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**VIA EMAIL AND CERTIFIED MAIL**

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**RE: Notice of Intent to Sue Under the Endangered Species for Failing to Make Required Finding on a Petition to Upgrade the Listing Status of the West Indian Manatee**

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

This letter serves to notify the U.S. and Wildlife Service (“the Service”) that the Center for Biological Diversity, the Harvard Animal Law & Policy Clinic, Miami Waterkeeper, and Frank S. Gonzalez Garcia intend to sue the Service under the Endangered Species Act (“ESA”)<sup>1</sup> for failure to make the required 90-day finding<sup>2</sup> on our 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

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<sup>1</sup> 16 U.S.C. §§ 1531-1544.

<sup>2</sup> 16 U.S.C. § 1533(b)(3)(A).

endangered.<sup>3</sup> This letter is submitted pursuant to the ESA's sixty-day notice requirement to provide the Service with notice of its violation of Section 4(b)(3).<sup>4</sup>

Petitioners are gravely concerned about the Service's lack of action on this petition considering the dire circumstances manatees now face. Manatee populations have undergone sharp reductions since they were downlisted to threatened status in 2017.<sup>5</sup> These losses have been driven by the destruction of the coastal, seagrass, and warm-water habitats upon which manatees rely, harassment of manatees at some of their most important refugia, new outbreaks of disease, and the increasing and unforeseen impacts of anthropogenic threats like climate change, boat strikes, marine debris, chemical contaminants, invasive species, and toxic algae blooms. As existing regulatory mechanisms persistently fail to address these root causes of manatee declines, and manatees become increasingly dependent on emergency human interference to survive, it has never been clearer that this species deserves the Endangered Species Act's full protection.

Accordingly, and as detailed below, we urge the Service to promptly respond to Petitioners' November 21 petition to protect manatees under the ESA. The petition presents substantial scientific information indicating that the petitioned action may be warranted, and thus the Service should issue a positive 90-day finding. By failing to make a timely 90-day finding on our petition, the Service is failing to meet its duty under Section 4 of the ESA to ensure that protection of endangered and threatened species occurs in a timely manner.<sup>6</sup> As such, we hereby provide our notice of intent to sue the Service for its failure to make a 90-day finding, should the Service not take timely action to remedy this legal violation.

## **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(3) of the Administrative Procedure Act, 5 U.S.C. § 553(e), and 50 C.F.R. § 424.14(a). The petition requested that the Service reclassify the West Indian manatee and its subspecies from threatened to endangered status under the Endangered Species Act. As the petition details, these manatees face substantial and intensifying threats across the entire range of the species, the entire range of each subspecies, and significant portions of the range for each. Current regulatory mechanisms are inadequate to stop these threats, creating grave risk to the future of these manatees and an urgent need for the Service to respond to the petition.

Manatees face exigent threats under all statutory listing factors,<sup>7</sup> particularly due to the destruction and fragmentation of their coastal habitats. Seagrass meadows, manatees' primary source of food, continue to suffer under an onslaught of diverse and growing threats including waterway eutrophication, boating, coastal development, storms, herbicide contamination, salinity changes, sea level rise, sargasso brown tides, and thermal stress exacerbated by ocean acidification.<sup>8</sup> Disturbingly, as red tide algal blooms become increasingly commonplace in the

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<sup>3</sup> Petition is available at <https://biologicaldiversity.org/w/news/press-releases/petition-urges-fish-and-wildlife-service-to-protect-manatee-as-endangered-2022-11-21/>.

<sup>4</sup> 16 U.S.C. § 1533(b)(3); *id.* § 1540(g)(1)(C).

<sup>5</sup> Petition at 20.

<sup>6</sup> 16 U.S.C. § 1533(b)(3)(A).

<sup>7</sup> 16 U.S.C. § 1533(a)(1).

<sup>8</sup> Petition at 46–57.

manatees' range, the potent neurotoxins they produce can be absorbed by seagrasses manatees feed on, sickening or killing them.<sup>9</sup> Shoreline development driven by coastal population growth, tourism, and marine industry makes matters worse by fragmenting habitat, increasing manatee hazards like boats and marine debris, and causing pollution runoff.<sup>10</sup> Climate change may cause droughts in some areas where manatees already suffer from freshwater scarcity, and it will worsen extreme precipitation events in others, causing even more contaminants to flow into manatees' waterways.<sup>11</sup> This is exemplified by coastal South Florida's recent monumental flooding event, in which over two feet of rain fell within just a few hours – likely resulting in significant wastewater runoff as water drained from urban Broward County into the ocean.<sup>12</sup>

The limited regulatory mechanisms in place to protect manatees have been woefully inadequate in resolving the threats they face. Clean Water Act regulations have failed to prevent the pollution of Florida waterways.<sup>13</sup> There has been little meaningful progress in addressing boat scarring of seagrasses.<sup>14</sup> International agreements are failing to halt climate change, and warming will likely exceed 1.5° C over pre-industrial levels by 2040, guaranteeing rapid and persistent changes to manatees' environments.<sup>15</sup> Sadly, the regulatory efforts of international bodies and foreign states often come up short, with sparse enforcement and deficient funding limiting the local implementation of conservation agreements.<sup>16</sup> National efforts in Mexico, Belize, and Brazil – such as protective legislation and marine sanctuaries – are stymied by similar problems.

Furthermore, unproven, stopgap, and voluntary conservation efforts like supplemental feeding and habitat restoration are not enough to make up for these regulatory failures. Supplemental feeding is reactive and only serves to slow manatees' decline, at best, and obscure the true severity of their food scarcity crisis, at worst – it does nothing to address the root causes of manatees' decline. Seagrass restoration likewise cannot succeed until the underlying water quality problems are addressed, and may require billions in additional funding and decades to complete.<sup>17</sup> Relatedly, efforts to address *Sargassum* seaweed inundation and brown tides are poorly managed by the affected governments using expensive, ad hoc, and voluntary measures – especially concerning in light of the massive 13 million metric ton *Sargassum* mat anticipated to hit Florida and Mexico in the next few months.<sup>18</sup> Warm-water habitat restoration projects are also funded at only a fraction of what is necessary, with significant amounts not being apportioned to any specific restoration projects.<sup>19</sup> These speculative measures' effects are highly uncertain and yet to be proven, making their consideration at the listing stage inappropriate.<sup>20</sup>

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<sup>9</sup> Petition at 47.

<sup>10</sup> Petition at 62, 64–66.

<sup>11</sup> Petition at 64, 110.

<sup>12</sup> Rafael Olmeda et al., *'Like the ocean was on Las Olas': South Florida under flood warning as historic rainfall ends*, SUN SENTINEL (Apr. 12, 2023), <https://www.sun-sentinel.com/news/weather/fl-ne-rain-flood-weather-broward-emergency-20230413-b7j4ojze6rdw7o4bc2fbjfcue-story.html>.

<sup>13</sup> Petition at 71, 73, 74–75.

<sup>14</sup> Petition at 75–76.

<sup>15</sup> Petition at 83–85.

<sup>16</sup> Petition at 86–89.

<sup>17</sup> Petition at 76.

<sup>18</sup> *Id.*; Elena Shao, *Those Seaweed Blobs Headed for Florida? See How Big They Are.*, N.Y. TIMES (Apr. 19, 2023), <https://www.nytimes.com/interactive/2023/04/19/climate/seaweed-florida-sargassum.html>.

<sup>19</sup> Petition at 76–79.

<sup>20</sup> See *Desert Survivors v. U.S. Dep't of Interior*, 321 F. Supp. 3d 1011, 1065 (N.D. Cal. 2018) (requiring that “future conservation efforts must be ‘sufficiently certain’ to be effective” for consideration in listing).

Finally, a host of other natural and anthropogenic factors are jeopardizing manatees' survival. Boat strikes pose an acute threat to the species and account for significant mortality and injury. Nearly all adult Florida manatees have been scarred by vessels, over two million of which are estimated to use Florida's waters – a number that is rising with the state's population.<sup>21</sup> Genetic diversity among manatees is weak and worsening as their numbers shrink; regional populations like those in Florida, Puerto Rico, and Belize face particularly severe demographic challenges.<sup>22</sup> And climate change is fueling a staggering array of new crises – warming and acidifying oceans, worsening toxic algal blooms, disease, precipitation changes, intensifying storms, extreme cold events, and sea level rise – that will only make manatees' survival progressively more challenging.<sup>23</sup>

## **ESA VIOLATIONS**

In response to a petition to list a species as threatened or endangered, the ESA requires that the Secretary to “the maximum extent practicable” determine within 90 days “whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted.”<sup>24</sup> If the Service makes a positive 90-day finding, it must initiate a status review of the species and then determine whether listing is warranted, not warranted, or warranted but precluded within 12 months of the date the petition is filed.<sup>25</sup> Further, the ESA requires listing determinations to be made “solely on the basis of the best scientific and commercial data available.”<sup>26</sup>

Petitioners submitted the petition on November 21, 2022. More than 150 days have passed without the Service making the required 90-day finding on the petition, making the finding more than two months overdue. Accordingly, the Service is violating Section 4 of the ESA and failing to ensure that protection of this seriously imperiled species occurs in a timely manner, which is necessary to avoid further decline and a significant increase in the risk of extinction of this beloved species.

## **CONCLUSION**

The manatee is in danger of extinction and deserves a prompt status review by the Service. Continued delay is harming prospects for the survival and recovery of this highly imperiled species. Therefore, if the Service does not act promptly to correct the violation described above or agree to a schedule for issuing the overdue finding, the petitioners will pursue litigation against the agency.

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<sup>21</sup> Petition at 90–93.

<sup>22</sup> *Id.*

<sup>23</sup> Petition at 103–112.

<sup>24</sup> 16 U.S.C. § 1533(b)(3)(A).

<sup>25</sup> 16 U.S.C. § 1533(b)(3)(B).

<sup>26</sup> 16 U.S.C. § 1533(b)(1)(A); *New Mexico Cattle Growers v. U.S. Fish & Wildlife Service*, 248 F.3d 1277, 1284–85 (10th Cir. 2001) (“The addition of the word ‘solely’ is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species” (quoting H.R. Rep. No. 97-567, pt. 1, at 29 (1982), reprinted in 1982 U.S.C.C.A.N. 2807)); H.R. Conf. Rep. No. 97-835 (1982), reprinted in 1982 U.S.C.C.A.N. 2860, 2860 (the limitations on the factors the Service may consider in making listing decisions were intended to “ensure that decisions . . . pertaining to the listing . . . are based solely upon biological criteria and to prevent nonbiological considerations from affecting such decisions”).

Please contact Ragan Whitlock, staff attorney with the Center for Biological Diversity, at (727) 426-3653 or [rwhitlock@biologicaldiversity.org](mailto: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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