



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2014-0024; 92220-1113-0000-C5]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to Reclassify the West Indian Manatee From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), announce a 90-day finding on a petition to reclassify the West Indian manatee (*Trichechus manatus*) as threatened under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to

determine if reclassification is warranted. Section 4(c)(2)(A) of the Act also requires a status review of listed species at least once every 5 years. We are, therefore, electing to conduct the 5-year review simultaneously with the status review. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding the West Indian manatee, including its subspecies the Florida manatee and Antillean manatee. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: We request that we receive information to consider for the status review on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. After this date, you must submit information directly to the North Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date. We may not be able to address or incorporate information that we receive after this date.

ADDRESSES: You may submit information by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter Docket No. FWS-R4-ES-2014-0024, which is the docket number for this action. Then, in the Search panel on the left side of the screen under the Document Type heading, click on the

Proposed Rules link to locate this document. You may submit a comment by clicking on “Comment Now!”

- U.S. mail or hand delivery: Public Comments Processing, Attn: Docket No. FWS-R4-ES-2014-0024; U.S. Fish & Wildlife Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Request for Information** section, below, for more details).

FOR FURTHER INFORMATION CONTACT: Jay Herrington, Field Supervisor of the North Florida Ecological Services Field Office, by telephone at 904-731-3191, or by facsimile at 904-731-3045; or at the following address, 7915 Baymeadows Way, Suite 200, Jacksonville, FL, 32256; or Edwin Muñiz, Field Supervisor of the Caribbean Ecological Services Field Office, by telephone at 787-851-7297 (ext. 204), or by facsimile at 787-851-7441; or at the following address, Road 301, Km. 5.1, 491, Boqueron, PR 00622. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that reclassifying a species may be warranted, we are required to promptly

commence a review of the status of the species (status review). To ensure that the status review is complete and based on the best available scientific and commercial information, we request information from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the status of the West Indian manatee throughout its entire range. We seek information on:

(1) The species' biology, including, but not limited to, distribution, abundance, population trends, demographics, and genetics.

(2) The factors that are the basis for making delisting and downlisting determinations for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which 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; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Habitat conditions, including, but not limited to, amount, distribution, and suitability.

(4) Whether or not climate change is a threat to the species, what regional climate change models are available, and whether they are reliable and credible to use as step-down models for assessing the effect of climate change on the species and its habitat.

(5) Past and ongoing conservation measures that have been implemented for the species, its habitat, or both.

(6) Threat status and trends within the geographical range currently occupied by the species.

(7) Any other new information, data, or corrections, including, but not limited to, taxonomic or nomenclatural changes, and improved analytical methods.

Please include sufficient information with your submission (such as scientific references) to allow us to verify any scientific or commercial information you include. Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made “solely on the basis of the best scientific and commercial data available.”

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via <http://www.regulations.gov/>, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov/>.

Information and supporting documentation that we received and used in preparing this finding is available for public inspection at <http://www.regulations.gov/>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, North Florida Ecological Services Field Office and Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time the petition is received. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information is “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species, which we subsequently summarize in a 12-month finding.

To make a 90-day finding, we do not conduct additional research, do not solicit information from parties outside the agency to help us in our evaluation, and do not

subject the petition to rigorous critical review. Rather, we accept the petitioners' sources and characterizations of the information presented if they appear based on accepted scientific principles (such as citing published and peer-reviewed articles, or studies done in accordance with valid methodologies), unless we have specific information to the contrary. Conclusive information indicating the species may meet the Act's requirements for listing is not required to make a substantial 90-day finding.

Petition History

On December 14, 2012, we received a petition submitted on the same date from the Pacific Legal Foundation, on behalf of Save Crystal River, Inc., requesting that the West Indian manatee and subspecies thereof be reclassified from its current status as endangered to threatened based primarily on the analysis and recommendation contained in our April 2007 5-year review for the species. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required at 50 CFR 424.14(a). We advised the petitioner of the status of our response in letters dated February 14, 2013, August 14, 2013, and March 26, 2014. This finding summarizes the information included in the petition and information available to us at the time the petition was received.

Previous Federal Actions

We listed the Florida manatee (*Trichechus manatus latirostris*), a subspecies of the West Indian manatee (*Trichechus manatus*), as endangered in 1967 (32 FR 4001) under the Endangered Species Preservation Act of 1966 (Pub. L. 89-669; 80 Stat. 926).

In 1970, we amended Appendix A to 50 CFR part 17 to include additional names to the list of foreign endangered species (35 FR 8491). This listing incorporated West Indian manatees into the list under the Endangered Species Conservation Act of 1969 (Pub. L. 91-135; 83 Stat. 275) and encompassed the species' range in the Caribbean Sea and northern South America, thus including both Antillean (*Trichechus manatus manatus*) and Florida (*Trichechus manatus latirostris*) manatees. The West Indian manatee is currently listed as an endangered species under the Act, and is further protected as a depleted stock under the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*). A 5-year review was completed on April 6, 2007, in which we recommended downlisting the species to threatened.

Species Information

West Indian manatees (*Trichechus manatus*) are massive, fusiform-shaped animals with skin that is uniformly dark grey, wrinkled, sparsely haired, and rubber-like. Manatees possess paddle-like forelimbs, no hind limbs, and a spatulate, horizontally flattened tail. Adults average about 3.0 m (9.8 ft) in length and 1,000 kg (2,200 lbs) in weight. Two subspecies of West Indian manatee are formally recognized: Antillean and Florida, *Trichechus manatus manatus* and *Trichechus manatus latirostris*, respectively (Hatt 1934, p. 538; Domning and Hayek 1986, p. 87; García-Rodríguez et al. 1998, p. 1137; Vianna et al. 2006, p. 433; Tucker et al. 2012, p. 1504).

In U. S. waters, Florida manatees are found in the southeastern United States, and Antillean manatees are found in Puerto Rico and possibly, but not confirmed Texas; a single sighting of a manatee in the U.S. Virgin Islands occurred in 1988 (Lefebvre et al.

2001, pp. 425-426; Domning and Hayek 1986, p. 186). Antillean manatees also occur throughout the Caribbean Sea, coastal regions of northern South America, eastern Central America, and Mexico. West Indian manatees are found in coastal and nearshore marine, estuarine, and freshwater areas. Typical habitats include tidal rivers and streams, mangrove swamps, salt marshes, grassbeds, and freshwater springs (Florida Fish and Wildlife Conservation Commission (FWC) 2005, pp. 95-361). Manatees favor areas that include foraging sites, sources of fresh drinking water, sheltered areas for resting, and travel corridors used to transit between preferred sites. Florida manatees require sources of warm water, where they shelter during cold weather periods (USFWS 2007, p. 12). Antillean manatees in Puerto Rico favor foraging and drinking water sites protected from severe wave action (Powell et al. 1981, pp. 642-644; Rathbun et al. 1985, p. 16; and Mignucci-Giannoni 1989, p. 170).

Using information from the United Nations Environment Programme (UNEP) (2010), Castelblanco-Martínez et al. (2012, p. 132) estimated a rangewide population size of 6,700 Antillean manatees. The most recent surveys for Antillean manatees in Puerto Rico have produced the highest unadjusted count for the species to date of 194 manatees from the December 2013 aerial survey (ATKINS 2014, p. 6). While there are no statistically robust estimates of Florida manatee population size, a FWC winter survey conducted in January 2011 produced an unadjusted count of 4,834 manatees for the Florida subspecies (FWC Fish and Wildlife Research Institute (FWRI) 2011).

Deutsch et al. (2008, p. 4), projected an Antillean manatee population decline of over 20 percent for the next two generations of manatees, assuming a lack of effective conservation actions and “current and projected future anthropogenic threats.” While no

trend analysis exists for Antillean manatees in Puerto Rico, the Service suggests that this population may be stable (USFWS 2007, p. 33). A demographic analysis for Florida manatees indicates that this population of manatees is likely increasing or stable throughout much of Florida (Runge et al. 2004, p. 316; Runge et al. 2007, p. 16). An adult survival rate analysis for the Florida manatee, through the winter of 2005 – 2006, identifies a rangewide survival rate of 96 percent (C.A. Langtimm, USGS, pers. comm., 2011). For more information on the biology and habitat needs of the West Indian manatee in United States waters, refer to the Florida Manatee Recovery Plan (USFWS 2001; available at <http://www.regulations.gov> and <http://www.fws.gov/northflorida/Manatee/manatees.htm>) and the Science Summary in Support of Manatee Protection Area Designation in Puerto Rico (Drew et al. 2012; available at http://www.basic.ncsu.edu/eda/downloads/PR-MPA_Report_2012.pdf).

Evaluation of Information for a 90-Day Finding on a Petition

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for adding a species to or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants (List). A species may be determined to be an endangered or threatened species because of any of the five factors described in section 4(a)(1) of the Act:

(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; or
- (E) Other natural or manmade factors affecting its continued existence.

This analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or reclassification and the removal or reduction of the Act's protections. A species is an "endangered species" for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range and is a "threatened species" if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

As discussed above, in making this 90-day finding we evaluated whether information regarding threats to the West Indian manatee, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our summary of this information is presented below.

Information Provided in the Petition

The petitioner requested the Service to reclassify the West Indian manatee, and subspecies thereof, including the Florida manatee and the Antillean manatee (in Puerto Rico and the U.S. Virgin Islands), from endangered to threatened. The petition cites and relies on information and recommendations from our 5-Year Review of the West Indian Manatee (USFWS 2007), the FWC's Final Biological Status Review of the Florida

manatee (*Trichechus manatus latirostris*) (FWC 2006), and correspondence from the U.S. Marine Mammal Commission (MMC) to the U.S Fish and Wildlife Service (MMC 2011). Specifically, the petition asserts that our 5-year review of the West Indian Manatee (USFWS 2007) constitutes substantial information that indicates that a reclassification of the species is warranted. Our 5-year review recommended that the West Indian manatee be reclassified to threatened (USFWS 2007, p. 35). This review was based on the best available data at that time.

The petition also asserts that FWC's Final Biological Status Review of the Florida manatee (*Trichechus manatus latirostris*) (FWC 2006) constitutes substantial information that indicates that a reclassification of the species is warranted. FWC's status review concluded that, per then-current State of Florida listing criteria, the Florida manatee met State listing criteria as a threatened species and recommended that the State reclassify the subspecies as a threatened species (FWC 2006, p. 38). FWC's recommendation did not address the Antillean manatee since it does not occur in Florida.

The petition also asserts that correspondence from the MMC to the Service (MMC 2011) constitutes substantial information that indicates that a reclassification of the species is warranted. The MMC's letter of September 21, 2011, acknowledged that significant progress toward recovery of the Florida manatee had been made over the past 30 years and that downlisting may be warranted (MMC 2011, p. 2). The letter did not address a reclassification of the Antillean manatee and also cited State of Florida aerial survey data from 2010 and 2011 wherein Statewide surveys tallied 5,076 and 4,834 Florida manatees, respectively (MMC 2011, p. 2). The MMC qualified its belief that reclassification of the Florida manatee may be warranted by recommending that (1) the

Service incorporate into any reclassification proposal an assessment of the effects of the high cold-stress mortality that occurred in 2010 and 2011, and consider the possibility that such mortality will continue to occur at least as often in the foreseeable future; (2) regional networks of warm-water refuges be established; and (3) a long-term strategy to minimize watercraft-related manatee deaths be in place (MMC 2011, pp. 2-3).

Summary of Information Provided in the Petition and Available in Service Files

The 2007 5-year review for the West Indian manatee recommended reclassification of the species. The rationale for this recommendation was that the Florida manatees were exhibiting positive population growth rates on the Atlantic Coast and because the magnitude of the primary threats to the species was minimized or reduced (USFWS 2007, pp. 25-35). The threats analysis for the Florida manatee indicated that the most significant threats for this subspecies are collisions with boats, potential loss of warm-water habitat throughout the State of Florida, red tide, and a broad regulatory framework that is variable in its implementation and effectiveness. The 2007 5-year review also determined that the population of the Antillean manatee in Puerto Rico was at least stable, if not slightly increasing, and that the most notable threats to this population were collisions with watercraft and a broad regulatory framework that is variable in its implementation and effectiveness. The State of Florida did not act on its recommendation in its 2006 status review to reclassify the Florida manatee and, in 2010, adopted new listing criteria that precluded a reclassification of this subspecies.

Information in Service files relevant to this petition includes: (1) FWC's Manatee Rescue and Mortality Response database of information on manatee mortality between our 2007 5-year review and the time of the petition (<http://www.myfwc.com/research/manatee/rescue-mortality-response/mortality-statistics>); (2) a population viability analysis for the Antillean manatee (Castelblanco-Martínez et al. 2012) that evaluated the potential effects of possible limiting factors, like habitat fragmentation and estimated times to extinction based on how these factors might change, to this subspecies; (3) a scientific paper on West Indian manatee genetics (Hunter et al. 2012) that shows Florida manatees are distinct from Antillean manatees in Puerto Rico; (4) a protection needs assessment and threats analysis for Antillean manatees that occur in Puerto Rico (Drew et al. 2012); and (5) reports that provide existing knowledge about the West Indian manatee subspecies and make recommendations for recovery actions where further data are needed (Deutsch et al. 2008; UNEP 2010; Marsh et al. 2011; Bossart et al. 2012).

Historically, West Indian manatees were found in 42 countries; Deutsch et al. (2008, p. 14) assessed 37 of these countries (not including the United States) and concluded that manatees are now found in 20 countries. This patchy distribution is likely due to habitat degradation and loss, hunting, incidental catch and accidental take, watercraft collisions, entanglement in fishing gear, pollution, natural disasters, and human disturbance (Deutsch et al. 2008, p. 14). In areas outside of the United States, habitat loss is considered to be one of the main threats to the species (Castelblanco-Martínez et al. 2012, p. 129).

The Florida manatee has not experienced any curtailment of its range throughout the southeastern United States. It has, however, experienced a shift in its winter distribution. Manatees are subtropical animals and require stable, long-term sources of warm water during cold weather (USFWS 2007, p. 16). Historically, manatees relied on the warm, temperate waters of south Florida and on natural warm-water springs scattered throughout their range as buffers to the lethal effects of cold winter temperatures (USFWS 2007, p. 16). Manatees have expanded their winter range to include industrial sites and associated warm-water discharges as refuges from the cold. Nearly two-thirds of the manatee population winters at industrial warm-water sites, which are now made up almost entirely of power plants (FWC FWRI, unpub. synoptic aerial survey data, 2011). A significant threat to Florida manatee habitat is the loss of natural and manmade warm-water refugia (Laist and Reynolds 2005a, b). Power plant discharges used by large numbers of wintering manatees can be disrupted and flows at natural springs can be reduced due to human consumption of groundwater. The Service and State of Florida are coordinating with other agencies and industry to address possible warm-water loss.

The Antillean manatee in Puerto Rico has not experienced a curtailment of its range throughout the island. Seagrass communities have been disrupted or eliminated in some areas due to marine construction and boating activities. These activities will continue to affect these areas. Human demands for potable water are expected to increase and will likely affect the availability of drinking water for manatees (USFWS 2007, p. 31).

In Puerto Rico, manatee poaching activities have been reduced (USFWS 2007, p.33). The West Indian manatee outside of United States jurisdiction continues to be

hunted for meat, oil, and other products despite being illegal (UNEP 2010, p. xiv).

Hunting has likely caused localized extirpation from certain areas (UNEP 2010, p. 12).

Florida and Antillean manatees are exposed to various disease processes and predators. Recently, a few Antillean manatee deaths in Puerto Rico have been attributed to toxoplasmosis (Bossart et al. 2012, p. 139), and the effect of this disease on the manatee population is poorly understood. A novel papillomavirus was discovered in Florida manatees; however, this disease was determined to be benign and not threatening to the Florida manatee population. A variety of parasites have been identified in manatees; however, none is known to cause death. Manatee predators include sharks and alligators. However, although bite marks and scars have been observed, only rare attacks have been described (Mon Sue et al. 1990, p. 239; D. Semeyn unpublished (in Marsh et al. 2010, p. 167).

Protection for the West Indian manatee outside of areas under United States jurisdiction is largely afforded through the Specially Protected Areas and Wildlife (SPA) Protocol of the Cartagena Convention. The Ramsar Convention on Wetlands and the Convention on Biological Diversity protect manatee habitat. Many countries have country-specific legislation protecting manatees and their habitat (Marsh et al. 2011, p. 376). Further protection is afforded under the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Marsh et al. 2011, p. 376).

Within areas under United States jurisdiction, manatees are protected through a number of Federal, State, and Commonwealth laws. Primary Federal regulations include the Act and the MMPA. In Florida, manatees are protected under the Florida Manatee Sanctuary Act of 1978, and through regulation; Florida Administrative Code 68A-27.000

provides protective measures for Florida's fish and wildlife, including candidate and protected species. Additional measures exist to protect manatee habitat in Florida, including State and Federal regulations governing human activity in certain habitat areas where manatees congregate, and measures designed to protect spring flows used by wintering manatees. In Puerto Rico, protection and conservation of natural resources is primarily based on the 1952 Constitution of Puerto Rico. The Commonwealth's New Wildlife Law of 1999 provides protections for endangered species. Other Commonwealth laws exist to protect habitat in coastal waters. States outside of Florida and the Commonwealth provide additional protections for manatees through a variety of State laws and regulations (USFWS 2007, pp. 19, 32).

Regulatory mechanisms that prohibit poaching throughout the manatee's range are in place. However, they are regionally difficult to enforce, and poaching remains a significant concern (UNEP 2010, pp. 89-90). Florida manatee protection areas are marked and enforced (USFWS 2007, p.72), and efforts to mark areas in Puerto Rico are ongoing (USFWS 2007, p.36).

Finding

In our 90-day finding, we are required to review a petition to reclassify a species, along with the information available in our files, for whether it contains information that would lead a reasonable person to believe that the action proposed in the petition is warranted. On the basis of the information presented, as summarized above, under section 4(b)(3)(A) of the Act, we find that the petition presents substantial scientific or commercial information indicating that the requested action, the reclassification of the

West Indian manatee to threatened, may be warranted. Therefore, we are initiating a status review to determine whether the petitioned action is warranted. In our 12-month finding, we will evaluate, through a status review, each of the five listing factors closely to determine if the threats to the species have been reduced to the degree that the reclassification of the species is warranted. The “best scientific and commercial data” standard under the Act for the status review differs from the “substantial information” standard for a 90-day finding, under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) of our regulations. Because the Act’s standards for 90-day and 12-month findings are different, as described above, this substantial 90-day finding does not necessarily mean that the 12-month finding will result in a warranted finding.

5-Year Review

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Under section 4(c)(2)(B), we are then to determine, on the basis of such review, whether or not such species should be recommended for removal from the List (delisted), or reclassified from endangered to threatened, or from threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under review. This notice announces our active review of the status of the West Indian manatee.

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the North Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice include staff from the North Florida Ecological Services Field Office and Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: June 19, 2014

Signed: Stephen Guertin

Acting Director, U.S. Fish and Wildlife Service

Billing Code 4310-55

~~[Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to
Reclassify the West Indian Manatee From Endangered to Threatened]~~

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