

U.S. Fish and Wildlife Service Strengthening the Listing Program Work Plan Questions and Answers

What action is the U.S. Fish and Wildlife Service taking today?

The U.S. Fish and Wildlife Service (Service) announced today that it has reached an agreement with a plaintiff group that will reinforce its work plan for listing species under the Endangered Species Act (ESA) and resolve and reduce litigation associated with the listing program, thereby allowing the agency to better focus its resources on species in need of protection under the ESA.

A multi-year work plan was first developed through an agreement with the plaintiff group WildEarth Guardians (WEG) and filed into a consolidated Multi-District Litigation (MDL) case in the U.S. District Court for the District of Columbia on May 10, 2011. If approved by the Court, the plan will enable the agency to systematically, over a period of six years, review and address the needs of more than 250 candidate species to determine if they should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants. The complementary agreement announced today with plaintiff group Center for Biological Diversity (CBD) reinforces that multi-year work plan and includes additional scheduling commitments for a small subset of the actions in the work plan.

In addition to addressing the needs of candidate species, the work plan, if approved by the Court, will provide state wildlife agencies, stakeholders, and the public clarity and certainty about when listing determinations will be made.

What scheduling commitments were provided in today's agreement?

The Service will submit a proposed listing rule or not-warranted finding to the *Federal Register* for the following species no later than the end of the specified Fiscal Year (FY):

- Cactus ferruginous pygmy owl (FY 2011);
- Acuna cactus, Jollyville Plateau salamander, Mexican wolf, Miami blue butterfly, Mt. Charleston blue butterfly, spring pygmy sunfish, and wekiu bug (FY 2012);
- Ashy storm-petrel, bi-state (Mono Basin) distinct population segment ("DPS") of greater sage-grouse, Dakota skipper, eastern small-footed bat, Kittlitz's murrelet, Mexican garter snake, mountain yellow-legged frog, North American wolverine, northern long-eared bat, Oregon spotted frog, red knot, Rosemont talussnail, yellow-billed cuckoo, and Yosemite toad (FY 2013);
- Arctic grayling, black pine snake, least chub, Rio Grande cutthroat trout, Tucson shovelnose snake, west coast fisher DPS, and yellow-billed loon (FY 2014);
- Eastern massasauga, greater sage-grouse range-wide (including Columbia DPS), headwater chub, Kentucky arrow darter, New England cottontail, and roundtail chub (FY 2015);
- Relict leopard frog, southern Idaho ground squirrel, and Tahoe yellow cress (FY 2016); and
- Pacific walrus (FY 2017).

Provided the Service finds that the listing petition for the 'i'iwi contains substantial information indicating the petitioned action may be warranted, the Service will submit a proposed listing rule or not-warranted finding to the *Federal Register* no later than the end of FY 2016.

While the agreement commits to more specific scheduling of these actions, only two of these listing determinations are beyond the scope of the agreement with WEG and not planned for in the Service's six-year work plan.

Are there any other commitments by the Service in the separate agreement?

Yes, the agreement with the CBD also includes the following commitments regarding petition findings, all of which were also included in the agreement with WEG filed with the Court on May 10, 2011:

- 12-month findings for the black-footed albatross, California golden trout, dusky tree vole, Lake Sammamish kokanee, Ilanero Coqui, Mojave fringe-toed lizard, Mojave ground squirrel, Oklahoma grass pink, Ozark chinquapin, Tehachapi slender salamander, and western gull-billed tern (FY 2011);
- 90-day findings for 32 species of Pacific Northwest mollusks, 42 species of Great Basin springsnails, and 403 southeast aquatic species (FY 2011); and
- 90-day finding for the San Bernardino flying squirrel (FY 2012).

The work plan is available online at:

http://www.fws.gov/endangered/improving_ESA/listing_workplan.html

Who administers the Endangered Species Act (ESA)?

Over the past 35 years, the Service and National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS), the federal agencies responsible for administering the ESA, have worked with state agencies, federal agencies, local government, tribes, private landowners, and the public to promote the conservation and prevent the extinction of the nation's imperiled species. Under the ESA, the Department of the Interior's Fish and Wildlife Service is primarily responsible for terrestrial and fresh water species; the Commerce Department's National Marine Fisheries Service has the lead responsibility for most marine and anadromous species, such as salmon, that spend parts of their life cycles in both saltwater and freshwater. This work plan covers only species with jurisdiction by the Fish and Wildlife Service.

What is a candidate species, and what is the Candidate Notice of Review?

The Service maintains a list of candidate species, and publishes a notice about this list annually, which is referred to as the Candidate Notice of Review. A candidate species is one for which the Service has determined that a proposal to list as endangered or threatened is warranted.

A species may be identified by the Service as a candidate for listing based on an evaluation of status of the species that the agency conducts on its own initiative, or as a result of finding, in response to a petition to list a species, that listing is warranted but precluded by other higher priority listing actions. For a variety of reasons, the Service has not been able to list species and designate critical habitat at the same rate that new species are added to the candidate list. As a result, the 2010 Candidate Notice of Review identified 251 species that warrant a listing proposal, but are not yet fully protected by the ESA. For more information visit: <http://www.fws.gov/endangered/what-we-do/index.html>.

How does the Service determine if a species should be listed?

Before a plant or animal species can receive the protection provided by the ESA, it must first be added to the Federal Lists of Endangered and Threatened 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) contain the names of all species of mammals, birds, reptiles, amphibians, fishes, insects, plants, and other creatures that have been determined by the Service and the NMFS (for most marine life) to be in the greatest need of federal protection.

The best available information regarding a species is considered and evaluated using the following five factors provided in the ESA:

- The present or threatened destruction, modification, or curtailment of its habitat or range;
- Overutilization for commercial, recreational, scientific, or educational purposes;
- Disease or predation;
- The inadequacy of existing regulatory mechanisms;
- The natural or manmade factors affecting its survival

A species is added to the list when it is determined to be endangered or threatened because of any one of these five factors. The listing process uses the best available scientific and commercial data and peer-review to ensure sound science and sound decision-making. The Service or NMFS must publish in the *Federal Register* a notice of any proposal to list a species as endangered or threatened and respond to public comment, and ordinarily must complete a final rule within one year of the proposed rule. <http://www.fws.gov/endangered/what-we-do/listing-overview.html>

How does a species become listed under the ESA?

A species can be considered for listing in two different ways: through the petition process or through the candidate assessment process. The ESA provides that any interested person may petition the Secretary of the Interior to add a species to, or to remove a species from, the list of endangered and threatened species. The ESA also provides for the Service to identify through the candidate assessment process any species that may warrant listing. Regardless of which way a species is brought into consideration for listing, the actual listing determinations are made through a rulemaking process, with determinations published in the *Federal Register* for public notice and comment.

What is critical habitat?

When a species is proposed for listing as endangered or threatened under the ESA, the Service must consider whether there are areas that meet the ESA's definition of "critical habitat." The Service may propose to designate those areas as critical habitat if it is prudent to do so. The determination and designation of critical habitat is one of the most controversial and confusing aspects of the ESA.

An area designated as critical habitat is not a refuge or sanctuary for the species. It is a specific geographic area(s) that contains features essential for the conservation of a threatened or endangered species and that may require special management and protection, or that is otherwise essential to the conservation of the species.

Federal agencies are required to consult with the Service on actions they carry out, fund, or authorize to ensure that their actions will not destroy or adversely modify critical habitat. In this way, a critical habitat designation protects areas that are necessary for the conservation of the species. A critical habitat designation generally has no effect on situations that do not involve a federal agency — for example, a private landowner undertaking a project that involves no federal funding or permit.

<http://www.fws.gov/endangered/what-we-do/critical-habitats-faq.html>

How does the Service determine what areas to designate as critical habitat?

Biologists consider physical and biological features needed for life processes and successful reproduction of the species. These include:

- space for individual and population growth and for normal behavior;
- cover or shelter;
- food, water, air, light, minerals, or other nutritional or physiological requirements;
- sites for breeding and rearing offspring; and
- habitats that are protected from disturbances or are representative of the historic geographical and ecological distributions of a species.

How many species have critical habitat designations?

As of July 11, 2011, critical habitat has been designated for 607 of the 1,372 U.S. species listed as threatened or endangered.

Will the implementation of the work plan affect resources devoted to recovery and consultation under Section 7 of the ESA?

This agreement and the agreement with WEG will enable the Service to use its current listing program resources more efficiently and effectively. It will not require or allow the Service to use funding or staff time devoted to recovery of listed species and/or consultations with federal agencies under Section 7 for listed species. These and other components of the Service's Endangered Species program are funded under separate line items in the federal budget. Any reprogramming of these funds would require congressional approval and would detract from these equally important functions of a balanced Endangered Species program.

As part of implementing this work plan, will the Service change how it administers the ESA?

The implementation of the work plan will allow the agency to improve the effectiveness of the ESA at conserving imperiled species and more efficiently administer the ESA in a productive manner.

At the direction of Secretary of the Interior Ken Salazar, the Service has also begun a review of its implementation of the ESA to identify ways to eliminate unnecessary procedural requirements, improve the clarity and consistency of regulations; engage the states, tribes, conservation organizations, and private landowners as more effective conservation partners; encourage greater creativity in the implementation of the ESA; and reduce the frequency and intensity of conflicts as much as possible. The Service will actively engage conservation partners and the public in the search for improved and innovative ways to conserve and recover imperiled species.

By taking action to protect imperiled native fish, wildlife and plants, together we can ensure a healthy future for our community and protect treasured landscapes for future generations.

Where can more information be found?

To learn more about the listing work plan and the Service's Endangered Species program, visit online at: http://www.fws.gov/endangered/improving_ESA/listing_workplan.html.