

IN UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF FLORIDA  
Ocala Division

SAVE CRYSTAL RIVER, INC., )

Plaintiff, )

v. )

SALLY JEWELL, in her official capacity as Secretary )  
of the United States Department of the Interior; )  
DANIEL M. ASHE, in his official capacity as )  
Director of the United States Fish and Wildlife )  
Service; UNITED STATES DEPARTMENT OF THE )  
INTERIOR; and UNITED STATES FISH AND )  
WILDLIFE SERVICE; )

Defendants. )

No. 5:15-cv-491-Oc-41PRL

**PLAINTIFF'S COMPLAINT  
FOR DECLARATORY  
JUDGMENT AND  
INJUNCTIVE RELIEF**

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**INTRODUCTION**

1. This suit arises under the Endangered Species Act (ESA) and the Administrative Procedure Act (APA). *See* 5 U.S.C. § 706(1). It seeks to hold Defendants—United States officials and agencies—accountable for their failure to make a finding on a petition seeking the reclassification of the West Indian manatee within 12 months of the determination that the Petition may be warranted, as required by federal law.

2. In late 2012, Plaintiff, Save Crystal River, Inc. (SCR), duly submitted a Petition under 16 U.S.C. § 1533(b)(3)(A) requesting that Defendants downlist the West Indian manatee and its subspecies from endangered to threatened status. On July 2, 2014, the Defendants issued a belated 90-day finding, stating that the petition presents substantial scientific or commercial information indicating that the reclassification may be warranted. *See* 79 Fed. Reg. 37,706. Pursuant to 16 U.S.C. § 1533(b)(3)(B) of the ESA, the Service

then had 12 months to make and publish one of three findings: (1) the petitioned action is not warranted; (2) the petitioned action is warranted and implement a proposed regulation; or (3) the petitioned action is warranted, but immediate promulgation of a final regulation is precluded by pending proposals. Although it has been more than 12 months since the Defendants published the determination that SCR's petition may be warranted, the Defendants still have not issued a 12-month finding. Therefore, Defendants violated the ESA, and unlawfully withheld or unreasonably delayed required agency action in violation of the APA. *See* 5 U.S.C. § 706(1).

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction pursuant to 5 U.S.C. § 702 (judicial review of agency action); 16 U.S.C. § 1540(c) (actions arising under the ESA); 16 U.S.C. § 1540(g) (citizen suits arising under the ESA); 28 U.S.C. § 1331 (civil action arising under the laws of the United States); and 28 U.S.C. § 2401(a) (6-year statute of limitations for civil suits against the United States).

4. On December 14, 2012, Plaintiff filed a Petition asking Defendants to downlist the West Indian manatee. The Petition is entitled PETITION OF SAVE CRYSTAL RIVER, INC., TO DOWNLIST THE WEST INDIAN MANATEE (TRICHECHUS MANATUS) AND SUBSPECIES THEREOF, INCLUDING THE FLORIDA MANATEE (TRICHECHUS MANATUS LATIROSTRIS) AND ANTILLEAN MANATEE (TRICHECHUS MANATUS MANATUS) (IN PUERTO RICO AND THE U.S. VIRGIN ISLANDS), FROM ENDANGERED TO THREATENED UNDER THE ENDANGERED SPECIES ACT. The Petition is attached hereto as Exhibit 1, and is incorporated by reference. To date, Defendants have failed to make a statutorily required initial finding on the Petition.

5. By July 15, 2015, Plaintiff provided Defendants with a 60-Day Notice of Intent To Bring a Citizen Suit Under the Endangered Species Act pursuant to 16 U.S.C. § 1540(g),

as required by the ESA. Plaintiff has attached a copy of this notice as Exhibit 2 and incorporates it by reference.

6. Venue in this district is proper under 28 U.S.C. § 1391(e)(1) because a substantial part of the events or omissions giving rise to the claims occurred in this district, and because Plaintiff resides in this district as defined by 28 U.S.C. § 1391(d).

## **PARTIES**

### **Plaintiff**

7. Plaintiff Save Crystal River, Inc. (SCR), is a Florida not-for-profit corporation. It is a nonpolitical organization of citizens from Crystal River, Citrus County, Florida, who wish to protect their individual property rights and enhance the quality of life for citizens of Crystal River and the surrounding area. The mission of SCR is to educate the public regarding current environmental, property, and riparian rights in an effort to effectively preserve a proper balance between nature and human activity. The specific purpose of SCR is to represent the interests of the citizens of Crystal River against excessive government regulation of the Crystal River and the resources of the surrounding area. SCR filed the Petition at issue here.

### **Defendants**

8. Defendant Sally Jewell is sued in her official capacity as Secretary of the United States Department of the Interior (Secretary). Secretary Jewell's official duties include ensuring timely responses to petitions filed under 16 U.S.C. § 1533(b)(3)(A).

9. Defendant Daniel M. Ashe is sued in his official capacity as Director of the United States Fish and Wildlife Service (Director). The Secretary delegates ESA authority to the Director, who is responsible for responding to petitions filed under 16 U.S.C. § 1533(b)(3)(A).

10. Defendant United States Department of the Interior is an agency of the United States that administers and implements the ESA, including responding to petitions filed under 16 U.S.C. § 1533(b)(3)(A).

11. Defendant United States Fish and Wildlife Service is an agency within the Interior Department which has the delegated responsibilities of administering and implementing the ESA, including responding to petitions filed under 16 U.S.C. § 1533(b)(3)(A).

### **GENERAL ALLEGATIONS**

12. The ESA authorizes Defendants to list species as either endangered or threatened due to the existence of any of several factors. 16 U.S.C. § 1533(a)(1)(A)-(E). Those factors are:

- (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.

*Id.*

13. The ESA requires Defendants to make listing determinations “solely on the basis of the best scientific and commercial data available.” 16 U.S.C. § 1533(b)(1)(A).

14. The ESA also requires Defendants to conduct status reviews, at least once every five years, of all listed species, to determine whether any species should be reclassified (i.e., removed from the list (delisted), changed in status from an endangered species to a threatened species (downlisted), or changed in status from a threatened species to an endangered species (uplisted)). 16 U.S.C. § 1533(c)(2)(A)-(B).

15. The ESA authorizes interested persons to petition Defendants to reclassify listed species. 16 U.S.C. § 1533(b)(3)(A).

16. Within 90 days of receiving a petition to reclassify a species, Defendants are required to “make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted.” 16 U.S.C. § 1533(b)(3)(A).

17. Once Defendants publish a determination that a petition presents substantial scientific or commercial information indicating that the reclassification may be warranted under 16 U.S.C. § 1533(b)(3)(A), Defendants must “promptly commence a review of the status of the species concerned.” *Id.* Defendants then have 12 months to make and publish in the Federal Register a finding that either the petitioned action is not warranted or it is warranted. 16 U.S.C. § 1533(b)(3)(B). If the petitioned action is warranted, the Defendants must either publish a proposed rule implementing the petitioned action, or it must publish a notice that timely promulgation of a rule is precluded by pending proposals to determine whether any species is endangered or threatened. 16 U.S.C. § 1533(b)(3)(B)(ii)-(iii).

#### **FACTUAL ALLEGATIONS**

18. The West Indian manatee, including its subspecies, the Florida manatee and Antillean manatee, is listed as an endangered species by Defendants.

19. In 2007, Defendants conducted a 5-year review of the West Indian manatee, which recommended that it be downlisted or delisted. *See* Exhibit 1 at 6-7. The status review states that “manatees appear to exceed the considerations necessary for reclassification to a species of special concern, or perhaps to be listed as recovered,” noting that “[r]easons for such consideration include an increasing population for more than 20 years, full occupation of its habitat without significant restriction on forage, water, or reproductive areas, and virtually no real probability of the manatee becoming extinct in the next 100 years due to boat interactions.” *Id.*

20. On or around December 14, 2012, Defendants received Plaintiff's Petition requesting that Defendants downlist the West Indian manatee and its subspecies from endangered to threatened status.

21. On July 2, 2014, Defendants published a 90-day finding that the Plaintiff's Petition presents substantial scientific or commercial information indicating that the reclassification may be warranted, pursuant to 16 U.S.C. § 1533(b)(3)(A).

22. Defendants did not make the required 12-month finding on Plaintiff's Petition by July 2, 2015, and have still not done so more than two months later. Therefore, Defendants violated the ESA, and unlawfully withheld or unreasonably delayed required agency action in violation of the APA. *See* 5 U.S.C. § 706(1); 16 U.S.C. § 1533(b)(3)(B).

#### **ALLEGATIONS SUPPORTING DECLARATORY RELIEF**

23. Plaintiff re-alleges the allegations contained in paragraphs 1 through 22 as though fully set forth herein.

24. An actual and substantial controversy exists between Plaintiff and Defendants over the Defendants' duty to comply with the ESA and the APA to make a 12-month finding on Plaintiff's Petition. 16 U.S.C. § 1533(b)(3)(B).

25. This case is justiciable because Defendants have failed to timely comply with their nondiscretionary duty to make a 12-month finding on Plaintiff's Petition, as required by the ESA. 16 U.S.C. § 1533(b)(3)(B).

26. Declaratory relief will clarify the rights and obligations of the parties and is, therefore, appropriate to resolve this controversy.

#### **ALLEGATIONS SUPPORTING INJUNCTIVE RELIEF**

27. Plaintiff re-alleges the allegations contained in paragraphs 1 through 22 as though fully set forth herein.

28. Plaintiff has been injured by Defendants' failure to comply with the ESA and the APA and issue the required 12-month finding on Plaintiff's Petition. Plaintiff will be

irreparably harmed if an injunction does not issue enjoining the Defendants from continuing to evade their duty to make a 12-month finding.

29. Plaintiff has no plain, speedy, or adequate remedy at law.

30. Plaintiff's claims for relief are ripe.

31. If not enjoined by this Court, Plaintiff alleges on information and belief that Defendants will continue to violate the law that requires them to issue a 12-month finding for Plaintiff's Petition.

32. Accordingly, injunctive relief is appropriate.

**FIRST CAUSE OF ACTION  
(Violation of the ESA, 16 U.S.C. § 1533(b),  
Failure To Make a Timely Finding  
on a Petition To Reclassify a Species)**

33. Plaintiff re-alleges the allegations contained in Paragraphs 1 through 22 as though fully set forth herein.

34. The ESA, 16 U.S.C. § 1533(b)(3)(B), requires Defendants, “[w]ithin 12 months after receiving a petition that is found . . . to present substantial information indicating that the petitioned action may be warranted” and then must make and publish one of the following findings in the Federal Register: (i) The petitioned action is not warranted; (ii) the petitioned action is warranted and a proposed regulation implementing the action; or (iii) the petitioned action is warranted, but cannot be immediately implemented due to other pending proposals.

35. Defendants made a belated 90-day finding on Plaintiff's Petition on July 2, 2014. *See* 79 Fed. Reg. 37,706-01. But they still have not issued a 12-month finding as required by the ESA. 16 U.S.C. § 1533(b)(3)(B).

36. Defendants' failure to make a 12-month finding on Plaintiff's Petition in the manner required by 16 U.S.C. § 1533(b)(3)(B) violates the ESA and is unlawful.

**SECOND CAUSE OF ACTION  
Violation of APA, 5 U.S.C. § 706(1),  
Unlawfully Withholding or Unreasonably  
Delaying Agency Action)**

37. Plaintiff re-alleges the allegations contained in Paragraphs 1 through 22 as though fully set forth herein.

38. The ESA, 16 U.S.C. § 1533(b)(3)(B), requires Defendants, “[w]ithin 12 months after receiving a petition that is found . . . to present substantial information indicating that the petitioned action may be warranted,” and the Defendants must make and publish one of the following findings in the Federal Register: (i) the petitioned action is not warranted; (ii) the petitioned action is warranted and a proposed regulation implementing the action; or (iii) the petitioned action is warranted, but cannot be immediately implemented due to other pending proposals.

39. Defendants made a 90-day finding on Plaintiff’s Petition on July 2, 2014. *See* 79 Fed. Reg. 37,706-01. But they still have not issued a 12-month finding as required by the ESA. 16 U.S.C. § 1533(b)(3)(B).

40. Defendants’ failure to make a 12-month finding on Plaintiff’s Petition constitutes agency action unlawfully withheld or unreasonably delayed in violation of 5 U.S.C. § 706(1).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment from this Court as follows:

1. A declaratory judgment under 28 U.S.C. §§ 2201(a) and 2202 determining and declaring that Defendants’ failure to comply with their nondiscretionary duty to make a 12-month finding on Plaintiff’s Petition is a violation of the ESA;

2. A declaratory judgment under 28 U.S.C. §§ 2201(a) and 2202 that Defendants’ failure to comply with their nondiscretionary duty to make a 12-month finding on Plaintiff’s Petition constitutes agency action unlawfully withheld in violation of the APA;



3. A mandatory injunction compelling Defendants to make a 12-month finding on Plaintiff's Petition by a date certain;

4. An award to Plaintiff of reasonable attorney fees and expert fees in bringing and maintaining this action pursuant to 16 U.S.C. § 1540(g)(4);

5. An award to Plaintiff of costs of suit pursuant to Federal Rule of Civil Procedure 54(d); and

6. An award to Plaintiff of any other relief that the Court deems just and proper under the circumstances of this case.

DATED: September 24, 2015.

Respectfully submitted,

By   
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