



U. S. Fish and Wildlife Service

Frequently Asked Questions - 90-Day Substantial Finding on Petition to Reclassify the West Indian manatee (*Trichechus manatus*) From Endangered to Threatened

Q1: What is a petition?

A1: A petition is a request filed under the Endangered Species Act (ESA) by an interested party asking that a species be listed on, delisted from, or reclassified on the Federal List of Endangered and Threatened Wildlife and Plants.

Q2: What is a 90-day Finding?

A2: Section 4(b)(3)(A) of the ESA requires the Service to make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information (see Q6 below for more information on this standard) indicating that the petitioned action may be warranted. The Service bases 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 was received. To the maximum extent practicable, the Service is to make this finding within 90 days of the receipt of the petition, and publish notice of this finding in the *Federal Register*.

Q3: Who petitioned the Service and what did they request?

A3: On December 14, 2012, the Service received a petition requesting that the West Indian manatee and its subspecies, the Florida manatee and Antillean manatee, be reclassified from endangered to threatened under the ESA. The petition was submitted by the Pacific Legal Foundation (PLF), on behalf of Save Crystal River, Inc., and included as supporting information an analysis of the Service's 2007 West Indian Manatee Five-Year Review which recommended reclassification. The Service subsequently sent letters to the petitioner on February 14, 2013, August 14, 2013, and March 26, 2014 advising them on the status of our petition response.

Q4: Why has the Service not proposed reclassification as recommended in their 2007 ESA Five-Year Review to date?

A4: A five-year review, conducted under the ESA, leads to a **recommendation** based on the best available information and data at the time on whether a status change for a species would be appropriate or that its listing status should remain the same. It is not a rulemaking. The Service must initiate the rulemaking process to make a change in a listed species status.

In our West Indian manatee five-year review, we recommended reclassification and also recommended several priority recovery actions that the Service wanted to tackle to aid in moving toward a reclassification. Since our 2007 five-year review, we have been making progress on those actions. For example, we established additional protections for wintering manatees at Crystal River, Florida, actively engaged our partners to restore natural warm water springs, continued to work with Florida's power industry to address recovery concerns, and conducted additional research on the Antillean manatee population. In addition, the Service was under court compliance during this time period to complete 89 five-year reviews; most of them were workload for our Florida field offices. The litigation was brought forward by Pacific Legal Foundation on behalf of the Florida Homebuilder's Association. With limited resources, the Service exceeded the timeframes of this court compliance and required work lasted until fall of 2010.

Subsequently, the Service had begun work on a proposal to reclassify the West Indian Manatee in 2013 but suspended that effort due to sequestration, limited resources, as well as concerns associated with recent high-mortality events.

The Service continues to work with its conservation partners to address priority recovery actions, as time and budgets permit.

Q5: Where can I find the 2007 West Indian Manatee Five-Year Review?

A5: The review and associated information is available on our Florida Manatee web page under Reference Material at <http://www.fws.gov/northflorida/Manatee/manatees.htm>. The Five-Year Review can also be found on our national website at <http://www.fws.gov/endangered/species/us-species.html> by clicking on “Mammals” and searching for “Manatee”

Q6: Why did it take so long to reach the 90-day finding in response to the petition?

A6: Budget and staff constraints, including but not limited to sequestration budget impacts, resulted in delays in completing our review and initial finding processes.

Q7: What did the Service conclude as its 90-day finding?

A7: The Service found that the information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time the petition was received did provide substantial scientific or commercial information indicating that reclassifying the West Indian manatee’s status under the ESA may be warranted. This notice constitutes the initial finding on the petition.

Q8: What did the Service consider in reaching its conclusion and finding?

A8: In making this finding, the Service evaluated the information provided by the petitioners in accordance with the Code of Federal Regulations (CFR): 50 CFR 424.14(b). The process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of regulations is limited to a determination of whether the information provided in the petition, supporting information submitted with the petition, and information otherwise available in Service files meets the “substantial information” threshold. The Service does not conduct additional research at this point, nor does the Service subject the petition to rigorous critical review or solicit information from parties outside the Service.

Q9: What is the next step?

A9: The Service is initiating a status review to determine whether reclassification of the West Indian manatee, including its subspecies the Florida manatee and Antillean manatee, is warranted. At the same time, the Service is electing to simultaneously conduct the five-year review required by Section 4(c)(2) of the ESA.

Q10: Is there a difference between a 90-day finding and a 12-month finding?

A10: Yes. A 90-day finding is not a status assessment of the species and does not constitute a status review under the ESA. A substantial 90-day finding simply states that a petitioned action may be warranted. Our final determination of whether a petitioned action is warranted is not made until the Service has completed a thorough status review of the species as part of the twelve-month finding on a petition, which is only conducted following a positive 90-day finding. A positive 90-day finding does not mean that the twelve-month finding also will be positive.

Q11: What options does the Service have when making a status review determination for its 12-month finding?

A11: Based on the status review, the Service will make one of three possible findings:

- 1) Reclassification is not warranted, in which case no further action will be taken. This finding will be published and the petitioner notified.
- 2) Reclassification from endangered to threatened is warranted. In this case, the Service will publish a proposed rule, solicit scientific peer review, seek input from the public, and consider the input before a final decision about reclassifying the species is made.
- 3) Reclassification is warranted but precluded.

Q12: If the Service determines reclassification is warranted is the species reclassified at that time?

A12: No. If the Service determines reclassification is warranted, it may publish a proposed reclassification rule in conjunction with twelve-month finding or at some later date. A species status under the ESA cannot be formally changed until a final regulation or rule is approved by the agency following a formal rulemaking process which includes ample opportunity for stakeholder and public comment.

Q13: Is the Service seeking information from the public for the status review?

A13: Yes; see next question for details. However, please note that 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 ESA directs that determinations as to whether any species is a threatened or endangered species must be made “solely on the basis of the best scientific and commercial data available.”

Q14: What information is the Service seeking from the public?

A14: The Service specifically is seeking information regarding:

- 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.);
- 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; and
- 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 to allow us to verify any scientific or commercial information or data you provide.

Q15: How do I submit information?

A15: You may submit information by one of the following methods:

- (1) *Electronically:* Go to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. In the Keyword box, enter Docket Number 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 “*Send a Comment or Submission.*”
- (2) *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS-R4-ES-2014-0024, U.S. Fish and Wildlife Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803

The Service will post all information received on <http://www.regulations.gov>. This generally means that the Service will post any personal information that is provided (see the *Request for Information* section of the *Federal Register* notice for more details).

In order to allow sufficient time for biologists to review and consider submitted information and conduct the review, submissions must be received on or before September 2, 2014.

Q16: Where can I find more information on current and future actions related to the manatee?

A16: Information on the West Indian manatee is available online at: <http://www.fws.gov/northflorida/> and <http://www.fws.gov/caribbean/ES/Index.html>.