

109TH CONGRESS  
1ST SESSION

# H. R. 1299

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2005

Mr. CARDOZA (for himself, Mr. DOOLITTLE, Mr. JONES of North Carolina, Mr. BACA, Mr. HERGER, Mr. RADANOVICH, Mr. COSTA, Mr. OTTER, Mr. CALVERT, Mr. PETERSON of Pennsylvania, Mr. WALDEN of Oregon, Mr. SIMPSON, Mr. OSBORNE, Mr. REHBERG, Mr. NUNES, Ms. BORDALLO, and Mr. GARY G. MILLER of California) introduced the following bill; which was referred to the Committee on Resources

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## 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 En-  
5 hancement Act of 2005”.

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—

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

3           (2) in paragraph (4) (as so redesignated)—

4                   (A) by striking “(i)” and inserting “(A)”;

5                   (B) by striking “(ii)” and inserting “(B)”;

6           and

7                   (C) by striking “(iii)” and inserting “(C)”;

8           and

9           (3) by amending paragraph (3) to read as fol-  
10          lows:

11          “(3)(A)(i) The Secretary shall, by regulation promul-  
12          gated in accordance with subsection (b) and to the max-  
13          imum extent practicable, prudent, and determinable, issue  
14          a final regulation designating any habitat of the species  
15          determined to be an endangered species or threatened spe-  
16          cies that is critical habitat of the species.

17          “(ii) The Secretary shall make any designation re-  
18          quired under clause (i) by not later than one year after  
19          the final approval of a recovery plan for the species under  
20          section 4(f), or 3 years after the date of publication of  
21          the final regulation implementing a determination that the  
22          species is an endangered species or threatened species,  
23          whichever is earlier.

24          “(B) The Secretary shall reconsider any determina-  
25          tion that designation of critical habitat of a species is not

1 practicable, or determinable, during the next review under  
2 section 4(c)(2)(A) or at the time of a final approval of  
3 a recovery plan for the species under section 4(f).

4 “(C) The Secretary may, from time-to-time as appro-  
5 priate, revise any designation of critical habitat under this  
6 paragraph.

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

10 “(i) a permit under section 10(a) (including any  
11 conservation plan or agreement under that section  
12 for such a permit) that applies to the area;

13 “(ii) a written statement under section 7(b)(4);  
14 or

15 “(iii) a land conservation or species manage-  
16 ment program of a State, a Federal agency, a feder-  
17 ally recognized Indian tribe located within the con-  
18 tiguous 48 States, or the Metlakatla Indian Commu-  
19 nity that the Secretary determines provides protec-  
20 tion for habitat of the species that is substantially  
21 equivalent to the protection that would be provided  
22 by such designation.

23 “(E) Nothing in this paragraph shall be construed  
24 to authorize a recovery plan to establish regulatory re-

1 requirements or otherwise to have an effect other than as  
2 non-binding guidance.”.

3 (b) CONFORMING AMENDMENT.—Section 4(b)(6)(C)  
4 of the Endangered Species Act of 1973 (16 U.S.C.  
5 1533(b)(6)(C)) is repealed.

6 **SEC. 3. BASIS FOR DETERMINATION.**

7 Section 4(b)(2) of the Endangered Species Act of  
8 1973 (16 U.S.C. 1533(b)(2)) is amended—

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

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

11 “(B) In determining whether an area is critical habi-  
12 tat, the Secretary shall seek and, if available, consider in-  
13 formation from State and local governments in the vicinity  
14 of the area, including local resource data and maps.

15 “(C) Consideration of economic impact under this  
16 paragraph shall include—

17 “(i) direct, indirect, and cumulative economic  
18 costs and benefits, including consideration of  
19 changes in revenues received by landowners, the  
20 Federal Government, and State and local govern-  
21 ments; and

22 “(ii) costs associated with the preparation of re-  
23 ports, surveys, and analyses required to be under-  
24 taken, as a consequence of a proposed designation of  
25 critical habitat, by landowners seeking to obtain per-

1 mits or approvals required under Federal, State, or  
2 local law.

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

7 **SEC. 4. CONTENT OF NOTICES OF PROPOSED DESIGNATION**  
8 **OF CRITICAL HABITAT.**

9 Section 4(b)(5)(A) of the Endangered Species Act of  
10 1973 (16 U.S.C. 1533(b)(5)(A)) is amended—

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

13 (2) in clause (ii)—

14 (A) by striking “and to each” and insert-  
15 ing “to each”; and

16 (B) by inserting “, and to the county and  
17 any municipality having administrative jurisdic-  
18 tion over the area” after “to occur”; and

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

20 “(iii) with respect to a regulation to des-  
21 ignate or revise a designation of critical habi-  
22 tat—

23 “(I) publish maps and coordinates  
24 that describe, in detail, the specific areas  
25 that meet the definition under section 3 of,

1 and are designated under section 4(a) as,  
2 critical habitat, and all field survey data  
3 upon which such designation is based; and

4 “(II) maintain such maps, coordi-  
5 nates, and data on a publicly accessible  
6 Internet page of the Department; and

7 “(iv) include in each of the notices re-  
8 quired under this subparagraph a reference to  
9 the Internet page referred to in clause  
10 (iii)(II);”.

11 **SEC. 5. CLARIFICATION OF DEFINITION OF CRITICAL HABI-  
12 TAT.**

13 Section 3(5) of the Endangered Species Act of 1973  
14 (16 U.S.C. 1532(5)) is amended—

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

17 “(i) the specific areas—

18 “(I) that are within the geographical area  
19 determined by field survey data to be occupied  
20 by the species at the time the areas are des-  
21 ignated as critical habitat in accordance with  
22 section 4; and

23 “(II) on which are found those physical  
24 and biological features that are necessary to  
25 avoid jeopardizing the continued existence of

1 the species and may require special manage-  
2 ment considerations or protection; and

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

8 (2) by striking subparagraph (B) and redesign-  
9 ating subparagraph (C) as subparagraph (B); and

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

11 “(C) For purposes of subparagraph (A)(i) the term  
12 ‘geographical area determined by field survey data to be  
13 occupied by the species’ means the specific area that, at  
14 the time the area is designated as critical habitat in ac-  
15 cordance with section 4, is being used by the species for  
16 breeding, feeding, sheltering, or another essential behav-  
17 ioral pattern.”.

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