

HARVARD LAW SCHOOL
ANIMAL LAW & POLICY CLINIC



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VIA EMAIL AND CERTIFIED MAIL

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RE: Sixty-day Notice of Intent to Sue Under the Endangered Species Act For Failure to Make a Timely 12-Month Finding on the West Indian Manatee Petition

Dear Secretary Haaland, Director Williams, Acting Regional Director Oetker, State Program Supervisor Williams, and Field Supervisor Muñiz:

This letter serves to notify the U.S. Fish and Wildlife Service (“the Service”) that the Center for Biological Diversity, Miami Waterkeeper, Save the Manatee Club and Frank S. González Garcia (“Petitioners”) intend to sue the Service under the Endangered Species Act

(“ESA”)¹ for the agency’s failure to make a timely 12-month finding² regarding the Petitioners’ November 21, 2022 petition to reclassify the West Indian manatee (*Trichechus manatus*) and its subspecies, the Florida manatee (*Trichechus manatus latirostris*) and the Antillean manatee (*Trichechus manatus manatus*), as endangered.³

BACKGROUND

On November 21, 2022, the Center for Biological Diversity, the Harvard Animal Law & Policy Clinic, Miami Waterkeeper, Save the Manatee Club, and Frank S. González García submitted a formal petition to the Service pursuant to Section 4(b) of the Endangered Species Act, 16 U.S.C. § 1533(b), Section 553(e) of the Administrative Procedure Act, 5 U.S.C. § 553(e), and 50 C.F.R. § 424.14(a) to reclassify the West Indian manatee (*Trichechus manatus*) and its subspecies, the Florida manatee (*Trichechus manatus latirostris*) and Antillean manatee (*Trichechus manatus manatus*) from a “threatened species” to an “endangered species” under the ESA.

As the petition details, manatees face substantial and intensifying threats across the entire range of the species and each subspecies, and the Service’s ongoing delay in determining whether to reclassify the West Indian manatee worsens the species’ prospects of survival and recovery. Since manatees were downlisted to a “threatened species” in 2017,⁴ manatee deaths have spiked due to the destruction of the coastal, seagrass, and warm-water habitats upon which manatees rely; the loss of warm-water refugia; harassment at some of their most important refugia; and from the increasing and unforeseen impacts of anthropogenic threats like climate change, boat strikes, poaching, marine debris, chemical contaminants, invasive species, and toxic algae blooms.⁵

The Service’s positive 90-day finding on the petition cited seagrass loss as a factor that “may be a threat to the species such that it may meet the definition of an endangered species under the Act.”⁶ In manatee core habitat within the Indian River Lagoon on Florida’s east coast, algae blooms fueled by excessive nutrient population have led to widespread seagrass losses. Between 2011 and 2017, it is estimated that the lagoon lost as much as 95% of total seagrasses.⁷

Impending loss of warm-water refugia also presents a significant threat to the species’ survival. Currently, over half of Florida manatees seek shelter from winter cold in the warm-

¹ 16 U.S.C. §§ 1531–1544.

² *Id.* § 1533(b)(3)(B).

³ The petition is available at https://www.biologicaldiversity.org/species/mammals/pdfs/2022_11_21_West-Indian-Manatee-Listing-Petition.pdf.

⁴ Petition at 29; Reclassification of the West Indian Manatee from Endangered to Threatened, 82 Fed. Reg. 16,668, 16,668 (April 5, 2017).

⁵ Petition at 31–33.

⁶ 90-Day Findings for Two Petitions to Reclassify the West Indian Manatee, 88 Fed. Reg. 70,634, 70,637 (Oct. 12, 2023).

⁷ Brian E. Lapointe, et al., *Nutrient Over-Enrichment and Light Limitation of Seagrass Communities in the Indian River Lagoon, an Urbanized Subtropical Estuary*, *Science of the Total Env’t* 2 (2020); see also Lori Morris, et al., Florida Fish and Wildlife Conservation Commission, *Summary Report for the Northern Indian River Lagoon* (Laura A. Yarbro & Paul R. Carlson, Jr., eds., 2018).

water discharges of power plants.⁸ Florida Power and Light (FPL) has set a goal of “100% decarboniz[ing]” its electricity generation mix “by no later than 2045,”⁹ which means four major sources of warm-water refugia will likely be removed over the next 20 years. Despite this looming threat, the power companies have failed to provide a schedule detailing which individual power plant outfalls will be removed and when. It is critical that the power companies provide the Service this information in a timely manner for recovery planning.

These growing, unmitigated threats demonstrate that existing regulatory mechanisms are inadequate to safeguard the species’ continued existence, highlighting the urgent need for the Service to respond to the petition and grant the West Indian Manatee the appropriate classification by listing them as an “endangered species.”¹⁰

ESA VIOLATIONS

The ESA requires that “[w]ithin 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted,” the Secretary must issue a finding.¹¹ In this 12-month finding, the Secretary “shall make” one of the following findings: (1) the petitioned action is not warranted, (2) the petitioned action is warranted, or (3) the petitioned action is warranted but precluded by work on other listing actions that the agency deems to be of higher priority.¹² If the Service determines the petitioned action is warranted, it must promptly publish in the Federal Register both a general notice and the text of the proposed regulation to implement such action.¹³

Petitioners submitted the petition on November 21, 2022. On October 12, 2023, the Secretary issued a positive 90-day finding, concluding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted.¹⁴ Yet, as of the date of this letter, no 12-month finding has been published in the Federal Register. The 12-month finding was due on November 21, 2023, making the finding four months overdue. Accordingly, the Service is violating Section 4 of the ESA and failing to ensure that protection of this imperiled species occurs in a timely manner,¹⁵ which is necessary to avoid the increasing risk of extinction of this beloved species. As such, Petitioners hereby provide notice of their intent to sue the Service for its failure to make a 12-month finding, should the Service not take timely action to remedy this legal violation.¹⁶

⁸ U.S. Fish & Wildlife Service & Florida Fish and Wildlife Conservation Commission, *Florida Manatee Warm-Water Habitat Action Plan 1* (J. Valade, R. Mezich, K. Smith, M. Merrill, & T. Calleson, eds., 2020), https://cfffw.org/wp-content/uploads/2021/03/Warm-Water-Manatee-Action-Plan_1130_2020_007.pdf.

⁹ Press Release, NextEra Energy, Inc., Nextera Energy Sets Industry-Leading Real Zero™ Goal To Eliminate Carbon Emissions From Its Operations, Leverage Low-Cost Renewables To Drive Energy Affordability For Customers (June 14, 2022), <https://newsroom.nexteraenergy.com/2022-06-14-NextEra-Energy-sets-industry-leading-Real-Zero-goal-to-eliminate-carbon-emissions-from-its-operations,-leverage-low-cost-renewables-to-drive-energy-affordability-for-customers?l=12>

¹⁰ Petition at 69.

¹¹ 16 U.S.C. § 1533(b)(3)(B).

¹² *Id.*

¹³ *Id.* § 1533(b)(3)(B)(ii).

¹⁴ 88 Fed. Reg. at 70,634, 70,635.

¹⁵ 16 U.S.C. § 1533(b)(3)(B).

¹⁶ *Id.* § 1540(g)(1)(C).

CONCLUSION

The West Indian manatee is in danger of extinction, and the Service's continued delay in issuing its 12-month finding harms the manatee's prospects for survival and recovery. Petitioners are eager to address this violation and to discuss with the Service prospects for resolution ahead of litigation. If the Service does not act promptly to correct its failure to timely issue the 12-month finding, Petitioners will pursue litigation against the agency.

Please contact Ragan Whitlock, Staff Attorney with the Center for Biological Diversity, at (727) 426-3653 or rwhitlock@biologicaldiversity.org, if you have any questions or would like to discuss this matter further. Thank you for your attention to this matter.

Sincerely,



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