November 9, 2026

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Via email and certified mail

Re: 60-Day Notice of Intent to Sue for Violations of the Endangered Species Act Regarding Failure to Take Final Action on the Proposed Revised Critical Habitat Designation for the Florida Manatee and Antillean Manatee

Dear Secretary Burgum, Director Nesvik, Regional Director Oetker, State Program Supervisor Basili, and Field Supervisor Muñiz:

The Center for Biological Diversity, Defenders of Wildlife, and Save the Manatee Club provide this 60-day notice of intent to sue the U.S. Department of the Interior and the U.S. Fish and Wildlife Service ("Service"), in accordance with ESA section 11(g),[1] for violating section 4 of the Endangered Species Act ("ESA") by failing to timely finalize proposed critical habitat designations for the Florida manatee and Antillean manatee.

[1] 16 U.S.C. § 1540(g).

Section 4 of the ESA requires the Service to finalize a proposal to revise or designate critical habitat within one year of publication.[2] It has now been two years since the Service published its proposal to revise the Florida manatee's critical habitat designation and designate critical habitat for the Antillean manatee ("Proposed Designation"), making the final designation overdue.[3]

A finalized designation is sorely needed. The Florida manatee's designation has not been updated since it was issued 50 years ago, and it has been more than 16 years since the Service found an update was warranted.[4] The Antillean manatee does not have any designated critical habitat. Finalizing the Proposed Designation would bring the manatee critical habitat designation more in line with the ESA and modern science and, in doing so, greatly expand habitat protections for both subspecies, adding nearly 1,000,000 new acres of critical habitat in Florida and almost 80,000 acres of critical habitat in Puerto Rico.[5]

I. Legal Background

Recognizing that wildlife cannot survive or recover unless their habitats are protected, Congress passed the ESA to safeguard imperiled species and the places they inhabit.[6] One means by which the ESA protects essential habitat is by designating it as "critical habitat." The Service must designate as critical habitat any areas occupied by a threatened or endangered species that contain "physical or biological features [("PBFs")] (I) essential to the conservation of the species and (II) which may require special management considerations or protection."[7] It must also designate unoccupied areas as critical habitat if they are "essential for the conservation of the species."[8] Conservation, in turn, is defined as "the use of all methods and procedures . . . necessary" to bring an endangered or threatened species to a point where the ESA's protections are no longer needed.[9] The Service must designate critical habitat on the basis of "the best available science."[10]

Critical habitat provides numerous conservation benefits for imperiled species. Federal agencies must ensure through consultation with the Service that any action they authorize, fund, or carry out will not "result in the destruction or adverse modification" of critical habitat.[11] By identifying

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[2] *Id.* § 1533(a)(b)(6)(A)(i)(II), (ii)(II). While the Service may extend those one-year periods if it determines that certain conditions are present, no such determination has been published—nor are those conditions satisfied here. *Id.* § 1533(a)(b)(6)(B).
[3] Critical Habitat Designations for Florida Manatee and Antillean Manatee, 89 Fed. Reg. 78134 (Sept. 24, 2024) ("Proposed Designation").
[4] 12-Month Finding on a Petition to Revise Critical Habitat for the Florida Manatee (*Trichechus manatus latirostris*), 75 Fed. Reg 1574 (January 12, 2010).
[5] *See* Proposed Designation, 89 Fed. Reg. at 78134.
[6] 16 U.S.C. § 1531(b); *see also Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 179 (1978); S. REP. NO. 93-307, at 4 (1973); H.R. REP. NO. 93-412, at 9 (1973) ("The protection of habitat of endangered species is clearly a critical function of any legislation in this area."); Listing Endangered and Threatened Species and Designating Critical Habitat, 89 Fed. Reg. 24300, 24301 (Apr. 5, 2024) [hereinafter 2024 ESA Section 4 Regulations] (noting that "the 'present or threatened destruction, modification, or curtailment' of a species' habitat or range is specifically enumerated in section 4(a)(1) of the [ESA] as the first of the factors that may underlie a determination that a species meets the definition of an endangered or threatened species").
[7] 16 U.S.C. § 1532(5)(A)(i).
[8] *Id.* § 1532(5)(A)(ii).
[9] *Id.* § 1532(3).
[10] *Id.* § 1533(b)(2).
[11] *Id.* § 1536(a)(2).

specific areas on which to focus federal conservation efforts, critical habitat designation also facilitates federal agencies' duty under section 7(a)(1) to use their authority in furtherance of the ESA's conservation purposes.[12]

Critical habitat provides significant conservation benefits even beyond federal actions, including by "informing management partners of important habitats, stimulating scientific surveys or research, promoting voluntary conservation actions, and raising public awareness of habitats that are essential for the conservation of a species."[13] Critical habitat is thus fundamental to the ESA's ultimate mandate "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved."[14]

Section 4 of the ESA provides that, once the Service publishes notice of a proposed regulation revising or designating critical habitat in the Federal Register, the agency has one year to either: (1) publish a final regulation implementing the proposed designation; or (2) publish notice that the one-year period is being extended by six months based on evidentiary concerns.[15] If the Service avails itself of the latter option, it must make a final determination within the additional six-month period.[16]

II. Manatee Critical Habitat

Almost 60 years ago, in 1967, the Secretary of the Interior listed the Florida manatee as endangered under a precursor to the ESA.[17] The Service then designated critical habitat in 1976.[18]

However, this was two years prior to the 1978 ESA amendments that established contemporary critical habitat designation standards. Those amendments require that critical habitat designations include a description of the "physical and biological features essential to the conservation of the species."[19] As a result, the existing critical habitat designation for the Florida manatee spans less than half of a page in the Federal Register and only lists specific waterways known to be concentration areas for manatees in 1976; it does not include any of the physical or biological features that are essential to the conservation of the species.[20] While this designation has provided some protection for the species, it is not based on the best available science and is not sufficient to support the conservation of the species. Much has changed regarding the law, the physical realities

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[12] *Id.* § 1536(a)(1); Listing Endangered and Threatened Species and Designating Critical Habitat, 81 Fed. Reg. 7414, 7414 (Feb. 11, 2016).
[13] 2024 ESA Section 4 Regulations, 89 Fed. Reg. at 24317.
[14] 16 U.S.C. § 1531(b).
[15] *Id.* § 1533(b)(6)(A)(i)–(ii), (B)(i)–(ii); 50 C.F.R. § 424.17(a)(1). For a proposed revision of critical habitat, the Service may also issue a finding that the proposed revision should not be made. 16 U.S.C. § 1533(b)(6)(A)(i)(II).
[16] 16 U.S.C. § 1533(b)(6)(C)(ii).
[17] Endangered Species, 32 Fed. Reg. 4001 (Mar. 11, 1967) (citing Endangered Species Preservation Act of 1966, Pub. L. No. 89-669, 80 Stat. 926 (1966) (repealed 1973)). The listing was soon expanded to encompass the West Indian manatee, including both the Florida manatee and Antillean manatee subspecies, throughout its range. 35 Fed. Reg. 8491 (June 2, 1970); List of Endangered Foreign Fish and Wildlife, 35 Fed. Reg. 18319 (Dec. 2, 1970).
[18] Determination of Critical Habitat for American Crocodile, California Condor, Indiana Bat, and Florida Manatee, 41 Fed. Reg. 41914, 41914–16 (Sept. 24, 1976) [hereinafter 1976 Designation].
[19] Endangered Species Act of 1978, Pub. L. No. 95-632, § 4(a)(1)–(5).
[20] 1976 Designation, 41 Fed. Reg. at 41916.

facing manatees (including landscape-level changes), and our scientific understanding of the species in the nearly 50 years since the Service promulgated that early critical habitat designation.

Given the clear need to enhance habitat protections for manatees, our organizations petitioned the Service in 2008 to revise critical habitat for the Florida manatee.[21] In response, the Service found that revisions to the Florida manatee's critical habitat were warranted but did not take further action to issue a revised critical habitat designation.[22] It was only after we sued the Service in February 2022 to compel an updated critical habitat designation that the Service committed to producing a proposed revision by September 12, 2024.[23]

On September 24, 2024, the Service issued its Proposed Designation.[24] While the Proposed Designation reflects a significant, needed improvement in protections for essential areas and features for the Florida and Antillean manatees, it should be improved upon in response to public comment. For example, the final designation should be expanded to include a broader construction of "essential physical and biological features," including travel corridors, freshwater sources, and calving areas. It should also expand designations of forage and warm-water habitat to protect against another unusual mortality event as seagrasses continue to decline statewide and artificial warm-water flows are removed over the next few decades.

The Service has not taken any required action on its proposal in the two years since its publication.

III. Violations of the ESA

The Service's failure to timely finalize its Proposed Designation for the Florida and Antillean manatee violates section 4 of the ESA. The Service published the Proposed Designation on September 24, 2024. As such, the Service was required to finalize or otherwise take action on the Proposed Designation by September 24, 2025. Now, a year later, the Service still has yet to finalize that proposed rule. The Service will continue to be in violation of the law until it publishes final rules designating critical habitat for the Florida manatee and Antillean manatee.

If the Service does not act within 60 days to correct these violations of the ESA, we intend to pursue litigation in federal court. If you have any questions, wish to meet to discuss this matter, or feel this notice is in error, please contact Victoria Molyneaux by telephone at (202) 579-8512 or by email at vmolyneaux@defenders.org, and/or Ragan Whitlock by telephone at (727) 426-3653 or by email at rwhitlock@biologicaldiversity.org.

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[21] WILDLIFE ADVOCACY PROJECT ET AL., PETITION FOR A RULE TO REVISE CRITICAL HABITAT FOR THE FLORIDA MANATEE, *TRICHECHUS MANATUS LATIROSTRIS*, PURSUANT TO THE ENDANGERED SPECIES ACT, 16 U.S.C. §§ 1531-1544 AND THE ADMINISTRATIVE PROCEDURE ACT 5 U.S.C.§ 553(E) (2008), defenders.org/sites/default/files/publications/florida_manatee_critical_habitat_petition_to_usfws.pdf.

[22] 12-Month Finding, 75 Fed. Reg. at 1574.

[23] Stipulated Settlement Agreement and Order, *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, No. 1:22-cv-00246-TNM, Dkt. 15 (D.D.C. June 1, 2022), biologicaldiversity.org/programs/biodiversity/pdfs/manatee-habitat-settlement-2022-06-01.pdf?_gl=1*1dcqs7r*_gcl_au*MTUyMDIyNTk3OC4xNzI3MTExODA5 (order approving settlement).

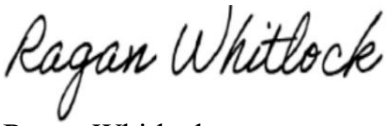
[24] *See generally* Proposed Designation, 89 Fed. Reg. 78134.

As always, we appreciate your partnership in manatee conservation and look forward to working with you to ensure the survival and recovery of Florida and Antillean manatees.

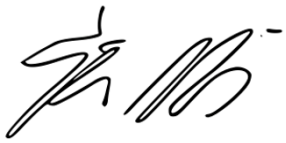
Sincerely,



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Defenders of Wildlife



Ragan Whitlock
Staff Attorney
Center for Biological Diversity



Elizabeth Neville
Director of Environmental Law and Policy
Save the Manatee Club