

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY  
378 Main Street  
Tucson, AZ 85701;

DEFENDERS OF WILDLIFE  
1130 17th Street NW  
Washington, DC 20036;

and

SAVE THE MANATEE CLUB  
533 Versailles Dr., Ste 100  
Maitland, FL 32751,

*Plaintiffs,*

v.

U.S. FISH AND WILDLIFE SERVICE  
1849 C Street NW  
Washington, DC 20240,

*Defendant.*

Case No.: \_\_\_\_\_

---

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

## INTRODUCTION

1. Plaintiffs Center for Biological Diversity (Center), Defenders of Wildlife (Defenders), and Save the Manatee Club challenge the unlawfully withheld and/or unreasonably delayed actions by the U.S. Fish and Wildlife Service (FWS) in failing to take final action on Plaintiffs’ “Petition for a Rule to Revise Critical Habitat for the Florida Manatee” dated December 19, 2008 (2008 Petition). In particular, FWS has failed to propose and finalize a regulation to revise the critical habitat designation for the Florida manatee, despite finding in January 2010 that a revision of critical habitat is “warranted” in order to provide for the conservation of the manatee. 75 Fed. Reg. 1574 (Jan. 12, 2010). Critical habitat designation is one of the essential mechanisms embodied in the Endangered Species Act (ESA) for ensuring the survival and effectuating the recovery of imperiled species such as the Florida manatee.

2. The Florida manatee (*Trichechus manatus latirostris*)<sup>1</sup> was listed in the first class of endangered species in 1967 under the Endangered Species Preservation Act, the forerunner to the ESA. FWS designated critical habitat for the manatee in 1976, delineating waterways in Florida that were known to be important concentration areas for manatees at that time.

3. On December 19, 2008, the Center, Defenders, and Save the Manatee Club petitioned FWS under the Administrative Procedure Act (APA) and ESA to undertake a rulemaking to revise critical habitat for the Florida manatee because, during the preceding three decades, Congress and FWS had changed the meaning of critical habitat, the original critical habitat designation lacked elements required by those changes, and new scientific information existed regarding where and how manatees used habitat since the designation.

---

<sup>1</sup> References to “manatee” in this complaint refer to the Florida manatee.

4. More than a decade ago, FWS determined that the revision was “warranted” to protect the manatee’s habitat and promote the species’ recovery. This determination was consistent with FWS’s earlier findings, in its own formal recovery plans for the manatee, that the manatee’s critical habitat designation was outdated and needed to be revised. Yet FWS has never undertaken the rulemaking process required to implement that long-overdue revision. Nor, given FWS’s egregious delay, is there any likelihood that FWS will embark on the rulemaking in the near future absent relief from this Court.

5. Meanwhile, Florida manatees and their habitat continue to face dire and imminent threats, including the loss of warm-water refuges and poor water quality that causes persistent harmful algal blooms and a profound loss of seagrass, a crucial food source, leading to mass starvation. Compounding these threats are a growing number of boat strikes and severe weather events caused by climate disruption.

6. In 2021, more than 1,100 Florida manatees died due to cold-related stress, starvation, boat strikes, and toxic red tides. This reflects approximately 13% of the manatee’s estimated total population and is more than double its five-year annual mortality average.

7. Given the ever-worsening threats to the Florida manatee and its habitat, and in light of the agency’s obligations to protect this species, FWS’s protracted failures to propose and finalize a regulation to revise critical habitat in response to Plaintiffs’ 2008 Petition constitute agency actions unlawfully withheld and unreasonably delayed in violation of the ESA and APA. Plaintiffs seek declaratory and injunctive relief to remedy these violations, including an order from the Court setting dates certain for FWS to act.

## **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action under 16 U.S.C. § 1540(g) (ESA citizen suit provision)<sup>2</sup> as well as 28 U.S.C. § 1331 because this case presents a federal question under the laws of the United States, including the ESA and APA. An actual, justiciable controversy exists between Plaintiffs and FWS. The APA waives FWS's sovereign immunity. 5 U.S.C. § 702. The requested relief is proper under 28 U.S.C. §§ 2201–2202 (Declaratory Judgment Act) and 5 U.S.C. §§ 701–706 (APA).

9. Venue in this Court is proper under 28 U.S.C. § 1391(e)(1). This action is brought against FWS, an agency of the United States, headquartered in Washington, DC. The Department of the Interior, of which FWS is a component agency, is headquartered in Washington, DC. In addition, Plaintiff Defenders is headquartered in Washington, DC, and Plaintiff Center maintains an office in this judicial district.

## **PARTIES**

### **Plaintiffs**

10. Plaintiff Center is a nonprofit 501(c)(3) organization incorporated in the State of California with offices across the country, including in Washington, D.C., Arizona, California, Florida, New York, North Carolina, Oregon, and Washington, and in Baja California Sur, Mexico. The Center works through science and environmental law to advocate for the protection of endangered, threatened, and rare species and their habitats both in the United States and abroad. The Center has over 81,800 active members, including members who reside in and travel to areas where manatees feed, breed, and migrate.

---

<sup>2</sup> Plaintiffs provided notice of their intent to sue FWS for these violations more than 60 days ago.

11. The Center brings this action on behalf of itself and its members, many of whom enjoy observing, photographing, and appreciating the Florida manatee in its natural habitat. The Center's members regularly engage in these activities in various locations within Florida from land and water and will continue to do so in the future.

12. For example, one of the Center's members resides in St. Petersburg, Florida, but travels throughout Florida in the hopes of seeing wildlife, including the Florida manatee. She photographs manatees while diving in their habitat, including in springs and nearshore waters of St. Petersburg, St. Augustine, and the Florida Keys. She went on at least ten dive trips in the summer of 2021 and has concrete plans to continue visiting these areas to see manatees and their habitat in 2022 and the foreseeable future.

13. Plaintiff Defenders is a nonprofit 501(c)(3) membership organization dedicated to the protection and restoration of all native wild animals and plants in their natural communities and the preservation of the habitats on which these species depend. Headquartered in Washington, D.C., Defenders has regional and field offices in Alaska, Arizona, California, Colorado, Florida, Montana, New Mexico, North Carolina, Ohio, Oregon, Texas, Washington, and Wyoming. Defenders has nearly 2.2 million members and activists across the United States, including more than 124,000 living in Florida where manatees live, feed, breed, and migrate.

14. Defenders brings this action on behalf of itself and its members, many of whom enjoy observing, photographing, and appreciating the Florida manatee in its natural habitat. Defenders' members regularly engage in these activities in various locations within Florida from land and water and will continue to do so in the future.

15. For example, one of Defenders' members enjoys viewing manatees as often as she can. A deciding factor in where she chose to live—Winter Park, Florida—was that the city is

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.