

**BEFORE THE UNITED STATES DEPARTMENT OF THE INTERIOR &
THE UNITED STATES FISH AND WILDLIFE SERVICE**

In the Matter of Save Crystal River, Inc.'s
Petition To Downlist the West Indian Manatee
and Subspecies Thereof, Including the
Florida Manatee and Antillean Manatee,
From Endangered to Threatened Under
the Endangered Species Act

**PETITION OF SAVE CRYSTAL RIVER, INC., TO DOWNLIST THE WEST
INDIAN MANATEE (TRICHECHUS MANATUS) AND SUBSPECIES
THEREOF, INCLUDING THE FLORIDA MANATEE (TRICHECHUS
MANATUS LATIROSTRIS) AND ANTILLEAN MANATEE
(TRICHECHUS MANATUS MANATUS) (IN PUERTO RICO
AND THE U.S. VIRGIN ISLANDS), FROM ENDANGERED TO
THREATENED UNDER THE ENDANGERED SPECIES ACT**

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INTRODUCTION

Petitioner, SAVE CRYSTAL RIVER, INC. (SCR), hereby petitions the United States Department of the Interior and the United States Fish and Wildlife Service (Service), pursuant to Section 4(b)(3), 16 U.S.C. §1533(b)(3), of the Endangered Species Act (ESA), *id.* § 1531, *et seq.*, to downlist the West Indian manatee (*Trichechus manatus*) (the manatee), and subspecies thereof, including the Florida manatee (*Trichechus manatus latirostris*) and Antillean manatee (*Trichechus manatus manatus*) (in Puerto Rico and the U.S. Virgin Islands). SCR contends that the manatee listing as endangered is unwarranted considering studies conducted by this agency and agencies of the State of Florida, recommending the downlisting of the manatee from endangered to threatened.

BACKGROUND

In April, 2007, the United States Fish and Wildlife Service (Service) completed a 5-Year Review of the West Indian manatee (*Trichechus manatus*), which includes the subspecies Florida manatee (*Trichechus manatus latirostris*) and Antillean manatee (*Trichechus manatus manatus*) (in Puerto Rico and the U.S. Virgin Islands), and recommended that the manatee be downlisted from endangered to threatened. *See* United States Fish and Wildlife Service, West Indian Manatee (*Trichechus manatus*), 5-Year Review: Summary and Evaluation at 52 (April, 2007) (5-Year Review) (attached as Exhibit 1). This agency recommended downlisting the manatee based

upon “more recent demographic analysis and a threats analysis of the five listing factors.” *See* 5-Year Review at 5.

Five years later, however, the manatee remains listed as a federally protected **endangered** species. In order to have this agency effectuate the recommendation of its 2007 5-Year Review, Petitioner, SCR, hereby petitions the United States Department of the Interior and the Service to downlist the manatee (West Indian manatee (*Trichechus manatus*), and subspecies thereof, including the Florida manatee (*Trichechus manatus latirostris*) and Antillean manatee (*Trichechus manatus manatus*) (in Puerto Rico and the U.S. Virgin Islands), from endangered to threatened status.

INTEREST OF PETITIONER

Petitioner, SCR, is a Florida not-for-profit corporation. It is a nonpolitical organization of citizens from Crystal River, Citrus County, Florida, who wish to protect their individual property rights and enhance the quality of life for citizens of Crystal River and the surrounding area. The mission of SCR is to educate the public regarding current environmental, property, and riparian rights in an effort to effectively preserve a proper balance between nature and human activity. The specific purpose of SCR is to represent the interest of the citizens of Crystal River against excessive government regulation of the Crystal River and the resources of the surrounding area.

**THE SERVICE'S 5-YEAR REVIEW SUPPORTS THE
THE DOWNLISTING OF THE MANATEE FROM
ENDANGERED TO THREATENED STATUS**

This agency listed the Florida manatee (*Trichechus manatus latirostris*) as endangered in 1967 under the Endangered Species Preservation Act of 1966 (80 Stat. 926; 16 U.S.C. §668aa). *See* 32 Fed. Reg. 4001 (Mar. 11, 1967); *see also* 5-Year Review at 3. The listing was revised in 1970 to incorporate the West Indian manatee (*Trichechus manatus*) into the list, thus including both the Antillean and Florida manatees in the listing. *Id.* at 3; *see* 35 Fed. Reg. 18,319 (Dec. 2, 1970); Appendix A of 50 C.F.R. § 17. Because the manatee was designated as an endangered species prior to the enactment of the Endangered Species Act of 1973, no initial, formal status review and no threats analysis was conducted. *See* 5-Year Review at 3. Subsequent to the listing, aerial surveys and other studies were conducted to ascertain the status of, and threats to, the manatee. Data from these studies, as well as subsequent workshop findings, were incorporated into the first manatee recovery plan. *See* R.I. Brownell, Jr., et al., 1978 - *Report of the West Indian Manatee Workshop, Orlando, Florida* (Mar. 27-29, 1978); Service and Manatee Recovery Team, *West Indian Manatee Recovery Plan* (1980). Additional field studies have been conducted in the southeastern United States and Puerto Rico to further define the status of the manatee. Additional workshops were held in 1992 and 2002 to discuss these findings. *See* T.J. O'Shea, et al., *Population Biology of the Florida Manatee, National Biological*

Service, Information and Technology Report No. 1 (1995 Washington, D.C.). See also L.W. Lefebvre, et al., *Manatee Population Ecology and Management Workshop Proceedings* (2002 USGS FISC Sirenia Project and University of Florida, Gainesville, Florida). Two habitat workshops were conducted in 1999 and 2004 to address threats to Florida manatee habitat. Recovery plans were published for the Antillean manatee in 1986 (*Recovery Plan for the Puerto Rican Population of the West Indian (Antillean) Manatee (Trichechus manatus manatus)*, (Dec., 1986)), and in 1980 (*West Indian Recovery Plan (Trichechus manatus)*, (Apr., 1980)), and for the Florida manatee in 1989, 1996, and 2001 (*Florida Manatee Recovery Plan (Trichechus manatus latirostris)* Third Revision, (Oct. 30, 2001), prior revisions July 24, 1989, and Jan. 29, 1996). The recovery plans all included updated status reviews and threat assessments. See 5-Year Review at 3-4.

First announced for comment in April, 2005, what eventually became the 2007 5-Year Review was expanded in March, 2006 (see 71 Fed. Reg. 14,940 (Mar. 24, 2006)), to include the status of the entire listed entity, including both the Florida and Antillean manatees. Regarding the species status, the 5-Year Review found that current information suggested that the population of the Florida manatee was growing in most areas of the southeastern United States and had achieved 75% of the recovery tasks identified in the *Florida Manatee Recovery Plan* (2001). See 5-Year Review at 2-3. Discussing “existing regulatory mechanisms,” the 5-Year Review notes:

Subsequent to the 2001 Florida Manatee Recovery Plan, there have been numerous additions and improvements to Federal, State and local manatee protection zones throughout peninsular Florida as well as a number of ongoing studies to assess the effectiveness of these protection zones. To reduce unauthorized “take” associated with boat facility construction and the boats that use them, the Service, State and permitting authorities have developed permitting guidance to minimize the effects of these activities on manatees. In addition, the State of Florida recently drafted a management plan in conjunction with their decision to reclassify the State’s status of the manatee from “endangered” to “threatened.” In addition, numerous counties have adopted manatee protection plans and other manatee protection measures.

5-Year Review at 8.

The 5-Year Review recognizes that the Florida Manatee Sanctuary Act of 1978 has established Florida as a refuge and sanctuary for manatees. The Act protects manatees from injury, disturbance, harassment, or harm in Florida waters and allows for enforcement of boat speeds and operations in areas where manatees are concentrated.

With regard to assessing population trends, the 5-Year Review notes that several times per year aerial surveys and ground counts known as synoptic surveys, are coordinated by the Service to count manatees statewide. The review suggests that the most reliable count of minimal population estimates was conducted in 2001, revealing 3,300 animals based upon a single statewide count at warm-water refuges and adjacent areas. *See* 5-Year Review at 13. More recently published information on Florida manatee populations indicate that, with the exception of the Southwest

Region, manatees are increasing or stable throughout Florida. See M.C. Runge, et al., *A Stage-Based Model of Manatee Population Dynamics*, Marine Mammal Science 20(3), 361-85 (2004); B.A. Craig & J.E. Reynolds, III, *Determination of Manatee Population Trends Along the Atlantic Coast of Florida Using a Bayesian Approach with Temperature-Adjusted Aerial Survey Data*, Marine Mammal Science 20(3), 386-400 (2004); Manatee Population Status Working Group Report, *Biological Assessment of the Florida Manatee* (2005). See also 5-Year Review at 13; Thomas H. Fraser, *Manatees In Florida: 2001*,¹ (describing his “major conclusions and observations” the author states “[a]ll of the biological data indicates that the West Indian Manatee in Florida has sustained an increasing population for the last 25 years,” (p.1), and that “[o]ther site specific evidence supports the general observation that the manatee population is increasing” (p. 2). Referring to Florida’s “requirements for listing, downlisting or delisting a species,” the author concludes that considering these criteria, “manatees appear to exceed the considerations necessary for reclassification to a species of special concern, or perhaps to be listed as recovered.” Justifying his conclusions, the author states that the “[r]easons for such consideration include an increasing population for more than 20 years, full occupation of its habitat without significant restriction on forage, water, or

¹ Available at http://ccaflorida.org/updates/Mar26_manatee.htm.

reproductive areas, and virtually no real probability of the manatee becoming extinct in the next 100 years due to boat interactions.” (*Id.* at 2-3.)

Acknowledging that the ESA defines an “endangered” species as one that is in danger of extinction throughout all or a significant portion of its ranges, the review by the Service concluded that **“we believe the West Indian manatee no longer meets the definition of an endangered species,”** but **“should be classified as threatened.”** *See* 5-Year Review at 35 (emphasis supplied).

**THE FLORIDA FISH AND WILDLIFE CONSERVATION
COMMISSION’S (FWC) APRIL, 2006, STUDY CONCLUDED
THAT DOWNLISTING THE MANATEE FROM ENDANGERED
TO THREATENED IS WARRANTED**

Responding to a petition requesting that the FWC reevaluate the endangered status of the Florida manatee (*Trichechus manatus latirostris*), the FWC adopted a new listing process and appointed a biological review panel to conduct the assessment. *See Final Biological Status Review of the Florida Manatee (Trichechus manatus latirostris)*, Status Assessment by the 2005-2006 Florida Manatee Biological Review Panel (Apr., 2006) (2006 Status Review). Summarizing the findings, FWC concluded that “[t]he probability of extinction for the statewide population is low in the next 100 years,” and recommended “that the Florida manatee be listed as Threatened under 68A-27.0012 F.A.C.” *See* 2006 Status Review at 4. Considering the applicable criteria as defined in 68A-1.004, F.A.C. (Criterion A: Population

Reduction, Criterion B: Extent of Occurrence and Area of Occupancy, Criterion C: Population Size and Trends, Criterion D: Number of Mature Individuals, and Criterion E: Probability of Extinction), the Biological Review Panel **“recommend[ed] that the Florida manatee be listed as Threatened under 68A-27.0012 F.A.C.”** *See* 2006 Status Review at 38 (bold print provided in assessment report).

**THE MARINE MAMMAL COMMISSION (MMC) HAS RECOGNIZED
THAT THE FLORIDA MANATEE POPULATION HAS MADE
SIGNIFICANT PROGRESS TOWARD RECOVERY AND THAT
FWS PLANS TO DOWNLIST THE MANATEE FROM ENDANGERED
TO THREATENED MAY BE WARRANTED**

On September 21, 2011, the executive director of the Marine Mammal Commission wrote to FWS a summary of its 2011 meeting, which focused on the status of the Florida manatee. *See* Letter from Timothy J. Ragen, Ph.D., Executive Director, Marine Mammal Commission to Dan Ashe, Director U.S. Fish and Wildlife Service, Department of the Interior (Sept. 21, 2011)² (copy attached as Exhibit 2). In that letter the MMC responded to FWS’s plans to “downlist the Florida manatee population from endangered to threatened under the Endangered Species Act.” Recognizing that the subspecies has made “significant progress towards recovery in the past three decades,” the MMC conceded that “consideration of such a change may be warranted.” *See* Exhibit 2, p. 2. Acknowledging a “record high” count of 5,076

² *Available at* http://www.mmc.gov/letters/pdf/2011/annual_mtg_fws_92111.pdf.

Florida manatees in 2010, the MMC cited a recent statewide survey completed in January, 2011, that produced a count of 4,834 manatees and opined that “cold-stress undoubtedly affected the population’s **abundance**.” *Id.* (emphasis supplied). *See also* Florida Fish and Wildlife Conservation Commission, Manatee Synoptic Surveys (2011),³ confirming the 2011 survey count of Florida manatees at the 4,834 number.

CONCLUSION

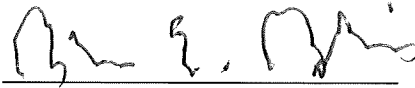
Based upon the conclusion of its own studies, and considering the conclusions of other recent studies conducted by the State of Florida regarding the status of the manatee, the Service should no longer delay issuing its determination that the West Indian manatee (*Trichechus manatus*), and subspecies thereof, including the Florida manatee (*Trichechus manatus latirostris*) and Antillean manatee (*Trichechus manatus manatus*) (in Puerto Rico and the U.S. Virgin Islands), should be downlisted from endangered to threatened. *See* 16 U.S.C. § 1533(b)(3)(A) (Service has 90 days to

³ Available at <http://myfwc.com/research/manatee/projects/population-monitoring/synoptic-surveys>.

determine whether a petition may be warranted based upon substantial information contained in the petition).

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Respectfully submitted,



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