



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240



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## Memorandum

To: Regional Directors, 1-8

From: Deputy Director

Subject: Procedures for Developing Substantial 90-day Petition Findings and Publication of Notification of Findings in the *Federal Register*

To improve the implementation of the Endangered Species Act (Act), as of the date of this memorandum, the Service will begin to batch notifications of substantial 90-day petition findings under section 4(b)(3) of the Act and publish them quarterly in one *Federal Register* notice. Signature authority for substantial 90-day petition findings is delegated to Regional Directors for domestic species and the Assistant Director for Endangered Species for foreign species.

Because the Act, our implementing regulations, and our policies do not specify how much information we must include in petition findings and notices, we have the discretion to streamline the process by batching them in one *Federal Register* notice.

Notifications in the *Federal Register* of substantial 90-day findings will provide a brief summary of our substantial findings and serve mainly to notify the public that we intend to initiate status reviews and solicit information from the public for use in our status reviews. In contrast, the procedures and format of not-substantial 90-day findings will not change. The Director will continue to sign those findings, which are final agency actions, and we will publish those individually with a thorough justification.

The advantages of batching our substantial 90-day findings are:

- A more efficient process that will allow us to complete more 90-day findings within the statutory timeframe;
- Simplified review and approval process for Regions, Headquarters, and the Department of the Interior; and
- Reduced *Federal Register* publication costs.

We will keep the individual substantial findings in the administrative record and post them in the Federal Docket Management System (FDMS) as supplemental material to the *Federal Register* notice.

Substantial 90-day findings already in surname as of the date of this memo may continue to be processed as before, but Regions should closely coordinate with Headquarters to ensure completion of those findings.

Thank you for your commitment to implementing efficient and effective approaches to address our Endangered Species Act workload. Attached are the procedures we will follow to batch the findings. If you have any questions please contact Mr. Gary Frazer, Assistant Director, Endangered Species at (202) 208-4646.

Attachments

## Batching Substantial 90-day Petition Findings – General Steps

We will batch together summaries of substantial 90-day findings for section 4(b)(3) petitionable actions under the Endangered Species Act (listing, reclassification, and delisting for domestic and foreign species, and revising critical habitat) to produce a *Federal Register* notice four times during the fiscal year.

- Each Region must decide whether the Field office or Regional office will review a petition and draft the recommendation.
- Consistent with our petition regulations and existing policies and practices,<sup>1</sup> the Field office or Regional office must evaluate the information in the petition and in Service files to determine whether the petition is valid, whether emergency listing is warranted, and whether the petition contains substantial information indicating that the petitioned action may be warranted. The reviewing office makes a recommendation on whether the petition contains substantial information.
  - If substantial, refer to the guidance below.
  - If not substantial, follow the regular procedures for making a not-substantial 90-day finding.
  - For petitions requesting that we act on 5-year status review recommendations to delist or reclassify, prepare a substantial finding incorporating by reference our 5-year review. The finding may note additional information that supports or refutes the petitioned action and that would be considered in our status review and 12-month finding. (Note: If we have additional information since the 5-year review that indicates the recommended status may no longer be appropriate, we would examine that question in the subsequent status review and 12-month finding).

### Procedures for Substantial Findings:

- If the petition finding recommendation is substantial, the reviewing office must use the template we provide to prepare a draft finding that explains why they are recommending a substantial finding. HQ staff will provide this template to Regional Office staff and make it available on our Sharepoint site. The finding must include a brief review of the information in the petition and in Service files—not a full five-factor analysis. Instead, the finding should briefly describe the information, relative to the five factors, that supports or refutes the petitioned action. (For petitions to act on a 5-year review recommendation, because the 5-year review already contains an analysis of the five listing factors, the summary may be very brief and just reference the 5-year review without repeating the

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<sup>1</sup> These policies include the October 19, 1983, Solicitor's Memorandum (The "substantial scientific or commercial information" standard as applied to the petition process for listings under the Endangered Species Act of 1973, as amended); the November 30, 1995, Director's Memorandum (Petition Findings Under the Endangered Species Act: A Clarification); and the 1996 Petition Management Handbook (though portions of the handbook have been invalidated by court decisions, petition content and processing was not impacted).

analysis). The finding must contain a statement concluding that, overall, we find that the petition contains substantial information and explaining why we consider the information substantial.

- The Regional Director for the lead Region signs the finding for domestic species. For foreign species (i.e., those found entirely outside the U.S.), the Assistant Director for Endangered Species signs the finding.
  - You may also choose to have the Regional Solicitor review the finding. In special cases that involve novel or particularly challenging analyses, be sure to include Solicitor review in the approval process. For example, involve the Solicitor following adoption of the new Significant Portion of the Range (SPR) policy and the first time that the Service is petitioned to list a species on the basis of threats to a significant portion of its range.
- Once signed by the Regional Director, the Regional office must send the finding to the appropriate division within the Headquarters (HQ) (Division of Conservation and Classification for listing, uplisting, or critical habitat findings, or the Division of Consultation, HCPs, Recovery and State Grants for delisting or reclassification petitions). The Region must include with the finding a brief paragraph that contains:
  - The species' name,
  - Petitioner,
  - Date petition was received,
  - Action requested in the petition, and
  - One sentence listing the threats for which there was substantial information.

This brief paragraph will be used as the summary for the batched notice.

- The HQ will collect the substantial 90-day findings for each quarter and will draft a *Federal Register* notice, using the paragraphs the Regions submit. The *Federal Register* notice must provide Field office contact information for each finding (or Branch of Foreign Species for foreign species).
- Appropriate HQ staff (affected Division Chiefs and the AD) must review and surname the *Federal Register* notice, and the Director has to sign it. The HQ will seek Solicitor clearance of the batched summary notice.
- Once signed and approved by all appropriate levels within the Department, HQ staff must send the notice to the *Federal Register* and notify the affected Regions of the publication date.
- The Division of Policy and Directives Management in the HQ collects the information the public submits in response to notices and posts it in FDMS. It will be the responsibility of the designated Regional or Field Office contact to download information through the <http://www.regulations.gov> website and disseminate the information specific to their status

review to the appropriate parties. HQ staff are available to provide training to Regional Office staff on this process if needed.

This guidance does not change Regional and Field Office responsibilities for petition responses or notices of receipt of petitions.

Endangered Species staff have had conversations with External Affairs in HQ about communication plans for substantial 90-day findings under this new guidance. Regions will continue to be the primary contacts for announcing their specific ESA actions unless otherwise directed by HQ. Regional staff are encouraged to focus on targeting affected parties who will need to be notified through the best means possible, whether that be through a news release, social media and the web, or updates to press. Congressional notifications will still occur from both HQ and Regions. Endangered Species and External Affairs staff in HQ will follow up with Assistant Regional Directors and staff in both programs to further clarify this new guidance and answer any questions.