



Report to the Ranking Member,
Committee on Natural Resources,
House of Representatives

February 2017

ENVIRONMENTAL LITIGATION

Information on Endangered Species Act Deadline Suits

GAO Highlights

Highlights of [GAO-17-304](#), a report to the Ranking Member, Committee on Natural Resources, House of Representatives

Why GAO Did This Study

To receive protection under the ESA—enacted to conserve at risk species—a species must first be added to one of the federal lists of threatened or endangered species. FWS and NMFS jointly administer the ESA and have programs that encompass actions related to Section 4 of the ESA. Some of these actions—such as making findings on petitions filed by a person or group requesting addition or removal of species from one of the lists—must be completed by specific statutory deadlines.

GAO was asked to review deadline litigation brought under Section 4 of the ESA. This report examines (1) the number and scope of deadline suits filed against the Services during fiscal years 2005 through 2015 under Section 4 of the ESA, and (2) the outcomes of these suits and the effect, if any, the suits had on the Services' implementation of their Section 4 programs.

GAO reviewed the ESA and agency documents; obtained a list of Section 4-related suits filed during fiscal years 2005 through 2015 from the Department of Justice, which is responsible for representing the Services; identified from the list those that were deadline suits and compared the list with other sources to confirm reliability; analyzed the suits, including documentation on how they were resolved; and interviewed Justice, FWS, and NMFS officials.

The agencies provided technical comments on this report.

View [GAO-17-304](#). For more information, contact Anne-Marie Fennell at (202) 512-3841 or fennella@gao.gov.

February 2017

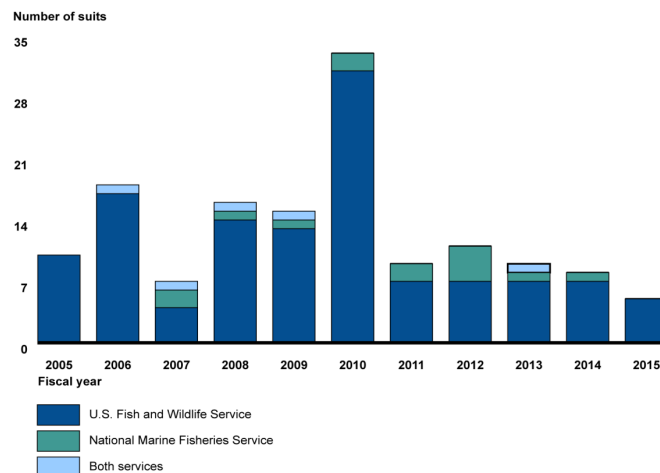
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What GAO Found

GAO found that plaintiffs filed 141 deadline suits against the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) for allegedly failing to take actions within statutory deadlines under Section 4 of the Endangered Species Act (ESA) during fiscal years 2005 through 2015 (see figure). Section 4 contains mandatory deadlines for such actions as making findings on petitions to list or delist species as threatened or endangered. The suits involved 1,441 species and cited a range of Section 4 actions, but most suits were related to missed deadlines for issuing findings on petitions to list species.

Figure: Number of Endangered Species Act Section 4 Deadline Suits Filed, Fiscal Years 2005-2015



Source: GAO analysis of legal information obtained from the Department of Justice and the federal online database Public Access to Court Electronic Records (PACER). | GAO-17-304

The majority of deadline suits filed during fiscal years 2005 through 2015 were resolved through negotiated settlement agreements that established schedules for the agencies to complete the actions involved in the suits. Agency officials said that most deadline suits are resolved through settlement because it is undisputed that a statutory deadline was missed. 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 proposed listing 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 in settlement agreements. FWS has initiated several changes to help improve Section 4 program implementation, including developing a 7-year workplan that prioritizes the order for completing overdue actions and revising information requirements for listing petitions.

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Abbreviations

DOJ	Department of Justice
ECOS	Environmental Conservation Online System
ESA	Endangered Species Act
FWS	U.S. Fish and Wildlife Service
MDL	Multi-District Litigation
NMFS	National Marine Fisheries Service
PACER	Public Access to Court Electronic Records

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February 28, 2017

The Honorable Raúl M. Grijalva
Ranking Member
Committee on Natural Resources
House of Representatives

Dear Mr. Grijalva,

The Endangered Species Act of 1973 (ESA) was enacted to conserve threatened and endangered species and the ecosystems upon which they depend.¹ The ESA is jointly administered by the Department of the Interior's U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS), within the Department of Commerce, collectively referred to as "the Services." To receive protection under the ESA, a species must first be added to one of the federal lists of threatened or endangered species, which typically happens in response to a person or group filing a petition to list the species with one of the Services.² Under Section 4 of the ESA, when one of the Services receives a petition to list or delist a species, it must determine whether the petition presents substantial information that the action may be warranted, and if so, proceed with a review of the species. For those species where a review is conducted, the Services must then determine whether the species' listing or delisting is warranted, and if so, issue a rule proposing to add or remove the species from the

¹The act defines a threatened species as one that is likely to become endangered in the foreseeable future and an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. The term "species" includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

²The Services may also initiate a review to determine if the listing or delisting of a species may be warranted. In addition, the Services may initiate, or a petition can request, a review to determine if the status of a listed species should be reclassified from either endangered to threatened (downlisted) or threatened to endangered (uplisted). The act provides that two separate lists shall be published, one list for endangered species and another list for threatened species. 16 U.S.C. § 1533(c)(1). FWS is primarily responsible for all terrestrial (land-dwelling) and freshwater species when on land and all birds, including seabirds. NMFS is primarily responsible for most anadromous (saltwater-freshwater migrant) fish, such as salmon, and most marine species. For some species, such as those that spend time on both land and in the ocean, such as sea turtles, NMFS and FWS share responsibility for management of the species under the ESA, including making listing decisions.

threatened or endangered lists. Under the Services' Section 4 programs, the Services also take action to designate and revise critical habitat for listed species—areas essential to a species' conservation— and conduct 5-year status reviews to evaluate any changes in the status of a listed species, among other things.³

In addition, Section 4 of the ESA includes statutory deadlines for the Services to take actions on listing or delisting species, designating and revising critical habitat, and conducting 5-year status reviews. Under the ESA, any person or entity may file a lawsuit to compel the Services to take statutorily required actions if they have not already done so within the statutorily designated time frames.⁴ These suits, known as deadline suits, are one category of court challenges over the past several decades to various aspects of the Services' implementation of the act. Some stakeholders have raised concerns that deadline suits burden the Services' workloads and resources and unduly influence their priorities.⁵ In contrast, others maintain that species have been neglected for years awaiting listing by the Services and only gained protection under the act because litigation forced the Services to take action.⁶

You asked us to review deadline litigation brought under Section 4 of the ESA. Specific to the Services' Section 4 programs, this report examines (1) the number and scope of deadline suits filed against the Services from

³The Services' Section 4 programs encompass all actions related to listing species as threatened or endangered, including making findings on petitions to add, remove, or reclassify species from either of these lists (16 U.S.C. § 1533(b)(3)); designating and revising critical habitat (16 U.S.C. § 1533(a)(3)); and conducting 5-year status reviews of listed species (16 U.S.C. § 1533(c)(2)(A)).

⁴These suits are brought under section 11 of the ESA, known as the citizen suit provision. 16 U.S.C. § 1540(g). As we have reported, citizen suit provisions appear in numerous environmental laws, including the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and Toxic Substances Control Act. GAO, *Environmental Litigation: Impact of Deadline Suits on EPA's Rulemaking Is Limited*, GAO-15-34 (Washington D.C.: Jan 14, 2015).

⁵For example, see U.S. Chamber of Commerce, *A Report on Sue and Settle: Regulating Behind Closed Doors* (Washington, D.C.: May 2013); Western Energy Alliance, *Environmental Groups Keep Suing Despite Vast ESA Settlement Agreements*, accessed November 16, 2016, <https://www.westernenergyalliance.org/knowledge-center/legal/sue-and-settle>.

⁶For example, see WildEarth Guardians, *Progress for Protection: Historic Endangered Species Act Settlement Concludes 2011-2016 Report* (Santa Fe, N. Mex.: 2016); E.E. Puckett, D.C. Kesler, and D.N. Greenwald, "Taxa, petitioning agency, and lawsuits affect time spent awaiting listing under the U.S. Endangered Species Act," *Biological Conservation*, vol. 201 (2016).

fiscal years 2005 through 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.

To conduct our work, we reviewed the ESA, including the Section 4 provisions that contain statutory deadlines that can be enforced through citizen suits. To determine the number and scope of deadline suits filed against the Services, we met with officials from the Department of Justice (DOJ)—the agency responsible for representing the Services in deadline litigation—and obtained a list of the suits filed during fiscal years 2005 through 2015 that involved a claim that one or both of the Services failed to take an ESA Section 4 action by a required statutory deadline.⁷ We used DOJ data to obtain a list of suits because the Services do not maintain such data and there is no other comprehensive public source of information on deadline suits involving Section 4 of the ESA.⁸ Using the federal judiciary's Public Access to Court Electronic Records (PACER) system, we then obtained and reviewed a copy of the complaint for each suit on the list.⁹ After reviewing each complaint, we identified those suits that included at least one claim that one or both of the Services failed to

⁷This list was generated from DOJ's Case Management System. According to DOJ officials, the Case Management System was designed primarily for internal management purposes and contains information on all litigation DOJ is involved in. However, the system also contains coding that can be used to identify suits filed against the Services that involve claims brought under Section 4 of the ESA. The data we received from DOJ included the civil action case numbers, parties to the suit, lead plaintiffs, defendants, and district courts with jurisdiction. We chose fiscal year 2015 as the end point for our review to allow time to capture information on the suits filed as well as how the suits were resolved.

⁸NMFS maintains a litigation database that contains descriptive information similar to the information in DOJ's Case Management System, but it was not designed to specifically identify or track deadline suits filed under Section 4 of the ESA.

⁹PACER is an electronic public access service that allows users to obtain suits and docket information from federal appellate, district, and bankruptcy courts.

take a Section 4 action by the applicable statutory deadline.¹⁰ Based on our review of the suits and comparison with other information on cases provided by NMFS and a group active in filing Section 4 deadline suits, we determined the list of deadline suits to be sufficiently complete and reliable for reporting information on the number and scope of suits filed during fiscal years 2005 through 2015. We then analyzed information in each of the deadline suits to identify the Section 4 provisions the suits were based on, the number and type of species involved, lead plaintiffs, and other characteristics. We also used FWS's Environmental Conservation Online System (ECOS) and NMFS endangered species program websites to obtain information on listed species and the regional offices responsible for these species.¹¹ Based on our review of information maintained on ECOS and the NMFS endangered species program websites, and our comparison of this information with information from other sources such as *Federal Register* notices and other published documents on the species, we determined ECOS and the NMFS websites to be sufficiently reliable for the purposes of capturing information on listed species.

To identify the outcomes of the deadline suits and any effects the suits had on the Services' implementation of their Section 4 programs, we used PACER to obtain and analyze documentation of how the suits were resolved, including any actions to be taken by the Services resulting from the suits. We then used information from the *Federal Register* to document when the required actions were completed and what decisions

¹⁰We focused on suits alleging a violation of a specific statutory deadline. We also included suits alleging a failure to designate critical habitat concurrently with issuance of a final rule listing the species. While ESA Section 4 does not define "concurrently," it does provide that critical habitat should be designated to the maximum extent prudent and determinable within 1 year of the final listing. We excluded suits that challenged the merits of the Services' decisions, such as a 12-month finding that listing a species was not warranted, or that the listing was warranted but precluded by other higher priority listing actions. We also excluded suits that involved claims for the Services' failure to issue a recovery plan for a listed species. Section 4 includes a nondiscretionary duty to develop recovery plans, or find that such a plan will not promote the conservation of the species, but there is no statutory deadline for completing this action. Similarly, we excluded suits challenging the Services' failure to issue a proposed listing rule "promptly" following the issuance of a 12-month finding that listing the species was warranted. While the act requires that a proposed rule shall be issued "promptly" following a finding that a petitioned action is warranted, there is no specific associated deadline or definition for "prompt" issuance.

¹¹ECOS is a website maintained by FWS that provides public access to information from numerous government data sources, including a variety of reports related to the Services' decisions on petitions to list threatened and endangered species.

were made (e.g. species listed or not listed). We conducted interviews with officials from DOJ, FWS, and NMFS about the outcomes of the deadline suits. We also discussed with FWS and NMFS officials the effects, if any, the suits had on their Section 4 programs and reviewed the agencies' Section 4 program policies, guidance, and other agency documentation. In addition, to obtain broader perspectives about deadline suits, we reviewed literature on ESA deadline litigation, and based on that review, we identified and interviewed four stakeholder organizations we selected to reflect a range of viewpoints on the ESA and deadline suits.¹²

We conducted this performance audit from November 2015 through February 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

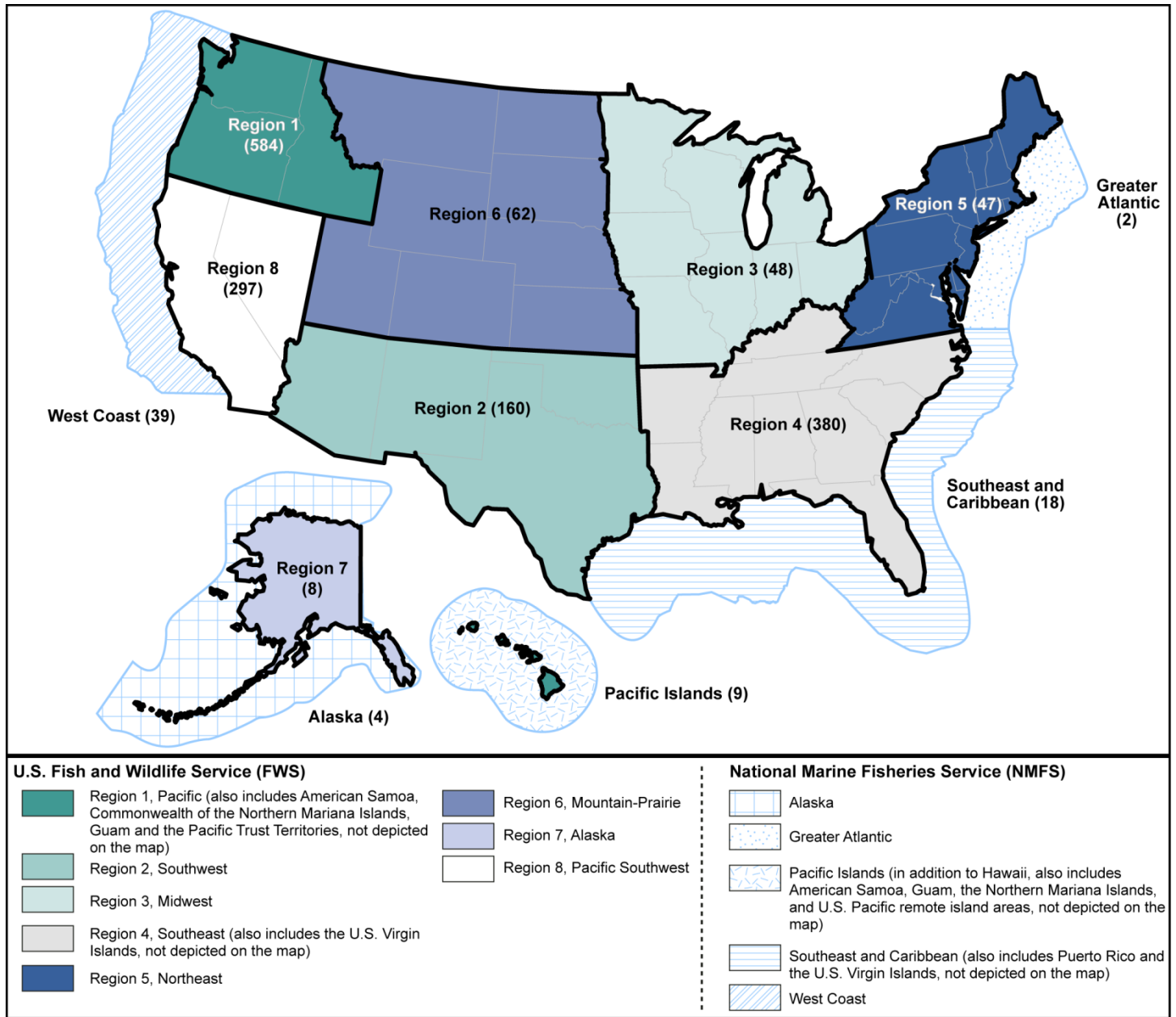
FWS, operating through its headquarters and eight regional offices, is responsible for managing 1,586 of the listed species found in the United States (see fig.1).¹³ NMFS, operating through its headquarters and five regional offices, is responsible for managing 96 listed species.¹⁴ In addition, the Services have proposed an additional 41 species for listing, but as of January 2017 had not yet made a final determination on listing those species. Additionally, since enactment of the ESA, the Services have delisted 76 species—47 as a result of recovery efforts, 10 due to the species' extinction, and 19 because of data errors in the original listing.

¹²The stakeholders were the Center for Biological Diversity, WildEarth Guardians, the U.S. Chamber of Commerce, and Western Energy Alliance.

¹³This is the number of U.S. listed species for which FWS is responsible as of January 2017. FWS is also responsible for an additional 635 foreign listed species, which are managed through FWS's headquarters office. Under the ESA's listing process, foreign and domestic species are treated equally, and the biological criteria used for determining the appropriate classification of threatened or endangered species are the same. However, most of the key conservation provisions of the ESA do not apply to foreign species.

¹⁴This is the number of U.S. listed species for which NMFS is responsible as of January 2017. NMFS is also responsible for an additional 55 foreign species, which are managed through both NMFS's headquarters office and five regional offices.

Figure 1: Map of the United States with Number of Listed Species by FWS and NMFS Regional Office



Sources: GAO analysis of FWS Environmental Conservation Online System data and NMFS agency data; Map Resources (map). | GAO-17-304

Note: This map presents information on the number of listed species (numbers in parentheses) managed by each of the Services' regional offices assigned as lead for the species, as of January 2017. Listed species presented in the map include all domestic species as well as those listed in U.S. territories and insular areas. The lead regional office represents the FWS or NMFS office assigned

with primary responsibility for the listed species. Lead regional offices are generally assigned based on the geographic location of the species, but some species may be located in more than one region. FWS and NMFS headquarters offices may also take lead responsibility for certain species whose geographic range spans multiple regions; the NMFS headquarters office is responsible for 24 listed species, not depicted on the map.

The Services' Section 4 programs encompass all actions related to listing or delisting species, designating or revising critical habitat, and conducting 5-year status reviews for listed species.¹⁵ Regarding listing or delisting a species, the process begins either through a petition submitted by an individual, group, or state agency or a review initiated by one of the Services. For petitions to list a species, the Service with jurisdiction over the species follows a multi-step process to determine if the listing of the species is warranted, as depicted in figure 2. For the species that the relevant Service determines warrant listing, the Service issues and publishes a proposed rule in the *Federal Register*.¹⁶ The issuance of a proposed or final rule to list a species is generally governed by procedures prescribed in the ESA and Administrative Procedure Act, such as providing opportunities for the public to submit additional information and comment on proposed rules.¹⁷ After evaluating any additional information and comments, if the relevant Service determines that the species is threatened or endangered, it generally issues a final rule to add the species to the respective list.¹⁸ FWS also maintains a "candidate" list for those species it determines warrant listing, but has determined that the immediate listing of the species is precluded by work on higher priority listing actions, such as actions for other species facing greater threats. Each year FWS publishes a Candidate Notice of Review that documents the Service's re-evaluation of the status and threats

¹⁵Section 4 also requires that the Services develop and implement recovery plans for listed species, or a finding that such a plan will not promote the conservation of the species. However, the act does not contain statutory deadlines for completing recovery plans, so we did not include recovery actions under Section 4 in our review.

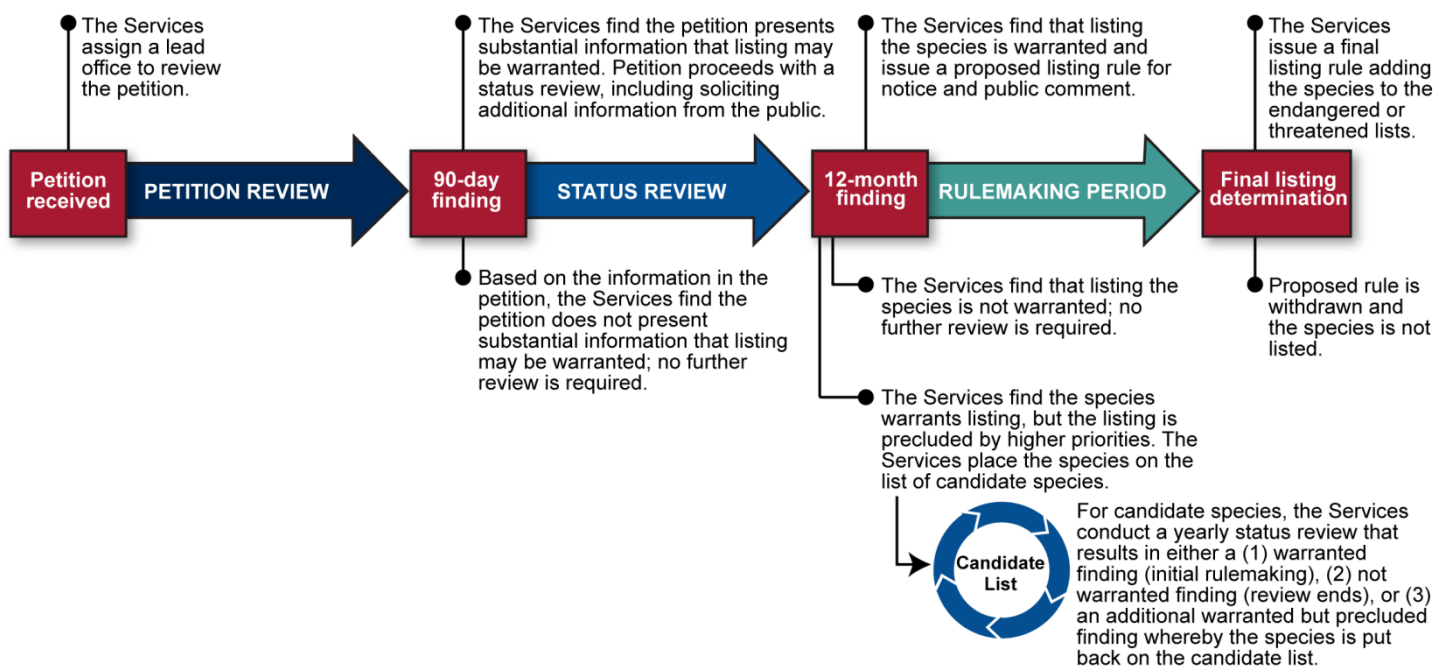
¹⁶If the Services determine that the listing is not warranted, they are to publish a notice of the finding in the *Federal Register*. The Services may also make and publish a finding that the immediate proposal and timely issuance of a final listing rule is warranted but precluded by higher priority actions. For these species, the act requires the Services to annually resubmit the petition to reconsider whether the listing may be warranted. The process continues until either a proposed listing rule is issued or a notice that listing is no longer warranted.

¹⁷See 16 U.S.C. § 1533(b)(4), 5 U.S.C. § 553.

¹⁸If the relevant Service determines that the species is not threatened or endangered, it publishes a notice withdrawing the proposed listing rule along with the reasons supporting that determination.

facing each candidate species to determine whether the species should be removed from the candidate list and either proposed for listing or withdrawn from further consideration.¹⁹ As of December 2016, there were 30 species identified by FWS as candidates for listing.

Figure 2: The Process for Issuing Findings on Petitions to List Species as Threatened or Endangered under the Endangered Species Act (ESA)



Source: GAO analysis of the Endangered Species Act. | GAO-17-304

Note: The U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) generally follow a similar process for petitions to delist or reclassify species from the federal lists of threatened and endangered species. ESA provisions allow the Services to issue warranted but precluded findings, however only FWS has maintained a list of candidate species—species it determines warrant listing, but the listing is precluded by higher priorities. When the Services list a species as threatened or endangered, the act provides that the Services shall concurrently designate critical habitat—areas essential to a species' conservation—for the species to the maximum extent prudent and determinable. Once listed, the ESA also requires the Services to conduct a status review of listed species at least once every 5 years.

¹⁹See, for example, 2015 Candidate Notice of Review, 80 Fed. Reg. 80,584 (Dec. 24, 2015). There are no statutory deadlines limiting how long a species may be on the candidate list.

When a species is proposed for listing, the act requires the Services to concurrently consider whether there are areas essential to the species' conservation and if so, to propose designation of critical habitat for the species.²⁰ Critical habitat may include areas occupied by the species—such as areas that provide food, water, cover or shelter, or sites for breeding and rearing offspring—as well as unoccupied areas that the Services determine are essential for the conservation of the species. As of January 2017, the Services had collectively designated critical habitat for 846 species listed as endangered or threatened in the United States. In addition, Section 4 of the ESA requires the Services to review the status of each listed species at least once every 5 years. The purpose of the 5-year status review is to evaluate whether a listed species should be delisted, reclassified from an endangered to threatened species (downlisted) or from a threatened to endangered species (uplisted), or if its classification should not change.

In 1982, Congress amended the ESA to establish statutory deadlines for the Services to complete Section 4 actions associated with listing, delisting, critical habitat designations or revisions, and 5-year status reviews.²¹ According to the accompanying Conference Committee report, the intended purposes of the amendments were to “expedite the decisionmaking process and to ensure prompt action in determining the status of the many species which may require the protections of the Act.”²² Congress also amended Section 11 of the act to authorize citizens to file suits against the Services for failing to perform actions by the deadlines imposed under Section 4.²³ Each of the specific Section 4 actions and their associated statutory deadlines are described in table 1.

²⁰The ESA requires the Services to concurrently designate critical habitat to the maximum extent prudent and determinable with issuance of a final rule listing a species, 16 U.S.C. § 1533(a)(3)(A)(i).

²¹Endangered Species Act Amendments of 1982, Pub. L. No. 97-304, §2, 96 Stat. 1411 - 16 (1982).

²²H.R. Conf. Rep. No. 97-835 at 19 (1982).

²³See *id.* at 35; 16 U.S.C. § 1540(g)(1)(C). The Endangered Species Act's legislative history does not contain extensive discussion of the purpose of the citizen suit provision. However, during hearings leading to the passage of the ESA, Representative Eckhardt stated with regard to the citizen suit provision “...maybe a little self-help will keep the representative of the public interest really representing the public interest.” *Endangered Species: Hearings Before the Subcomm. on Fisheries and Wildlife Conservation and the Environment of the H. Comm. on Merchant Marine and Fisheries*, 93d Cong. 344 (1973) (testimony of the Hon. Bob Eckhardt).

Table 1: Endangered Species Act Section 4 Actions with Statutory Deadlines

Section 4 Action	Description	Statutory Deadline
Listing and delisting		
90-day finding on a listing or delisting petition	The U.S. Fish and Wildlife Service and National Marine Fisheries Service (Services) shall make a finding as to whether the petition presents substantial information that the petitioned action may be warranted.	90-days from receipt of petition (to the maximum extent practicable).
12-month finding on a listing or delisting petition	The Services conduct a status review using best available scientific and commercial data to determine whether the petitioned action is warranted, not warranted, or warranted but precluded by other higher priority listing actions.	12-months from receipt of petition.
Final determination on a proposed rule to list or delist species	When the Services issue a 12-month finding that a petitioned action to list or delist a species is warranted, they are to promptly publish a proposed rule in the <i>Federal Register</i> for notice and comment and to solicit additional information. Then, a determination is made whether to issue a final rule implementing the proposed action, to withdrawal the proposed rule, or a notice to extend the review for additional information collection.	1 year from publication of proposed rule. If substantial disagreement exists regarding the sufficiency or accuracy of available data, the deadline may be extended by up to 6 months to obtain additional data.
Critical habitat		
90-day finding on a petition to revise critical habitat	The Services shall make a finding as to whether a petition to revise a critical habitat designation presents substantial information that the requested action may be warranted.	90-days from receipt of petition (to the maximum extent practicable).
12-month finding on a petition to revise critical habitat	If the petition presents substantial information indicating that the requested revision may be warranted, the Services shall issue a notice of how they intend to proceed on the requested revision.	12-months from receipt of petition.
Final determination on a proposed rule to revise critical habitat	If the Services proceed with a proposed rule to revise critical habitat, then they are to publish it in the <i>Federal Register</i> for notice and comment and to solicit additional information. Then, a determination is made whether to issue a final rule implementing the proposed revision, to withdrawal the proposed rule, or a notice to extend the review for additional information collection.	1 year from publication of proposed rule. If substantial disagreement exists regarding the sufficiency or accuracy of available data, the deadline may be extended by up to 6 months to obtain additional data.
Critical habitat determination	Critical habitat is to be designated to the maximum extent prudent and determinable concurrently with the final rule to list a species.	Final rule issued within 12-months of proposed rule. If critical habitat is not determinable at the time the species is listed, the designation can be extended for not more than one additional year from issuance of the final listing rule.
5-year status review		
5-year status review	The Services shall conduct a review of all listed species to determine whether any such species should be removed from the list or whether a change should be made in the species' listing status.	At least once every 5 years.

Source: GAO analysis of the Endangered Species Act. | GAO-17-304

Note: Listing actions may also include reviews to determine if the status of a listed species should be reclassified from either endangered to threatened (downlisted) or threatened to endangered (uplisted).

For decades, FWS has faced challenges in implementing its Section 4 program, in part because of a high volume of litigation and petitions seeking to add a large number of species to the threatened and endangered species lists.²⁴ For example, in 2007, FWS received two “mega-petitions,” collectively requesting the listing of 674 species in the Southwest and Mountain-Prairie regions. In 2010, another “mega-petition” was submitted requesting the listing of 404 southeast aquatic species. During fiscal years 2005 through 2015, FWS received 170 petitions to list 1,446 species.²⁵ According to a 2010 FWS report to Congress, petitions to list species are an integral aspect of endangered and threatened species protection.²⁶ The report further stated, however, that FWS does not have the capability to postpone action on petitions because of statutory deadlines or to balance that work with other Section 4 program actions. The report also indicated that any delay in making a petition finding could lead to litigation for which FWS has no sufficient legal defense. As a result, with limited resources and a significant petition workload with statutory deadlines, FWS has been vulnerable to and has experienced a high volume of litigation that has affected much of FWS’s Section 4 program since the early 1990s.

Beginning in fiscal year 1998, and in each year thereafter, annual appropriations acts have established statutory caps on the funds available for FWS to implement certain provisions within its Section 4 program.²⁷ According to FWS officials, the initial spending cap was

²⁴U.S. Fish and Wildlife Service, *Managing the U.S. Fish and Wildlife Service’s Endangered Species Act Listing Program, Response to House Report 111-180, A Directive by the Committee on Appropriations to Review the Process for Determining the Status of Species* (May 2010). See also Benjamin Jesup, *Endless War or End This War? The History of Deadline Litigation Under Section 4 of the Endangered Species Act and the Multi-District Litigation Settlements*, Vt. J. Env. L., 327 (2013).

²⁵During that same period, NMFS received 64 petitions to list 305 species.

²⁶U.S. Fish and Wildlife Service, *Managing the U.S. Fish and Wildlife Service’s Endangered Species Act Listing Program, Response to House Report 111-180, A Directive by the Committee on Appropriations to Review the Process for Determining the Status of Species* (May 2010).

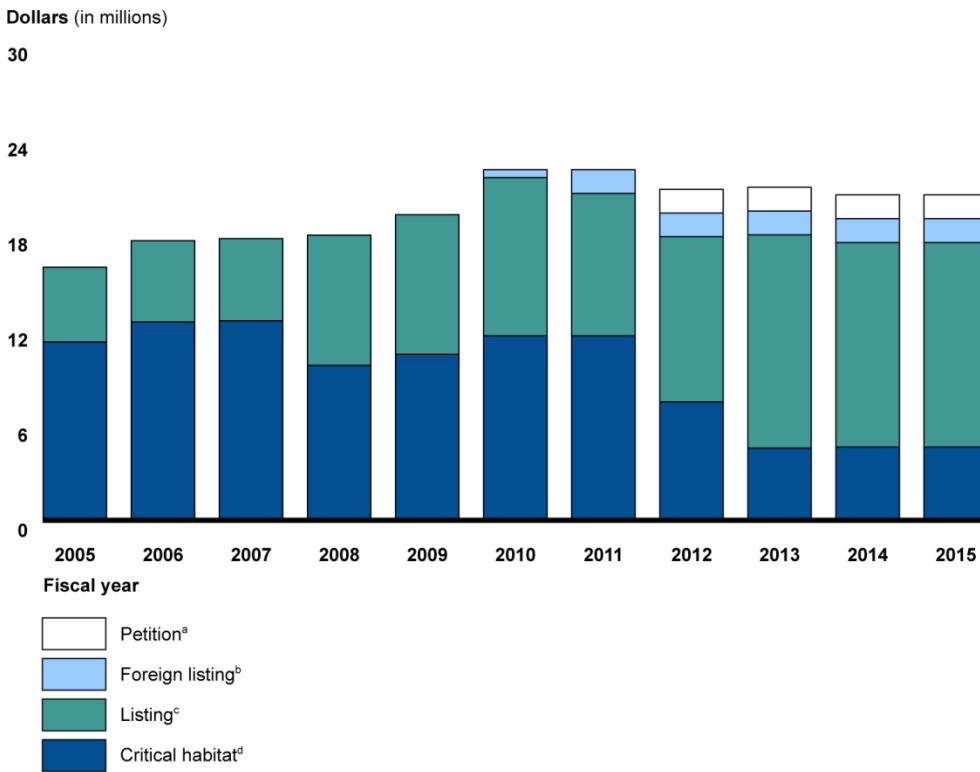
²⁷Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-83, 111 Stat. 5 (1997). This act established a spending cap of \$5.19 million for the FWS to implement the listing provisions of Section 4.

established to limit the amount that could be spent on listing actions so that funds would be available for other Section 4 actions, such as developing and completing recovery plans. Subsequent appropriations acts established additional spending caps specific to 90-day and 12-month petition findings, critical habitat designations, and foreign species-related listing actions.²⁸ During fiscal years 2005 through 2015, overall funding for FWS's listing and critical habitat actions averaged about \$20 million per year (see fig. 3).²⁹

²⁸The Department of the Interior and Related Agencies Appropriations Act of 2002 established a spending cap limiting the amount of spending on critical habitat designations for species already listed. Pub. L. No. 107-63, 115 Stat. 419 (2001). The Consolidated Appropriations Act, 2012 added two additional spending caps, one for petition findings and another for foreign species listing actions. Pub. L. No. 112-74, 125 Stat. 988 (2011). FWS's work on delisting and downlisting petitions and conducting 5-year status reviews are funded separately through a recovery line item.

²⁹NMFS program officials said that NMFS does not receive a direct appropriation specific to its ESA Section 4 program and therefore the agency does not track its spending by Section 4 actions. According to NMFS officials, the agency estimated spending approximately \$820,000 across listing and critical habitat actions in fiscal year 2015.

Figure 3: Appropriations for U.S. Fish and Wildlife Service Section 4 Program, Fiscal Years 2005-2015



Source: GAO analysis of U.S. Fish and Wildlife Service budget documents. | GAO-17-304

^aPetition includes funding for work on 90-day and 12-month findings on petitions to list domestic species.

^bForeign listing includes funding for work on listing petition findings, proposed listing determinations, and final listing determinations for foreign species.

^cListing includes funding for work on proposed listing rules, critical habitat designations proposed concurrently with proposed listing rules, and final listing determinations for species proposed for listing.

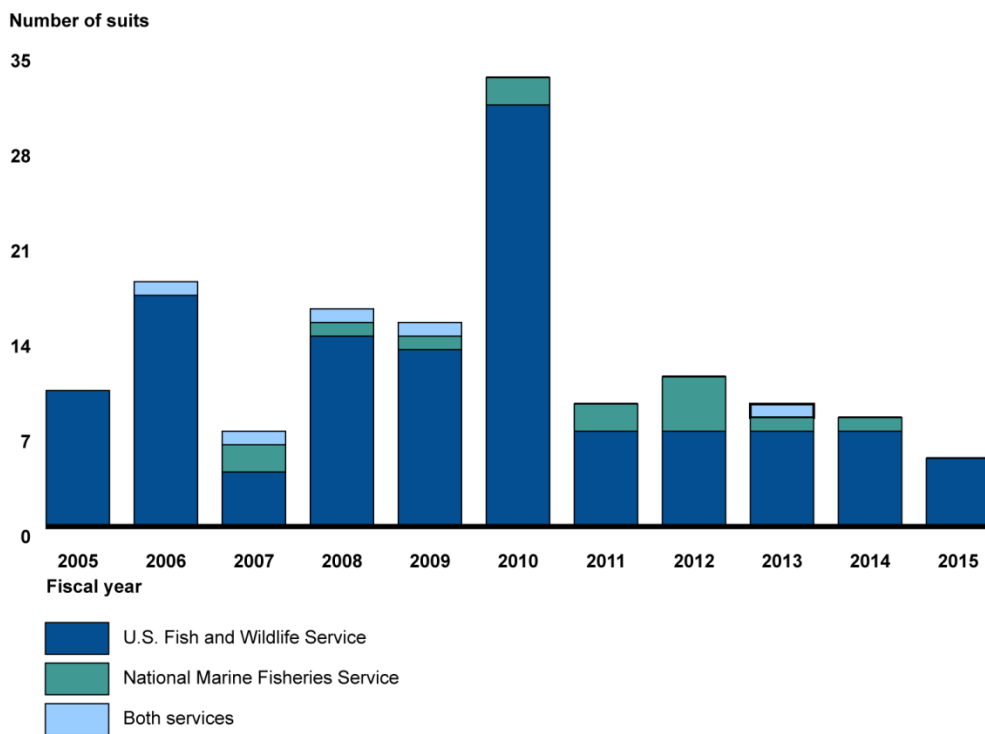
^dCritical habitat includes funding for work on designating critical habitat for listed species where critical habitat was not designated concurrently with the rule listing the species.

A Variety of Plaintiffs Filed 141 Deadline Suits Involving 1,441 Species, Mostly Against FWS

Based on our review, we found that a variety of plaintiffs filed 141 deadline suits against the Services for allegedly failing to comply with statutory deadlines for Section 4 actions involving 1,441 species during fiscal years 2005 through 2015. Approximately 86 percent of the suits (122 of 141) were filed against FWS, about 10 percent (14 of 141) were filed against NMFS, and about 4 percent (5 of 141) were filed against both Services (see app. I for a list of the 141 deadline suits). On average,

about 13 deadline suits were filed each fiscal year, ranging from 5 deadline suits in fiscal year 2015 to 33 suits in fiscal year 2010 (see fig. 4).³⁰

Figure 4: Number of Endangered Species Act Section 4 Deadline Suits Filed, Fiscal Years 2005-2015



Source: GAO analysis of legal information obtained from the Department of Justice and the federal online database Public Access to Court Electronic Records (PACER). | GAO-17-304

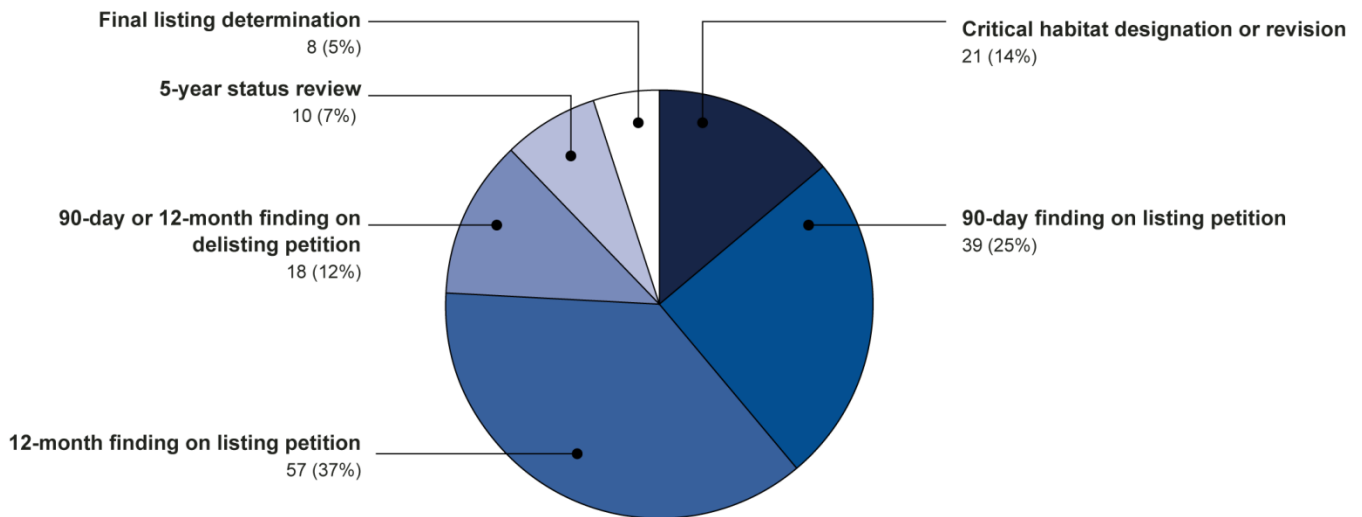
Note: Section 4 deadline suits presented in this figure include citizen suits filed against the Services during the time period to compel compliance with statutory deadlines for certain actions under Section 4 of the Endangered Species Act. Section 4 of the act includes statutory deadlines for the Services to complete certain mandatory actions, including making findings on petitions to list or delist species, designating or revising critical habitat, and conducting 5-year status reviews of listed species.

The deadline suits filed against the Services involved allegedly missing deadlines across the range of Section 4 actions, including listing, delisting, designating or revising critical habitat, and conducting 5-year status reviews. Figure 5 provides information on the number of suits that

³⁰In 2010, WildEarth Guardians filed 16 suits against FWS for allegedly missing deadlines in completing 90-day and 12-month findings for petitions to list multiple species as part of its larger campaign to protect imperiled species.

were filed across the 11-year period based on the specific Section 4 action involved.

Figure 5: Number and Percentage of Deadline Suits Filed by Endangered Species Act Section 4 Action Involved, Fiscal Years 2005-2015



Source: GAO analysis of legal information obtained from the Department of Justice and the federal online database Public Access to Court Electronic Records (PACER). | GAO-17-304

Note: This figure represents the total number (and percentage) of Section 4 deadline suits filed during fiscal years 2005 through 2015, broken out by the specific action involved in the suits. Final listing determinations include both listing and delisting actions. Twelve suits involved more than one Section 4 action, and therefore the number of suits represented here—totaling 153 actions—is greater than the total 141 deadline suits filed during the 11-year period. Section 4 deadline suits include citizen suits filed against the Services to compel compliance with statutory deadlines for certain actions under Section 4 of the Endangered Species Act. Section 4 of the act includes statutory deadlines for the Services to complete certain mandatory actions, including making findings on petitions to list or delist species, designating or revising critical habitat, and conducting 5-year status reviews of listed species.

Additionally, the 141 deadline suits included Section 4 actions for a total of 1,441 unique species (see app. II). The majority of the suits (93 of 141) centered on an action for a single species, such as allegedly missing the deadline to issue a 90-day finding on a petition to list a specific species, but about one-third of the suits (48 of 141) involved actions for multiple species. For example, a 2009 suit filed by WildEarth Guardians alleged that FWS failed to make 90-day findings for two petitions it had submitted

to list 674 Rocky Mountain and Southwestern species.³¹ Similarly, in 2005, California State Grange—a nonprofit organization promoting agriculture and rural family farm units in California—filed a suit against FWS for allegedly failing to conduct 5-year status reviews for 194 listed species located in California.³²

Factoring in species involved in the suits as well as the specific Section 4 actions at issue, we found that collectively, the deadline suits comprised a total of 1,673 actions.³³ FWS was responsible for the majority of the actions (1,545 of 1,673), NMFS was responsible for 120 of the 1,673 actions, and the two agencies worked jointly on 8 actions. Table 2 provides a breakdown—by fiscal year and type of Section 4 action—of the total number of actions involved across the deadline suits filed against the Services during fiscal years 2005 through 2015. See appendix II for additional information on the number and type of actions specific to each agency.

³¹*WildEarth Guardians v. Kempthorne*, Civ. No. 1:08-cv-00472, D.D.C. (1st amended complaint filed Jan. 14, 2009). This suit accounted for three-fourths of the allegedly overdue 90-day findings on listing petitions involved in the 141 deadline suits included in our review.

³²*California State Grange, et al. v. Norton, et al.*, Civ. No. 2:05-cv-00560, E.D. Cal. (filed Mar. 22, 2005).

³³The number of actions is based on the number of species for which a Section 4 action was allegedly overdue. For example, a suit may have included one claim for relief alleging that the Services failed to issue 90-day findings on a petition to list 12 species. For our analysis, we counted this as 12 actions—one 90-day finding for each of the 12 species. Some species were involved in multiple suits, thus bringing the total number of actions on the 1,441 species to 1,673.

Table 2: Number and Type of Section 4 Actions Involved in Endangered Species Act Deadline Suits, Fiscal Years 2005-2015

Fiscal year	90-day finding on listing petition	12-month finding on listing petition	90-day or 12-month finding on delisting petition	Final listing determination	Critical habitat designation or revision	5-year status review	Total
2005	5	1	0	12	15	194	227
2006	29	4	0	1	1	90	125
2007	0	1	1	0	7	3	12
2008	5	12	1	1	8	1	28
2009	702	6	3	7	1	1	720
2010	155	112	3	10	50	1	331
2011	1	84	2	0	1	6	94
2012	2	20	1	1	0	1	25
2013	2	18	15	0	2	0	37
2014	1	52	1	0	5	0	59
2015	0	13	2	0	0	0	15
Total	902	323	29	32	90	297	1,673

Source: GAO analysis of legal information obtained from the Department of Justice and the federal online database Public Access to Court Electronic Records (PACER). | GAO-17-304

Note: This table provides information on the number and type of Section 4 actions included in the deadline suits filed against the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) during fiscal years 2005 through 2015. Section 4 deadline suits include citizen suits filed against the Services to compel compliance with statutory deadlines for certain actions under Section 4 of the Endangered Species Act. Section 4 of the act includes statutory deadlines for the Services to complete certain mandatory actions, including making findings on petitions to list or delist species, designating or revising critical habitat, and conducting 5-year status reviews of listed species. Final listing determinations include both listing and delisting actions.

Across the deadline suits filed during fiscal years 2005 through 2015, 44 different lead plaintiffs representing a variety of interests filed suits against the Services (see table 3).³⁴ However, two environmental groups, the Center for Biological Diversity and WildEarth Guardians, collectively filed more than half of the suits (73 of 141).³⁵ The Center for Biological Diversity was the most active plaintiff, filing a total of 46 deadline suits

³⁴The total number of lead plaintiffs we report does not include counts of other persons or groups that may have also been parties to the suits.

³⁵The Center for Biological Diversity is a nonprofit organization whose mission is “saving life on earth” by working to “secure a future for all species, great and small, hovering on the brink of extinction, through science, law and creative media, with a focus on protecting the lands, waters and climate that species need to survive.” WildEarth Guardians is a nonprofit organization whose mission is to protect and restore the wildlife, wild places, wild rivers, and health of the American West.

against the Services over this period for allegedly missing deadlines for completing 90-day and 12-month findings on petitions to list hundreds of species. Trade associations, representing businesses and industry such as the California Cattlemen’s Association and Florida Home Builders Association, filed suits against FWS for allegedly missing deadlines related to 90-day and 12-month findings on petitions to delist threatened and endangered species as well as allegedly missing deadlines in conducting 5-year status reviews for a number of species.³⁶

Table 3: Types and Number of Lead Plaintiffs Filing Endangered Species Act Section 4 Deadline Suits, Fiscal Years 2005-2015

Lead Plaintiff	Description	Total Number
Environmental group	Environmental groups or associations working at the national or local level. For our purposes, “environmental” includes a focus on conservation or improvement of any aspect of the outdoor environment and protection of natural resources, including at-risk species.	22
Trade association	Represents for-profit companies involved in a particular business or industry.	8
Individual	A private citizen not affiliated with a formal organization.	5
Recreational group	A group that generally represents members who participate in outdoor recreational activities, such as hunting or driving off-road vehicles.	3
Local citizens group	Civic, social, or community groups with an interest in citizen protection, health, recreation, or justice issues that are not identified as specifically focused on “environmental” issues.	2
Local government	County governments.	2
Other	Any other plaintiffs that do not fit into one of the categories listed above.	2
Total		44

Source: GAO analysis of legal information obtained from the Department of Justice and the federal online database Public Access to Court Electronic Records (PACER). | GAO-17-304

Note: The numbers in the table are based on our classification of the lead plaintiff in each of the deadline suits filed during fiscal years 2005 through 2015. For suits with more than one plaintiff, we use lead plaintiff to refer to the plaintiff that is listed first in the complaint and has the primary role in pursuing the action. The information presented in the table does not include counts of other persons or groups that may have also been listed as plaintiffs in the suits. Section 4 deadline suits include citizen suits filed against the Services to compel compliance with statutory deadlines for certain actions under Section 4 of the Endangered Species Act. Section 4 of the act includes statutory deadlines for the Services to complete certain mandatory actions, including making findings on petitions to list or delist species, designating or revising critical habitat, and conducting 5-year status reviews of listed species.

³⁶The California Cattlemen’s Association is a nonprofit trade association that represents California’s ranchers and beef producers in legislative and regulatory affairs. The Florida Home Builders Association represents corporate members in the construction industry in Florida through its lobbying efforts and by providing educational forums and networking opportunities.

The Majority of Deadline Suits Were Resolved through Settlement Agreements, and FWS Delayed Some Section 4 Actions to Prioritize Those Covered by Settlement Agreements and Court Orders

Based on our analysis, we found that the majority of ESA Section 4 deadline suits filed in fiscal years 2005 through 2015 were resolved through negotiated settlement agreements that established schedules for the Services to complete the actions involved in the suits. Otherwise, the settlement agreements did not affect the substantive basis or procedural rule-making requirements the Services were to follow in completing the actions. Officials from both Services said they prioritized completing actions included in settlement agreements in implementing their Section 4 workloads. NMFS officials indicated that the deadline suits and their resulting settlement agreements did not have a significant effect on the implementation of the agency's Section 4 program. In contrast, FWS has delayed completing some Section 4 actions to complete those included in settlement agreements. FWS has initiated several changes to its Section 4 program to help prioritize the order in which it addresses its backlog of hundreds of overdue actions and to help increase the efficiency of its Section 4 program, including revising information requirements for listing petitions.

The Majority of Deadline Suits Were Resolved through Negotiated Settlement Agreements Establishing Schedules for the Services to Complete Section 4 Actions

The Services resolved the majority of deadline suits filed during fiscal years 2005 through 2015 by negotiated settlement agreements, whereby the parties generally agreed on a schedule for the Services to complete the Section 4 actions at issue in the suits. Specifically, the Services resolved about 72 percent of the suits (101 of 141) through negotiated settlement agreements (see table 4). About 22 percent of the suits (31 of 141) were resolved through voluntary or unopposed dismissal, primarily because the Services had completed the actions involved in the suits and nothing further remained to be litigated. The remaining 9 deadline suits, all involving FWS, were resolved by a court order. Specifically, the courts dismissed 6 of the suits, ruling in favor of FWS. In the other 3 suits, the courts issued orders directing FWS to complete the Section 4 action at issue by an established schedule.

Table 4: Disposition of Endangered Species Act Section 4 Deadline Suits, Fiscal Years 2005-2015

Disposition Type	U.S. Fish and Wildlife Service	National Marine Fisheries Service	Both Services	Total
Settlement agreement ^a	88	9	4	101
Voluntary or unopposed dismissal ^b	25	5	1	31
Court order ^c	9	0	0	9
Total	122	14	5	141

Source: GAO analysis of legal information obtained from the Department of Justice and the federal online database Public Access to Court Electronic Records (PACER). | GAO-17-304

Note: Section 4 deadline suits include citizen suits filed against the Services during fiscal years 2005 through 2015 to compel compliance with statutory deadlines for certain actions under Section 4 of the Endangered Species Act. Section 4 of the act includes statutory deadlines for the Services to complete certain mandatory actions, including making findings on petitions to list or delist species, designating or revising critical habitat, and conducting 5-year status reviews of listed species.

^aSettlement agreement in this context refers to a negotiated agreement reached between the parties to resolve the claims brought in the suit and filed with the court. We also included three suits resolved by a consent decree, which are court orders that embody the terms agreed upon by the parties as a compromise to litigation.

^bVoluntary or unopposed dismissal refers to a motion filed by the plaintiff or jointly by the parties to dismiss the action because the Services completed the actions involved in the suits and therefore no further dispute remained to be litigated. We also included cases in which the government’s motion to dismiss was unopposed.

^cCourt order refers to an order issued by the court of jurisdiction that resolved the suit.

According to officials from DOJ and the Services, the agencies coordinate in deciding how to respond to a deadline suit, including whether or not to negotiate a settlement with the plaintiff or proceed with litigation. In reaching its decision, DOJ considers several factors, including whether there may be a legal defense to the suit—such as providing information establishing that the agency took action on the finding at issue or that the plaintiff lacked standing—and the likelihood that the government could obtain a favorable outcome.³⁷ The officials said that most deadline suits are resolved through a negotiated settlement agreement because in the majority of them, it is undisputed that a statutory deadline was missed.

³⁷A plaintiff must have standing to pursue a claim in federal court, meaning that (1) the plaintiff must have suffered an injury in fact; (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely that a favorable decision on the merits will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). For example, in *Friends of Animals v. Jewell*, 115 F. Supp. 3d 107 (D.D.C. 2015), *affirmed* 828 F.3d 989 (D.C. Cir. 2016), the court granted the government’s motion to dismiss the case on the grounds that the plaintiff lacked standing to sue. *Id.* at 112. The court held, among other things, that the plaintiff did not demonstrate it suffered an injury in fact from being deprived of information on the status of petitioned species that the plaintiff claimed was needed to conduct its work advocating for protection of these animals. *Id.*

When negotiating the terms of a settlement agreement, DOJ officials said they consult with the Services to evaluate their workload, priorities, and available resources to propose a reasonable deadline for making the decisions agreed to under the settlement. DOJ officials said they are guided by a 1986 DOJ memorandum—referred to as the Meese Memorandum—in negotiating settlement terms.³⁸ Accordingly, officials from DOJ and the Services stated that any agreement to settle a deadline suit would only include a commitment to perform a mandatory Section 4 action by an agreed-upon schedule and would not otherwise predetermine or prescribe a specific substantive outcome for the actions to be completed by the Services. Similarly, for those suits resolved by a court order, DOJ officials said they present what they believe is a reasonable timeframe for the court to consider in establishing a schedule for the Services to complete the action.

Most settlement agreements established time frames specific to the Section 4 action at issue, but in some settlement agreements, the Services also agreed to complete additional, related actions within certain time frames. For example, several settlement agreements contained provisions for the Services to complete an action by a certain date as well as a related, contingent action by the applicable Section 4 statutory deadline, such as a 12-month finding for a listing petition, if the 90-day finding concluded that the listing of a species may be warranted.

Additionally, in 2010, DOJ sought to have multiple deadline suits—filed by the Center for Biological Diversity and WildEarth Guardians against FWS that were pending in several district courts—transferred and consolidated by the Judicial Panel for Multi-District Litigation (MDL).³⁹ The MDL panel consolidated 15 deadline suits in the federal district court for the District of Columbia, and in 2011, FWS reached a separate settlement agreement with each of the plaintiffs in these suits.⁴⁰ The settlement agreements primarily established schedules for FWS to make hundreds of 90-day and

³⁸In general, any proposed settlement must be approved by the Deputy Attorney General or Associate Attorney General, as appropriate, when the proposed settlement converts an otherwise discretionary authority of the agency to promulgate, revise, or rescind regulations into a mandatory duty. The concepts in the memorandum were codified in the Code of Federal Regulations in 1991 at 28 C.F.R. §§ 0.160-0.163.

³⁹*In re Endangered Species Act Section 4 Deadline Litig.*, 716 F.Supp.2d 1369 (J.P.M.L. 2010).

⁴⁰Thirteen of the suits were filed by WildEarth Guardians and two suits were filed by the Center for Biological Diversity.

12-month findings on listing petitions. In the settlement agreement with WildEarth Guardians, FWS also agreed to make either not warranted findings or proposed and final listing determinations for the 251 species that were candidate species in 2010.⁴¹ Each agreement also included provisions that for any action that resulted in a proposed listing rule, the final listing determination would be made in accordance with the one-year period prescribed in the statute. In exchange for these commitments made by FWS, each of the plaintiffs agreed to limits on filing additional listing petitions and deadline suits until the terms of the agreements conclude in fiscal year 2017. According to FWS officials, consolidating these suits and entering into the two settlement agreements helped make FWS's Section 4 workload more predictable, essentially establishing a five-year work plan that reflected the agency's priorities for completing overdue Section 4 actions for hundreds of species.

Other than agreed-upon schedules for completing Section 4 actions, the settlement agreements and court orders did not affect the substantive basis or procedural rule-making requirements the Services were to follow in completing the actions. For example, the settlement agreements contained provisions specifying that nothing in the agreement should be interpreted to limit or modify the discretion afforded to the Services under the ESA. Similarly, the provisions also stated that the agreements did not change any of the procedures to be followed, or the substance of, any rulemaking action to be completed under the agreement, such as opportunities for public comment on proposed listing rules. These opportunities include submitting comments and additional information to be considered during the status review accompanying a 12-month finding on a listing petition, notice and public comment period on any proposed rule to list a species or designate or revise critical habitat, and notice of issuance of any final rule.

Based on our analysis, we found that as of December 2016, the Services collectively completed 1,766 Section 4 actions related to the 104 suits that were resolved by settlement agreements and court orders entered

⁴¹The 251 candidate species were not included in the initial deadline suits filed by WildEarth Guardians, but were the subject of a related lawsuit. See *Biodiversity Conservation Alliance, et al. v. Kempthorne, et al.*, Civ. No. 1:04-cv-02026, D.D.C. (filed Nov. 18, 2004).

into fiscal years 2005 through 2015.⁴² Table 5 provides a breakdown of the outcomes of the decisions the Services made related to these Section 4 actions, based on whether the Services made a positive finding—determining that a listing, delisting, or critical habitat-related action was warranted—or a negative finding, meaning that the Services generally found that the action at issue was not warranted.

Table 5: Outcomes of the Endangered Species Act Section 4 Actions Related to a Deadline Suit Settlement Agreement or Court Order, Fiscal Years 2005-2015

Section 4 action	Number of positive findings ^a	Number of negative findings ^b	Total number of actions completed
90-day finding on listing petition	575	184	759
12-month finding on listing petition	284	157	441
90-day or 12-month finding on delisting petition	9	3	12
Final listing determination	192	7	199
Critical habitat designation or revision	68	5	73
5-year status review	^c	^c	282
Total	1,128	356	1,766

Source: GAO analysis of legal information obtained from the Department of Justice and the federal online database Public Access to Court Electronic Records (PACER). | GAO-17-304

Note: The number of Section 4 actions presented in this table represent the total number of actions completed, related to the 104 deadline suits resolved by settlement agreements and court orders entered into in fiscal years 2005 through 2015. The scheduled due date for a number of pending actions to be completed by FWS under some settlement agreements are in fiscal year 2017 or later and therefore are not included in the table. In addition, the number of actions agreed to in the settlement agreements and court orders during this period exceeds the total number of actions involved in the initial deadline suits that were filed against the Services for several reasons. For instance, in some settlement agreements, the agreements established time frames specific to the Section 4 action at issue, as well as time frames for completing additional related actions. Section 4 deadline suits include citizen suits filed against the Services during fiscal years 2005 through 2015 to compel compliance with statutory deadlines for certain actions under Section 4 of the Endangered Species Act. Section 4 of the act includes statutory deadlines for the Services to complete certain mandatory actions, including making findings on petitions to list or delist species, designating or revising critical habitat, and conducting 5-year status reviews of listed species. Final listing determinations include both listing and delisting actions.

⁴²The scheduled due date for a number of pending actions to be completed by FWS under the 2011 MDL and other settlement agreements are in fiscal year 2017 or later and therefore are not included in our analysis. The number of actions agreed to in the settlement agreements and court orders exceeds the total number of actions involved in the deadline suits for several reasons. For instance, in some settlement agreements, the agreements established time frames specific to the Section 4 action at issue, as well as time frames for completing additional related actions.

^aA positive finding indicates that the Services determined that the action was warranted, generally leading to a proposed listing or delisting rule in the case of listing or delisting petitions, or designating or revising critical habitat.

^bA negative finding indicates that the Services determined that the action was not warranted, or for a 12-month finding on a listing or delisting petition, that the action was warranted but precluded by other higher priority actions. A negative final listing determination would include the withdrawal of a proposed rule to list or delist a species.

^cFor a 5-year status review, we did not classify whether the outcome of the review was positive or negative. These reviews provide information on the status of the species that may or may not result in further action by the Services. We therefore considered the outcomes of these reviews to be neutral, but we counted the reviews as part of the total number of actions completed.

The Services Prioritized Completing Actions Included in Settlement Agreements and Court Orders, but FWS Delayed Other Section 4 Actions

The Services prioritized completing actions included in settlement agreements and court orders, but FWS delayed working on some Section 4 actions to complete those covered in the agreements and orders. In implementing the Services' Section 4 programs, officials from both Services said they prioritized completing actions included in settlement agreements and court orders above other Section 4 actions. According to NMFS officials, deadline suits and their resulting settlement agreements during fiscal years 2005 through 2015 did not have a significant effect on the implementation of their Section 4 program. NMFS officials said this is largely because NMFS is responsible for fewer species than FWS, has not received as many of the 'mega-petitions' for listing species that FWS has, and has largely been able to manage its workload without being compelled to act in response to deadline suits. The officials added that in many instances in which a deadline suit was filed, NMFS was already working on the Section 4 action at issue and therefore making a decision by an agreed-to time frame did not significantly alter how NMFS implemented its Section 4 program workload.

In contrast to NMFS, FWS has delayed completing some Section 4 actions, including those with statutory deadlines, to complete actions included in settlement agreements and court orders, according to FWS documentation.⁴³ For fiscal years 2005 through 2015, FWS officials said they have focused much of their Section 4 program on completing actions

⁴³According to the 2015 Candidate Notice of Review, FWS uses the following categories to prioritize its Section 4 workload: (1) court orders and settlement agreements that outline schedules requiring FWS to issue a decision; (2) essential litigation-related, administrative, and listing program-management functions; (3) Section 4 listing and critical habitat actions with statutory deadlines; and (4) Section 4 actions without statutory deadlines.

required under settlement agreements and court orders.⁴⁴ This focus has been particularly evident since 2011, when FWS entered into the two MDL settlement agreements that established a five-year workplan for completing hundreds of listing and other Section 4 actions by the end of fiscal year 2017. To fulfill its commitments under these agreements, FWS's efforts related to listing have required the use of substantially all of its petition and listing budgetary resources, according to FWS documents.

In focusing on completing the actions covered by the two MDL settlement agreements, FWS documents indicated that the agency was limited in its ability to undertake work on additional Section 4 actions outside of the agreements. For example, according to an FWS press release announcing positive 90-day listing petition findings for 374 southeastern aquatic species included in one of the 2011 MDL settlement agreements, FWS stated that it was unable to complete 12-month status reviews for these species until fiscal year 2017.⁴⁵ The agency explained that this was because of existing commitments made under various settlement agreements and court orders. According to FWS documents, it has not had resources sufficient to complete its backlog of overdue actions and with anticipated resources, it has the capacity to complete a limited number of actions per year.⁴⁶ As of September 2016, FWS's backlog of overdue Section 4 actions included nearly 600 12-month findings on listing petitions and other listing-related actions that FWS has been unable to address while it focused on completing its litigation-related workload.

To help prioritize the order in which it addresses its backlog and to help increase the efficiency of its Section 4 program, FWS has initiated several

⁴⁴According to FWS data, FWS completed a total of 3,527 Section 4 actions during fiscal years 2005 through 2015. We found that 1,645 of these actions were related to deadline suit settlement agreements or court orders, representing approximately 47 percent of the total number of actions carried out by FWS during this time period.

⁴⁵In this MDL settlement agreement, FWS agreed to issue 90-day findings on the petition to list 403 southeastern species by the end of fiscal year 2011. The agreement did not include deadlines for conducting the 12-month status reviews for any species for which it found the petition presented substantial information that the listing may be warranted.

⁴⁶FWS funding for making findings on listing petitions has been at \$1.5 million for fiscal years 2012 through 2015. The number of listing actions FWS can undertake in a given year is influenced by the complexity of those listing actions, and more complex actions generally are more costly, according to FWS documents. FWS estimated that the median cost for preparing and publishing a 90-day finding was \$4,500 and the estimate for a 12-month finding was \$68,875.

changes to its program.⁴⁷ For example, starting in October 2015, FWS implemented a streamlined process for publishing its 90-day and 12-month findings in the *Federal Register*.⁴⁸ Instead of issuing each decision individually, as was done in the past, the streamlined process bundles all 90-day findings on a quarterly basis and 12-month findings biannually and publishes those decisions collectively in the *Federal Register*. FWS officials said that they anticipate this streamlined approach will result in administrative efficiencies and reduced publishing costs.

In March 2016, FWS established a Unified Listing Team with the goal of promoting a more consistent, efficient, and timely petition review process.⁴⁹ An initial activity this team undertook included developing a National Listing Workplan for fiscal years 2017-2023. This 7-year workplan lays out a plan for addressing FWS's backlog of listing petition findings and critical habitat decisions.⁵⁰ According to FWS documentation, the workplan will help enable the agency to more effectively and efficiently administer its workload based on the needs of candidate and petitioned species while providing greater clarity and predictability to the public about the timing of its actions. In developing the workplan, FWS utilized its prioritization methodology that was finalized in July 2016. The prioritization methodology outlines the order of priority that FWS will give to species in making 12-month findings on listing petitions, giving highest

⁴⁷Because the actions FWS has taken have yet to be fully implemented, it is too early to evaluate the effectiveness of the actions or whether efficiencies have been gained.

⁴⁸U.S. Fish and Wildlife Service, *Streamlining 90-day and 12-month Petition Findings*, Acting Director of FWS Memorandum to FWS Regional Directors (Oct. 27, 2015).

⁴⁹In part, FWS officials said that the Unified Listing Team was established in response to recommendations from an independent evaluation of the program that FWS commissioned in 2010. See GAP Solutions, Inc., *Managing the Listing Program Forward: An Analysis of the Endangered Species Listing Program of the Fish and Wildlife Service* (2011).

⁵⁰U.S. Fish and Wildlife Service, *National Listing Workplan (Fiscal Years 2017-2023)*, accessed September 20, 2016, https://www.fws.gov/endangered/improving_ESA/pdf/Listing%207-Year%20Workplan%20Sept%202016.pdf. The workplan includes a schedule for FWS to issue 12-month findings, proposed and final listing rules, and critical habitat designations for 362 species, including the 30 species on the 2016 candidate list, 320 12-month findings on listing petitions and 11 species for which FWS is undertaking voluntary status reviews. However, the workplan does not include a schedule for completing all of the actions on FWS's backlog, with 12-month findings and other actions for an additional 235 species deferred until fiscal year 2024 or later.

priority to species considered to be critically imperiled.⁵¹ FWS officials said the agency's ability to implement its workplan as scheduled is subject to change based on future funding and litigation, which may require FWS to reprioritize its workload.⁵²

In addition, in September 2016, the Services jointly issued a final rule revising regulations that outline the process and information required for listing petitions. The Services stated that the purposes for the revisions were "to improve the content and specificity of petitions to enhance the efficiency and effectiveness of the petition process to support species conservation."⁵³ Among other revisions, petitions will be limited to one species per petition, and petitioners will be required to provide a "complete, balanced representation of the relevant facts" with respect to the Services' initial 90-day finding. According to officials from the Services, improving the quality of information submitted in support of listing petitions will help enable the Services to more efficiently process the petitions and issue decisions in a timelier manner.

Agency Comments

We provided a draft of this report for review and comment to the Department of Commerce, the Department of the Interior, and the Department of Justice. The Departments of Commerce, the Interior, and Justice each provided technical comments, which we incorporated as appropriate.

⁵¹U.S. Fish and Wildlife Service, *Methodology for Prioritizing Status Reviews and Accompanying 12-Month Findings on Petitions for Listing Under the Endangered Species Act* (July 2016). The methodology outlines five "priority bins" in which a species may be placed to reflect the priority FWS places on conducting a 12-month status review: (1) high priority – critically imperiled; (2) strong data already available on status; (3) new science underway to inform key uncertainties; (4) conservation opportunities in development or underway; and (5) limited data currently available.

⁵²For example, in August 2016, the Center for Biological Diversity filed a notice of intent to sue for FWS' alleged failure to meet deadlines for issuing 12-month decisions on listing petitions for more than 400 species. Not all of these species are included in FWS' National Listing Workplan for fiscal years 2017-2023. On December 30, 2016, the Center sent FWS a letter formally withdrawing its notice of intent to sue to allow FWS the opportunity to complete its workplan.

⁵³50 C.F.R. 424.14. See also https://www.fws.gov/endangered/improving_ESA/petition-regulations.html. The regulations became effective on October 27, 2016.

We are sending copies of this report to the appropriate congressional committees, the Attorney General, the Secretary of Commerce, the Secretary of the Interior, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or fennella@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff members who made key contributions to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink that reads "Anne-Marie Fennell". The signature is written in a cursive style with a horizontal line underneath the name.

Anne-Marie Fennell
Director, Natural Resources and Environment

Appendix I: List of Endangered Species Act Section 4 Deadline Suits, Fiscal Years 2005-2015

Section 4 deadline suits include citizen suits filed against the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) to compel compliance with statutory deadlines for certain actions under Section 4 of the Endangered Species Act (ESA). Section 4 of the act includes statutory deadlines for the Services to complete certain mandatory actions, including making findings on petitions to list or delist species, designating or revising critical habitat, and conducting 5-year status reviews of listed species. Table 6 provides information on each of the deadline suits filed against the Services during fiscal years 2005 through 2015, including the date the suit was filed, the district court in which it was filed, a summary of the Section 4 action at issue, and the disposition of the suit.

Table 6: List of Endangered Species Act (ESA) Section 4 Deadline Suits Filed Against the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) and Their Disposition, Fiscal Years 2005-2015

Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
Fiscal Year 2005					
1/3/2005	<i>Forest Guardians, et al. v. U.S. Fish and Wildlife Service</i> , 1:05-cv-00001 (District of New Mexico)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to revise critical habitat designated for the Northern Aplomado falcon.		X	
2/2/2005	<i>Center for Native Ecosystems, et al. v. Norton</i> , 1:05-RB-188 (District of Colorado)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to list the Douglas County pocket gopher as threatened or endangered.	X		
2/28/2005	<i>Center for Biological Diversity v. Allen</i> , 3:05-cv-00274 (District of Oregon)	FWS's alleged failure to make a final determination within 1 year of publishing the proposed rule to list 12 species of Hawaiian picture-wings as endangered and to concurrently designate critical habitat for these species.	X		
3/22/2005	<i>California State Grange, et al. v. Norton, et al.</i> , 2:05-cv-00560 (Eastern District of California)	FWS's alleged failure to conduct 5-year status reviews for 194 listed species.	X		
5/6/2005	<i>Heartwood, et al. v. Norton, et al.</i> , 1:05-cv-00313 (Southern District of Ohio)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to revise critical habitat designated for the Indiana bat.	X		

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
5/17/2005	<i>Center for Biological Diversity v. Norton</i> , 4:05-cv-00341 (District of Arizona)	FWS's alleged failure to issue a 90-day finding on plaintiff's petition to list the Mexican garter snake as threatened or endangered.	X		
5/19/2005	<i>Southern Utah Wilderness Alliance, et al. v. Hogan, et al.</i> , 2:05-cv-00434 (District of Utah)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to list the Mussentuchit gilia as threatened or endangered.	X		
6/1/2005	<i>Center for Biological Diversity v. Manson, et al.</i> , 1:05-cv-01087 (District Court for the District of Columbia)	FWS's alleged failure to issue a final determination within 1 year of publishing a proposed listing rule on plaintiff's petition to list the Southwest Alaska Northern sea otter Distinct Population Segment as endangered.		X	
8/23/2005	<i>Center for Biological Diversity, et al. v. Norton, et al.</i> , 3:05-cv-01311 (District of Oregon)	FWS's alleged failure to issue 90-day findings on plaintiffs' petition to list the Siskiyou Mountains salamander and Scott Bar salamander as threatened or endangered.	X		
9/6/2005	<i>Harold Schoeffler v. Norton, et al.</i> , 6:05-cv-01573 (Western District of Louisiana)	FWS's alleged failure to issue a final determination within 1 year of publishing a proposed rule to designate critical habitat for the Louisiana black bear.	X		
Total	10 suits		8	2	0
Fiscal Year 2006					
10/4/2005	<i>Center for Biological Diversity v. U.S. Fish and Wildlife Service, et al.</i> , 5:05-cv-00922 (Central District of California)	FWS's alleged failure to issue a 90-day finding on plaintiff's petition to list the Casey's June beetle as endangered.	X		
10/10/2005	<i>Center for Native Ecosystems, et al. v. Norton</i> , 1:05-cv-01966 (District of Colorado)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to list the Pariette cactus as threatened or endangered.	X		
10/18/2005	<i>Center for Biological Diversity v. Norton, et al.</i> , 3:05-cv-01973 (Southern District of California)	FWS's alleged failure to issue 90-day findings on plaintiff's petitions to list the Thorne's hairstreak and Hermes copper butterflies as endangered.	X		

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
10/20/2005	<i>Center for Biological Diversity v. Norton, et al.</i> , 3:05-cv-01988 (Southern District of California)	FWS's alleged failure to issue 90-day findings on plaintiff's petitions to list the Andrew's dune scarab beetle and 16 other invertebrates endemic to the Algodones Dunes as threatened or endangered.	X		
10/31/2005	<i>Edmund Contoski v. Norton, et al.</i> , 3:05-cv-02528 (District of Minnesota)	FWS's alleged failure to make a final determination within 1 year of publishing a proposed rule to delist the bald eagle as threatened or endangered.			X
11/10/2005	<i>Florida Home Builders Association v. Norton, et al.</i> , 6:05-cv-01675 (Middle District of Florida)	FWS's alleged failure to conduct 5-year status reviews for 90 listed species.			X
12/8/2005	<i>Center for Biological Diversity v. U.S. Fish and Wildlife Service, et al.</i> , 2:05-cv-02492 (Eastern District of California)	FWS's alleged failure to timely designate critical habitat for the Sierra Nevada bighorn sheep.	X		
12/15/2005	<i>Center for Biological Diversity, et al. v. Norton, et al.</i> , 3:05-cv-05191 (Northern District of California)	FWS's alleged failure to issue a 12-month finding on plaintiffs' petition to list the polar bear as threatened.	X		
1/5/2006	<i>Center for Biological Diversity, et al. v. Norton, et al.</i> , 2:06-cv-00023 (Eastern District of California)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to list the Sand Mountain blue butterfly as threatened or endangered.	X		
2/2/2006	<i>Forest Guardians, et al. v. Norton</i> , 1:06-cv-00183 (District Court for the District of Columbia)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to reclassify the Utah prairie dog as endangered.	X		
2/13/2006	<i>Center for Biological Diversity v. Norton, et al.</i> , 3:06-cv-00928 (Northern District of California)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to list the Tricolored blackbird as endangered.	X		
2/28/2006	<i>National Audubon Society, et al. v. Norton, et al.</i> , 1:06-cv-00349 (District Court for the District of Columbia)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Cerulean warbler as a threatened.	X		

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
3/20/2006	<i>Forest Guardians, et al. v. U.S. Fish and Wildlife Service</i> , 1:06-cv-00114 (District of Idaho)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to list the Columbian sharp-tailed grouse as threatened or endangered.	X		
3/27/2006	<i>Center for Biological Diversity, et al. v. Norton, et al.</i> , 2:06-cv-00887 (District of Arizona)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to list the Southwestern Desert Nesting bald eagle distinct population segment as endangered.	X		
6/6/2006	<i>Center for Native Ecosystems, et al. v. U.S. Fish and Wildlife Service</i> , 1:06-cv-01069 (District of Colorado)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to list DeBeque milkvetch as threatened or endangered.	X		
6/21/2006	<i>Wade, et al. v. U.S. Fish and Wildlife Service</i> , 1:06-cv-01132 (District Court for the District of Columbia)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the New England cottontail rabbit as threatened or endangered.		X	
7/20/2006	<i>Watts, et al. v. Kempthorne</i> , 1:06-cv-01282 (District Court for the District of Columbia)	FWS and NMFS's alleged failure to issue a 12-month finding on plaintiff's petition to list the American eel as threatened or endangered.	X		
8/10/2006	<i>Save Our Springs Alliance v. U.S. Fish and Wildlife Service, et al.</i> , 1:06-cv-00630 (Western District of Texas)	FWS's alleged failure to issue 90-day and 12-month findings on plaintiff's petitions to list the Jollyville salamander and the San Felipe gambusia as endangered.	X		
Total	18 suits		15	1	2
Fiscal Year 2007					
11/2/2006	<i>Board of County Commissioners of Otero County, New Mexico v. U.S. Fish and Wildlife Service, et al.</i> , 2:06-cv-01067 (District of New Mexico)	FWS's alleged failure to issue a 90-day finding on plaintiff's petition to delist the Sacramento Mountains thistle as threatened or endangered.		X	
12/15/2006	<i>Conservation Law Foundation, et al. v. Kempthorne, et al.</i> , 2:06-cv-00226 (District of Maine)	FWS and NMFS's alleged failure to timely designate critical habitat for the Gulf of Maine distinct population segment of Atlantic salmon.	X		

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
12/19/2006	<i>Center for Biological Diversity v. Kempthorne, et al.</i> , 1:06-cv-02151 (District Court for the District of Columbia)	FWS's alleged failure to issue a final critical habitat designation within 1-year of finding that designation of critical habitat was not determinable at the time of listing the Southwest Alaska distinct population segment of the Northern sea otter.	X		
12/20/2006	<i>Center for Biological Diversity v. Gutierrez, et al.</i> , 3:06-cv-07786 (Northern District of California)	NMFS's alleged failure to issue a 12-month finding on plaintiff's petition to list the North Pacific Right Whale as endangered.		X	
3/09/2007	<i>Institute for Wildlife Protection v. U.S. Fish and Wildlife Service, et al.</i> , 3:07-cv-00358 (District of Oregon)	FWS's alleged failure to designate critical habitat and conduct a 5-year status review of the Oregon chub.	X		
5/30/2007	<i>Walt Moden, et al. v. U.S. Fish and Wildlife Service, et al.</i> , 1:07-cv-00799 (District of Oregon)	FWS's alleged failure to conduct 5-year status reviews for the shortnose sucker and Lost River sucker.		X	
8/30/2007	<i>Center for Biological Diversity v. Gutierrez, et al.</i> , 1:07-cv-01545 (District Court for the District of Columbia)	NMFS's alleged failure to issue final critical habitat designations within 1-year of finding that designation of critical habitat was not determinable at the time of listing the elkhorn coral, staghorn coral, U.S. distinct population segment of smalltooth sawfish, and southern distinct population segment of North American green sturgeon.	X		
Total	7 suits		4	3	0
Fiscal Year 2008					
11/15/2007	<i>Friends of Mississippi Public Lands, et al. v. Kempthorne</i> , 1:07-cv-02073 (District Court for the District of Columbia)	FWS's alleged failure to designate critical habitat for the Mississippi gopher frog concurrent with the final listing determination.	X		

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
11/27/2007	<i>Center for Biological Diversity v. Hamilton, et al.</i> , 1:07-cv-02928 (Northern District of Georgia)	FWS's alleged failure to designate critical habitat for the vermilion darter concurrent with the final listing determination.	X		
12/17/2007	<i>Sierra Club, et al. v. Kempthorne, et al.</i> , 1:07-cv-02261 (District Court for the District of Columbia)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to list the coaster brook trout as threatened or endangered.	X		
12/19/2007	<i>Center for Biological Diversity v. Kempthorne, et al.</i> , 3:07-cv-02378 (Southern District of California)	FWS's alleged failure to designate critical habitat for the San Diego ambrosia, Cool's lomatium and large-flowered woolly meadowfoam, and golden sedge concurrent with the final listing determination.	X		
12/19/2007	<i>Center for Biological Diversity, et al. v. Kempthorne, et al.</i> , 3:07-cv-06406 (Northern District of California)	FWS's alleged failure to make a 12-month finding on plaintiffs' petition to list the yellow-billed loon as threatened or endangered.	X		
1/3/2008	<i>Forest Guardians, et al. v. Kempthorne, et al.</i> , 1:08-cv-00011 (District Court for the District of Columbia)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to list the Sacramento Mountains checkerspot butterfly as threatened or endangered.	X		
2/27/2008	<i>Center for Biological Diversity v. Hall, et al.</i> , 1:08-cv-00335 (District Court for the District of Columbia)	FWS's alleged failure to issue 12-month findings on plaintiff's petition to list 10 penguins as threatened or endangered.	X		
3/3/2008	<i>Center for Native Ecosystems v. Kempthorne, et al.</i> , 1:08-cv-00441 (District of Colorado)	FWS's alleged failure to issue a 90-day finding on plaintiff's petition to revise the critical habitat designated for the clay-loving wild buckwheat.	X		
3/13/2008	<i>WildEarth Guardians v. Kempthorne</i> , 1:08-cv-00443 (District Court for the District of Columbia)	FWS's alleged failure to issue a 90-day finding on plaintiff's petition to list the black-tailed prairie dog as threatened or endangered.	X		
3/19/2008	<i>WildEarth Guardians v. Kempthorne</i> , 1:08-cv-00472 (District Court for the District of Columbia)	FWS's alleged failure to issue 90-day findings on plaintiff's petitions to list 674 species as threatened or endangered.	X		

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
4/17/2008	<i>WildEarth Guardians, et al. v. Hall, et al.</i> , 1:08-cv-00676 (District Court for the District of Columbia)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to change the listing status of Canada lynx to provide threatened ESA status to lynx entering and inhabiting north-central New Mexico.	X		
5/12/2008	<i>Friends of Merrymeeting Bay, et al. v. Gutierrez, et al.</i> , 2:08-cv-00146 (District of Maine)	FWS and NMFS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Kennebec River population of Atlantic salmon as endangered.		X	
6/10/2008	<i>American Sand Association, et al. v. U.S. Fish and Wildlife Service, et al.</i> , 3:08-cv-01034 (Southern District of California)	FWS's alleged failure to issue a 12-month finding on plaintiffs' petition to delist the Peirson's milkvetch as threatened or endangered.		X	
6/30/2008	<i>Cook Inlet Beluga Whale, et al. v. Gutierrez, et al.</i> , 1:08-cv-01129 (District Court for the District of Columbia)	NMFS's alleged failure to issue a final determination within 1 year of publishing a proposed listing rule on plaintiffs' petition to list the Cook Inlet beluga whale as threatened or endangered.		X	
8/11/2008	<i>Institute for Wildlife Protection, et al. v. Kempthorne</i> , 2:08-cv-01202 (Western District of Washington)	FWS's alleged failure to designate critical habitat and conduct a 5-year status review for the Tumbling Creek cavesnail.	X		
8/19/2008	<i>Center for Biological Diversity v. Kempthorne, et al.</i> , 2:08-cv-01936 (Eastern District of California)	FWS's alleged failure to issue a 90-day finding on plaintiff's petition to list the American pika as threatened or endangered.	X		
Total	16 suits		13	3	0
Fiscal Year 2009					
11/4/2008	<i>Center for Native Ecosystems, et al. v. U.S. Fish and Wildlife Service, et al.</i> , 1:08-cv-02394 (District of Colorado)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to list the Wyoming pocket gopher as threatened or endangered.	X		

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
12/3/2008	<i>Center for Biological Diversity v. U.S. Fish and Wildlife Service, et al.</i> , 3:08-cv-00265 (District of Alaska)	FWS's alleged failure to issue a 90-day finding on plaintiff's petition to list the Pacific walrus as threatened or endangered.	X		
2/24/2009	<i>Endangered Species Recovery Council v. Salazar, et al.</i> , 1:09-cv-00363 (District Court for the District of Columbia)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to delist the brown pelican as threatened or endangered.		X	
3/16/2009	<i>Conservation Force, et al. v. Salazar, et al.</i> , 1:09-cv-00496 (District Court for the District of Columbia)	FWS's alleged failure to issue a 12-month finding on plaintiffs' petition to reclassify the wood bison from endangered to threatened.			X
3/16/2009	<i>Conservation Force, et al. v. Ken Salazar, et al.</i> , 1:09-cv-00495 (District Court for the District of Columbia)	FWS's alleged failure to issue a 12-month finding on plaintiffs' petition to reclassify the Suleiman markhor from endangered to threatened.			X
4/1/2009	<i>Center for Biological Diversity v. Salazar, et al.</i> , 3:09-cv-01415 (Northern District of California)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the ashy storm-petrel as threatened or endangered.	X		
4/3/2009	<i>WildEarth Guardians v. Salazar</i> , 6:09-cv-00331 (District of New Mexico)	FWS's alleged failure to issue 90-day findings on plaintiff's petitions to list the Chihuahua scurfpea, Wright's marsh thistle, Jemez Mountains salamander, and white-sided jackrabbit as threatened or endangered.	X		
4/16/2009	<i>Friends of Animals v. Salazar, et al.</i> , 1:09-cv-00707 (District Court for the District of Columbia)	FWS's alleged failure to issue 90-day and 12-month findings on plaintiff's petition to list 13 species of macaws, parrots, and cockatoos as threatened or endangered.			X
5/11/2009	<i>Friends of Oceano Dunes, Inc. v. Salazar, et al.</i> , 1:09-cv-00866 (District Court for the District of Columbia)	FWS's alleged failure to make a final determination within 1 year of publishing the proposed rule to delist the brown pelican as threatened or endangered.	X		

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
5/28/2009	<i>Center for Biological Diversity, et al. v. Locke, et al.</i> , 3:09-cv-02346 (Northern District of California)	FWS and NMFS's alleged failure to issue 12-month findings on plaintiff's petitions to reclassify the North Pacific and Western North Atlantic distinct population segments of the loggerhead sea turtle from threatened to endangered. FWS and NMFS's alleged failure to issue a 12-month finding on plaintiff's petition to revise the critical habitat designation for the leatherback sea turtle.	X		
6/1/2009	<i>WildEarth Guardians, et al. v. Salazar</i> , 2:09-cv-01166 (District of Arizona)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to list the Sonoran Desert tortoise as threatened or endangered.	X		
6/10/2009	<i>Center for Biological Diversity, et al. v. Salazar, et al.</i> , 3:09-cv-02578 (Northern District of California)	FWS's alleged failure to promptly publish proposed listing rules for 25 foreign bird species and alleged failure to issue final listing determinations for 6 foreign bird species within 1-year of publishing proposed rules to list the species.	X		
8/20/2009	<i>WildEarth Guardians v. Salazar</i> , 1:09-cv-01977 (District of Colorado)	FWS's alleged failure to issue a 90-day finding on plaintiff's petition to list the Sprague's pipit as threatened or endangered.		X	
8/26/2009	<i>WildEarth Guardians v. Salazar</i> , 4:09-cv-02744 (Southern District of Texas)	FWS's alleged failure to issue 90-day findings on plaintiff's petition to list six mollusk species as threatened or endangered.	X		
9/8/2009	<i>Center for Biological Diversity v. National Oceanic and Atmospheric Administration, et al.</i> , 1:09-cv-01703 (District Court for the District of Columbia)	NMFS's alleged failure to issue 12-month findings on plaintiff's petition to list the ringed seal, bearded seal, and spotted seal as threatened or endangered.	X		
Total	15 suits		10	2	3

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
Fiscal Year 2010					
11/13/2009	<i>Center for Biological Diversity, et al. v. Salazar, et al.</i> , 1:09-cv-02092 (Eastern District of California)	FWS's alleged failure to issue a 12-month finding on plaintiffs' petition to reclassify the Delta smelt from threatened to endangered.		X	
12/14/2009	<i>Riverside County Farm Bureau v. U.S. Department of the Interior, et al.</i> , 2:09-cv-09162 (Central District of California)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to delist Stephen's kangaroo rat as threatened or endangered.	X		
12/23/2009	<i>WildEarth Guardians v. Salazar</i> , 1:09-cv-02990 (District of Colorado)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Fremont County rockcress as threatened or endangered.	X		
12/26/2009	<i>WildEarth Guardians v. Salazar</i> , 1:09-cv-02997 (District of Colorado)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the mist forestfly as threatened or endangered.	X		
12/28/2009	<i>Board of County Commissioners of Otero County, New Mexico v. U.S. Fish and Wildlife Service, et al.</i> , 6:09-cv-01204 (District of New Mexico)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to delist the Sacramento Mountains thistle as threatened or endangered.		X	
12/30/2009	<i>WildEarth Guardians v. Salazar</i> , 6:09-cv-01212 (District of New Mexico)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Jemez Mountains salamander as threatened or endangered.	X		
1/4/2010	<i>WildEarth Guardians v. Salazar</i> , 1:10-cv-00003 (District of Hawaii)	FWS's alleged failure to make a final determination within 1 year of publishing proposed rules to list 48 species from Kauai as endangered and to concurrently designate critical habitat for these species.		X	
1/8/2010	<i>WildEarth Guardians v. Salazar</i> , 1:10-cv-00048 (District Court for the District of Columbia)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the frigid ambersnail as threatened or endangered.	X		

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
1/12/2010	<i>WildEarth Guardians v. Salazar</i> , 1:10-cv-00057 (District of Colorado)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Platte River caddisfly as threatened or endangered.	X		
1/19/2010	<i>WildEarth Guardians v. Salazar</i> , 2:10-cv-00102 (District of Arizona)	FWS's alleged failure to issue a 90-day finding on plaintiff's petition to list the Mexican gray wolf as threatened or endangered.	X		
1/26/2010	<i>WildEarth Guardians v. Salazar</i> , 2:10-cv-00169 (District of Colorado)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Pipe Springs cryptantha as threatened or endangered.	X		
1/27/2010	<i>Center for Biological Diversity v. Salazar, et al.</i> , 1:10-cv-00149 (District Court for the District of Columbia)	FWS's alleged failure to issue a 90-day finding on plaintiff's petition to list the Mexican gray wolf as endangered.	X		
1/28/2010	<i>WildEarth Guardians v. Salazar</i> , 3:10-cv-00053 (District of Nevada)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Northern leatherside chub as threatened or endangered.	X		
2/1/2010	<i>WildEarth Guardians v. Salazar</i> , 6:10-cv-00080 (District of New Mexico)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the white-sided jackrabbit as threatened or endangered.	X		
2/2/2010	<i>WildEarth Guardians, et al. v. Salazar</i> , 6:10-cv-00086 (District of New Mexico)	FWS's alleged failure to issue a 12-month finding on plaintiffs' petition to list the Sonoran Desert tortoise as threatened or endangered.	X		
2/3/2010	<i>Western Watersheds Project v. U.S. Fish and Wildlife Service</i> , 4:10-cv-00054 (District of Idaho)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the pygmy rabbit as threatened or endangered.	X		
2/8/2010	<i>WildEarth Guardians v. Salazar</i> , 1:10-cv-00256 (District of Colorado)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Yellowstone sand verbena as threatened or endangered.	X		

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
2/9/2010	<i>WildEarth Guardians v. Salazar</i> , 1:10-cv-00263 (District of Colorado)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the pale blue-eyed grass as threatened or endangered.	X		
2/11/2010	<i>WildEarth Guardians v. Salazar</i> , 1:10-cv-00122 (District of New Mexico)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Wright's marsh thistle as threatened or endangered.	X		
2/17/2010	<i>Center for Biological Diversity v. Salazar, et al.</i> , 2:10-cv-00401 (Eastern District of California)	FWS's alleged failure to issue 12-month findings on plaintiff's petitions to list the Mount Charleston blue butterfly, California golden trout, Mojave fringe-toed lizard, Amargosa toad, and Techachapi slender salamander as threatened or endangered. In addition, FWS's alleged failure to issue 90-day findings on plaintiff's petition to list 42 species of Great Basin springsnails and Mohave ground squirrel as threatened or endangered.		X	
2/17/2010	<i>Center for Biological Diversity v. Salazar, et al.</i> , 3:10-cv-00176 (District of Oregon)	FWS's alleged failure to issue 12-month findings on plaintiff's petitions to list the dusky tree vole, Lake Sammamish kokanee, and black-footed albatross as threatened or endangered. In addition, FWS's alleged failure to issue 90-day findings on plaintiff's petitions to list 32 species of Pacific Northwest mollusks as threatened or endangered.		X	
2/17/2010	<i>Center for Biological Diversity v. Salazar, et al.</i> , 4:10-cv-00106 (District of Arizona)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Tucson shovel-nosed snake and cactus ferruginous pygmy-owl as threatened or endangered.		X	

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
2/17/2010	<i>Center for Biological Diversity v. Salazar, et al.</i> , 1:10-cv-00230 (District Court for the District of Columbia)	FWS's alleged failure to issue 12-month findings on plaintiff's petitions to list 15 species as threatened or endangered. In addition, FWS's alleged failure to issue 90-day findings on plaintiff's petitions to list 77 species as threatened or endangered.	X		
2/24/2010	<i>Natural Resources Defense Council v. Salazar, et al.</i> , 1:10-cv-00299 (District Court for the District of Columbia)	FWS's alleged failure to issue a 90-day finding on plaintiff's petition to list whitebark pine as endangered.	X		
3/2/2010	<i>Friends of Animals, et al. v. Salazar</i> , 1:10-cv-00357 (District Court for the District of Columbia)	FWS's alleged failure to issue 12-month findings on plaintiffs' petition to list 12 species of parrots, macaws, and cockatoos as threatened or endangered.	X		
3/9/2010	<i>Center for Biological Diversity, et al. v. Salazar, et al.</i> , 3:10-cv-00992 (Northern District of California)	FWS's alleged failure to make a final determination within 1 year of publishing proposed rules to list 7 penguin species as threatened or endangered.	X		
3/15/2010	<i>WildEarth Guardians v. Salazar</i> , 1:10-cv-00421 (District Court for the District of Columbia)	FWS's alleged failure to issue 12-month findings on plaintiff's petition to list 3 freshwater springsnails as threatened or endangered.	X		
3/23/2010	<i>Center for Biological Diversity v. Locke, et al.</i> , 3:10-cv-01193 (Northern District of California)	NMFS's alleged failure to designate critical habit for the endangered black abalone within 12-month of final listing.	X		
4/12/2010	<i>WildEarth Guardians v. Salazar</i> , 1:10-cv-00817 (District of Colorado)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Sprague's pipit as threatened or endangered.	X		
5/25/2010	<i>The Humane Society of the United States, et al. v. National Marine Fisheries Service, et al.</i> , 1:10-cv-10873 (District of Massachusetts)	NMFS's alleged failure to issue a 90-day finding on plaintiffs' petition to revise critical habitat designated for the North Atlantic right whale.		X	

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
6/23/2010	<i>Conservation Force, et al. v. Salazar, et al.</i> , 1:10-cv-01057 (District Court for the District of Columbia)	FWS's alleged failure to issue a 12-month finding on plaintiffs' petition to reclassify the wood bison from endangered to threatened and alleged failure to conduct a 5-year status review for this species.			X
9/13/2010	<i>Center for Biological Diversity v. Salazar, et al.</i> , 1:10-cv-01536 (District Court for the District of Columbia)	FWS's alleged failure to make a final determination within 1 year of publishing proposed rules to list the Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail as threatened or endangered.		X	
9/20/2010	<i>WildEarth Guardians v. Salazar</i> , 4:10-cv-03366 (Southern District of Texas)	FWS's alleged failure to issue 12-month findings on plaintiff's petitions to list 9 species of mollusks as threatened or endangered.	X		
Total	33 suits		24	8	1
Fiscal Year 2011					
10/25/2010	<i>WildEarth Guardians v. Salazar</i> , 1:10-cv-02232 (District of Colorado)	FWS's alleged failure to issue a 90-day finding on plaintiff's petition to list the Utah population of the Gila monster as endangered or threatened.	X		
10/27/2010	<i>WildEarth Guardians v. Salazar</i> , 1:10-cv-02231 (District of Arizona)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Mexican wolf as an endangered subspecies separate and distinct from the gray wolf species.	X		
11/23/2010	<i>Washington Farm Bureau, et al. v. Salazar, et al.</i> , 2:10-cv-01910 (Western District of Washington)	FWS's alleged failure to conduct 5-year status reviews for the gray wolf, northern spotted owl, Oregon silverspot butterfly, showy stickseed, and Wenatchee Mountains checkermallow.		X	

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
2/16/2011	<i>Washington Cattlemen's Association v. Salazar, et al.</i> , 2:11-cv-03019 (Eastern District of Washington)	FWS's alleged failure to conduct a 5-year status review for the gray wolf, excluding the Minnesota threatened population, all experimental populations, and the Northern Rockies distinct population segment.	X		
4/8/2011	<i>North Sacramento Land Company, et al. v. U.S. Fish and Wildlife Service, et al.</i> , 2:11-cv-00943 (Eastern District of California)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to delist the valley elderberry longhorn beetle as threatened or endangered.		X	
4/19/2011	<i>Center for Biological Diversity, et al. v. Locke, et al.</i> , 3:11-cv-01870 (Northern District of California)	NMFS's alleged failure to issue a final determination within 1-year of publishing a proposed rule to revise critical habitat designated for the leatherback sea turtle.	X		
6/14/2011	<i>Wild Equity Institute v. Salazar, et al.</i> , 3:11-cv-02904 (Northern District of California)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Franciscan manzanita as threatened or endangered.		X	
9/15/2011	<i>Coalition of Labor, Agriculture, and Business, et al. v. U.S. Department of the Interior, et al.</i> , 3:11-cv-02136 (Southern District of California)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to delist the California gnatcatcher as threatened or endangered.		X	
9/27/2011	<i>Center for Biological Diversity v. National Marine Fisheries Service, et al.</i> , 3:11-cv-04779 (Northern District of California)	NMFS's alleged failure to issue 12-month findings on plaintiff's petition to list 82 coral species as threatened or endangered.	X		
Total	9 suits		5	4	0
Fiscal Year 2012					
11/10/2011	<i>Conservation Force, et al. v. Salazar, et al.</i> , 1:11-cv-02008 (District Court for the District of Columbia)	FWS's alleged failure to conduct a 5-year status review for the straight-horned markhor.	X		

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
3/12/2012	<i>North Sacramento Land Company, et al. v. U.S. Fish and Wildlife Service, et al.</i> , 2:12-cv-00618 (Eastern District of California)	FWS's alleged failure to issue a 12-month finding on plaintiffs' petition to delist the valley elderberry longhorn beetle as threatened or endangered.	X		
4/12/2012	<i>Sierra Club v. National Oceanic and Atmospheric Administration, et al.</i> , 1:12-cv-00572 (District Court for the District of Columbia)	NMFS's alleged failure to issue a 12-month finding on plaintiff's petition to revise critical habitat designated for the endangered leatherback sea turtle.		X	
5/22/2012	<i>Natural Resources Defense Council v. Bryson, et al.</i> , 1:12-cv-00826 (District Court for the District of Columbia)	NMFS's alleged failure to make a final determination within 1 year of publishing a proposed rule to list the Hawaiian insular population of false killer whales as endangered.	X		
5/30/2012	<i>Center for Biological Diversity v. Salazar, et al.</i> , 1:12-cv-00861 (District Court for the District of Columbia)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Big Sandy crayfish as threatened or endangered.	X		
6/29/2012	<i>Center for Biological Diversity v. Salazar, et al.</i> , 1:12-cv-01073 (District Court for the District of Columbia)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Coleman's coral-root as threatened or endangered.	X		
7/2/2012	<i>Center for Biological Diversity v. Salazar, et al.</i> , 1:12-cv-01091 (District Court for the District of Columbia)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Humboldt marten as threatened or endangered.	X		
8/3/2012	<i>WildEarth Guardians v. Blank</i> , 1:12-cv-01295 (District Court for the District of Columbia)	NMFS's alleged failure to issue 90-day findings on plaintiff's petitions to list the Gulf of Mexico Sperm Whale distinct population segment and the Nassau grouper as threatened or endangered. NMFS's alleged failure to issue 12-month findings on plaintiff's petitions to list 5 species of sawfish and the bumphead parrotfish as threatened or endangered.	X		

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
8/7/2012	<i>Center for Environmental Science Accuracy and Reliability, et al. v. Salazar, et al.</i> , 1:12-cv-01311 (District Court for the District of Columbia)	FWS's alleged failure to issue a 12-month finding on plaintiffs' petition to list the American eel as threatened or endangered.	X		
9/12/2012	<i>Center for Biological Diversity v. Blank, et al.</i> , 3:12-cv-00189 (District of Alaska)	NMFS's alleged failure to make a final determination within 1 year of publishing proposed rules to list the ringed seals and bearded seals as threatened or endangered.		X	
9/13/2012	<i>Center for Biological Diversity v. Salazar, et al.</i> , 1:12-cv-01514 (District Court for the District of Columbia)	FWS's alleged failure to issue 12-month findings on plaintiff's petitions to list 7 species as threatened or endangered.	X		
Total	11 suits		9	2	0
Fiscal Year 2013					
11/15/2012	<i>Bonner County, et al. v. Salazar, et al.</i> , 2:12-cv-00567 (District of Idaho)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to delist the southern Selkirk Mountains caribou population as threatened or endangered.		X	
1/8/2013	<i>Center for Biological Diversity, et al. v. Blank, et al.</i> , 3:13-cv-00086 (Northern District of California)	FWS and NMFS's alleged failure to make final determinations on designation of critical habitat for the Northwest Atlantic Ocean and North Pacific Ocean populations of loggerhead sea turtle within 1-year of publishing final rules listing the species.	X		
3/27/2013	<i>Pacific Legal Foundation v. Salazar, et al.</i> , 2:13-cv-00594 (Eastern District of California)	FWS's alleged failure to make final determinations within 1 year of publishing proposed rules to reclassify the Tidewater goby from endangered to threatened and to delist the Eureka Valley dunegrass and Eureka Valley evening primrose as threatened or endangered.	X		

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
4/24/2013	<i>California Cattlemen's Association, et al. v. Jewell, et al.</i> , 2:13-cv-00800 (Eastern District of California)	FWS's alleged failure to issue 12-month findings on plaintiffs' petition to reclassify 6 species from endangered to threatened.	X		
5/31/2013	<i>New Mexico Cattle Growers' Association, et al. v. Jewell, et al.</i> , 1:13-cv-00506 (District of New Mexico)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to reclassify the black capped vireo, Kuenzler hedgehog cactus, lesser long-nosed bat, and the Tobusch fishhook cactus from endangered to threatened and delist the gypsum wild-buckwheat as threatened or endangered.		X	
6/17/2013	<i>Xerces Society for Invertebrate Conservation v. Jewell, et al.</i> , 3:13-cv-01000 (District of Oregon)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to list the island marble butterfly as threatened or endangered.	X		
6/27/2013	<i>Center for Biological Diversity v. Jewell, et al.</i> , 1:13-cv-00975 (District Court for the District of Columbia)	FWS's alleged failure to issue 12-month findings on plaintiff's petitions to list 9 species as threatened or endangered.	X		
7/1/2013	<i>Xerces Society for Invertebrate Conservation, et al. v. Jewell, et al.</i> , 3:13-cv-01103 (District of Oregon)	FWS's alleged failure to issue a 12-month finding on plaintiffs' petition to list the Leona's little blue butterfly as threatened or endangered.			X
7/25/2013	<i>Friends of Animals, et al. v. Sullivan</i> , 1:13-cv-01130 (District Court for the District of Columbia)	NMFS's alleged failure to issue a 90-day finding on plaintiffs' petition to list the whale shark as threatened or endangered. NMFS's alleged failure to issue 12-month findings on plaintiffs' petitions to list 5 species of sturgeon and 3 other marine wildlife species as endangered or threatened.	X		
Total	9 suits		6	2	1

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
Fiscal Year 2014					
10/21/2013	<i>Friends of Animals v. Ashe, et al.</i> , 1:13-cv-01607 (District Court for the District of Columbia)	FWS's alleged failure to issue 12-month findings on plaintiffs' petitions to list 11 sturgeon species, 11 tarantula species, 15 bat species, the Ridgway hawk, and the Flores hawk-eagle as threatened or endangered.			X
3/12/2014	<i>Bonner County, et al. v. Jewell, et al.</i> , 2:14-cv-00100 (District of Idaho)	FWS's alleged failure to issue a 12-month finding on plaintiffs' petition to delist the southern Selkirk Mountain caribou population as threatened or endangered.		X	
3/18/2014	<i>Delaware Riverkeeper Network, et al. v. U.S. Dept. of Commerce, et al.</i> , 1:14-cv-00434 (District Court for the District of Columbia)	NMFS's alleged failure to timely designate critical habitat for 5 listed distinct population segments of the Atlantic sturgeon.	X		
5/1/2014	<i>Save Crystal River, Inc. v. Jewell, et al.</i> , 5:14-cv-00253 (Middle District of Florida)	FWS's alleged failure to issue a 90-day finding on plaintiff's petition to reclassify the West Indian manatee from endangered to threatened.		X	
5/13/2014	<i>Xerces Society for Invertebrate Conservation, et al. v. Jewell, et al.</i> , 1:14-cv-00802 (District Court for the District of Columbia)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to list the rusty patched bumble bee as endangered.	X		
6/10/2014	<i>Center for Biological Diversity, et al. v. Jewell, et al.</i> , 1:14-cv-00991 (District Court for the District of Columbia)	FWS's alleged failure to issue a 12-month finding on plaintiffs' petition to list the Alexander Archipelago wolf as threatened or endangered.	X		
6/17/2014	<i>Center for Biological Diversity v. Jewell, et al.</i> , 1:14-cv-01021 (District Court for the District of Columbia)	FWS's alleged failure to issue 12-month findings on plaintiff's petitions to list 9 species as threatened or endangered.	X		

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Date Filed	Suit (District Court)	Summary of ESA Section 4 Action at Issue	Disposition		
			Settlement Agreement ^a	Voluntary or Unopposed Dismissal ^b	Court Order ^c
9/23/2014	<i>Western Watersheds Project v. Jewell, et al.</i> , 2:14-cv-02205 (Eastern District of California)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the Eagle Lake rainbow trout as threatened or endangered.	X		
Total	8 suits		5	2	1
Fiscal Year 2015					
12/1/2014	<i>Xerces Society for Invertebrate Conservation v. Jewell, et al.</i> , 3:14-cv-01919 (District of Oregon)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to list the island marble butterfly as threatened or endangered.	X		
1/7/2015	<i>Friends of Animals v. Ashe, et al.</i> , 1:15-cv-00016 (District Court for the District of Columbia)	FWS's alleged failure to issue 12-month findings on plaintiff's petitions to list the spider tortoise and the flat-tailed tortoise as threatened or endangered.			X
2/18/2015	<i>Center for Biological Diversity v. Jewell, et al.</i> , 1:15-cv-00229 (District Court for the District of Columbia)	FWS's alleged failure to issue 12-month findings on plaintiff's petitions to list 10 species as threatened or endangered.	X		
9/2/2015	<i>Riverside County Farm Bureau, et al. v. U.S. Department of the Interior, et al.</i> , 5:15-cv-01799 (Central District of California)	FWS's alleged failure to issue a 90-day finding on plaintiffs' petition to delist the Stephen's kangaroo rat as threatened or endangered.		X	
9/24/2015	<i>Save Crystal River, Inc. v. Jewell, et al.</i> , 5:15-cv-00491 (Middle District of Florida)	FWS's alleged failure to issue a 12-month finding on plaintiff's petition to reclassify the West Indian manatee from endangered to threatened.		X	
Total	5 suits		2	2	1

Source: GAO analysis of legal information obtained from the Department of Justice and the federal online database Public Access to Court Electronic Records (PACER). | GAO-17-304

Note: Section 4 deadline suits include citizen suits filed against the Services during fiscal years 2005 through 2015 to compel compliance with statutory deadlines for certain actions under Section 4 of the Endangered Species Act. Section 4 of the act includes statutory deadlines for the Services to complete certain mandatory actions, including making findings on petitions to list or delist species, designating or revising critical habitat, and conducting 5-year status reviews of listed species.

^aSettlement agreement refers to a negotiated agreement reached between the parties to resolve the claims brought in the suit. We also included three suits resolved by a consent decree, which are court orders that embody the terms agreed upon by the parties as a compromise to litigation.

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^bVoluntary or unopposed dismissal refers to a motion filed by the plaintiff or jointly by the parties to dismiss the action. It also includes suits that were dismissed based on motions by the defendants that were unopposed by the plaintiffs.

^cCourt order refers to an order issued by the court of jurisdiction that resolved the suit.

Appendix II: Additional Information on Endangered Species Act Section 4 Deadline Suits, Fiscal Years 2005-2015

Section 4 deadline suits include citizen suits filed against the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS), to compel compliance with statutory deadlines for certain actions under Section 4 of the Endangered Species Act. Section 4 of the act includes statutory deadlines for the Services to complete certain mandatory actions, including making findings on petitions to list or delist species, designating or revising critical habitat, and conducting 5-year status reviews of listed species. Table 7 provides information on the taxonomic groups of species involved in the Section 4 deadline suits filed during fiscal years 2005 through 2015. Table 8 provides information on the distribution of the species managed by FWS and NMFS as well as distribution by each of the agency's respective regions. Table 9 provides information on the number of actions involved in the Section 4 deadline suits by agency.

Table 7: Number of Unique Species Included in Endangered Species Act Section 4 Deadline Suits by Taxonomic Group, Fiscal Years 2005-2015

Taxonomic group	Number of unique species
Plants	
Flowering Plants	452
Non-flowering Plants ^a	26
Animals (vertebrates)	
Mammals	76
Birds	72
Fish	75
Reptiles	30
Amphibians	25
Animals (invertebrates)	
Snails	257
Insects	164
Arachnids	87
Corals	84
Crustaceans	62
Clams	26
Millipedes	4
Flatworms	1
Total	1,441

Source: GAO analysis U.S. Fish and Wildlife data from the Environmental Conservation Online System (ECOS) and NatureServe Explorer. | GAO-17-304

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Note: This table includes a count of the number of unique species involved in 141 deadline suits during fiscal years 2005 through 2015. A species could have been subject to more than one deadline suit. For the purposes of our analysis, we counted distinct population segments of species as unique species. Section 4 deadline suits include citizen suits filed against the Services to compel compliance with statutory deadlines for certain actions under Section 4 of the Endangered Species Act. Section 4 of the act includes statutory deadlines for the Services to complete certain mandatory actions, including making findings on petitions to list or delist species, designating or revising critical habitat, and conducting 5-year status reviews of listed species.

^aNon-flowering Plants include conifers and cycads, ferns, allies, lichens, and algae.

Table 8: Distribution of Species Included in Endangered Species Act Section 4 Deadline Suits by Agency and Lead Regional Office, Fiscal Years 2005-2015

FWS Lead Regional Office	Number of Species	Percentage of FWS Total	NMFS Lead Regional Office	Number of Species	Percentage of NMFS Total
FWS Headquarters	71	5	NMFS Headquarters	8	7
Pacific (region 1)	97	7	Alaska	5	4
Southwest (region 2)	499	38	Greater Atlantic	1	1
Midwest (region 3)	12	1	Pacific Islands	78	68
Southeast (region 4)	126	9	Southeast	20	18
Northeast (region 5)	7	1	West Coast	2	2
Mountain-Prairie (region 6)	214	16			
Alaska (region 7)	7	1			
Pacific-Southwest (region 8)	294	22			
Total	1,327	100		114	100

Source: GAO analysis of U.S. Fish and Wildlife (FWS) data from the Environmental Conservation Online System (ECOS), data from National Marine Fisheries Service (NMFS), and NatureServe Explorer. | GAO-17-304

Note: Lead regional office represents the FWS or NMFS office assigned to lead any Section 4 action(s) to be completed for the species. Lead regional offices are generally assigned based on the geographic location of the species, but some species may be located in more than one region. Generally, FWS and NMFS headquarters offices have the lead role for all foreign species. Section 4 deadline suits include citizen suits filed against the Services to compel compliance with statutory deadlines for certain actions under Section 4 of the Endangered Species Act. Section 4 of the act includes statutory deadlines for the Services to complete certain mandatory actions, including making findings on petitions to list or delist species, designating or revising critical habitat, and conducting 5-year status reviews of listed species.

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Table 9: Number of Section 4 Actions by Agency included in Deadline Suits, Fiscal Years 2005- 2015

Section 4 Action	U.S. Fish and Wildlife Service	National Marine Fisheries Service	Both Services	Total
90-day finding on listing petition	899	3	0	902
12-month finding on listing petition	216	103	4	323
90-day or 12-month finding on delisting petition	29	0	0	29
Final listing determination	30	2	0	32
Critical habitat designation or revision	74	12	4	90
5-year status review	297	0	0	297
Total	1,545	120	8	1,673

Source: GAO analysis of legal information obtained from the Department of Justice and the federal online database Public Access to Court Electronic Records (PACER). | GAO-17-304

Note: This table provides information on the number and type of Section 4 actions included in the deadline suits filed against the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) during fiscal years 2005 through 2015. Section 4 deadline suits include citizen suits filed against the Services to compel compliance with statutory deadlines for certain actions under Section 4 of the Endangered Species Act. Section 4 of the act includes statutory deadlines for the Services to complete certain mandatory actions, including making findings on petitions to list or delist species, designating or revising critical habitat, and conducting 5-year status reviews of listed species. In some instances, in resolving the deadline suits, the Services agreed to undertake additional, related actions; therefore the number of actions ultimately agreed to by the Services exceeds the number of actions involved in the suits that were filed. Final listing determinations include both listing and delisting actions.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Anne-Marie Fennell, (202) 512-3841 or fennella@gao.gov

Staff Acknowledgments

In addition to the contact named above, Alyssa M. Hundrup (Assistant Director), Carolyn Blocker, Ellen Fried, Cindy Gilbert, Richard Johnson, Michael Meleady, Sara Sullivan, and Manuel Valverde made key contributions to this report.

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