



## U.S. Fish & Wildlife Service

# Listing a Species as Threatened or Endangered

## *Section 4 of the Endangered Species Act*

The Endangered Species Act of 1973, as amended, 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 prevent extinctions facing many species of fish, wildlife and plants. The purpose of the ESA is to conserve endangered and threatened species and the ecosystems on which they depend as key components of America's heritage. To implement the ESA, the U.S. Fish and Wildlife Service works in cooperation with the National Marine Fisheries Service (NMFS), other Federal, State, and local agencies, Tribes, non-governmental organizations, and private citizens.

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) contain the names of all species of mammals, birds, reptiles, amphibians, fishes, insects, plants, and other creatures that have been determined by us and NMFS (for most marine life) to be in the greatest need of Federal protection.

### **What does "endangered" mean? What does "threatened" 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 throughout all or a significant portion of its range. To help conserve genetic diversity, the ESA defines "species" broadly to include subspecies and (for vertebrates) distinct populations.



Susanne Miller, USFWS

*Listed in 2008 as threatened because of the decline in sea ice habitat, the polar bear may spend time on land during fall months, waiting for ice to return.*

### **What are the criteria 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 its habitat or range;
- overutilization for commercial, recreational, scientific, or educational purposes;
- disease or predation;
- the inadequacy of existing regulatory mechanisms;
- other natural or manmade factors affecting its survival.

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

We follow a strict legal process known as a rulemaking (or regulatory) procedure. Federal agencies follow this procedure to propose and 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 species, we publish notices of review that identify species that we believe meet the definition of threatened or endangered. We refer to these

species as "candidates" for listing. Through notices of review, we seek biological information that will help us to complete the status reviews for these candidate species. We publish notices in the *Federal Register*, a daily Federal Government publication. Our latest Candidate Notice of Review is also available on our Web site [http://ecos.fws.gov/tess\\_public/candidateReport?norAll.action](http://ecos.fws.gov/tess_public/candidateReport?norAll.action).

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

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

We strive to conserve candidate species to prevent the need for listing. Candidate Conservation Agreements are partnerships involving the Service

and States or U.S. Territories, Federal agencies, private agencies, and you or your neighbor to reduce or remove the threats to species on the brink of listing.

### How can you comment on a listing proposal?

We or the NMFS (for most marine species) publishes listing proposals 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 promote awareness of a proposal, we issue news releases, conduct special mailings, and 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. We may hold public hearings in cases of high public interest or if an interested party asks us to do so within 45 days of the proposal.

### What do we do with comments and biological information?

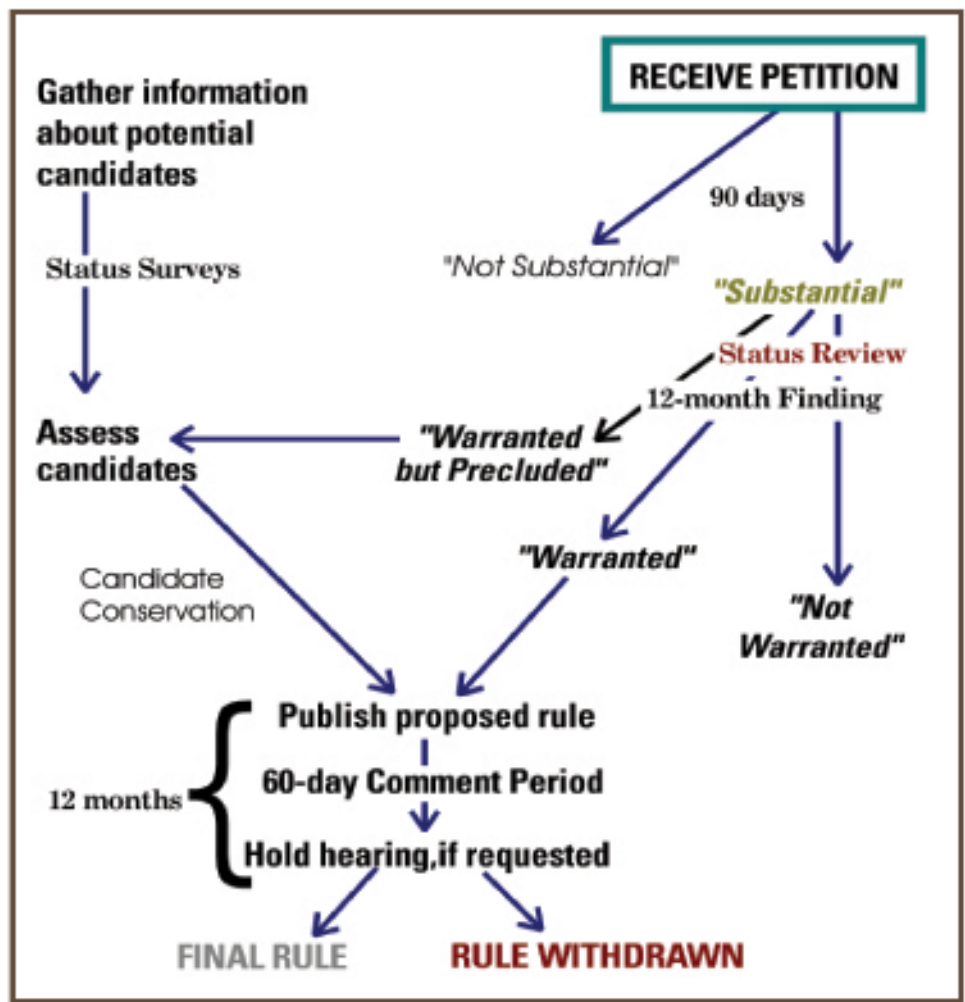
In our final rulemaking, we analyze information received in public comments and testimony. Within one year of a listing proposal, we may:

- 1) publish a final listing rule as originally proposed or later revised because the best available biological data support it;
- 2) withdraw the proposal because the biological information does not support the listing; or
- 3) extend the proposal if there is substantial disagreement within the scientific community concerning the biological appropriateness of the listing. After a six-month extension, we are required to make a decision on the basis of the best scientific information available.

A final listing rule generally becomes effective 30 days after publication in the *Federal Register*.

### Can you nominate a species for listing?

Although we may initiate listing proposals, we also may start the listing process with a petition from any member of the public.



However, petitions need the support of biological data. We consider any information submitted on the biology, distribution, or threats to the species when making our decisions.

### What are petitions for listing?

Petitions are formal requests to list a species. The ESA requires that we make and publish specific findings on a petition. We or the NMFS (for most marine species) is required to make a finding within 90 days of receiving a petition (to the extent practicable) as to whether there is “substantial information” indicating that the petitioned action may be warranted. If this preliminary finding is positive, we conduct a status review. Within one year of receipt of the petition, we must make a finding whether the listing is warranted. A positive 12-month finding may be incorporated into a proposed listing. However, if a prompt proposal is precluded by higher priority listing activities, we may defer the proposal. Then the species becomes a candidate for listing and is added to our candidates list. These “warranted but precluded” findings require subsequent 12-month findings on each succeeding anniversary of the petition until we

either undertake a proposal or make a “not warranted” finding.

### What does “listing” mean for a species?

Once we add an animal or plant to the List, protective measures apply. These 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 in achieving the ultimate goals — conserving plants and animals and maintaining their natural diversity and the ecosystems upon which they depend.

**U. S. Fish and Wildlife Service  
Endangered Species Program  
4401 N. Fairfax Drive, Room 420  
Arlington, VA 22203  
703-358-2171  
<http://www.fws.gov/endangered/>**

June 2011