Texas Commission on Environmental Quality (TCEQ) Comments on

***Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Petitions***

Docket ID Number FWS–HQ–ES–2015–0016

# Background

On July 17, 2015 the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively, the Services) published a notice extending the comment period for proposed rule revisions regarding regulations in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 424.14 concerning petitions for endangered and threatened wildlife and plants. The rule changes; originally noticed in the May 21, 2015, Federal Register, were proposed to improve the content and specificity of petitions and to enhance the efficiency and effectiveness of the petition process to support species conservation. The proposed revisions to Section 424.14 would clarify and enhance the procedures by which the Services will evaluate petitions under section 4(b)(3) of the Endangered Species Act, 16 U.S.C. 1533(b)(3). The Services proposed to revise the regulations pertaining to the petition process to provide greater clarity on the petition-submission process by 1) identifying that petitions are limited to a single species, 2) requiring petitioners to submit a copy of the petition to state agencies responsible for the management and conservation of fish, plant, or wildlife resources in each state where the species occurs, 3) certify that the petitioner has provided all reasonably available relevant information, not just information supporting their position, and 4) identifying the actions the Services may take on a petition.

The comment period on the May 21, 2015, proposed rule was originally scheduled to close on July 20, 2015. The July 17, 2015 notice extended the comment period to September 18, 2015.

# Comments on Proposed Draft Criterion

1. *The TCEQ supports limiting petitions to only one species as stated in the proposed revision to 424.14(b)(2)”…one and only one species may be the subject of a petition.”*

The Texas Commission on Environmental Quality (TCEQ) supports the revision to Section 424.14(b)(2) which would limit a petition to one and only one species. Limiting the petition to one species will ensure that the information necessary to support the submitted petition is clearly presented and organized. This will provide for more efficient processing of petitions and conserve the resources of both the Services and states reviewing a petition.

1. *424.14(b)(9)(i) That a copy of the petition was provided to the State agency(ies) responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species occurs at least 30 days prior to submission to the Service.*

**A. The TCEQ supports the inclusion of state agencies in the initial phase of the petition process.**

Requiring petitioners to notify state agencies will provide review of the accuracy and completeness of the scientific or commercial information provided with a petition. State agencies are likely to have relevant information on the species and the habitats on which they depend. The state agencies may also have information on the conservation activities for the species subject to the petition. The TCEQ supports the inclusion of state agencies in the petition process.

**B. The proposed revisions to the regulation should provide a broad definition of the state agencies to which a petitioner must provide a copy of the petition.**

The proposed revisions indicate that the petitioner must provide a copy of the petition “to the State agency(ies) responsible for the management and conservation of fish, plant, or wildlife resources….” As proposed the revisions do not provide sufficient inclusion of all state agencies which may have information regarding the management and conservation of species and their habitats and whether or not a listing may be warranted. For example, the TCEQ is designated by law as the lead agency for managing water quality in Texas. The agency gathers and maintains significant data regarding water quality and quantity in the state. As proposed the revision to the regulation could be interpreted such that a copy of a petition would only be required to be submitted to the Texas Parks and Wildlife Department. Such a narrow interpretation would preclude inclusion of multiple state agencies with information relevant to a petition.

The TCEQ supports the recommendations provided by Texas Comptroller Glenn Hegar in his July 15, 2015 comments on the proposed revisions. The comments included a recommendation that the following definition of state agencies be added to the proposed revisions:

424.14(9)(iii) State agency(ies) is defined as “any and all state agencies with responsibility for or involvement with the protection and management of the petitioned fish, plant or wildlife or the habitats upon which it depends.”

**C. Additional time should be allowed for state review.**

## The proposed revision to Section 424.14(b)(9)(i) requires that a copy of the petition be provided to state agencies at least “30 days prior to submission to the Service.” The TCEQ appreciates the Services’ decision to include states in the petition process. However, 30 days is not sufficient time for an agency to conduct a thorough and meaningful review of the petition. It is recommended that the proposal be revised to provide states with a minimum 90 day review period prior to a petition being submitted.

1. *Revision of Section 424.14(b)(10) “Certification that the petitioner has gathered all relevant information (including information that may support a negative 90-day finding) that is reasonably available, such as that available on Web sites maintained by the affected States, and has clearly labeled this information and appended it to the petition.”*

The TCEQ supports the proposed revision which would require a petitioner to provide all relevant information which is reasonably available, whether or not the information supports the position of the petitioner. Conducting the work for a 90-day finding is the first step in the listing process under the Endangered Species Act. By requiring that a petition includes all relevant information, the Services are ensuring that a decision is based on valid science and any next steps taken in the process are warranted. This provides for a more effective process and efficient use of resources.