

USFWS Decides Not to List Eastern Population of Gopher Tortoises Under Endangered Species Act

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In October, the US Fish & Wildlife Service published its Notice of Findings following the completion of the Species Action Plan for the Eastern and Western Distinct Population Segments of the gopher tortoise; the Western population had been listed as “threatened” under the Endangered Species Act, while the Eastern population (including Florida) was proposed for listing but a listing decision had been deferred for multiple years due to higher agency priorities. Updating the Species Action Plan began in 2019 and concluded with the publication of the Notice of Findings. 87 Fed. Reg. 61,834 (October 12, 2022)

In the Notice of Findings, USFWS found “the eastern DPS no longer meets the criteria for ESA listing and is therefore withdrawing the eastern DPS as a candidate. The gopher tortoise is protected by state regulations range-wide. If state protections for the species change in the future, especially in the core areas of the species, a reevaluation of the adequacy of existing regulatory mechanisms may be required. Additionally, the Service confirms that the western DPS continues to meet the definition of a threatened species under the ESA. The determination comes after a rigorous analysis of the best available scientific data and commercial information.” For more information, [please click here](#).

As a practical matter, because the decision not to list the tortoise was based primarily on existing state regulations, the USFWS decision can be expected to affect Florida’s gopher tortoise permitting program for gopher tortoises in two ways: (1) The Gopher Tortoise Technical Advisory Committee (GTTAC) has lost the biggest “hammer” it had to continually make the guidelines more stringent: the fear of federal listing. (2) The GTTAC does have ammunition to use against any attempts to relax the guidelines, arguing that to do so could potentially reopen the listing decision. For the foreseeable future, however, expect no changes in the permitting program.