



Highlights of [GAO-08-688T](#), a testimony before the Committee on Natural Resources, House of Representatives

Why GAO Did This Study

The Department of the Interior's (Interior) U.S. Fish and Wildlife Service (Service) is generally required to use the best available scientific information when making key decisions under the Endangered Species Act (ESA). Controversy has surrounded whether former Deputy Assistant Secretary Julie MacDonald may have inappropriately influenced ESA decisions by basing decisions on political factors rather than scientific data. Interior directed the Service to review ESA decisions to determine which decisions may have been unduly influenced.

ESA actions include, among others, 90-day petition findings, 12-month listing or delisting findings, and recovery planning. The Service distributed informal guidance in May 2005 on the processing of 90-day petitions. Recovery plans generally must include recovery criteria that, when met, would result in the species being delisted.

GAO examined three separate issues: (1) what types of decisions, if any, were excluded from the Service's review of decisions that may have been inappropriately influenced; (2) to what extent the Service's May 2005 informal guidance affected 90-day petition findings; and (3) to what extent the Service has, before delisting species, met recovery criteria. GAO interviewed Service staff, surveyed Service biologists, and reviewed delisting rules and recovery plans. Interior did not provide comments in time for them to be included in this testimony.

To view the full product, including the scope and methodology, click on [GAO-08-688T](#). For more information, contact Robin M. Nazzaro at (202) 512-3841 or nazzaror@gao.gov.

U.S. FISH AND WILDLIFE SERVICE

Endangered Species Act Decision Making

What GAO Found

Several types of decisions were excluded from the Service's review of decisions that may have been inappropriately influenced. Using the following selection criteria, the Service identified eight ESA decisions for potential revision: (1) whether Ms. MacDonald influenced the decision directly, (2) was the scientific basis of the decision compromised, and (3) did the decision significantly change and result in a potentially negative impact on the species. The Service excluded (1) decisions made by Interior officials other than Ms. MacDonald, (2) policy decisions that limited the application of science, and (3) decisions that were changed but not significantly or to the point of negative impact on the species.

The Service's May 2005 informal guidance had no substantive effect on 90-day petition findings. In May 2005, Service headquarters distributed a guidance document via e-mail to endangered-species biologists that could have been interpreted as instructing them to use additional information collected to evaluate a 90-day petition only to refute statements made therein. GAO's survey of 90-day petition findings issued by the Service from 2005 through 2007 found that biologists used additional information collected to evaluate petitions to both support and refute claims made in the petitions, as applicable, including during the 18-month period when the May 2005 informal guidance was being used. However, GAO found that the Service faces various other challenges in processing petitions, such as making decisions within 90 days and adjusting to recent court decisions. None of the 90-day petition findings issued from 2005 through 2007 were issued within the desired 90-day time frame. During these years, the median processing time was 900 days, or about 2.5 years, with a range of 100 days to 5,545 days (over 15 years). Additionally, the Service faces several challenges in responding to court decisions issued since 2004. For example, the Service has not yet developed new official guidance on how to process 90-day petitions after the courts invalidated a portion of the prior guidance.

Finally, of the eight species delisted because of recovery from 2000 through 2007, the Service determined that recovery criteria were completely met for five species and partially met for the remaining three species because some recovery criteria were outdated or otherwise not feasible to achieve. When the delistings were first proposed, however, only two of the eight species had completely met all their respective recovery criteria. Although the ESA does not explicitly require the Service to follow recovery plans when delisting species, courts have held that the Service must address the ESA's listing/delisting threat factors to the maximum extent practicable when developing recovery criteria. In 2006, GAO reported that the Service's recovery plans generally did not contain criteria specifying when a species could be recovered and removed from the endangered species list. Earlier this year, in response to GAO's recommendation, the Service issued a directive requiring all new and revised recovery plans to include criteria addressing each of the ESA's listing/delisting threat factors.