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.

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.

MAY 14, 2003

Reported from the Committee on Resources with an amendment

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

MAY 14, 2003

Referral to the Committee on Armed Services extended for a period ending not later than June 13, 2003

JUNE 13, 2003

Additional sponsor: Mr. COLE

JUNE 13, 2003

The Committee on Armed Services discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed.
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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Security Readiness Act of 2003”.

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

(a) DESIGNATION OF CRITICAL HABITAT.—Section 4(a)(3) of the Endangered Species Act of 1973 (16 U.S.C. 1533(a)(3)) is amended by striking “prudent and determinable” and inserting “necessary”.

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

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

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

(3) by adding at the end the following:
“(B)(i) The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines that such plan addresses special management considerations or protection (as those terms are used in section 3(5)(A)(i)).

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

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

(c) CONSIDERATION OF EFFECTS OF DESIGNATION OF CRITICAL HABITAT.—Section 4(b)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(2)) is amended by inserting “the impact on national security,” after “the economic impact,”.

SEC. 3. AMENDMENT TO DEFINITION OF HARASSMENT UNDER MARINE MAMMAL PROTECTION ACT OF 1972.

Section 3(18) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(18)) is amended by striking the
matter preceding subparagraph (B) and inserting the follow-
ing:

“(18)(A) The term ‘harassment’ means—

“(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or

“(ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered.”.

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

Section 101 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371) is amended by inserting after sub-
section (e) the following:

“(f) EXEMPTION OF ACTIONS NECESSARY FOR NA-
TIONAL DEFENSE.—(1) The Secretary of Defense, after con-
ferring with the Secretary of Commerce, the Secretary of
the Interior, or both, as appropriate, may exempt any ac-
tion or category of actions undertaken by the Department
of Defense or its components from compliance with any re-
quirement of this Act, if the Secretary determines that it is necessary for national defense.

“(2) An exemption granted under this subsection—

“(A) subject to subparagraph (B), shall be effective for a period specified by the Secretary of Defense; and

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

“(3)(A) The Secretary of Defense may issue additional exemptions under this subsection for the same action or category of actions, after—

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

“(ii) making a new determination that the additional exemption is necessary for national defense.

“(B) Each additional exemption under this paragraph shall be effective for a period specified by the Secretary of Defense, of not more than 2 years.”.

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

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

(1) in subparagraph (A)—

(A) by striking “within a specified geographical region”;

•HR 1835 RH
(B) by striking “within that region of small numbers”; and

(C) by adding at the end the following:

“Notwithstanding the preceding sentence, the Secretary is not required to publish notice under this subparagraph with respect to incidental takings while engaged in military readiness activities authorized by the Secretary of Defense, except in the Federal Register.”;

(2) in subparagraph (B)—

(A) by striking “within a specified geographical region”; and

(B) by striking “within one or more regions”; and

(3) in subparagraph (D)—

(A) in clause (i)—

(i) by striking “within a specific geographic region”; 

(ii) by striking “of small numbers”;

and

(iii) by striking “within that region”; 

and

(B) by adding at the end the following:

“(vi) Notwithstanding clause (iii), the Secretary is not required to publish notice under this subpara-
graph with respect to an authorization under clause (i) of incidental takings while engaged in military readiness activities authorized by the Secretary of Defense, except in the Federal Register.”.

SEC. 6. LIMITATION ON DEPARTMENT OF DEFENSE RESPONSIBILITY FOR CIVILIAN WATER CONSUMPTION IMPACTS ON CRITICAL HABITAT OR ENDANGERED SPECIES.

(a) RULE OF CONSTRUCTION.—For purposes of section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536), the terms “action” and “agency action”, when applied to any action of the Department of Defense, shall not include water consumption of any kind unless—

(1) such water consumption occurs on a military installation, whether the source of the water consumed is located on or off the installation; or

(2) such water consumption occurs off of a military installation and the source of the water is under the direct control of the Department of Defense.

(b) VOLUNTARY EFFORTS.—Nothing in this section shall prohibit a military installation from voluntarily undertaking efforts to mitigate water use and consumption.

(c) DEFINITIONS.—In this section:
(1) The term “military installation” has the meaning given such term in section 2687(e) of title 10, United States Code.

(2) The term “water consumption” means the use of water, from any source, for human purposes of any kind, including household or industrial use, irrigation, or landscaping.

(d) EFFECTIVE DATE.—This section applies only to Department of Defense actions regarding which consultation or reconsultation under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is first required on or after the date of the enactment of this Act.
A BILL

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JUNE 13, 2003

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