

# Union Calendar No. 77

108TH CONGRESS  
1ST SESSION

# H. R. 1835

[Report No. 108–99, Part I]

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

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



1       “(B)(i) *The Secretary shall not designate as critical*  
2 *habitat any lands or other geographical areas owned or con-*  
3 *trolled by the Department of Defense, or designated for its*  
4 *use, that are subject to an integrated natural resources*  
5 *management plan prepared under section 101 of the Sikes*  
6 *Act (16 U.S.C. 670a), if the Secretary determines that such*  
7 *plan addresses special management considerations or pro-*  
8 *tection (as those terms are used in section 3(5)(A)(i)).*

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

12       “(iii) *Nothing in this paragraph affects the obligation*  
13 *of the Department of Defense to comply with section 9, in-*  
14 *cluding the prohibition preventing extinction and taking of*  
15 *endangered species and threatened species.”.*

16       (c) *CONSIDERATION OF EFFECTS OF DESIGNATION OF*  
17 *CRITICAL HABITAT.—Section 4(b)(2) of the Endangered*  
18 *Species Act of 1973 (16 U.S.C. 1533(b)(2)) is amended by*  
19 *inserting “the impact on national security,” after “the eco-*  
20 *nom ic impact,”.*

21 **SEC. 3. AMENDMENT TO DEFINITION OF HARASSMENT**  
22 **UNDER MARINE MAMMAL PROTECTION ACT**  
23 **OF 1972.**

24       *Section 3(18) of the Marine Mammal Protection Act*  
25 *of 1972 (16 U.S.C. 1362(18)) is amended by striking the*

1 matter preceding subparagraph (B) and inserting the fol-  
2 lowing:

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

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

7 “(ii) any act that disturbs or is likely to  
8 disturb a marine mammal or marine mammal  
9 stock in the wild by causing disruption of nat-  
10 ural behavioral patterns, including, but not lim-  
11 ited to, migration, surfacing, nursing, breeding,  
12 feeding, or sheltering, to a point where such be-  
13 havioral patterns are abandoned or significantly  
14 altered.”.

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

17 *Section 101 of the Marine Mammal Protection Act of*  
18 *1972 (16 U.S.C. 1371) is amended by inserting after sub-*  
19 *section (e) the following:*

20 “(f) **EXEMPTION OF ACTIONS NECESSARY FOR NA-**  
21 **TIONAL DEFENSE.**—(1) *The Secretary of Defense, after con-*  
22 *ferring with the Secretary of Commerce, the Secretary of*  
23 *the Interior, or both, as appropriate, may exempt any ac-*  
24 *tion or category of actions undertaken by the Department*  
25 *of Defense or its components from compliance with any re-*

1 *quirement of this Act, if the Secretary determines that it*  
2 *is necessary for national defense.*

3 *“(2) An exemption granted under this subsection—*

4 *“(A) subject to subparagraph (B), shall be effec-*  
5 *tive for a period specified by the Secretary of Defense;*  
6 *and*

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

8 *“(3)(A) The Secretary of Defense may issue additional*  
9 *exemptions under this subsection for the same action or cat-*  
10 *egory of actions, after—*

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

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

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

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

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

23 *(1) in subparagraph (A)—*

24 *(A) by striking “within a specified geo-*  
25 *graphical region”;*

1           (B) by striking “within that region of small  
2           numbers”; and

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

4           “Notwithstanding the preceding sentence, the Sec-  
5           retary is not required to publish notice under this  
6           subparagraph with respect to incidental takings while  
7           engaged in military readiness activities authorized by  
8           the Secretary of Defense, except in the Federal Reg-  
9           ister.”;

10          (2) in subparagraph (B)—

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

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

15          (3) in subparagraph (D)—

16               (A) in clause (i)—

17                     (i) by striking “within a specific geo-  
18                     graphic region”;

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

20                     and

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

22                     and

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

24                     “(vi) Notwithstanding clause (iii), the Secretary  
25                     is not required to publish notice under this subpara-

1 *graph with respect to an authorization under clause*  
2 *(i) of incidental takings while engaged in military*  
3 *readiness activities authorized by the Secretary of De-*  
4 *fense, except in the Federal Register.”.*

5 **SEC. 6. LIMITATION ON DEPARTMENT OF DEFENSE RE-**  
6 **SPONSIBILITY FOR CIVILIAN WATER CON-**  
7 **SUMPTION IMPACTS ON CRITICAL HABITAT**  
8 **OR ENDANGERED SPECIES.**

9 *(a) RULE OF CONSTRUCTION.—For purposes of section*  
10 *7 of the Endangered Species Act of 1973 (16 U.S.C. 1536),*  
11 *the terms “action” and “agency action”, when applied to*  
12 *any action of the Department of Defense, shall not include*  
13 *water consumption of any kind unless—*

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

17 *(2) such water consumption occurs off of a mili-*  
18 *tary installation and the source of the water is under*  
19 *the direct control of the Department of Defense.*

20 *(b) VOLUNTARY EFFORTS.—Nothing in this section*  
21 *shall prohibit a military installation from voluntarily un-*  
22 *dertaking efforts to mitigate water use and consumption.*

23 *(c) DEFINITIONS.—In this section:*

1           (1) *The term “military installation” has the*  
2           *meaning given such term in section 2687(e) of title*  
3           *10, United States Code.*

4           (2) *The term “water consumption” means the*  
5           *use of water, from any source, for human purposes of*  
6           *any kind, including household or industrial use, irri-*  
7           *gation, or landscaping.*

8           (d) *EFFECTIVE DATE.—This section applies only to*  
9           *Department of Defense actions regarding which consulta-*  
10          *tion or reconsultation under section 7 of the Endangered*  
11          *Species Act of 1973 (16 U.S.C. 1536) is first required on*  
12          *or after the date of the enactment of this Act.*



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**A BILL**

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