



# NOAA FISHERIES

## Did You Know That?

Economics cannot be considered when we determine whether a species should be listed under the ESA.

We must make an ESA listing determination solely on the basis of the best scientific and commercial data available.

## Listing Considerations:

A species can be listed if it is endangered or threatened due to any one of these five factors.

- 1) Present or threatened destruction, modification, or curtailment of its habitat or range;
- 2) Overutilization for commercial, recreational, scientific, or educational purposes;
- 3) Disease or predation;
- 4) Inadequacy of existing regulatory mechanisms;
- 5) Other natural or manmade factors affecting its continued existence.

# Endangered and Threatened Species Listing 101

## What are the steps and timelines for NOAA Fisheries to list a species under the Endangered Species Act (ESA)?

The steps and associated deadlines are presented below. A listing is not a foregone conclusion for any species until a final rule is published.

### Step 1: Petition

Any interested person or organization can petition NOAA Fisheries to list a species under the ESA. A petition must:

- Clearly indicate the requested listing action, threatened or endangered, and give the name (scientific and common) of the species;
- Contain a detailed discussion and justification for the requested listing, describing past and present numbers, distribution, and any threats faced by the species;
- Provide information regarding the status of the species over all or a significant portion of its range; and
- Provide supporting documentation, in the form of references, publications, copies of reports or letters from authorities, and maps.

### Step 2: 90-day Finding

The 90-day finding is a decision on whether or not the petition presented substantial information indicating that the petitioned action may be warranted. The 90-day finding is based solely on the information included in the petition and information found in files NOAA Fisheries has readily available. We cannot request information from other sources at the 90-day finding stage. The petition does not need to show a strong likelihood that a species should be listed, but only needs to show that listing may be warranted.

- If we find that the petition did not present substantial information, we will publish a negative 90-day finding in the *Federal Register*. The listing process ends. However, a person or organization can submit a new petition and a species can be petitioned again at a later date.

- If we find that the petition presented substantial information, we will publish a positive 90-day finding in the *Federal Register*. We will often request information from the public to help inform the status review.

## When Can the Public Provide Input on a Listing?

### After we publish a positive 90-day finding:

We often request scientific and commercial information from the public. We may incorporate this information into the status review.

### After a proposed rule is published:

We provide the public at least a 60-day comment period. We may also hold public hearings to solicit additional information. We will then address the public comments received in the final listing decision.

## Step 3: Status Review

A positive 90-day finding automatically triggers a status review and a 12-month determination. A status review is a comprehensive assessment of the status of the species and its threats. It is based on the best available science. It considers any information received from the public. NOAA Fisheries relies on the status review to make a 12-month determination as to whether or not a species should be listed as threatened or endangered, or not at all.

## Step 4: 12-Month Determination

The 12-month determination is a decision on whether or not listing the species is warranted. In making the 12-month determination, we look at the status review, existing conservation efforts being made by any State or foreign nation to protect the species, and Endangered Species Act (ESA) policies. There are three options:

- The listing is not warranted, in which case NOAA Fisheries will publish the determination in the *Federal Register*. The listing process ends.
- The listing is warranted, but precluded because other pending listing, delisting, or reclassification actions take priority. In this case, we have determined that listing is warranted, but that listing other species takes priority because they are more in need of protection.
- The listing is warranted, in which case NOAA Fisheries will publish a proposed rule in the *Federal Register*.

## Step 5: Proposed Rule

If NOAA Fisheries decides that the species should be listed, a proposed rule is published in the *Federal Register*. A proposed rule will contain a summary of the data and the decision to propose the species as threatened or endangered under the ESA. NOAA Fisheries will allow at least 60-days for public comment. We usually also hold public hearings.

## Step 6: How to comment and how we use public comment

When a positive 90-day finding or a proposed rule is published in the *Federal Register* a public comment period automatically opens. Any scientific or commercial information submitted by the public during the public comment periods will help inform the final listing decision. The Federal Register Notice will provide specifics on the information needed and details on how to submit comments electronically or by mail.

## Step 7: Final Listing Decision

Within one year of publishing a proposed rule, NOAA Fisheries must publish in the *Federal Register* a final decision to complete or withdraw the listing. The final decision will consider and address the public comments received. If the decision is to list the species, the final rule will specify when the listing will actually go into effect, usually 30 days later.

## What Can Be Listed Under the ESA?

Plants and animals can be listed at the species and sub-species level. Vertebrate animals can also be listed as [distinct population segments](#).

Fun fact: insect species classified as a pest cannot be listed under the ESA.

## What Species Are Listed Under the ESA?

NOAA Fisheries and the U.S. Fish and Wildlife Service have the ability to list species under the ESA.

To learn more about threatened and endangered species managed by NOAA Fisheries, go to: <http://www.nmfs.noaa.gov/pr/species/index.htm>

To learn more about threatened and endangered species managed by U.S. Fish and Wildlife, go to: <http://www.fws.gov/endangered/species/us-species.html>

## What Species Have Been Petitioned For Listing?

To learn more about species petitioned for listing in the Southeast Region, go to: <http://sero.nmfs.noaa.gov/pr/ListingPetitions.htm>

## What is the Federal Register?

The *Federal Register* is a daily journal of the U.S. Government. It contains proposed and final regulations. To search, view, and comment on new regulations please visit: <https://www.federalregister.gov/>

## What happens if a species is listed as “endangered”?

Endangered species are automatically afforded protections under Section 9 of the Endangered Species Act (ESA). For endangered animals, including any parts or products, the ESA prohibits:

- Import or export from the U.S.
- [Take](#) in the U.S., or the territorial sea of the U.S.
- [Take](#) upon the high seas.
- Possession, sale, deliver, carry, transport, or ship, by any means, such species taken illegally.
- Deliver, receive, carry, transport, or ship interstate or foreign commerce, by any means in the course of commercial activity, such species taken illegally.
- Sell or offer for sale in interstate or foreign commerce.

## What happens if a species is listed as “threatened”?

Threatened species are afforded fewer protections under the ESA than species listed as endangered. The Section 9 prohibitions do not automatically apply to threatened species listed by NOAA Fisheries, unless they are established in a separate 4(d) rule. Activities that involve species listed as threatened can continue as usual after a listing unless a 4(d) rule prohibits those acts.

## What is a 4(d) rule?

NOAA Fisheries can extend some or all of the Section 9 prohibitions to threatened species if it is advisable and necessary for the conservation of the species. A separate ESA Section 4, paragraph (d) rule (termed a “4(d)” rule) can establish any restrictions. The details of the restrictions can be crafted to the particular conservation needs of the species.

## If a species is listed under the ESA will I need a permit to conduct my research activities?

Permits are required if your activities would result in a violation of a Section 9 prohibition or a 4(d) rule. If your research would involve take, import, export, or any other prohibited activity, you need a permit. Permits may be issued under Section 10(A)(1)(a) of the ESA to conduct scientific research or to enhance the propagation and survival of endangered species.

## What about species held in captivity?

Species held in captivity are considered part of the listed species. Any Section 9 or 4(d) rule requirements will apply. But the continued possession of captive animals is not prohibited by Section 9.

## Do I need a permit to keep endangered species in captivity?

Simply maintaining endangered species and providing routine care would not require a permit. Conducting additional activities such as experiments and releasing captive species into the wild would require a permit. Import or export may be authorized only for research or enhancement purposes by permit. Public display may occur with a permit. For threatened species, the requirements may be similar, but will depend on the details of its 4(d) rule.

### **Does a U.S. citizen need an Endangered Species Act (ESA) permit to “take” endangered species in a foreign country?**

No, a U.S. permit is not required for activities conducted by a U.S. citizen on the land or in the territorial waters of another nation. However, an ESA permit is required for any "takes" by a U.S. citizen on the “high seas,” i.e., more than 12 miles from the coast of any nation. Importing a listed species, including any parts, must have a U.S. permit, even if it was taken legally in another country.

### **Where do I get a Scientific Research & Enhancement Permit?**

NOAA’s Office of Protected Resources, Permits and Conservation Division issues 10(a)(1)(A) permits. Apply for a permit by email or mail. If you are currently conducting scientific research or enhancement activities on a species that is proposed for endangered status under the ESA, you should begin the ESA Section 10 permit application process right away. The permitting process takes approximately one year.

Application instructions are at:

[http://www.nmfs.noaa.gov/pr/permits/esa\\_permits.htm#scientific](http://www.nmfs.noaa.gov/pr/permits/esa_permits.htm#scientific).

### **What if you still have a species (part or product) that you obtained for commercial purposes prior to the species being proposed for listing as endangered?**

Selling or trying to sell an endangered species part and/or product is prohibited even if the species was obtained prior to the ESA listing. It is illegal to deliver, receive, carry, transport, or ship, in interstate or foreign commerce by any means whatsoever and in the course of commercial activities, any endangered species. The ESA does not allow commerce of endangered species. But these prohibitions do not apply to species proposed for listing. They would only go into effect after a final listing rule, for endangered species, or after a final listing rule and a 4(d) rule, for threatened species. After a proposed listing, businesses should assess the implications for their operations and make any needed changes before a final listing decision.

### **Endangered Species Act: Celebrating 40-Years of Conservation**

This year, 2013, marks the 40<sup>th</sup> year since the Endangered Species Act was signed into law. President Nixon signed the Endangered Species Act (ESA) on December 28, 1973. Since then the ESA has become one of the most important environmental laws in history and has been successful in preventing the extinction of countless species. The purpose of the ESA is to protect and recover imperiled species and the ecosystems on which they depend.