

Memorandum



Date: March 23, 2022

Agenda Item No. 2(B)(12)
May 3, 2022

To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Update on Federal Agency Actions Related to Endangered Species Act - Directive No. 150351

On April 21, 2015, the Board of County Commissioners (Board) adopted Resolution No. R-332-15, which I sponsored when I was a Commissioner, directing the County Mayor or County Mayor’s designee to monitor Federal Agency actions related to the Endangered Species Act that could substantially impact Miami-Dade County or properties within the County, and to prepare a report to be placed on an agenda of the Board within 60 days of learning of any such federal agency action.

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) recently announced the proposed delisting of Johnson’s seagrass (*Halophila johnsonii*) and the proposed removal of designated critical habitat for Johnson’s seagrass. These actions are based on newly obtained genetic data that demonstrate that Johnson’s seagrass is not a unique taxon but rather a clone of an Indo-Pacific species, *Halophila ovalis*. The proposed rule comment period was from December 22, 2021 to February 22, 2022. Delisting Johnson’s seagrass and removal of the designated critical habitat are specific to the Endangered Species Act and would have no effect on other federal, state, county or local seagrass protections that may be in place.

The Endangered Species Act (ESA) defines an endangered species as one currently in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become endangered within the foreseeable future. When a species is listed under the ESA, the NMFS is required, where possible, to identify areas essential to the conservation of that species, known as critical habitat. The areas selected for designation are selected using the best available scientific data.

Given the extremely limited geographical distribution of Johnson’s seagrass (about 200 kilometers (km) of Florida coastline) which includes northern Biscayne Bay (see Attachment A), its limited reproductive potential (only asexual reproduction), and the variety of threats that could affect survival, NMFS conducted a status review to consider whether it should be added to the Federal List of Threatened and Endangered Species. NMFS published a proposed rule to list the species as threatened on September 15, 1993, and a proposed rule to designate critical habitat on August 4, 1994. Additional research on the ecology of this species subsequently became available and was considered an updated status review, which was completed in 1997. NMFS published a final rule listing Johnson’s seagrass as a threatened species in 1998 and final rule designating critical habitat in 2000.

Under section 4(c)(1) and 4(c)(2) of the ESA, the Secretary is required to periodically review and revise the Federal List of Endangered and Threatened Species and consider, among other things, whether a species’ listing status should be changed, including whether the species should be removed from the list. Pursuant to implementing regulations for the ESA at 50 CFR 424.11(e)—the Secretary shall delist a species if, after conducting a status review based on the best scientific and commercial data available, the Secretary determines: (1) The species is extinct; (2) the species does not meet the definition of an endangered species or threatened species; or (3) the listed entity does not meet the statutory definition of

a species. When conducting a status review, if it is determined that the entity under review does not meet the statutory definition of a species, the status review would conclude at that point without further evaluation because NMFS can only list entities that qualify as species under the ESA. In this case, NMFS status review is an assessment of the best scientific and commercial data available as presented in this proposed rule, which supports the determination that Johnson's seagrass does not meet the statutory definition of a species. As presented in Waycott *et al.* (2021) and independently confirmed by four expert reviewers from the NOAA Genetics Group, the results indicate Johnson’s seagrass is a single clone of a morphological variant of *Halophila ovalis*, and therefore, is not a unique species.

The best scientific and commercial data available demonstrate that Johnson’s seagrass is not a unique taxon but rather a morphological variant of *Halophila ovalis* and thus it is not a species eligible for listing under the ESA. Therefore, NMFS is proposing to remove Johnson’s seagrass from the Federal List of Threatened and Endangered species.

Delisting Johnson’s seagrass will result in the protections of the ESA being no longer applicable. Since critical habitat can only be designated for species listed under the ESA, delisting of Johnson’s seagrass would also trigger the need to remove the currently designated critical habitat, as is proposed. In addition, because *Halophila ovalis* is not listed as an endangered or threatened species under the ESA, the proposed delisting of Johnson’s seagrass would have no effect on the status of *Halophila ovalis*.

The delisting of Johnson’s would not affect existing County regulations requiring the avoidance and minimization of impacts to benthic resources, regardless of the species’ listing status. The delisting of Johnson’s and the removal of its critical habitat would result in changes to federal regulatory consultation requirements specific to Johnson’s protection. The US Army Corps of Engineers has delegated to Miami-Dade County regulatory authority over certain coastal construction pursuant to the conditions of the federal Programmatic General Permit SAJ-42 on behalf of the Army Corps. Therefore, the delisting of Johnson’s would result in minor changes to the County’s delegation that may further streamline the permitting process by enabling the County to authorize additional work in tidal waters on behalf of the federal government.

Note that Appendix A of the Conservation, Aquifer Recharge and Drainage Element of the Miami-Dade County Comprehensive Development Master Plan includes Johnson’s on the “List of Federal, State and County Endangered, Threatened, Rare, and Special Concern Flora In Miami-Dade County”.

Frequently Asked Questions PDF is available at the following link:

[Frequently Asked Questions on the Removal of Johnson's seagrass from the Endangered Species Act | NOAA Fisheries.](#)

In accordance with Ordinance 14-65, this report will be placed on the next available Board meeting agenda. If you have any questions or require additional information, please contact Lee N. Hefty, Assistant Director, Division of Environmental Resources Management, Department of Regulatory and Economic Resources at Lee.Hefty@miamidade.gov.

Attachment A: Map of Johnson’s Seagrass (*Halophila johnsonii*) Critical Habitat

c: Geri Bonzon-Keenan, County Attorney

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Office of the Mayor Senior Staff
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Lee N. Hefty, Assistant Director, Department of Regulatory and Economic Resources
Yinka Majekodunmi, Commission Auditor
Jennifer Moon, Chief, Office of Policy and Budgetary Affairs
Basia Pruna, Director, Clerk of the Board
Eugene Love, Agenda Coordinator

Attachment A: Johnson's Seagrass | NOAA Critical Habitat Map

