FWS, DOI, and NOAA, Commerce § 424.18

give notice of the proposed regulation to list, delist, or reclassify a species to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation;

(v) Give notice of the proposed regulation to such professional scientific organizations as the Secretary deems appropriate; and

(vi) Publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur.

(2) Period of public comments. At least 60 days shall be allowed for public comment following publication in the FEDERAL REGISTER of a rule proposing the listing, delisting, or reclassification of a species, or the designation or revision of critical habitat. All other proposed rules shall be subject to a comment period of at least 30 days following publication in the FEDERAL REGISTER. The Secretary may extend or reopen the period for public comment on a proposed rule upon a finding that there is good cause to do so. A notice of any such extension or reopening shall be published in the FEDERAL REGISTER, and shall specify the basis for so doing.

(3) Public hearings. The Secretary shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list, delist, or reclassify a species, or to designate or revise critical habitat. Notice of the location and time of any such hearing shall be published in the FEDERAL REGISTER not less than 15 days before the hearing is held.


(a) General. (1) Within 1 year of the publication of a rule proposing to determine whether a species is an endangered or threatened species, or to designate or revise critical habitat, the Secretary shall publish one of the following in the FEDERAL REGISTER:

(i) A final rule to implement such determination or revision,

(ii) A finding that such revision should not be made,

(iii) A notice withdrawing the proposed rule upon a finding that available evidence does not justify the action proposed by the rule, or

(iv) A notice extending such 1-year period by an additional period of not more than 6 months because there is substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned.

(2) If an extension is made under paragraph (a)(1)(iv) of this section, the Secretary shall, within the extended period, take one of the actions described in paragraphs (a)(1) (i), (ii), or (iii) of this section.

(3) If a proposed rule is withdrawn under paragraph (a)(1)(iii) of this section, the notice of withdrawal shall set forth the basis upon which the proposed rule has been found not to be supported by available evidence. The Secretary shall not again propose a rule withdrawn under such provision except on the basis of sufficient new information that warrants a reproposal.

(b) Critical habitat designations. A final rule designating critical habitat of an endangered or a threatened species shall to the extent permissible under § 424.12 be published concurrently with the final rule listing such species, unless the Secretary deems that—

(1) It is essential to the conservation of such species that it be listed promptly; or

(2) Critical habitat of such species is not then determinable,

in which case, the Secretary, with respect to the proposed regulation to designate such habitat, may extend the 1-year period specified in paragraph (a) of this section by not more than one additional year. Not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

§ 424.18 Final rules—general.

(a) Contents. A final rule promulgated to carry out the purposes of the Act
§424.19 Impact analysis and exclusions from critical habitat.

(a) At the time of publication of a proposed rule to designate critical habitat, the Secretary will make available for public comment the draft economic analysis of the designation. The draft economic analysis will be summarized in the Federal Register notice of the proposed designation of critical habitat.

(b) Prior to finalizing the designation of critical habitat, the Secretary will consider the probable economic, national security, and other relevant impacts of the designation upon proposed or ongoing activities. The Secretary will consider impacts at a scale that the Secretary determines to be appropriate, and will compare the impacts with and without the designation. Impacts may be qualitatively or quantitatively described.

(c) The Secretary has discretion to exclude any particular area from the critical habitat upon a determination that the benefits of such exclusion outweigh the benefits of specifying the particular area as part of the critical

(1) Not less than 30 days after it is published in the Federal Register, except as otherwise provided for good cause found and published with the rule; and

(2) Not less than 90 days after (i) publication in the Federal Register of the proposed rule, and (ii) actual notification of any affected State agencies and counties or equivalent jurisdictions in accordance with §424.16(c)(1)(ii).

(c) Disagreement with State agency. If a State agency, given notice of a proposed rule in accordance with §424.16(c)(1)(ii), submits comments disagreeing in whole or in part with a proposed rule, and the Secretary issues a final rule that is in conflict with such comments, or if the Secretary fails to adopt a regulation for which a State agency has made a petition in accordance with §424.14, the Secretary shall provide such agency with a written justification for the failure to adopt a rule consistent with the agency’s comments or petition.