



90-day finding on a petition to delist the Valley Elderberry Long-horned Beetle

Questions and Answers

Prepared by the Sacramento Fish and Wildlife Office
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Q: Why is the Service issuing a 90 day finding today?

A: On September 9, 2010, we received a petition from Pacific Legal Foundation (PLF) requesting that we delist the valley elderberry longhorn beetle (beetle) as recommended in the 5-year status review completed in 2006. On October 5, 2010, we informed the PLF that we had initiated a review of the petition and anticipated making an initial finding as to whether the petitioned action may be warranted in Fiscal Year 2011.

On April 8, 2011, PLF filed a lawsuit in federal court in Sacramento seeking the U.S. Fish and Wildlife Service (Service) be ordered to issue a finding on the PLF petition to delist the Valley elderberry longhorn beetle. The 90-day finding announced today addresses the 2010 petition and avoids unnecessary litigation.

Q. What is a 90-day finding on a petition to delist?

A. Section 4 of the Endangered Species Act requires that the Service make a finding on whether a petition to list, delist, or reclassify a species contains “substantial” information to indicate that the requested action may be warranted. That finding is to be made within 90 days, to the maximum extent practicable, after receipt of the petition, and is to be published in the *Federal Register*. Findings are based on information contained in the petition, supporting information submitted with the petition, and other information available to the Service at the time.

Q. What is meant by “substantial” information?

A. When the Service evaluates a petition, it considers the adequacy and reliability of the information supporting the proposed action. A “substantial” finding means that the Service has determined that the petition presents adequate and reliable information that would lead a reasonable person to believe the petitioned action *may* be warranted. It is not a final conclusion about the information presented. We call this a “positive” or “substantial” 90-day finding.

Q. Why hasn't the Service acted on the 2006 recommendation to delist the beetle?

A. The Service never halted its work to complete a proposed rule. However, the Service's litigation-driven workload, limited budgets and other priorities (consultation for renewable energy projects) made expeditious work on this action a challenge. Other circumstances, like deployment of biologists to the Gulf oil spill in 2010 have contributed to delays.

Q: Does this 90 Day finding announced today effect the Service's 2006 recommendation to delist the beetle?

A: No. This 90-day finding addresses the PLF petition. We are continuing our work on a full status review and expect to publish a more in-depth review by the end of 2011.

Q. What happens now?

A. The 90-day finding opens a 60 day comment period. Completion of the 90-day finding initiates a full status review. Depending on the information received from the public and species experts during the 90-day finding comment period we anticipate taking less than a year to make our decision.

The status review, known as a 12-month review, considers information beyond what the petition references, including public comments and peer review. This helps the Service decide whether the petitioned action is warranted. A status review includes a full examination of all scientific literature and any other information that is available or submitted to the Service. If the Service decides that a petitioned action is warranted in the 12-month finding, the Service must promptly publish a proposed rule to pursue the petitioned action. At that time, further information and public comments will be sought before making a final decision.

Q. What is the Service asking from public?

A: To delist or downlist a species, the Service follows a process similar to that for listing under the ESA. In order to assess the population and its recovery achievements; they assess the existing threats and seek advice from the public and a variety of species experts. We're also ask the public be as specific as possible and include references to scientific journal articles or other publications where possible so the Service can to verify any scientific or commercial information included.

Q. What specific or relevant information is the Service looking for?

A. During this public comment period, the Service seeks information on the following five factors:

- 1.) Is there a present or threatened destruction, modification, or curtailment of the species' habitat or range? For species proposed for delisting, the Service would be interested in information on measures in place to protect habitat of the species.
- 2.) Is the species subject to overutilization for commercial, recreational, scientific, or

educational purposes?

3.) Is disease or predation a factor?

4.) Are there existing regulatory mechanisms in place outside the ESA (taking into account the efforts by the States and other organizations) to protect the species or habitat?

5.) Are other natural or manmade factors affecting its continued existence?

Q. How can the public provide comments on this 90 day finding?

A. To ensure that the review is comprehensive and based on the best available science, the Service is opening a 60-day public-comment period to solicit information and data regarding the species. The comment period closes October 18, 2011.

Comments may be submitted in one of the following ways:

-- Federal eRulemaking Portal: <http://www.regulations.gov>. In the Keywords box, enter Docket No. FWS-R8-ES-2011-0063 and follow the instructions for submitting comments.

-- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R8-ES-2011-0063; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203

Q. What happens in the interim? Will Federal action agencies and private landowners still have to comply with the ESA regarding this species between now and final action on delisting?

A: Until a species is formally delisted (i.e. the final rule is published with a delisting effective date) all the protections of the ESA remain in place. This means that actions by Federal agencies and private landowners which might adversely affect the species continue to require ESA compliance through either Section 7 consultations or the Section 10 Habitat Conservation Planning (HCP) process. Existing consultations, permitted HCPs, and agreements made on behalf of the species remain in effect.

Q. If the species is delisted in the future, would all the various beetle compensation sites, such as conservation banks and permittee-responsible mitigation sites, be necessary and maintained?

A. If the decision is made to delist the species in the future, the protection of the beetle by all the compensation sites will be one factor of many which will lead to the decision to delist the species. These compensation sites have been set up under conservation easements, with financial endowments to ensure the sites are managed in perpetuity for the species' benefit, so they will always remain protected habitat for the beetle.