

105TH CONGRESS  
2D SESSION

# H. R. 4555

To amend the Endangered Species Act of 1973 to reform provisions relating to liability for civil and criminal penalties under that Act.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 11, 1998

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

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## A BILL

To amend the Endangered Species Act of 1973 to reform provisions relating to liability for civil and criminal penalties under that Act.

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 Criminal and Civil Penalties Liabil-  
6       ity Reform Act”.

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

1 sion, the reference shall be considered to be made to that  
 2 section or provision of the Endangered Species Act of  
 3 1973 (16 U.S.C. 1531 et seq.).

4 **SEC. 2. SPECIFIC INTENT REQUIRED FOR PENALTIES RE-**  
 5 **GARDING TAKINGS OF SPECIES.**

6 Section 9 (16 U.S.C. 1538) is amended by adding  
 7 at the end the following:

8 “(h) SPECIFIC INTENT REQUIRED FOR TAKING.—  
 9 For purposes of this section, the term ‘take’ means to—

10 “(1) knowingly and intentionally perform any  
 11 act with the knowledge that the act would constitute  
 12 harassing, harming, pursuing, hunting, shooting,  
 13 wounding, killing, trapping, capturing, or collecting  
 14 an individual member of a species that was present  
 15 at the time and location of the act; or

16 “(2) attempt to engage in conduct described in  
 17 paragraph (1).”.

18 **SEC. 3. REQUIREMENT TO PROVIDE NOTICE AND OPPOR-**  
 19 **TUNITY TO CORRECT VIOLATION.**

20 Section 10 (16 U.S.C. 1540) is amended by adding  
 21 at the end the following:

22 “(k) NOTICE AND OPPORTUNITY TO CORRECT VIO-  
 23 LATION.—

24 “(1) IN GENERAL.—A person shall not be liable  
 25 for any criminal or civil penalty for a violation of

1       this Act committed while conducting an otherwise  
2       lawful activity and not for the purpose of a taking  
3       prohibited by this Act, unless—

4               “(A) the Secretary provides the person no-  
5       tice of the violation; and

6               “(B) the person fails to terminate and oth-  
7       erwise correct the activity constituting the viola-  
8       tion by not later than 30 days after the date of  
9       the notice.

10              “(2) CORRECTIVE ACTION.—A person may cor-  
11       rect an activity for purposes of paragraph (1)(B) by  
12       mitigation, entering into a binding commitment to  
13       carry out mitigation, or other method that is deter-  
14       mined by the Secretary to be reasonably calculated  
15       to restore the species to its status immediately prior  
16       to the activity.”.

17   **SEC. 4. NO SURPRISES.**

18       Section 10(a) (16 U.S.C. 1539(a)) is amended by  
19       adding at the end the following:

20              “(3)(A) Each conservation plan developed under this  
21       subsection shall include provisions under which a person  
22       who has entered into, and is in compliance with, the con-  
23       servation plan may not, without their consent, be required  
24       to undertake any additional mitigation measures for spe-  
25       cies covered by the plan if the measures would require pay-

1 ment of money, or compliance with use, development, or  
2 management restrictions on any land, waters, or water-  
3 related rights, in addition to payments or compliance, re-  
4 spectively, otherwise required under the terms of the plan.

5 “(B) The provisions required by subparagraph (A)  
6 shall, among other matters, identify—

7 “(i) modifications to the plan; or

8 “(ii) additional conservation measures;

9 if any, that the Secretary may require under extraordinary  
10 circumstances.”.

11 **SEC. 5. KNOWLEDGE OF ENDANGERED OR THREATENED**  
12 **STATUS REQUIRED FOR ENFORCEMENT AC-**  
13 **TIONS.**

14 Section 11 (16 U.S.C. 1540) is further amended by  
15 adding at the end the following:

16 “(h) KNOWLEDGE OF ENDANGERED OR THREAT-  
17 ENED STATUS REQUIRED.—In any enforcement action or  
18 citizen suit under this Act in which it is alleged that the  
19 defendant acted or failed to act with respect to a member  
20 of a species listed under section 4(c), it is an affirmative  
21 defense to the allegation that the defendant could not rea-  
22 sonably have known that the fish or wildlife or plant con-  
23 cerned is a member of an endangered species or threat-  
24 ened species.”.

1 **SEC. 6. SAFE HARBOR AGREEMENTS.**

2 Section 10 (16 U.S.C. 1539) is further amended by  
3 adding at the end thereof the following new subsection:

4 “(m) SAFE HARBOR AGREEMENTS.—

5 “(1) AGREEMENTS.—

6 “(A) IN GENERAL.—The Secretary may  
7 enter into agreements with non-Federal persons  
8 to benefit the conservation of endangered spe-  
9 cies or threatened species by creating, restoring,  
10 or improving habitat or by maintaining cur-  
11 rently unoccupied habitat for endangered spe-  
12 cies or threatened species. Under an agreement,  
13 the Secretary shall permit the person to take  
14 endangered species or threatened species in-  
15 cluded under the agreement on lands or waters  
16 that are subject to the agreement if the taking  
17 is incidental to, and not the purpose of, carry-  
18 ing out of an otherwise lawful activity, provided  
19 that the Secretary may not permit through such  
20 agreements any incidental take below the base-  
21 line requirement specified pursuant to subpara-  
22 graph (B).

23 “(B) BASELINE.—For each agreement  
24 under this subsection, the Secretary shall estab-  
25 lish a baseline requirement that is mutually  
26 agreed upon by the applicant and the Secretary

1 at the time of the agreement that will, at a  
2 minimum, maintain existing conditions for the  
3 species covered by the agreement on lands and  
4 waters that are subject to the agreement. The  
5 baseline may be expressed in terms of the abun-  
6 dance or distribution of endangered or threat-  
7 ened species, quantity or quality of habitat, or  
8 such other indicators as appropriate.

9 “(2) STANDARDS AND GUIDELINES.—The Sec-  
10 retary shall issue standards and guidelines for the  
11 development and approval of safe harbor agreements  
12 in accordance with this subsection.

13 “(3) FINANCIAL ASSISTANCE.—

14 “(A) IN GENERAL.—In cooperation with  
15 the States and subject to the availability of ap-  
16 propriations under section 15(d), the Secretary  
17 may provide a grant of up to \$10,000 to any  
18 individual private landowner to assist the land-  
19 owner in carrying out a safe harbor agreement  
20 under this subsection.

21 “(B) PROHIBITION ON ASSISTANCE FOR  
22 REQUIRED ACTIVITIES.—The Secretary may not  
23 provide assistance under this paragraph for any  
24 action that is required by a permit issued under

1           this Act or that is otherwise required under this  
2           Act or other Federal law.

3           “(C) OTHER PAYMENTS.—Grants provided  
4           to an individual private landowner under this  
5           paragraph shall be in addition to, and not af-  
6           fect, the total amount of payments that the  
7           landowner is otherwise eligible to receive under  
8           the Conservation Reserve Program (16 U.S.C.  
9           3831 et seq.), the Wetlands Reserve Program  
10          (16 U.S.C. 3837 et seq.), or the Wildlife Habi-  
11          tat Incentives Program (16 U.S.C. 3836a).”.

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