108TH CONGRESS
1ST SESSION

H. R. 1835

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

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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) POLICY REGARDING DUTIES OF FEDERAL DEPARTMENTS AND AGENCIES.—Section 2(c)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1531(c)(1)) by inserting after ''threatened species'' the following: ''insofar as is practicable and consistent with their primary purposes''.

(b) 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''.

(c) 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 con-

siderations 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.".

(d) 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—

(1) by striking the matter preceding subparagraph (B) and inserting the following:

"(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;

"(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; or

"(iii) any act that is directed toward a specific individual, group, or stock of marine mammals in the wild and that is likely to disturb the individual, group, or stock of marine mammals by disrupting behavior, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering."; and

(2) in subparagraph (C) by striking "(A)(ii)" and inserting "(A) (ii) or (iii)".

SEC. 4. EXEMPTION OF ACTIONS NECESSARY FOR NATIONAL DEFENSE.

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

"(f) EXEMPTION OF ACTIONS NECESSARY FOR NATIONAL DEFENSE.—(1) The Secretary of Defense, after conferring with the Secretary of Commerce, the Secretary

of the Interior, or both, as appropriate, may exempt any action or category of actions undertaken by the Department of Defense or its components from compliance with any requirement 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'';

(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 subparagraph 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.''.

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