

In Reply Refer To:
FWS/Region 5/ES-TE

Defenders of Wildlife
1130 17th Street, NW
Washington, D.C. 20036

Dear Petitioner:

This letter is in regard to your petition dated July 28, 2005, which requested the U.S. Fish and Wildlife Service (Service) to emergency list the red knot (*Calidris canutus rufa*) under the provisions of the Endangered Species Act (ESA) of 1973, as amended. Your petition was received on August 5, 2005.

Under the provisions of section 4 of the ESA, we must first make an initial finding as to whether or not a petition to add a species to the endangered species list presents substantial information indicating that the requested action may be warranted. Section 4(b)(3)(A) of the ESA provides that, to the maximum extent practicable, our finding must be made within 90 days. If our initial finding concludes that the petition presents substantial information indicating that the requested action may be warranted, then section 4(b)(3)(B) gives the Service 1 year from the date the petition was received to either: Decide that the petitioned action is not warranted; decide that the petitioned action is warranted, but precluded; or decide that the petitioned action is warranted, and promptly publish a proposed rule. Designation of critical habitat is not subject to the ESA's petition provision; however, the ESA requires us to make a critical habitat determination concurrent with listing determinations.

While we have not made a decision on whether the petition presents substantial information that the petitioned action may be warranted, we have looked at the immediacy of possible threats to the species to determine if emergency listing may be warranted at this time. Our initial review of your petition, and the information within our files, does not indicate that an emergency situation exists. If at any time the conditions change, and we later determine that an emergency listing is warranted, an emergency rule may be developed.

The following information assisted in making the determination that an emergency listing is not warranted at this time. Currently, actions are under way by the States along the Delaware Bay, the Service, the U.S. Department of Commerce (DOC), and the Atlantic States Marine Fisheries Commission (ASMFC), to gain more knowledge about the red knot situation and to conserve the ecosystem the species' depends on. In response to a request from the ASMFC, the Service formed a Shorebird Technical Committee in 2001. This committee provides technical guidance regarding effects that horseshoe crab (*Limulus polyphemus*) management actions could have on shorebird populations, including the red knot. In 2001, the DOC designated a 1,500-square-mile horseshoe crab sanctuary in Federal waters to protect horseshoe crab populations. The sanctuary is located 30 miles into the Atlantic Ocean, extending from Peck's Beach, New Jersey to Ocean

City, Maryland. This area was chosen because it has the largest horseshoe crab population on the east coast. Beginning in 2003, the State of New Jersey restricted beach access on critical beaches during late May and early June; closed the horseshoe crab harvest between May 1 and June 7; capped the State's horseshoe crab harvest at 150,000; and required fishers of conch (whelk) to use bait-saving devices such as bait bags, reducing horseshoe crab use for bait by 50 percent. In 2004, the State of Delaware implemented similar regulations. In 2005, the States added to these regulations. The State of New Jersey, in 2005, in response to the late arrival of the red knots in Delaware Bay, imposed an emergency moratorium temporarily halting the hand harvest of horseshoe crabs until June 23, in order to ensure enough food for the red knots. The State of Delaware also added to their State regulations by instituting mandatory, rather than voluntary, horseshoe crab check stations. Additionally, dredging for horseshoe crabs was open until June 30; however, the State reached their 150,000 quota earlier, closing all harvest effective June 24. In the fall of 2005, the States of Delaware and New Jersey addressed the ASMFC and proposed a 2-year moratorium on horseshoe crab harvest in the Delaware Bay. The ASMFC's Horseshoe Crab Management Board has authorized the development of a draft addendum proposing the 2-year moratorium, with an exemption for harvest for biomedical use. The management board will meet in February 2006 to review and consider approval for the draft addendum. The States of New Jersey and Delaware are planning to institute the 2-year moratorium, beginning in 2006, separate from the ASMFC decision.

In addition to the protection measures above, the birds stopping in the Delaware Bay in 2005 seemed to have a relatively good year. During spring of 2005, peak numbers of migrant red knots observed during aerial counts of the Delaware Bay stopover area increased slightly over 2004 peak counts. Although the red knots departed from Delaware Bay for the Arctic about 5 days later on average than in previous years, the majority of the red knots had reached satisfactory body weights prior to departure. Given the protective measures being undertaken by the States of New Jersey and Delaware, and the condition of the red knots at the Delaware Bay stopover in 2005, we have determined that emergency listing is not warranted. However, we will review the petition in the context of a non-emergency, through our petition process. We anticipate making our 90-day petition finding in early 2006. If there are any questions concerning this matter, please contact Ms. Diane Lynch, Regional Listing Coordinator, at 413-253-8628.

Sincerely,

Marvin E. Moriarty
Regional Director