

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1714

To amend the Endangered Species Act of 1973 to require that species which are being considered for listing under that Act or are currently listed under that Act are expeditiously reviewed for listing or continued listing, respectively, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

MAY 25, 1995

Mr. DOOLEY introduced the following bill; which was read twice and referred to the Committee on Resources

---

## A BILL

To amend the Endangered Species Act of 1973 to require that species which are being considered for listing under that Act or are currently listed under that Act are expeditiously reviewed for listing or continued listing, respectively, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Endangered Species  
5 Relisting Act of 1995”.

1 **SEC. 2. REQUIREMENT TO REVIEW SPECIES.**

2 (a) REQUIREMENT.—Section 4 of the Endangered  
3 Species Act of 1973 (16 U.S.C. 1533) is amended by add-  
4 ing at the end the following new subsection:

5 “(j) PETITION AND REVIEW REQUIRED FOR CER-  
6 TAIN SPECIES TO BE LISTED.—

7 “(1) IN GENERAL.—After the end of the 12-  
8 month period beginning on the date of enactment of  
9 the Endangered Species Relisting Act of 1995, a  
10 covered species shall not be considered to be an en-  
11 dangered species or threatened species for purposes  
12 of this Act and shall not be included or considered  
13 to be included in any list published under subsection  
14 (c) unless before the end of such 12-month period  
15 either—

16 “(A) in the case of a species described in  
17 paragraph (4)(A), a petition is filed under sec-  
18 tion 553(e) of title 5, United States Code, to  
19 relist that species on such list and the review of  
20 such petition is completed by the Secretary ac-  
21 cording to the criteria set forth in subsection  
22 (k); or

23 “(B) in response to a petition or on the  
24 Secretary’s own initiative, the Secretary deter-  
25 mines in accordance with paragraph (2) that  
26 the species is certain to become extinct, or will

1 be placed on an irreversible course to extinction,  
2 over the 24-month period beginning on the date  
3 of the determination.

4 “(2) EMERGENCY LISTING REQUIREMENTS.—

5 “(A) A determination under paragraph  
6 (1)(B) must be based on the best scientific and  
7 commercial data available, and must be subject  
8 to comment, after publication in the Federal  
9 Register, for a period of 60 days, prior to tak-  
10 ing effect.

11 “(B) The Secretary may utilize informa-  
12 tion contained in a recovery plan developed  
13 prior to the date of the enactment of the En-  
14 dangered Species Relisting Act of 1995 with re-  
15 spect to a species, in making a determination  
16 under paragraph (1)(B).

17 “(C) A determination of the Secretary  
18 under paragraph (1)(B)—

19 “(i) shall be published in the Federal  
20 Register;

21 “(ii) shall contain a response to all  
22 comments filed under subparagraph (B);  
23 and

24 “(iii) shall be subject to judicial re-  
25 view.

1           “(D) After the end of the 24-month period  
2 beginning on the date the Secretary publishes a  
3 determination under paragraph (1)(B) for a  
4 species, the species shall not be considered to be  
5 an endangered species or threatened species for  
6 purposes of this Act and shall not be included  
7 or considered to be included in any list pub-  
8 lished under subsection (c), unless before the  
9 end of that period the Secretary determines in  
10 accordance with subsections (a), (b), and (c) to  
11 add the species to such a list.

12           “(3) ANNUAL REPORTS.—Not later than 1 year  
13 after the date of the enactment of the Endangered  
14 Species Relisting Act of 1995 and annually there-  
15 after, the Secretary shall submit a report to the  
16 Congress on the implementation of this subsection,  
17 including on progress made in considering petitions  
18 referred to in paragraph (1) (A) and (B).

19           “(4) COVERED SPECIES DEFINED.—In this sub-  
20 section the term ‘covered species’ means a species—

21                   “(A) which on the date of enactment of the  
22 Endangered Species Relisting Act of 1995 is in-  
23 cluded in a list published under subsection (c);  
24 or

1           “(B) for which a notice is published under  
2           subsection (b)(5)(A)(i) before that date of en-  
3           actment.”.

4           (b) CONFORMING AMENDMENT.—Section 4(b)(3)(A)  
5 of such Act (16 U.S.C. 1533(b)(3)(A)) is amended in the  
6 first sentence by inserting “, to relist a species on,” after  
7 “add a species to,”.

8   **SEC. 3. PEER REVIEW REQUIREMENT.**

9           Section 4 of the Endangered Species Act of 1973 (16  
10 U.S.C. 1533) is further amended by adding at the end  
11 the following new subsection:

12           “(k) PEER REVIEW REQUIREMENTS.—

13                   “(1) REQUIREMENTS.—The Secretary—

14                           “(A) may not take any action described in  
15                           paragraph (2) based on any data, result, or de-  
16                           termination unless the data, result, or deter-  
17                           mination has undergone peer review in accord-  
18                           ance with subparagraph (B); and

19                           “(B) shall submit to peer review, by at  
20                           least 3 independent reviewers selected by the  
21                           Secretary from among individuals recommended  
22                           by the National Academy of Sciences—

23                                   “(i) all data, results, and determina-  
24                                   tions that are the basis of an action de-  
25                                   scribed in paragraph (2), and

1           “(ii) all data that is timely submitted  
2           to the Secretary by any person likely to be  
3           affected by an action described in para-  
4           graph (2), and that the Secretary deter-  
5           mines to be of substantial scientific value.

6           “(2) ACTIONS DESCRIBED.—The actions re-  
7           ferred to in paragraph (1) are the following:

8           “(A) The inclusion of a species in, reten-  
9           tion of a species on, or removal of a species  
10          from a list published under subsection (c).

11          “(B) The development, revision, approval,  
12          or implementation of a recovery plan under sub-  
13          section (f).

14          “(3) PUBLICATION.—The Secretary shall pub-  
15          lish—

16          “(A) the results of any peer review con-  
17          ducted under paragraph (1); and

18          “(B) in the case of peer review conducted  
19          under paragraph (1) for an action described in  
20          paragraph (2), all other materials that are rel-  
21          evant to the decision to take the action.

22          “(4) OBTAINING RECOMMENDATIONS.—The  
23          Secretary shall—

24          “(A) take appropriate action to obtain  
25          from the National Academy of Sciences rec-

1           ommendations of individuals to perform peer  
2           review under paragraph (1)(B); and

3           “(B) in the case of economic analyses, con-  
4           sult with appropriate scientific board to obtain  
5           recommendations of individuals with economic  
6           expertise to perform peer review under para-  
7           graph (1)(B).”.

8   **SEC. 4. DEADLINE FOR DEVELOPMENT OF RECOVERY**  
9                           **PLANS.**

10          Section 4(f) of the Endangered Species Act of 1973  
11         (16 U.S.C. 1533(f)) is amended by adding at the end the  
12         following new paragraph:

13          “(6) The Secretary shall—

14                 “(A) begin developing a recovery plan re-  
15                 quired for a species under paragraph (1) and  
16                 publish notice of the intent of the Secretary to  
17                 develop such a plan, before the end of the 30-  
18                 day period beginning on the date the Secretary  
19                 publishes notice of the listing of the species  
20                 under subsection (c); and

21                 “(B) issue such a plan in final form, or  
22                 submit to the appropriate committees of the  
23                 Congress the reasons why such a plan has not  
24                 been issued, before the end of the 12-month pe-

1           riod beginning on the date of publication of  
2           such notice.

3           “(7)(A) Any person affected by the listing of a species  
4 under subsection (c) may submit a proposed recovery plan  
5 for the species to the Secretary. The Secretary, in the no-  
6 tice required under paragraph (6)(A), shall encourage sub-  
7 mission of such proposed recovery plans.

8           “(B) For any species for which one or more proposed  
9 recovery plans are submitted under subparagraph (A) that  
10 would adequately promote the conservation and survival  
11 of a species, the Secretary shall adopt as the final recovery  
12 plan required for the species under this subsection the pro-  
13 posed plan that, among all proposed plans submitted,  
14 would—

15           “(i) impose the lowest costs on persons affected  
16 by the plan;

17           “(ii) to the greatest extent possible, apply to  
18 more than one species; and

19           “(iii) not result in a prohibition of use of the  
20 land or water for other purposes.”.

21 **SEC. 5 INCIDENTAL TAKE IN COURSE OF NORMAL ACTIVI-**  
22 **TIES.**

23           Section 4 of the Endangered Species Act of 1973 (16  
24 U.S.C. 1533) is further amended by adding at the end  
25 the following new subsection:

1 “(l) INCIDENTAL TAKE.—

2 “(1) IN GENERAL.—Notwithstanding the provi-  
3 sions of section 9(a), a taking that occurs in the  
4 course of an activity described in paragraph (2) is  
5 not prohibited by this Act if the taking is de minimis  
6 in nature and merely incidental to the activity.

7 “(2) COVERED ACTIVITIES.—The activities re-  
8 ferred to in paragraph (1) are the following:

9 “(A) Any action by a State or local govern-  
10 ment agency to respond to, prevent, or mitigate  
11 an emergency.

12 “(B) Operation, repair, or minor alteration  
13 of an existing facility.

14 “(C) Construction of a minor structure ad-  
15 jacent to an existing facility.

16 “(D) Clearing of land adjacent to an exist-  
17 ing structure to comply with a fire code, or to  
18 reasonably protect property.

19 “(E) Use of land for agricultural produc-  
20 tion, or, if previously zoned for agricultural pro-  
21 duction, for any use not more intensive than  
22 agricultural activity.

23 “(F) Any action reasonably needed to pro-  
24 tect a human from injury or death.

1                   “(G) Any other lawful activity that is ap-  
2                   proved by a State or local government.”.

○