

108TH CONGRESS  
1ST SESSION

# H. R. 1835

To amend the Endangered Species Act of 1973 to limit designation as critical habitat of areas owned or controlled by the Department of Defense, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2003

Mr. GALLEGLY (for himself, Mr. POMBO, Mr. GIBBONS, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Endangered Species Act of 1973 to limit designation as critical habitat of areas owned or controlled by the Department of Defense, and for other purposes.

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 “National Security  
5 Readiness Act of 2003”.

1 **SEC. 2. MILITARY READINESS AND THE CONSERVATION OF**  
2 **PROTECTED SPECIES.**

3 (a) POLICY REGARDING DUTIES OF FEDERAL DE-  
4 PARTMENTS AND AGENCIES.—Section 2(c)(1) of the En-  
5 dangered Species Act of 1973 (16 U.S.C. 1531(c)(1)) by  
6 inserting after “threatened species” the following: “insofar  
7 as is practicable and consistent with their primary pur-  
8 poses”.

9 (b) DESIGNATION OF CRITICAL HABITAT.—Section  
10 4(a)(3) of the Endangered Species Act of 1973 (16 U.S.C.  
11 1533(a)(3)) is amended by striking “prudent and deter-  
12 minable” and inserting “necessary”.

13 (c) LIMITATION ON DESIGNATION OF CRITICAL  
14 HABITAT.—Section 4(a)(3) of the Endangered Species  
15 Act of 1973 (16 U.S.C. 1533(a)(3)) is amended—

16 (1) by redesignating subparagraphs (A) and  
17 (B) as clauses (i) and (ii), respectively;

18 (2) by inserting “(A)” after “(3)”; and

19 (3) by adding at the end the following:

20 “(B)(i) The Secretary shall not designate as critical  
21 habitat any lands or other geographical areas owned or  
22 controlled by the Department of Defense, or designated  
23 for its use, that are subject to an integrated natural re-  
24 sources management plan prepared under section 101 of  
25 the Sikes Act (16 U.S.C. 670a), if the Secretary deter-  
26 mines that such plan addresses special management con-

1 siderations or protection (as those terms are used in sec-  
2 tion 3(5)(A)(i)).

3 “(ii) Nothing in this paragraph affects the require-  
4 ment to consult under section 7(a)(2) with respect to an  
5 agency action (as that term is defined in that section).

6 “(iii) Nothing in this paragraph affects the obligation  
7 of the Department of Defense to comply with section 9,  
8 including the prohibition preventing extinction and taking  
9 of endangered species and threatened species.”.

10 (d) CONSIDERATION OF EFFECTS OF DESIGNATION  
11 OF CRITICAL HABITAT.—Section 4(b)(2) of the Endan-  
12 gered Species Act of 1973 (16 U.S.C. 1533(b)(2)) is  
13 amended by inserting “the impact on national security,”  
14 after “the economic impact,”.

15 **SEC. 3. AMENDMENT TO DEFINITION OF HARASSMENT**  
16 **UNDER MARINE MAMMAL PROTECTION ACT**  
17 **OF 1972.**

18 Section 3(18) of the Marine Mammal Protection Act  
19 of 1972 (16 U.S.C. 1362(18)) is amended—

20 (1) by striking the matter preceding subpara-  
21 graph (B) and inserting the following:

22 “(18)(A) The term ‘harassment’ means—

23 “(i) any act that injures or has the signifi-  
24 cant potential to injure a marine mammal or  
25 marine mammal stock in the wild;

1           “(ii) any act that disturbs or is likely to  
2           disturb a marine mammal or marine mammal  
3           stock in the wild by causing disruption of nat-  
4           ural behavioral patterns, including, but not lim-  
5           ited to, migration, surfacing, nursing, breeding,  
6           feeding, or sheltering, to a point where such be-  
7           havioral patterns are abandoned or significantly  
8           altered; or

9           “(iii) any act that is directed toward a spe-  
10          cific individual, group, or stock of marine mam-  
11          mals in the wild and that is likely to disturb the  
12          individual, group, or stock of marine mammals  
13          by disrupting behavior, including, but not lim-  
14          ited to, migration, surfacing, nursing, breeding,  
15          feeding, or sheltering.”; and

16          (2) in subparagraph (C) by striking “(A)(ii)”  
17          and inserting “(A) (ii) or (iii)”.

18 **SEC. 4. EXEMPTION OF ACTIONS NECESSARY FOR NA-**  
19 **TIONAL DEFENSE.**

20          Section 101 of the Marine Mammal Protection Act  
21          of 1972 (16 U.S.C. 1371) is amended by inserting after  
22          subsection (e) the following:

23          “(f) EXEMPTION OF ACTIONS NECESSARY FOR NA-  
24          TIONAL DEFENSE.—(1) The Secretary of Defense, after  
25          conferring with the Secretary of Commerce, the Secretary

1 of the Interior, or both, as appropriate, may exempt any  
2 action or category of actions undertaken by the Depart-  
3 ment of Defense or its components from compliance with  
4 any requirement of this Act, if the Secretary determines  
5 that it is necessary for national defense.

6 “(2) An exemption granted under this subsection—

7 “(A) subject to subparagraph (B), shall be ef-  
8 fective for a period specified by the Secretary of De-  
9 fense; and

10 “(B) shall not be effective for more than 2  
11 years.

12 “(3)(A) The Secretary of Defense may issue addi-  
13 tional exemptions under this subsection for the same ac-  
14 tion or category of actions, after—

15 “(i) conferring with the Secretary of Commerce,  
16 the Secretary of the Interior, or both as appropriate;  
17 and

18 “(ii) making a new determination that the addi-  
19 tional exemption is necessary for national defense.

20 “(B) Each additional exemption under this para-  
21 graph shall be effective for a period specified by the Sec-  
22 retary of Defense, of not more than 2 years.”.

1 **SEC. 5. INCIDENTAL TAKINGS OF MARINE MAMMALS IN**  
2 **MILITARY READINESS ACTIVITY.**

3 Section 101(a)(5) of the Marine Mammal Protection  
4 Act of 1972 (16 U.S.C. 1371(a)(5)) is amended—

5 (1) in subparagraph (A)—

6 (A) by striking “within a specified geo-  
7 graphical region”;

8 (B) by striking “within that region of  
9 small numbers”; and

10 (C) by adding at the end the following:

11 “Notwithstanding the preceding sentence, the Secretary is  
12 not required to publish notice under this subparagraph  
13 with respect to incidental takings while engaged in mili-  
14 tary readiness activities authorized by the Secretary of De-  
15 fense, except in the Federal Register.”;

16 (2) in subparagraph (B)—

17 (A) by striking “within a specified geo-  
18 graphical region”; and

19 (B) by striking “within one or more re-  
20 gions”; and

21 (3) in subparagraph (D)—

22 (A) in clause (i)—

23 (i) by striking “within a specific geo-  
24 graphic region”;

25 (ii) by striking “of small numbers”;

26 and

1 (iii) by striking “within that region”;

2 and

3 (B) by adding at the end the following:

4 “(vi) Notwithstanding clause (iii), the Secretary is  
5 not required to publish notice under this subparagraph  
6 with respect to an authorization under clause (i) of inci-  
7 dental takings while engaged in military readiness activi-  
8 ties authorized by the Secretary of Defense, except in the  
9 Federal Register.”.

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