

### § 424.13

may designate an inclusive area as critical habitat.

(e) The Secretary may designate critical habitat for those species listed as threatened or endangered but for which no critical habitat has been previously designated. For species listed prior to November 10, 1978, the designation of critical habitat is at the discretion of the Secretary.

(f) The Secretary may revise existing designations of critical habitat according to procedures in this section as new data become available.

(g) The Secretary will not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States.

(h) The Secretary will not designate as critical habitat land or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to a compliant or operational integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a) if the Secretary determines in writing that such plan provides a conservation benefit to the species for which critical habitat is being designated. In determining whether such a benefit is provided, the Secretary will consider:

- (1) The extent of the area and features present;
- (2) The type and frequency of use of the area by the species;
- (3) The relevant elements of the INRMP in terms of management objectives, activities covered, and best management practices, and the certainty that the relevant elements will be implemented; and
- (4) The degree to which the relevant elements of the INRMP will protect the habitat from the types of effects that would be addressed through a destruction-or-adverse-modification analysis.

[49 FR 38908, Oct. 1, 1984, as amended at 77 FR 25622, May 1, 2012; 81 FR 7439, Feb. 11, 2016; 84 FR 45053, Aug. 27, 2019]

### § 424.13 Sources of information and relevant data.

When considering any revision of the lists, the Secretary shall consult as appropriate with affected States, interested persons and organizations, other affected Federal agencies, and, in co-

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operation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed by the Secretary may include, but are not limited to scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts on the subject, and comments from interested parties.

### § 424.14 Petitions.

(a) *Ability to petition.* Any interested person may submit a written petition to the Services requesting that one of the actions described in § 424.10 be taken for a species.

(b) *Notification of intent to file petition.* For a petition to list, delist, or reclassify a species, or for petitions to revise critical habitat, petitioners must provide notice to the State agency responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species that is the subject of the petition occurs. This notification must be made at least 30 days prior to submission of the petition. This notification requirement shall not apply to any petition submitted pertaining to a species that does not occur within the United States.

(c) *Requirements for petitions.* A petition must clearly identify itself as such, be dated, and contain the following information:

- (1) The name, signature, address, telephone number, if any, and the association, institution, or business affiliation, if any, of the petitioner;
- (2) The scientific name and any common name of a species of fish or wildlife or plants that is the subject of the petition. Only one species may be the subject of a petition, which may include, by hierarchical extension based on taxonomy and the Act, any subspecies or variety, or (for vertebrates) any potential distinct population segments of that species;
- (3) A clear indication of the administrative action the petitioner seeks (*e.g.*, listing of a species or revision of critical habitat);
- (4) A detailed narrative justifying the recommended administrative action

that contains an analysis of the information presented;

(5) Literature citations that are specific enough for the Services to readily locate the information cited in the petition, including page numbers or chapters as applicable;

(6) Electronic or hard copies of supporting materials, to the extent permitted by U.S. copyright law, or appropriate excerpts or quotations from those materials (*e.g.*, publications, maps, reports, letters from authorities) cited in the petition;

(7) For a petition to list, delist, or reclassify a species, information to establish whether the subject entity is a "species" as defined in the Act;

(8) For a petition to list a species, or for a petition to delist or reclassify a species in cases where the species' range has changed since listing, information on the current and historical geographic range of the species, including the States or countries intersected, in whole or part, by that range; and

(9) For a petition to list, delist or reclassify a species, or for petitions to revise critical habitat, copies of the notification letters or electronic communication which petitioners provided to the State agency or agencies responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species that is the subject of the petition currently occurs.

(d) *Information to be included in petitions to add or remove species from the lists, or change the listed status of a species.* The Service's determination as to whether the petition provides substantial scientific or commercial information indicating that the petitioned action may be warranted will depend in part on the degree to which the petition includes the following types of information:

(1) Information on current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available;

(2) Identification of the factors under section 4(a)(1) of the Act that may affect the species and where these factors are acting upon the species;

(3) Whether and to what extent any or all of the factors alone or in com-

bination identified in section 4(a)(1) of the Act may cause the species to be an endangered species or threatened species (*i.e.*, the species is currently in danger of extinction or is likely to become so within the foreseeable future), and, if so, how high in magnitude and how imminent the threats to the species and its habitat are;

(4) Information on adequacy of regulatory protections and effectiveness of conservation activities by States as well as other parties, that have been initiated or that are ongoing, that may protect the species or its habitat; and

(5) A complete, balanced representation of the relevant facts, including information that may contradict claims in the petition.

(e) *Information to be included in petitions to revise critical habitat.* The Services' determinations as to whether the petition provides substantial scientific information indicating that the petitioned action may be warranted will depend in part on the degree to which the petition includes the following types of information:

(1) A description and map(s) of areas that the current designation does not include that should be included, or includes that should no longer be included, and a description of the benefits of designating or not designating these specific areas as critical habitat. Petitioners should include sufficient supporting information to substantiate the requested changes, which may include GIS data or boundary layers that relate to the request, if appropriate;

(2) A description of physical or biological features essential for the conservation of the species and whether they may require special management considerations or protection;

(3) For any areas petitioned to be added to critical habitat within the geographical area occupied by the species at time it was listed, information indicating that the specific areas contain one or more of the physical or biological features (including characteristics that support ephemeral or dynamic habitat conditions) that are essential to the conservation of the species and may require special management considerations or protection. The petitioner should also indicate which specific areas contain which features;

(4) For any areas petitioned for removal from currently designated critical habitat within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas do not contain the physical or biological features (including characteristics that support ephemeral or dynamic habitat conditions) that are essential to the conservation of the species, or that these features do not require special management considerations or protection;

(5) For areas petitioned to be added to or removed from critical habitat that were outside the geographical area occupied by the species at the time it was listed, information indicating why the petitioned areas are or are not essential for the conservation of the species; and

(6) A complete, balanced representation of the relevant facts, including information that may contradict claims in the petition.

(f) *Response to petitions.* (1) If a request does not meet the requirements set forth at paragraph (c) of this section, the Services will generally reject the request without making a finding, and will, within a reasonable timeframe, notify the sender and provide an explanation of the rejection. However, the Services retain discretion to process a petition where the Services determine there has been substantial compliance with the relevant requirements.

(2) If a request does meet the requirements set forth at paragraph (c) of this section, the Services will acknowledge receipt of the petition by posting information on the respective Service's Web site.

(g) *Supplemental information.* If the petitioner provides supplemental information before the initial finding is made and states that it is part of the petition, the new information, along with the previously submitted information, is treated as a new petition that supersedes the original petition, and the statutory timeframes will begin when such supplemental information is received.

(h) *Findings on petitions to add or remove a species from the lists, or change the listed status of a species.* (1) To the

maximum extent practicable, within 90 days of receiving a petition to add a species to the lists, remove a species from the lists, or change the listed status of a species, the Services will make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. The Services will publish the finding in the FEDERAL REGISTER.

(i) For the purposes of this section, "substantial scientific or commercial information" refers to credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific or commercial information will not be considered "substantial information."

(ii) In reaching the initial finding on the petition, the Services will consider the information referenced at paragraphs (c), (d), and (g) of this section. The Services may also consider information readily available at the time the determination is made. The Services are not required to consider any supporting materials cited by the petitioner if the cited document is not provided in accordance with paragraph (c)(6) of this section.

(iii) The "substantial scientific or commercial information" standard must be applied in light of any prior reviews or findings the Services have made on the listing status of the species that is the subject of the petition. Where the Services have already conducted a finding on, or review of, the listing status of that species (whether in response to a petition or on the Services' own initiative), the Services will evaluate any petition received thereafter seeking to list, delist, or reclassify that species to determine whether a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted despite the previous review or finding. Where the prior review resulted in a final agency action, a petitioned action generally would not be considered to

present substantial scientific and commercial information indicating that the action may be warranted unless the petition provides new information not previously considered.

(2) If the Services find that a petition presents substantial information indicating that the petitioned action may be warranted, the Services will commence a review of the status of the species concerned. At the conclusion of the status review and within 12 months of receipt of the petition, the Services will make one of the following findings:

(i) The petitioned action is not warranted, in which case the Service shall publish a finding in the FEDERAL REGISTER.

(ii) The petitioned action is warranted, in which case the Services shall publish in the FEDERAL REGISTER a proposed regulation to implement the action pursuant to § 424.16; or

(iii) The petitioned action is warranted, but:

(A) The immediate proposal and timely promulgation of a regulation to implement the petitioned action is precluded because of other pending proposals to list, delist, or change the listed status of species; and

(B) Expeditious progress is being made to list, delist, or change the listed status of qualified species, in which case such finding will be published in the FEDERAL REGISTER together with a description and evaluation of the reasons and data on which the finding is based. The Secretary will make any determination of expeditious progress in relation to the amount of funds available after complying with nondiscretionary duties under section 4 of the Act and court orders and court-approved settlement agreements to take actions pursuant to section 4 of the Act.

(3) If a finding is made under paragraph (h)(2)(iii) of this section with regard to any petition, the Services will, within 12 months of such finding, again make one of the findings described in paragraph (h)(2) of this section with regard to such petition.

(i) *Findings on petitions to revise critical habitat.* (1) To the maximum extent practicable, within 90 days of receiving a petition to revise a critical habitat

designation, the Services will make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Services will publish such finding in the FEDERAL REGISTER.

(i) For the purposes of this section, “substantial scientific information” refers to credible scientific information in support of the petition’s claims such that a reasonable person conducting an impartial scientific review would conclude that the revision proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific information will not be considered “substantial information.”

(ii) The Services will consider the information referenced at paragraphs (c), (e), and (g) of this section. The Services may also consider other information readily available at the time the determination is made in reaching its initial finding on the petition. The Services are not required to consider any supporting materials cited by the petitioner if the cited documents are not provided in accordance with paragraph (b)(6) of this section.

(2) If the Services find that the petition presents substantial information that the requested revision may be warranted, the Services will determine, within 12 months of receiving the petition, how to proceed with the requested revision, and will promptly publish notice of such intention in the FEDERAL REGISTER. That notice may, but need not, take a form similar to one of the findings described under paragraph (h)(2) of this section.

(j) *Petitions to designate critical habitat or adopt rules under sections 4(d), 4(e), or 10(j) of the Act.* The Services will conduct a review of petitions to designate critical habitat or to adopt a rule under section 4(d), 4(e), or 10(j) of the Act in accordance with the Administrative Procedure Act (5 U.S.C. 553) and applicable Departmental regulations, and take appropriate action.

(k) *Withdrawal of petition.* A petitioner may withdraw the petition at any time during the petition process by submitting such request in writing. If a petition is withdrawn, the Services may, at their discretion, discontinue action on the petition finding, even if

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the Services have already made a 90-day finding that there is substantial information indicating that the requested action may be warranted.

[81 FR 66484, Sept. 27, 2016]

### § 424.15 Notices of review.

(a) If the Secretary finds that one of the actions described in § 424.10 may be warranted, but that the available evidence is not sufficiently definitive to justify proposing the action at that time, a notice of review may be published in the FEDERAL REGISTER. The notice will describe the measure under consideration, briefly explain the reasons for considering the action, and solicit comments and additional information on the action under consideration.

(b) The Secretary from time to time also may publish notices of review containing the names of species that are considered to be candidates for listing under the Act and indicating whether sufficient scientific or commercial information is then available to warrant proposing to list such species, the names of species no longer being considered for listing, or the names of listed species being considered for delisting or reclassification. However, none of the substantive or procedural provisions of the Act apply to a species that is designated as a candidate for listing.

(c) Such notices of review will invite comment from all interested parties regarding the status of the species named. At the time of publication of such a notice, notification in writing will be sent to State agencies in any affected States, known affected Federal agencies, and, to the greatest extent practicable, through the Secretary of State, to the governments of any foreign countries in which the subject species normally occur.

### § 424.16 Proposed rules.

(a) *General.* Based on the information received through §§ 424.13, 424.14, 424.15, and 424.21, or through other available avenues, the Secretary may propose revising the lists as described in § 424.10.

(b) *Contents.* A notice of a proposed rule to carry out one of the actions described in § 424.10 will contain a detailed description of the proposed action and a summary of the data on

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which the proposal is based (including, as appropriate, citation of pertinent information sources) and will show the relationship of such data to the rule proposed. If such a rule proposes to designate or revise critical habitat, such summary will, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify such habitat or may be affected by such designation. For any proposed rule to designate or revise critical habitat, the detailed description of the action will include a map of the critical habitat area, and may also include rule text that clarifies or modifies the map. Any such notice proposing the listing, delisting, or reclassification of a species or the designation or revision of critical habitat will also include a summary of factors affecting the species and/or its designated critical habitat.

(c) *Procedures—(1) Notifications.* In the case of any proposed rule to list, delist, or reclassify a species, or to designate or revise critical habitat, the Secretary shall—

(i) Publish notice of the proposal in the FEDERAL REGISTER;

(ii) Give actual notice of the proposed regulation to the State agency in each State in which the species is believed to occur and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;

(iii) Give notice of the proposed regulation to any Federal agencies, local authorities, or private individuals or organizations known to be affected by the rule;

(iv) Insofar as practical, and in cooperation with the Secretary of State, 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