

106TH CONGRESS
1ST SESSION

S. 1100

To amend the Endangered Species Act of 1973 to provide that the designation of critical habitat for endangered and threatened species be required as part of the development of recovery plans for those species.

IN THE SENATE OF THE UNITED STATES

MAY 20, 1999

Mr. CHAFEE (for himself, Mr. CRAPO, and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Endangered Species Act of 1973 to provide that the designation of critical habitat for endangered and threatened species be required as part of the development of recovery plans for those species.

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. RECOVERY PLANS AND CRITICAL HABITAT**
4 **DESIGNATIONS.**

5 The Endangered Species Act of 1973 (16 U.S.C.
6 1531 et seq.) is amended—

7 (1) by inserting after section 4 the following:

1 threatened species or endangered species, the Sec-
2 retary, in cooperation with any State affected by the
3 determination, shall—

4 “(A) appoint a recovery team to develop a
5 recovery plan for the species; or

6 “(B) after public notice and opportunity
7 for comment, determine that a recovery team
8 shall not be appointed.”; and

9 (D) by adding at the end the following:

10 “(f) SCHEDULE.—For each species determined to be
11 an endangered species or a threatened species after the
12 date of enactment of this subsection for which the Sec-
13 retary is required to develop a recovery plan under sub-
14 section (a), the Secretary shall publish—

15 “(1) not later than 18 months after the date of
16 the publication under section 4 of the final regula-
17 tion containing the listing determination, a draft re-
18 covery plan; and

19 “(2) not later than 3 years after the date of
20 publication under section 4 of the final regulation
21 containing the listing determination, a final recovery
22 plan.”.

1 **SEC. 2. CRITICAL HABITAT DESIGNATIONS.**

2 (a) IN GENERAL.—Section 4A of the Endangered
3 Species Act of 1973 (as added by section 1) is amended
4 by adding at the end the following:

5 “(g) CRITICAL HABITAT DESIGNATIONS.—

6 “(1) RECOMMENDATION OF THE RECOVERY
7 TEAM.—

8 “(A) RECOVERY TEAM APPOINTED.—Not
9 later than nine months after the date of publi-
10 cation under section 4 of a final regulation con-
11 taining a listing determination for a species, the
12 recovery team (if a recovery team has been ap-
13 pointed for the species) shall provide the Sec-
14 retary with a description of any habitat of the
15 species that is recommended for designation as
16 critical habitat pursuant to this subsection and
17 any recommendations for special management
18 considerations or protection that are specific to
19 the habitat.

20 “(B) NO RECOVERY TEAM APPOINTED.—If
21 a recovery team is not appointed by the Sec-
22 retary, the Secretary shall perform all duties of
23 the recovery team required under this section.

24 “(2) DESIGNATION BY THE SECRETARY.—The
25 Secretary, to the maximum extent prudent and de-
26 terminable, shall by regulation designate any habitat

1 that is considered to be critical habitat of an endan-
2 gered species or a threatened species that is indige-
3 nous to the United States or waters with respect to
4 which the United States exercises sovereign rights
5 or jurisdiction.

6 “(A) DESIGNATION.—

7 “(i) PROPOSAL.—Concurrently with
8 publication of a draft recovery plan, the
9 Secretary, after consultation and in co-
10 operation with the recovery team, shall
11 publish in the Federal Register a proposed
12 regulation, based on the draft recovery
13 plan for the species, that designates crit-
14 ical habitat for the species.

15 “(ii) PROMULGATION.—Concurrently
16 with publication of a final recovery plan,
17 the Secretary, after consultation and in co-
18 operation with the recovery team, shall
19 publish a final regulation, based on the
20 final recovery plan for the species, that
21 designates critical habitat for the species.

22 “(B) OTHER DESIGNATIONS.—If a recov-
23 ery plan is not developed under this section for
24 an endangered species or a threatened species,
25 the Secretary shall publish a final critical habi-

1 tat determination for the endangered species or
2 threatened species not later than three years
3 after making a determination that the species is
4 an endangered species or a threatened species.

5 “(C) ADDITIONAL AUTHORITY.—The Sec-
6 retary may publish a regulation designating
7 critical habitat for an endangered species or a
8 threatened species concurrently with the final
9 regulation implementing the determination that
10 the species is endangered or threatened if the
11 Secretary determines that designation of such
12 habitat at the time of listing is essential to
13 avoid the imminent extinction of the species.

14 “(3) FACTORS TO BE CONSIDERED.—The des-
15 ignation of critical habitat shall be made on the
16 basis of the best scientific and commercial data
17 available and after taking into consideration the eco-
18 nomic impact, impacts to military training and oper-
19 ations, and any other relevant impact, of specifying
20 any particular area as critical habitat. The Secretary
21 shall describe the economic impacts and other rel-
22 evant impacts that are to be considered under this
23 subsection in the publication of any proposed regula-
24 tion designating critical habitat.

1 “(4) EXCLUSIONS.—The Secretary may exclude
2 any area from critical habitat for a species if the
3 Secretary determines that the benefits of the exclu-
4 sion outweigh the benefits of designating the area as
5 part of the critical habitat, unless the Secretary de-
6 termines that the failure to designate the area as
7 critical habitat will result in the extinction of the
8 species.

9 “(5) REVISIONS.—The Secretary may, from
10 time-to-time and as appropriate, revise a designa-
11 tion. Each area designated as critical habitat before
12 the date of enactment of this subsection shall con-
13 tinue to be considered so designated, until the des-
14 ignation is revised in accordance with this sub-
15 section.

16 “(6) PETITIONS.—

17 “(A) DETERMINATION THAT REVISION
18 MAY BE WARRANTED.—To the maximum extent
19 practicable, not later than 90 days after receiv-
20 ing the petition of an interested person under
21 section 553(e) of title 5, United States Code, to
22 revise a critical habitat designation, the Sec-
23 retary shall make a finding as to whether the
24 petition presents substantial scientific or com-
25 mercial information indicating that the revision

1 may be warranted. The Secretary shall prompt-
2 ly publish the finding in the Federal Register.

3 “(B) NOTICE OF PROPOSED ACTION.—Not
4 later than one year after receiving a petition
5 that is found under subparagraph (A) to
6 present substantial information indicating that
7 the requested revision may be warranted, the
8 Secretary shall determine how to proceed with
9 the requested revision, and shall promptly pub-
10 lish notice of the intention in the Federal Reg-
11 ister.

12 “(7) PROPOSED AND FINAL REGULATIONS.—
13 Any regulation to designate critical habitat or imple-
14 ment a requested revision shall be proposed and pro-
15 mulgated in accordance with paragraphs (4), (5),
16 and (6) of section 4(b) in the same manner as a reg-
17 ulation to implement a determination with respect to
18 listing a species.”.

19 (b) CITIZEN SUITS.—Section 11(g) of the Endan-
20 gered Species Act of 1973 (16 U.S.C. 1540(g)) is
21 amended—

22 (1) in paragraph (1)(C), by inserting “or sec-
23 tion 4A” after “section 4”; and

24 (2) in paragraph (2), by adding at the end the
25 following:

1 “(D) ACTIONS RELATING TO CRITICAL
2 HABITAT DESIGNATION.—With respect to an
3 action relating to an alleged violation of section
4 4A(g) concerning the area designated by the
5 Secretary as critical habitat, no action may be
6 commenced independently of an action relating
7 to an alleged violation of subsection (a) or (f)
8 of section 4A.”.

9 (c) PLANS FOR PREVIOUSLY LISTED SPECIES.—

10 (1) IN GENERAL.—In the case of species in-
11 cluded in the list published under section 4(c) of the
12 Endangered Species Act of 1973 (16 U.S.C.
13 1533(c)) before the date of enactment of this Act,
14 and for which no final recovery plan was developed
15 before the date of enactment of this Act, the Sec-
16 retary of the Interior or the Secretary of Commerce,
17 as appropriate, shall develop a final recovery plan in
18 accordance with the requirements of section 4A of
19 the Endangered Species Act of 1973, including the
20 priorities of subsection (a)(1) of that section, for not
21 less than one-half of the species not later than 36
22 months after the date of enactment of this Act and
23 for all species not later than 60 months after such
24 date.

1 (2) DESIGNATIONS OF CRITICAL HABITAT.—
2 The Secretary of the Interior or the Secretary of
3 Commerce, as appropriate, shall review and revise as
4 necessary any designation of critical habitat for a
5 species described in paragraph (1) based on the final
6 recovery plan for the species and in accordance with
7 section 4A(g) of the Endangered Species Act of
8 1973.

9 (d) CONFORMING AMENDMENTS.—

10 (1) Section 3(5)(A) of the Endangered Species
11 Act of 1973 (16 U.S.C. 1532(5)(A)) is amended—

12 (A) in clause (i), by striking “, at the time
13 it is listed in accordance with the provisions of
14 section 4 of this Act,”; and

15 (B) in clause (ii), by striking “at the time
16 it is listed in accordance with the provisions of
17 section 4 of this Act”.

18 (2) Section 4 of the Endangered Species Act of
19 1973 (16 U.S.C. 1533) (as amended by section
20 1(2)) is amended—

21 (A) in subsection (a), by striking para-
22 graph (3);

23 (B) in subsection (b)—

24 (i) by striking paragraph (2);

1 (ii) in paragraph (3), by striking sub-
2 paragraph (D);

3 (iii) in paragraph (5), by striking “,
4 designation, or revision referred to in sub-
5 section (a)(1) or (3),” and inserting “re-
6 ferred to in subsection (a)(1),”;

7 (iv) in paragraph (6)—

8 (I) by striking “(6)(A)” and all
9 that follows through the end of sub-
10 paragraph (A) and inserting the fol-
11 lowing:

12 “(6) FINAL REGULATIONS.—

13 “(A) IN GENERAL.—Within the one-year
14 period beginning on the date on which general
15 notice is published in accordance with para-
16 graph (5)(A)(i) regarding a proposed regula-
17 tion, the Secretary shall publish in the Federal
18 Register—

19 “(i) a final regulation to implement
20 the determination;

21 “(ii) notice that the one-year period is
22 being extended under subparagraph (B)(i);
23 or

24 “(iii) notice that the proposed regula-
25 tion is being withdrawn under subpara-

1 graph (B)(ii), together with the finding on
2 which the withdrawal is based.”;

3 (II) in subparagraph (B)(i), by
4 striking “or revision”;

5 (III) in subparagraph (B)(iii), by
6 striking “or revision concerned, a
7 finding that the revision should not be
8 made,”; and

9 (IV) by striking subparagraph
10 (C); and

11 (v) by redesignating paragraph (8) as
12 paragraph (2) and moving that paragraph
13 to appear after paragraph (1);

14 (C) in subsection (c)(1)—

15 (i) in the second sentence, by insert-
16 ing “designated” before “critical habitat”;
17 and

18 (ii) in the third sentence, by striking
19 “determinations, designations, and revi-
20 sions” and inserting “determinations”;

21 (D) by redesignating subsections (g)
22 through (i) as subsections (f) through (h), re-
23 spectively; and

1 (E) in subsection (g)(4) (as so redesignig-
2 nated), by striking “subsection (f) of this sec-
3 tion” and inserting “section 4A”.

4 (3) Section 4A of the Endangered Species Act
5 of 1973 (as added by section 1) is amended—

6 (A) in subsection (a)—

7 (i) in the first sentence—

8 (I) by striking “this subsection”
9 and inserting “this section”; and

10 (II) by striking “this section”
11 and inserting “section 4”;

12 (ii) by redesignating subparagraphs
13 (A) and (B) as paragraphs (1) and (2), re-
14 spectively; and

15 (iii) in paragraph (2) (as so redesignig-
16 nated)—

17 (I) by redesignating clauses (i)
18 through (iii) as subparagraphs (A)
19 through (C), respectively; and

20 (II) in subparagraph (B) (as so
21 redesignated), by striking “the provi-
22 sions of this section” and inserting
23 “section 4”;

24 (B) in subsection (c), by striking “this sec-
25 tion” and inserting “section 4”; and

1 (C) in subsection (e), by striking “para-
2 graph (4)” and inserting “subsection (d)”.

3 (4) Section 6(d)(1) of the Endangered Species
4 Act of 1973 (16 U.S.C. 1535(d)(1)) is amended in
5 the first sentence by striking “section 4(g)” and in-
6 serting “section 4(f)”.

7 (5) Section 10(f)(5) of the Endangered Species
8 Act of 1973 (16 U.S.C. 1539(f)(5)) is amended by
9 striking the last sentence.

10 (6) Section 104(c)(4)(A)(ii)(I) of the Marine
11 Mammal Protection Act of 1972 (16 U.S.C.
12 1374(c)(4)(A)(ii)(I)) is amended by striking “section
13 4(f)” and inserting “section 4A”.

14 (7) Section 115(b)(2) of the Marine Mammal
15 Protection Act of 1972 (16 U.S.C. 1383b(b)(2)) is
16 amended by striking “section 4(f) of the Endangered
17 Species Act of 1973 (16 U.S.C. 1533(f))” and in-
18 serting “section 4A of the Endangered Species Act
19 of 1973”.

20 (8) Section 118(f)(11) of the Marine Mammal
21 Protection Act of 1972 (16 U.S.C. 1387(f)(11)) is
22 amended by striking “section 4” and inserting “sec-
23 tion 4A”.

24 (9) The table of contents in the first section of
25 the Endangered Species Act of 1973 (16 U.S.C.

- 1 prec. 1531) is amended by inserting after the item
- 2 relating to section 4 the following:

“Sec. 4A. Recovery plans and critical habitat designations.”.

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