



PACIFIC LEGAL FOUNDATION

November 21, 2012

Ms. Cynthia K. Dohner
Regional Director, Southeast Region 4
United States Fish and Wildlife Service
1875 Century Boulevard NE
Suite 400
Atlanta, GA 30345

Re: "Down listing" Wood Stork (*Mycteria americana*)

Dear Ms. Dohner:

On January 3, 2012, Pacific Legal Foundation (PLF) served a 60-day notice of intent (NOI) to sue under the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*) (ESA) on behalf of the Florida Home Builders Association (Home Builders). Therein PLF provided a chronology with regard to the wood stork as follows:

- The wood stork was listed as endangered under the ESA in 1984. 49 Fed. Reg. 7332 (Feb. 28, 1984).
- The United States Fish & Wildlife Service (Service) conducted a five-year status review of the species in 1991. 56 Fed. Reg. 56,882 (Nov. 6, 1991). After more than a decade without a subsequent review, however, the Secretary of Interior (Secretary) and Service were ordered by a federal court to complete a new five-year status review of the wood stork, and of nearly 100 other Florida species overdue for review, in a lawsuit brought by the Home Builders. *See Florida Home Builders Ass'n v. Norton*, 496 F. Supp. 2d 1330 (M.D. Fla 2007).
- The new five-year status review was completed in September, 2007. Based on the best available scientific information, the recommendation resulting from the review was to 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)*. Notwithstanding the recommendation to reclassify the wood stork, the southeastern population of the wood stork remained on the endangered species list.
- In May, 2009, Home Builders petitioned the Secretary and the Service to "down list" the wood stork from endangered to threatened as recommended in the Five-Year Review. Under Section 4 of the ESA, the government had 90 days to determine whether the petition may be warranted. When the 90-day determination was not forthcoming, Home

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Builders filed a 60-day Notice of Intent to sue in July, 2010, pursuant to Section 11 of the Act.

- On September 21, 2010, in response to the NOI, the Service issued a 90-day finding that the petition may be warranted. 75 Fed. Reg. 57,426. This triggered a statutory requirement (under Section 4) for the Service to determine within 12 months—after receiving a petition that may be warranted—whether the petition is warranted, not warranted, or warranted but precluded. Although it had been more than 13 months since the 90-day finding and 30 months since the petition was received, there had been no “12-month finding as required by law.
- The federal government’s five-year status review was unambiguous in recommending that the wood stork be reclassified from endangered to threatened. In response to a petition to “down list” the wood stork from endangered to threatened, the Service issued a 90-day finding that the petitioned action may be warranted. Contrary to law, there has been no 12-month finding” on the status of the species.

On January 3, 2012, the Secretary and Service were put on notice that if they did not issue a 12-month finding within 60 days, Home Builders (and other affected parties) would seek redress in court. On March 5, 2012, the Service responded by letter acknowledging receipt of PLF’s 60-day notice and indicating that it anticipated publishing a 12-month finding on the United States (U.S.) breeding population of the wood stork (*Mycteria americana*) in May, 2012. Six months after the promised publication date, nothing has been posted on the agency’s website indicating that the study was performed by the Service.

The substantial delay in preparing a 12-month finding on the U.S. breeding population of the wood stork is unauthorized under the law and requires that PLF seek redress in court on behalf of the Home Builders (and other affected parties). Please be advised that such redress will be pursued if the 12-month finding is not issued within the next 60 days.

Thank you for your attention.

Sincerely,



ALAN E. DESERIO
Managing Attorney
Atlantic Center