(C) IMPORT.—The term “import” has the meaning given the
40 term under section 203101 of title 56.

1 “(D) INDIAN TRIBAL FISH OR WILDLIFE OR WILD PLANT REGU-
2 LATORY LAW.—The term “Indian tribal fish or wildlife or wild
3 plant regulatory law” has the meaning given the term under sec-
4 tion 203101 of title 56.

5 “(E) PERSON.—The term “person” has the meaning given the
6 term under section 203101 of title 56.

7 “(F) STATE.—The term “State” has the meaning given the
8 term under section 203101 of title 56.

9 “(G) TAKE.—The term “take” has the meaning given the term
10 under section 203101 of title 56.

11 “(H) TRANSPORT.—The term “transport” has the meaning
12 given the term under section 203101 of title 56.

13 “(I) WILD PLANT.—The term “wild plant” has the meaning
14 given the term under section 203101 of title 56.

15 “(2) GENERAL OFFENSES.—

16 “(A) OFFENSES REQUIRING ACTUAL KNOWLEDGE OF FISH OR
17 WILDLIFE OR WILD PLANT REGULATORY LAW VIOLATION.—

18 “(i) IN GENERAL.—A person shall be imprisoned not more
19 than 5 years, fined under this title, or both, if—

20 “(I) the person—

21 “(aa) knowingly imports or exports any fish or
22 wildlife or wild plants in violation of section
23 203102(a)(1) of title 56; or

24 “(bb) violates section 203102(a)(1) of title 56 by
25 knowingly engaging in conduct that involves the sale
26 or purchase of, the offer of sale or purchase of, or
27 the intent to sell or purchase fish or wildlife or wild
28 plants with an aggregate market value in excess of
29 \$350; and

30 “(II) the person knows that the fish or wildlife or wild
31 plants were taken, possessed, transported, or sold in vio-
32 lation of, or in a manner unlawful under, Federal, State,
33 or foreign fish or wildlife or wild plant regulatory law or
34 Indian tribal fish or wildlife or wild plant regulatory law.

35 “(ii) SEPARATE OFFENSE.—Each violation shall be a sepa-
36 rate offense.

37 “(iii) VENUE.—For venue purposes, an offense is consid-
38 ered to have been committed—

39 “(I) in the district where the offense first occurred;
40 and

1 “(II) in any district to which a person may have
2 taken, or in any district in which a person may have
3 been in possession of, the fish or wildlife or wild plants
4 involved in the offense.

5 “(B) OFFENSES REQUIRING CONSTRUCTIVE KNOWLEDGE OF
6 FISH OR WILDLIFE OR WILD PLANT REGULATORY LAW VIOLA-
7 TION.—

8 “(i) IN GENERAL.—A person shall be imprisoned not more
9 than 1 year, fined under this title, or both, if the person—

10 “(I) knowingly engages in conduct prohibited by sec-
11 tion 203102(a)(1) of title 56; and

12 “(II) in the exercise of due care, should know that the
13 fish or wildlife or wild plants were taken, possessed,
14 transported, or sold in violation of, or in a manner un-
15 lawful under, a Federal, State, or foreign fish or wildlife
16 or wild plant regulatory law or Indian tribal fish or wild-
17 life or wild plant regulatory law.

18 “(ii) SEPARATE OFFENSE.—Each violation shall be a sepa-
19 rate offense.

20 “(iii) VENUE.—For venue purposes, an offense is consid-
21 ered to have been committed—

22 “(I) in the district where the offense first occurred;
23 and

24 “(II) in any district to which a person may have
25 taken, or in any district in which a person may have
26 been in possession of, the fish or wildlife or wild plants
27 involved in the offense.

28 “(3) FALSIFICATION OFFENSES; WILD PLANT DECLARATION OF-
29 FENSES.—

30 “(A) KNOWING OFFENSES RELATED TO IMPORTATION, EXPOR-
31 TATION, SALE, OR PURCHASE.—A person shall be imprisoned not
32 more than 5 years, fined under this title, or both, if—

33 “(i) the person knowingly violates subsection (c) or (d) of
34 section 203102 of title 56; and

35 “(ii) the offense involves—

36 “(I) the importation or exportation of fish or wildlife
37 or wild plants; or

38 “(II) the sale or purchase of, offer of sale or purchase
39 of, or commission of an act with intent to sell or pur-
40 chase fish or wildlife or wild plants with an aggregate
41 market value greater than \$350.

1 “(B) KNOWING OFFENSES NOT INVOLVING IMPORTATION, EX-
 2 PORTATION, SALE, OR PURCHASE.—A person shall be imprisoned
 3 not more than 1 year, fined under this title, or both, if—

4 “(i) the person knowingly violates subsection (c) or (d) of
 5 section 203102 of title 56; and

6 “(ii) the offense does not involve conduct described in sub-
 7 paragraph (A)(ii).

8 “(c) AIRBORNE HUNTING (CHAPTER 211).—

9 “(1) DEFINITIONS.—In this subsection:

10 “(A) AIRCRAFT.—The term “aircraft” has the meaning given
 11 the term under section 211101 of title 56.

12 “(B) WILD ANIMAL.—The term “wild animal” has the meaning
 13 given the term under section 211101 of title 56.

14 “(2) IN GENERAL.—A person shall be imprisoned not more than 1
 15 year, fined under this title, or both if the person—

16 “(A) while airborne in an aircraft, shoots or attempts to shoot
 17 for the purpose of capturing or killing a wild animal;

18 “(B) uses an aircraft to harass a wild animal; or

19 “(C) knowingly participates in using an aircraft for a purpose
 20 described in subparagraph (A) or (B).

21 **“§ 51. Aquatic wildlife (division B of subtitle II of title 56)**

22 “(a) MARINE MAMMAL PROTECTION (CHAPTER 221).—

23 “(1) DEFINITION OF PERSON.—In this subsection, the term “per-
 24 son” has the meaning given the term under section 221102 of title 56.

25 “(2) IN GENERAL.—A person that knowingly violates subchapter II
 26 of chapter 221 of title 56 or a permit or regulation issued under the
 27 subchapter (except as provided in section 221216 of title 56) shall be
 28 imprisoned not more than 1 year, fined under this title, or both, for
 29 each violation.

30 “(3) INTERNATIONAL DOLPHIN CONSERVATION PROGRAM.—A person
 31 that knowingly and willfully violates paragraphs (5) or (6) of section
 32 221406(a) of title 56 shall be subject to a criminal penalty under para-
 33 graph (2).

34 “(b) NORTH PACIFIC FUR SEALS (CHAPTER 225).—

35 “(1) DEFINITION OF PERSON.—In this subsection, the term “per-
 36 son” has the meaning given the term under section 225101 of title 56.

37 “(2) IN GENERAL.—A person that knowingly violates chapter 225 of
 38 title 56 or a permit or regulation issued under the chapter shall be im-
 39 prisoned for not more than 1 year, fined under this title, or both.

40 “(c) WHALING CONVENTION (CHAPTER 251).—

41 “(1) DEFINITIONS.—In this subsection:

1 “(A) CONVENTION.—The term “Convention” has the meaning
2 given the term under section 251101 of title 56.

3 “(B) PERSON.—The term “person” has the meaning given the
4 term under section 251101 of title 56.

5 “(C) REGULATIONS OF THE COMMISSION.—The term “regula-
6 tions of the Commission” has the meaning given the term under
7 section 251101 of title 56.

8 “(D) REGULATIONS OF THE SECRETARY OF COMMERCE.—The
9 term “regulations of the Secretary of Commerce” has the meaning
10 given the term under section 251101 of title 56.

11 “(E) WHALE PRODUCT.—The term “whale product” has the
12 meaning given the term under section 251101 of title 56.

13 “(F) WHALING.—The term “whaling” has the meaning given
14 the term under section 251101 of title 56.

15 “(G) WHALING LAWS.—The term “whaling laws” has the mean-
16 ing given the term under section 251101 of title 56.

17 “(2) IN GENERAL.—Except as to violations under paragraphs (3)
18 and (4) of subsection (a) of section 251104 of title 56, a person that
19 violates any of the whaling laws shall be imprisoned not more than 1
20 year, fined under this title, or both.

21 “(3) ADDITIONAL PENALTIES.—In addition to the penalties under
22 paragraph (2), the court may—

23 “(A) prohibit a person described in paragraph (2) from whaling
24 for such period of time as the court may determine; and

25 “(B) order forfeited, in whole or in part—

26 “(i) the whales taken by a person described in paragraph
27 (2) in whaling during the season;

28 “(ii) the whale products derived from the whales; or

29 “(iii) the monetary value of the whales or whale products.

30 “(4) DISPOSITION OF FORFEITED WHALES AND WHALE PROD-
31 UCTS.—Whales and whale products forfeited under paragraph (3)(B)
32 shall be disposed of in accordance with the direction of the court.

33 “(5) PENALTIES RELATING TO CATCH RETURNS, RECORDS, AND RE-
34 PORTS.—

35 “(A) IN GENERAL.—A person shall be subject to subparagraph
36 (B) if the person—

37 “(i) fails to make, keep, or furnish a catch return, record,
38 or report that may be required by the Convention, a regula-
39 tion of the Commission, or a regulation of the Secretary of
40 Commerce; or

41 “(ii) furnishes a false catch return, record, or report.

1 “(B) PENALTIES.—A person described in subparagraph (A)
2 shall be—

3 “(i) fined under this title; and

4 “(ii) prohibited from whaling, processing, or possessing
5 whales and whale products from the date of conviction until
6 such time as any delinquent catch return, record, or report
7 is submitted or any false catch return, record, or report is re-
8 placed by a certified correct and true catch return, record, or
9 report to the satisfaction of the court.

10 “(6) INAPPLICABILITY OF GENERAL PENALTIES.—The penalties im-
11 posed by paragraphs (2) through (4) shall not be invoked for failure
12 to comply with requirements with respect to catch returns, records, and
13 reports.

14 “(d) ANTARCTIC MARINE LIVING RESOURCES CONVENTION (CHAPTER
15 252).—

16 “(1) DEFINITION OF PERSON.—In this subsection, the term “per-
17 son” has the meaning given the term under section 252101 of title 56.

18 “(2) IN GENERAL.—A person that commits an act prohibited by
19 paragraph (4), (5), (6), or (7) of section 252104 of title 56 shall be
20 imprisoned not more than 10 years, fined under this title, or both.

21 “(3) OFFENSES UNDER OTHER LAWS.—A conviction under para-
22 graph (2) for an act does not preclude a conviction for the act under
23 any other law.

24 **“§ 52. Avian wildlife (division C of subtitle II of title 56)**

25 “(a) MIGRATORY BIRD TREATIES (SUBCHAPTER II OF CHAPTER 261).—

26 “(1) DEFINITIONS.—In this subsection:

27 “(A) CONVENTIONS.—The term “Conventions” has the meaning
28 given the term under section 261101 of title 56.

29 “(B) MIGRATORY BIRD.—The term “migratory bird” has the
30 meaning given the term under section 261101 of title 56.

31 “(2) IN GENERAL.—Except as otherwise provided in this subsection,
32 a person that violates a provision of any of the Conventions or sub-
33 chapter II of chapter 261 of title 56 (including a regulation prescribed
34 under the subchapter) shall be imprisoned not more than 6 months,
35 fined not more than \$15,000 or an alternative amount provided under
36 this title, or both.

37 “(3) KNOWING VIOLATIONS RELATING TO SELLING AND BARTER-
38 ING.—A person shall be imprisoned not more than 2 years, fined under
39 this title, or both, if the person, in violation of subchapter II of chapter
40 261 of title 56, knowingly—

1 “(A) takes a migratory bird with intent to sell, offer to sell, bar-
2 ter, or offer to barter the migratory bird; or

3 “(B) sells, offers for sale, barter, or offers to barter a migra-
4 tory bird.

5 “(4) VIOLATION RELATING TO PLACEMENT OF BAIT.—A person that
6 violates section 261201(b)(2) of title 56 shall be imprisoned not more
7 than 1 year, fined under this title, or both.

8 “(b) BALD EAGLES AND GOLDEN EAGLES (CHAPTER 263).—

9 “(1) DEFINITIONS.—In this subsection:

10 “(A) EAGLE.—The term “eagle” has the meaning given the
11 term under section 263101 of title 56.

12 “(B) TAKE.—The term “take” has the meaning given the term
13 under section 263101 of title 56.

14 “(C) TRANSPORT.—The term “transport” has the meaning
15 given the term under section 263101 of title 56.

16 “(2) IN GENERAL.—A person shall be imprisoned not more than 1
17 year, fined under this title, or both, if the person, within the United
18 States or a place subject to the jurisdiction of the United States, with-
19 out being permitted to do so as provided in chapter 263 of title 56—

20 “(A) knowingly, or with wanton disregard for the consequences
21 of the person’s act, takes, possesses, sells, purchases, barter, of-
22 fers to sell, purchase, or barter, transports, exports, or imports an
23 eagle; or

24 “(B) violates a permit issued or regulation prescribed under
25 chapter 263 of title 56.

26 “(3) SUBSEQUENT CONVICTION.—In the case of a subsequent convic-
27 tion for a violation of this subsection, a person shall be imprisoned not
28 more than 2 years, fined under this title, or both.

29 “(4) SEPARATE VIOLATIONS.—Each violation shall be a separate of-
30 fense.

31 “(5) REWARDS.—One-half of the amount of a fine under this sub-
32 section, but not more than \$2,500, shall be paid to the person giving
33 information that leads to conviction.

34 “(6) EXCEPTIONS.—Nothing in this subsection prohibits the posses-
35 sion or transportation of—

36 “(A) a bald eagle, alive or dead, or a part, nest, or egg of a
37 bald eagle, lawfully taken before June 8, 1940; or

38 “(B) a golden eagle, alive or dead, or a part, nest, or egg of
39 a golden eagle, lawfully taken before October 24, 1962.

40 “(c) WILD EXOTIC BIRDS (CHAPTER 265).—

41 “(1) DEFINITIONS.—

1 “(A) EXOTIC BIRD.—The term “exotic bird” has the meaning
2 given the term under section 265101 of title 56.

3 “(B) IMPORT.—The term “import” has the meaning given the
4 term under section 265101 of title 56.

5 “(C) PERSON.—The term “person” has the meaning given the
6 term under section 265101 of title 56.

7 “(2) KNOWING VIOLATIONS RELATING TO IMPORTATIONS AND PER-
8 MITS.—A person that knowingly violates, or a person engaged in busi-
9 ness as an importer of exotic birds that violates, paragraph (1) or (2)
10 of section 265107(a) of title 56 or a permit issued under section
11 265108 of title 56 shall be imprisoned not more than 2 years, fined
12 under this title, or both.

13 “(3) KNOWING VIOLATIONS OF REGULATIONS.—A person that know-
14 ingly violates section 265107(a)(3) of title 56 shall be imprisoned not
15 more than 6 months, fined under this title, or both.

16 **“§ 53. Other wildlife (division D of subtitle II of title 56)**

17 “(a) AFRICAN ELEPHANTS (SUBCHAPTER I OF CHAPTER 281).—A per-
18 son that knowingly violates section 281106 of title 56 shall be imprisoned
19 not more than 1 year, fined under this title, or both.

20 “(b) RHINOCEROSES AND TIGERS (CHAPTER 285).—

21 “(1) DEFINITION OF PERSON.—In this subsection, the term “per-
22 son” has the meaning given the term under section 285101 of title 56.

23 “(2) IN GENERAL.—A person engaged in business as an importer,
24 exporter, or distributor that knowingly violates section 285104(a) of
25 title 56 shall be imprisoned not more than 6 months, fined under this
26 title, or both.

27 “(c) WILD HORSES AND BURROS (CHAPTER 289).—

28 “(1) DEFINITIONS.—In this subsection:

29 “(A) PUBLIC LAND.—The term “public land” has the meaning
30 given the term under section 289101 of title 56.

31 “(B) SECRETARY.—The term “Secretary” has the meaning
32 given the term under section 289101 of title 56.

33 “(C) WILD FREE-ROAMING HORSE OR BURRO.—The term “wild
34 free-roaming horse or burro” has the meaning given the term
35 under section 289101 of title 56.

36 “(2) IN GENERAL.—A person shall be imprisoned not more than 1
37 year, fined under this title, or both, if the person—

38 “(A) willfully removes or attempts to remove a wild free-roam-
39 ing horse or burro from public land, without authority from the
40 Secretary;

1 “(B) converts a wild free-roaming horse or burro to private use,
2 without authority from the Secretary;

3 “(C) maliciously causes the death or harassment of a wild free-
4 roaming horse or burro;

5 “(D) except as provided in section 289104 of title 56, processes
6 or permits to be processed into commercial products the remains
7 of a wild free-roaming horse or burro;

8 “(E) sells, directly or indirectly, a wild free-roaming horse or
9 burro, or the remains of the wild free-roaming horse or burro,
10 maintained on private or leased land pursuant to section 289105
11 of title 56; or

12 “(F) willfully violates a regulation prescribed under chapter 289
13 of title 56.”.

14 **SEC. 5. CONFORMING AMENDMENTS TO CERTAIN PROVISIONS OF**
15 **LAW.**

16 (a) **SUNSET TERMINATION EXCEPTIONS.**—Section 3003(a)(1) of the Fed-
17 eral Reports Elimination and Sunset Act of 1995 (Public Law 104–66, 31
18 U.S.C. 1113 note) does not apply to a report required to be submitted
19 under section 201903 of title 56, United States Code.

20 (b) **FUR SEAL ACT OF 1966.**—Section 208 of the Fur Seal Act of 1966
21 (16 U.S.C. 1168) is amended by adding at the end the following:

22 “(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be
23 appropriated such sums as may be necessary for each fiscal year for the
24 purposes of this section.”.

25 (c) **PUBLIC LAW 104–91.**—Section 3 of Public Law 104–91 (16 U.S.C.
26 1165 note) is amended by adding at the end the following:

27 “(h) **REPEAL OF SECTION.**—This section is repealed effective on the date
28 on which the Secretary of Commerce publishes the notice of certification re-
29 quired by section 105(b)(5) of the Pribilof Islands Transition Act (Public
30 Law 106–562, title I).”.

31 (d) **TITLE 16.**—The 1st section and section 2 of Public Law 86–359 (16
32 U.S.C. 760e, 760f) are amended by striking “Secretary of the Interior” and
33 inserting “Secretary of Commerce”.

34 (e) **ENDANGERED SPECIES ACT AMENDMENTS OF 1982.**—Section 2(b)(4)
35 of the Endangered Species Act Amendments of 1982 (Public Law 97–304,
36 16 U.S.C. 1533 note), is amended by striking “Section 4(a)(3)(A) of such
37 Act of 1973 (as added by subsection (a))” and inserting “Section
38 201201(b)(1)(A) of title 56, United States Code”.

39 **SEC. 6. TRANSITIONAL AND SAVINGS PROVISIONS.**

40 (a) **DEFINITIONS.**—In this section:

1 (1) **RESTATED PROVISION.**—The term “restated provision” means a
 2 provision of title 56, United States Code, that is enacted by section 3
 3 or a provision of title 18, United States Code, that is enacted by sec-
 4 tion 4.

5 (2) **SOURCE PROVISION.**—The term “source provision” means a pro-
 6 vision of law that is replaced by a restated provision.

7 (b) **CUTOFF DATE.**—The restated provisions replace certain provisions of
 8 law enacted on or before August 18, 2017. If a law enacted after that date
 9 amends or repeals a source provision, that law is deemed to amend or re-
 10 peal, as the case may be, the corresponding restated provision. If a law en-
 11 acted after that date is otherwise inconsistent with a restated provision or
 12 a provision of this Act, that law supersedes the restated provision or provi-
 13 sion of this Act to the extent of the inconsistency.

14 (c) **ORIGINAL DATE OF ENACTMENT UNCHANGED.**—For purposes of de-
 15 termining whether one provision of law supersedes another based on enact-
 16 ment later in time, a restated provision is deemed to have been enacted on
 17 the date of enactment of the source provision that the restated provision re-
 18 places.

19 (d) **REFERENCES TO RESTATED PROVISIONS.**—A reference to a restated
 20 provision is deemed to refer to the corresponding source provision.

21 (e) **REFERENCES TO SOURCE PROVISIONS.**—A reference to a source pro-
 22 vision, including a reference in a regulation, order, or other law, is deemed
 23 to refer to the corresponding restated provision.

24 (f) **REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.**—A
 25 regulation, order, or other administrative action in effect under a source
 26 provision continues in effect under the corresponding restated provision.

27 (g) **ACTIONS TAKEN AND OFFENSES COMMITTED.**—An action taken or
 28 an offense committed under a source provision is deemed to have been taken
 29 or committed under the corresponding restated provision.

30 **SEC. 7. REPEALS.**

31 The following provisions of law are repealed, except with respect to rights
 32 and duties that matured, penalties that were incurred, or proceedings that
 33 were begun before the date of enactment of this Act:

Schedule of Laws Repealed

Act	Section	United States Code Former Classification
Revised Statutes	1957	16 U.S.C. 645.
Act of May 31, 1880, ch. 113	2d paragraph under heading “UNITED STATES FISH COMMISSSION” (semicolon and all that follows through “Survey”), at 21 Stat. 151.	16 U.S.C. 746.

Schedule of Laws Repealed—Continued

Act	Section	United States Code Former Classification
Act of March 3, 1885, ch. 360	1(2)	16 U.S.C. 743a.
Act of May 25, 1900, ch. 553	1st section	16 U.S.C. 701.
Act of June 3, 1902, ch. 983	1st section	16 U.S.C. 702.
Act of March 4, 1911, ch. 285	1st section (2d paragraph under heading "BUREAU OF FISHERIES", at 36 Stat. 1436).	16 U.S.C. 742.
Act of July 1, 1918, ch. 113	1st section (56th paragraph under heading "BUREAU OF FISHERIES", at 40 Stat. 693).	16 U.S.C. 748.
	1st section (58th paragraph under heading "BUREAU OF FISHERIES", at 40 Stat. 694).	16 U.S.C. 754a.
Migratory Bird Treaty Act (Act of July 3, 1918, ch. 128)	1	16 U.S.C. 710.
	2	16 U.S.C. 703.
	3	16 U.S.C. 704.
	4	16 U.S.C. 705.
	5	16 U.S.C. 706.
	6	16 U.S.C. 707.
	7	16 U.S.C. 708.
	8	16 U.S.C. 709.
	9	16 U.S.C. 709a.
	10	16 U.S.C. 710.
	12	16 U.S.C. 711.
Act of June 16, 1921, ch. 23	4 (paragraph under heading "BUREAU OF FISHERIES", at 42 Stat. 63).	16 U.S.C. 749.
Act of March 28, 1922, ch. 117	title I, 15th paragraph under heading "BUREAU OF FISHERIES", at 42 Stat. 484.	16 U.S.C. 747.
Act of April 28, 1922, ch. 153	1	16 U.S.C. 750.
	2	16 U.S.C. 751.
Act of January 5, 1923, ch. 24	title I, 16th paragraph under heading "BUREAU OF FISHERIES", at 42 Stat. 1125.	16 U.S.C. 747.
Act of May 28, 1924, ch. 204	title III, 15th paragraph under heading "BUREAU OF FISHERIES", at 43 Stat. 238.	16 U.S.C. 747.
Act of February 27, 1925, ch. 364	title III, 8th paragraph under heading "BUREAU OF FISHERIES", at 43 Stat. 1047.	16 U.S.C. 747.
Migratory Bird Conservation Act (Act of February 18, 1929, ch. 257)	1	16 U.S.C. 715.
	2	16 U.S.C. 715a.
	3	16 U.S.C. 715b.
	4	16 U.S.C. 715c.
	5	16 U.S.C. 715d.
	6	16 U.S.C. 715e.
	7	16 U.S.C. 715f.
	8	16 U.S.C. 715g.
	9	16 U.S.C. 715h.
	10	16 U.S.C. 715i.
	11	16 U.S.C. 715j.
	12	16 U.S.C. 715k.
	15	16 U.S.C. 715n.
	16	16 U.S.C. 715o.
	17	16 U.S.C. 715p.
	18	16 U.S.C. 715q.
	19	16 U.S.C. 715r.

Schedule of Laws Repealed—Continued

Act	Section	United States Code Former Classification
Tariff Act of 1930 (Act of June 17, 1930, ch. 497, title IV)	527	19 U.S.C. 1527.
Fish and Wildlife Coordination Act (Act of March 10, 1934, ch. 55)	1	16 U.S.C. 661.
	5	16 U.S.C. 665.
Migratory Bird Hunting and Conservation Stamp Act (Act of March 16, 1934, ch. 71)	1	16 U.S.C. 718a.
	2	16 U.S.C. 718b.
	3	16 U.S.C. 718c.
	4	16 U.S.C. 718d.
	5	16 U.S.C. 718e.
	6	16 U.S.C. 718f.
	7	16 U.S.C. 718g.
	8	16 U.S.C. 718h.
	9	16 U.S.C. 718i.
	10	16 U.S.C. 718j.
Act of June 15, 1935, ch. 261, title III	304	16 U.S.C. 715e-1.
title V	501	16 U.S.C. 715d-3.
title VII	1st section	16 U.S.C. 715k-1.
Act of June 29, 1937, ch. 404	title I, proviso in last paragraph under heading "SALARIES AND EXPENSES", at 50 Stat. 421.	16 U.S.C. 715k-2.
Pittman-Robertson Wildlife Restoration Act (Act of September 2, 1937, ch. 899)	1	16 U.S.C. 669.
	2	16 U.S.C. 669a.
	3	16 U.S.C. 669b.
	4	16 U.S.C. 669c.
	5	16 U.S.C. 669d.
	6	16 U.S.C. 669e.
	7	16 U.S.C. 669f.
	8	16 U.S.C. 669g.
	8A	16 U.S.C. 669g-1.
	9	16 U.S.C. 669h.
	10	16 U.S.C. 669h-1.
	11	16 U.S.C. 669h-2.
	12	16 U.S.C. 669i.
Act of June 16, 1938, ch. 464	title I, proviso in 2d paragraph under heading "FEDERAL AID IN WILDLIFE RESTORATION", at 52 Stat. 736.	16 U.S.C. 715k-2.
Reorganization Plan No. II of 1939	4(h)	5 U.S.C. App.
Act of June 30, 1939, ch. 253	title I, proviso in 2d paragraph under heading "FEDERAL AID IN WILDLIFE RESTORATION", at 53 Stat. 965.	16 U.S.C. 715k-2.
Act of June 8, 1940, ch. 278	1	16 U.S.C. 668.
	2	16 U.S.C. 668a.
	3	16 U.S.C. 668b.
	4	16 U.S.C. 668c.
	5	16 U.S.C. 668d.
Act of July 2, 1942, ch. 473	1 (3d proviso in 2d paragraph under heading "FEDERAL AID IN WILDLIFE RESTORATION", at 56 Stat. 557.	16 U.S.C. 752.
	1 (4th proviso in 2d paragraph under heading "FEDERAL AID IN WILDLIFE RESTORATION", at 56 Stat. 558).	16 U.S.C. 753.

Schedule of Laws Repealed—Continued

Act	Section	United States Code Former Classification
	1 (last proviso in 2d paragraph under heading "FEDERAL AID IN WILDLIFE RESTORATION", at 56 Stat. 558).	16 U.S.C. 754.
Act of May 18, 1948, ch. 303	1	16 U.S.C. 695.
	2	16 U.S.C. 695a.
	3	16 U.S.C. 695b.
	4	16 U.S.C. 695c.
Whaling Convention Act of 1949 (Act of August 9, 1950, ch. 653)	2	16 U.S.C. 916.
	3	16 U.S.C. 916a.
	4	16 U.S.C. 916b.
	5	16 U.S.C. 916c.
	6	16 U.S.C. 916d.
	7	16 U.S.C. 916e.
	8	16 U.S.C. 916f.
	9	16 U.S.C. 916g.
	10	16 U.S.C. 916h.
	11	16 U.S.C. 916i.
	12	16 U.S.C. 916j.
	13	16 U.S.C. 916k.
	14	16 U.S.C. 916l.
Dingell-Johnson Sport Fish Restoration Act (Act of August 9, 1950, ch. 658)	1	16 U.S.C. 777.
	2	16 U.S.C. 777a.
	3	16 U.S.C. 777b.
	4	16 U.S.C. 777c.
	5	16 U.S.C. 777d.
	6	16 U.S.C. 777e.
	7	16 U.S.C. 777f.
	8	16 U.S.C. 777g.
	9	16 U.S.C. 777h.
	10	16 U.S.C. 777i.
	12	16 U.S.C. 777k.
	13	16 U.S.C. 777l.
	14	16 U.S.C. 777m.
Act of August 12, 1955, ch. 861	1	16 U.S.C. 669b-1.
Act of July 30, 1956, ch. 782	3(a), (b)	16 U.S.C. 718b-1.
Fish and Wildlife Act of 1956 (Act of August 8, 1956, ch. 1036)	3	16 U.S.C. 742b.
	5	16 U.S.C. 742d.
	6(c)	16 U.S.C. 742e(c).
	7	16 U.S.C. 742f.
	8	16 U.S.C. 742g.
	10	16 U.S.C. 742i.
	11	16 U.S.C. 742j.
	13	16 U.S.C. 742j-1.
	14	16 U.S.C. 742j-2.
Pub. L. 85-582	1	16 U.S.C. 742d-1.
Public Law 86-686	1	16 U.S.C. 753a.
	2	16 U.S.C. 753b.
Pub. L. 87-383	1	16 U.S.C. 715k-3.
	2	16 U.S.C. 715k-4.
	3	16 U.S.C. 715k-5.
Anadromous Fish Conservation Act (Pub. L. 89-304)	1	16 U.S.C. 757a.
	2	16 U.S.C. 757b.
	3	16 U.S.C. 757c.
	4	16 U.S.C. 757d.
	5	16 U.S.C. 757e.
	6	16 U.S.C. 757f.
Fur Seal Act of 1966 (Pub. L. 89-702, title I)	101	16 U.S.C. 1151.
	102	16 U.S.C. 1152.
	103	16 U.S.C. 1153.

Schedule of Laws Repealed—Continued

Act	Section	United States Code Former Classification
	104	16 U.S.C. 1154.
	105	16 U.S.C. 1155.
	106	16 U.S.C. 1156.
	107	16 U.S.C. 1157.
	108	16 U.S.C. 1158.
	109	16 U.S.C. 1159.
(title II)	201	16 U.S.C. 1161.
	202	16 U.S.C. 1162.
	203	16 U.S.C. 1163.
	204	16 U.S.C. 1164.
	205(a), (b), (d) through (f)	16 U.S.C. 1165(a), (b), (d) through (f).
	206 (except (f))	16 U.S.C. 1166 (except (f)).
	207	16 U.S.C. 1167.
	211	16 U.S.C. 1169.
	212 (as enacted by Pub. L. 98-369, div. B, title II, § 2208(b)).	16 U.S.C. 1169a.
	212 (as enacted by Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 144(e)(6)(A)(ii)]).	16 U.S.C. 1169b.
(title III)	301	16 U.S.C. 1171.
	302	16 U.S.C. 1172.
	303	16 U.S.C. 1173.
	304	16 U.S.C. 1174.
	305	16 U.S.C. 1175.
Reorganization Plan No. 4 of 1970	1	15 U.S.C. 1511 note; 5 U.S.C. App.
	2	15 U.S.C. 1511 note; 5 U.S.C. App.
	3	15 U.S.C. 1511 note; 5 U.S.C. App.
	4	15 U.S.C. 1511 note; 5 U.S.C. App.
	5	15 U.S.C. 1511 note; 5 U.S.C. App.
	6	15 U.S.C. 1511 note; 5 U.S.C. App.
Wild Free-Roaming Horses and Burros Act (Pub. L. 92-195)	2	16 U.S.C. 1332.
	3	16 U.S.C. 1333.
	4	16 U.S.C. 1334.
	5	16 U.S.C. 1335.
	6	16 U.S.C. 1336.
	7	16 U.S.C. 1337.
	8	16 U.S.C. 1338.
	9	16 U.S.C. 1338a.
	10	16 U.S.C. 1339.
	11	16 U.S.C. 1340.
Marine Mammal Protection Act of 1972 (Pub. L. 92-522)	2	16 U.S.C. 1361.
	3	16 U.S.C. 1362.
(title I)	101	16 U.S.C. 1371.
	102	16 U.S.C. 1372.
	103	16 U.S.C. 1373.
	104 (except (e)(5)(C)(i))	16 U.S.C. 1374 (except (e)(5)(C)(i)).
	105	16 U.S.C. 1375.
	106	16 U.S.C. 1376.
	107	16 U.S.C. 1377.
	108 (except (a)(5), (6), (b))	16 U.S.C. 1378 (except (a)(5), (6), (b)).
	109	16 U.S.C. 1379.
	110 (except (e))	16 U.S.C. 1380 (except (e)).
	112	16 U.S.C. 1382.
	113 (except (e))	16 U.S.C. 1383 (except (e)).
	114	16 U.S.C. 1383a.
	115	16 U.S.C. 1383b.
	116	16 U.S.C. 1384.
	117	16 U.S.C. 1386.
	118	16 U.S.C. 1387.
	119	16 U.S.C. 1388.
	120	16 U.S.C. 1389.
(title II)	201	16 U.S.C. 1401.
	202	16 U.S.C. 1402.
	203	16 U.S.C. 1403.
	204	16 U.S.C. 1404.

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	205	16 U.S.C. 1405.
	206	16 U.S.C. 1406.
	207	16 U.S.C. 1407.
(title III)	301	16 U.S.C. 1411.
	302	16 U.S.C. 1412.
	303	16 U.S.C. 1413.
	304	16 U.S.C. 1414a.
	305	16 U.S.C. 1415.
	306	16 U.S.C. 1416.
	307	16 U.S.C. 1417.
(title IV)	401	16 U.S.C. 1421.
	402	16 U.S.C. 1421a.
	403	16 U.S.C. 1421b.
	404	16 U.S.C. 1421e.
	405	16 U.S.C. 1421d.
	406	16 U.S.C. 1421e.
	407	16 U.S.C. 1421f.
	408	16 U.S.C. 1421f-1.
	409	16 U.S.C. 1421g.
	410	16 U.S.C. 1421h.
(title V)	501	16 U.S.C. 1423.
	502	16 U.S.C. 1423a.
	503	16 U.S.C. 1423b.
	504	16 U.S.C. 1423e.
	505	16 U.S.C. 1423d.
	506	16 U.S.C. 1423e.
	507	16 U.S.C. 1423f.
	508	16 U.S.C. 1423g.
	509	16 U.S.C. 1423h.
Endangered Species Act of 1973 (Pub. L. 93-205)	2	16 U.S.C. 1531.
	3 (except (11))	16 U.S.C. 1532 (except (11)).
	4	16 U.S.C. 1533.
	5	16 U.S.C. 1534.
	6	16 U.S.C. 1535.
	7	16 U.S.C. 1536.
	8	16 U.S.C. 1537.
	8A (except (e)(3))	16 U.S.C. 1537a (except (e)(3)).
	9	16 U.S.C. 1538.
	10 (except (j)(3))	16 U.S.C. 1539 (except (j)(3)).
	11	16 U.S.C. 1540.
	15	16 U.S.C. 1542.
	17	16 U.S.C. 1543.
	18	16 U.S.C. 1544.
Pub. L. 94-389	1	16 U.S.C. 673d.
	2	16 U.S.C. 673e.
	3	16 U.S.C. 673g.
Fish and Wildlife Improvement Act of 1978 (Public Law 95-616)	3(a) through (d), (k)	16 U.S.C. 742f.
	3(h)(2), (3)	16 U.S.C. 712.
Fish and Wildlife Conservation Act of 1980 (Pub. L. 96-366)	13	16 U.S.C. 2912.
Pub. L. 97-58	4(b)	16 U.S.C. 1379 note.
Lacey Act Amendments of 1981 (Pub. L. 97-79)	2	16 U.S.C. 3371.
	3	16 U.S.C. 3372.
	4	16 U.S.C. 3373.
	5	16 U.S.C. 3374.
	6	16 U.S.C. 3375.
	7	16 U.S.C. 3376.
	8	16 U.S.C. 3377.
	9(a) through (c), (g), (h)	16 U.S.C. 3378.
Antarctic Marine Living Resources Con- vention Act of 1984 (Pub. L. 98-623, title III)	303	16 U.S.C. 2432.
	304	16 U.S.C. 2433.
	305	16 U.S.C. 2434.
	306	16 U.S.C. 2435.
	307	16 U.S.C. 2436.

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	308	16 U.S.C. 2437.
	309	16 U.S.C. 2438.
	310	16 U.S.C. 2439.
	311	16 U.S.C. 2440.
	312	16 U.S.C. 2441.
	313	16 U.S.C. 2442.
	314	16 U.S.C. 2443.
	315	16 U.S.C. 2444.
Public Law 99-659, title IV	406	15 U.S.C. 1511e.
	407(a)	15 U.S.C. 1503b.
	407(b)	15 U.S.C. 1507c.
African Elephant Conservation Act (Pub. L. 100-478, title II)	2101	16 U.S.C. 4211.
	2102	16 U.S.C. 4212.
	2103	16 U.S.C. 4213.
	2104	16 U.S.C. 4214.
	2201	16 U.S.C. 4221.
	2202	16 U.S.C. 4222.
	2203	16 U.S.C. 4223.
	2204	16 U.S.C. 4224.
	2205	16 U.S.C. 4225.
	2302	16 U.S.C. 4241.
	2303	16 U.S.C. 4242.
	2305	16 U.S.C. 4244.
	2306	16 U.S.C. 4245.
Public Law 100-653, title IX	901	16 U.S.C. 742m.
Pub. L. 101-162, title VI	609 (except (a)(5))	16 U.S.C. 1537 note.
Great Lakes Fish and Wildlife Restora- tion Act of 1990 (Pub. L. 101-537, title I)	1004	16 U.S.C. 941b.
	1005	16 U.S.C. 941e.
	1006	16 U.S.C. 941d.
	1007	16 U.S.C. 941e.
	1008	16 U.S.C. 941f.
	1009	16 U.S.C. 941g.
New England Fishery Resources Resto- ration Act of 1990 (Pub. L. 101- 593, title I)	111 (except (d), (e))	16 U.S.C. 777e-1 (except (d), (e)).
Dolphin Protection Consumer Informa- tion Act (Pub. L. 101-627, title IX) ..	901(a), (c) through (h)	16 U.S.C. 1385(a), (c) through (h).
Pub. L. 102-251, title III	303	16 U.S.C. 1151 note.
	305	16 U.S.C. 1531 note.
Wild Bird Conservation Act of 1992 (Pub. L. 102-440, title I)	104	16 U.S.C. 4903.
	105	16 U.S.C. 4904.
	106	16 U.S.C. 4905.
	107	16 U.S.C. 4906.
	108	16 U.S.C. 4907.
	109	16 U.S.C. 4908.
	110	16 U.S.C. 4909.
	111	16 U.S.C. 4910.
	112	16 U.S.C. 4911.
	113	16 U.S.C. 4912.
	114 (except (e))	16 U.S.C. 4913 (except (e)).
	115	16 U.S.C. 4914.
	116	16 U.S.C. 4915.
	117	16 U.S.C. 4916.
The Great Lakes Fish and Wildlife Tis- sue Bank Act (Pub. L. 102-440, title II)	202	16 U.S.C. 943.
	203	16 U.S.C. 943a.
	204	16 U.S.C. 943b.
	205	16 U.S.C. 943c.

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National Oceanic and Atmospheric Administration Authorization Act of 1992 (Public Law 102-567, title III)	307	15 U.S.C. 1511d.
Marine Mammal Protection Act Amendments of 1994 (Pub. L. 103-238)	17	16 U.S.C. 1538 note.
Junior Duck Stamp Conservation and Design Program Act of 1994 (Pub. L. 103-340)	2	16 U.S.C. 719.
	3	16 U.S.C. 719a.
	4	16 U.S.C. 719b.
	5	16 U.S.C. 719b-1.
	6	16 U.S.C. 719c.
Rhinoceros and Tiger Conservation Act of 1994 (Pub. L. 103-391)	4	16 U.S.C. 5303.
	5	16 U.S.C. 5304.
	6	16 U.S.C. 5305.
	7	16 U.S.C. 5305a.
	8	16 U.S.C. 5305b.
	9	16 U.S.C. 5305c.
10	16 U.S.C. 5306.	
Public Law 104-208	div. A, title I, § 101(d) (title I, proviso in paragraph under heading "RESOURCE MANAGEMENT", at 110 Stat. 3009-185).	15 U.S.C. 742b note.
Water Resources Development Act of 1996 (Pub. L. 104-303, title V)	511 (except (a)(5))	16 U.S.C. 3301 note.
Asian Elephant Conservation Act of 1997 (Pub. L. 105-96)	4	16 U.S.C. 4263.
	5	16 U.S.C. 4264.
	6	16 U.S.C. 4265.
	7	16 U.S.C. 4265a.
	8	16 U.S.C. 4266.
Sportfishing and Boating Safety Act of 1998 (Pub. L. 105-178, title VII)	7404(b) through (e)	16 U.S.C. 777g-1(b) through (e).
Pub. L. 105-277, div. A	101(e) (title I, 4th proviso in paragraph under heading "RESOURCE MANAGEMENT", at 112 Stat. 2681-236).	16 U.S.C. 718k.
	101(e) (title I, 2d through last provisos in paragraph under heading "MULTINATIONAL SPECIES CONSERVATION FUND", at 112 Stat. 2681-237).	16 U.S.C. 4246.
Pub. L. 106-113	div. B, § 1000(a)(3) [title I, 5th proviso in paragraph under heading "RESOURCE MANAGEMENT", at 113 Stat. 1501A-139].	16 U.S.C. 1375a.
	div. B, § 1000(a)(3) [title I, 6th proviso in paragraph under heading "RESOURCE MANAGEMENT", at 113 Stat. 1501A-139].	16 U.S.C. 754b.
	div. B, § 1000(a)(3) [title I, 7th proviso in paragraph under heading "RESOURCE MANAGEMENT", at 113 Stat. 1501A-140].	16 U.S.C. 754c.
Neotropical Migratory Bird Conservation Act (Pub. L. 106-247)	4	16 U.S.C. 6103.
	5	16 U.S.C. 6104.

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	6	16 U.S.C. 6105.
	7	16 U.S.C. 6106.
	9	16 U.S.C. 6108.
	10	16 U.S.C. 6109.
Public Law 106–291, title I	136	16 U.S.C. 754d.
Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (Pub. L. 106–408, title I)	132	16 U.S.C. 742b–1.
	133 (except (a))	16 U.S.C. 669k (except (a)).
Great Ape Conservation Act of 2000 (Pub. L. 106–411)	3	16 U.S.C. 6302.
	4	16 U.S.C. 6303.
	5	16 U.S.C. 6304.
	6	16 U.S.C. 6305.
Pub. L. 106–553	1(a)(2) [title IX, § 902(f)]	16 U.S.C. 669 note.
	1(a)(2) [title IX, § 902(h)]	16 U.S.C. 669 note.
Shark Finning Prohibition Act (Pub. L. 106–557)	1	16 U.S.C. 1822 note.
	3	16 U.S.C. 1822 note.
	5	16 U.S.C. 1822 note.
	6	16 U.S.C. 1822 note.
	7	16 U.S.C. 1822 note.
	8	16 U.S.C. 1822 note.
	9	16 U.S.C. 1822 note.
	10	16 U.S.C. 1822 note.
Pribilof Islands Transition Act (Pub. L. 106–562, title I)	105(e), (e), (f)	16 U.S.C. 1161 note.
Pub. L. 107–314, div. A, title III	315	16 U.S.C. 703 note.
Pub. L. 107–372, title IV	403	16 U.S.C. 916c note.
Marine Turtle Conservation Act of 2004 (Pub. L. 108–266)	3	16 U.S.C. 6602.
	4	16 U.S.C. 6603.
	5	16 U.S.C. 6604.
	6	16 U.S.C. 6605.
	7	16 U.S.C. 6606.
	8	16 U.S.C. 6607.
Pub. L. 108–447 (div. B, title II)	213	16 U.S.C. 1379 note.
(div. E, title I)	143(e)	16 U.S.C. 703 note.
Pub. L. 112–74	div. E, title I, 2d proviso in paragraph under heading “RESOURCE MANAGEMENT”, at 125 Stat. 988.	16 U.S.C. 742f–1.
	div. E, title I, 3d proviso in paragraph under heading “RESOURCE MANAGEMENT”, at 125 Stat. 988.	16 U.S.C. 754e.
	div. E, title I, § 114	16 U.S.C. 1336 note.
Pub. L. 113–76	div. G, title I, § 111	16 U.S.C. 1336 note.
Pub. L. 113–235	div. F, title I, § 110	16 U.S.C. 1336 note.
Permanent Electronic Duck Stamp Act of 2013 (Pub. L. 113–239)	2	16 U.S.C. 718o.
	3	16 U.S.C. 718p.
	4	16 U.S.C. 718q.
	5	16 U.S.C. 718r.
	6	16 U.S.C. 718s.
	7	16 U.S.C. 718t.

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Fixing America's Surface Transportation Act (Pub. L. 114-94)	div. A, title I, § 1439(b)(1)	16 U.S.C. 703 note.
Pub. L. 114-113	div. G, title I, § 109	16 U.S.C. 1336 note.
Eliminate, Neutralize, and Disrupt Wildlife Trafficking Act of 2016 (Pub. L. 114-231)	2	16 U.S.C. 7601.
	101	16 U.S.C. 7611.
	102	16 U.S.C. 7612.
	201	16 U.S.C. 7621.
	301	16 U.S.C. 7631.
	401(a)	16 U.S.C. 7641(a).
	402	16 U.S.C. 7642.
	403	16 U.S.C. 7643.
	404	16 U.S.C. 7644.
Pub. L. 115-31	div. G, title I, § 109	16 U.S.C. 1336 note.