



# PACIFIC LEGAL FOUNDATION

March 31, 2014

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United States Department of the Interior  
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**CERTIFIED MAIL-RRR**

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**CERTIFIED MAIL-RRR**

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**CERTIFIED MAIL-RRR**

Re: 60-Day Notice of Intent To Bring a Citizen Suit Under the Endangered Species  
Act To Compel Reclassification of the Wood Stork (*Mycteria americana*)

Dear Ms. Jewell, Mr. Ashe, and Ms. Dohner:

Pursuant to Section 11(g) of the Endangered Species Act (ESA), 16 U.S.C. § 1540(g), this letter provides notice of intent to commence civil litigation for violation of Section (4)(b)(3) of the Act, 16 U.S.C. § 1533 (b), governing the reclassification of species. The Florida Home Builders Association intends to file suit after 60 days if the Secretary of the Interior and the U.S. Fish & Wildlife Service (Service) continue to violate statutory requirements for responding to a petition to downlist the wood stork (*Mycteria americana*) from endangered to threatened status.

## INTEREST OF PARTY

The Florida Home Builders Association (Home Builders) was established in 1949 and currently has approximately 7,000 corporate members located throughout the State of Florida. Home Builders members employ thousands of workers who produce millions of dollars in annual economic impact. Home Builders members operate businesses in areas inhabited by the wood stork. Therefore, Home Builders faces significant harm due to restrictions placed on

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construction, permitting, and land and water use due to the wood stork's outdated classification as an endangered species.

## NATURE OF CHALLENGE

The Service listed the wood stork (*Mycteria americana*) as an endangered species under the ESA in 1984. 49 Fed. Reg. 7332 (Feb. 28, 1984). In 1991, the Service completed a Five-Year Review of the wood stork. 56 Fed. Reg. 56882 (Nov. 6, 1991). After more than a decade without a subsequent review, Home Builders brought a lawsuit requesting a new five-year status review. As a result, a federal court ordered the Secretary of the Interior (Secretary) and Service to complete a new five-year status review of the wood stork and nearly 100 other Florida species overdue for review. *See Florida Home Builders Ass'n v. Norton*, 496 F. Supp. 2d 1330 (M.D. Fla 2007).

The Service completed the new status review in September, 2007. Based on the best scientific data available, the review recommended that the Service reclassify the wood stork from endangered to threatened status. *See Wood Stork Five-Year Review at 22 (available at [http://ecos.fws.gov/docs/five\\_year\\_review/doc1115.pdf](http://ecos.fws.gov/docs/five_year_review/doc1115.pdf))*. Notwithstanding the recommendation to reclassify, the wood stork is still listed as endangered.

As a result of the Service's delay, the Home Builders petitioned the Secretary and the Service in May, 2009, to downlist the wood stork from endangered to threatened, as recommended in the 2007 status review. Under Section 4 of the ESA, the government had 90 days to determine whether the petition may be warranted. More than a year later, the Service had still failed to conduct the "90-day review." Thus in July, 2010, pursuant to Section 11 of the ESA, Home Builders filed a 60-day Notice of Intent to Sue. In response, on September 21, 2010, the Service issued a "90-day finding" that the petition may be warranted. 75 Fed. Reg. 57426. This triggered a requirement under Section 4 that the Service determine within 12 months whether the petition is warranted, not warranted, or warranted but precluded. More than 15 months later, the Service had still failed to issue a 12-month finding. Accordingly, Home Builders filed another 60-day Notice of Intent to Sue in January, 2012.

The Service responded with a letter dated March 5, 2012, stating that it intended to publish a 12-month finding in May, 2012. In December, 2012, the Service issued its 12-month finding and announced its intent to downlist the wood stork, asking for comment from the public. 77 Fed. Reg. 75947 (Dec. 26, 2012), *correction to docket number published in* 78 Fed. Reg. 279 (Jan. 3, 2013). More than one year later, the Service has still not reclassified the wood stork, nor has it filed a related notice. Section 4(6)(A) of the ESA requires that the service publish a final

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regulation or an appropriate notice within one year from the date of the proposed rule's publication.

## CONCLUSION

The federal government's five-year status review unequivocally recommended that the Service downlist the wood stork (*Mycteria americana*) from endangered to threatened. In December, 2012, the Service published a "12-month finding" and a proposed rule to reclassify the wood stork as threatened. The Service has failed to act on its own recommendation and findings. It has failed to abide by the requirements of Section 4(6)(A) of the ESA. This letter is a notice that unless the Service adopts its own proposed rule to downlist, Home Builders will file suit to compel the reclassification.

Respectfully submitted,



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