

S.1180**Latest Title:** Endangered Species Recovery Act of 1997**Sponsor:** [Sen Kempthorne, Dirk](#) [ID] (introduced 9/16/1997) [Cosponsors](#) (18)**Latest Major Action:** 10/31/1997 Placed on Senate Legislative Calendar under General Orders. Calendar No. 242.**Senate Reports:** [105-128](#)

SUMMARY AS OF:

10/31/1997--Reported to Senate amended.

Endangered Species Recovery Act of 1997 - Amends the Endangered Species Act to direct the Secretary of the Interior or Commerce, as appropriate, where required to use the best scientific and commercial data available, to give greater weight to data that is empirical, field-tested, or peer-reviewed when evaluating comparable data.

Adds the introduction of species and competition to the list of factors to be considered in making determinations of whether a species is endangered or threatened. Repeals a requirement that a designation of critical habitat be made concurrently with any such determination.

Requires the Secretary, upon a determination that the goals of the recovery plan for a species have been met, to initiate procedures for determining whether to remove a species from the endangered or threatened list.

Expands provisions which allow petitions for proposed additions to, or removals from, endangered or threatened lists to authorize petitions for changing the status of a species from a previous determination with respect to such lists. Sets forth minimum requirements for information to be provided by petitions, including: (1) descriptions of available data on historical and current range and distribution of the species; (2) appraisals of available data on status and trends of populations of, and threats to, the species; and (3) identification of information contained in the petition that has been peer-reviewed or field-tested.

Sets forth requirements for notification of State agencies to solicit assessment of petitions or proposals by the Secretary to list a species.

Requires a public hearing to be held in each State that would be affected by a proposed regulation on endangered or threatened species, at the request of any person. Limits the total number of hearings to five.

Provides for independent scientific peer review of proposed regulations on endangered or threatened species or determinations that a species should be removed from a list.

Repeals provisions regarding recovery plans.

Authorizes the Secretary to enter into a conservation agreement with one or more States for a species that has been proposed for listing, is a candidate species, or is likely to become a candidate species in the near future.

Permits withholding or limiting the availability of data requested under Freedom of Information Act provisions if release of the data would be likely to result in increased take of an endangered or threatened species or one proposed for listing. Bars withholding of data in response to a request by a landowner regarding the presence of those species on private land.

(Sec. 3) Requires the Secretary, on the basis of the best scientific and commercial data available, to develop and implement plans for the conservation and recovery of endangered and threatened species unless a plan will not promote the conservation of the species or an existing plan or strategy for conservation already serves as the functional equivalent of such plan.

Gives priority to plans that: (1) address significant and immediate threats to the survival of a species, have the greatest likelihood of achieving species recovery, and will benefit species that are more taxonomically distinct; (2) address multiple species that are dependent on the same habitat as the endangered or threatened species; (3) reduce conflicts with construction, development projects, jobs, private property, or other economic activities; and (4) reduce conflicts with military training and operations.

Directs the Secretary to implement a priority ranking system for the preparation of plans based on the factors listed above.

Establishes deadlines for the publication of draft and final recovery plans.

Requires plans to: (1) contain biological recovery goals and objective, measurable benchmarks to determine progress toward such goals; and (2) identify Federal agencies that authorize, fund, or carry out actions likely to have a significant impact on prospects for recovering the species. Makes such goals subject to independent scientific review.

Establishes deadlines for the Secretary's review of existing and future plans. Provides for revision of plans if new information indicates that recovery goals will not achieve conservation and recovery.

Permits the Secretary to enter into agreements with Federal agencies, affected States, Indian tribes, local governments, private landowners, and organizations to implement conservation measures identified by approved plans that promote species recovery with respect to lands or waters owned by, or within the jurisdiction of, such parties.

Authorizes grants of up to \$25,000 to individual landowners for carrying out such agreements. Bars grants for actions for which a permit is required under any Federal law.

Sets forth conditions under which States may develop recovery plans.

Revises provisions regarding designations of critical habitat. Authorizes the Secretary to designate critical habitat concurrently with the determination that a species is endangered or threatened if such designation is essential to avoid imminent extinction. Provides for revisions of such designations, as appropriate.

(Sec. 4) Requires Federal agencies responsible for the management of lands and waters to: (1) provide the Secretary with an inventory of endangered and threatened species as well as species proposed, or identified as candidates, for listing on lands or waters under their control; and (2) update such inventory at least every ten years.

Directs Federal agencies, prior to commencing any action, to notify the Secretary if such action may affect an endangered or threatened species or critical habitat. Requires a Federal agency to consult with the Secretary on each action for which notification is required unless: (1) such agency determines, based on the opinion of a qualified biologist, that the action is not likely to adversely affect such species or habitat; (2) the agency has made such determination and provides the Secretary with the information on which the determination was based; and (3) the Secretary does not object to such determination within 60 days of receiving notification.

Permits the Secretary to identify categories of actions determined to have adverse effects and for which consultation shall not apply. Authorizes the Secretary to object to agency determinations under certain conditions. Requires the Secretary to report at least biennially to the Congress on agency determinations.

Directs the Comptroller General to report to the Senate Committee on Environment and Public Works and the House Committee on Resources on the cost of formal consultation to Federal agencies and other persons.

Authorizes Federal agencies implementing land use or land and resource management plans to authorize, fund, or carry out a site-specific ongoing or previously scheduled action prior to completing consultation if no consultation is required or the Secretary issues a biological opinion and the action satisfies relevant requirements.

Authorizes consultation and conferencing between the Secretary and a Federal agency, with the Secretary's approval, to encompass a number of related or similar actions by the agency within a particular geographic area. Permits the consolidation of requests for consultation or conferencing from various Federal agencies whose actions may affect the same species within a particular geographic area.

Provides for the participation of States and persons who have sought authorization or funding subject to consultation in consultation proceedings.

Permits consultation to be deferred by a Federal agency, in response to a natural disaster or other emergency, for the emergency repair of a natural gas pipeline, hazardous liquid pipeline, or electrical transmission facility if the repair is necessary to address an imminent threat to human lives or the environment.

(Sec. 5) Authorizes the development of multiple species conservation plans which may include measures for non-listed species. (Conservation plans are required to be developed in connection with incidental takings of species which are otherwise prohibited.) Authorizes the Secretary and the heads of Federal agencies to provide technical assistance or guidance to States or persons developing such plans. Establishes deadlines for plan approval.

Allows the Secretary to issue a permit for a low effect activity authorizing an otherwise prohibited taking if the activity will have no more than a negligible effect on the species, any taking will be incidental, and the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. Requires the Secretary to minimize permitting costs by developing model permit applications that will constitute conservation plans for low effect activities.

Requires conservation plans to include a "no surprises" provision such that a person who is in compliance with a plan may not be required to undertake additional mitigation measures for a species covered by the plan if such measures would require additional money or the adoption of additional use, development, or management restrictions on land, waters, or water-related rights that would otherwise be available under the plan. Provides for the identification of plan modifications or other measures that may be required under extraordinary circumstances.

Authorizes the Secretary to enter into candidate conservation agreements with a non-Federal person for a species that is proposed for listing, is a candidate species, or is likely to become a candidate species. Sets forth conditions for approval of such agreements. Includes a "no surprises" provision in such agreements as well.

Provides for public participation in the development of multiple species conservation plans and permit applications.

Authorizes the Secretary to enter into safe harbor agreements with non-Federal persons to benefit the conservation of endangered or threatened species by creating, restoring, or improving habitat or by maintaining currently unoccupied habitat for such species. Requires the Secretary, under such agreements, to permit the person to take endangered or threatened species on lands or waters subject to the agreement if the taking is incidental to, and not the purpose of, an otherwise lawful activity. Prescribes a mutually agreed upon baseline requirement that will, at a minimum, maintain existing conditions for the species. Authorizes the baseline to be expressed in terms of the abundance or distribution of species, quantity or quality of habitat, or other appropriate indicators.

Provides for grants of up to \$10,000 to any private landowner to carry out such agreements, subject to the availability of appropriations.

Requires the Secretary to: (1) establish a habitat reserve program to be implemented through contracts or easements to assist non-Federal property owners in preserving and managing suitable habitat for endangered and threatened species; and (2) make payments

to such property owners for carrying out an agreement, if the activities carried out are not otherwise required by the Act. Authorizes appropriations.

Establishes a Habitat Conservation Planning Loan Program under which the Secretary may make no-interest loans to States and other political subdivisions to assist in the development of conservation plans. Requires loans to be for ten-year terms, with shorter terms if a conservation plan is not developed or a permit for incidental taking is not issued within specified deadlines.

Creates a Habitat Conservation Insurance Program to pay the cost of additional mitigation measures under an existing conservation plan or candidate conservation agreement to minimize or mitigate adverse effects to a covered species to the extent such effects were not anticipated at the time the plan or agreement was approved.

(Sec. 6) Requires, in civil and criminal actions, actions to enjoin persons alleged to be in violation, or citizen suits brought under the Act, that the Secretary, Attorney General, or other person, as appropriate, establish, using pertinent evidence based on scientifically valid principles, that the acts of a person have caused or will cause the taking of an endangered or threatened species.

(Sec. 7) Directs the Secretary to implement a private property owners education and technical assistance program to: (1) inform the public about the Act; (2) respond to requests for technical assistance from property owners interested in conserving listed species, those proposed for listing, and candidate species; and (3) recognize exemplary efforts to conserve species on private land.

(Sec. 8) Extends the authorization of appropriations to carry out the Act through FY 2003. Makes additional authorizations of appropriations to carry out specified activities under this Act.

Requires each Secretary to submit to the Senate Committee on Environment and Public Works and the House Committee on Resources: (1) an accounting for FY 1998 of funds expended by the Departments of the Interior and Commerce, respectively, to carry out this Act; and (2) a management plan describing the projected uses by such Departments of authorized funds for FY 1999 through 2003.