

to be based upon the “best scientific and commercial data available” and is to include the “primary constituent elements” (PCEs) for the species. PCEs are the elements the species needs for breeding, feeding and sheltering. Final critical habitat designations are to be published with legal descriptions so private landowners would know whether their private property or water was within or outside designated boundaries. Critical habitat designations are also made with consideration of the economic impacts. Under the ESA, although the FWS cannot consider the economic impacts of listing a species, all other economic impacts are to be considered when designating critical habitat, and if the economic impacts in an area are too great, the area could be excluded as critical habitat as long as the exclusion did not cause extinction of the species.

With regard to the critical habitat designation itself, critical habitat determinations are made in two stages. First, the FWS considers the currently occupied habitat and determines if that habitat (1) contains the PCEs for the species and (2) is sufficient for protection of the species. Second, the FWS looks at the unoccupied habitat for the species and makes the same determinations, i.e., (1) whether areas of unoccupied habitat contain the necessary PCEs and (2) if including this additional land or water as critical habitat was necessary for protection of the species. The FWS then considers whether the economic costs of including some of the areas are so high that the areas should be excluded from the critical habitat designation. In simplest terms, FWS would weigh or balance the benefits of designation of certain areas of critical habitat against the regulatory burdens and economic costs of designation and could exclude discreet areas from a critical habitat designation so long as exclusion did not cause species extinction. This was called the “exclusion analysis.”

Starting with a new 2012 rule and extending to the 2015 rules and policy, those considerations have all changed, and in fact, FWS has admitted that the new rules will result in more land and water being included in critical habitat designations.

The first major change is the inclusion of “the principals of conservation biology” as part of the “best scientific and commercial data available.” Conservation biology was not created until the 1980s and has been described by some scientists as “agenda-driven” or “goal-oriented” biology.

Second, the new Obama policy has changed regarding a listing species “throughout a significant portion of its range.” Now, rather than listing species within the range where the problem lies, all species throughout the entire range will be listed as threatened or endangered.

Third, based upon the principals of conservation biology, including indirect or circumstantial information, critical habitat designations will be greatly expanded. Under the new regulations, FWS will initially consider designation of both occupied and unoccupied habitat, including habitat with potential PCEs. In other words, not only is FWS considering habitat that is or may be used by the species, FWS will consider habitat that may develop PCBs sometime in the future. There is no time limit on when such future development of PCEs will occur, or what types of events have to occur so that the habitat will develop PCEs. FWS will then look outside occupied and unoccupied habitat to decide if the habitat will develop PCEs in the future and should be designated as critical habitat now. FWS has determined that critical habitat can include temporary or periodic habitat, ephemeral habitat, potential habitat and migratory habitat, even if that habitat is currently unusable by the species.

Fourth, FWS has also determined that it will no longer publish the text or legal descriptions or GIS coordinates for critical habitat. Rather it will only publish maps of the critical habitat designation. Given the small size of the Federal Register, I do not think this will adequately notify landowners whether their private property is included or excluded from a critical habitat designation.

Fifth, FWS has significantly limited what economic impacts are considered as part of the critical habitat designation. According to a Tenth Circuit Court of Appeals decision, although the economic impacts are not to be considered as part of the listing process, once a species was listed, if FWS could not determine whether the economic impact came from listing or critical habitat, the cost should be included in the economic analysis. In other words, only those costs that were solely based on listing were excluded from the economic analysis. In contrast, the Ninth Circuit Court took the opposite view and determined that only economic costs that were solely attributable to critical habitat designations were to be included. Rather than requesting the U.S. Supreme Court make a consistent ruling among the courts, FWS simply recognized this circuit split for almost 15 years. However, on Aug. 28, 2013, FWS issued a final rule that determined that the Ninth Circuit Court was “correct” and regulatorily determined that only economic costs attributable solely to the critical habitat designation would be analyzed. This rule substantially reduces the determination of the cost of critical habitat designation because FWS can claim that almost all costs are based on the listing of the species because if not for the listing, there would be no need for critical habitat.

Sixth, FWS has determined that while completing the economic analysis is mandatory, the consideration of whether habitat should be excluded based on economic considerations is discretionary. In other words, under the new policy, FWS is no longer required to consider whether areas should be excluded from critical habitat designation based upon economic costs and burdens.

The problem with these new rules is what it means if private property or federal lands are designated as critical habitat or the designated habitat only has the potential to develop PCEs. Even if the species is not present in the designated critical habitat, a “take” of a species can occur through “adverse modification of critical habitat.” For private land, that may include stopping stream diversions because the water is needed in downstream critical habitat for a fish species or that haying practices, such as cutting of invasive species to protect hay fields, are stopped because it will prevent the area from developing PCEs in the future that may support a species. It could include stopping someone from putting on fertilizer or doing other crop management on a farm field because of a concern with runoff into downstream designated habitat. Designation of an area as critical habitat—even if that area does not contain PCEs now—will absolutely require more federal permitting, i.e. Section 7 consultation, for things like crop plans or conservation plans or anything else requiring a federal permit. In fact, one of the new regulations issued by Obama concludes that “adverse modification of critical habitat” can include “alteration of the quantity or quality” of habitat that precludes or “significantly delays” the capacity of the habitat to develop PCEs over time.

While the agriculture community raised a huge alarm over the waters of the U.S., FWS was quietly implementing these new rules, in a piecemeal manner, without a lot of fanfare. Honestly, I think these new habitat rules will have as great or greater impact on the

private lands and federal land permits as does the Ditch Rule, and I would hope that the outcry from the agriculture community, private property advocates, and our Congressional delegations would be as great.

ADDITIONAL STATEMENTS

TRIBUTE TO JENNIFER WAITES

● Mr. DAINES. Mr. President, I wish to recognize Jennifer Waites, a 911 emergency dispatcher from Helena, MT, who was named the 2016 911 Dispatcher of the Year by the Montana Department of Public Health and Human Services. Waites has been with Helena’s 911 center for the past 7 years, working the 3 a.m. to 11 p.m. shift as the “first, first responder” for the medical emergencies in Helena.

Many refer to Waites as a “silent hero,” going about her work day-in and day-out performing a wide variety of tasks that are largely completed under the radar. Whether it is responding to multiple calls at once or relaying information to responding units as efficiently as possible, she knows that serving the people who call in is her top priority and is what motivates her to carry out all tasks with timeliness and care.

Waites is humble enough to admit that her job could not be made possible without the joint efforts from the rest of her team. Waites said, “Just knowing that you’re here and you can make someone else’s day a little bit better and get the help that they need is really beneficial for everyone involved.”

It is my honor to recognize Jennifer Waites today. And I thank you on behalf of Montana for your exceptional service and responsibility you have undertaken to the people in our great State.●

65TH ANNIVERSARY OF BUENO FOODS

● Mr. HEINRICH. Mr. President, today I wish to recognize the 65th anniversary of Bueno Foods, a New Mexico family-owned business and one of the Southwest’s premier producers of New Mexican foods, including our State’s iconic chile from Hatch, NM, and the surrounding Rio Grande Valley.

In 1946, when several brothers from the Baca family returned home from serving in World War II, they scraped together enough money to start a small grocery business. Although the business started off successfully, the Bacas soon learned how difficult it was for a small community market to compete with larger grocery store chains, so they decided to specialize, manufacturing corn and flour tortillas and traditional holiday favorites like tamales and posole. The Baca brothers also noticed that more households owned freezers, and they asked themselves around the family dinner table: Why don’t we take our heritage and preserve it?

With this idea, Bueno Foods was born in 1951. Today Bueno Foods manufactures a full line of more than 150 authentic New Mexican and Mexican food products and currently employs more than 250 employees.

I commend Buenos Foods for taking an active role in the community and contributing to organizations that serve some of our most vulnerable New Mexicans, including impoverished children, the homeless, and the hungry.

Bueno Foods is a strong partner with New Mexico's renowned chile pepper farmers. The chile industry in New Mexico, including both growers and processors, is an integral part of our agricultural and cultural heritage and New Mexico-grown chile peppers remain the most sought after. New Mexico is a leading producer of American-grown chile peppers, and I am pleased that our State's chile farmers and Bueno Foods have come together to protect authentic New Mexico-grown chile.

I congratulate Bueno Foods on 65 years of success as they work to keep our State's chile industry strong and produce the quality foods that can only be from New Mexico.●

300TH ANNIVERSARY OF STRATHAM, NEW HAMPSHIRE

● Mrs. SHAHEEN. Mr. President, the town of Stratham in New Hampshire is celebrating its 300th anniversary this year. Today Stratham is a classic New England community, proud of its family-friendly quality of life and looking forward to its annual town fair in June. The culmination of this year's fair will be the 300th anniversary dinner dance at Stratham Hill Park on June 25, celebrating the establishment of the township of Stratham in 1716.

Of course, the human history of what is now Stratham, located between the Great Bay and Exeter in southeastern New Hampshire, goes back many centuries prior to the arrival of the first English explorers and settlers. The land was originally inhabited by the Pennacook Tribe, Algonquian-speaking Native Americans, who were among the first to encounter European colonists in what is today New England.

In 1640, an Englishman named Thomas Wiggin established the first settlement in what was then called Squamscott Patent, and through the remainder of the 1600s, people continued to arrive in the settlement. By the early 1700s, residents petitioned George Vaughn, Lieutenant Governor of the Province of New Hampshire, to incorporate a new town. On March 20, 1716, he granted their request and ordered that "Squamscott Patent land be a township by the name of Stratham, and that there be a meeting house built for public worship of God with all convenient speed." The town was given authority under King George I to elect selectmen, hold town meetings, collect taxes, build a meeting house and hire a "learned and orthodox minister." At

the initial gathering of town leaders, they appointed a committee of five to take care of building a meeting house, which would be used both for church services and meetings of the selectmen. Stratham Community Church now stands on the site of that original meeting house.

As a resident of the Seacoast, I regularly visit Stratham. It is hometown and headquarters to corporate giants Lindt chocolate and Timberland footwear, whose products include the Stratham Heights line of women's high-fashion boots. The town also takes pride in its smaller stores, cafes, and restaurants, places where people know your name and where the small businessowners are right there every day. But Stratham's greatest assets are its citizens, who are unfailingly gracious and friendly.

Of course, the big event in Stratham is its annual town fair, one of the oldest in the Granite State. The fair got its start in 1966, when Stratham held a giant party to celebrate its 250th anniversary. A half century later, that party has evolved into a sprawling fair that draws visitors from across southeastern New Hampshire, nearly tripling Stratham's usual population of 7,250. This year, as I said, the fair's gala dinner dance at Stratham Hill Park will be the culmination of the town's 300th anniversary celebrations.

Stratham's motto is "inspired by the past, committed to the future." The town does indeed have a long and rich history, and it has entered the 21st century as a forward-thinking community with a vibrant economy. Even as Stratham grows, it has preserved its small town charm, hospitality, and lifestyle.

I congratulate all the folks in Stratham on this landmark 300th anniversary. I wish everyone a wonderful celebration in June.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Pate, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The messages received today are printed at the end of the Senate proceedings.)

PRESIDENTIAL MESSAGE

REPORT ON THE CONTINUATION OF THE NATIONAL EMERGENCY THAT WAS ORIGINALLY DECLARED IN EXECUTIVE ORDER 13303 OF MAY 22, 2003, WITH RESPECT TO THE STABILIZATION OF IRAQ—PM 49

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, within 90 days prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent to the *Federal Register* for publication the enclosed notice stating that the national emergency with respect to the stabilization of Iraq that was declared in Executive Order 13303 of May 22, 2003, is to continue in effect beyond May 22, 2016.

Obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. Accordingly, I have determined that it is necessary to continue the national emergency with respect to the stabilization of Iraq.

BARACK OBAMA,
THE WHITE HOUSE, May 18, 2016.

MESSAGE FROM THE HOUSE

ENROLLED BILLS SIGNED

At 12:40 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 1492. An act to direct the Administrator of General Services, on behalf of the Architect of the United States, to convey certain Federal property located in the State of Alaska to the Municipality of Anchorage, Alaska.

S. 2143. An act to provide for the authority for the successors and assigns of the Starr-Camargo Bridge Company to maintain and operate a toll bridge across the Rio Grande near Rio Grande City, Texas, and for other purposes.

H.R. 4923. An act to establish a process for the submission and consideration of petitions for temporary duty suspensions and reductions, and for other purposes.

H.R. 4957. An act to designate the Federal building located at 99 New York Avenue, N.E., in the District of Columbia as the "Ariel Rios Federal Building".