

Endangered Species Act/Citizen Suit Litigation: U.S. Government Accountability Office Addresses Deadline Suits



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The United States Government Accountability Office (“GAO”) issued a February 2017 report titled: Environmental Litigation – Information on Endangered Species Deadline Suits (“Report”)

See GAO-17-304.

The Ranking Member of the United States House of Representatives Committee on Natural Resources (Raul M. Grijalva) asked the GAO to review citizen suit litigation brought under Section 4 of the Endangered Species Act of 1973 (“ESA”). Section 4 contains certain mandatory deadlines for federal agency action.

This section of the ESA requires that either the United States Fish and Wildlife Service (“FWS”) or the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (“NMFS”) undertake certain actions when they receive a petition to list or delist a species. The relevant agency must determine whether the petition presents information warranting action. If so, the relevant agency must proceed with a review of the species.

In the event a species review is conducted, the relevant agency must determine whether the species’ listing or delisting is warranted. If a listing or delisting must be undertaken, a rule proposing to add or remove the species from the threatened or endangered list must be proposed. Further, Section 4 requires that certain actions be taken to designate and revise critical habitat for listed species. Also, the relevant agency must conduct five-year status reviews to evaluate any changes in the status of listed species.

The ESA is one of the federal environmental statutes that contains a citizen suit section. Any person or entity may file a lawsuit to compel the relevant agency to take statutorily required actions (if they have not already done so) within the relevant designated timeframe.

The GAO Report notes that some stakeholders have “raised concerns that deadline suits burden the Services’ workloads and resources and unduly influence their priorities.” In contrast, others are stated to maintain that species have been neglected for years awaiting listing by the Services and only gain protection under the Act because litigation forced the Services to take action.

The GAO was asked to review this “deadline litigation” brought under Section 4 of the ESA. As a result, the GAO examined:

1. the number and scope of deadline suits filed against the Services from fiscal years 2005-2015, and
2. the outcomes of these suits and the effect, if any, the suits had on the Services' implementation of their Section 4 programs.

In summary, the GAO found that Plaintiffs filed 141 deadline suits against the relevant federal agencies for allegedly failing to take actions within the statutory deadlines under Section 4 of the ESA during the fiscal years 2005-2015. It further determined that the majority of deadline suits filed during this time period were resolved through negotiated settlement agreements that established schedules for the agency to complete the actions involved in the suits. Agency officials are stated to have indicated that most deadline suits are resolved in this manner because there is no dispute that a statutory deadline was missed.

As to setting schedules, the GAO states:

...other than setting schedules for completing Section 4 actions, the settlement agreements did not affect the substantive basis or procedural rule-making requirements the Services were to follow in completing the actions, such as providing opportunities for public notice and comment on the proposed rules. Officials also said they prioritize completing actions in settlement agreements in implementing their Section 4 programs. NMFS officials indicated that work resulting from deadline suits did not have a significant effect on the implementation of their program, in part because NMFS has not had a high number of petitions to list species. In contrast, FWS has delayed completing some actions to complete those included settlement agreements. FWS has initiated several changes to help improve Section 4 program implementation, including developing a 7-year work plan that prioritizes the order for completing overdue actions and revising information requirements for listing petitions.

[A copy of the GAO report can be downloaded here.](#)