

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.

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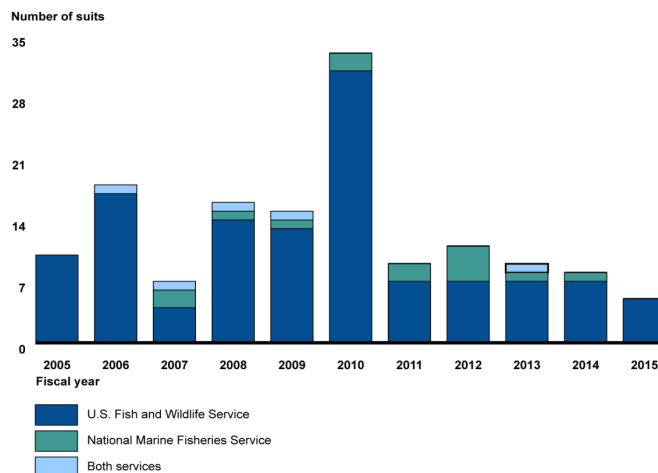
ENVIRONMENTAL LITIGATION

Information on Endangered Species Act Deadline Suits

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.