

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.

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 'Military Readiness and Southern Sea Otter Conservation Act'.

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

(a) Findings and Purpose- The Congress finds and declares the following:

(1) The United States Fish and Wildlife Service--

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

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

(C) has administered the plan since August 1987.

(2) National defense-related activities at San Nicolas Island have not had adverse affects on southern

sea otters, but continued expansion of the southern sea otter population into the area designated by Public Law 99-625 as the management zone may result in national security impacts. Military training programs evolve, as they are linked to real world events, necessitating greater flexibility in the types and amounts of training events the military departments conduct.

(3) Sikes Act Compliant Integrated Natural Resources Management Plans for military installations in California adequately address the special management needs of threatened and endangered species, and provide conservation benefits to the near shore marine environments through watershed and land-based management actions.

(4) Public Law 99-625 provided the authority under the Endangered Species Act of 1973 and the Marine Mammal Protection Act of 1972 for otters established at San Nicolas Island to be designated a nonessential experimental population and this designation should be continued to provide for the flexibility needed for military readiness requirements guaranteed by Public Law 99-625.

(b) Purpose- The purpose of this section is to enhance conservation of the southern sea otter and its growth toward an optimum sustainable population while allowing reasonable assurances for military readiness activities, as defined in section 315(f) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 116 Stat. 2509; 16 U.S.C. 703 note), to continue.

(c) Establishment of the Southern Sea Otter Military Readiness Areas- Chapter 136 of title 10, United States Code, is amended by adding at the end the following new section:

Sec. 2283. Establishment of the Southern Sea Otter Military Readiness Areas

(a) Establishment- The Secretary of Defense shall establish Southern Sea Otter Military Readiness Areas for national defense purposes, consisting of--

(1) the area that includes Naval Base Ventura County San Nicolas Island and Begg Rock, and the adjacent and surrounding waters within the following coordinates:

N. Latitude/W. Longitude

33°27.8

119°03.3

031'

33°20.5

119°15.5

031'

33°13.5

119°11.8

031'

`33«06.5

031'/119«15.3

031'

`33«02.8

031'/119«26.8

031'

`33«08.8

031'/119«46.3

031'

`33«17.2

031'/119«56.9

031'

`33«30.9

031'/119«54.2

031';

`(2) that area that includes Naval Base Coronado San Clemente Island and the adjacent and surrounding waters running parallel to shore to 3 nautical miles from the high tide line designated by 33 C.F.R. part 165 on May 20, 2010, as the San Clemente Island 3NM Safety Zone; and

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

`Latitude/W. Longitude

`33«26.6

031'/117«38.9

031'

`33«21.3

031'/117«45.8

031'

3356.2

031/11739.7

031'

336.5

031/11728.5

031'

3310.2

031/11723.7

031'

3311.8

031/11723.2

031'

3326.6

031/11738.9

031'.

(b) Activities Within the Southern Sea Otter Military Readiness Areas-

(1) INCIDENTAL TAKINGS UNDER ENDANGERED SPECIES ACT OF 1973- Sections 4 and 9 of the Endangered Species Act of 1973 (16 U.S.C. 1533, 1538) shall not apply with respect to the incidental taking of any southern sea otter in the Southern Sea Otter Military Readiness Areas in the course of conducting a military readiness activity.

(2) INCIDENTAL TAKINGS UNDER MARINE MAMMAL PROTECTION ACT OF 1972- Sections 101 and 102 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371, 1372) shall not apply with respect to the incidental taking of any southern sea otter in the Southern Sea Otter Military Readiness Areas in the course of conducting military readiness activities.

(3) TREATMENT AS SPECIES PROPOSED TO BE LISTED- For purposes of any military readiness activity, any southern sea otter while within the Southern Sea Otter Military Readiness Areas shall be treated for the purposes of section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) as a member of a species that is proposed to be listed as an endangered species or a threatened species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533).

(c) Removal- Nothing in this section or any other Federal law shall be construed to require that any southern sea otter located within the Southern Sea Otter Military Readiness Areas as of the effective

date of this section or thereafter be removed from the Areas.

`(d) Revision or Termination of Exceptions- The Secretary of the Interior may revise or terminate the application of subsection (b) if the Secretary, in consultation with, and with the concurrence of, the Secretary of the Navy, determines that military activities authorized under subsection (b) are substantially impeding southern sea otter conservation or the return of southern sea otters to optimum sustainable population levels.

`(e) Monitoring-

`(1) IN GENERAL- The Secretary of the Navy shall monitor the Southern Sea Otter Military Readiness Areas not less than every three years to measure the growth or decline of the southern sea otter population.

`(2) REPORTS- Within 24 months after the effective date of this section and every three years thereafter, the Secretary of the Navy shall report to Congress and the public on monitoring undertaken pursuant to paragraph (1).

`(f) Relationship to Other Federal Law- Except as provided in subsections (a) and (b), nothing in this section shall be construed as repealing, superseding, or modifying any provision of Federal law.

`(g) Ecosystem Management-

`(1) ECOSYSTEM MANAGEMENT PLAN- Consistent with Public Law 99-625 and the notice and comment provisions of chapter 5 of title 5, the Director of the United States Fish and Wildlife Service and the Director of the National Marine Fisheries 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 assessment required under paragraphs (1) and (2), respectively, are completed.

`(h) Definitions- In this section:

`(1) INCIDENTAL TAKING- The term `incidental taking' means any take of a southern sea otter that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

`(2) OPTIMUM SUSTAINABLE POPULATION- The term `optimum sustainable population' means, with respect to any population stock, the number of animals that will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

`(3) SOUTHERN SEA OTTER- The term `southern sea otter' means any member of the subspecies *Enhydra lutris nereis*.

`(4) TAKE- The term `take'--

`(A) when used in reference to activities subject to regulation by the Endangered Species Act of 1973 (16 U.S.C. 1531-1544) shall have the meaning given such term in that statute; and

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

`(5) MILITARY READINESS ACTIVITY- The term `military readiness activity' has the meaning given that term in section 315(f) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 116 Stat. 2509; 16 U.S.C. 703 note), and includes all training and operations of the Armed Forces that relate to combat, and the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use.'

(d) Clerical Amendment- The table of sections at the beginning of such chapter is amended by adding at the end the following:

`2283. Establishment of the Southern Sea Otter Military Readiness Areas.'

END