



February 16, 2016

Public Comments Processing  
Attention: FWS-HQ-ES-2015-0169  
MS: BPHC  
U.S. Fish and Wildlife Service  
5275 Leesburg Pike, MS-PPM  
Falls Church, VA 22041-3803

**Re: Draft Methodology for Prioritizing Status Reviews and Accompanying 12-Month Findings on Petitions for Listing Under the Endangered Species Act 81 Fed. Reg. 2229-2232 (Friday, January 15, 2016):**  
**Comments of the American Petroleum Institute and the Independent Petroleum Association of America**

Dear Madam or Sir:

The American Petroleum Institute (“API”) and the Independent Petroleum Association of America (“IPAA”) submit these comments on the above-captioned Draft Methodology for prioritizing status reviews and accompanying 12-month findings on petitions for listing species under the Endangered Species Act (“ESA”).

API is a national trade association representing over 640 member companies involved in all aspects of the oil and natural gas industry. API’s members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API and its members are dedicated to meeting environmental requirements, while economically developing and supplying energy resources for consumers.

IPAA is a national trade association representing the thousands of independent crude oil and natural gas explorers and producers in the United States. It also operates in close cooperation with forty-four unaffiliated independent national, state, and regional associations, which together represent thousands of royalty owners and the companies that provide services and supplies to the domestic industry. IPAA is dedicated to ensuring a strong and viable domestic oil and natural gas industry, recognizing that an adequate and secure supply of energy developed in an environmentally responsible manner is essential to the national economy.

API and IPAA support the objective of the U.S. Fish and Wildlife Service (“the Service” or “the agency”) to address the backlog of ESA listing actions by establishing a method for prioritizing listing petition status reviews and accompanying determinations under the ESA in order to improve allocation of the Ser-

vice's resources. Such an effort is consistent with the Service's inherent legal authority to prioritize its workload in carrying out its responsibilities under the ESA.

API and IPAA have commented on several past occasions about the importance of the Service addressing its workload with clearly communicated approaches that the public can easily understand. In September 2015, we provided comments that offered qualified support for the proposed rule regarding the listing petition process that the Service published jointly with the National Marine Fisheries Service. In those comments, we said:

IPAA and API strongly support the efforts of the Services to achieve those goals by, among other things:

- 1) requiring that petitions be limited to a single species;
- 2) requiring consultation with states prior to the submission of petitions;
- 3) ensuring that petitions identify, clearly label and append all reasonably available information relevant to the petitioned action and species, including information that may support a finding that the petitioned action is not warranted;
- 4) providing clear direction as to the information necessary for submission of a complete petition; and
- 5) clarifying that a petitioner's submission of supplemental information after filing of a petition will re-start the statutory timeframe for review.

We also stated that the Services should make clear that, as the ESA requires, "all relevant information" means "the best available scientific and commercial data" and that it includes the best available scientific and commercial data that support the petition as well as any such data that may refute the petition.

We refer to these prior comments in order to call attention to the following certain themes that we believe apply equally to the Draft Methodology:

- 1) adoption of a systematic approach to the management of the agency's workload so to prioritize work;
- 2) consultation taking place between the Service and state wildlife resource agencies;
- 3) decisions being reached through a transparent, clearly communicated and documented process; and
- 4) objective and science-based consideration of the information on which decisions are based.

These themes should likewise govern the development of a methodology for prioritizing listing decisions and the implementation of that methodology once it is developed.

We appreciate that the Draft Methodology recognizes that the Service can only make decisions under the ESA based on the best available scientific and commercial data. By giving a higher priority to species for which there is ample data currently available, the Service can correctly ensure that it does not base its ESA decisions on speculative, incomplete, or unreliable information. In addition, we strongly encourage the Service to use sound science as a fundamental tool when assigning a priority level to any species, including any decision that a species warrants the highest priority level. To that end, we also recommend that the Service remove "level of controversy" as an additional consideration in the Draft Methodology, because consideration of such subjective information is contrary to the Service's obligation to make its decisions based on the best available scientific and commercial data.

We further appreciate that the Draft Methodology recognizes the critical role conservation efforts play in preserving species. Recent efforts have shown that voluntary conservation efforts, like those that API

members have supported and actively participate in through significant financial contribution, land enrollment and implementation of robust conservation measures, can ensure that species receive the necessary level of protection without receiving a high level of priority. To further acknowledge industry's important role in conserving species and providing the Service with scientific and commercial data, we recommend that the methodology identify industry as one of the "conservation partners" with whom the Service may work.

Although the Draft Methodology states that it will not apply to actions to down-list or delist a species, the Service should clearly state in this guidance that it will continue to give such actions priority where appropriate. Furthermore, the Service should explain its methodology for prioritizing actions to down-list or delist a species in conjunction with this Draft Methodology to assure the public that a balanced effort will be made to: (1) list species and (2) down-list or delist species.

We also recommend a revision to how the Service will treat actions that are assigned the lowest priority, where the Service "know[s] almost nothing about its threats or status." For such actions, as an initial matter the Service should closely consider whether to deny the applicable petition as failing to meet the ESA's requirement that petitions must present substantial information that a listing may be warranted. This clarification would be consistent with the proposed rule regarding the listing process and would help the Service ensure that it meets any applicable deadlines under the ESA.

We strongly recommend that the Service also describe how the assignment of a listing action to a particular bin or category will determine the timing of decisions flowing from that assignment as well as the resources the Service will employ in subsequent agency actions. We also recommend that the Service describe how court-imposed deadlines will affect the level of priority the Service will assign to a status review or finding and whether the Service will use this methodology when deciding whether to enter into any settlement establishing a deadline for such a status review or finding. We are concerned about the possibility for court decisions or settlements to undermine the Service's efforts to establish a rational system for ESA actions.

We believe that as useful as the proposed categories may be, the quality of the documentation the Service offers with respect to the rationale it employs for assigning an action to a particular category will be central to the categories' utility and to their successful use. An example would be actions meeting the conditions for more than one bin where the Service indicates it will take into consideration any case-specific information relevant to determining what prioritization would, overall, best advance the objectives of the Draft Methodology, where thorough documentation of the Service's consideration process would promote the agency's goal to provide transparency to stakeholders..

The Service should also recognize that as it evolves, the National Listing Workplan that the Draft Methodology contemplates should take shape as an archive of the decisions the Service makes. For the benefit of both the Service and the public it serves the archive should be accessible to the public and be formatted in a way that will make it a useful reference for decision-makers at the Service, for state wildlife agencies, for the scientific community, and for others who have an interest in the decisions the Service reaches. The Service should also make clear how and how often the National Listing Workplan will be updated. We recommend that the Service establish a regular schedule (e.g., every quarter) and clearly identify changes so that the public can easily track of changes over time.

The Draft Methodology is a positive step forward and appears to make logical sense. For it to fully serve the purpose the Service describes and anticipates, it must be supported by careful documentation, rely to the greatest extent possible on objective science, and provide a record that is accessible to all interested parties.

API and IPAA value the opportunity to provide comments on the Draft Methodology.

Sincerely,

Handwritten signature of Richard Ranger in black ink.

Richard Ranger  
Senior Policy Advisor  
American Petroleum Institute

Handwritten signature of Dan Naatz in black ink.

Dan Naatz  
Senior Vice President of Government  
Relations and Public Affairs  
Independent Petroleum Association of America