



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 31, 1997

S. 1180
Endangered Species Recovery Act of 1997

*As ordered reported by the Senate Committee on Environment and Public Works
on September 30, 1997*

SUMMARY

S. 1180 would amend the Endangered Species Act (ESA) and authorize funding for programs carried out under the statute for each of fiscal years 1998 through 2003. A major focus of the bill is cooperation among all parties affected by the ESA, including federal agencies (both those with primary responsibility for carrying out the act and those that manage federal lands or whose activities may affect protected species), state and local governments, and private property owners. The bill would enhance this cooperation by (1) providing incentives to encourage owners of nonfederal land to participate in species recovery plans, habitat conservation projects and other activities, (2) giving state and local governments a greater voice in federal regulatory decisions, (3) streamlining the procedures by which federal agencies consult with one another before funding or carrying out activities that may affect protected species, and (4) authorizing appropriations to provide financial and technical assistance for these purposes.

The bill would authorize specific appropriations for federal agencies responsible for administering the ESA (the Interior, Commerce, and Agriculture Departments) and for financial assistance to state and local governments or other nonfederal entities. In aggregate, the bill would authorize specific annual appropriations of between \$241 million (for fiscal year 1998) and \$341 million (for 2003), for a total of about \$1.9 billion over the six-year period. In addition, section 8 of the bill would authorize the appropriation of whatever amounts are necessary to provide financial and technical assistance to states to carry out conservation activities under the act. (This is in addition to any grants authorized by the ESA from the Cooperative Endangered Species Conservation Fund.)

S. 1180 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA). Enactment of this legislation would not affect federal receipts or direct spending; therefore, pay-as-you-go procedures would not apply.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Although authorizations for funding under the ESA expired in 1992, the Congress has continued to appropriate funds each year for programs carried out under the act. For fiscal year 1997, the Congress earmarked about \$92 million for these programs. Full-year funding for fiscal year 1998 has not yet been enacted.

Assuming appropriation of the entire amounts specified for each fiscal year, the 1998 funding for ESA activities would total \$241 million—an increase of \$150 million over the 1997 level. CBO estimates that additional indefinite authorizations (for state assistance) and implicit authorizations (for new requirements on federal land-management agencies) would increase the authorized funding levels by an additional \$10 million annually. The estimated budgetary effects of implementing S. 1180 are summarized in the following table.

	By Fiscal Year, in Millions of Dollars					
	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATION						
ESA Spending Under Current Law						
Budget Authority ^{a, b}	92	0	0	0	0	0
Estimated Outlays	84	2	2	0	0	0
Proposed Changes						
Authorization Level	0	251	296	326	346	351
Estimated Outlays	0	138	278	295	328	350
ESA Spending Under S. 1180						
Specified Authorization Level ^a	92	241	286	316	336	341
Estimated Authorization Level	<u>0</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>
Total Estimated Authorizations	92	251	296	326	346	351
Estimated Outlays	84	140	280	295	328	350

a. The 1997 level is the amount actually appropriated for programs authorized by this bill.

b. Appropriations for ESA have not yet been enacted for fiscal year 1998. Senate-passed S. 1022, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies, would provide \$32 million, and H.R. 2107, making appropriations for the Department of the Interior and related agencies (as cleared by the Congress), would provide an additional \$80 million.

The costs of S. 1180 fall within budget function 300 (natural resources and environment). In addition to the amounts shown in the table, the bill would authorize appropriations of an additional \$351 million for fiscal year 2003 (the same amount as shown above for 2002).

BASIS OF ESTIMATE

For purposes of this estimate, CBO has assumed that S. 1180 will be enacted during fiscal year 1998 and that the entire amounts specifically authorized or estimated to be necessary to carry out the bill will be appropriated for each fiscal year.

Authorizations of Appropriations

Section 8 of S. 1180 would authorize the appropriation of operating funds to the three federal agencies responsible for carrying out the ESA. In total, the funding levels specified in S. 1180 for each year are more than double the appropriations for recent years. The higher authorization levels, particularly those for operations of the Interior Department (DOI), reflect both newly authorized financial assistance programs as well as the greater costs of carrying out the ESA under the new requirements imposed by the bill. These provisions would require expedited development of recovery plans for the backlog of previously listed species as well as new procedural requirements, such as additional public notices and hearings and greater consultation with affected states.

Specified Authorizations. For fiscal years 1998 through 2003, the authorization levels shown in the table include specified amounts of:

- between \$90 million and \$165 million a year for DOI, which has primary responsibility for implementing and enforcing the act through the U.S. Fish and Wildlife Service (USFWS),
- between \$35 million and \$70 million annually for the Department of Commerce, which administers ESA programs for marine species through the National Marine Fisheries Service (NMFS),
- \$4 million annually for the Department of Agriculture for animal and plant inspections, and
- \$1 million annually for DOI to implement CITES—the Convention on International Trade in Endangered Species—and \$0.6 million a year to carry out the functions of the Endangered Species Committee.

Also included are specified authorizations of between \$116 million (for 1998) and \$106 million (for 2003) for grants and other assistance to nonfederal entities, including:

- about \$41 million annually for the habitat reserve program, under which the USFWS and NMFS would execute contracts or easements with owners of nonfederal property to preserve, manage, or improve suitable habitat for protected species,
- \$15 million annually for safe harbor agreements, under which the two agencies would provide funds to nonfederal entities that create, restore, or otherwise maintain natural habitat in exchange for permits to take protected species,
- \$45 million annually for grants to private landowners who agree to implement species recovery plans, and
- \$10 million a year for 1998 through 2000 and \$5 million a year for 2001 and 2002 for the subsidy cost of providing no-interest loans to state and local governments to finance the development of habitat conservation plans. We estimate that such appropriations, less about 10 percent for administrative costs, would support an annual loan level of about \$40 million for 1998 through 2000 and about \$20 million for 2001 and 2002.

Estimated Authorizations. The table also includes estimated authorizations of \$10 million annually, about one-half of which is for the financial assistance to states, as authorized by section 8. CBO estimates that the balance would be needed for each of the next five years by federal agencies such as the Forest Service and the Bureau of Land Management to conduct inventories of protected species required by section 4. We estimated the costs of these indefinite authorizations on the basis of information provided by the Departments of Commerce and the Interior, other affected federal agencies, and various state agencies.

Outlays from Spending Subject to Appropriation

Outlays for administrative activities have been estimated on the basis of historical spending patterns for ongoing ESA programs. Spending rates for most new programs, such as those involving grants to property owners, reflect the time that would be required for the needed regulatory procedures to be completed. For example, payments to property owners who wish to implement recovery plans and direct loans to state or local governments for developing such plans could lag behind species listing and plan development by several years. Moreover, set-asides over the next five years for the habitat conservation insurance program would delay some of the outlays for a number of financial assistance programs because 5 percent of such amounts would be reserved for conservation efforts after 2002.

PAY-AS-YOU-GO CONSIDERATIONS: None.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 1180 contains no intergovernmental mandates as defined in UMRA. The bill would affect state and local governments in a number of ways, but would not require any additional spending by these governments. State and local governments would benefit from many provisions in the bill that would enhance their role in implementing the ESA. Any additional state or local costs would result from voluntary decisions to accept greater responsibilities under the act. The bill would authorize appropriations to cover the cost of these activities.

A number of provisions in S. 1180 would offer states the opportunity to accept increased responsibilities under the ESA. For example, the bill would authorize federal agencies to enter into state conservation agreements, under which one or more states would undertake activities to benefit candidate species. Under such agreements, states would be required to ensure adequate funding and enforcement to implement the agreement. S. 1180 would also offer states an increased role in developing and implementing recovery plans for endangered or threatened species. The bill would establish a number of other vehicles under which federal agencies could enter into agreements with state or local agencies or private parties to carry out various activities under the ESA.

State and local governments could receive additional federal funds to support their activities under the ESA as a result of provisions in S. 1180. The bill would authorize appropriations totaling \$40 million over the 1998-2002 period for the Habitat Conservation Planning Loan Program. CBO estimates that, if appropriated, these funds would subsidize no-interest loans to state and local governments totaling \$160 million over that period. It also would authorize appropriations for state conservation activities not covered by existing appropriations. CBO estimates that states would use about \$5 million per year to support these activities.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 1180 contains no private-sector mandates as defined in UMRA. The bill would affect landowners in a number of ways, but would not mandate any additional spending. The bill would allow landowners who require federal permits or approvals under ESA to have a greater role in implementing recovery plans for listed species. Further, the bill would authorize federal grants (subject to available appropriations) for agreements with private landowners to implement conservation measures identified by approved recovery plans.

S. 1180 also includes several other incentives to encourage private landowners to participate in various ESA programs. Any additional costs incurred by the private sector would result from voluntary decisions to accept greater responsibilities under the act. The bill would authorize appropriations to cover some of the costs of these voluntary activities.

Under current law, landowners whose lands provide habitat to endangered species are prohibited from "taking" an endangered species. "Taking" is defined broadly and includes killing, harming, or harassing protected species and, in certain instances, modifying their habitat. According to the General Accounting Office, in 1993 over 90 percent of species protected under ESA had a major share of their habitat on nonfederal land. Nonfederal lands containing habitat for protected species may be owned by private or government landowners. Over 600 species have some or all of their habitat on land owned by private landowners and more than 500 listed species have their habitat on land owned by state and local governments. Under the ESA, a landowner whose land is occupied by threatened or endangered species may obtain "incidental take" permits in return for carrying out habitat conservation plans (HCPs) on their property. These permits, allow landowners to carry out economic activities on their property that may incidentally harm listed species.

The bill would codify several existing policies that encourage the involvement of private landowners in the conservation of protected species including the "no surprises" policy and safe harbor agreements. The "no surprises" policy protects parties participating in habitat conservation plans from being required to take additional steps to protect species in the future. Safe harbor agreements protect landowners who take voluntary steps to create or restore habitats from future liability under ESA. The bill would authorize grants to assist landowners in carrying out safe harbor agreements.

S. 1180 also would provide incentive programs to encourage small landowners to participate in conservation programs under the Endangered Species Act, including low-effect habitat conservation plans and habitat reserve agreements. The bill would require the Secretary of the Interior, in cooperation with state fish and wildlife agencies, to develop a model permit application that could serve as the conservation plan and thereby provide a less expensive, streamlined process for small landowners and others whose activities will have a minor effect on listed species ("low-effect plans"). The habitat reserve program would be similar to the existing conservation reserve program and would provide a direct monetary incentive to conserve habitat, particularly for farmers.

ESTIMATE PREPARED BY:

Federal Costs: Deborah Reis

Impact on State, Local, and Tribal Governments: Marjorie Miller

Impact on the Private Sector: Patrice Gordon

ESTIMATE APPROVED BY:

Robert A. Sunshine

Deputy Assistant Director for Budget Analysis