

109TH CONGRESS
1ST SESSION

H. R. 1837

To amend the Endangered Species Act of 1973 to establish limitations on the designation of critical habitat, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2005

Mr. FLAKE (for himself, Mr. HAYWORTH, Mr. RENZI, Mr. SHADEGG, and Mr. FRANKS of Arizona) introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the Endangered Species Act of 1973 to establish limitations on the designation of critical habitat, 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. LIMITATION ON DESIGNATION OF CRITICAL**
4 **HABITAT.**

5 Section 4(b)(2) of the Endangered Species Act of
6 1973 (16 U.S.C. 1533(b)(2)) is amended by adding at the
7 end the following: “The Secretary shall not designate as
8 critical habitat any habitat located within the high water
9 mark of a water storage reservoir, water diversion struc-

1 ture, canal, or other artificial water delivery facility, if
2 such habitat is periodically created and destroyed as a re-
3 sult of fluctuations in water levels caused by operation of
4 the water storage reservoir, water diversion structure,
5 canal, or other artificial water delivery facility.”.

6 **SEC. 2. CONSIDERATIONS IN DETERMINING LIKELIHOOD**
7 **OF DESTRUCTION OR ADVERSE MODIFICA-**
8 **TION OF THE CRITICAL HABITAT.**

9 Section 7(b)(3) of the Endangered Species Act of
10 1973 (16 U.S.C. 1536(b)(3)) is amended by adding at the
11 end the following:

12 “(C) In determining whether a Federal agency action
13 is likely to result in the destruction or adverse modifica-
14 tion of the critical habitat of a species, the Secretary shall
15 consider the offsetting effects of habitat conservation
16 measures proposed to be implemented as part of the ac-
17 tion, including the protection and management of alter-
18 native habitat, whether or not designated as critical habi-
19 tat, that has or is likely to develop the primary constituent
20 elements of critical habitat.”.

21 **SEC. 3. AMENDMENTS RELATING TO INCIDENTAL TAKE**
22 **PERMITS.**

23 Section 10(a) of the Endangered Species Act of 1973
24 (16 U.S.C. 1539(a)) is amended by adding at the end of
25 paragraph (2) the following:

1 “(D) The requirements of paragraph
 2 (2)(B)(ii) shall be deemed satisfied if the Sec-
 3 retary finds that the minimization and mitiga-
 4 tion measures proposed to be implemented are
 5 rationally related to the level of take under the
 6 plan.”.

7 **SEC. 4. EXEMPTION FROM LIABILITY FOR TAKE OF LISTED**
 8 **AQUATIC SPECIES.**

9 Section 10 of the Endangered Species Act of 1973
 10 (16 U.S.C. 1539) is amended by adding at the end the
 11 following:

12 “(k) EXEMPTION FROM LIABILITY FOR TAKE OF
 13 LISTED AQUATIC SPECIES.—The operator of a water stor-
 14 age reservoir, water diversion structure, canal, or other ar-
 15 tificial water delivery facility shall not be in violation of
 16 section 9(a) by reason of any take of any aquatic species
 17 listed under section 4(c) that results from predation, com-
 18 petition, or other adverse effects attributable to non-native
 19 aquatic species introduced by another person into the river
 20 basin in which the water storage reservoir, water diversion
 21 structure, canal, or other artificial water delivery facility
 22 is located.”.

○