



Animal Welfare Institute

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Sent via Regulations.gov Website and First-Class Mail

National Marine Fisheries Service
Office of Protected Resources
Attn: Jennifer Schultz
1315 East-West Highway
Silver Spring, MD 20910

Re: 90-Day Finding on a Petition to Identify the Northwest Atlantic Leatherback Turtle as a Distinct Population Segment and List It as Threatened Under the Endangered Species Act

Dear Ms. Schultz:

The Animal Welfare Institute (AWI) submits these comments in response to the National Oceanic and Atmospheric Association's (NOAA)/National Marine Fisheries Service (NMFS) initiation of a status review for the leatherback sea turtle (*Dermochelys coriacea*) based on its 90-day finding to identify the Northwest Atlantic subpopulation of the species as a Distinct Population Segment and to downlist the DPS from endangered to threatened under the Endangered Species Act (ESA). 82 Fed. Reg. 57565.

AWI opposes the downlisting of the leatherback sea turtle from endangered to threatened and urge NOAA/NMFS to keep the leatherback listed as an endangered species. Current scientific data suggests that the leatherback sea turtle is still highly endangered, and the Northwest Atlantic subpopulation specifically faces severe threats from: bycatch in commercial fisheries; habitat loss, degradation, and fragmentation; and from myriad impacts associated with climate change. To aid NOAA/NMFS in its status review of this subpopulation, please find attached a number of studies that should be evaluated and considered as part of the decision-making process. For the reasons explained below, reclassification is not warranted under Section 4(a) of the ESA and the best available science supports the NOAA/NMFS' continued listing and management of the species as "endangered."

I. Introduction

The leatherback sea turtle has enjoyed protection under the Endangered Species Act since 1970. Critical habitat was designated very generally for leatherback turtles to include waters adjacent to Sandy Point, St. Croix, U.S. Virgin Islands in 1979 and along the U.S. West Coast in 2012. The 1979 designation did not list any of the required specific physical or biological features essential to the conservation of the leatherback, which may require special management considerations or protection. NMFS also published several recovery plans for the turtles in 1998 (U.S. Pacific) and 1991 (U.S., Caribbean, Atlantic, and Gulf of Mexico), while the US Fish and Wildlife Service (USFWS) published a multi-species recovery plan for South Florida, which included a section on leatherback sea turtles, in 1999.

According to NMFS, Western Pacific and Eastern Pacific leatherbacks have continued to decline by more than 80 and 97 percent, respectively, over the last three generations.¹ Of the Eastern Pacific leatherbacks (Mexico's nesting population)—once considered to be the world's largest, with 65 percent of the worldwide population—is now less than one percent of its estimated size in 1980. For leatherbacks in the Atlantic, the Caribbean, Atlantic and Gulf of Mexico, leatherback populations are generally increasing, while data from the Atlantic coast of Florida, one of the main nesting areas in the continental United States, reveals a general upward trend, though with some fluctuation.

Despite the gradual increase in Atlantic leatherback sea turtle populations, the global population has declined by over 40 percent over the past 90 years and the population trend is decreasing (Wallace et al. 2013; Wallace et al. 2015). Furthermore, despite the positive trend in Atlantic leatherbacks, the same threats against the Northwest Atlantic subpopulation of leatherback turtle that landed the species on the endangered species list persist today.

Leatherback sea turtles are susceptible to a number of threats including: oil and gas exploration, development, and transportation; pollution; trawl, purse seine, hook and line, gill net, pound net, longline, and trap fisheries; underwater explosions; dredging; offshore artificial lighting; power plant entrapment; entanglement in debris; ingestion of marine debris; marina and dock development; boat collisions; poaching (USFWS 1999); and climate change (IUCN 2009, Wallace et al. 2013). Globally, the major threats to the leatherback include egg poaching and fisheries bycatch/interference (Santidrian Tomillo et al. 2017) while fisheries bycatch is the greatest threat, but certainly not the only threat, to leatherback turtles in the Northwest Atlantic region (James et al. 2005).

Leatherback sea turtles require a high adult survival rate to maintain a viable population due to their slow growth rates and delayed sexual maturity (Santidrian Tomillo et al. 2017). In addition, leatherbacks reproduce on average every three to four years (Santidrian Tomillo et al. 2017). Therefore, the bycatch and resulting death of adult leatherbacks in fishing gear is particularly dangerous to the species and recovery from any significant perturbation to a population can take decades. Furthermore, leatherback turtles engage in long distance migrations between breeding and feeding areas (Hamelin et al. 2017). There are unique risks to the turtles due to the overlap between their migratory routes, feeding, the overlap of breeding areas with commercial fishing

¹ See <http://www.nmfs.noaa.gov/pr/species/turtles/leatherback.html>.

activities (which results in increased bycatch; *see* Hamelin et al. 2017), and other anthropogenic threats.

The turtles' eggs and turtles themselves continue to be harvested, and populations continue to face significant threats from incidental capture in fishing gear, such as gillnets, longlines, trawls, traps, pots, and dredges.² It is estimated that only about one in a thousand leatherback hatchlings survive to adulthood.³ The greatest threats they face worldwide are long-term gravest and incidental capture in fishing gear. Harvest of eggs and adults occurs on nesting beaches while juveniles and adults are harvested on feeding grounds. Incidental capture primarily occurs in gillnets, but also in trawls, traps and pots, longlines, and dredges. Studies that show that the Northwest Atlantic population is doing moderately well are deceiving due to the underreporting by fisheries of bycatch.

II. The Northwest Atlantic Leatherback Turtle Biology, Distribution, Abundance, Population Trends and Demographics

Globally, mortality has increased for leatherback sea turtles since 1970, limiting the species' ability to fully recover. A review of the threats against the Northwest Atlantic leatherback turtle based on the best available scientific information demonstrates that, while its numbers may be gradually increasing, threats remain, and the status of the subpopulation continues to warrant protection under the ESA as an endangered species. Not only would it be premature and detrimental to the continued existence of the species to downlist it to threatened at this time, a downlisting is also unsupported by the language or intent of the ESA, NMFS' regulations, and the best available science.

In the Northwest Atlantic, although the numbers of leatherback sea turtles are reportedly large and increasing (Wallace et al. 2013), “future population increases will be dependent on the success of conservation actions mitigating current and future threats to this species throughout its range, especially in breeding and foraging areas, and on no new threats arising (e.g. climate change) that could cause population declines” (Wallace et al. 2013).

In their 2013 subpopulation assessment, Wallace et al (2013a) reported annual counts of >50,000 nests and approximately 10,000 female leatherback sea turtles in the Northwest Atlantic population. This reflects an increase of 20.6 percent over the past three generations with projections of an increase to >180,000 nests by 2040 (Wallace et al. 2013a). For this particular subpopulation, “future population increases depend on the success of current conservation efforts to protect leatherbacks, their offspring, and their habitats being maintained—or augmented, wherever possible—throughout their enormous geographic distribution, but particularly in breeding and foraging areas, to ensure that current and future threats do not reach levels capable of causing population decreases” (Wallace et al. 2013a).

Wallace et al. (2011) evaluated the relative impacts of individual threats to all leatherback subpopulations and identified fisheries bycatch as the highest threat to leatherbacks globally and for the Northwest Atlantic subpopulation in particular. Additional threats, in order of concern,

² *Id.*

³ *Id.*

included human consumption of leatherback eggs, meat, or other products, and coastal development.

While leatherback sea turtles remain subject to persistent threats globally (see Wallace et al. 2011 and Eckert et al. 2012), in the Northwest Atlantic, ongoing conservation efforts have resulted in stable or increasing population trends for most rookeries (Wallace et al 2013a citing Dutton et al. 2005; Girondot et al. 2007; Hilterman and Goverse 2007; TEWG 2007; Stewart et al. 2011). Nevertheless, as noted by Wallace et al. (2013a), “continued threats from fisheries bycatch in small- and large-scale fishing operations (Wallace et al. 2011; 2013), particularly those near nesting beaches (Lee Lum 2006) and in distant foraging areas (James et al. 2005; Stewart et al. 2013), could jeopardize the future state of this subpopulation’s abundance and trend,” as could egg harvest for human consumption (Revuelta et al. 2012).

Consequently, Wallace et al. (2013a) made clear that “continued, effective efforts to mitigate bycatch impacts are absolutely necessary to ensure future population stability or increases for Northwest Atlantic leatherbacks.” In addition, they concluded that:

To ensure successful leatherback conservation, the most prevalent and impactful threats must be reduced wherever they occur, whether on nesting beaches or in feeding, migratory, or other habitats (Bellagio Report 2004; Wallace et al. 2011; 2013); a holistic approach that addresses threats at all life history stages needs to be implemented (Dutton and Squires 2011). Therefore, current conservation efforts, legal protections, and resources supporting those mechanisms must be maintained—and augmented, wherever possible—to sustain current population trends for the Northwest Atlantic leatherback subpopulation. (Emphasis added)

Furthermore, while reported incidents of leatherback bycatch in the Northwest Atlantic have declined in recent years, this decline may be due to a reduction in reporting of leatherback mortalities and not in entrapment (Hamelin et al. 2017; see also Santidrian Tomillo et al. 2017). Commercial fishers may be especially reluctant to report entanglement or sightings for fear of punitive action (Hamelin et al. 2017).

III. Reclassification of the Northwest Atlantic Leatherback Turtle from Endangered to Threatened is Not Warranted under the ESA

Under the Endangered Species Act (ESA), in determining whether a species’ status can be reclassified from endangered to threatened, the NMFS must base its decision on the best available scientific information evaluating the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) Over utilization for commercial, recreational, scientific, or educational purposes; (3) Disease or predation; (4) The inadequacy of existing regulatory mechanisms; or (5) Other natural or manmade factors affecting its continued existence.⁴

⁴ 16 U.S.C. § 1533(a)(1)(A)-(E); 50 C.F.R. § 424.11(c)(1)-(5).

The NMFS cannot deviate from these criteria in its decision-making. The role of the NMFS is to assess the technical and scientific data in the administrative record against the relevant listing criteria set forth under Section 4(a) and then to exercise its own expert discretion in reaching its listing decision.⁵

The reason why reclassification decisions are to be based solely on the five factors set forth under Section 4(a) is rooted in the fundamental purpose of the ESA, which is to conserve (i.e. recover) species so protection of the ESA is no longer necessary. The Service defines recovery as “improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act.”

In other words, “recovery is not attained until the threats to the species as analyzed under section 4(a)(1) of the Act have been removed.” The Act was amended in 1982 to ensure that the decision whether to list a species as endangered or threatened was based solely on an evaluation of the biological risks faced by the species, to the exclusion of all other factors. Thus, the five aforementioned factors are used to determine whether threats have been eliminated or sufficiently reduced to the point at which the species is on its way towards recovery and down-listing the species is warranted. Further, NOAA must determine whether a species should be reclassified under the ESA, solely on the basis of the best available scientific and commercial information regarding a species’ status. As Congress explained during the passage of the ESA, “economic considerations have no relevance to determinations regarding the status of the species.”⁶

In addition to assessing the five listing factors, the NMFS is required to determine whether a species in danger of extinction or threatened by possible extinction in all or a significant portion of its range. An “endangered species” is “any species which is in danger of extinction throughout all or a significant portion of its range.” A species is “in danger of extinction throughout...a significant portion of its range” if there are “major geographical areas in which it is no longer viable but once was.” A “threatened species” means “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.”⁷

While these terms may be relative to the evaluation of an individual species, in the case of the Northwest Atlantic leatherback turtle, because the same threats persist against it and it faces new and worse threats, the NMFS must conclude that the species is currently in danger of extinction.

⁵ Biodiversity Legal Fund v. Babbitt, 943 F. Supp. 23 (D.D.C. 1996); Southwest Ctr. for Biological Diversity v. Babbitt, 939 F. Supp. 49 (D.D.C. 1996); 2 Northern Spotted Owl v. Hodel, 716 F. Supp. 479 (W.D. Wa. 1988).

⁶ 16 U.S.C. § 1532(3); 50 C.F.R. § 402.02; Fish and Wildlife Service & National Oceanic & Atmospheric Administrative, Interagency Cooperation – Endangered Species Act of 1973, as Amended; Final Rule, 51 Fed. Reg. 19,935 (1986); Fish and Wildlife Service & National Oceanic & Atmospheric Administrative, Interagency Cooperation – Endangered Species Act of 1973, as Amended; Final Rule, 51 Fed. Reg. 19,935 (1986); Fish and Wildlife Service & National Oceanic & Atmospheric Administrative, Interagency Cooperation – Endangered Species Act of 1973, as Amended; Final Rule, 51 Fed. Reg. 19,935 (1986); H.R. Conf. Rep. No. 97-835, at 20, reprinted in 1982 U.S.C.C.A.N. 2807, 2861.

⁷ 16 U.S.C. § 1522(6); 50 C.F.R. 424.02(e); 16 U.S.C. § 1522(6); 50 C.F.R. 424.02(e); 16 U.S.C. § 1522(6); 50 C.F.R. 424.02(e).

IV. Conclusion

Due to the ongoing and severe threat of bycatch posed by the commercial fishing industry, down listing the Northwest Atlantic leatherback sea turtle subpopulation would have significant ramifications for the species at both the subpopulation and global levels. Indeed, as concluded by Wallace et al. (2013a), “current conservation efforts, legal protections, and resources supporting those mechanisms must be maintained—and augmented, wherever possible” to ensure the continued recovery of this subpopulation (emphasis added).

Thank you for your consideration of our comments.

Sincerely,



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