

118TH CONGRESS  
1ST SESSION

# H. R. 97

To amend the Endangered Species Act of 1973 to further restrict the Secretary of the Interior from designating certain lands used for national defense-related purposes as critical habitats for any species under that Act and to broaden exclusions and exemptions from that Act for such defense-related purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2023

Mr. BIGGS introduced the following bill; which was referred to the Committee on Natural Resources

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## A BILL

To amend the Endangered Species Act of 1973 to further restrict the Secretary of the Interior from designating certain lands used for national defense-related purposes as critical habitats for any species under that Act and to broaden exclusions and exemptions from that Act for such defense-related 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 “Armed Forces Endan-  
5       gered Species Exemption Act”.

1 **SEC. 2. EXCLUSION OF MILITARY INSTITUTIONS AS CRIT-**  
2 **ICAL HABITAT.**

3 Section 4(a)(3)(B) of the Endangered Species Act of  
4 1973 (16 U.S.C. 1533(a)(3)(B)) is amended to read as  
5 follows:

6 “(i) The Secretary shall not designate  
7 as critical habitat—

8 “(I) any military installation or a  
9 State-owned National Guard installa-  
10 tion, or any portion thereof, as such  
11 terms are defined in section 100 of  
12 the Sikes Act (16 U.S.C. 670); or

13 “(II) any other lands, waters, or  
14 geographical area not described in  
15 clause (i) that is otherwise designated  
16 for use by the Secretary of Defense  
17 including by any contractor of the De-  
18 partment of Defense, if the Secretary  
19 of Defense determines in writing and  
20 submitted to the Secretary of the In-  
21 terior that such area is necessary for  
22 military training, weapons testing, or  
23 any other reason determined appro-  
24 priate by such Secretary of Defense.

25 “(ii) The Secretary of Defense shall  
26 not be required to consult with the Sec-

1           retary of the Interior, under section  
2           7(a)(2) of this Act with respect to agency  
3           action, regardless of whether the area de-  
4           scribed in clause (i) is subject to an inte-  
5           grated natural resources management plan  
6           prepared under section 101 of the Sikes  
7           Act (16 U.S.C. 670a).”.

8 **SEC. 3. ADDITIONAL EXCLUSIONS AND EXEMPTIONS FROM**  
9                                   **THE ENDANGERED SPECIES ACT FOR DE-**  
10                                   **FENSE-RELATED OPERATIONS.**

11           Section 10 of the Endangered Species Act of 1973  
12 (16 U.S.C. 1539) is amended by adding at the end the  
13 following new subsection:

14           “(h) EXCLUSION FOR NATIONAL DEFENSE-RELATED  
15 OPERATIONS.—

16                           “(1) EXCLUSIONS.—The prohibitions under sec-  
17 tion 9 shall not apply with respect to—

18                                   “(A) the taking of any endangered species  
19                                   or threatened species, or the importation or ex-  
20                                   portation of any such species taken as prohib-  
21                                   ited by such section, by military personnel en-  
22                                   gaged in a national defense-related operation;

23                                   “(B) damaging or destroying any threat-  
24                                   ened or endangered species, or removing, cut-  
25                                   ting, digging up, damaging, or destroying any

1 such species, by military personnel engaged in  
2 a national defense-related operation; or

3 “(C) an injury to or mortality of a threat-  
4 ened or endangered species that results from,  
5 but is not the purpose of, a national defense-re-  
6 lated operation,

7 regardless of whether the operation is conducted on  
8 a military installation or other area described in sec-  
9 tion 4(a)(3)(B)(i).

10 “(2) DEFINITIONS.—For the purposes of this  
11 subsection—

12 “(A) the term ‘national defense-related op-  
13 eration’ means—

14 “(i) research, development, testing,  
15 and evaluation of military munitions, other  
16 ordnance, and weapons systems;

17 “(ii) the training of members of the  
18 Armed Forces in the use and handling of  
19 military munitions, other ordnance, and  
20 weapons systems;

21 “(iii) general training and military  
22 preparedness; or

23 “(iv) any action or duty that the Sec-  
24 retary of Defense deems necessary to sup-

1 port the Department of Defense in its mis-  
2 sion; and

3 “(B) the term ‘military personnel’  
4 means—

5 “(i) a member of the Armed Forces;  
6 and

7 “(ii) a civilian employee or contractor  
8 (including a subcontractor at any tier) of  
9 the—

10 “(I) Department of Defense (in-  
11 cluding a nonappropriated fund in-  
12 strumentality of the Department); or

13 “(II) any other Federal agency,  
14 or any provisional authority, to the  
15 extent such employment relates to  
16 supporting the mission of the Depart-  
17 ment of Defense overseas.”.

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