



Public Comments Processing  
Attn: FWS-R4-ES 2012-0020  
Division of Policy and Directives Management  
U.S. Fish and Wildlife Service  
4401 N. Fairfax Drive  
Suite 222  
Arlington, VA 22203

February 25, 2013

Re: Reclassification of the continental U.S. breeding population of the woodstork from endangered to threatened.

Greetings:

South Florida Wildlands Association (SFWA) is pleased to submit these comments concerning the U.S. Fish and Wildlife Service's (FWS) proposed downlisting of the wood stork from endangered to threatened, published in the Federal Register on December 26, 2012, at 77 FR 75947, Docket No. FWS-R4-ES-2011-0020.

SFWA was founded in March of 2010 to protect wildlife, wilderness, and habitat in the Greater Everglades. Our staff, volunteers, and members all have a deep connection to south Florida and work hard to protect what remains of the natural ecosystem. In addition to being engaged in policy work, we also try to spend as much time as possible in the places we are trying to protect. While a part of the attraction to those places is the unique beauty of the landscape, nothing is more important than the occasional glimpses we get of south Florida's varied wildlife. The wood stork is high on the list of the animals we enjoy seeing and a big part of our outdoor experience. SFWA members and our guests obtain great delight in watching these birds forage in shallow waters, attend to hatchlings in the nest, or fly gracefully past us on enormous black and white wings. Alongside animals like the Florida panther, alligator, black bear and manatee, the wood stork is one of the truly iconic and beloved creatures of south Florida.

With that in mind, we were extremely distressed to learn - unfortunately at nearly the eleventh hour through a colleague - that FWS was in the final stages of moving the wood stork from endangered to threatened. We disagree with the service that no management changes would occur as a result of the transition from endangered to threatened. This PDF produced by the FWS itself clearly demonstrates that less protection - including "take" - is permissible for a threatened species while protection and consultation by FWS is far more rigorous for a species considered endangered.

<http://www.fws.gov/midwest/wolf/esastatus/t-vs-e.pdf>

Furthermore, section 4 of the Endangered Species Act (ESA) outlines the basis for the original listing of the woodstork as endangered. According to the ESA - "any" of the following factors would be sufficient. However in the case of the woodstork, multiple criteria were and still are applicable.

- (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.

We will take up each of these with regard to the current status of the woodstork.

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

There is no question that the woodstork has suffered tremendous habitat loss in modern times. In an FWS publication entitled "Wetland Losses in the United States: 1780's to 1980's" the service states that, outside the State of Alaska, "Florida has lost the most acreage cover -- 9.3 million acres." This is an area greater than 6 times the size of Everglades National Park. Virtually all of those wetlands were at one time nesting or foraging habitat for woodstorks.

This trend is echoed by the Florida Fish and Wildlife Conservation Commission's "Wildlife 2060 - What's at Stake for Florida" - a report on the projected impact to Florida's wildlife from the expected doubling of the state's human population:

"More than 2 million of the 7 million acres projected to be developed by 2060 lie within a mile of existing public conservation lands. So, even though we've protected several million acres of wildlife management areas, parks, forests and preserves in Florida, these lands will become increasingly isolated from one another.

For wildlife, this means their remaining habitats will come to be islands within an urban sea. And these disconnected fragments of habitat will support reduced populations of animals and plants more vulnerable to extinction as their genetic viability declines."

See: <http://myfwc.com/media/129053/FWC2060.pdf>

Much of this lost land will be foraging, nesting or breeding habitat for the woodstork. Somewhat ironic writing from an agency whose own comments on the change in status of the woodstork paint a rosy picture of ever increasing woodstork populations. However, this is completely inconsistent with the ongoing loss and projected loss of wetlands in the state which is still the most important for the future of the woodstork. The "infilling" of

the Florida peninsula will by all accounts have devastating impacts on all of Florida's wildlife.

It should be noted that this development is hardly hypothetical or relegated to the future. Projects currently on the table which will of certainty reduce habitat for the woodstork include:

- two massive new nuclear reactors on the shores of Biscayne Bay at Florida Power and Light's (FPL) Turkey Point facility.
- construction of a massive powerline corridor from Turkey Point to Broward County through many miles of wetlands and woodstork habitat in Miami Dade County - including 7 miles of what is currently the Shark River Slough area of Everglades National Park (FPL has proposed taking possession of the eastern side of Everglades National Park in exchange for an unused corridor it owns within the park). NPS has identified no less than 3 woodstork colonies in the vicinity of the proposed powerlines.
- Another FPL project - a massive 3,750 MW gas-fired power plant in southeast Hendry County is proposed on 3000 acres of mixed wetlands (and woodstork habitat). FPL is seeking up to 23.5 Million gallons a day of water for cooling - which will further impact wetlands in a much larger area surrounding the proposed plant.
- construction of "new towns" in the western Everglades/Big Cypress region including expansion of the existing town of Ave Maria and the construction of the still to be built town of Big Cypress.
- Road building and expansion throughout the woodstork's breeding range in south Florida including the 6-laning of Oil Well Road, the 4 laning of SR 80, and the proposed construction of the massive Heartland Parkway with up to 150 miles of major highway across wetlands and woodstork habitat in southwest Florida.

Similar projects are slated for other parts of the woodstork's range in central and north Florida and in the states where the woodstork has recently migrated to escape the currently undesirable hydrologic conditions of south Florida. The massive new community planned for tens of thousands of acres of mixed wetlands on Miami Corporation's "Farmton" property comes immediately to mind.

It should be pointed out that the mitigation proposed for the enormous loss of wetlands these projects entail would not be likely to produce new or additional wetlands. This description of the Farmton Mitigation Bank explains clearly how mitigation simply sets aside wetlands (for non-development) to offset areas that are lost.

<http://farmtonmitigationbank.com/>

The compensation only happens on paper. In reality, wetlands throughout Florida continue to shrink.

(c) Disease or predation

Woodstorks are certainly subject to mercury poisoning from the bioaccumulation of biologically active mercury compounds in prey species throughout the woodstork's range:

<http://www.ncbi.nlm.nih.gov/pubmed/12395855>

Woodstorks have also been documented as prey for the highly invasive Burmese python. As pythons continue to multiply and spread, the potential for increased predation is likely.

d) The inadequacy of existing regulatory mechanisms. The aforementioned loss of 9 million acres of Florida's wetlands is testament to the lax regulatory environment which has catapulted Florida to the third most populous state in the United States in a short time. County Commissions frequently approve projects based solely on hoped for economic benefits - while the FWS seldom steps in to stop a project which could be injurious to an endangered or threatened species. The FWS has a near perfect record of approving project after project in Florida panther habitat based on the mistaken notion that since each project will not by itself lead to the panther's extinction, the project can go ahead with "mitigation". The same has been true for wood stork habitat. And with the demise of the Florida Department of Community Affairs in 2011 - the state has lost the one growth "watchdog" agency which could and did function to stop sprawl and injurious development. The new agency which has replaced the DCA - the Department of Economic Opportunity has a very different mission - jobs creation. As a Collier County Commission characterized growth management in his county and throughout Florida under the current legislature - the counties have what amounts to a blank check to approve new development.

On the economic side of the argument, it should also be pointed out that the Florida Department of Environmental Protection's 2011 Outdoor Recreation Survey demonstrated that approximately half of Florida's tourists and residents participate in "wildlife watching" - making it the second most important outdoor recreational activity in the state (after going to the beach). As the woodstork is a sought after bird for wildlife watchers - there is tremendous economic incentive to provide the woodstork with all the protection necessary. Coupled with the unknown future of the bird - where it's historic home range has crashed in terms of nesting productivity - the FWS should use its professional discretion and maintain full protection of the woodstork under its current "endangered" status.

The following notes were prepared by Mara Shlackman, current legal director of SFWA. We include them here. Given the shortness of time we would also like to incorporate by reference the entirety of the Conservancy of Southwest Florida's recent comments on this topic (prepared by Amber Crooks). Our colleagues at the Conservancy did an admirable

and thorough job of demonstrating the precarious nature of woodstork populations - and the need to maintain the "endangered" status.

Notes from Mara Shlackman:

FWA opposes the downlisting for the reasons set forth below.

The situation of the wood stork is bad now and getting worse. In 2012, every single wood stork nest in south Florida, 820 in all, either failed or was abandoned (see <http://www.npr.org/2013/02/03/170993762/wood-storks-endangered-status-is-up-in-the-air>). Research has estimated that the south Florida subpopulation of wood storks has a 69% likelihood of declining by 90% over the next 30 years (see <http://udini.proquest.com/view/modeling-population-viability-and-pqid:1992440851/>).

Factors contributing to this anticipated decline include droughts that will be increasing in frequency, intensity, and duration, 77 FR at 75959, and the ongoing loss of foraging habitat, with continued new development and accompanying roads and other infrastructure, 77 FR at 75954. Examples in south Florida of continued development that will negatively affect habitat for the wood stork include the proposed FPL natural gas plant in Hendry County, 130 miles of planned off-road vehicle trails in Big Cypress National Preserve's Addition Lands, the planned Town of Big Cypress, and continued development in Naples and Fort Myers.

Downlisting of wood storks from endangered to threatened would allow USFWS to scale back protection to the wood stork, expanding the circumstances under which "take" is permitted, and under which permits for "take" may be issued (see <http://www.fws.gov/endangered/esa-library/pdf/t-vs-e.pdf>).

USFWS has stated that downlisting could be considered when (1) there are 6,000 nesting pairs, and (2) annual average regional productivity is greater than 1.5 chicks per nest per year. 77 FR at 75955. Both criteria are calculated over a 3-year average. Id. USFWS acknowledges that it lacks the data to determine whether its productivity criterion of 1.5 chicks per nest per year is being satisfied, noting that less than 25% of the colonies were surveyed for productivity in the last 4 years. 77 FR at 75956. Downlisting should not be done when USFWS lacks the data to determine whether one of its own two criteria for downlisting have been met, when the status of the wood stork in south Florida is poor and declining, and when the threats to the wood stork will increase over time.

Part of endangered species listing is in a significant portion of its range.

Sincerely,

Matthew Schwartz  
Executive Director  
South Florida Wildlands Association