



June 22, 2015

U.S. Fish and Wildlife Service
Attn: Docket No. FWS–HQ–ES–2015–0016
5275 Leesburg Pike
Falls Church, VA 22041–3803

National Marine Fisheries Service
Attn: DOC 150506429–5429–01
1315 East-West Highway
Silver Spring, MD 20910

Re: SCB Comments on the proposed *Revision to Petition Regulations*

Dear Mr. Douglas Krofta and Ms. Angela Somma,

On behalf of the North America Section of the Society for Conservation Biology (“SCB”), we would like to offer comments regarding the newly proposed rule from the U.S. Fish and Wildlife Service and National Marine Fisheries Service (“Services”) that changes the procedures that scientists must comply with if submitting a petition to the Services to protect a species under the Endangered Species Act (“ESA”). SCB is an international professional organization whose mission is to advance the science and practice of conserving the Earth’s biological diversity, support dissemination of conservation science, and increase application of science to management and policy. The North America Section’s 1184 members include resource scientists and managers, educators, students, and government and private conservation workers, many of whom are deeply involved in the conservation of species protected by the ESA. We are concerned that these new regulatory proposals will present substantial burdens to individual scientists and discourage them from attempting to submit petitions based on best available science to protect imperiled species under the ESA.

Under the ESA, any citizen may petition the U.S. Fish and Wildlife Service—or in the case of marine and anadromous species, the National Marine Fisheries Service—to protect a species. The ESA sets forth clear deadlines to respond to such petitions and standards to evaluate whether petitions have scientific merit. Longstanding regulations set forth the required elements of a petition, as well as the criteria to determine whether a petition demonstrates that protecting a species under the ESA may be warranted. Recently, the Services proposed several new requirements that all petitions must contain, including a requirement that a petitioner must gather and append all relevant information that is “reasonably available” to the petitioner. The petitioner also must contact every state in which the species sought to be protected might reside within at least 30 days before the submission of the petition. Any information from any state agency that is received must also be appended to the petition before its submission to the Services. The petitioner must certify in writing that he/she has followed these requirements. Finally, the petition itself must be limited to just one species; multi-species petitions will no longer be accepted.

The Services assert that these regulatory changes are needed to “improve the content and specificity of petitions and to enhance the efficiency and effectiveness of the petition process to support species conservation.” Yet nowhere in the proposal do the Services identify the ways in which currently submitted petitions lack the needed content or specificity to facilitate their efficient review, and the Services’ new requirements (e.g., requiring extensive appendices and forbidding multi-species petitions)



These will in fact dramatically decrease the efficiency of the listing process. Further, from a scientific perspective (which is important because listing decisions are to be based solely on best available science), it is unclear what the Services mean when they assert that the effectiveness of the petition process must be “enhanced.” The goal and purpose of the ESA is to prevent species extinction. Thus the effectiveness of the petition process should be evaluated based on whether species at greatest biological need for protection under the ESA are protected in a timely fashion. Since the passage of the ESA in 1973, the number of species needing protection has far exceeded the number of species protected by the ESA. In 1975, the Smithsonian Institution completed a report at the behest of Congress, which identified more than 3,000 plant species for possible protection under the ESA. As recently as 1994, the Services had identified over 1,900 Category 2 candidate species—species for which the Services possessed information indicating that protection under the Act may be warranted.

Given that the global extinction crisis continues unabated¹ and that more than a thousand species in the United States still await the ESA’s protection, it should come as no surprise that the number of listing petitions filed over the last 10 years has increased substantially. But the fact that the number of petitions to the Services has increased does not indicate that the petition process is flawed; rather, it suggests that our collective conservation efforts have yet to stem the tide of species decline. Making the petition process more burdensome, as the proposed rule does, will not improve the efficiency or effectiveness of the petition process: the Services will actually make it more difficult for scientists to engage in the listing petition process. This will frustrate the conservation goals of the ESA because research has shown that citizen-initiated petitions, including petitions submitted by individual scientists, more frequently identify species at higher levels of biological threat than that of species identified by the Services.²

There are many notable instances where individual scientists have submitted meritorious petitions that led to species being protected under the ESA. Dr. Brad Shaffer at UCLA petitioned the U.S. Fish and Wildlife Service to protect the California tiger salamander (*Ambystoma californiense*). Dr. James Gore King, a storied biologist and bush-plane pilot, petitioned to protect the Steller’s eider (*Polysticta stelleri*) and spectacled eider (*Sumateria fischeri*) after conducting field surveys of both species and observing them decline. Sam Wright, who spent 45 years managing fish populations, petitioned the National Marine Fisheries Service to protect five species of rockfish in the Puget Sound. All of these species are at grave risk for extinction and their listing has resulted in substantial management changes on the ground that will eventually put them on the path to recovery. If the Services adopt their proposed regulatory changes, scientists will be much less likely to submit petitions in the future that identify high-risk species such as these.

According to the Services’ proposal, if a listing petition does not meet the 10 newly announced mandatory criteria, the Services will summarily reject the petition (although the petitioner will be allowed to correct the deficiencies and resubmit at a later time). For example, if a scientist failed to gather “all relevant information” about a species—some thing that is undefined and subject to interpretation—that petition would be immediately rejected. Requiring an individual scientist, who might be writing the petition entirely on his/her own personal time, to certify compliance with such a vague and ambiguous requirement might simply cause that person to give up. Most scientists do not fully understand what it means to certify that one’s responses are complete, nor would they likely understand the consequences of making such a certification.

¹ Pimm, S.L. et al., 2014. *The biodiversity of species and their rates of extinction, distribution, and protection*. Science 344: DOI: 10.1126/science.1246752

² Brosi, B.J. and E. Biber, 2012. *Citizen involvement in the U.S. Endangered Species Act*. Science 337:802-803.



The proposed ban on multi-species petitions is also likely to impede species protection efforts. As an example, had Mr. Wright submitted one petition to protect five species of rockfish under the current proposal, the Fisheries Service would have summarily rejected his petition. Would Mr. Wright submit five petitions if his time were limited, or would he only complete one or two petitions? In such a circumstance, species that otherwise merit protection are likely to be overlooked merely because the burden of having to submit five nearly identical petitions rather than one petition (not to mention that each individual petition would, under the proposed rules, have to append all “reasonably available” information about each species) is too great. Further, such a restriction is nonsensical from a scientific perspective as it is often the case that groups of species that live in the same geographic area are at risk due to a common set of threats to the ecosystem they depend upon. In such circumstances, allowing scientists and other concerned citizens to submit multi-species petitions is the most efficient, time- and cost-effective way to effectuate listing determinations. SCB is concerned that the Services’ proposed rule conflicts with and undermines the Services’ 1994 *Interagency Cooperative Policy for the Ecosystem Approach to the Endangered Species Act*, which seeks to protect species that live in the same ecosystem in a holistic and efficient manner.

A final example illustrates another significant problem with the Services’ proposal. In 2010, the Fish and Wildlife Service received a petition from Anna Sewell, a second-year law student (albeit not a scientist), to protect the golden-winged warbler (*Vermivora chrysoptera*) under the ESA. Under the Services’ proposal, before submitting such a petition Ms. Sewell would have had to contact every state where the species occurs, request information regarding that species, and certify to the Service that she had done so. As a law student, she would presumably understand what it means to certify in writing that she had submitted her petition to the states. But from what states should she have requested information? The warbler breeds in 10 states, and migrates through another 20 states on its way to and from its wintering grounds. According to the Cornell Lab of Ornithology’s eBird database, golden-winged warblers have been found in 43 of the 50 states when one includes vagrant individuals. Because the Services’ proposal is not limited to states where a species breeds, or even where it is regularly found, Ms. Sewell would presumably have had to contact 43 states regarding her petition. That is a burden that most individuals and scientists would simply not be willing to endure even if the states—some of which may have only a transitory relationship with a species—could be expected to respond.

SCB is concerned that its members and other interested scientists will not be able or willing to comply with the burdens imposed by the newly proposed rule, and consequently will participate less in the ESA listing process. SCB believes that the likely end result of this proposal will be that only large and sophisticated environmental organizations with substantial resources will be able to submit listing petitions. The new rule effectively erects a roadblock that hinders scientists’ engagement in the listing process. This anti-scientist bias, in turn, will prevent the best available science from being used in the most efficient and effective way to facilitate threatened and endangered species protection.

SCB requests that the Services carefully consider how these onerous new requirements will impair the ability of individual scientists to participate in the petitioning process under the Act, and how this lack of scientist participation, in turn, will adversely affect species in need of the ESA’s protection. The efficacy of the listing program and the petition process should be evaluated based on the Services’ ability to protect the most imperiled species in the shortest amount of time, not on whether petitions meet arbitrary and formalistic requirements. To the extent that the Services continue to have difficulties prioritizing species conservation efforts given their limited resources, SCB hereby offers its assistance in



Society for Conservation Biology

A global community of conservation professionals

helping to develop a rational, science-based approach to prioritize, protect and recover the most at-risk species.

Sincerely,

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Carlos Carroll', written in a cursive style.

Carlos Carroll, President of SCB-NA

A handwritten signature in black ink, appearing to read 'Doug Parsons', written in a cursive style.

Doug Parsons, SCB-NA Policy Director