

proposing critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* in a takings implications assessment. Our taking implications assessment concludes that critical habitat for *L.f. grandiflora* and *Lomatium cookii* would not pose significant takings implications.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at <http://www.regulations.gov> or by contacting the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this rulemaking are the staff members of the Oregon Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 30, 2009.

Eileen Sobeck,

Acting Assistant Secretary of Fish Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2009-0066]
[MO 92210-0-0009-B4]

Endangered and Threatened Wildlife and Plants; 12-month Finding on a Petition To Revise Critical Habitat for the Florida Manatee (*Trichechus manatus latirostris*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 12-month finding on a petition to revise critical habitat for the Florida manatee (*Trichechus manatus latirostris*) under the Endangered Species Act of 1973, as amended. After a thorough review of all available scientific and commercial information, we find that revisions to critical habitat for the Florida manatee are warranted. However, sufficient funds are not available due to higher priority actions such as court-ordered listing-related actions and judicially approved settlement agreements. We

intend to initiate rulemaking when we complete the higher priorities and have the necessary resources to do so.

DATES: The finding announced in this document was made on January 12, 2010.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R4-ES-2009-0066. Supporting documentation we used to prepare this finding is available for public inspection, by appointment during normal business hours at the U.S. Fish and Wildlife Service, Jacksonville Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256-7517. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Attn: Manatee CH Review, at the above address, by telephone at 904-731-3336, by facsimile at 904-731-3045, or by e-mail: northflorida@fws.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339. Please include "Florida manatee scientific information" in the subject line for faxes and emails.

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(D)(ii) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition that is found to present substantial scientific and commercial information indicating that the requested revisions to critical habitat may be warranted, we make a finding within 12 months of the date of receipt of the petition and publish a notice in the **Federal Register** indicating how we intend to proceed with the requested revision.

Background

Previous Federal Actions

We originally listed the Florida manatee (*Trichechus manatus latirostris*), a subspecies of the West Indian manatee (*Trichechus manatus*), as endangered in 1967 (32 FR 4001) under the Endangered Species Preservation Act of 1966 (Pub. L. 89-669; 80 Stat. 926). In 1970, Appendix A to 50 CFR Part 17 was amended to include additional names to the list of foreign endangered species (35 FR 18319). This listing incorporated West Indian manatees into the list under the Endangered Species Conservation Act of 1969 (Pub. L. 91-135; 83 Stat. 275) and encompassed the species' range in the Caribbean and northern South America,

thus including both Antillean (*T. m. manatus*) and Florida manatees in the listing. The West Indian manatee is currently listed as an endangered species under the Act and the population is further protected as a depleted stock under the Marine Mammal Protection Act (16 U.S.C. 1361-1407).

Critical habitat was designated for the Florida manatee on September 24, 1976 (41 FR 41914). This designation delineated specific waterways in Florida that were known to be important concentration areas for manatees at that time.

On December 19, 2008, we received a petition from Wildlife Advocacy Project, Save the Manatee Club, Center for Biological Diversity, and Defenders of Wildlife, requesting that critical habitat be revised for the Florida manatee (*Trichechus manatus latirostris*) under the Act and the Administrative Procedure Act. The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a).

In a January 17, 2009, letter to the petitioners, we responded that we had received the petition and would make a finding, to the maximum extent practicable within 90 days, as to whether or not the petition presents substantial information. We also stated that, if the initial finding concludes that the petition presents substantial information indicating that the requested action may be warranted, then we have 1 year from the date we received the petition to determine how we intend to proceed with the requested revision, and that we would promptly publish a notice of our intentions in the **Federal Register** at the end of this period.

We published our 90-day finding regarding the petition to revise critical habitat for the Florida manatee on September 29, 2009 (74 FR 49842). We determined that the petition presented substantial information indicating that revising critical habitat for the Florida manatee under the Act may be warranted, thus initiating this 12-month finding. Accordingly, we asked the public to submit information relevant to the finding by October 29, 2009. We have fully considered all information available and received in response to information requested in our 90-day finding.

This 12-month finding discusses only those topics directly relevant to the revision of existing critical habitat for the Florida manatee.

Species Information

The Florida manatee, *Trichechus manatus latirostris*, is a subspecies of the West Indian manatee (*T. manatus*, Linnaeus 1758) and is native to Florida. Manatees are long-lived marine mammals, dark grey in color, and average about 10 feet (3 m) in length and between 800 to 1,200 pounds (363 to 544 kg) in weight. Manatees have a round, flattened, paddle-shaped tail and two front flippers that are used for steering while swimming.

Female manatees are capable of reproduction at as early as 4 years of age; however, most breed between the ages of 7 and 9. Gestation lasts from 12 to 14 months. Normally an adult female would have only one calf every 2 to 5 years, but there are rare occurrences of twins. The mother and calf remain together for up to 2 years. Male manatees aggregate in mating herds around a female when she is ready to conceive, but contribute no parental care to the calf.

The major threats to the Florida manatee population are human related, and include watercraft strikes (direct impacts and propeller cuts), which can cause injury and death (Rommel *et al.* 2007, p. 111; Lightsey *et al.* 2006, p. 262); entrapment and crushing in water control structures (gates, locks, *etc.*); and entanglement in fishing gear. Natural threats include red tide and exposure to cold. A comprehensive threats analysis, recently conducted as part of the Service's 5-year status review, indicated that the single largest threat to the persistence of manatees in Florida is collisions with watercraft. The second most significant threat to the species' survival is the loss of warm-water habitat. The other threats (water control structures, entanglement, and red tide) are of substantially less impact to the overall status of the species (USFWS 2007, p. 24; Runge *et al.* 2007a, p. 10).

The Florida manatee has not experienced any curtailment in the extent of its range throughout the southeastern U.S. To the contrary, Florida manatees have expanded their summer range to other states along the Atlantic and Gulf coasts. It is now not uncommon to find manatees in coastal waters of Georgia, North and South Carolina, Alabama, and Louisiana.

Habitat Information

Florida manatees are found in freshwater, brackish, and marine environments. Typical habitats include coastal tidal rivers and streams, mangrove swamps, salt marshes, and freshwater springs (FWC 2005). As

herbivores, manatees feed on the wide range of aquatic vegetation that these habitats provide. Shallow seagrass beds, with ready access to deep channels, are generally preferred feeding areas in coastal and riverine habitats (Smith 1993, p. 5). In coastal Georgia and northeastern Florida, manatees feed in salt marshes on smooth cordgrass (*Spartina alterniflora*) by timing feeding periods with high tide (Baugh *et al.* 1989, p. 89; Zoodsma 1991, p. 124). Manatees use springs and freshwater runoff sites for drinking water; secluded canals, creeks, embayments, and lagoons for resting, cavorting, mating, calving, and nurturing their young; and open waterways and channels as travel corridors (Marine Mammal Commission 1984, p. 8, and 1988, p. 88; Gannon, *et al.* 2007, p. 140; Laist and Boland 2008, p. 1).

Although manatees occupy different habitats during various times of the year (Deutsch *et al.* (2003, p. 1), they are a subtropical species with little tolerance for cold. Their year-round presence in Florida represents the northern limit of their winter range (Lefebvre *et al.* 2001, p. 425). Within Florida, they require stable, long-term sources of warm water during cold weather. Prolonged exposure to cold water temperatures can result in debilitation and death due to a phenomenon known as "cold stress syndrome" (Rommel *et al.* 2002, p. 16; Bossart *et al.* 2004, p. 437). An ambient water temperature of 68 degrees Fahrenheit (20 degrees Celsius) is generally considered as the lower threshold; below this temperature they have been observed to exhibit an increase in metabolic rate (Worthy *et al.* 1999, p. 4). When water temperatures begin to decrease to this temperature, manatees will aggregate within the confines of warm-water refuges or move to the southern tip of Florida. During periods of intense cold, they will remain at warm-water refuges; during warm interludes, they will move from the warm-water areas to feed, and return once again when water temperatures are too cold (Hartman 1979, p. 26; Deutsch *et al.* 2000, p. 22; Stith *et al.* 2006, p. 24). Recent studies focusing on manatee use of natural warm-water sites include those by Koelsch *et al.* 2000, p. 27; Taylor *et al.* 2005, p. 3; Taylor 2006, p. 5; USGS 2006, p. 3; Gannon *et al.* 2006, p. 133; Stith *et al.* 2006, p. iv; Reynolds and Barton 2005, 2008, p. 9; and Taylor and Provancha 2008, p. 2).

Historically, manatees relied on the warm, temperate waters of south Florida and on natural warm-water springs scattered throughout the State as buffers to the lethal effects of cold winter temperatures. In part, as a result of

human disturbance at natural sites (Laist and Reynolds 2005, p. 740), they have expanded their winter range to include industrial sites and associated warm-water discharges as refuges from the cold. Although manatees overwinter at major springs throughout peninsular Florida, nearly two-thirds of the population winters at industrial warm-water sites, which are now made up almost entirely of power plants (FWC FWRI, unpub. synoptic aerial survey data). The thermal discharge from power plants serves as an attractant to manatees because the temperature of the discharge is much warmer than the surrounding water temperature. Power plants in Brevard, Palm Beach, and Hillsborough counties maintain the largest winter aggregations of manatees throughout the winter. There are numerous research and monitoring studies that have documented historical and recent use by manatees at power plants (Keith *et al.* 2008, p. 16; Reynolds 2007, 2009, p. 10; and Fonnesebeck *et al.* 2009, p. 563).

The Crystal River springs complex in Citrus County and Blue Springs along the St. Johns River, in Volusia County, are the northernmost natural warm-water refuges in Florida used regularly by manatees. These and other natural springs in the State have experienced an increase in manatee use as the Florida population has grown (FWC FWRI, unpub. synoptic aerial survey data).

Minor thermal refuges are also used by manatees throughout Florida. Most of these include canals or boat basins where warmer water temperatures persist as temperatures in adjacent bays and rivers decline.

The loss of Florida's warm-water habitats is one of the leading threats facing the manatee population (Runge 2007a, p. 2). Reductions in spring flows, which affect manatee access and use of springs, are being addressed through the adoption of minimum flow regulations (Florida Springs Task Force 2001, p. 15). A minimum spring discharge rate that considered the estimated flow rates necessary to support overwintering manatees has been identified for Volusia County's Blue Spring and is expected to be adopted, pending the St. Johns River Water Management District's acceptance of a monitoring plan currently under development. Similarly, other springs used by manatees have been scheduled for, or are in the process of developing, minimum flow regulations. Those requirements would assure adequate flows are secured to support manatees. All Primary sites, except the Weeki Wachee/Mud Creek/Jenkins Creek complex, have been protected. Ten of

the 47 total known warm-water sites still require protection.

In addition to protecting natural warm-water sites, efforts are under way to restore and improve them to enhance manatee use. As an example, the spring run at Homossassa Springs was dredged in 2006 to improve manatee access; since dredging, studies indicate that the run has been attracting more animals (Taylor 2009, pers. comm.).

We and our partners are defining a network of migratory corridors based on manatee travel patterns and identifying other use areas to ensure protection of feeding, calving, and nursing areas throughout the State (FWC FWRI, unpub. data 2006; USGS FISC Sirenia Project, unpub. data 2006; Gannon *et al.* 2007, p. 134). Many of these sites are already known and are variously protected under the Florida Manatee Sanctuary Act, the Endangered Species Act, and the Marine Mammal Protection Act. We are currently completing an assessment of manatee habitat use at a number of natural warm-water sites throughout Florida. Recently, we initiated a study to predict manatee carrying capacity at natural warm-water sites, and we are also evaluating effects to manatees in South Florida associated with Comprehensive Everglades Restoration Plan activities.

Industrial thermal discharges are not a reliable source of warm water for the manatee population in the long term. Power plants can be eliminated due to plant obsolescence, environmental permitting requirements, economic pressures, and other factors, and can experience disruptions and temporary shutdowns. It is difficult to predict how manatees will respond to changes at artificial warm-water sites. In some instances manatees have been observed to use less preferred nearby sites, yet, in other cases when thermal discharges have been eliminated, manatees have died due to behavioral persistence or site fidelity (USFWS 2000, p. 74).

Since release of the Service's 5-year status review in 2007, we have new information that two of the oldest power plants in Florida that attract the largest numbers of wintering manatees will be undergoing repowering over the next several years, and will continue to discharge warm water (USFWS 2007, p. 16). Repowering these facilities will reduce the probability of a catastrophic winter mortality event for the manatee population over the next several decades.

We currently assess the status of the Florida manatee population according to regional management units within the State that reflect the winter-season site fidelity of individuals in the population,

as manatees tend to return to the same warm-water sites each winter. The four regional management units are: an Atlantic Coast unit that occupies the east coast of Florida, including the Florida Keys and the lower St. Johns River north of Palatka; an Upper St. Johns River unit that occurs in the river south of Palatka; a Northwest unit that occupies the Florida Panhandle south to Hernando County; and a Southwest unit that occurs from Pasco County south to Whitewater Bay in Monroe County. Typical manatee habitat within these geographic boundaries is described in Table 1. Exchange of individuals between the management units is thought to be limited during winter months, based on data from telemetry (Reid *et al.* 1991, p. 185; Weigle *et al.* 2001, p. 18; Deutsch *et al.* 1998, p. 18, and 2003, p. 2) and photo-identification (C. A. Beck, USGS FISC Sirenia Project, unpub. data, 2009; K. Higgs, FWC FWRI, unpub. data, 2009). Movement between management units does occur during warm seasons, particularly along the same coast, and there are some documented cases of wide-ranging coastal movements and isolated events of intercoastal migration (Reid *et al.* 1991, p. 185; Deutsch *et al.* 1998, p. 18, and 2003, p. 2; Beck 2009, pers. comm.).

Although natural vegetation has diminished in some locations due to human activities, and exotic vegetation has increased in other areas, the availability of aquatic vegetation as forage is not known to be a limiting factor for manatees at this time (Orth *et al.* 2006, p. 994; G.A.J. Worthy, University of Central Florida, unpub. data 2006).

Population Status

The most current information on Florida manatee population demographics (growth, survival, and reproductive rates) includes published studies by Runge *et al.* (2004, 2007b), Craig and Reynolds (2004), Kendall *et al.* (2004), and Langtimm *et al.* (2004), and unpublished reports by the Manatee Population Status Working Group (2005) and Runge *et al.* (2007a). All of these studies indicate that the manatee population is doing well throughout most of Florida. Population growth rates, determined using the Manatee Core Biological Model (Runge *et al.* 2004, p. 361, and 2007b), are as follows:

Northwest Region	4.0 percent
Upper St. Johns River Region	6.2 percent
Atlantic Coast Region	3.7 percent
Southwest Region	-1.1 percent

Craig and Reynolds (2004, p. 386) additionally suggested that populations

of wintering manatees in the Atlantic Coast Region have been increasing at rates of between 4 and 6 percent per year since 1994.

In southwest Florida, estimates of adult manatee survival and reproduction are less precise than in the other regions of Florida because the time series of data is comparatively shorter for this region and there are no demographic data available for manatees in the southernmost part of this region. The estimates could also be biased low due to effects from temporary emigration (Langtimm *et al.* 2004, p. 450; Langtimm 2009 pers. comm.). Updated estimates of adult survival and growth rates for manatees in this region are anticipated in early 2010.

The most current and best available count of the Florida manatee population is 3,807 animals, based on a single synoptic survey of warm-water refuges and adjacent areas in January 2009 (FWC FWRI 2009 Manatee Synoptic Aerial Survey Data).

Critical Habitat

Current Critical Habitat Designation

Critical habitat was designated for the Florida manatee (listed in that regulation as *Trichechus manatus*) in 1976 (50 CFR 17.95(a)) as follows: "Florida. Crystal River and its headwaters known as King's Bay, Citrus County; the Little Manatee River downstream from the U.S. Highway 301 bridge, Hillsborough County; the Manatee River downstream from the Lake Manatee Dam, Manatee County; the Myakka River downstream from Myakka River State Park, Sarasota and Charlotte Counties; the Peace River downstream from the Florida State Highway 760 bridge, De Soto and Charlotte Counties; Charlotte Harbor north of the Charlotte-Lee County line, Charlotte County; Caloosahatchee River downstream from the Florida State Highway 31 bridge, Lee County; all U.S. territorial waters adjoining the coast and islands of Lee County; all U.S. territorial waters adjoining the coast and islands and all connected bays, estuaries, and rivers from Gordon's Pass, near Naples, Collier County, southward to and including Whitewater Bay, Monroe County; all waters of Card, Barnes, Blackwater, Little Blackwater, Manatee, and Buttonwood Sounds between Key Largo, Monroe County, and the mainland of Dade County; Biscayne Bay, and all adjoining and connected lakes, rivers, canals, and waterways from the southern tip of Key Biscayne northward to and including Maule Lake, Dade County; all of Lake Worth, from its

northernmost point immediately south of the intersection of U.S. Highway 1 and Florida State Highway A1A southward to its southernmost point immediately north of the town of Boynton Beach, Palm Beach County; the Loxahatchee River and its headwaters, Martin and West Palm Beach Counties; that section of the intracoastal waterway from the town of Seawalls Point, Martin County to Jupiter Inlet, Palm Beach County; the entire inland section of water known as the Indian River, from its northernmost point immediately south of the intersection of U.S. Highway 1 and Florida State Highway 3, Volusia County, southward to its southernmost point near the town of Sewalls Point, Martin County, and the entire inland section of water known as the Banana River and all waterways between Indian and Banana Rivers, Brevard County; the St. Johns River including Lake George, and including Blue Springs and Silver Glen Springs from their points of origin to their confluences with the St. Johns River; that section of the Intracoastal Waterway from its confluences with the St. Marys River on the Georgia-Florida border to the Florida State Highway A1A bridge south of Coastal City, Nassau and Duval Counties.”

No map was published with the 1976 designation. The earliest known record of a map created from the physical description of designated critical habitat for the Florida manatee was published by the Service's Office of Biological Services in 1980 (USFWS 1980). A more recent GIS depiction of the general locations of the designated critical habitat for the Florida manatee is shown in Figure 1.

Relevant Statutes and Regulations

Critical habitat is defined in section 3(5)(A) of the Act as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) essential to the conservation of the species and

(II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered or

threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, or transplantation.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, specific areas within the geographical area occupied by the species at the time it is listed must contain the physical and biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas containing the essential physical and biological features that provide for requisite life cycle needs of the species. Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information

Standards Under the Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Finding

The current critical habitat designation for the Florida manatee was described before critical habitat regulations and guidance were developed; it does not identify specific physical and biological features essential to the conservation of the manatee for this species' habitat. Instead, it describes specific waterways that were known to be important concentration areas for manatees at that time. We recognize that the geographic areas originally described as manatee critical habitat need to be updated, based on recent scientific studies of manatee distribution, habitat use, and habitat needs as discussed above. Since the original designation, we have more information on the specific habitat needs of the Florida manatee, including the use of warm-water sites (Koelsch *et al.* 2000, p. 27; Taylor *et al.* 2005, p. 3; Taylor 2006, p. 5; USGS 2006, p. 3; Gannon *et al.* 2006, p. 133; Stith *et al.* 2006, p. iv; Reynolds and Barton 2005, 2008, p. 9; and Taylor and Provanca 2008, p. 2) as well as power plant discharges (Keith *et al.* 2008, p. 16; Reynolds 2007, 2009, p. 10; and Fonnesebeck *et al.* 2009, p. 563, among others), that will allow us to identify the physical or biological features essential to manatee conservation. Therefore, based on this current and best available scientific and commercial information, we find that revising critical habitat for the Florida manatee under the Act is warranted.

We intend to identify the physical and biological features essential to conservation of the species, in order to address the ecological and conservation needs of the Florida manatee. Given the significance of warm water to the survival of the manatee in Florida, the most essential feature will be the availability and adequacy of warm-water refugia. Additional features to be considered in the analysis may include

adequate forage within dispersal distance of a warm-water refuge, areas needed for calving and nursing, and important travel corridors for movements throughout Florida and beyond. The revision may include both additions and deletions to the current designation, and specific areas within and outside of the geographical area currently occupied by manatees. We find that incorporating these concepts into a revised critical habitat designation for the Florida manatee is important for identifying the specific areas essential to the conservation of the species or which contain the essential features. We request any additional information or input on these potential essential features.

How the Service Intends To Proceed

Section 4(b)(3)(D)(ii) of the Act requires that if we find that a revision to critical habitat is warranted, then we are to indicate how we intend to proceed with such revision and promptly publish a notice of our intention in the **Federal Register**. We have reviewed the best available scientific data available, and we find that revisions to critical habitat for Florida manatee under the Act should be made. However, sufficient funds are not available due to higher priority actions such as listing-related actions pursuant to court orders and judicially-approved settlement agreements. We intend to undertake rulemaking to revise critical habitat for the Florida manatee when funding and staff resources become available.

The resources available for listing actions, including critical habitat designations and revisions, are determined through the annual Congressional appropriations process. We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (31 U.S.C. 1341(a)(1)(A)). Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put in place a critical habitat subcap within the overall Listing Program budget in FY 2002 and has retained it each subsequent year. Thus, through the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for critical habitat revisions. Therefore, the funds in the critical habitat subcap set the limits on our ability to designate critical habitat or revise existing designations in a given year.

In FY 2002 and each year until FY 2006, we had to use virtually all of the funds available under the subcap to address court-mandated designations of critical habitat; consequently, none of the critical habitat subcap funds have been available for other designations. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In FY 2008, we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations; however, we did use some of this money to fund the critical habitat portion of some proposed listing determinations. In those cases, the proposed listing determination and proposed critical habitat designation were combined into one rule, thereby increasing efficiency in our work. In FY 2009, we have been able to continue this practice. However, our current projection for FY 2010 is that all of the funding anticipated for the critical habitat portion of the listing allocation will be used to address court-ordered critical habitat designations. Therefore, we do not anticipate having any funding in FY 2010 available to work on additional critical habitat designations.

Nonetheless, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel, we have endeavored to make our critical habitat designation and revision actions as efficient and timely as possible. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together as described above.

We intend to proceed with a revision of critical habitat as soon as we have the necessary resources. Our critical habitat regulations (50 CFR 424.12(c)) state that critical habitat will be defined by specific limits using reference points and lines on standard topographic maps of the area. Section 4(b)(2) of the Act requires that we consider economic, national security, and other impacts of designating critical habitat. Based on these authorities, and on the definition of critical habitat under the Act, once funding is available, we will take the following steps to propose the revision of designated critical habitat for the Florida manatee: (1) Determine the geographical area occupied by the species at the time of listing; (2) identify the physical or biological features essential to the conservation of the species; (3) delineate specific areas within the geographical area occupied by the species that contain these features, and that may require special management considerations or

protection; (4) delineate any areas outside of the geographical area occupied by the species that are essential for the conservation of the species; and (5) conduct appropriate analyses under section 4(b)(2) of the Act; and (6) invite the public to review and provide comments on the proposed revision through a public comment period.

We intend that any revisions to critical habitat for the Florida manatee be as accurate as possible. Therefore, even until we initiate the proposed designation we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

Current Designation and Protections

Until we are able to revise the critical habitat designation for the Florida manatee, the currently designated critical habitat, as well as areas that support manatee populations, but are outside the current critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act. Federal agency actions are subject to the regulatory protections afforded by section 7(a)(2), which requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. We expect that the majority of regulatory projects will involve a Federal nexus, in which case consultation under section 7(a)(2) would apply. In addition, federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases.

Under section 7(a)(2) of the Act, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. For most species, as a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

- (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or
- (2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

Because manatees are marine mammals, they are protected under the Marine Mammal Protection Act of 1972

(MMPA). Section 17 of the Act provides that any more restrictive conflicting provisions of the MMPA take precedence over the Act (16 U.S.C. 1543). Section 7(b)(C) of the Act identifies the necessary authorization pursuant to section 101(a)(5) of the MMPA for taking of an endangered or threatened marine mammal. Because the Service has not promulgated a rulemaking under MMPA section 101(a)(5), we do not issue incidental take authorization in conjunction with consultations on Federal actions under section 7(a)(2) of the Act. In order to ensure compliance with section 7(a)(2) of the Act and the more restrictive provisions of the MMPA, any Federal action that is determined as “likely to adversely affect the Florida manatee” (USFWS 2008) will need to:

(1) Modify the project to the extent that take is no longer reasonably certain to occur and/or:

(2) Incorporate Service-approved take minimization and avoidance measures, as outlined in our 2009 Manatee Programmatic Biological Opinion (USFWS 2009).

Therefore, although we are not immediately proceeding with a revision of the current critical habitat designation for the manatee, the current designation still provides protections to the manatee in addition to the protections afforded the manatee through listing under the Act and those provided under the MMPA.

References Cited

A complete list of all references cited in this document is available, upon

request, from the Jacksonville Ecological Services Field Office (see **ADDRESSES section**).

Author

The primary author of this notice is staff with the U.S. Fish and Wildlife Service, Jacksonville Ecological Services Field Office (see **ADDRESSES section**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 30, 2009.

Eileen Sobeck,

Acting Assistant Secretary of Fish Wildlife and Parks.

TABLE 1. REGIONAL DESCRIPTION OF MANATEE HABITAT AND REGION-SPECIFIC THREATS FOR MANATEES IN FLORIDA

Features	Northwest Management Unit	Southwest Management Unit	Atlantic Coast Management Unit	Upper St. Johns River Management Unit
Geographic Boundaries	Located along Florida's northwest coast, the southern boundary of the unit is defined by the Hernando-Pasco County line. While the majority of use occurs east of the Wakulla River, manatees from this unit range as far west as Texas.	Located along Florida's southwest coast, the northern boundary is described by the Pasco-Hernando County line, extending south to the mouth of Whitewater Bay, along the western margin of the Everglades.	Includes Florida's coastal areas from south of the mouth of Whitewater Bay, through Florida Bay and north to the mid-Atlantic region. The unit extends into the St. Johns River as far south as Palatka.	This unit is located upstream of Palatka, Florida, extending to the headwaters of the St. Johns River.
Habitat Description	This unit incorporates coastal seagrass beds which extend from the shoreline out to the Gulf of Mexico. Significant features include the spring-fed Wakulla, Suwannee, Crystal, and Homosassa River systems, which empty into the Gulf.	This unit primarily includes in-shore and near-shore seagrass beds, which border mangrove systems to the south. Tampa Bay, Charlotte Harbor, and the Caloosahatchee River are dominant coastal features. There are numerous barrier islands south of Tampa Bay, accompanied by passes, inland waterways, etc. Tidal rivers and creeks are common in this area.	This unit primarily includes in-shore seagrass beds, which border mangrove systems to the south. Predominant features include Florida Bay, the Florida Keys, Biscayne Bay, and barrier islands and inland waterways that extend into the mid-Atlantic region. Significant waterways include the Indian River Lagoon, Banana River, and Mosquito Lagoon. From north Florida and into more northerly states, habitats are typified by large coastal rivers, such as the St. Johns River and coastal marshes.	This freshwater system includes extensive eel grass beds bordered largely by cypress and hardwood swamps. There are numerous rivers and lakes that make up this system. Notable features include the Ocklawaha River (dammed), Lake George, Lake Woodruff, and Lake Monroe. There are many small, spring-fed tributaries that discharge into this system.

TABLE 1. REGIONAL DESCRIPTION OF MANATEE HABITAT AND REGION-SPECIFIC THREATS FOR MANATEES IN FLORIDA—
Continued

Features	Northwest Management Unit	Southwest Management Unit	Atlantic Coast Management Unit	Upper St. Johns River Management Unit
Winter Sites	Crystal River Springs Complex (Citrus) Homosassa River Springs Complex (Citrus). Weeki Wachee/ Mud Creek/ Jenkins Creek Springs (Hernando). Progress Energy Crystal River Power Plant (Citrus). Manatee/Fanning Springs (Dixie). Wakulla/St. Mark's Complex (Wakulla).	TECO Big Bend Power Plant (Hillsborough) Warm Mineral Springs (Sarasota). Matlacha Isles (Lee) FPL Ft. Myers Power Plant (Lee). Port of the Islands (Collier). Progress Energy Anclote Plant (Pasco). TECO Gannon Plant (Hillsborough). Progress Energy Bartow Power Plant (Pinellas). Ten Mile Canal Borrow Pit (Lee). Franklin Locks (Lee) Spring Bayou/Tarpon Springs (Pasco). Forked Creek (Sarasota) Tamiami Canal at Wootens (Collier). Big Cypress National Preserve Headquarters Canal (Collier). Sulphur Springs (Hillsborough).	Reliant Energy Power Plant (Brevard) FPL Canaveral Power Plant (Brevard County, FL). FPL Riviera Beach Power Plant (Palm Beach). FPL Port Everglades Power Plant (Broward). FPL Fort Lauderdale Power Plant (Broward). Coral Gables Waterway (Dade). Sebastian River (C-54 canal) (Brevard). Vero Beach Power Plant (Indian River). Henry D. King Electric Station – Ft. Pierce Utilities (St. Lucie). Big Mud Creek (St. Lucie). Berkeley Canal (Brevard) Black Point Park/Black Creek (Dade County). Palmer Lake (Dade) Little River (Dade). Turkey Point Canal (Dade). C-111 canal and canal just west of Card Sound Bridge (Dade). Biscayne Canal (Dade) Banana River Marine Service Marina (Brevard). Canals/Coves, Upper Keys (Bayside of Key Largo) (Monroe). Harbor Branch canal (St. Lucie).	Blue Spring (Volusia) Silver Glen Springs (Marion) DeLeon Springs (Volusia) Salt Springs (Marion) Ocklawaha River Springs Complex (Marion/Lake)



Figure 1. Florida manatee critical habitat map created from the physical description of the published designated critical habitat (50 CFR 17.95(a)).

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