

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 1897
OFFERED BY MR. GRAY OF CALIFORNIA**

At the end of title V, add the following (and conform the table of contents accordingly):

1 SEC. 506. EXPANSION OF EXEMPTION PROCESS AND ELIGI-
2 BILITY UNDER SECTION 7 OF ENDANGERED
3 SPECIES ACT OF 1973.

4 Section 7 of the Endangered Species Act of 1973 (16
5 U.S.C. 1536) is amended—

6 (1) in subsection (g)—

7 (A) in paragraph (1), to read as follows:

8 “(1)(A) A Federal agency, the Governor of the
9 State in which an agency action will occur, if any,
10 or a permit or license applicant may apply to the
11 Secretary for an exemption for an agency action of
12 such agency if, after consultation under subsection
13 (a)(2), the Secretary’s opinion under subsection (b)
14 indicates that—

15 “(i) the agency action would violate sub-
16 section (a)(2); or

1 “(ii) a reasonable and prudent alternative
2 necessary for the agency action to comply with
3 subsection (a)(2) may—

4 “(I) impair national security; or

5 “(II) result in significant adverse na-
6 tional or regional economic impacts.

7 “(B) An application for an exemption shall be
8 considered initially by the Secretary in the manner
9 provided for in this subsection, and shall be consid-
10 ered by the Committee for a final determination
11 under subsection (h) after a report is made pursuant
12 to paragraph (5).

13 “(C) The applicant for an exemption shall be
14 referred to as the ‘exemption applicant’ in this sec-
15 tion.”;

16 (B) in paragraph (3)—

17 (i) in subparagraph (A), to read as
18 follows:

19 “(A) determine—

20 “(i) that the Federal agency concerned and
21 the exemption applicant have—

22 “(I) carried out the consultation re-
23 sponsibilities described in subsection (a) in
24 good faith and made a reasonable and re-
25 sponsible effort to develop and fairly con-

1 sider reasonable and prudent alternatives
2 to the proposed agency action which would
3 not violate subsection (a)(2);

4 “(II) conducted any biological assess-
5 ment required by subsection (c); and

6 “(III) to the extent determinable with-
7 in the time provided herein, refrained from
8 making any irreversible or irretrievable
9 commitment of resources prohibited by
10 subsection (d); and

11 “(ii) if the exemption applicant submitted
12 to the Secretary the application for exemption
13 pursuant to paragraph (1)(A)(ii), whether a
14 reasonable and prudent alternative necessary
15 for the proposed agency action to comply with
16 subsection (a)(2) may—

17 “(I) impair national security; or

18 “(II) result in significant adverse na-
19 tional or regional economic impacts; or”;
20 and

21 (ii) in subparagraph (B), by striking
22 “(i), (ii), and (iii)”;

23 (C) in paragraph (4), by striking “(i), (ii)
24 and (iii)”;

25 (D) in paragraph (5)—

1 (i) by redesignating subparagraphs
2 (B) through (D) as subparagraphs (C)
3 through (E), respectively; and

4 (ii) by inserting after subparagraph
5 (A) the following:

6 “(B) if the exemption applicant submitted to
7 the Secretary the application for exemption pursuant
8 to paragraph (1)(A)(ii), after consultation with the
9 National Security Council regarding potential im-
10 pacts to national security and the Director of the
11 National Economic Council regarding potential sig-
12 nificant adverse national and regional economic im-
13 pacts, any impairment to national security or signifi-
14 cant adverse national or regional economic impacts
15 that would result from a reasonable and prudent al-
16 ternative necessary for the agency action to comply
17 with subsection (a)(2), including a description of the
18 analysis and conclusions produced by the National
19 Security Council and the Director of the National
20 Economic Council as a result of each such consulta-
21 tion;” and

22 (2) in subsection (h)(1)(A)(i), to read as fol-
23 lows:

24 “(i)(I) there are no reasonable and prudent
25 alternatives to the agency action; or

1 “(II) with respect to an agency action the
2 application for exemption of which was sub-
3 mitted to the Secretary pursuant to subsection
4 (g)(1)(A)(ii), a reasonable and prudent alter-
5 native necessary for the agency action to com-
6 ply with subsection (a)(2) may—

7 “(aa) impair national security; or

8 “(bb) result in significant adverse na-
9 tional or regional economic impacts;”.

