



May 18, 2016

Public Comments Processing

Attn: FWS–HQ–ES–2015–0016

U.S. Fish and Wildlife Service 5275 Leesburg Pike

Falls Church, VA 22041-3803.

Re: Proposed Rule – Revisions to the Regulations for Petitions

Dear Sir/Madam,

The National Association of State Foresters (NASF) submits these comments in response to the U.S. Fish and Wildlife Service (USFWS) revisions to the proposed rule for petitions for listing under the Endangered Species Act (ESA) (81 Fed. Reg. 23448). NASF is comprised of the heads of the state forestry agencies in all fifty states, the District of Columbia, and the U.S. territories. State foresters directly manage some 63.1 million acres of publicly-owned land and provide technical and financial assistance to more than 22 million family forest landowners who are the stewards of 264 million acres of forest land.

NASF commented previously (dated July 20, 2015) on this effort during the initial USFWS comment period, and we are disappointed to see that the most critical and beneficial aspect of this proposed revision is being scaled back. We supported the initial proposal as a way to enhance the role of state government expertise in the petition process and foster collaboration among all stakeholder groups with an interest in wildlife conservation. The original proposal would have benefitted species conservation and strengthened cooperation. However, the changes USFWS released to this proposal in April of 2016 greatly diminish the role of states in the petition process:

At proposed § 424.14(b)(9), we replace text concerning pre-coordination of petitioners with States and gathering of information from State wildlife agencies with new text requiring that petitioners notify affected States of their intention to file a petition to list, delist, change the status of, or revise critical habitat for a species, at least 30 days before submitting a petition to the Services (81 Fed. Reg. 23450).

This downgrading of the state role is impactful in three important ways. Foremost, it no longer requires the petitioner to gather and understand all the science behind a species and associated conservation efforts in order to make a fully informed decision on whether to petition the USFWS or not. This seems counterintuitive to additional proposed text that requires petitioners to present unbiased and balanced information:

In this revised proposed rule, we add a new proposed § 424.14(c)(5) stating that a petitioner should provide a complete, balanced presentation of facts pertaining to the petitioned species, which would include any information the petitioner is aware of that contradicts claims in the petition. The intent of this provision is to discourage petitioners from presenting only that information that supports the claims in the petition, which might result in a biased, less-than-robust petition (81 Fed. Reg. 23450).

If petitioners are not required to ask states if they have any information that might contradict their predetermined petition claim, then it would seem that the bar of “awareness” is being kept intentionally low.

A second impact from this revision is that it creates an added burden on the states, and an increased likelihood of an incomplete data package being received by the USFWS. In the most recent proposal, the states are now responsible for getting all information to the USFWS, and hoping it ends up alongside the petition. This is of course dependent upon the petition actually being submitted in a timely manner, and both the petition and the state information being routed to the same reviewer. The original proposed rule requiring the petitioner to submit a complete package seems vastly more efficient. We do not agree that “*attempting to contact and gather responsive data from multiple State wildlife agencies may cause an undue burden on the petitioner*” (81 Fed. Reg. 23450) nor that it would make the process unduly complex. On the contrary, it would be the hallmark of a fully-informed science-based petition.

Finally, this revision removes the element of cooperation that was being fostered through the original proposal. The tactic of serially petitioning and litigating the USFWS is not representative of the approach to species conservation supported by most stakeholders in the wildlife community. Anything the USFWS can do to foster increased dialogue between petitioners, other interest groups and state agencies engaged in wildlife conservation will ultimately be for the benefit of the species. Our efforts are strengthened the more we work together, cooperate, and share expertise.

In sum, we are disappointed with the changes made to these proposed revisions regarding the role of states in the petition process. We request that the USFWS rescinds these changes and once again requires petitioners to coordinate with states through the gathering of pertinent information. We would also like to reiterate from our earlier comments two items that appear not to have been addressed in the April 2016 revision:

- We recommend that USFWS provide each State the opportunity to designate all appropriate agencies to receive a copy of the petition, and maintain a master contact list for petitioners to access when contacting states.
- We request that the timeframe for states to respond to a petition be extended to at least 60 days.

Thank you for the additional opportunity to comment on the proposed petition regulation revisions, and we hope that the unfortunate change in the role of states outlined above will be reversed.

Sincerely,



Paul DeLong
NASF President
State Forester of Wisconsin