

Calendar No. 237

106TH CONGRESS  
1ST Session

**S. 1100**

[Report No. 106-126]

**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.

JULY 28, 1999

Reported with an amendment

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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

JULY 28, 1999

Reported by Mr. CHAFEE, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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**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,*

1 **SECTION 1. RECOVERY PLANS AND CRITICAL HABITAT**  
 2 **DESIGNATIONS.**

3 The Endangered Species Act of 1973 (16 U.S.C.  
 4 1531 et seq.) is amended—

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

6 “RECOVERY PLANS AND CRITICAL HABITAT  
 7 DESIGNATIONS

8 “SEC. 4A.”;

9 (2) by moving subsection (f) of section 4 to ap-  
 10 pear at the end of section 4A (as added by para-  
 11 graph (1)); and

12 (3) in section 4A (as amended by paragraph  
 13 (2))—

14 (A) by striking “(f)(1) RECOVERY  
 15 PLANS.—The” and inserting the following:

16 “(a) IN GENERAL.—The”;

17 (B) by redesignating paragraphs (2)  
 18 through (5) as subsections (b) through (e), re-  
 19 spectively;

20 (C) in subsection (b) (as so redesi-  
 21 gnated)—

22 (i) by striking “(b) The Secretary”  
 23 and inserting the following:

24 “(b) RECOVERY TEAMS.—

25 “(1) IN GENERAL.—The Secretary”; and

1 (ii) by adding at the end the fol-  
 2 lowing:

3 “(2) APPOINTMENT OF A TEAM.—Not later  
 4 than 60 days after the date of publication under sec-  
 5 tion 4 of a final determination that a species is a  
 6 threatened species or endangered species, the Sec-  
 7 retary, in cooperation with any State affected by the  
 8 determination, shall—

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

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

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

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

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

24 “(2) not later than 3 years after the date of  
 25 publication under section 4 of the final regulation

1 containing the listing determination, a final recovery  
 2 plan.”.

3 **SEC. 2. CRITICAL HABITAT DESIGNATIONS.**

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

7 “(g) **CRITICAL HABITAT DESIGNATIONS.**—

8 “(1) **RECOMMENDATION OF THE RECOVERY**  
 9 **TEAM.**—

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

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

1           “(2) DESIGNATION BY THE SECRETARY.—The  
 2       Secretary, to the maximum extent prudent and de-  
 3       terminable, shall by regulation designate any habitat  
 4       that is considered to be critical habitat of an endan-  
 5       gered species or a threatened species that is indige-  
 6       nous to the United States or waters with respect to  
 7       which the United States exercises sovereign rights  
 8       or jurisdiction.

9           “(A) DESIGNATION.—

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

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

1           “(B) OTHER DESIGNATIONS.—If a recovery  
2           plan is not developed under this section for  
3           an endangered species or a threatened species,  
4           the Secretary shall publish a final critical habitat  
5           determination for the endangered species or  
6           threatened species not later than three years  
7           after making a determination that the species is  
8           an endangered species or a threatened species.

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

18          “(3) FACTORS TO BE CONSIDERED.—The designation  
19          of critical habitat shall be made on the  
20          basis of the best scientific and commercial data  
21          available and after taking into consideration the economic  
22          impact, impacts to military training and operations,  
23          and any other relevant impact, of specifying  
24          any particular area as critical habitat. The Secretary  
25          shall describe the economic impacts and other rel-

1       evant impacts that are to be considered under this  
 2       subsection in the publication of any proposed regula-  
 3       tion designating critical habitat.

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

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

19          “(6) PETITIONS.—

20           “(A) DETERMINATION THAT REVISION  
 21      MAY BE WARRANTED.—To the maximum extent  
 22      practicable, not later than 90 days after receiv-  
 23      ing the petition of an interested person under  
 24      section 553(e) of title 5, United States Code, to  
 25      revise a critical habitat designation, the Sec-



retary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the revision may be warranted. The Secretary shall promptly publish the finding in the Federal Register.

~~“(B) NOTICE OF PROPOSED ACTION.—~~Not later than one year after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how to proceed with the requested revision, and shall promptly publish notice of the intention in the Federal Register.

~~“(7) PROPOSED AND FINAL REGULATIONS.—~~

Any regulation to designate critical habitat or implement a requested revision shall be proposed and promulgated in accordance with paragraphs (4), (5), and (6) of section 4(b) in the same manner as a regulation to implement a determination with respect to listing a species.”.

~~(b) CITIZEN SUITS.—~~Section 11(g) of the Endangered Species Act of 1973 (16 U.S.C. 1540(g)) is amended—

(1) in paragraph (1)(C), by inserting “or section 4A” after “section 4”; and

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

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

(e) PLANS FOR PREVIOUSLY LISTED SPECIES.—

(1) IN GENERAL.—In the case of species included in the list published under section 4(e) of the Endangered Species Act of 1973 (16 U.S.C. 1533(e)) before the date of enactment of this Act, and for which no final recovery plan was developed before the date of enactment of this Act, the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall develop a final recovery plan in accordance with the requirements of section 4A of the Endangered Species Act of 1973, including the priorities of subsection (a)(1) of that section, for not less than one-half of the species not later than 36

1 months after the date of enactment of this Act and  
 2 for all species not later than 60 months after such  
 3 date.

4 ~~(2) DESIGNATIONS OF CRITICAL HABITAT.—~~

5 The Secretary of the Interior or the Secretary of  
 6 Commerce, as appropriate, shall review and revise as  
 7 necessary any designation of critical habitat for a  
 8 species described in paragraph (1) based on the final  
 9 recovery plan for the species and in accordance with  
 10 section 4A(g) of the Endangered Species Act of  
 11 1973.

12 ~~(d) CONFORMING AMENDMENTS.—~~

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

15 ~~(A) in clause (i), by striking “, at the time~~  
 16 ~~it is listed in accordance with the provisions of~~  
 17 ~~section 4 of this Act,”; and~~

18 ~~(B) in clause (ii), by striking “at the time~~  
 19 ~~it is listed in accordance with the provisions of~~  
 20 ~~section 4 of this Act”.~~

21 ~~(2) Section 4 of the Endangered Species Act of~~  
 22 ~~1973 (16 U.S.C. 1533) (as amended by section~~  
 23 ~~1(2)) is amended—~~

24 ~~(A) in subsection (a), by striking para-~~  
 25 ~~graph (3);~~

1                   (B) in subsection (b)—

2                   (i) by striking paragraph (2);

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

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

9                   (iv) in paragraph (6)—

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

14                   “(6) FINAL REGULATIONS.—

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

21                   “(i) a final regulation to implement  
22 the determination;

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

1 “(iii) notice that the proposed regula-  
 2 tion is being withdrawn under subpara-  
 3 graph (B)(ii); together with the finding on  
 4 which the withdrawal is based.”;

5 (II) in subparagraph (B)(i), by  
 6 striking “or revision”;

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

11 (IV) by striking subparagraph  
 12 (C); and

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

16 (C) in subsection (c)(1)—

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

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

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

1           ~~(E)~~ in subsection ~~(g)~~(4) (as so redesignated), by striking “subsection (f) of this section” and inserting “section 4A”.

4           ~~(3)~~ Section 4A of the Endangered Species Act 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), respectively; and

15          (iii) in paragraph ~~(2)~~ (as so redesignated)—

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 provisions of this section” and inserting  
22          “section 4”;

24          ~~(B)~~ in subsection (c), by striking “this section” 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.”.

3        **SECTION 1. RECOVERY PLANS.**

4        *Section 4(f) of the Endangered Species Act of 1973 (16*  
 5        *U.S.C. 1533(f)) is amended—*

6                *(1) in the first sentence of paragraph (1), by*  
 7                *striking “species.” and inserting “species, or that the*  
 8                *species is not indigenous to the United States or wa-*  
 9                *ters with respect to which the United States exercises*  
 10                *sovereign rights or jurisdiction.”;*

11                *(2) in paragraph (2)—*

12                        *(A) by striking “(2) The Secretary” and in-*  
 13                        *serting the following:*

14                        *“(2) RECOVERY TEAMS.—*

15                                *“(A) IN GENERAL.—The Secretary”; and*

16                                *(B) by adding at the end the following:*

17                                *“(B) APPOINTMENT OF A TEAM.—Not later*  
 18                                *than 120 days after the date of publication*  
 19                                *under subsection (b) of a final determination*  
 20                                *that a species is an endangered species or a*  
 21                                *threatened species, the Secretary, in cooperation*  
 22                                *with any State affected by the determination,*  
 23                                *shall—*

24                                        *“(i) appoint a recovery team to develop*  
 25                                        *a recovery plan for the species; or*



1           “(ii) after public notice and oppor-  
 2           tunity for comment, determine that a recov-  
 3           ery team shall not be appointed.

4           “(C) NO RECOVERY TEAM APPOINTED.—If a  
 5           recovery team is not appointed by the Secretary,  
 6           the Secretary shall perform all duties of the re-  
 7           covery team required under this subsection.

8           “(D) COMPOSITION OF RECOVERY TEAM.—  
 9           Each recovery team shall include the Secretary  
 10          and at least 1 representative from each affected  
 11          State that chooses to participate, and shall have  
 12          balanced representation among constituencies  
 13          with an interest in the species and its recovery  
 14          and with an interest in the economic or social  
 15          impacts of recovery, including Federal agencies,  
 16          tribal governments, local governments, academic  
 17          institutions, private individuals (including land-  
 18          owners), conservation and other organizations,  
 19          and commercial enterprises. When a recovery  
 20          plan or critical habitat designation will have a  
 21          significant impact on private land, the Secretary  
 22          shall invite at least one landowner or one rep-  
 23          resentative of an organization representing land-  
 24          owners to serve on the recovery team. The recov-  
 25          ery team members shall be selected for their

1       *knowledge of the species or for their expertise in*  
 2       *the elements of the recovery plan or its imple-*  
 3       *mentation.”;*

4       *(3) in the second sentence of paragraph (4), by*  
 5       *inserting before the period at the end the following:*  
 6       *“and shall, when the Secretary publishes a final re-*  
 7       *covery plan, respond to comments received during the*  
 8       *comment period”; and*

9       *(4) by adding at the end the following:*

10       *“(6) SCHEDULE.—For each species determined*  
 11       *to be an endangered species or a threatened species*  
 12       *after the date of enactment of this paragraph for*  
 13       *which the Secretary is required to develop a recovery*  
 14       *plan under paragraph (1), the Secretary shall*  
 15       *publish—*

16               *“(A) not later than 18 months after the date*  
 17               *of publication under subsection (b) of the final*  
 18               *regulation containing the listing determination,*  
 19               *a draft recovery plan; and*

20               *“(B) not later than 30 months after the date*  
 21               *of publication under subsection (b) of the final*  
 22               *regulation containing the listing determination,*  
 23               *a final recovery plan.”.*

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

2       (a) *IN GENERAL.*—Section 4(f) of the *Endangered Spe-*  
 3 *cies Act of 1973 (16 U.S.C. 1533(f)) (as amended by section*  
 4 *1(4)) is amended by adding at the end the following:*

5               “(7) *CRITICAL HABITAT DESIGNATIONS.*—

6                       “(A) *IN GENERAL.*—The Secretary, to the  
 7 *extent prudent, shall designate any habitat that*  
 8 *is considered to be critical habitat of an endan-*  
 9 *gered species or a threatened species that is in-*  
 10 *digenous to the United States or waters with re-*  
 11 *spect to which the United States exercises sov-*  
 12 *ereign rights or jurisdiction.*

13                       “(i) *DESIGNATION.*—

14                               “(I) *PROPOSAL.*—As part of a  
 15 *draft recovery plan, the Secretary,*  
 16 *after consultation and in cooperation*  
 17 *with the recovery team, shall designate*  
 18 *proposed critical habitat for the spe-*  
 19 *cies.*

20                               “(II) *FINAL.*—As part of a final  
 21 *recovery plan, the Secretary, after con-*  
 22 *sultation and in cooperation with the*  
 23 *recovery team, shall designate critical*  
 24 *habitat for the species.*

25                               “(ii) *OTHER DESIGNATIONS.*—If the  
 26 *Secretary determines that a recovery plan*

1           *will not promote the conservation of an en-*  
2           *dangered species or a threatened species, the*  
3           *Secretary shall publish in the Federal Reg-*  
4           *ister, in accordance with paragraphs (4),*  
5           *(5), and (6) of subsection (b), a regulation*  
6           *designating critical habitat for the species*  
7           *not later than three years after making a*  
8           *determination that the species is an endan-*  
9           *gered species or a threatened species.*

10           “(iii) *ADDITIONAL AUTHORITY.—The*  
11           *Secretary shall, after providing public no-*  
12           *tice and opportunity for comment, designate*  
13           *critical habitat for an endangered species or*  
14           *a threatened species concurrently with the*  
15           *final regulation implementing the deter-*  
16           *mination that the species is an endangered*  
17           *species or a threatened species if the Sec-*  
18           *retary determines that designation of such*  
19           *habitat at the time of listing is essential to*  
20           *avoid the imminent extinction of the spe-*  
21           *cies. Such designation, in addition to re-*  
22           *sponses to comments received by the Sec-*  
23           *retary, shall be published in the Federal*  
24           *Register and shall be considered to be a*  
25           *final agency action for the purposes of judi-*

1           cial review. The recovery team and the Sec-  
2           retary shall review and revise, as appro-  
3           priate, the designation during the develop-  
4           ment of the recovery plan for the species.

5           “(B) *FACTORS TO BE CONSIDERED.*—The  
6           designation of critical habitat shall be made on  
7           the basis of the best scientific and commercial  
8           data available and after taking into consider-  
9           ation the economic impact, impacts to military  
10          training and operations, and any other relevant  
11          impact, of specifying any particular area as  
12          critical habitat. The Secretary shall describe in  
13          the draft and final recovery plans (or in the pro-  
14          posed and final regulations) the economic im-  
15          pacts and other relevant impacts considered  
16          under this paragraph in any designation of crit-  
17          ical habitat.

18          “(C) *EXCLUSIONS.*—The Secretary may ex-  
19          clude any area from critical habitat for a species  
20          if the Secretary determines that the benefits of  
21          the exclusion outweigh the benefits of designating  
22          the area as part of the critical habitat, unless the  
23          Secretary determines, based on the best scientific  
24          and commercial data available, that the failure

1           to designate the area as critical habitat will re-  
2           sult in the extinction of the species.

3           “(D) *ADDITIONAL INFORMATION.*—At the  
4           time that the Secretary determines that a species  
5           is an endangered species or a threatened species,  
6           the Secretary shall—

7                   “(i) publish a description of additional  
8                   scientific and commercial data that would  
9                   assist in the preparation of a recovery plan  
10                  and designation of critical habitat;

11                  “(ii) invite any person to submit data  
12                  to the Secretary; and

13                  “(iii) describe the steps that the recov-  
14                  ery team and the Secretary will take to ac-  
15                  quire additional data.

16           “(E) *CIVIL ACTIONS.*—In accordance with  
17           section 11(g), any person may bring a civil ac-  
18           tion against the Secretary regarding the designa-  
19           tion of critical habitat for a species.”.

20       (b) *PREVIOUSLY LISTED SPECIES.*—

21           (1) *RECOVERY PLANS.*—

22                   (A) *DEVELOPMENT OF RECOVERY PLANS.*—  
23                   In the case of species included on the lists pub-  
24                   lished under section 4(c) of the Endangered Spe-  
25                   cies Act of 1973 (16 U.S.C. 1533(c)) before the

1        *date of enactment of this Act, and for which no*  
2        *final recovery plan was developed before the date*  
3        *of enactment of this Act, the Secretary of the In-*  
4        *terior or the Secretary of Commerce, as appro-*  
5        *priate (referred to in this subsection as “the Sec-*  
6        *retary”), shall develop a final recovery plan, in*  
7        *accordance with the requirements of section 4 of*  
8        *the Endangered Species Act of 1973 (16 U.S.C.*  
9        *1533), for not less than one-half of the species not*  
10       *later than 36 months after the date of enactment*  
11       *of this Act and for all species not later than 60*  
12       *months after such date.*

13                *(B) REVISION OF RECOVERY PLANS.—In the*  
14        *case of species included on the lists published*  
15        *under section 4(c) of the Endangered Species Act*  
16        *of 1973 (16 U.S.C. 1533(c)) before the date of en-*  
17        *actment of this Act, the Secretary shall publish,*  
18        *not later than 270 days after the date of enact-*  
19        *ment of this Act, a list of the species for which*  
20        *the Secretary will revise recovery plans developed*  
21        *prior to the date of enactment of this Act, and*  
22        *a schedule established under subparagraph (D)*  
23        *for revising the plans.*

24                *(C) PRIORITY RANKING SYSTEM.—*

1                   (i) *IN GENERAL.*—Not later than 270  
2                   days after the date of enactment of this Act,  
3                   the Secretary of the Interior and the Sec-  
4                   retary of Commerce each shall, after pro-  
5                   viding notice and an opportunity for public  
6                   comment, develop and implement a priority  
7                   ranking system for the development and re-  
8                   vision of recovery plans to carry out section  
9                   4(f) of the Endangered Species Act of 1973  
10                  (16 U.S.C. 1533(f)) and this subsection in  
11                  the most efficient and effective manner  
12                  practicable.

13                  (ii) *CRITERIA FOR PRIORITIES.*—In  
14                  developing the priority ranking system, the  
15                  Secretary shall be consistent with the cri-  
16                  teria set forth in section 4(f)(1)(A) of the  
17                  Endangered Species Act of 1973 (16 U.S.C.  
18                  1533(f)(1)(A)) and shall take into account  
19                  the scientifically based biological needs of  
20                  the species.

21                  (D) *SCHEDULE.*—In establishing the sched-  
22                  ule for revising recovery plans for species identi-  
23                  fied on the list established under subparagraph  
24                  (B), the Secretary shall require that recovery  
25                  plans for—



1                   (i)  $\frac{1}{3}$  of the species on the list be com-  
 2                   pleted not later than 4 years after the date  
 3                   of enactment of this Act;

4                   (ii)  $\frac{2}{3}$  of the species on the list be com-  
 5                   pleted not later than 7 years after the date  
 6                   of enactment of this Act; and

7                   (iii) all species on the list be completed  
 8                   not later than 10 years after the date of en-  
 9                   actment of this Act.

10                  (E) CIVIL ACTIONS.—No person may bring  
 11                  a civil action, under title 5, United States Code,  
 12                  or under the Endangered Species Act of 1973 (16  
 13                  U.S.C. 1531 et seq.), alleging failure to develop  
 14                  a recovery plan or to designate critical habitat  
 15                  for—

16                   (i) any species included on the lists  
 17                   published under section 4(c) of the Endan-  
 18                   gered Species Act of 1973 (16 U.S.C.  
 19                   1533(c)) before the date that is 270 days  
 20                   after the date of enactment of this Act;

21                   (ii) any species for which a recovery  
 22                   plan is required to be developed under sub-  
 23                   paragraph (A) before the date that is 60  
 24                   months after the date of enactment of this  
 25                   Act; or

1                   (iii) any species on the list established  
 2                   under subparagraph (B) before the date on  
 3                   which the recovery plan and designation are  
 4                   required to be completed in accordance with  
 5                   the schedule established under subparagraph  
 6                   (D).

7                   (2) *CRITICAL HABITAT DESIGNATIONS.*—

8                   (A) *CRITICAL HABITAT DESIGNATED.*—*The*  
 9                   *Secretary shall review, and revise as necessary,*  
 10                  *any designation of critical habitat for a species*  
 11                  *described in paragraph (1)(A) based on, and as*  
 12                  *part of, the final recovery plan for the species,*  
 13                  *under section 4(f)(7) of the Endangered Species*  
 14                  *Act of 1973 (16 U.S.C. 1533(f)(7)) and in ac-*  
 15                  *cordance with the schedule established under*  
 16                  *paragraph (1)(D). Each area designated as crit-*  
 17                  *ical habitat before the date of enactment of this*  
 18                  *Act shall continue to be considered so designated,*  
 19                  *until the designation is revised in accordance*  
 20                  *with this subsection, at which point the regula-*  
 21                  *tion designating critical habitat that was pro-*  
 22                  *mulgated before the date of enactment of this Act*  
 23                  *shall be withdrawn.*

24                  (B) *CRITICAL HABITAT NOT DESIGNATED.*—

1           (i) *IN GENERAL.*—*Except as provided*  
2           *in clause (ii), if the Secretary has not des-*  
3           *ignated critical habitat for a species de-*  
4           *scribed in paragraph (1)(A) because the*  
5           *Secretary determined that designation was*  
6           *not prudent or that critical habitat was not*  
7           *determinable, or for any other reason, the*  
8           *Secretary shall designate critical habitat for*  
9           *the species as part of the development or re-*  
10          *vision of the recovery plan for the species in*  
11          *accordance with section 4(f)(7) of the En-*  
12          *dangered Species Act of 1973 (16 U.S.C.*  
13          *1533(f)(7)), and in accordance with the*  
14          *schedule established under paragraph*  
15          *(1)(D).*

16          (ii) *DESIGNATION REQUIRED BY*  
17          *COURT.*—*Clause (i) shall not apply in a*  
18          *case in which a court has issued an order*  
19          *prior to the date of enactment of this Act re-*  
20          *manding to the Secretary a decision, or*  
21          *mandating a schedule for the Secretary to*  
22          *make a decision, or a case in which a court*  
23          *issues an order in an action for which a*  
24          *complaint was filed before July 1, 1999, re-*  
25          *garding the designation of critical habitat,*

1           *although such designations are subject to re-*  
 2           *visions required under subparagraph (A).*  
 3           *Nothing in this clause affects the right of*  
 4           *any party to appeal a court order relating*  
 5           *to a designation of critical habitat.*

6           (c) *CONFORMING AMENDMENTS.*—

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

9           (A) *in clause (i), by striking “, at the time*  
 10           *it is listed in accordance with the provisions of*  
 11           *section 4 of this Act,”; and*

12           (B) *in clause (ii), by striking “at the time*  
 13           *it is listed in accordance with the provisions of*  
 14           *section 4 of this Act”.*

15           (2) *Section 4 of the Endangered Species Act of*  
 16           *1973 (16 U.S.C. 1533) is amended—*

17           (A) *in subsection (a), by striking paragraph*  
 18           (3);

19           (B) *in subsection (b)—*

20           (i) *by striking paragraph (2);*

21           (ii) *in paragraph (3), by striking sub-*  
 22           *paragraph (D);*

23           (iii) *in paragraph (5), by striking “,*  
 24           *designation, or revision referred to in sub-*

section (a)(1) or (3),” and inserting “referred to in subsection (a)(1),”;

(iv) in paragraph (6)—

(I) by striking “(6)(A)” and all that follows through the end of subparagraph (A) and inserting the following:

“(6) *FINAL REGULATIONS.*—

“(A) *IN GENERAL.*—Within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register—

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

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

“(iii) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which the withdrawal is based.”;

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

1 (III) in subparagraph (B)(iii), by  
 2 striking “or revision concerned, a find-  
 3 ing that the revision should not be  
 4 made,”; and

5 (IV) by striking subparagraph  
 6 (C); and

7 (v) by redesignating paragraph (8) as  
 8 paragraph (2) and moving that paragraph  
 9 to appear after paragraph (1); and  
 10 (C) in subsection (c)(1)—

11 (i) in the second sentence, by inserting  
 12 “designated” before “critical habitat”; and

13 (ii) in the third sentence, by striking  
 14 “determinations, designations, and revi-  
 15 sions” and inserting “determinations”.

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

19 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated to carry out  
 21 this Act, the amendments made by this Act, and section  
 22 4(f) of the Endangered Species Act of 1973 (16 U.S.C.  
 23 1533(f))—

24 (1) to the Secretary of the Interior—

25 (A) \$42,000,000 for fiscal year 2000;

- 1                    *(B) \$46,000,000 for fiscal year 2001;*  
2                    *(C) \$50,000,000 for fiscal year 2002;*  
3                    *(D) \$55,000,000 for fiscal year 2003; and*  
4                    *(E) \$60,000,000 for fiscal year 2004; and*  
5                    *(2) to the Secretary of Commerce, \$30,000,000*  
6                    *for each of fiscal years 2000 through 2004.*