

Facility 5935  
Naval Submarine Base  
Kings Bay Co: Camden GA 31547-  
Landholding Agency: Navy  
Property Number: 77199940019  
Status: Unutilized  
Reason: Secured Area

New Mexico  
Bldg. 21, TA-2  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940001  
Status: Unutilized  
Reason: Secured Area

Bldg. 57, TA-2  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940002  
Status: Unutilized  
Reason: Secured Area

Bldg. 28, TA-8  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940003  
Status: Unutilized  
Reason: Secured Area

Bldg. 38, TA-14  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940004  
Status: Unutilized  
Reason: Secured Area, Extensive  
deterioration

Bldg. 8, TA-15  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940005  
Status: Unutilized  
Reason: Secured Area, Extensive  
deterioration

Bldg. 9, TA-15  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940006  
Status: Unutilized  
Reason: Secured Area

Bldg. 22, TA-15  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940007  
Status: Unutilized  
Reason: Secured Area

Bldg. 141, TA-15  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940008  
Status: Unutilized  
Reason: Secured Area

Bldg. 44, TA-15  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940009  
Status: Unutilized  
Reason: Secured Area

Bldg. 2, TA-18

Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940010  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration

Bldg. 5, TA-18  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940011  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration

Bldg. 186, TA-18  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940012  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration

Bldg. 188, TA-18  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940013  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration

Bldg. 254, TA-21  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940014  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration

Bldg. 44, TA-36  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940015  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration

Bldg. 45, TA-36  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940016  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration

Bldg. 19, TA-40  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940017  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration

Bldg. 43, TA-40  
Los Alamos National Lab  
Los Alamos Co: NM 87545-  
Landholding Agency: Energy  
Property Number: 41199940018  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration

Bldg. 258, TA-46  
Los Alamos National Lab  
Los Alamos Co: NM 87545-

Landholding Agency: Energy  
Property Number: 41199940019  
Status: Unutilized  
Reasons: Secured Area, Extensive  
deterioration

Pennsylvania  
Bldg. 603  
Naval Support Station  
Mechanicsburg Co: Cumberland PA 17055-  
0788

Landholding Agency: Navy  
Property Number: 77199940015  
Status: Unutilized  
Reason: Extensive deterioration

*Land (by State)*

California

Land  
Naval Construction Battalion  
Center  
Port Hueneme Co: Ventura CA 93043-4301  
Landholding Agency: Navy  
Property Number: 77199940001  
Status: Unutilized  
Reason: Secured Area

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Endangered and Threatened Wildlife  
and Plants; Final Listing Priority  
Guidance for Fiscal Year 2000**

**AGENCY:** Fish and Wildlife Service,  
Interior.

**ACTION:** Notice.

**SUMMARY:** We (the U.S. Fish and Wildlife Service) announce final guidance for assigning relative priorities to listing actions conducted under section 4 of the Endangered Species Act of 1973 as amended (Act) during fiscal year (FY) 2000. We have returned to a more balanced listing program and have reduced the serious backlogs that remained from the 1995-96 moratorium and funding rescission. Nevertheless, a method for prioritizing among the various listing activities remains necessary because it is still extremely important for us to focus our efforts on listing actions that will provide the greatest conservation benefits to imperiled species in the most expeditious and biologically sound manner. We will no longer recognize tiers and, nationwide, we will undertake all listing activities in all priority levels simultaneously; however, we will observe relative priorities among various listing actions as described in this guidance. The highest priority will be processing emergency listing rules for any species determined to face a significant and imminent risk to its well being. Second priority is the processing

of final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as conservation efforts demand and in light of resource constraints. Delisting activities are no longer part of the listing program and have been undertaken by the recovery program since FY 1999. In addition, all listing and delisting of foreign species are carried out by the Service's International Affairs program and are not addressed in this notice.

**DATES:** This Listing Priority Guidance is effective immediately upon publication and will remain in effect until modified or terminated. This is internal Service guidance that will neither invoke nor relieve restrictions on the private or public sector. Therefore, in accordance with 5 U.S.C. 553(d), we have determined that good cause exists to make the effective date of this notice immediate.

**ADDRESSES:** Submit questions regarding this guidance to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, NW, Mailstop ARLSQ-420, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Nancy Gloman, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703-358-2171 (see **ADDRESSES** section).

**SUPPLEMENTARY INFORMATION:**

**Background**

We adopted guidelines on September 21, 1983 (48 FR 43098-43105), that govern the assignment of priorities to species under consideration for listing as endangered or threatened under section 4 of the Act. We adopted those guidelines to establish a rational system for allocating available appropriations to

the highest priority species when adding species to the lists of endangered or threatened wildlife and plants or reclassifying threatened species to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera, full species, and subspecies (or, equivalently, distinct population segments of vertebrates). However, this system does not provide for prioritization among different types of listing actions such as preliminary determinations, proposed listings, and final listings.

Serious backlogs of listing actions resulted from the 1995-96 listing moratorium and funding rescission. The enactment of Public Law 104-6 in April 1995 rescinded \$1.5 million from our budget for carrying out listing activities through the remainder of FY 1995. Public Law 104-6 prohibited the expenditure of the remaining appropriated funds for final determinations to list species or designate critical habitat which, in effect, placed a moratorium on those activities. For more than half of FY 1996, we operated without a final budget due to a series of continuing resolutions. Those continuing resolutions continued the moratorium and provided almost no funds for listing. The net effect of the moratorium and the limited funding provided by continuing resolutions was that our listing program was essentially shut down. The moratorium on final listings and the budget constraints remained in effect until April 26, 1996, when President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and waived the moratorium. At that time, we had accrued a backlog of proposed listings for 243 species. The limited funding available for listing activities generally precluded petition processing and the development of proposed listings from October 1, 1995, through April 26, 1996.

When the moratorium was lifted and funds were appropriated for the administration of the listing program, we faced the considerable task of allocating the available resources to the significant backlog of listing activities. The Final Listing Priority Guidance for FY 1996 was published on May 16, 1996 (61 FR 24722). We followed that three-tiered approach until the Final Listing Priority Guidance for FY 1997 was published on December 5, 1996 (61 FR 64475). The FY 1997 Listing Priority Guidance employed four tiers for assigning relative priorities to listing

actions to be carried out under section 4 of the Act. Tier 1, the highest priority, was the processing of emergency listings for species facing a significant risk to their well-being. Processing final decisions on pending proposed listings was assigned to Tier 2. Tier 3 was to resolve the conservation status of species identified as candidates and processing 90-day or 12-month administrative findings on petitions to list or reclassify species from threatened to endangered status. Preparation of proposed or final critical habitat designations and processing reclassifications were assigned lowest priority (Tier 4). We published Listing Priority Guidance for FY 1998 and 1999 on May 8, 1998 (63 FR 25502), and employed a three-tiered system.

Emergency actions comprised Tier 1, all other listing actions except critical habitat designation were included in Tier 2, and critical habitat designation was the lowest priority, or Tier 3.

While operating the listing program under the Final FY 1998 and FY 1999 Listing Priority Guidance, we focused our resources on completing Tier 2 activities. Two emergency listing actions (for the San Bernardino kangaroo rat (63 FR 3835) and Jarbidge population of bull trout (63 FR 42757)) were necessary in FY 1998. During FY 1998, we made final determinations for 57 species (47 final listings and 10 withdrawals). As a result of this expeditious progress, only 84 proposed species remained at the end of FY 1998 (including 42 newly proposed species). We published petition findings for 18 species (11 90-day findings and seven 12-month findings). We proposed one species, the peregrine falcon in North America, for delisting during FY 1998. Since the end of FY 1998, and up to July 31, 1999, 38 final determinations, 18 proposed rules, 15 petition findings, five proposed delistings, one final delisting, and two proposed and three final critical habitat designations have been completed. The proposed critical habitat designations, Tier 3 activities, were undertaken to comply with court orders. However, we did make critical habitat determinations (prudence and/or determinability decisions) for each final listing during FY 1998 and through July 30, 1999.

Despite the return to a more balanced listing program, backlogs remain. As of July 31, 1999, there are 66 proposed species awaiting final determinations, and 154 candidates awaiting resolution of their conservation status. Fifty-three species have pending 90-day petition findings and 22 species have pending 12-month petition findings. Various district courts and appellate courts have

remanded not prudent critical habitat determinations to us for reconsideration. Currently, we have to reconsider not prudent determinations for 245 Hawaiian Island plants and four vernal pool fairy shrimp that courts have remanded.

As stated in the FY 1998 and FY 1999 Listing Priority Guidance, it is important to recognize that we face even greater backlogs in our responsibilities to implement other aspects of the Act. The section 7 consultation and habitat conservation planning (HCP) backlogs continue to grow. The backlog of species awaiting Recovery Plans and the shortage of funding used for recovery implementation make the recovery backlog most severe. We base our funding requests on the workloads faced by all activities of the endangered species program. In FY 1999, the Department of the Interior requested significant increases in funding for all endangered species activities, but proportionally less for the listing program. The magnitude of the other endangered species backlogs exceeds the listing backlog, and was therefore reflected in the overall Department of the Interior funding request that included larger increases for the other endangered species programs.

In enacting the Department of the Interior's FY 1999 Omnibus and Emergency Supplemental Appropriations Act (Public Law 105-277), Congress provided only modest increases. Congress included in the Department of the Interior's FY 1998 appropriation an express limit on the amount to be spent on listing actions (including the designation of critical habitat); that continues this year, and the limit is \$5.756 million.

Even with the gradual reduction of the backlogs of proposed species pending final action, candidate species awaiting proposal, and petitions awaiting administrative findings, it is extremely important for us to focus our efforts on listing actions that will provide the greatest conservation benefits to imperiled species in the most expeditious and biologically sound manner. It has been longstanding policy (1983 Listing and Recovery Priority Guidelines (48 FR 43098)) that the order in which species should be processed for listing is based primarily on the immediacy and magnitude of the threats they face. We will continue to base decisions regarding the order in which species will be proposed or listed on the 1983 listing priority guidelines. We also must continue to prioritize among types of listing actions and this level of relative prioritization is the guidance provided below.

### Analysis of Public Comments

On May 20, 1999, we published a notice in the **Federal Register** (63 FR 10931) announcing proposed listing priority guidance for FY 1999 and FY 2000 and solicited public comment on that proposed guidance. We received two letters of comment on the proposed guidance (in two separate mailings) within the 30-day comment period specified in the Notice of Proposed LPG for FY 1999 and 2000. One letter was generally in favor of the proposed guidance and one letter was generally opposed. A summary of the issues raised and our response follows.

*Issue 1:* The order for processing species listings should be based on the immediacy and magnitude of the threats facing the species, as outlined in the proposed Listing Priority Guidance. The priorities for listing proposed in the guidance (emergency listings, final decisions, resolving the status of candidate species, processing administrative petition findings) will help to ensure the greatest conservation benefits for imperiled species in the most expeditious and biologically sound manner.

*Response 1.* We agree that the priorities outlined in the proposed Listing Priority Guidance are sound. We developed our priority system in order to provide the Act's protection to the most imperiled species as quickly as possible. We received no additional information or comments during the comment period that required the re-examination or revision of these priorities.

*Issue 2.* Delisting activities are most appropriately undertaken by the Service's Recovery Program, and the Service should provide a funding amount that will be allocated within the Recovery Program specifically for completing delisting actions.

*Response 2.* We agree that delisting actions should be accomplished through our recovery program, instead of the listing program. Although delisting activity is not a separate line item in Service budget requests or Congressional appropriations, beginning in 1999, work on delisting was included in the line item for the recovery program. Prior to that time it was included in the line item for the listing program. For Fiscal Year 1999, a total of \$1 million was allocated to our regions for work specifically related to delisting or reclassification actions, and we plan to continue allocating a specific amount of recovery funds for this purpose in future years.

*Issue 3.* Many of the Service's administrative and funding problems

related to listing activities are indicative of the larger problem of insufficient attention to species prior to the need to list them. The Service should continue to construct conservation agreements and habitat conservation plans, and should seek additional ways to address conservation issues proactively, in a manner that will preclude the need for listing whenever possible.

*Response 3.* Efforts to conserve species and their habitats prior to the need to list are extremely important. Initiating or expanding conservation actions before a species and its habitat are critically imperiled makes it more likely that simpler, more cost-effective conservation options will still be available and that conservation will ultimately be successful. In addition, removing the need to list a species through early conservation actions maintains land use and development flexibility for landowners. Our candidate conservation program involves a collaborative approach with States and Territories, other Federal agencies, and the private sector to identify species that are in need of conservation actions. In cooperation with our partners, we plan and implement conservation actions to stabilize or conserve species and their habitats, thus reducing and removing threats so that Federal listing is not necessary. We note that our efforts to conserve candidate species do not come at the expense of the listing program, as candidate conservation is funded by a separate budget line-item.

We recently published final policies on Safe Harbor Agreements and Candidate Conservation Agreements with Assurances (CCAA) (June 17, 1999; 64 FR 32726). These Agreements are becoming extremely important and effective candidate conservation tools. The CCAA policy offers assurances as an incentive for non-Federal property owners to implement conservation measures for species that are proposed for listing, species that are candidates for listing, and species that are likely to become candidates in the near future. In turn, property owners receive assurances that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed should the species become listed in the future. We agree that proactive conservation actions are vitally important and should be initiated as early as possible. We encourage Federal, State, and private partners to continue working with us to remove and reduce threats to imperiled species so that listings may be precluded.

*Issue 4.* If the Service's Listing Priority Guidance permits statutorily defined deadlines to be exceeded, the Listing Priority Guidance violates the Act. The Service should establish a listing procedure that guarantees that each deadline will be met. This procedure should include the following: uniform intermediate deadlines that Service listing staff must meet, elimination of multiple intermediate reviews, elimination of multiple public comment periods and comment period extensions, and elimination of reviews as required under various Executive Orders (Executive Orders provide that they cannot cause non-compliance with statutes). If necessary, imperfect decisions can be made in order to comply with the mandated deadlines, and remedied later with revisions.

*Response 4.* Contrary to the commenter's assertion, the Listing Priority Guidance does not "permit" statutorily defined deadlines to be exceeded. It is an unfortunate fact that some of those deadlines will be exceeded with or without the Listing Priority Guidance. The conflict between the listing actions required and deadlines imposed by the Act and the appropriations provided by Congress make it impossible for the Service to avoid delaying compliance with the Act. Therefore, until Congress provides adequate funding, the relevant question is not whether we will delay taking some listing actions required by the Act, but what actions will we delay and with respect to what species. In the Listing Priority Guidance, we have created a uniform policy for answering these questions. The Listing Priority Guidance improves our efficiency, thereby minimizing the need for such delays, and helps us determine which delays of the Act will be of the least consequence to imperiled species. Thus, the LPG is our blueprint for working to comply with the Act while providing the most conservation benefit in furthering the purposes of the Act.

We have established a listing procedure through which we endeavor to meet statutory and regulatory guidelines to the extent made possible by the annual appropriations for listing activities. We are committed to making listing determinations based on the best available scientific and commercial information as required by the Act. Violation of this standard is no less a violation of the Act than missing a statutory deadline. The opening of public comment periods is necessary to ensure that the public has ample opportunity to provide us with any pertinent information of which we may not be aware. Our agency review

process, which does contain internal deadlines for certain review stages, is necessary to ensure that the best available information has been used to make the most appropriate listing decision. In addition, various Executive Orders, such as Executive Order 12866, require that we obtain external review prior to publication of proposed and final listing rules. Under this Executive Order, the Office of Management and Budget must review significant regulatory actions. Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law and the President's priorities, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. This Executive Order requires the Office of Management and Budget to complete its review within 90 calendar days of receipt of the rule. In cases where a statutory or court-ordered deadline is applicable, this Executive Order directs agencies to schedule rulemakings, to the extent practicable, so as to permit sufficient time for the Office of Management and Budget to complete its review prior to the deadline. In some cases where courts have imposed very short deadlines for completion of rules, this has not been practicable. Lastly, we regularly review and revise the status of species after they have been listed when additional information is obtained that indicates such revision is appropriate. We will not knowingly issue "imperfect decisions" in order to expedite listing actions to meet mandated deadlines as suggested by the commenter.

*Issue 5.* The proposed Listing Priority Guidance states that "[c]ritical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately." The Act does not allow this separation.

*Response 5.* It is true that Section 4(a)(3) of the Act requires that critical habitat be designated concurrently with listing to the maximum extent prudent and determinable. However, as discussed in our response to Issue 4, we are unable to comply with all of the requirements of the Act at current funding levels. In some cases, making prudence and determinability findings, as well as actual critical habitat designations, will divert limited listing resources from other listing actions required by the Act. Therefore, in appropriate cases, we will delay all critical habitat determinations for a species in order to comply with other statutory requirements that provide greater conservation benefit in furtherance of the purposes of the Act.

*Issue 6.* The Service's position that critical habitat is relatively unimportant is contradicted by the Act and its legislative history.

*Response 6.* We believe that protection of habitat is paramount to successful species' conservation. On June 14, 1999, we published a Notice of Intent to Clarify the Role of Habitat in Endangered Species Conservation (64 FR 31871). As we stated in that notice, we believe that the process of habitat protection via critical habitat designation is most properly examined in the broad context of the overall importance of habitat in endangered species conservation.

Habitat considerations are a key part of virtually every process called for in the Act. We describe the habitat needs of species, and threats to habitat, in detail in all listing rules. In fact, Factor A of the "Summary of Factors Affecting the Species" section of all proposed and final listing rules discusses "The Present or Threatened Destruction, Modification, or Curtailment of the Habitat or Range" of the species. For most species, the threats to habitat are the most important consideration when determining if a species qualifies for protection under the Act. Habitat considerations are prominent in all recovery plans, and recovery plans include maps and descriptions of the habitat needed to recover the species. The section 7 consultation process addresses the dynamic and seasonal characteristics of the habitat needs of listed species. New information concerning species' habitat use becomes available throughout the listing, consultation, habitat conservation planning, and recovery processes. It is essential that we consider current and complete habitat information in these processes. The analysis of habitat alteration and/or destruction is the cornerstone of the Act's section 7 consultation process and the section 10 habitat conservation planning process; this is true for species that have designated critical habitat, as well as for those species that do not. Habitat is identified, communicated to affected parties, protected, and conserved through all phases of applying the Act's protections. The conservation and recovery of imperiled species are dependent upon habitat protection and restoration. When species are listed as threatened or endangered, the habitats or ecosystems upon which they depend are recognized. Conservation and recovery actions are directed not only to the imperiled species, but to the species' habitat, as well. (64 FR 31871).

The designation of critical habitat has only one regulatory impact: under section 7(a)(2), Federal agencies must, in consultation with us, insure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. Destruction or adverse modification is a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the

survival and recovery of a listed species. However, section 7 also prohibits Federal agencies from taking actions that jeopardize the continued existence of a listed species. To jeopardize the continued existence of a species is to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of species. For almost all species, the section 7 critical habitat adverse modification and jeopardy standards are the same, resulting in an unnecessarily duplicative and expensive regulatory process.

Therefore, while we firmly believe that attention to and protection of habitat is paramount to successful conservation actions, we have found that, in most circumstances, the designation of "official" critical habitat is of little additional value for most listed species.

*Issue 7.* The Service's position that it will not allow litigation to affect its priorities violates the Act's citizen suit provision, and unnecessarily burdens the courts and others with protracted litigation. The Service should respond to 60-day notices and enter into settlement agreements to avoid protracted litigation.

*Response 7.* As we stated in the proposed Listing Priority Guidance (64 FR 27596), we will not adjust our biological priorities to reflect the threat of litigation. This position does not violate the Act's provision that allows for citizen suits. According to section 11 (g) (1) (c), any person may commence a civil suit on his own behalf against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under section 4 which is not discretionary with the Secretary. In cases where such citizen suits have been filed regarding the processing of listing actions in accordance with our Listing Priority Guidance, we continue to seek from the courts recognition of our need to allocate our limited listing budget so as to best fulfill the spirit and intent of the Act. We will, of course, comply with all court orders. When possible and when consistent with our biologically-based priorities, we have entered into, and will continue to seek settlement agreements to resolve outstanding litigation. However, adopting the commenter's position would result in allocating scarce resources based on litigation rather than biology. For instance, in response to litigation, we might spend our entire listing budget designating critical habitat for species already listed and therefore subject to

most of the protections of the Act, while a gravely imperilled species without the benefit of an interested litigant would be denied the Act's protection.

#### *Final Listing Priority Guidance for Fiscal Year 2000*

##### *Relative Listing Priorities*

Nationwide in FY 2000, we will undertake the full array of listing actions consistent with the relative priority guidance described below. However, some Regions and some Field Offices within Regions have significant backlogs of proposed species, candidates, and petitions. Therefore, additional guidance is needed to clarify the relative priorities among the various listing activities.

Completion of emergency listings for species facing a significant risk to their well-being remains our highest priority. Emergency actions take precedence over all other section 4 listing actions. With the exception of emergency actions, all other listing activities may be undertaken simultaneously. Regions should assign relative priorities for their remaining non-emergency listing actions based on the following priority levels. Processing final decisions on pending proposed listings are Priority 2 actions. Priority 3 actions are the resolution of the conservation status of species identified as candidates (resulting in a new proposed rule or a candidate removal). Priority 4 actions are the processing of 90-day or 12-month administrative findings on petitions.

The processing of petitions requesting critical habitat designations and the preparation of proposed and final critical habitat determinations and/or designations will no longer be prioritized with other section 4 listing actions. Critical habitat actions will be conducted within a specified amount of funding (\$979,000 (17% of total) for FY99) which has been set aside out of the listing subactivity.

##### Priority 1—Emergency Listing Actions

We will immediately process emergency listings for any species of fish, wildlife, or plant that faces a significant and imminent risk to its well-being under the emergency listing provisions of section 4(b)(7) of the Act. This includes preparing a proposed rule to list the species. Every petition to list a species or reclassify a threatened species to endangered will be reviewed in order to determine whether an emergency situation exists. If the initial review indicates an emergency situation, the action will be a Priority 1 action and an emergency rule to list the

species will be prepared immediately. Emergency listings are effective for 240 days. A proposed rule to list the species is usually published concurrently with the emergency rule to ensure that the final listing and full protection of the Act are established before the 240-day emergency protection expires. If the initial review does not indicate that emergency listing is necessary, processing of the petition will be assigned to Priority 4 as discussed below.

##### Priority 2—Processing Final Decisions on Proposed Listings

Proposed species are just one step away from receiving the most important protections under the Act. The majority of the unresolved proposed species face high-magnitude threats. By focusing our efforts on completing final determinations, we can provide the maximum conservation benefits to the largest numbers of those species that are in greatest need of the Act's protections. As proposed listings are reviewed and processed, they will be completed through publication of either a final listing or a withdrawal of the proposed listing. Completion of a withdrawal may not appear consistent with the conservation intent of this guidance. However, once a determination not to make a proposed listing final has been made, publishing the withdrawal of the proposed listing takes minimal time and appropriations. Thus, it is more cost effective and efficient to bring closure to the proposed listing than it is to postpone the action and take it up at some later time.

##### Priority 3—Resolving the Conservation Status of Candidate Species (Resulting in a New Proposed Rule or a Candidate Removal)

The publication of new proposals (candidate conservation resolution) to add species to the lists of threatened and endangered species has significant conservation benefit. Under the 1983 listing priority guidelines, proposed rules dealing with taxa believed to face imminent, high-magnitude threats have the highest relative priority within Priority 3. If an emergency situation exists, the species will be elevated to Priority 1. Proposed listings that cover multiple species facing high-magnitude threats have priority over single-species proposed rules unless we have reason to believe that the single-species proposal should be processed first to avoid possible extinction. Proposed listings for species facing high-magnitude threats that can be quickly completed have higher priority than proposed rules for species with equivalent listing

priorities that require extensive work to complete.

Issuance of a new proposed listing is the first formal step in the regulatory process for listing a species. It provides some protection in that all Federal agencies must "confer" with us on actions that are likely to jeopardize the continued existence of proposed species. The resolution of a candidate species' conservation status will be accomplished through the publication of new proposed rules or the processing of candidate removal forms (which, when signed by the Director, remove species from the candidate list). Candidate species include species petitioned for listing, for which we have made a warranted but precluded finding pursuant to section 4(b)(3)(B)(iii) of the Act.

#### Priority 4—Processing Administrative Findings on Petitions to Add Species to the Lists and Petitions to Reclassify Species

The processing of 90-day petition findings and 12-month petition findings to add species to the lists or reclassify species will be Priority 4 activities. Once a 90-day petition finding is published, we will make every reasonable effort to complete the 12-month finding in the appropriate time frame. When it is practicable for us to complete a 90-day finding within 90 days, we are statutorily afforded a 12-month period from the receipt of a petition to completion of the 12-month finding. However, in those cases in which it is not practicable for us to complete a 90-day finding within 90 days of receipt of the petition, after the 90-day finding is completed, we will require 9 months to complete a thorough biological status review and issue a 12-month finding.

#### Allocating Listing Resources Among Regions

We allocate the listing appropriation among our seven Regions based strictly on the number of proposed and candidate species for which the Region has lead responsibility, with the exception of providing minimum "capability funding" for each Region. The objective is to ensure that those areas of the country with the largest percentage of known imperiled species will receive a correspondingly high level of listing resources. Our experience in administering the Act for the past twenty five years has shown, however, that we need to maintain at least a minimal listing program in each Region in order to respond to emergencies and to retain a level of expertise that permits the overall

program to function effectively over the longer term, thus the "capability funding" to each Region. In the past, when faced with seriously uneven workloads, we have experimented with reassigning workloads from heavily burdened Regions to less burdened Regions. This approach has proven to be very inefficient because the expertise developed by a biologist who works on a species' listing is useful in recovery planning and other conservation activities for that species. Additionally, biologists in a Region are familiar with other species in that Region that interact with the species proposed for listing, and that knowledge is useful in processing a final decision. For these reasons, we have found it unwise to reassign one Region's workload to personnel in another Region. Because we must maintain a listing program in each Region, Regions with few outstanding proposed listings may be able to address more lower priority listing actions, while Regions with many outstanding proposed listings will use most of their allocated funds on Priority 2 actions (finalizing proposed listings) or Priority 3 actions (completing new proposals to add species to the lists). It is the responsibility of individual Regions to recognize their workloads and backlogs and undertake priorities (1-4) as their regional workloads permit. We will provide critical habitat funding on a project-by-project basis in FY 2000.

#### Addressing Matters in Litigation

The numerous statutory responsibilities we bear under the Act do not come with an unlimited budget. We are sometimes required to make difficult choices about how to prioritize carrying out those statutory responsibilities in order to make the best use of our limited resources. Under these circumstances, technical compliance with the various sections of the Act with respect to one species can mean failure to comply with the other technical requirements of the Act for the same or another species. This guidance is part of a continuing effort to strive to achieve compliance with the Act in the manner that best fulfills the spirit of the Act, using our best scientific expertise.

Individuals or organizations occasionally bring suit against us for failing to carry out specific actions with regard to specific species. Many of these suits question our judgment and priorities, and seek compliance with the Act in circumstances that do not, in our judgment, lead to the best use of our resources to provide the maximum conservation benefit to all species. In many of the outstanding section 4

matters currently in litigation, the effect of what the plaintiff seeks is to require us to postpone or sacrifice conservation actions that we believe would have major conservation benefits in favor of actions that we believe would have lesser conservation benefits.

In no case will we adjust our biological priorities to reflect the threat of litigation. We have sought and will continue to seek from the courts recognition of our need to allocate our limited listing budget so as to best fulfill the spirit of the Act. We will, of course, comply with all court orders.

#### National Environmental Policy Act

We do not consider the implementation of this guidance to be a major Federal action significantly affecting the quality of the human environment for the purposes of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Further, the Department of the Interior's Departmental Manual (DM) categorically excludes from consideration under NEPA, "Policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case." This guidance clearly qualifies as an administrative matter under this exclusion. We also believe that the exceptions to categorical exclusions (DM 2 Appendix 2) would not be applicable to such a decision, especially in light of environmental effects for such action.

#### Authority

The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: September 15, 1999.

**Marshall P. Jones,**

*Acting Director,*

*U.S. Fish and Wildlife Service.*

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#### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management

[AK-(962)-4230-15]

#### Alaska; Notice for Publication, F-14908-B, Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is