

111TH CONGRESS
2D SESSION

H. R. 5531

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

JUNE 15, 2010

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

12 “(i) the members of any threatened species or
13 endangered species of plant or animal that the Sec-
14 retary determines would be taken in the course of
15 the action; and

16 “(ii) any plant or other natural material that
17 the Secretary considers to be suitable habitat, or a
18 component of suitable habitat, for such species and
19 that the Secretary determines would be damaged,
20 destroyed, or removed in the course of the action.

21 “(E) Except as provided in subparagraph (D), the
22 Secretary may not require a non-Federal person to carry
23 out under this section any measures to minimize or miti-
24 gate the impacts of an agency flood control action for

1 which consultation and conferencing is carried out under
2 subsections (a)(2) and (a)(4), respectively.”.

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

6 “(3) This subsection shall not be construed as prohib-
7 iting any activity that is authorized, funded, or carried out
8 as part of an agency flood control action (as defined in
9 section 7(b)(5)(B)) after the 60-day period beginning on
10 the date of the completion of consultation and confer-
11 encing under section 7(a) (2) and (4), respectively, regard-
12 ing the action.”.

○