

Public Advisory: Information to Consider When Submitting a Petition under the Endangered Species Act

Under the Endangered Species Act (Act¹) anyone can submit a written petition requesting one of the following actions:

- Add a species to (“list”) or delete a species from (“delist”) the Lists of Endangered or Threatened Wildlife and Plants;
- Change the status of (“reclassify”) a species already on one of the lists from endangered to threatened or threatened to endangered; or
- Revise an existing critical habitat designation.

Once a petition is received, either the Secretary of the Interior (acting through the U.S. Fish and Wildlife Service) or the Secretary of Commerce (acting through the National Oceanic and Atmospheric Administration) will review the petition, depending on which agency has jurisdiction over the species that is the subject of the petition. Under the Act, a “species” is defined as any species or subspecies of fish, wildlife, or plant, or any “distinct population segment” (DPS) of any species of vertebrate fish or wildlife which interbreeds when mature.

Petitions to designate critical habitat (for species without existing critical habitat) or adopt special rules to provide for the conservation of a species are reviewed under the Administrative Procedure Act, and are not addressed here. See 50 C.F.R. § 424.14(d). Please note that listing a species on an emergency basis is not a petitionable action under the Act, and the question of when to list on an emergency basis is left to our discretion. See Section 4(b)(7) of the Act, at 16 U.S.C. § 1533(b)(7). For this reason, courts lack authority to review our determinations on such petitions under the Act or the Administrative Procedure Act. Therefore, we treat a petition requesting emergency listing solely as a petition to list a species under the Act. In evaluating listing petitions, however, we routinely consider whether emergency listing is appropriate.

Petition Guidelines

The regulations that apply to petitions submitted under the Act are found in Title 50 of the Code of Federal Regulations (C.F.R.); petitions to list, delist, or reclassify species are addressed in 50 C.F.R. § 424.14(b), and petitions to revise critical habitat are addressed in § 424.14(c). (The full text of the CFR is available online at <http://www.gpoaccess.gov/cfr/index.html>). The following is a summary of the minimum regulatory requirements for petitions, as well as recommendations for information that you should include to ensure that we are able to complete the most thorough and timely review of your petition possible.

Requirements for all petitions

The required elements for all petitions (50 C.F.R. § 424.14(a)) are as follows:

¹ The full text of the Endangered Species Act is available online at <http://www.fws.gov/endangered/laws-policies/index.html>.

1. The written document must be clearly identified as a petition submitted under the Act and must be dated.
2. The petition must contain the name, signature, address, telephone number, if any, and the association, institution, or business affiliation, if any, of the petitioner.

Evaluation of petitions to list, delist, or reclassify species

We evaluate whether a petition to list, delist, or reclassify species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. For this purpose, “substantial scientific or commercial information” refers to information in support of the petition’s claims such that a reasonable person would conclude that the action proposed in the petition may be warranted. Please note that we will not consider conclusions stated in the petition that are not supported by credible scientific or commercial information to be “substantial information.” In making a finding, we consider whether the petition provides the following (50 C.F.R. § 424.14(b)(2)):

1. The scientific and common name of any species involved.
2. A clear description of the administrative measure recommended (i.e., listing, delisting, or change in listing status).
3. A detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; it is most helpful if this narrative contains an analysis of the information presented.
4. Information regarding the status of the species over all or a significant portion of its range.
5. Supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps. Since the Service is required to evaluate whether *the petition* has met the statutory standard, the Service will not conduct additional research when evaluating whether a petition presents substantial information indicating listing may be warranted, beyond considering materials readily available in our files. Therefore, to ensure that we will consider any supporting documentation you reference, you should provide either electronic or hard copies of any supporting materials cited in the petition, or valid links to public websites where the cited materials can be accessed; these materials should be in English. If you do not, we may at our option contact you to obtain supporting documentation. However, if you do not provide the supporting documentation, and it is not otherwise readily available in our files, we will be unable to consider this information in making our finding. In addition, we request that you provide literature citations that are specific enough to allow us to easily locate within the documentation the particular information cited in the petition, including page numbers or chapters, as applicable.

When we review a petition at the 90-day stage, in addition to evaluating the information in the petition, we also evaluate the information we have readily available in our files.

Recommended additional information for petitions to list, delist, or reclassify a species

The following information is relevant to our determination as to whether the petition provides substantial information that indicates the petitioned action may be warranted. Therefore, although it is not mandatory under the regulations, we strongly recommend you include the following information in your petition:

- Information on estimates of current population status, trends, sizes, and distributions, both in captivity and the wild, if available;
- Biological information on the species (including life-history traits) that is relevant to determining whether a species may be endangered or threatened;
- Identification and description of the Act's section 4(a)(1) factors that the petitioner believes are affecting the species, including where these factors are acting upon the species, the magnitude and imminence of these factors, and whether, either singly or acting in combination, these factors may cause the species to be an endangered or threatened species (i.e., place the species at risk of extinction now or in the foreseeable future);
- Information on how the petitioned species meets the definition of a species, subspecies or DPS (the DPS policy is available online at <http://www.fws.gov/endangered/laws-policies/policy-distinct-vertebrate.html>); and
- Information on regulatory protections and conservation activities initiated or currently in place that may or may not protect the species or its habitat.

Evaluation of petitions to revise critical habitat

We evaluate whether a petition to revise critical habitat presents substantial scientific information indicating that the revision may be warranted. For this purpose, "substantial scientific information" refers to information in support of the petition's claims such that a reasonable person would conclude that the action proposed in the petition may be warranted. Please note that we will not consider conclusions stated in the petition that are not supported by credible scientific information to be "substantial information." In making a finding, we consider whether the petition provides the following (50 C.F.R. §424.14(c)(2)):

1. Information indicating that areas petitioned to be added to critical habitat contain physical or biological features essential to, and that may require special management to provide for, the conservation of the species involved; or
2. Information indicating that areas currently designated as critical habitat (that you want removed) do not contain resources essential to, or do not require special management to provide for, the conservation of the species involved.

When we review a petition at the 90-day stage, in addition to evaluating the information in the petition, we also evaluate the information we have readily available in our files.

Recommended additional information for petitions to revise critical habitat

The following information is relevant to our determination as to whether the petition provides substantial information that the petitioned action may be warranted. Therefore, although it is not mandatory, we strongly recommend you include the following information in your petition:

- A description and map(s) of areas that should be added to or removed from the current designation and the benefits of designating or not designating these specific areas as critical habitat;
- A description of the physical and biological features essential for the conservation of the species and whether those features may require special management considerations or protection;
- Within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas petitioned to be added contain the physical or biological features that are essential to the conservation of the species and may require special management considerations or protection;
- Within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas petitioned to be removed do not contain features, including features that allow the area to support the species periodically, over time, that are essential to the conservation of the species, or that these features do not require special management consideration or protections;
- Outside the geographical area occupied by the species at the time it was listed, information indicating why the areas petitioned to be added or removed are or are not essential for the conservation of the species.

Adding Additional Information to a Petition

After submitting a petition, you may submit additional information in support of your petition and ask us to consider it when we make our finding. However, if we receive this information before we make our finding, we will treat the new information, along with the previously submitted information, as a new petition. We interpret the statutory timeframe to be reset to start on the date when we receive your additional information, superseding that which had begun to run on the original petition.

How the Services Will Respond to Petitions

To the maximum extent practicable, within 90 days of receiving a petition, we will make a finding as to whether the petition presents substantial scientific (or commercial, in the case of listing petitions) information indicating that the petitioned action may be warranted (referred to as a “90-day petition finding”). We will publish our finding in the **Federal Register** and notify you of our decision.

The next steps following a 90-day petition finding are outlined in Section 4(b) of the Act and in our regulations at 50 C.F.R. § 424.14 and vary depending on the type of petition involved. In general, if we deny the petition (make a “not substantial” finding), we take no further action. For petitions to list, delist, or reclassify, if the finding is positive (substantial), we then conduct a thorough review of the status of the species (see section 4(b)(3)(A) of the Act). When the status review is complete, we must then make and promptly publish one of three possible findings within 12 months after the date we received the petition (a “12-month finding”), per Section 4(b)(3)(B):

1. The petitioned action is not warranted (no further action is taken);
2. The petitioned action is warranted (in which case we are required to promptly publish a proposed regulation to implement the petitioned action; once we publish a proposed rule for a species, section 4(b)(5) and 4(b)(6) of the Act govern further procedures); or
3. The petitioned action is warranted but (a) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action is precluded by pending proposals, and (b) expeditious progress is being made to add qualified species to the lists of endangered or threatened species. We refer to this as a “warranted-but-precluded finding.”

When we make a warranted-but-precluded finding on a petition, we are to treat such a petition as one that is resubmitted on the date of such a finding. Thus, we are required to review our previous finding and publish a new 12-month finding on this “resubmitted” petition once each year until we either (i) decide the petitioned action is not warranted or (ii) propose a regulation to implement the petitioned action (e.g., a proposed rule to add the species to the List of species protected under the Act in the case of a petition to list a species). See Section 4(b)(3)(C) of the Act.