



August 31, 2015

Via Federal eRulemaking Portal  
(<http://www.regulations.gov>)

Attn: Director Daniel M. Ashe  
Public Comments Processing  
U.S. Fish and Wildlife Service, MS: BPHC  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

Re: Comments Regarding Endangered and Threatened Wildlife  
and Plants; 90-Day Findings on 31 Petitions, 80 Fed. Reg. 37,568

Dear Director Ashe:

CropLife America appreciates the opportunity to review and comment on the U.S. Fish and Wildlife Service (FWS)'s findings on various petitions to list 30 species and one petition that describes itself as a petition to reclassify one species under the Endangered Species Act of 1973, as amended (Act).<sup>1</sup>

Established in 1933, CropLife America represents the developers, manufacturers, formulators and distributors of crop protection chemicals and plant science solutions for agriculture and pest management in the United States. CropLife America's member companies produce, sell and distribute virtually all the crop protection and biotechnology products used by American farmers.

CLA represents registrant member companies' interests by, among other things, monitoring legislation, federal agency regulations and actions and litigation that impact the crop protection and pest control industries, and participating in such actions when appropriate. CLA is committed to working with FWS, the Environmental Protection Agency, the United States Department of Agriculture, the National Marine Fisheries Service, state wildlife agencies, conservation groups and other stakeholders to encourage responsible use of its members' products.

In reviewing the potential role that pesticides may be alleged to play in the listing decisions addressed in this Federal Register notice, CLA has found it impossible to comment in a meaningful way because of the lack of specific species range information provided, and FWS's reliance on insufficient or unreliable information as factors that may warrant listing. FWS should follow the practice it has recently proposed elsewhere,

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<sup>1</sup> Endangered and Threatened Wildlife and Plants; 90-Day Findings on 31 Petitions, 80 Fed. Reg. 37,568 (July 1, 2015).

and analyze these species individually providing the public with adequate time and information to comment on these findings in a substantive way.

### **90-Day Findings Lack Sufficient Species Information and Data**

The ESA prescribes five factors for FWS to consider in the listing, delisting and reclassifying of a species. These factors are: (A) the present or threatened destruction, modification or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.<sup>2</sup> When making a listing determination, FWS must base its decision “solely on the basis of the best scientific and commercial data available.”<sup>3</sup>

In several of the 90-day findings at issue here, FWS relies on insufficient or unreliable information to make findings that the petitioned actions may be warranted. This lack of detail is both inconsistent with FWS’s legal obligations<sup>4</sup> and makes it impossible to meaningfully respond.

In this Federal Register notice and accompanying species evaluation documents, FWS lists species ranges by state, without any greater specificity. FWS should provide greater specificity in its evaluation of species ranges in 90-day findings so that stakeholders may provide meaningful comments on which factors may be impacting a species. If FWS does not evaluate whether or not the range identified by the petitioner is supported by the information in the petition, it is difficult for stakeholders to determine whether activities of interest to them may overlap with some or all of the range of the species. FWS’s own evaluations note the importance of knowing the extent to which certain activities may impact a species across its range.<sup>5</sup> Without greater specificity, it is impossible to meaningfully evaluate potential risks to species.

CLA also objects to FWS’s reliance on insufficient and unreliable information in finding that petitioned actions may be warranted. For example, FWS’s support of its 90-Day Finding On A Petition To List The Southern Hog-Nosed Snake Under The Endangered Species Act, provides little or no information supporting listing, but FWS still concluded that the petition to list this species may be warranted.<sup>6</sup> In fact, the information cited by

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<sup>2</sup> 16 U.S.C. § 1533(1)(A)-(E).

<sup>3</sup> 16 U.S.C. § 1533(b)(1).

<sup>4</sup> See 16 U.S.C. § 1533(b)(1); 50 C.F.R. § 424.14(b).

<sup>5</sup> See, e.g., Gina Shultz, Evaluation of Petition to List the Oregon Slender Salamander as an Endangered or Threatened Species Under the Act, U.S. Fish and Wildlife Service, June 19, 2015 *available at* <http://www.regulations.gov/#!documentDetail;D=FWS-R1-ES-2015-0057-0003> (“No information on either the use of pesticides in the range of the species or information indicating pesticides have had an effect on the decline of the species was provided.”).

<sup>6</sup> See, e.g., Gina Shultz, Evaluation of Petition to List the Southern Hog-nosed Snake as an Endangered or Threatened Species under the Act, U.S. Fish and Wildlife Service, June 19, 2015 *available at* <http://www.regulations.gov/#!documentDetail;D=FWS-R4-ES-2015-0063-0003>.

FWS to support listing would not lead a reasonable person to believe that the petition to list the Southern Hog-Nosed Snake may be warranted.<sup>7</sup> FWS should only find that petitioned actions may be warranted if they are supported by the best scientific and commercial data available.

CLA recognizes the difficulty in responding to petitions that involve a large number of species, which may contribute to the concerns raised above. Addressing each species in separate petitions, as recently proposed by FWS<sup>8</sup>, would provide a more comprehensive and efficient way to evaluate the best scientific and commercial data available for each individual species. FWS should provide the 31 species addressed in this action the same care. FWS should reissue the 90-day findings on these species providing more specific detail on species location, only make affirmative 90-day findings on information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted and provide adequate time for meaningful comment.

CLA appreciates the complexity of administering the ESA to best protect threatened and endangered species and their critical habitats, and thanks FWS for the opportunity to comment on these 90-day findings. CLA supports FWS's efforts to conserve wildlife while recognizing that normal agricultural and silvicultural practices, including responsible pesticide use, are consistent with this goal. Should you have any questions or comments, please feel free to contact me at [RLattimore@croplifeamerica.org](mailto:RLattimore@croplifeamerica.org) or (202) 872-3895.

Regards,



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Senior Vice President, General Counsel & Secretary  
CropLife America

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<sup>7</sup> 50 C.F.R. § 424.14(b).

<sup>8</sup> Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Petitions, 80 Fed. Reg. 89,286 (May 21, 2015).