

108TH CONGRESS  
1ST SESSION

# H. R. 1194

To amend the Endangered Species Act of 1973 to enable Federal agencies responsible for the preservation of threatened species and endangered species to rescue and relocate members of any of those species that would be taken in the course of certain reconstruction, maintenance, or repair of Federal or non-Federal manmade flood control levees.

---

## IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2003

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

---

## A BILL

To amend the Endangered Species Act of 1973 to enable Federal agencies responsible for the preservation of threatened species and endangered species to rescue and relocate members of any of those species that would be taken in the course of certain reconstruction, maintenance, or repair of Federal or non-Federal manmade flood control levees.

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 “Species Rescue Act”.

1 **SEC. 2. RELOCATION OF MEMBERS OF ENDANGERED SPE-**  
2 **CIES AND THREATENED SPECIES THAT**  
3 **WOULD BE TAKEN IN THE COURSE OF RE-**  
4 **CONSTRUCTION, MAINTENANCE, OR REPAIR**  
5 **OF MANMADE FLOOD CONTROL LEVEES.**

6 (a) EXPEDITED CONSULTATION AND CONFER-  
7 ENCING; RELOCATION REQUIREMENT.—Section 7 of the  
8 Endangered Species Act of 1973 (16 U.S.C. 1536) is  
9 amended—

10 (1) in subsection (a)(2), by inserting “, except  
11 in the case of an agency action flood control action  
12 (as defined in subsection (b)(5)(B)) for which con-  
13 sultation and conferencing is completed in accord-  
14 ance with subsection (b),” after “threatened species  
15 or”;

16 (2) in subsection (b)(4) by striking the matter  
17 preceding subparagraph (A) and inserting the fol-  
18 lowing:

19 “(4) If after consultation under subsection (a)(2) of  
20 this section regarding an agency action, other than an  
21 agency flood control action (as defined in paragraph  
22 (5)(B)), the Secretary concludes that—”; and

23 (3) by adding at the end of subsection (b) the  
24 following:

25 “(5)(A) Notwithstanding paragraph (1)(A), consulta-  
26 tion under subsection (a)(2) and conferencing under sub-

1 section (a)(4) regarding an agency flood control action  
2 shall be concluded within the 60-day period beginning on  
3 the date on which initiated.

4 “(B) For purposes of this paragraph, the term ‘agen-  
5 cy flood control action’ means an agency action consisting  
6 of the authorization, funding, or carrying out by an agency  
7 of reconstruction, maintenance, or repair of a Federal or  
8 non-Federal manmade flood control levee—

9 “(i) based on a determination that—

10 “(I) there exists or is likely to exist in the  
11 future high water;

12 “(II) the levee is likely to fail in the period  
13 of such high water unless the levee is recon-  
14 structed, maintained, or repaired; and

15 “(III) such a levee failure would pose se-  
16 vere public health and safety risks, place per-  
17 sons residing in areas protected by the levee at  
18 risk, or cause extensive flooding and significant  
19 economic damages, including loss of life, prop-  
20 erty, or habitat; or

21 “(ii) to address an imminent threat from a cat-  
22 astrophic natural event.

23 “(C) Promptly after conclusion of consultation and  
24 conferencing regarding an agency flood control action, the  
25 Secretary shall provide the Federal agency and the appli-

1 cant concerned, if any, a written statement that specifies  
2 the impact of the action on endangered species and threat-  
3 ened species.

4 “(D) Not later than 60 days after the conclusion of  
5 consultation and conferencing regarding an agency flood  
6 control action, the Secretary, acting through the United  
7 States Fish and Wildlife Service, any other Federal land  
8 management agency, the National Marine Fisheries Serv-  
9 ice, or a State conservation agency, shall relocate from the  
10 flood control levee with respect to which the action will  
11 be carried out the members of any threatened species or  
12 endangered species of plant or animal that the Secretary  
13 determines would be taken in the course of the action.

14 “(E) Except as provided in subparagraph (D), the  
15 Secretary may not require a non-Federal person to carry  
16 out under this section any measures to minimize or miti-  
17 gate the impacts of an agency flood control action for  
18 which consultation and conferencing is carried out under  
19 subsections (a)(2) and (a)(4), respectively.”.

20 (b) LIMITATION ON PROHIBITION OF TAKINGS.—  
21 Section 9(a) of such Act (16 U.S.C. 1538(a)) is amended  
22 by adding at the end the following new paragraph:

23 “(3) This subsection shall not be construed as prohib-  
24 iting any activity that is authorized, funded, or carried out  
25 as part of an agency flood control action (as defined in

1 section 7(b)(5)(B)) after the 60-day period beginning on  
2 the date of the completion of consultation and confer-  
3 encing under section 7(a)(2) and (4), respectively, regard-  
4 ing the action.”.

○