



# Listing a Species as Threatened or Endangered

## *Section 4 of the Endangered Species Act*

The Endangered Species Act of 1973 is one of the most far-reaching wildlife conservation laws ever enacted by any nation. Congress, on behalf of the American people, passed the ESA to counteract the alarming rate of extinctions facing many fish, wildlife and plant species. The purpose of the ESA is to protect endangered and threatened species and the ecosystems on which they depend, and to take steps to recover these species as key components of America's heritage. To implement the ESA, we work in cooperation with the National Marine Fisheries Service, other Federal, State, and local agencies, non-governmental organizations, and you.

Before a plant or animal species can receive the protection provided by the ESA, it must first be added to the Federal lists of threatened and endangered wildlife and plants. The List of Endangered and Threatened Wildlife, 50 CFR 17.11, and the List of Endangered and Threatened Plants, 50 CFR 17.12, contains the names of all species of mammals, birds, reptiles, amphibians, fishes, insects, plants, and other creatures that have been determined by us and the National Marine Fisheries Service (for most marine life) to be in the greatest need of Federal protection.

### **What does "endangered" mean?**

A species is listed under one of two categories, endangered or threatened, depending on its status and the degree of threat it faces. An "endangered" species is one that is in danger of extinction throughout all or a significant portion of its range. A "threatened" species is one that is likely to become endangered in the foreseeable future. To help conserve genetic diversity, the ESA defines "species" broadly to include subspecies, and (for vertebrates) distinct populations.

### **What is the criterion for deciding whether to add a species to the list?**

A species is added to the list when it is determined to be endangered or threatened because of any of the following factors:

- the present or threatened destruction, modification, or curtailment of the species' habitat or range;
- overutilization for commercial, recreational, scientific, or educational purposes;
- disease or predation;
- the inadequacy of existing regulatory mechanisms; or
- other natural or manmade factors affecting the species' survival.

### **What steps are involved in listing a species?**

In order to list a species, we must follow a strict legal process known as a "rulemaking (or regulatory) procedure." Federal agencies follow this procedure to propose and then adopt regulations that have the effect of law and apply to all persons and agencies under U.S. jurisdiction.

As a first step in assessing the status of a species, we publish "notices of review" that identify U.S. species that we believe meet the definition of threatened or endangered; we refer to them as "candidates" for listing. Through notices of review, we seek biological information that will complete the status reviews for these candidate species. These and all other notices throughout the rulemaking process are published in the *Federal Register*, a daily Federal Government publication. Our latest Candidate Notice of Review is also available on our web site.

### **How do we decide which species to list?**

Because of the large number of candidates and the time required to list a species, we developed a priority system designed to direct our efforts toward the plants and animals in the greatest need. In our priority system, the degree or magnitude



*The endangered tan riffleshell is one of many species on the U.S. List of Endangered and Threatened Wildlife and Plants. To see what species are currently on the list, the best place to look is on our web site at <http://endangered.fws.gov>. USFWS photo*

of threat is the highest criterion, followed by the immediacy of the threat and the taxonomic distinctiveness of the species (monotypic genus, then species, and lastly subspecies, variety, or vertebrate population). The ESA gives no preference to popular species or so-called "higher life forms."

In some cases, we initiate conservation activities for various candidate species before listing. Candidate Conservation Agreements are partnerships involving the Fish & Wildlife Service and States or territories, Federal agencies, private agencies, and you or your neighbor to reduce or remove the threats to species on the brink of listing. This "preventive" approach is taken for species that can benefit from early recovery efforts, with the goal of avoiding the need to formally list the species at a later date.

## How can you comment on a listing?

Once a species is chosen for listing, we or the National Marine Fisheries Service (for most marine species) publish a proposed rule in the *Federal Register*. We sometimes publish multi-species proposals when several candidate species share a common ecosystem. At this stage, any interested person can comment and provide additional information on the proposal (generally during a 60-day comment period), and submit statements at any public hearings that may be held.

To ensure that everyone is aware of a proposal, we issue news releases, conduct special mailings, and directly inform the scientific community and other Federal and State agencies. In addition, we publish a summary of any proposal as a legal notice in newspapers serving each area in which the species is believed to occur so that you can hear of our proposal. We may hold public hearings in cases of high public interest or if requested to do so within 45 days of a proposal.

## What do you do with the comments and biological information?

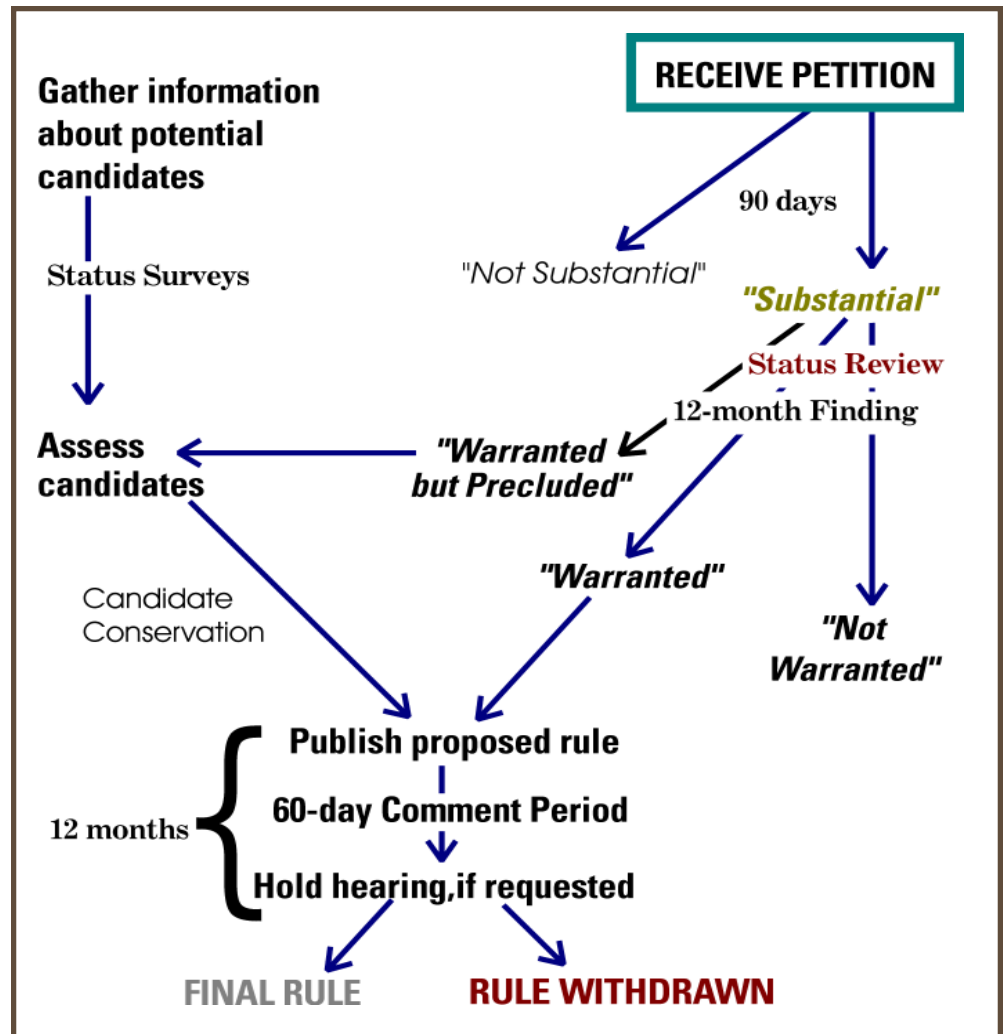
Information received in public comments and testimony is analyzed and considered in our final rulemaking process. Within one year of a listing proposal, one of three possible courses of action is taken:

- 1) a final listing rule is published (as proposed or revised) because the best available biological data supports it;
- 2) the proposal is withdrawn because the biological information on hand does not support the listing; or
- 3) the proposal is extended (but only for an additional 6 months) because, at the end of one year, there is substantial disagreement within the scientific community concerning the biological appropriateness of the listing. After the extension, we must make a decision on the basis of the best scientific information available.

If approved, the final listing rule generally becomes effective 30 days after publication in the *Federal Register*. After a species is listed, we review its status at least every 5 years to determine if Federal protection is still warranted.

## Can I nominate a species for listing?

Although we usually initiate listing proposals, we also may start the listing process with a petition from anyone. However, petitions need the support of adequate biological data. Any information submitted on the biology, distribution of, or



threats to the species is taken into consideration in making our decisions.

## What are petitions for listing?

Petitions are formal requests to list a species that require published findings. We (or the National Marine Fisheries Service for most marine species) must make a finding within 90 days of receiving a petition (to the extent practicable) as to whether or not there is "substantial information" indicating that the petitioned listing *maybe* warranted. If this preliminary finding is positive, a status review is conducted. Within one year of receipt of the petition, we must make a further finding that the listing either *is* or *is not* warranted. A positive one-year finding can be incorporated into a proposed listing or, if a prompt proposal is precluded by other listing activities, the proposal may be deferred. These "warranted but precluded" proposals require subsequent one-year findings on each succeeding anniversary of the petition until either a proposal is undertaken or a "not warranted" finding is made.

## What does "listing" mean for a species?

Once we add an animal or plant to the List, all protective measures authorized by the ESA apply to the species and its habitat. Such measures include protection from adverse effects of Federal activities (through consultations under section 7 of the ESA); restrictions on taking, transporting, or selling a species; authority for us to develop and carry out recovery plans; authority to purchase important habitat; and Federal aid to State and Commonwealth wildlife agencies that have cooperative agreements with us. These efforts contribute to species survival and assist us in achieving our ultimate goals — to maintain the natural diversity of plants and animals and the ecosystems upon which they depend and to restore listed species to a level where protection is no longer required.

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