

105TH CONGRESS
2D SESSION

H. R. 4554

To reform Federal land management activities relating to endangered species
conservation.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 11, 1998

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

A BILL

To reform Federal land management activities relating to
endangered species conservation.

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; REFERENCES.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Endangered Species Land Management Reform Act”.

6 (b) REFERENCES TO ENDANGERED SPECIES ACT OF
7 1973.—Except as otherwise expressly provided, whenever
8 in this Act an amendment or repeal is expressed in terms
9 of an amendment to, or repeal of, a section or other provi-
10 sion, the reference shall be considered to be made to that

1 section or provision of the Endangered Species Act of
 2 1973 (16 U.S.C. 1531 et seq.).

3 **SEC. 2. RIGHT TO COMPENSATION.**

4 (a) IN GENERAL.—Section 13 of the Endangered
 5 Species Act of 1973 is amended to read as follows:

6 “RIGHT TO COMPENSATION

7 “SEC. 13. (a) PROHIBITION.—No agency may take
 8 an action under this Act affecting privately owned prop-
 9 erty that results in the diminishment of the value of any
 10 portion of that property by an amount equal to or greater
 11 than 50 percent of the value of that portion unless com-
 12 pensation is offered in accordance with this section.

13 “(b) COMPENSATION FOR DIMINISHMENT.—Any
 14 agency that takes an action referred to in subsection (a)—

15 “(1) shall compensate the property owner for
 16 the diminution in value of any portion of that prop-
 17 erty resulting from the action; or

18 “(2) at the option of the owner, shall buy that
 19 portion of the property by paying the fair market
 20 value of the portion, determined based on the value
 21 of the property before the diminution and without
 22 regard to the presence on the property of a species
 23 listed under section 4(c), or the use of the property
 24 by such a species.

25 “(c) REQUEST OF OWNER.—A property owner seek-
 26 ing compensation under this section shall make a written

1 request for compensation to the agency whose action
2 would limit the otherwise lawful use of property. The re-
3 quest shall, at a minimum, identify the affected portion
4 of the property, the nature of the diminution, and the
5 amount of compensation claimed.

6 “(d) CHOICE OF REMEDIES.—If the parties have not
7 reached an agreement on compensation within 180 days
8 after the written request is made, the owner may elect
9 binding arbitration through alternative dispute resolution
10 or seek compensation due under this section in a civil ac-
11 tion. The parties may by mutual agreement extend the pe-
12 riod of negotiation on compensation beyond the 180-day
13 period without loss of remedy to the owner under this sec-
14 tion. In the event the extension period lapses the owner
15 may elect binding arbitration through alternative dispute
16 resolution or seek compensation due under this section in
17 a civil action.

18 “(e) ALTERNATIVE DISPUTE RESOLUTION.—

19 “(1) IN GENERAL.—In the administration of
20 this section—

21 “(A) arbitration procedures shall be in ac-
22 cordance with the alternative dispute resolution
23 procedures established by the American Arbi-
24 tration Association; and

1 “(B) in no event shall arbitration be a con-
2 dition precedent or an administrative procedure
3 to be exhausted before the filing of a civil action
4 under this section.

5 “(2) REVIEW OF ARBITRATION.—

6 “(A) APPEAL OF DECISION.—Appeal from
7 arbitration decisions shall be to the United
8 States District Court for the district in which
9 the property is located or the United States
10 Court of Federal Claims in the manner pre-
11 scribed by law for the claim under this section.

12 “(B) RULES OF ENFORCEMENT OF
13 AWARD.—The provisions of title 9, United
14 States Code (relating to arbitration), shall
15 apply to enforcement of awards rendered under
16 this section.

17 “(f) CIVIL ACTION.—An owner who prevails in a civil
18 action against any agency pursuant to this section shall
19 be entitled to, and such agency shall be liable for, just
20 compensation, plus reasonable attorney’s fees and other
21 litigation costs, including appraisal fees.

22 “(g) SOURCE OF PAYMENTS.—Any payment made
23 under this section shall be paid from the responsible agen-
24 cy’s annual appropriation supporting the agency’s activi-
25 ties giving rise to the claim for compensation. If insuffi-

1 cient funds are available to the agency in the fiscal year
2 in which the award becomes final the agency shall pay the
3 award from appropriations available in the next fiscal
4 year.

5 “(h) DEFINITIONS.—For the purposes of this sec-
6 tion—

7 “(1) the term ‘agency’ has the meaning given
8 that term in section 551 of title 5, United States
9 Code;

10 “(2) the term ‘agency action’ means any action
11 or decision taken by any agency that at the time of
12 such action or decision adversely affects private
13 property rights;

14 “(3) the term ‘fair market value’ means the
15 likely price at which property would change hands,
16 in a competitive and open market under all condi-
17 tions requisite to fair sale, between a willing buyer
18 and willing seller, neither being under any compul-
19 sion to buy or sell and both having reasonable
20 knowledge of relevant facts, prior to occurrence of
21 the agency action;

22 “(4) the term ‘just compensation’—

23 “(A) means compensation equal to the full
24 extent of a property owner’s loss, including the
25 fair market value of the private property taken,

1 whether the taking is by physical occupation or
2 through regulation, exaction, or other means;
3 and

4 “(B) shall include compounded interest
5 calculated from the date of the taking until the
6 date the United States tenders payment;

7 “(5) the term ‘owner’ means the owner or pos-
8 sessor of property or rights in property at the time
9 the taking occurs, including when—

10 “(A) the statute, regulation, rule, order,
11 guideline, policy, or action is passed or promul-
12 gated; or

13 “(B) the permit, license, authorization, or
14 governmental permission is denied or sus-
15 pended;

16 “(6) the term ‘property’ means land, an interest
17 in land, proprietary water rights, and any personal
18 property that is subject to use by the Federal Gov-
19 ernment or to a restriction on use;

20 “(7) the term ‘private property’ or ‘property’
21 means all interests constituting real property, as de-
22 fined by Federal or State law, protected under the
23 fifth amendment to the United States Constitution,
24 any applicable Federal or State law, or this section,
25 and more specifically constituting—

1 “(A) real property, whether vested or
2 unvested, including—

3 “(i) estates in fee, life estates, estates
4 for years, or otherwise;

5 “(ii) inchoate interests in real prop-
6 erty such as remainders and future inter-
7 ests;

8 “(iii) personalty that is affixed to or
9 appurtenant to real property;

10 “(iv) easements;

11 “(v) leaseholds;

12 “(vi) recorded liens; and

13 “(vii) contracts or other security in-
14 terests in, or related to, real property;

15 “(B) the right to use water or the right to
16 receive water, including any recorded liens on
17 such water right; or

18 “(C) rents, issues, and profits of land, in-
19 cluding minerals, timber, fodder, crops, oil and
20 gas, coal, or geothermal energy.”.

21 (b) CONFORMING AMENDMENT.—The table of con-
22 tents at the end of the first section is amended by striking
23 the item relating to section 13 and inserting the following:

“Sec. 13. Right to compensation.”.

1 **SEC. 3. SPECIES CONSERVATION TRUST FUND.**

2 (a) ESTABLISHMENT.—Section 14 of the Endangered
3 Species Act of 1973 is amended to read as follows:

4 “SPECIES CONSERVATION FUND

5 “SEC. 14. (a) ESTABLISHMENT OF FUND.—There is
6 established in the Treasury a separate account, which
7 shall be known as the Species Conservation Fund (in this
8 section referred to as the ‘Fund’).

9 “(b) CONTENTS.—The Fund shall consist of such
10 amounts as are appropriated to the Fund.

11 “(c) USE.—Amounts in the Fund shall be available
12 to the Secretary, without further appropriation, to carry
13 out projects on privately owned land to conserve species
14 included in lists published under section 4(c) and their
15 habitats, including for acquiring real property, waters, or
16 interests therein.”.

17 (b) CONFORMING AMENDMENT.—The table of con-
18 tents at the end of the first section is amended by striking
19 the item relating to section 14 and inserting the following:

“Sec. 14. Species Conservation Fund.”.

20 **SEC. 4. LIMITATION ON MITIGATION REQUIREMENTS.**

21 Section 10 (16 U.S.C. 1539) is amended by adding
22 at the end the following:

23 “(k) LIMITATION ON MITIGATION REQUIREMENTS.—

24 (1) If the Secretary requires that mitigation be carried
25 out as a condition of any approval or other action by the

1 Secretary under any provision of this Act with respect to
2 an activity, then the scope and scale of mitigation required
3 may not exceed the scope and scale of the activity for
4 which mitigation is required.

5 “(2) With respect to activities affecting land—

6 “(A) the area of land on which the mitigation
7 is required may not exceed the area of land subject
8 to impacts for which mitigation is required; and

9 “(B) the mitigation required may not require
10 expenditures greater than the cost of fencing and
11 preserving the current condition of the land on
12 which the activity is conducted.”.

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