

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

# H. R. 2444

To reauthorize and amend the Endangered Species Act of 1973.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 1995

Mr. SAXTON introduced the following bill; which was referred to the  
Committee on Resources

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## A BILL

To reauthorize and amend the Endangered Species Act of  
1973.

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 Habitat Conservation Act of 1995”.

6 **SEC. 2. AUTHORIZATION OF APPROPRIATIONS.**

7 Section 15 of the Endangered Species Act of 1973  
8 (16 U.S.C. 1542) is amended to read as follows:

9 “AUTHORIZATION OF APPROPRIATIONS

10 “SEC. 15. (a) IN GENERAL.—There are authorized  
11 to be appropriated to carry out this Act—

1           “(1) \$110,000,000 for each of the fiscal years  
2           1996, 1997, 1998, 1999, and 2000, to the Depart-  
3           ment of the Interior;

4           “(2) \$15,000,000 for fiscal year 1996,  
5           \$20,000,000 for fiscal year 1997, \$25,000,000 for  
6           fiscal year 1998, \$30,000,000 for fiscal year 1999,  
7           and \$35,000,000 for fiscal year 2000 to the Depart-  
8           ment of Commerce; and

9           “(3) \$4,000,000 for each of the fiscal years  
10          1996, 1997, 1998, 1999, and 2000, to the Depart-  
11          ment of Agriculture for the enforcement of this Act  
12          and the Convention with respect to the importation  
13          or exportation of plants.

14          “(b) EXEMPTIONS FROM ACT.—There are authorized  
15          to be appropriated to the Secretary to assist the Secretary  
16          and the Endangered Species Committee in carrying out  
17          their functions under section 7 (e), (g), and (h)  
18          \$1,000,000 for each of the fiscal years 1996, 1997, 1998,  
19          1999, and 2000.

20          “(c) CONVENTION IMPLEMENTATION.—In addition  
21          to amounts authorized under subsections (a) and (b),  
22          there are authorized to be appropriated to the Department  
23          of the Interior for purposes of carrying out section 8A(e)  
24          \$500,000 for each of the fiscal years 1996, 1997, 1998,

1 1999, and 2000, which shall remain available until ex-  
2 pended.”.

3 **SEC. 3. REQUIRED CONTENTS OF PETITIONS.**

4 Section 4(b)(3)(A) (16 U.S.C. 1533(b)(3)(A)) is  
5 amended—

6 (1) by inserting “(i)” after “(3)(A)”; and

7 (2) by striking all after the first sentence and  
8 inserting the following:

9 “(ii) A petition referred to in clause (i) for a species  
10 shall contain the following information, based on the best  
11 scientific and commercial information available:

12 “(I) The current known range of the species.

13 “(II) The most recent population estimates and  
14 trends, if available.

15 “(III) The reason that the petitioned action is  
16 warranted, based on the factors established under  
17 subsection (a).

18 “(IV) A bibliography of recent peer-reviewed  
19 scientific literature on the species, if any.

20 “(V) Any other information that the petitioner  
21 considers appropriate.

22 “(VI) Information on habitat occupied by the  
23 species and any additional habitat needed by the  
24 species.

1       “(iii) If the Secretary finds that such a petition con-  
2 tains such information, the Secretary shall—

3               “(I) provide the petition to each affected State  
4 and request comments on whether the petitioned ac-  
5 tion is warranted;

6               “(II) promptly commence a review of any new  
7 information presented by the petition; and

8               “(III) promptly publish each finding made  
9 under this subparagraph in the Federal Register.”;

10 **SEC. 4. RECOVERY PLANNING.**

11       The Endangered Species Act of 1973 is amended—

12               (1) by striking section 4(f) (16 U.S.C. 1533(f));

13       and

14               (2) by amending section 13 to read as follows:

15                       “RECOVERY PLANS

16       “SEC. 13. (a) REQUIREMENT TO DEVELOP STAND-  
17 ARDS.—(1) The Secretary shall, in cooperation with ap-  
18 propriate State agencies, and on the basis of the best sci-  
19 entific and commercial data available, develop overall  
20 standards for the development and implementation of a  
21 plan (in this section referred to as a ‘recovery plan’) for  
22 the conservation and recovery of each species listed pursu-  
23 ant to section 4 and the habitats upon which such species  
24 depends.

25               “(2) The Secretary shall, in cooperation with appro-  
26 priate State agencies, and on the basis of the best sci-

1 entific and commercial data available, develop and imple-  
2 ment a recovery plan for the conservation and recovery  
3 of each species listed pursuant to section 4 and the habi-  
4 tats on which such species depends, unless the Secretary  
5 finds that such a plan will not promote the conservation  
6 of the species.

7 “(3) The Secretary, shall, consistent with paragraph  
8 (1), seek to minimize and fairly distribute adverse social  
9 and economic consequences that may result from imple-  
10 mentation of recovery plans.

11 “(4) The Secretary shall—

12 “(A) issue a draft recovery plan for a species by  
13 not later than 18 months after the date the species  
14 is first listed pursuant to section 4; and

15 “(B) issue a final recovery plan for a species by  
16 not later than 30 months after the date the species  
17 is first listed pursuant to section 4.

18 “(5) The Secretary shall seek to coordinate the devel-  
19 opment and implementation of any recovery plan under  
20 this section with the development and implementation of  
21 agreements for the plan under subsection (f).

22 “(6) The Secretary shall, prior to final approval of  
23 a recovery plan—

24 “(A) provide public notice and a 60-day period  
25 for public review and comment on the plan; and

1           “(B) consider all information presented during  
2           the public comment period.

3           “(7) Each Federal agency shall, before issuing a final  
4           recovery plan, consider all information presented during  
5           the public comment period for the plan under paragraph  
6           (6).

7           “(b) DELEGATION OF AUTHORITY AND DEVELOP-  
8           MENT BY STATE AGENCY.—(1) At the request of the gov-  
9           ernor of a State, the Secretary, subject to paragraph (2),  
10          shall delegate to the State agency of the State the author-  
11          ity to develop and implement recovery plans in accordance  
12          with this section for species in the State, if—

13                 “(A) the State has entered into a cooperative  
14                 agreement with the Secretary pursuant to section  
15                 6(c), and

16                 “(B) the State agency has the necessary au-  
17                 thority and capability to develop and implement re-  
18                 covery plans.

19           “(2) If the Secretary determines that a State agency  
20           does not have the authority and capability required by  
21           paragraph (1)(B), the Secretary shall—

22                 “(A) notify the State agency of the specific con-  
23                 cerns of the Secretary and of any measures that  
24                 would address those concerns, and

1           “(B) provide the State agency an opportunity  
2           to take necessary action to address those concerns.

3           “(3)(A) The Secretary shall monitor whether each  
4 State agency which has been delegated authority under  
5 this subsection coordinates its activities with respect to a  
6 species with other States in which the species is believed  
7 to occur.

8           “(B) If the Secretary determines that a proposed re-  
9 covery plan developed for a species by a State agency pur-  
10 suant to this subsection is inconsistent or not complemen-  
11 tary with any recovery plan developed for the species by  
12 the State agency of another State, the Secretary may  
13 reassume authority delegated to the State agency after no-  
14 tifying the State agency and providing an adequate oppor-  
15 tunity for the affected States to take corrective action.

16           “(4)(A) A recovery plan developed by a State agency  
17 pursuant to this subsection shall not take effect unless ap-  
18 proved by the Secretary as meeting the requirements of  
19 this section.

20           “(B) The Secretary shall approve or disapprove a re-  
21 covery plan developed by a State agency before the end  
22 of the 60-day period beginning on the date the State agen-  
23 cy submits a final proposed recovery plan.

24           “(C) The Secretary shall approve a final proposed re-  
25 covery plan submitted by a State agency unless the Sec-

1 retary determines that the plan does not meet the require-  
2 ments of this section.

3 “(5) The Secretary, in cooperation with the States,  
4 shall develop standards and guidelines for delegations of  
5 authority to State agencies under this subsection.

6 “(c) DEVELOPMENT BY JOINT FEDERAL-STATE  
7 PANELS.—(1) In lieu of the development of a recovery  
8 plan for a species by a State agency under authority dele-  
9 gated under subsection (b), the Secretary shall provide for  
10 the development of a recovery plan for the species under  
11 this subsection by a panel established in accordance with  
12 this subsection if the Secretary—

13 “(A) reassumes the delegated authority under  
14 subsection (b)(3)(B); or

15 “(B) before the end of the period referred to in  
16 subsection (b)(4)(B), does not approve a final pro-  
17 posed recovery plan for the species submitted by the  
18 State agency.

19 “(2)(A) Except as provided in subparagraph (B),  
20 each panel established under this subsection shall consist  
21 of the following members:

22 “(i) One individual appointed by the Secretary,  
23 in consultation with the Governor of the State, from  
24 a list of 3 nominees submitted by the President of  
25 the National Academy of Sciences.

1           “(ii) 2 individuals appointed by the State agen-  
2           cy.

3           “(iii) 2 individuals appointed by the Secretary.

4           “(B) In the case of a recovery plan developed under  
5 this subsection because the Secretary reassumes authority  
6 from, or does not approve a final proposed recovery plan  
7 submitted by, more than one State agency with respect  
8 to the same species, a panel established under this para-  
9 graph shall consist of the following members:

10           “(i) One individual appointed by the Secretary,  
11           in consultation with the Governor of the State, from  
12           a list of 3 nominees submitted by the President of  
13           the National Academy of Sciences.

14           “(ii) One individual appointed by each State  
15           agency.

16           “(iii) A number of individuals appointed by the  
17           Secretary, equal to the total number of individuals  
18           appointed under clause (ii).

19           “(3) The members of each panel established under  
20 this subsection shall be appointed from among individuals  
21 who—

22           “(A) through publication of peer-reviewed sci-  
23           entific literature or other means, have demonstrated  
24           relevant scientific expertise on the species for which  
25           the panel is established or a similar species; and

1 “(B) to the maximum extent practicable—

2 “(i) do not have, and do not represent any-  
3 one with, a significant economic interest in the  
4 activities of the panel; and

5 “(ii) are not employed by, under contract  
6 with, or seeking or in receipt of a grant from,  
7 the Department of the Interior.

8 “(4) The Federal Advisory Committee Act (5 U.S.C.  
9 App.) shall not apply to any panel established under this  
10 subsection.

11 “(5) A panel shall issue a recovery plan under this  
12 subsection by not later than 90 days after the completion  
13 of appointment of the membership of the panel.

14 “(d) PRIORITIES IN DEVELOPING AND IMPLEMENT-  
15 ING RECOVERY PLANS.—In implementing this section, the  
16 Secretary shall give priority to—

17 “(1) the development and implementation of in-  
18 tegrated, multispecies recovery plans for the con-  
19 servation of threatened species, endangered species,  
20 or species which the Secretary has identified as can-  
21 didates for listing under section 4 that are depend-  
22 ent upon a common ecosystem; and

23 “(2) endangered species or threatened species,  
24 without regard to taxonomic classification, that—

1           “(A) are most likely to benefit from recovery plans,

2           “(B) the Secretary has determined present  
3           the greatest potential for recovery in a timely  
4           manner,

5           “(C) have a potentially large economic impact,

6           “(D) are close to extinction, or that

7           “(E) serve a critical ecological function.

8           “(e) CONTENTS.—(1) Each recovery plan for a species shall, to the maximum extent practicable, incorporate  
9           the following:

10           “(A) Objective, measurable criteria and recovery objectives, based on the best scientific and commercial data available, which if met would result in  
11           a determination that the species should be removed  
12           from the list published under section 4 or changed  
13           in status.

14           “(B) A description of such site-specific management actions as may be necessary to achieve the goal  
15           of the recovery plan for the conservation and survival of the species, which shall—

16           “(i) to the extent possible, include a range  
17           of options;

1           “(ii) include actions to maintain or restore  
2           ecosystems upon which the species is depend-  
3           ent; and

4           “(iii) consider the overall health of the  
5           habitat of the species, impacts on species diver-  
6           sity, and other relevant factors to ensure sus-  
7           tainability of the entire habitat of the species.

8           “(C) Estimates of the time required and cost to  
9           carry out those measures needed to achieve the goals  
10          of the recovery plan and to achieve intermediate  
11          steps towards that goal.

12          “(D) A description of the actions that will be  
13          taken to minimize and fairly distribute adverse social  
14          or economic impacts that may result from implemen-  
15          tation of the recovery plan.

16          “(E) A designation of the critical habitat of the  
17          covered species to the maximum extent prudent and  
18          determinable, if such designation would contribute to  
19          the conservation of the species.

20          “(F) Strategies that utilize existing Federal  
21          lands, to the extent that such lands are available, to  
22          promote the conservation and recovery of the spe-  
23          cies.

1           “(G) An identification of measures taken by all  
2 parties which would contribute to the conservation of  
3 the species.

4           “(H) An identification of any specific areas or  
5 circumstances in which the development and imple-  
6 mentation of conservation plans under section  
7 10(a)(2) would contribute to or be consistent with  
8 the conservation of the species.

9           “(I) An identification of any specific activities  
10 and geographic areas which should be exempt from  
11 any prohibition in section 9 related to the take of a  
12 species.

13           “(J) An identification of any opportunities for  
14 entering into voluntary conservation agreements with  
15 private landowners that would promote the conserva-  
16 tion of the species.

17           “(K) An identification of opportunities to co-  
18 operate with municipalities, political subdivisions of  
19 States, and other persons in actions which would  
20 contribute to the conservation of the species, includ-  
21 ing the development of implementation agreements.

22           “(L) An identification of situations in which  
23 regulated takes of the species would promote the  
24 conservation of the species.

1           “(M) A clear identification of prohibited acts  
2           under section 9(a) with respect to the species and  
3           criteria for distinguishing between low-impact and  
4           high-impact Federal projects with respect to the spe-  
5           cies.

6           “(2) A recovery plan may include model conservation  
7           plans which may be used pursuant to section 10(a)(2) in  
8           furtherance of the plan.

9           “(f) IMPLEMENTATION AGREEMENTS.—(1) Each ap-  
10          propriate Federal agency may enter into one or more im-  
11          plementation agreements with appropriate State agencies  
12          which specify measures to be undertaken by the parties  
13          to the agreement for implementation of a recovery plan  
14          that applies to the agency. Upon approval of the imple-  
15          mentation agreement by the parties to the agreement and  
16          by the Secretary, the agreement shall be incorporated into  
17          the recovery plan.

18          “(2) The Secretary shall review each implementation  
19          agreement and approve the agreement if it is consistent  
20          with the requirements of this Act.

21          “(3) Each implementation agreement shall be re-  
22          viewed and revised as necessary on a regular basis by the  
23          parties to the agreement.

1       “(4) Each party to an implementation agreement  
2 shall ensure that its actions are consistent with the terms  
3 of the agreement.

4       “(5) The Secretary shall give expedited review under  
5 section 7(a) to Federal agency actions, plans, and projects  
6 which are consistent with a recovery plan and related im-  
7 plementation agreements under this subsection. Within  
8 one year after the date of the enactment of the Endan-  
9 gered Species Habitat Conservation Act of 1995, the Sec-  
10 retary, in cooperation with the States, shall propose meas-  
11 ures to implement such expedited process.

12       “(g) REVIEW OF APPROVED STATE RECOVERY  
13 PLANS.—Each recovery plan developed and implemented  
14 by a State agency pursuant to subsection (b) shall be re-  
15 viewed by the Secretary at least every 3 years, in consulta-  
16 tion with affected States. If the Secretary finds in such  
17 a review that the recovery standards under the plan are  
18 not being satisfied, the Secretary shall notify the State  
19 of that finding. Not later than 1 year after the date of  
20 that notification the Secretary shall again review whether  
21 the recovery criteria are being satisfied. If the Secretary  
22 finds that the recovery criteria are not being satisfied the  
23 Secretary shall take such appropriate steps as may be nec-  
24 essary to promote the conservation of species that are cov-  
25 ered species under the plan.

1       “(h) PUBLIC OUTREACH.—(1) The Secretary, in de-  
2 veloping and implementing recovery plans, may procure  
3 the services of the appropriate public and private agencies  
4 and institutions and other qualified persons.

5       “(2) The Secretary shall, in cooperation with the  
6 States, solicit the participation of relevant Federal agen-  
7 cies and appropriate persons to identify matters under  
8 subparagraphs (E) through (M) of subsection (e)(1).

9       “(i) COORDINATION WITH OTHER REQUIRE-  
10 MENTS.—(1) Within their authorities, Federal agencies  
11 shall integrate recovery plans into their land management  
12 programs.

13       “(2) The requirements of section 102 of the National  
14 Environmental Policy Act of 1969 (42 U.S.C. 4332) shall  
15 not apply to development and implementation of a recov-  
16 ery plan if the planning process—

17               “(A) includes an opportunity for public review  
18               and comment; and

19               “(B) public comments received are considered  
20               in the development of the final recovery plan.

21       “(j) EXISTING RECOVERY PLANS.—(1) Each recov-  
22 ery plan developed under section 4(f) before the date of  
23 the enactment of the Endangered Species Habitat Con-  
24 servation Act of 1995 shall continue in effect until revised  
25 by the Secretary in accordance with this section.

1       “(2) The Secretary shall revise each recovery plan de-  
2 veloped before the date of enactment of the Endangered  
3 Species Habitat Conservation Act of 1995 under section  
4 4(f), as in effect before that date of enactment, as nec-  
5 essary for the plan to comply with this section. In imple-  
6 menting this paragraph the Secretary shall give priority  
7 to recovery plans the revision of which would provide the  
8 greatest benefit to species listed under section 4 and spe-  
9 cies which the Secretary has identified as candidates for  
10 listing under section 4.”.

11 **SEC. 5. PEER REVIEW.**

12       Section 14 of the Endangered Species Act of 1973  
13 is amended to read as follows:

14                   “PEER REVIEW REQUIREMENTS

15       “SEC. 14. (a) IN GENERAL.—(1) If in the public  
16 comment period prior to making any covered determina-  
17 tion for a species the Secretary is requested to do so by  
18 any interested person because of a legitimate scientific  
19 concern, the Secretary shall request the views of 3 referees  
20 who—

21                   “(A) through publication of peer-reviewed sci-  
22 entific literature or other means, have demonstrated  
23 relevant scientific expertise on that species or similar  
24 species;

25                   “(B) are selected by the Secretary in consulta-  
26 tion with the National Academy of Sciences; and

1 “(C) to the maximum extent practicable—

2 “(i) do not have, and do not represent any-  
3 one with, a significant economic interest in the  
4 determination; and

5 “(ii) are not employed by, under contract  
6 with, or seeking or in receipt of a grant from,  
7 the Department of the Interior.

8 “(2) To the maximum extent practicable, the Sec-  
9 retary shall seek to receive views required under para-  
10 graph (1) within 30 days after the Secretary requests the  
11 views.

12 “(3) A summary of views received by the Secretary  
13 pursuant to paragraph (1) shall be made available by the  
14 Secretary—

15 “(A) to each affected State, and

16 “(B) to any interested person upon request.

17 “(4) In this subsection, the term ‘legitimate scientific  
18 concern’ means objective scientific information that indi-  
19 cates there is a reasonable dispute about the proposed cov-  
20 ered determination.

21 “(b) BASIS FOR COVERED DETERMINATIONS.—The  
22 Secretary shall base a covered determination on the views  
23 received by the Secretary pursuant to subsection (a)(1)  
24 and the preponderance of scientific data.

