

unacceptable for distribution by the National Eagle Repository, or those that the National Eagle Repository does not typically distribute to Native Americans for religious ceremonial purposes (such as some skeletal parts), all nonliving eagle specimens possessed under this permit must have been lawfully acquired before March 30, 1994. The Regional Director for the Region where the applicant resides may authorize exceptions on a case-by-case basis for important resource needs with compelling justification.

(5) Prior to acquiring or transferring any eagle or specimen thereof, you must submit a FWS Form 3-202-12 to your migratory bird permit issuing office and receive authorization from the office for the transfer.

(6) To transport nonliving eagle specimens out of or into the United States for educational purposes, you must submit your application for a transport permit to the Division of Management Authority. Your application must contain all the information necessary for the issuance of a CITES permit. You must also comply with all the requirements in part 23 of this subchapter before undertaking international travel. Mail should be addressed to the Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203-1610.

(i) Eagle specimens may be transported out of or into the United States on a temporary basis only. You must return the permitted specimens to the originating country within the timeframe specified on the face of the permit, not to exceed 3 years.

(ii) We will not issue a permit under this section that authorizes the transportation out of or into the United States of any live bald eagle or golden eagle or viable egg of these species.

(7) You must send all bald eagle and golden eagle carcasses of eagles that die in your possession, and all molted eagle primary and secondary feathers and retrices (tail feathers) not needed for imping (replacing a damaged feather with a molted feather) to the U. S. Fish and Wildlife Service, National Eagle Repository, Building 128, Rocky Mountain Arsenal, Commerce City, CO 80022. You can contact the Repository at 303-287-2110.

(8) You must submit an annual report for the preceding calendar year to your migratory bird permit issuing office by the date specified on your permit. You may complete FWS Form 3-202-13 or a report from a database you maintain, provided your report contains all, and

only, the information required by FWS Form 3-202-13.

Dated: July 1, 2010.

**Thomas L. Strickland,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2010-0067; 92220-1113-0000-C5]

#### **Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Reclassify the U.S. Breeding Population of Wood Storks From Endangered to Threatened**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to reclassify the United States (U.S.) breeding population of the wood stork (*Mycteria americana*) from endangered to threatened under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that reclassifying the U.S. breeding population of the wood stork to threatened may be warranted. Therefore, with the publication of this notice, we are initiating a review of the species' status to determine if reclassification is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding the U.S. breeding population of this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

**DATES:** To allow us adequate time to conduct this review, we request that we receive information on or before November 22, 2010. After this date, you must submit information directly to the Jacksonville Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is

Eastern Standard Time on this date. We may not be able to address or incorporate information that we receive after this date.

**ADDRESSES:** You may submit information by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the Keyword box, enter Docket No FWS-R4-ES-2010-0067, 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."

- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R4-ES-2010-0067; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

**FOR FURTHER INFORMATION CONTACT:** David L. Hankla, Field Supervisor, Jacksonville Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256, by telephone (904) 731-3336, or by facsimile (904) 731-3045. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Information**

When we make a finding that a petition presents substantial information indicating that reclassifying a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the status of the U.S. breeding population of the wood stork and other populations of wood storks breeding in Central and South America. We seek information on:

(1) The historical and current status and distribution of the wood stork, its biology and ecology, and ongoing conservation measures for the species and its habitat;

(2) The five factors that are the basis for making a listing/delisting/

downlisting determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

- (a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;
  - (b) Overutilization for commercial, recreational, scientific, or educational purposes;
  - (c) Disease or predation;
  - (d) The inadequacy of existing regulatory mechanisms; or
  - (e) Other natural or manmade factors affecting its continued existence;
- (3) The genetics and taxonomy of the wood stork throughout its entire range, including the range of the federally listed U.S. breeding population of the wood stork; and
- (4) Discreteness and significance of the wood stork in the southeastern United States in light of our distinct population segment (DPS) policy (61 FR 4722; February 7, 1996).
- (5) Discreteness, significance, and status of the wood stork in other portions of its range.
- (6) Differences or similarities in regulatory protection for the wood stork outside of the southeastern United States.
- (7) 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.

(8) Anything else that would assist us in determining whether the wood stork is in danger of extinction throughout all or a significant portion of its range, or likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include.

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, as section 4(b)(1)(A) of the Act 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."

You may submit your information concerning this finding by one of the methods listed in the **ADDRESSES** section. If you submit information via <http://www.regulations.gov/>, your entire submission—including any personal

identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov/>.

Information and supporting documentation that we received and used in preparing this finding, will be available for public inspection at <http://www.regulations.gov/>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Jacksonville Ecological Services Field Office (*see FOR FURTHER INFORMATION CONTACT*).

### Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for "substantial scientific or commercial information" within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a review of the status of the species, which is subsequently summarized in our 12-month finding.

### Petition History

On May 28, 2009, we received a petition, dated May 27, 2009, from the Pacific Legal Foundation on behalf of the Florida Homebuilders Association, requesting that the southeastern U.S. population of the wood stork be reclassified as threatened under the Act as recommended in our 2007 5-year status review. The petition clearly identified itself as such and included the requisite identification information

for the petitioner, as required by 50 CFR 424.14(a).

The petition presented, as sole supporting evidence, the 2007 5-year status review as its supporting information. The petition incorporated the status review by reference and summarized the five-factor analysis contained in the status review. On July 9, 2009, we sent a letter to the Pacific Legal Foundation informing them that we received the petition.

On July 8, 2010, we received a letter, dated July 1, 2010, from the Pacific Legal Foundation, notifying the Service of the Pacific Legal Foundation's intent to commence civil litigation after 60 days if we did not respond to the petition. This notice constitutes our initial finding on the petition.

### Previous Federal Actions

On February 28, 1984, we published a final rule in the **Federal Register** listing the U.S. breeding population of the wood stork as endangered under the Act due primarily to the loss of suitable feeding habitat, particularly in south Florida (49 FR 7332). The endangered status covered wood storks in the States of Alabama, Florida, Georgia, and South Carolina, the breeding range of the species at that time. At the time of listing, critical habitat was considered but not designated for this species (49 FR 7332). We developed a September 9, 1986, recovery plan for the U.S. breeding population. The recovery plan was revised on January 27, 1997, and addressed new threats and species' needs.

On November 6, 1991 (56 FR 56882), we published a notice in the **Federal Register** that we were conducting a 5-year review for all endangered and threatened species listed before January 1, 1991, including the wood stork. In this review, we simultaneously evaluated the status of many species, with no in-depth assessment of the five threat factors under section 4(a)(1) of the Act as they pertain to the individual species. The notice stated that we were seeking any new or additional information reflecting the necessity of a change in the status of any of the species under review. The notice indicated that if significant data were available warranting a change in a species' classification, we would propose a rule to modify the species' status. We did not find a change in the wood stork's listing classification under the Act to be warranted at that time.

On September 27, 2006 (71 FR 56545), we published a notice in the **Federal Register** that we were initiating a 5-year status review of 37 southeastern U.S. species, including the wood stork. We

solicited information from the public concerning the status of the species, including the status and trends of species threats under section 4(a)(1) of the Act. We completed the 5-year status review for the wood stork on September 27, 2007. The 5-year status review, completed in accordance with section 4(c)(2) of the Act, contains a detailed description of the species' natural history and status, including information on distribution and movements, behavior, population status and trends, and factors contributing to the status of the U.S. breeding population. It also presents a detailed analysis of the five factors that are the basis for determination of a species' status under section 4(a) of the Act. A copy of the 5-year status review is available on our Web site at [http://www.fws.gov/ecos/ajax/docs/five\\_year\\_review/doc1115.pdf](http://www.fws.gov/ecos/ajax/docs/five_year_review/doc1115.pdf).

#### *Species Information*

The wood stork is a large, long-legged wading bird, with a head-to-tail length of 85–115 centimeters (cm) (33–45 inches (in)) and a wingspread of 150–165 cm (59–65 in). The plumage is white, except for iridescent black primary and secondary wing feathers and a short black tail. Storks fly with their necks and legs extended. On adults, the rough, scaly skin of the head and neck is unfeathered and blackish in color, the legs are dark, and the feet are dull pink. The bill color is also blackish. Immature storks, up to the age of about 3 years, differ from adults in that their bills are yellowish or strap colored and there are varying amounts of dusky feathers on the head and neck. During courtship and early nesting season, adults have pale salmon coloring under the wings, fluffy undertail coverts that are longer than the tail, and toes that brighten to a vivid pink.

Wood storks feed almost entirely on fish between 2 and 25 cm (1 and 10 in) in length (Kahl 1964, pp.107–108; Ogden *et al.* 1976, pp. 325–327). They also occasionally consume crustaceans, amphibians, reptiles, mammals, birds, and arthropods. Fish populations reach high numbers during the wet season, but become concentrated in increasingly restricted habitats as drying occurs. Consumers such as the wood stork are able to exploit high concentrations of fish in drying ponds and sloughs.

#### *Mating and Reproduction*

Wood storks are seasonally monogamous, probably forming a new pair bond every season. There is documented first breeding at 3 and 4 years old, but the average age at first breeding is unknown. Nest initiation

varies geographically. Wood storks lay eggs as early as October and as late as June in Florida (Rodgers 1990, pp. 48–51). In general, earlier nesting occurs in the southern portion of Florida (< 27 °N). Wood storks in Georgia and South Carolina initiate nesting on a seasonal basis regardless of environmental conditions. They lay eggs from March to late May, with fledging occurring in July and August. In response to deteriorating habitat conditions in south Florida, wood storks nesting in Everglades National Park and in the Big Cypress region of Florida delayed initiation of nesting to February or March in most years since the 1970s. Colonies that start after January in south Florida risk having young in the nests when May–June rains flood marshes and disperse fish.

Females lay a single clutch of two to five eggs per breeding season, but the average is three eggs. Females sometimes lay a second clutch if nest failure occurs early in the season (Coulter *et al.* 1999, p.11). Average clutch size may increase during years of favorable water levels and food resources. Incubation requires about 30 days, and begins after the female lays the first one or two eggs; the eggs therefore hatch at different times and young nestlings in a single nest vary in size. Nestlings require about 9 weeks for fledging, but the young return to the nest for an additional 3 to 4 weeks to be fed. Actual colony production measurements are difficult to determine because of the prolonged fledging period, during which time the young return daily to the colony to be fed. It appears that colonies experience considerable variation in production among years and locations, apparently in response to differences in food availability.

#### *Range and Distribution*

The wood stork is one of 17 species of storks occurring worldwide, and is the only stork regularly occurring in the United States. It occurs from northern Argentina, eastern Peru, and western Ecuador, north to Central America, Mexico, Cuba, Hispaniola, and the southeastern United States. The breeding range of the species extends from the southeastern United States south through Mexico and Central America, Cuba and Hispaniola, and through South America to western Ecuador, eastern Peru, Bolivia, and northern Argentina (Coulter *et al.* 1999, p. 2). The species uses a variety of freshwater and estuarine wetlands for nesting, feeding, and roosting. Throughout its range in the southeastern United States, the wood stork is

dependent upon wetlands for breeding and foraging. Winter foraging habitat is also important to the recovery of the species, as it may determine the carrying capacity of the U.S. breeding population.

Wood storks select patches of medium-to-tall trees as nesting sites, which are located either in standing water such as swamps, or on islands surrounded by relatively broad expanses of open water (Ogden 1991, p. 43). Colony sites located in standing water must remain inundated throughout the nesting cycle to protect against predation and nest abandonment. A wood stork tends to use the same colony site over many years, as long as the site remains undisturbed, and sufficient feeding habitat remains in the surrounding wetlands. Wood storks may abandon traditional wetland sites once local or regional drainage schemes remove surface water from beneath the colony trees.

#### *Population Demographics*

Alterations in the quality and amount of foraging habitats in the Florida Everglades and extensive drainage and land conversions throughout South Florida led to the initial decline of the wood stork nesting population. Since listing under the Act, wood stork nesting has increased in South Florida and the Everglades, but the timing and location of nesting have changed in response to alterations in hydrology and habitat. The overall distribution of the breeding population of wood storks is also in transition. The wood stork appears to have adapted to changes in habitat in South Florida in part by expanding its breeding range north into Georgia, South Carolina, and North Carolina.

The estimated total population of nesting wood storks throughout the southeastern United States declined from 15,000–20,000 pairs during the 1930s, to about 10,000 pairs in 1960, to a low of 4,500–5,700 pairs in most years during the period between 1977–1980 (Ogden *et al.* 1987, p. 752). In the 23-year period from the time of listing (1984) to 2006, 13 surveys of the entire breeding range were completed. Eight of those resulted in counts exceeding 6,000 pairs. Five of those higher counts occurred during the past 8 years. In summary, annual nest counts have increased significantly, from 6,245 pairs to 11,279 pairs in 2006 (Brooks and Dean, 2008, pp. 53–54), indicating the population is stable or increasing across the southeastern United States (Borkhataria *et al.* 2008, p. 48).

The recovery plan's population objectives are 6,000 nesting pairs

(calculated over a 3-year average) for consideration to reclassify from endangered to threatened. The 1993–1995 surveys averaged 6,783 nesting pairs. The 3-year averages from 2001 through 2006 also exceeded 6,000 pairs for all combined years.

Three-year averages calculated from nesting data from 2001 through 2006 indicate that the total nesting population has been consistently above the threshold of 6,000 nesting pairs and productivity of 1.5 chicks per nest per year (2004–2006) required before the species can be reclassified to threatened. The average number of nesting pairs has ranged from 7,400 to over 8,700. The first wood stork colony in North Carolina was documented in 2005, with 32 nesting pairs. In 2006, the same North Carolina colony increased to 132 nesting pairs.

The 2006 nesting totals indicated that the wood stork population reached over 11,000 nesting pairs documented in Florida, Georgia, South Carolina, and North Carolina during the 2006 breeding season. Information in our files indicates that fewer than 6,000 nesting pairs were documented in 2007 and 2008. These lower nesting numbers were likely related to severe drought conditions in Florida. In 2009, the number of nesting pairs once again surpassed 10,000, with over 12,000 nesting pairs recorded.

Since the time that the species was listed as endangered under the Act, the number of nesting pairs in the United States is increasing overall, the number of nesting colonies in the United States is increasing, and the nesting range in the United States is growing.

#### Evaluation of Listable Entities

Under section 3(16) of the Act, we may consider for listing any species, including subspecies, of fish, wildlife, or plants, or any DPS of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Such entities are considered eligible for listing under the Act (and, therefore, are referred to as listable entities), should we determine that they meet the definition of an endangered or threatened species.

#### *Distinct Vertebrate Population Segment*

The Service and the National Marine Fisheries Service (National Oceanic and Atmospheric Administration—Fisheries) developed a joint policy that addresses the recognition of DPSes of vertebrate species for potential listing actions (61 FR 4722, February 7, 1996). To determine whether a population qualifies as a DPS; this requires a finding that the population is both: (1) Discrete in relation to the remainder of

the species to which it belongs; and (2) biologically and ecologically significant to the species to which it belongs. If the population meets these criteria, we then proceed to evaluate the population segment's conservation status in relation to the Act's standards for listing as an endangered or threatened species. These three elements are applied similarly for additions to or removals from the Federal Lists of Endangered and Threatened Wildlife and Plants.

Our evaluation of significance is made in light of Congressional guidance (see Senate Report 151 of the 96th Congress, 1st Session) that the authority to list DPSes be used “sparingly,” while encouraging the conservation of genetic diversity. If we determine that a population segment meets the discreteness and significance standards, then the level of threat to that population segment is evaluated based on the five listing factors established by the Act to determine whether listing the DPS as either endangered or threatened is warranted.

In this case, the petitioners attached our 5-year status review of the species, and incorporated it by reference into the petition. The U.S. breeding population of the wood stork was listed in 1984 under the Act, 12 years prior to the DPS policy. The 5-year status review did not include a DPS analysis. However, it indicates that we believe the original listing of the U.S. breeding population of wood storks likely meets the current standards of the DPS policy for the following reasons: The population is physically separated from the adjacent populations that breed in southern Mexico. The loss of the U.S. breeding population would result in a significant gap in the range of the species, as there would no longer be wood storks breeding in the United States. As applied to information contained in the petition and available in our files, we will conduct a DPS analysis for the wood stork as part of the status review process initiated under this 90-day petition finding.

#### Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information regarding threats to the southeastern U.S. population of the wood stork, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below. On pp. 2–3 of the petition, the petitioner summarized the five-factor analysis contained in our 2007 5-year review of the species, which was also included as an attachment to the petition.

#### *A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

Evaluation of Information Provided in the Petition and Available in Service Files

Factor A. is discussed on p. 2 of the petition and on pp. 14–16 in our 5-year review of the species. Please refer to the 5-year review document for additional information.

The petition and our 5-year review of the species presented information regarding the threats to the wood stork from the loss, fragmentation, and modification of wetland habitats. We found the petition and information in our files presented substantial information that activities that destroy or modify wetland habitat continue to threaten the wood stork. Habitat loss, fragmentation, and modification are known to impact the species, but the significance of these threats cannot be quantified. The overall threat to the species is reduced, not necessarily because of habitat conservation programs, but rather due to an increase in wood storks and expansion of the range of the species. Historically, the core of the wood stork breeding population in the southeastern United States was located in the Everglades of south Florida. Populations there had diminished because of deterioration of the habitat. However, the breeding range has now almost doubled in extent and shifted northward along the Atlantic coast as far as southeastern North Carolina. Therefore, dependence of

wood storks on any specific wetland complex has been reduced.

In summary, we evaluated the petition and information in our files and find that substantial information has been presented in the petition or is available in our files to indicate that reclassifying the U.S. breeding population of the wood stork to threatened may be warranted due to the present or threatened destruction, modification, or curtailment of the species' habitat or range.

#### *B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

##### Evaluation of Information Provided in the Petition and Available in Service Files

Factor B. is discussed on p. 2 of the petition and on pp. 16–17 in our 5-year review of the species. Please refer to the 5-year review document for additional information.

As described in our 5-year review, a small number of scientific research permits with potential to harm individual wood storks have been issued. This level of take/harm is not expected to adversely impact wood stork recovery. Wading birds can impact production at fish farms. To minimize the impacts, the Service issues depredation permits to aquaculture facilities for herons, egrets and other water bird species. It is likely that wood stork take at aquaculture facilities occurs. To what extent this type of take occurs is unknown.

After a review of information in our files and in the petition, we do not find substantial information to indicate that overutilization for commercial, recreational, scientific, or educational purposes is a threat to the wood stork.

#### *C. Disease or Predation*

##### Evaluation of Information Provided in the Petition and Available in Service Files

Factor C. is discussed on p. 3 of the petition and on pp. 17–18 in our 5-year review of the species. Please refer to the 5-year review document for additional information.

Colonies with adequate water levels under nesting trees or surrounding nesting islands deter raccoon predation. If the water level remains too low or alligators are removed from the nesting site, this could facilitate raccoon predation. Human disturbance may cause adults to leave nests, exposing eggs and nestlings to predators. A breeding population of Burmese pythons has been documented in the Florida Everglades. If this snake

becomes established, it could pose a threat to nesting water bird populations, including the wood stork. However, there has been limited documentation of predation and disease in wood storks.

After a review of information in our files and in the petition, we find substantial information to indicate that disease or predation is a threat to the wood stork, but that the threat is localized and not occurring at significant levels.

#### *D. The Inadequacy of Existing Regulatory Mechanisms*

##### Evaluation of Information Provided in the Petition and Available in Service Files

Factor D. is discussed on p. 3 of the petition and on pp. 18–19 in our 5-year review of the species. Please refer to the 5-year review document for additional information.

There are a number of regulatory mechanisms implemented by Federal and State agencies to protect wood storks and conserve their habitat. Recent trends indicate that the range of the wood stork is expanding and breeding populations have increased, suggesting that the current conservation measures are sufficient to allow population growth.

We evaluated the petition and information in our files and find that substantial information has been presented in the petition or is available in our files to indicate that the existing regulatory mechanisms appear to be adequate based on the increasing number of nesting pairs and nesting colonies in the United States, and the expanding nesting range in the United States. However, we cannot determine whether regulatory mechanisms are adequate until the habitat base is shown to be either sufficient or insufficient to minimize risk of extinction in all or a significant portion of the range of wood storks in the southeastern United States.

#### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

##### Evaluation of Information Provided in the Petition and Available in Service Files

Factor E. is discussed on p. 3 of the petition and on pp. 19–21 in our 5-year review of the species. Please refer to the 5-year review document for additional information.

The Intergovernmental Panel on Climate Change (IPCC) concluded that evidence of warming of the climate system is unequivocal (IPCC 2007a, p. 30). Numerous long-term changes have been observed, including changes in arctic temperatures and ice, widespread

changes in precipitation amounts, ocean salinity, wind patterns, and aspects of extreme weather, including droughts, heavy precipitation, heat waves, and the intensity of tropical cyclones (IPCC 2007b, p. 7). Species that are dependent on specialized habitat types, are limited in distribution, or are located in the extreme periphery of their range will be most susceptible to the impacts of climate change. Such species would currently be found at high elevations, extreme northern/southern latitudes, or are dependent on delicate ecological interactions or sensitive to nonnative competitors. While continued change is certain, the magnitude and rate of change is unknown in many cases.

The petition did not present specific information on whether global climate change has affected or is likely to affect the wood stork. Additionally, information on the subject of climate change in our files is not specific to the wood stork. While predictions of increased drought frequency, intensity, and duration suggest that nestling survival could be a limiting factor for the wood stork due to increased predation, the species possesses other biological traits (*i.e.*, adaptability to changing habitat conditions) to provide resilience to this threat. We have no evidence that climate changes observed to date have had any adverse impact on the wood stork or its habitat. Without additional information, the effect of long-term climate change on the wood stork is unclear. However, we will seek additional information regarding any potential effects of climate change during the status review process initiated under this 90-day petition finding.

Contaminants, harmful algal blooms such as red tide events, electrocution mortalities from power lines, road kill, invasion of exotic plants and animals, human disturbance, and stochastic events such as severe thunderstorms and hurricanes may affect the wood stork, but are not significant.

After a review of information in our files and in the petition, we find substantial information to indicate that other natural or manmade factors are a threat to the wood stork, but that the threat is not significant, except that without additional information, the effect of long-term climate change on the wood stork is unclear. However, we will seek additional information regarding any potential effects of climate change during the status review process.

#### **Finding**

The petition and supporting information in our files presents

substantial information on several factors affecting wood storks in the southeastern United States, including: Impacts of habitat modification and disruption of water regimes (Factor A); predation (Factor C); and contaminants, harmful algal blooms such as red tide events, electrocution mortalities from power lines, road kill, invasion of exotic plants and animals, human disturbance, and stochastic events (Factor E).

Of the five listing factors, Factor A (habitat destruction and modification) continues to be the leading threat to wood stork recovery. However, magnitude of this threat may be reduced due to the increase in wood storks and expansion of the breeding range from Florida into Georgia, South Carolina, and North Carolina. There are a number of regulatory mechanisms implemented by Federal and State agencies to protect wood storks and conserve their habitat. Whether habitat protection and conservation regulatory mechanisms are inadequate can only be assessed in terms of the wood stork population, and recent trends indicate that the range is still expanding and the breeding population has increased, suggesting that current conservation measures are sufficient to allow population growth. Other threats such as disease and predation and other natural or man-made factors (*i.e.*, contaminants, electrocution, road kill, invasion of exotic plants and animals, disturbance, and stochastic events) are known to occur but are not significant. We believe that the conclusions of the 5-year review regarding the listing factors and the recommended change in status of the species from endangered to threatened, as presented in the petition and as modified by any information in our files, still apply.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure to a factor and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice.

The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information must contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

Because we have found that the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that reclassifying the wood stork in the southeastern United States to threatened may be warranted, we are initiating a status review to determine whether reclassifying the wood stork in the southeastern United States to threatened under the Act is warranted. We will issue a 12-month finding as to whether the petitioned action is warranted. As part of our status review, we will examine newly available information on the threats to the species and make a final determination on a 12-month finding on whether the species should be listed as endangered or threatened under the Act. To ensure the status review is complete, we are requesting scientific and commercial information regarding the wood stork throughout its entire range (as described under the Request for Information section).

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

#### References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the U.S. Fish and Wildlife Service, Jacksonville Ecological Services Field Office (*see FOR FURTHER INFORMATION CONTACT*).

#### Author

The primary authors of this notice are staff of the Jacksonville Ecological Services Field Office (*see FOR FURTHER INFORMATION CONTACT*).

#### Authority

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

Dated: August 23, 2010.

**Wendi Weber,**

*Acting Deputy Director, Fish and Wildlife Service.*

[FR Doc. 2010-23138 Filed 9-20-10; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 223 and 224

[Docket No. 100903415-04-02]

RIN 0648-XW96

#### Listing Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List Atlantic Bluefin Tuna as Threatened or Endangered under the Endangered Species Act

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** 90-day petition finding; request for information.

**SUMMARY:** We, NMFS, announce a 90-day finding for a petition to list Atlantic bluefin tuna (*Thunnus thynnus*) as endangered or threatened under the Endangered Species Act (ESA) and to designate critical habitat concurrently with a listing. We find that the petition presents substantial scientific information indicating the petitioned action may be warranted. We will conduct a status review of Atlantic bluefin tuna to determine if the petitioned action is warranted. To ensure that the review is comprehensive, we solicit information pertaining to this species from any interested party.

**DATES:** Information related to this petition finding must be received by November 22, 2010.

**ADDRESSES:** You may submit comments, identified by RIN 0648-XW96, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail or hand-delivery: Assistant Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

All comments received are a part of the public record and will generally be