



The Endangered Species Act: Listing and Critical Habitat Process

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U.S. Fish and Wildlife Service
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Endangered Species Act of 1973

“The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species...” – Section 2





Enactment of the ESA

“[federal law] simply does not provide the kind of management tools needed to act early enough to save vanishing species”

(R. Nixon 1972)

- House: 355 – 4
- Senate: 92 – 0: Voice vote without dissent





“A certain humility and a sense of urgency seem indicated... One might analogize the case to one in which one copy of all the books ever printed were gathered together in one huge building. The position in which we find ourselves today is that of custodians of this building, and our choice is between exercising our responsibilities and ignoring them. If these theoretical custodians were to permit a madman to enter, build a bonfire and throw in at random any volume he selected, one might with justification suggest that others be found, or at least that they be censored and told to be more careful in the future. So it is with mankind. Like it or not, we are our brothers’ keepers, and we are also keepers of the rest of the house.” (U.S. Congress 1973)

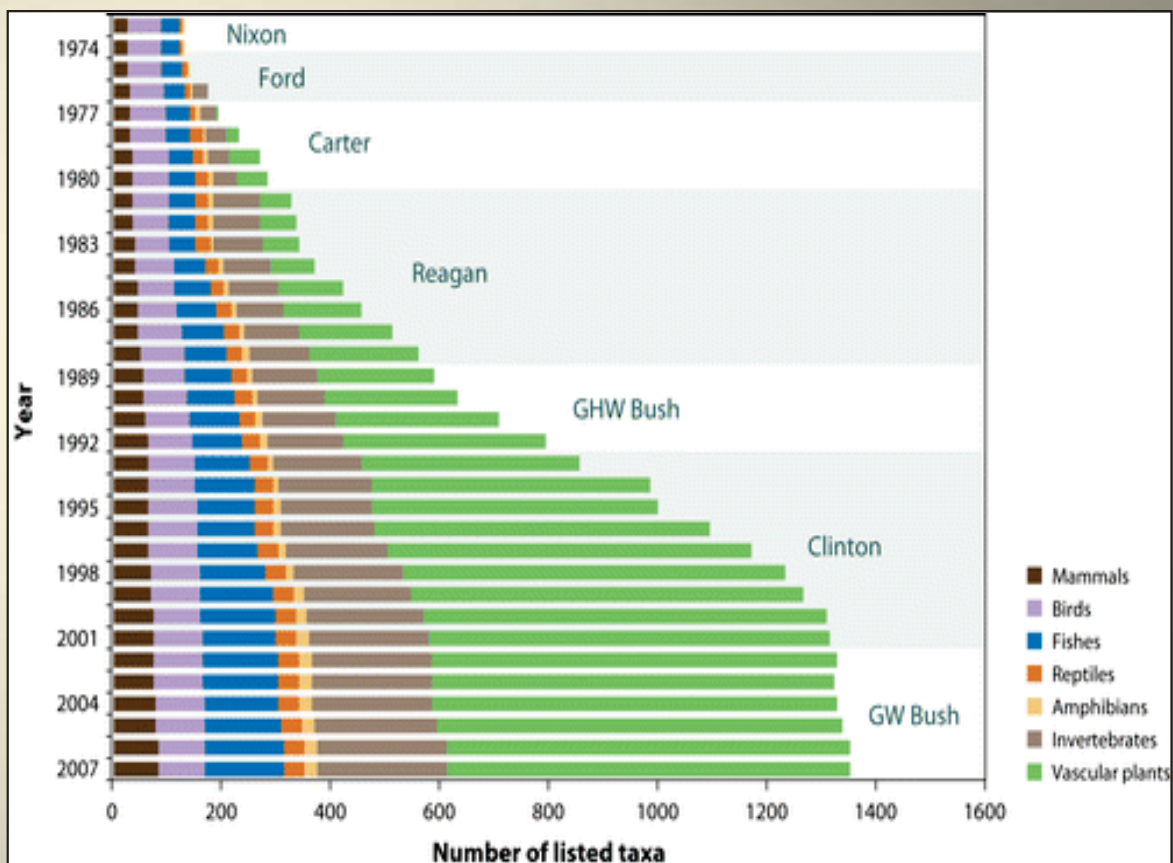



By the Numbers

U.S. Listings	E	T	Total
Animals	448	171	619
Plants	667	150	817
Grand totals	1,114	320	1,434

Delisted

- Recovered – 22
- Extinct – 10
- Other reason – 18



 Schwartz MW. 2008.
Annu. Rev. Ecol. Evol. Syst. 39:279–99



“The Secretary shall by regulation ...determine whether any species is an endangered species or a threatened species because of any of the following factors: Section 4

- A. Present or threatened destruction, modification, or curtailment of habitat or range
- B. Overuse for commercial, recreational, scientific or educational purposes
- C. Disease or predation
- D. Inadequacy of existing regulatory mechanisms
- E. Other natural or manmade factors affecting the species continued existence



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Endangered Species Act of 1973

Threatened Species: Any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Endangered Species: Any species which is in danger of extinction throughout all or a significant portion of its range other than a species [except insect pests that present an overwhelming and overriding risk to man].



The Listing Process

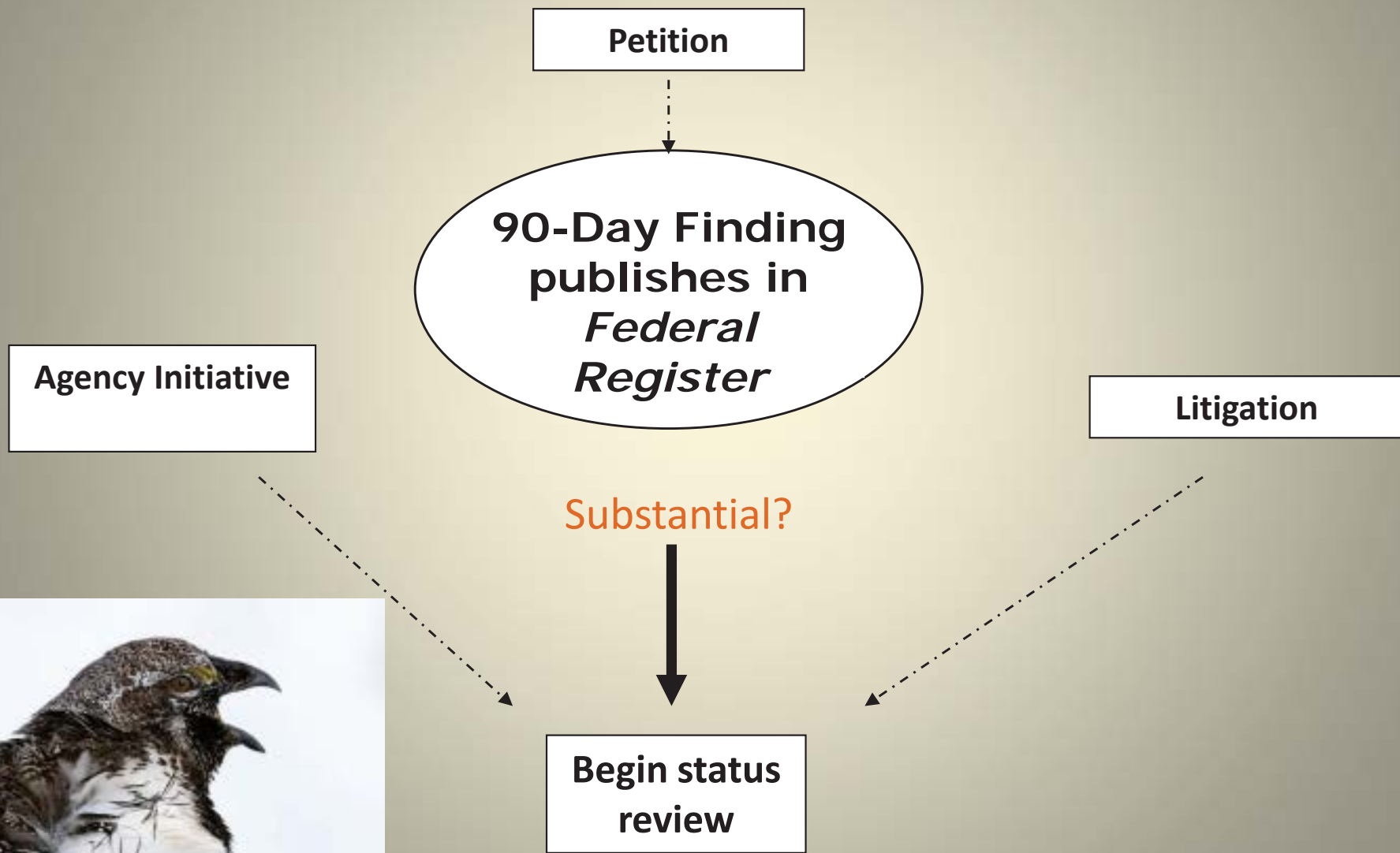
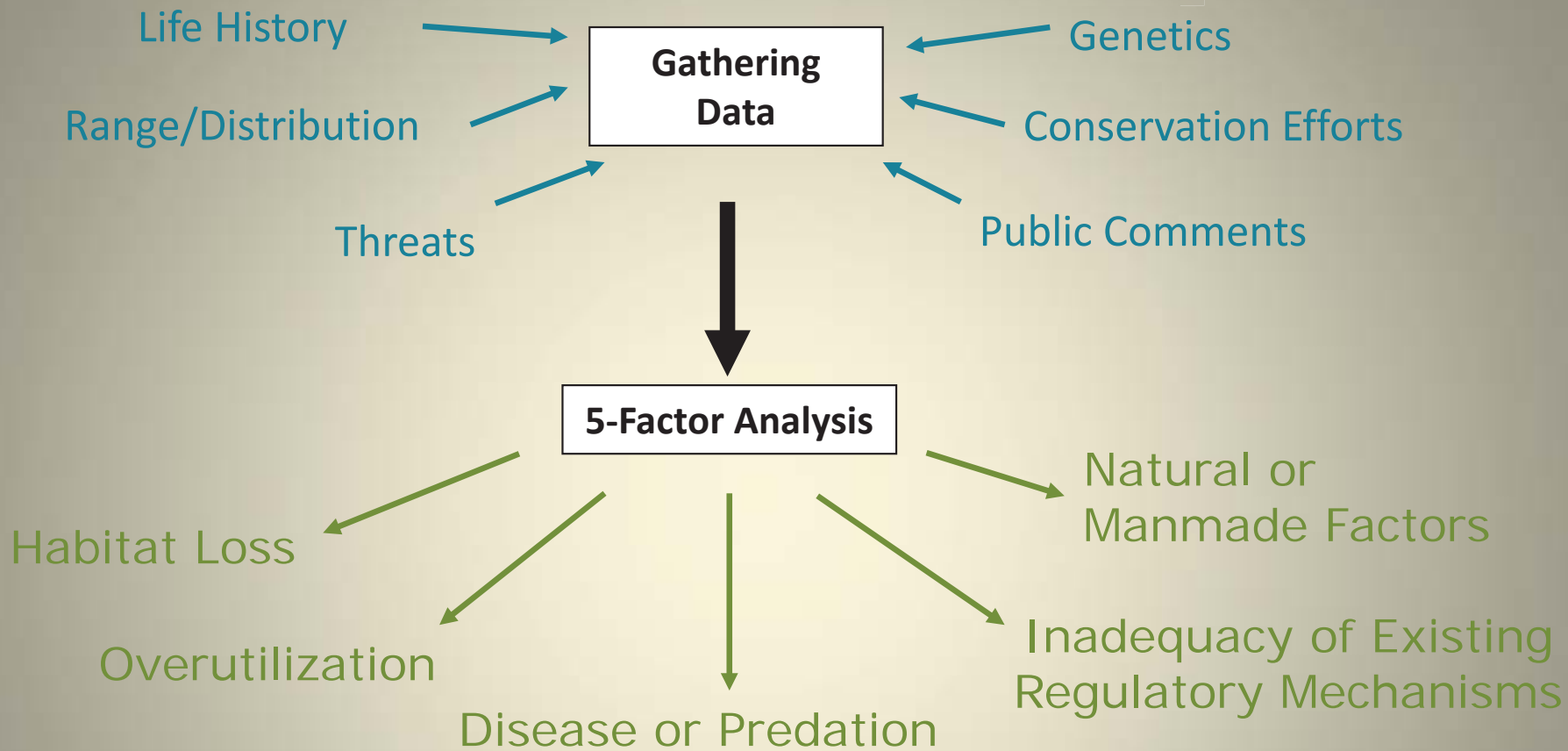


Photo © James Yule, used by permission



Status Review



Finding

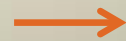
**Not warranted
Or T or E
rangewide**

DPS Analysis

**No DPS Or
List a DPS**

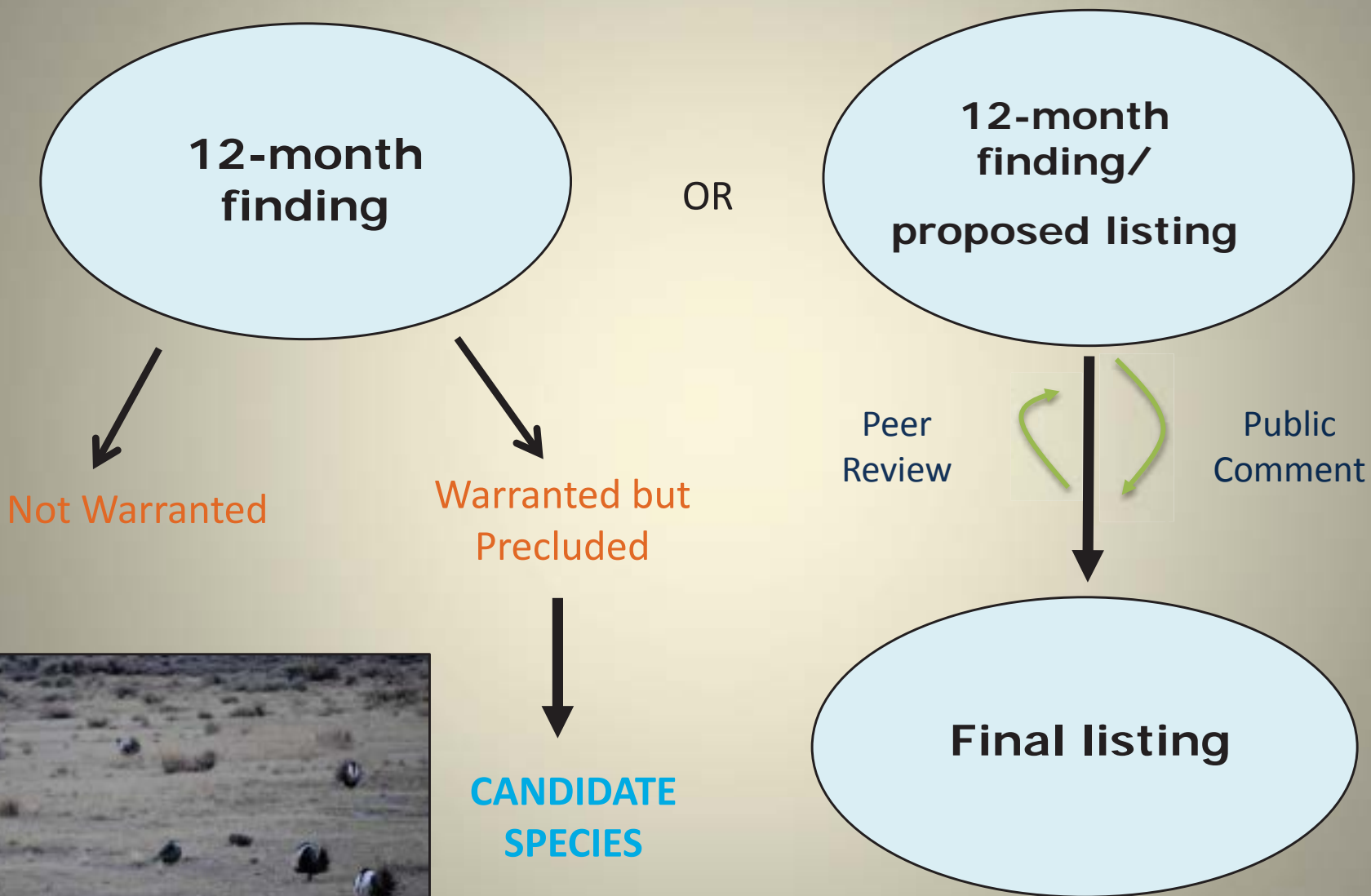
SPR Analysis

**See draft SPR Policy
(76 FR 76987)**





12-Month Finding





Critical Habitat

The Secretary... “to the maximum extent prudent and determinable...

- (i) shall, concurrently with making a [listing] determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and
- (ii) may, from time-to-time thereafter as appropriate, revise such designation.”

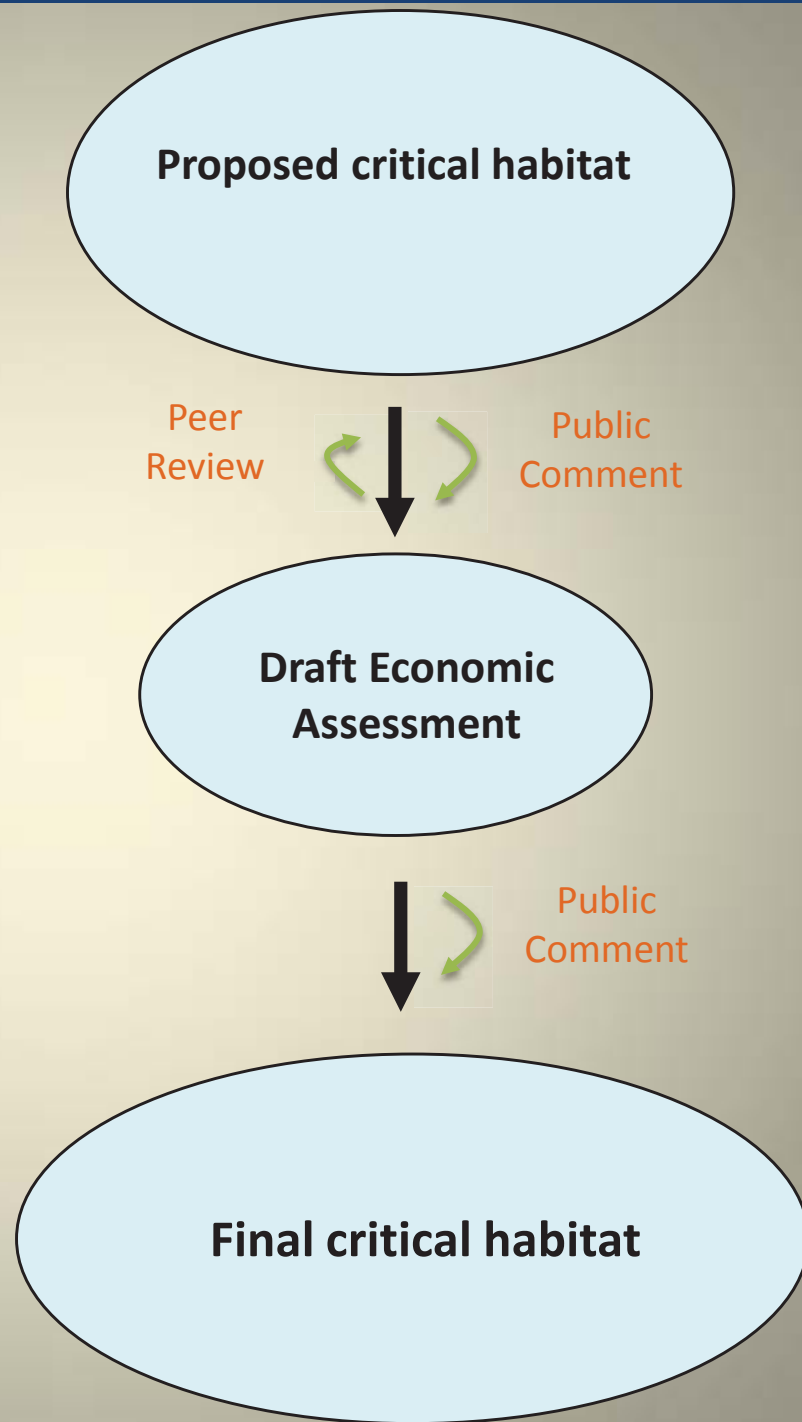
Section 4(a)(1)





Typical Critical Habitat Process

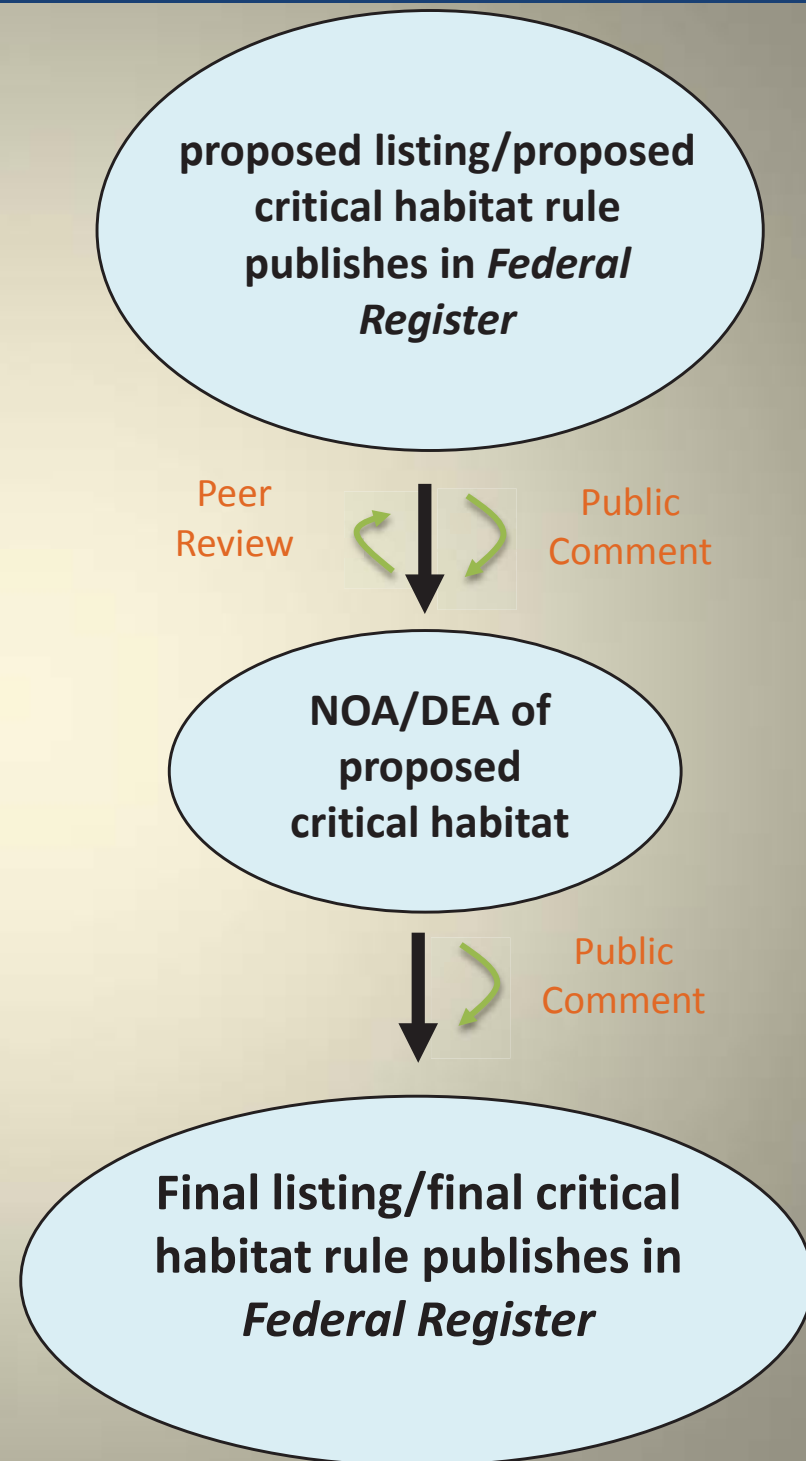
- Done after final listing
- Can be the result of a petition
- Most often has been the result of litigation.





New Listing and Critical Habitat Process

- Will be done for all MDL packages and beyond
- Should be more efficient
- Will result in longer documents.





Sage-grouse Petition Summary

**1999 – 2003: FWS
received 8 petitions**



1999 – Columbia Basin populations

2001 – Bi-State (Mono Basin) population (and 2005)

2002 – Western subspecies

2002 – Greater sage-grouse range-wide

2002 – Eastern subspecies

2003 - Greater sage-grouse range-wide (2)



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Results:

Columbia Basin DPS

- Warranted but precluded
- Designated a Candidate

3 range-wide petitions

- Combined into one finding
- Not Warranted

Bi-State population petition determined to lack sufficient information to warrant further action



Challenges to findings

Bi-State

Settlement agreement
to conduct new finding



Eastern/Western subspecies

- Eastern legal challenges dismissed
- Western legal challenges - remanded decision

Rangewide

- Finding remanded in 2007



USFWS Warranted But Precluded Finding

March 23, 2010

- Listing the Greater Sage-grouse is warranted but precluded by higher priority actions.
- The Bi-State population is a DPS and also warrants listing but is precluded by higher priority actions.
- Primary threats – Habitat destruction/modification and lack of regulatory mechanisms.

A warranted but precluded findings mean that a species becomes a **Candidate species** under the ESA





Expeditious Progress

A finding of “**Warranted but Precluded**”
can only be made when:

1. There are higher priority proposed rules that preclude us from issuing a proposed rule at the time of our finding; AND
2. Expeditious progress is being made to add qualified species to the list.



MDL Settlement

May 10, 2011



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Prompted by litigation on failure to make “expeditious progress” on listing our candidate species (251 at the time of the settlement) – i.e., species we have found warrant listing, but where we lacked the resources to add them to the list of T & E species.

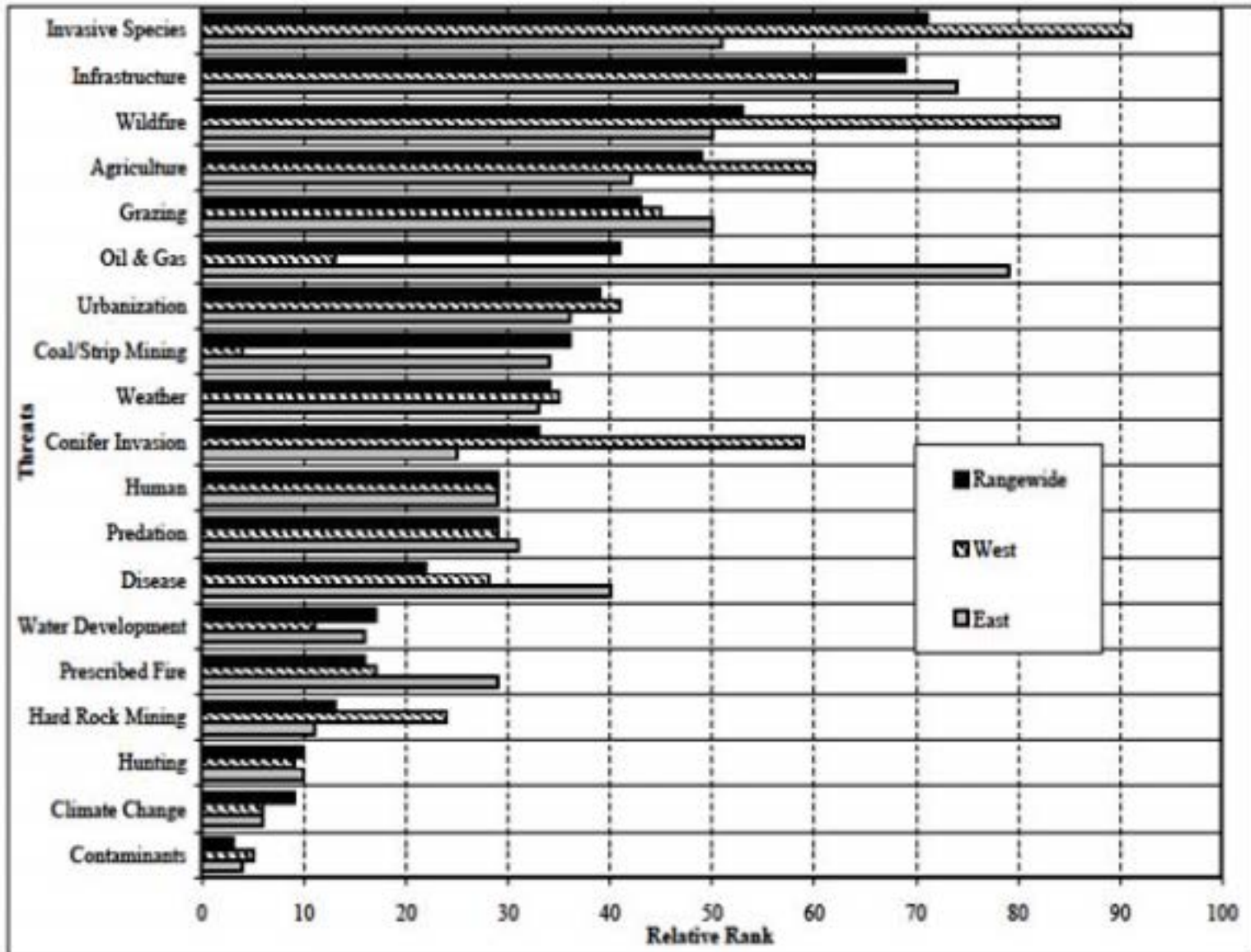
REQUIRES us to make a finding on whether or not to proceed with listing (i.e., issue a proposed rule or withdraw our 12-month finding) by **September 2016** for all Candidates, and specifies earlier dates for some species, including Sage-grouse:

Bi-State Population – **September 2013**

Greater Sage-grouse and any other DPSs – **September 2015**

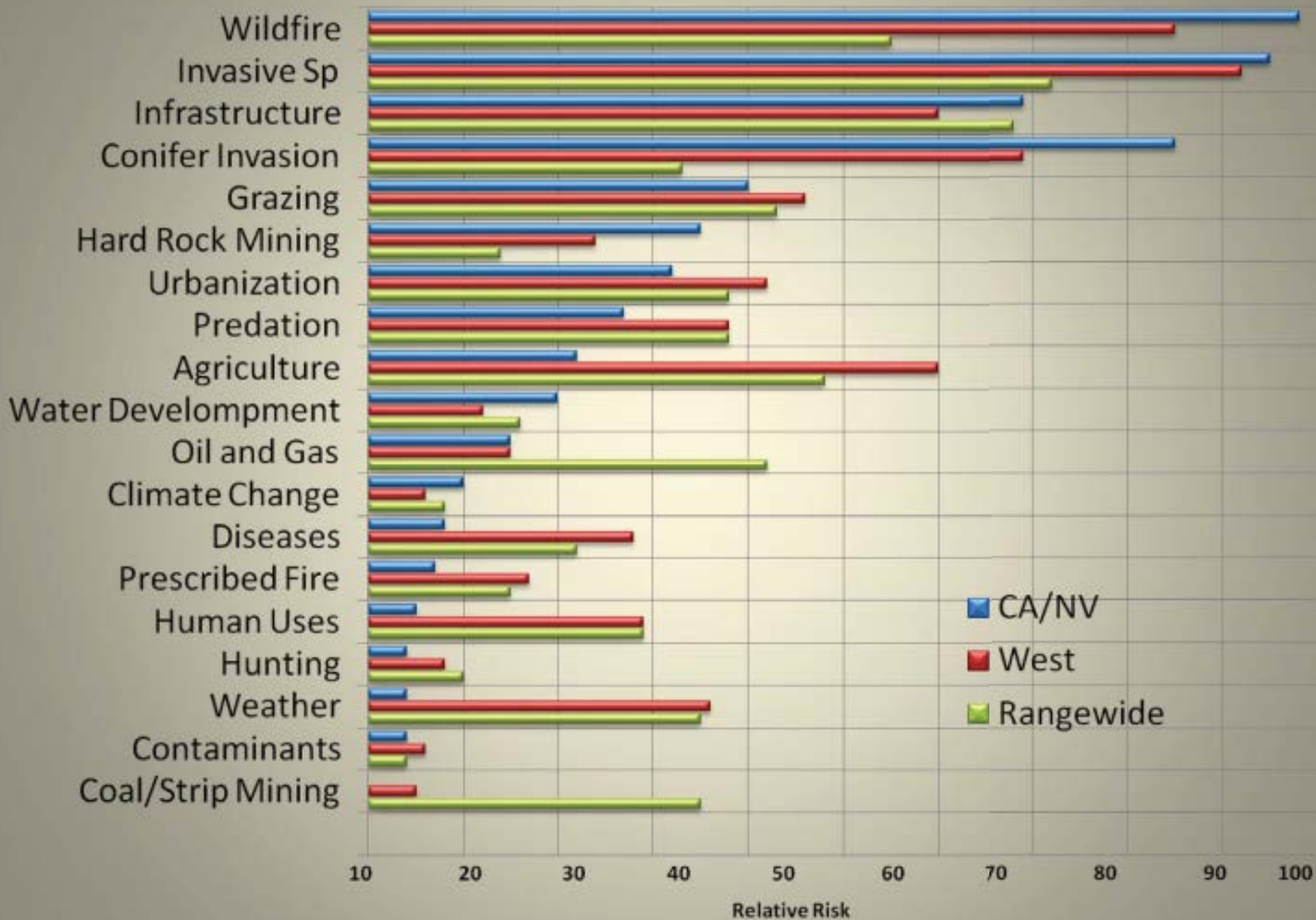


Structured Decision Approach





U.S. FISH & WILDLIFE SERVICE



Questions ?

