

Subactivity: Endangered Species
Program Element: Listing

		2007 Actul	2008 Enacted	2009			Change from 2008 (+/-)
				Fixed Costs & Related Changes (+/-)	Program Changes (+/-)	Budget Request	
Critical Habitat	(\$000)	12,631	9,771	+187	-19	9,939	+168
	FTE	81	53		-	53	-
Listing	(\$000)	5,193	8,207	+101	-59	8,249	+42
	FTE	42	50		-	50	-
Total, Listing	(\$000)	17,824	17,978	+288	-78	18,188	+210
	FTE	103	103	-	-	103	-

Summary of 2009 Program Changes for Listing

Request Component	(\$000)	FTE
• Travel Reduction	-\$42	-
• Contract Reduction	-36	-
TOTAL Program Changes	-\$78	-

Justification of 2009 Program Changes

The 2009 budget request for Listing and Critical Habitat is \$18,188,000 and 90 FTEs, a program change of +\$210,000 and 0 FTEs from 2008 Enacted.

Program Performance Change

No table is included as the measures are not impacted by the projected funding changes.

Program Overview

The Listing program funds the process of adding species to the list of threatened and endangered species, and evaluating petitions to list species. It also funds critical habitat petitions and designation of critical habitat. Listing activities contribute to the Department's strategic goal of Resource Protection by working to sustain biological communities on DOI managed and influenced lands and waters. Listing a species and designating critical habitat provides species with the protections of the *Endangered Species Act (ESA)*, and focuses resources and the efforts of the Service and its partners on the recovery of the species.

Listing a species as threatened or endangered provides it with protections under *ESA*. These include restrictions on taking, transporting, or selling a species; a requirement that federal agencies not fund, permit or undertake activities that would be likely to jeopardize the continued existence of the species; authorization for the Service to develop and carry out recovery plans; authority to purchase important habitat; authorization to issue permits allowing exceptions to actions otherwise prohibited under the *ESA*; and authority to provide federal aid to state wildlife agencies that have cooperative agreements with the Service. Habitat also is safeguarded through the *ESA's* section 9 prohibition on take of listed wildlife, and through the section 7 consultation process. In a section 7 consultation with other Federal agencies, the Service looks at effects of federally authorized, funded, or proposed activities on the species' ability to survive. If critical habitat has been designated for a species, the Service also considers, during consultation, whether the federal activity will likely destroy or adversely modify critical habitat.

Critical habitat is required to be designated for a species, concurrent with its listing, “to the maximum extent prudent and determinable.” If the Service finds that critical habitat is “not determinable” at the time of listing, it may extend the statutory deadline by one year. To the extent that the Service finds the designation is “not prudent,” no designation is required. Courts have held the prudency exception to be very narrow, which has led to a need to designate critical habitat for many already-listed species.

Listing a species becomes necessary when it is at risk of extinction or may become so in the foreseeable future. Under the ESA, this determination must be made solely on the basis of the best scientific and commercial data available, and must take into account conservation efforts being made by states, foreign nations, or subdivisions of these entities to protect the species. The initial step in the process is to prepare a proposed rule to list the species. This analysis may result in a determination that the species does not require protection under the ESA or in a proposed rule to list it as threatened or endangered species. Each proposed rule is published in the *Federal Register* for public review and comment. Under the ESA, after publishing a proposed rule the Service has 12-months to make a final listing determination, i.e. to either list the species as threatened or endangered, or to withdraw the proposal.

ESA DEFINITIONS

Endangered - a species is in danger of extinction throughout all or a significant portion of its range.

Threatened - a species is likely to become endangered within the foreseeable future.

The Service undertakes the listing process for species identified either as candidate species or after a successful petition from the public to list the species. The *ESA* provides that any interested person may petition to add a species to, or to remove a species from, the lists of endangered and threatened species. The Service also receives a number of petitions for amendments to critical habitat and other actions; these actions are not subject to the same strict deadline as listing petitions, but they must be acted on in a timely manner.

Upon receipt of a listing petition, the Service must respond, within 90 days when practicable, with a finding as to whether the petition provided substantial scientific or commercial information indicating that the petitioned action may be warranted. If the Service determines the petition did not provide substantial information indicating that the action may be warranted, the 90-day finding completes the petition management process. However, if the Service determines the petition provided substantial information, the Service initiates a status review and must issue a finding within 12 months of the receipt of the petition. In all cases, the Service ensures consistent and rigorous analysis of petitions by following current policies and procedures.

There are three possible outcomes of a “12-month finding” for a petition: 1) listing is not warranted, and no further action is taken; 2) listing is warranted, and a listing proposal is promptly prepared; or 3) listing is warranted but precluded by higher priority actions (this determination of “preclusion” is based on the species’ listing priority number and the listing workload), and preparation of a listing proposal is therefore delayed until higher priority actions are completed.

The Listing Program funds the development of 90-day and, if appropriate, 12-month findings on listing petitions. When the Service makes a determination that listing is warranted it rarely has had the capacity to proceed directly with a listing proposal. As a result, for many years almost all of the positive 12-month petition findings have been that listing is warranted but precluded by higher priority listing actions (e.g., actions required due to court rulings and settlement agreements) and the species are considered candidates for listing. The candidate assessment process funded by the candidate conservation subactivity is another way that the Service can identify species as candidates for listing. Regardless of whether the Service’s

petition management process or candidate assessment process is the basis for identifying a species as a candidate for listing, it means the species qualifies for development of a proposal for federal listing under the *ESA*.

There are currently 281 candidate species for which the Service had determined, either through the petition management or the candidate assessment processes, that listing is warranted, but for which listing is precluded due to higher priority listing actions. Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Our process is to make determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first. In accordance with guidance we published on September 21, 1983, we assign a listing priority number (LPN) to each candidate species (48 FR 43098). Such a priority ranking guidance system is required under section 4(h)(3) of the Act (16 U.S.C. 1533(h)(3)). Using this guidance, we assign each candidate a LPN of 1 to 12, depending on the magnitude of threats, imminence of threats, and taxonomic status; the lower the listing priority number, the higher the listing priority (e.g., a species with an LPN of 1 would have the highest listing priority).

Of the 281 candidate species, 125 have a LPN of 2, which means they face threats of high magnitude that are imminent, and taxonomically they are species. (There are currently no candidate species with a LPN of 1; this category has the same magnitude and imminence of threats as LPN 2, but to qualify for LPN 1 a species must be the sole member of a genus). The Service has developed a method of prioritizing species within the LPN 2's. This method is based on rankings made by the World Conservation Union (IUCN), and rankings by NatureServe. The application of this methodology has resulted in a "Top 40" list of candidate species that should be addressed first with available listing funding. The Service will be using this list, together with approaches that encourage efficiency, in identifying species that will have priority for funding listing determinations.

Listing and the Endangered Species Strategic Plan - Listing, critical habitat designation, and their associated processes are the backbone that supports the program's goal to recover species. This support stems in large part from the information conveyed within the rules and the prohibitions resulting from listing and critical habitat designations.

The listing rule provides background information on the species (taxonomy, historic and current range, population information, habitat requirements, etc.), a summary of the threats faced by the species, designation of critical habitat if appropriate, examples of available conservation measures, and a preview of actions that would be prohibited if the species were to be listed. Additionally, recovery efforts for species are initially identified based on information within the listing rules. In this way, listing packages are a crucial first step on the road to recovery.

In addition to providing valuable information through the rule, listing affords species a suite of conservation benefits: protection from being jeopardized by Federal activities; restrictions on take and trafficking; authorization to seek land purchases or exchanges for important habitat; Federal aid to States with cooperative endangered species agreements; and benefits from the conservation programs of other Federal agencies as directed in Section 7 of the *ESA*. Listing also lends greater recognition to a species' imperiled status, encouraging conservation efforts by other agencies (foreign, Federal, State, and local), independent organizations, and concerned individuals. Critical habitat provides additional benefits in that Federal agencies must also ensure that their activities do not destroy or adversely modify critical habitat.

Use of Cost and Performance Information

In FY 2008, the Service will be finalizing a strategic plan for the Endangered Species Program that includes new long-term outcome and annual output performance measures to respond to the 2005 PART findings. The Program will focus on the highest priority conservation objectives identified in the draft plan, listed species recovered and unlisted species-at-risk conserved to look forward, learn from the challenges and successes of the past, and shape the Endangered Species Program of the future.

2009 Program Performance

The Service anticipates the following accomplishments and activities.

Critical Habitat for Already Listed Species

The Service anticipates publishing 10 final critical habitat rules (for 21 species) and 6 proposed critical habitat rules (for 6 species) in FY 2009.

Listing Determinations

During the 2009 Fiscal Year, we project completion of:

- Final listings/critical habitat determinations for 53 species
- Final listings determinations for 14 species
- Proposed listings/critical habitat determinations for 11 candidate species
- Emergency listings as necessary

Petition Findings

The Service intends to address 90-day and 12-month findings on citizen petitions in FY 2009.

- 18 petition findings, 90-day and 12-month, for 18 species