

112TH CONGRESS
2D SESSION

H. R. 4043

To amend title 10, United States Code, to direct the Secretary of Defense to establish Southern Sea Otter Military Readiness Areas for national defense purposes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 2012

Mr. GALLEGLY introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committee on Natural Resources, 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

A BILL

To amend title 10, United States Code, to direct the Secretary of Defense to establish Southern Sea Otter Military Readiness Areas for national defense purposes, 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. SHORT TITLE.**

4 This Act may be cited as the “Military Readiness and
5 Southern Sea Otter Conservation Act”.

1 **SEC. 2. SOUTHERN SEA OTTER MILITARY READINESS AND**
2 **CONSERVATION ACT.**

3 (a) FINDINGS AND PURPOSE.—The Congress finds
4 and declares the following:

5 (1) The United States Fish and Wildlife Serv-
6 ice—

7 (A) developed a relocation and manage-
8 ment plan for southern sea otters as authorized
9 by Public Law 99–625 (Nov. 7, 1986, 100 Stat.
10 3500);

11 (B) promulgated governing regulations on
12 August 11, 1987 (52 Fed. Reg. 29754), in ac-
13 cordance with section 1(b) of Public Law 99–
14 625; and

15 (C) has administered the plan since Au-
16 gust 1987.

17 (2) National defense-related activities at San
18 Nicolas Island have not had adverse affects on
19 southern sea otters, but continued expansion of the
20 southern sea otter population into the area des-
21 ignated by Public Law 99–625 as the management
22 zone may result in national security impacts. Mili-
23 tary training programs evolve, as they are linked to
24 real world events, necessitating greater flexibility in
25 the types and amounts of training events the mili-
26 tary departments conduct.

1 (3) Sikes Act Compliant Integrated Natural Re-
2 sources Management Plans for military installations
3 in California adequately address the special manage-
4 ment needs of threatened and endangered species,
5 and provide conservation benefits to the near shore
6 marine environments through watershed and land-
7 based management actions.

8 (4) Public Law 99–625 provided the authority
9 under the Endangered Species Act of 1973 and the
10 Marine Mammal Protection Act of 1972 for otters
11 established at San Nicolas Island to be designated a
12 nonessential experimental population and this des-
13 ignation should be continued to provide for the flexi-
14 bility needed for military readiness requirements
15 guaranteed by Public Law 99–625.

16 (b) PURPOSE.—The purpose of this section is to en-
17 hance conservation of the southern sea otter and its
18 growth toward an optimum sustainable population while
19 allowing reasonable assurances for military readiness ac-
20 tivities, as defined in section 315(f) of the Bob Stump Na-
21 tional Defense Authorization Act for Fiscal Year 2003
22 (Public Law 107–314; 116 Stat. 2509; 16 U.S.C. 703
23 note), to continue.

24 (c) ESTABLISHMENT OF THE SOUTHERN SEA OTTER
25 MILITARY READINESS AREAS.—Chapter 136 of title 10,

1 United States Code, is amended by adding at the end the
 2 following new section:

3 **“§ 2283. Establishment of the Southern Sea Otter**
 4 **Military Readiness Areas**

5 “(a) ESTABLISHMENT.—The Secretary of Defense
 6 shall establish Southern Sea Otter Military Readiness
 7 Areas for national defense purposes, consisting of—

8 “(1) the area that includes Naval Base Ventura
 9 County San Nicolas Island and Begg Rock, and the
 10 adjacent and surrounding waters within the fol-
 11 lowing coordinates:

12 “N. Latitude/W. Longitude

13 “33°27.8′/119°34.3′

14 “33°20.5′/119°15.5′

15 “33°13.5′/119°11.8′

16 “33°06.5′/119°15.3′

17 “33°02.8′/119°26.8′

18 “33°08.8′/119°46.3′

19 “33°17.2′/119°56.9′

20 “33°30.9′/119°54.2′;

21 “(2) that area that includes Naval Base Coro-
 22 nado San Clemente Island and the adjacent and sur-
 23 rounding waters running parallel to shore to 3 nau-
 24 tical miles from the high tide line designated by 33

1 C.F.R. part 165 on May 20, 2010, as the San
2 Clemente Island 3NM Safety Zone; and

3 “(3) that area that includes Marine Corps Base
4 Camp Pendleton and the adjacent waters within the
5 following coordinates:

6 “Latitude/W. Longitude

7 “33°26.6′/117°38.9′

8 “33°21.3′/117°45.8′

9 “33°56.2′/117°39.7′

10 “33°6.5′/117°28.5′

11 “33°10.2′/117°23.7′

12 “33°11.8′/117°23.2′

13 “33°26.6′/117°38.9′.

14 “(b) ACTIVITIES WITHIN THE SOUTHERN SEA
15 OTTER MILITARY READINESS AREAS.—

16 “(1) INCIDENTAL TAKINGS UNDER ENDAN-
17 GERED SPECIES ACT OF 1973.—Sections 4 and 9 of
18 the Endangered Species Act of 1973 (16 U.S.C.
19 1533, 1538) shall not apply with respect to the inci-
20 dental taking of any southern sea otter in the South-
21 ern Sea Otter Military Readiness Areas in the
22 course of conducting a military readiness activity.

23 “(2) INCIDENTAL TAKINGS UNDER MARINE
24 MAMMAL PROTECTION ACT OF 1972.—Sections 101
25 and 102 of the Marine Mammal Protection Act of

1 1972 (16 U.S.C. 1371, 1372) shall not apply with
2 respect to the incidental taking of any southern sea
3 otter in the Southern Sea Otter Military Readiness
4 Areas in the course of conducting military readiness
5 activities.

6 “(3) TREATMENT AS SPECIES PROPOSED TO BE
7 LISTED.—For purposes of any military readiness ac-
8 tivity, any southern sea otter while within the South-
9 ern Sea Otter Military Readiness Areas shall be
10 treated for the purposes of section 7 of the Endan-
11 gered Species Act of 1973 (16 U.S.C. 1536) as a
12 member of a species that is proposed to be listed as
13 an endangered species or a threatened species under
14 section 4 of the Endangered Species Act of 1973 (16
15 U.S.C. 1533).

16 “(c) REMOVAL.—Nothing in this section or any other
17 Federal law shall be construed to require that any south-
18 ern sea otter located within the Southern Sea Otter Mili-
19 tary Readiness Areas as of the effective date of this sec-
20 tion or thereafter be removed from the Areas.

21 “(d) REVISION OR TERMINATION OF EXCEPTIONS.—
22 The Secretary of the Interior may revise or terminate the
23 application of subsection (b) if the Secretary, in consulta-
24 tion with, and with the concurrence of, the Secretary of
25 the Navy, determines that military activities authorized

1 under subsection (b) are substantially impeding southern
2 sea otter conservation or the return of southern sea otters
3 to optimum sustainable population levels.

4 “(e) MONITORING.—

5 “(1) IN GENERAL.—The Secretary of the Navy
6 shall monitor the Southern Sea Otter Military Read-
7 iness Areas not less than every three years to meas-
8 ure the growth or decline of the southern sea otter
9 population.

10 “(2) REPORTS.—Within 24 months after the ef-
11 fective date of this section and every three years
12 thereafter, the Secretary of the Navy shall report to
13 Congress and the public on monitoring undertaken
14 pursuant to paragraph (1).

15 “(f) RELATIONSHIP TO OTHER FEDERAL LAW.—Ex-
16 cept as provided in subsections (a) and (b), nothing in this
17 section shall be construed as repealing, superseding, or
18 modifying any provision of Federal law.

19 “(g) ECOSYSTEM MANAGEMENT.—

20 “(1) ECOSYSTEM MANAGEMENT PLAN.—Con-
21 sistent with Public Law 99–625 and the notice and
22 comment provisions of chapter 5 of title 5, the Di-
23 rector of the United States Fish and Wildlife Service
24 and the Director of the National Marine Fisheries
25 Service, in cooperation with the Marine Mammal

Commission, shall develop an ecosystem management plan that, for waters off the coast of California, ensures—

“(A) the recovery of the southern sea otter;

“(B) the recovery of the endangered black abalone and the endangered white abalone; and

“(C) the commercial harvest of shellfish fisheries at levels approximating current harvests.

“(2) ASSESSMENT OF CARRYING CAPACITY.—

The Director of the United States Fish and Wildlife Service shall, within one year after the effective date of this section, assess the carrying capacity of the habitat for southern sea otters, including an assessment of the impacts of water quality on that carrying capacity and the causes of water quality degradation.

“(3) CONTINUED IMPLEMENTATION OF EXISTING PLAN.—The Director of the United States Fish and Wildlife Service shall continue implementing the relocation and management plan for southern sea otters authorized by Public Law 99–625 (100 Stat. 3500) until the date the management plan and as-

1 sessment required under paragraphs (1) and (2), re-
2 spectively, are completed.

3 “(h) DEFINITIONS.—In this section:

4 “(1) INCIDENTAL TAKING.—The term ‘inci-
5 dental taking’ means any take of a southern sea
6 otter that is incidental to, and not the purpose of,
7 the carrying out of an otherwise lawful activity.

8 “(2) OPTIMUM SUSTAINABLE POPULATION.—
9 The term ‘optimum sustainable population’ means,
10 with respect to any population stock, the number of
11 animals that will result in the maximum productivity
12 of the population or the species, keeping in mind the
13 carrying capacity of the habitat and the health of
14 the ecosystem of which they form a constituent ele-
15 ment.

16 “(3) SOUTHERN SEA OTTER.—The term ‘south-
17 ern sea otter’ means any member of the subspecies
18 *Enhydra lutris nereis*.

19 “(4) TAKE.—The term ‘take’—

20 “(A) when used in reference to activities
21 subject to regulation by the Endangered Species
22 Act of 1973 (16 U.S.C. 1531–1544) shall have
23 the meaning given such term in that statute;
24 and

1 “(B) when used in reference to activities
2 subject to regulation by the Marine Mammal
3 Protection Act of 1972 (16 U.S.C. 1361–
4 1423h), shall have the meaning given such term
5 in that statute.

6 “(5) MILITARY READINESS ACTIVITY.—The
7 term ‘military readiness activity’ has the meaning
8 given that term in section 315(f) of the Bob Stump
9 National Defense Authorization Act for Fiscal Year
10 2003 (Public Law 107–314; 116 Stat. 2509; 16
11 U.S.C. 703 note), and includes all training and oper-
12 ations of the Armed Forces that relate to combat,
13 and the adequate and realistic testing of military
14 equipment, vehicles, weapons, and sensors for proper
15 operation and suitability for combat use.”.

16 (d) CLERICAL AMENDMENT.—The table of sections
17 at the beginning of such chapter is amended by adding
18 at the end the following:

“2283. Establishment of the Southern Sea Otter Military Readiness Areas.”.

