

Union Calendar No. 480

108TH CONGRESS
2D SESSION

H. R. 2933

[Report No. 108-786]

To amend the Endangered Species Act of 1973 to reform the process for designating critical habitat under that Act.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2003

Mr. CARDOZA (for himself, Mr. DOOLEY of California, Mr. CARSON of Oklahoma, Mr. NUNES, Mr. BACA, Mr. STENHOLM, Mr. HALL, Mr. BERRY, Mr. ROSS, Mr. DOOLITTLE, Mr. RADANOVICH, Mr. HERGER, Mr. PETERSON of Minnesota, Mr. ALEXANDER, Mr. ORTIZ, Mr. HUNTER, Mr. CALVERT, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Resources

NOVEMBER 19, 2004

Additional sponsors: Mr. ISAKSON, Mrs. CUBIN, Mr. KLINE, Mr. OSBORNE, Mr. JONES of North Carolina, Mr. RENZI, Mr. WALDEN of Oregon, Mr. PEARCE, Mr. REHBERG, Mr. PETERSON of Pennsylvania, and Mr. FLAKE

NOVEMBER 19, 2004

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on July 25, 2003]

A BILL

To amend the Endangered Species Act of 1973 to reform the process for designating critical habitat 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.**

4 *This Act may be cited as the “Critical Habitat Reform*
5 *Act of 2004”.*

6 **SEC. 2. DESIGNATION OF CRITICAL HABITAT; STANDARD.**

7 *(a) IN GENERAL.—Section 4(a) of the Endangered*
8 *Species Act of 1973 (16 U.S.C. 1533(a)) is amended—*

9 *(1) by redesignating subparagraph (B) of para-*
10 *graph (3) as paragraph (4);*

11 *(2) in paragraph (4) (as so redesignated)—*

12 *(A) by striking “(i)” and inserting “(A)”;*

13 *(B) by striking “(ii)” and inserting “(B)”;*

14 *and*

15 *(C) by striking “(iii)” and inserting “(C)”;*

16 *and*

17 *(3) by amending paragraph (3) to read as fol-*
18 *lows:*

19 *“(3)(A)(i) The Secretary shall, by regulation promul-*
20 *gated in accordance with subsection (b) and to the max-*
21 *imum extent practicable, prudent, and determinable, issue*
22 *a final regulation designating any habitat of the species*
23 *determined to be an endangered species or threatened spe-*
24 *cies that is critical habitat of the species.*

1 “(ii) *The Secretary shall make any designation re-*
2 *quired under clause (i) by not later than one year after*
3 *the final approval of a recovery plan for the species under*
4 *section 4(f), or 3 years after the date of publication of the*
5 *final regulation implementing a determination that the spe-*
6 *cies is an endangered species or threatened species, which-*
7 *ever is earlier.*

8 “(B) *The Secretary shall reconsider any determination*
9 *that designation of critical habitat of a species is not prac-*
10 *ticable, or determinable, during the next review under sec-*
11 *tion 4(c)(2)(A) or at the time of a final approval of a recov-*
12 *ery plan for the species under section 4(f).*

13 “(C) *The Secretary may, from time-to-time as appro-*
14 *priate, revise any designation of critical habitat under this*
15 *paragraph.*

16 “(D) *Notwithstanding subparagraphs (A), (B), and*
17 *(C), any designation of an area as critical habitat shall*
18 *not apply with respect to any action authorized by—*

19 “(i) *a permit under section 10(a) (including any*
20 *conservation plan or agreement under that section for*
21 *such a permit) that applies to the area;*

22 “(ii) *a written statement under section 7(b)(4);*
23 *or*

24 “(iii) *a land conservation or species management*
25 *program of a State, a Federal agency, a federally rec-*

1 *ognized Indian tribe located within the contiguous 48*
2 *States, or the Metlakatla Indian Community that the*
3 *Secretary determines provides protection for habitat*
4 *of the species that is substantially equivalent to the*
5 *protection that would be provided by such designa-*
6 *tion.*

7 *“(E) Nothing in this paragraph shall be construed to*
8 *authorize a recovery plan to establish regulatory require-*
9 *ments or otherwise to have an effect other than as non-bind-*
10 *ing guidance.”.*

11 *(b) CONFORMING AMENDMENT.—Section 4(b)(6)(C) of*
12 *the Endangered Species Act of 1973 (16 U.S.C.*
13 *1533(b)(6)(C)) is repealed.*

14 **SEC. 3. BASIS FOR DETERMINATION.**

15 *Section 4(b)(2) of the Endangered Species Act of 1973*
16 *(16 U.S.C. 1533(b)(2)) is amended—*

17 *(1) by inserting “(A)” after “(2)”;* and

18 *(2) by adding at the end the following:*

19 *“(B) In determining whether an area is critical habi-*
20 *tat, the Secretary shall seek and, if available, consider infor-*
21 *mation from State and local governments in the vicinity*
22 *of the area, including local resource data and maps.*

23 *“(C) Consideration of economic impact under this*
24 *paragraph shall include—*

1 “(i) direct, indirect, and cumulative economic
2 costs and benefits, including consideration of changes
3 in revenues received by landowners, the Federal Gov-
4 ernment, and State and local governments; and

5 “(ii) costs associated with the preparation of re-
6 ports, surveys, and analyses required to be under-
7 taken, as a consequence of a proposed designation of
8 critical habitat, by landowners seeking to obtain per-
9 mits or approvals required under Federal, State, or
10 local law.

11 “(D) In designating critical habitat of a species, the
12 Secretary shall first consider all areas that are known to
13 be within the geographical area determined by field survey
14 data to be occupied by the species.”.

15 **SEC. 4. CONTENT OF NOTICES OF PROPOSED DESIGNATION**
16 **OF CRITICAL HABITAT.**

17 Section 4(b)(5)(A) of the Endangered Species Act of
18 1973 (16 U.S.C. 1533(b)(5)(A)) is amended—

19 (1) in clause (i) by striking “, and” and insert-
20 ing a semicolon;

21 (2) in clause (ii)—

22 (A) by striking “and to each” and inserting
23 “to each”; and

1 (B) by inserting “, and to the county and
2 any municipality having administrative juris-
3 diction over the area” after “to occur”; and

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

5 “(iii) with respect to a regulation to des-
6 ignate or revise a designation of critical habi-
7 tat—

8 “(I) publish maps and coordinates that
9 describe, in detail, the specific areas that
10 meet the definition under section 3 of, and
11 are designated under section 4(a) as, crit-
12 ical habitat, and all field survey data upon
13 which such designation is based; and

14 “(II) maintain such maps, coordinates,
15 and data on a publicly accessible Internet
16 page of the Department; and

17 “(iv) include in each of the notices required
18 under this subparagraph a reference to the Inter-
19 net page referred to in clause (iii)(II);”.

20 **SEC. 5. CLARIFICATION OF DEFINITION OF CRITICAL HABI-**
21 **TAT.**

22 Section 3(5) of the Endangered Species Act of 1973
23 (16 U.S.C. 1532(5)) is amended—

24 (1) in subparagraph (A) by striking clauses (i)
25 and (ii) and inserting the following:

1 “(i) the specific areas—

2 “(I) that are within the geographical area
3 determined by field survey data to be occupied
4 by the species at the time the areas are des-
5 ignated as critical habitat in accordance with
6 section 4; and

7 “(II) on which are found those physical and
8 biological features that are necessary to avoid
9 jeopardizing the continued existence of the spe-
10 cies and may require special management con-
11 siderations or protection; and

12 “(ii) areas that are not within the geographical
13 area referred to in clause (i)(I) and that the Sec-
14 retary determines are essential for the survival of the
15 species at the time the areas are designated as critical
16 habitat in accordance with section 4.”;

17 (2) by striking subparagraph (B) and redesign-
18 ating subparagraph (C) as subparagraph (B); and

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

20 “(C) For purposes of subparagraph (A)(i) the term
21 ‘geographical area determined by field survey data to be
22 occupied by the species’ means the specific area that, at the
23 time the area is designated as critical habitat in accordance
24 with section 4, is being used by the species for breeding,

1 *feeding, sheltering, or another essential behavioral pat-*
2 *tern.”.*

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