



December 28, 2015

Ms. Julie Crocker
NMFS Greater Atlantic Regional Fisheries Office
Protected Resources Division
55 Great Republic Drive
Gloucester, MA 01930

Re: Preliminary submission of information relevant to the status review of the thorny skate (*Amblyraja radiata*) (NOAA-NMFS-2015-0120)

Dear Ms. Crocker:

On behalf of the Animal Welfare Institute (AWI) and Defenders of Wildlife (Defenders), I submit the following preliminary comments on the request for comments related to the status review of the thorny skate for potential listing as an endangered or threatened species under the Endangered Species Act (ESA)(80 Federal Register 65175). More specifically, the May 2015 petition sought an endangered or threatened designation for the Northwest Atlantic or United States Distinct Population Segment based on compelling evidence that the species qualifies for such listing pursuant to the five ESA listing factors (i.e., the present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species' existence). The petition also requested that critical habitat be designated for the species.

On December 7, 2015, AWI and Defenders sought a 14-day extension of the deadline for public comments on the status review of the thorny skate. On December 21, this request was denied although the National Marine Fisheries Services stated that "in the event that you or your members intend to submit information to us consistent with the request outlined in the Federal Register notice, we would be happy to receive it, even after December 28, 2015."¹ The specific information requested in the Federal Register notice included:

(1) historical and current distribution and abundance of this species in the Northwest Atlantic; (2) historical and current population status and trends;

¹ See email from Ms. Julie Crocker (NMFS) to Ms. Tara Zuardo (AWI).

- (3) any current or planned activities that may adversely impact the species, especially as related
 - to the five factors specified in section 4(a)(1) of the ESA and listed above;
- (4) ongoing efforts to protect and restore the species and its habitat; and
- (5) genetic data or other information related to possible population structure of thorny skate.

AWI and Defenders intend to submit substantive information which will supplement the information included in the May 2015 petition relevant to many of these specific areas of information. This new information was obtained through an updated literature review, acquisition of agency (United States and Canadian) data on thorny skates, compilation of peer-reviewed studies (including newly published and other studies not cited in the petition). Analysis of this information has taken longer than expected and, therefore, AWI and Defenders will, as NMFS has invited us to do, submit substantive comments after December 28, 2015. When submitting their comments, copies of all newly cited studies will be provided to NMFS to facilitate and expedite its review of the additional material.

As an initial matter, AWI and Defenders are concerned by a determination made by NMFS that the thorny skate is no longer designated as a species that is subject to overfishing.² This determination is patently incorrect. In 2014, the thorny skate was designated as both “overfished” and subject to “overfishing.”³ Yet, in a July 27, 2015 Memorandum, the species remained designated as “overfished” due to an autumn average biomass index (0.13 kg/tow) being well below the biomass reference point of 2.06 kg/tow but is no longer considered subject to “overfishing” because the 2012-2014 index is slightly higher than the 2011-2013 index.⁴

The methodology used to assess whether a species is subject to overfishing is invalid due to the failure to consider long-term survey data. In this case, because the three year average survey data (kg/tow) for 2012-2014 was one-tenth of a percentage point (0.13) higher than the three year average (kg/tow) data (0.12) for 2011-2013 (representing an 8.7 percent increase in kg/tow data), NMFS concluded that the species was not subject to overfishing. However, the 0.13 three year average for 2012-2014 is the second lowest average recorded since 2007 suggesting that the thorny skate remains at historically low levels. Furthermore, if long-term data is considered it then becomes clear that, for example, the 0.13 three year average for

² See July 27, 2015 NMFS Memorandum from William Karp to John Bullard on “Update of Skate Stock Status Based on NEFSC Bottom Trawl Survey Data through Autumn 2014/Spring 2015.

³ See NOAA Fisheries. 2014. Status of Stocks 2014. Annual Report to Congress on the Status of US Fisheries. Available at: http://www.nmfs.noaa.gov/sfa/fisheries_eco/status_of_fisheries/archive/2014/2014_status_of_stocks_final_web.pdf

⁴ See July 27, 2015 NMFS Memorandum from William Karp to John Bullard on “Update of Skate Stock Status Based on NEFSC Bottom Trawl Survey Data through Autumn 2014/Spring 2015.

2012-2014 is 76 percent below the three year average for 2004-2006 (0.55) which provides conclusive evidence of the ongoing dire status of the thorny skate. See Table 1.

Table 1: Compilation of three-year averages for thorny skate survey data (kg/tow) 2004-2006 through 2012-2014⁵

Survey data time period	Kg/tow
2004-2006	0.55
2005-2007	0.42
2006-2008	0.42
2007-2009	0.26
2008-2010	0.24
2009-2011	0.24
2010-2012	0.18
2011-2013	0.12
2012-2014	0.13

Not surprisingly, given the dire status of the thorny skate and no evidence of population recovery in United States or Canadian waters, the American Society of Ichthyologists and Herpetologists adopted the following resolution at its July 2015 annual meeting.⁶

RESOLUTION REGARDING NORTHWEST ATLANTIC THORNY SKATE REBUILDING. —
WHEREAS the Northwest Atlantic population of Thorny Skate (*Amblyraja radiata*) is a straddling stock classified by the International Union for Conservation of Nature (IUCN) as Vulnerable off the east coast of Canada and Critically Endangered off New England, and

WHEREAS the Thorny Skate has been a prohibited species in the U.S. under the New England Fishery Management Council (NEFMC) Fishery Management Plan (FMP) for skates since 2003 and yet stock biomass has since decreased, and

WHEREAS the NEFMC will consider over the coming months amendments to its skate FMP to promote Thorny Skate recovery, and

WHEREAS the United States and Canada are parties to the Northwest Atlantic Fisheries Organization (NAFO), and

⁵ Date in Table 1 taken from July 2, 2013 Memorandum from William Karp to John Bullard on “Update of Skate Stock Status Based on NEFSC Bottom Trawl Survey Data through Autumn 2012 and Spring 2013 (see Table 1); and July 27, 2015 NMFS Memorandum from William Karp to John Bullard on “Update of Skate Stock Status Based on NEFSC Bottom Trawl Survey Data through Autumn 2014/Spring 2015 (see Table 1).

⁶ See Summary of the Meetings. 2015. Copeia, 103(4):1121-1127.

WHEREAS the NAFO Scientific Council regularly offers advice regarding the NAFO total allowable catch (TAC) for skates based on the status of Thorny Skate (*Amblyraja radiata*) yet the NAFO skate TAC has remained well above that level since establishment a decade ago, and

WHEREAS Canada is allocated a large share of the NAFO skate quota, yet imposes no species-specific safeguards for Thorny Skate, and

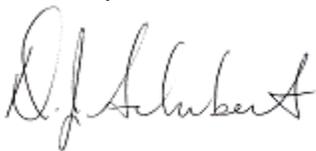
WHEREAS the NAFO Scientific Council has warned of low resilience to fishing mortality, reports little stock improvement, and advises fishery managers to ensure skate catches do not increase,

THEREFORE BE IT RESOLVED that the American Society of Ichthyologists and Herpetologists joins the American Elasmobranch Society in urging the U.S. and Canadian governments to elevate the priority of additional Thorny Skate safeguards to promote recovery at a national level, and to work with the European Union at the September 2015 NAFO annual meeting to secure a NAFO skate TAC that does not exceed the level advised by the NAFO Scientific Council.

In its subsequent submission of information to inform the status review of this species, AWI and Defenders will elaborate on their concern regarding the status of the thorny skate and the NMFS determination that the species is no longer subject to overfishing. In addition, compelling new information and evidence from studies not cited in the petition will be provided to further make clear that the Northwest Atlantic of United State DPS of the thorny skate warrants designated as a threatened or endangered species pursuant to the ESA and to support the request that critical habitat be identified for the species.

Thank you in advance for considering this preliminary submission relevant to the status review of the thorny skate. Should you have any questions about this submission, please contact me using the contact information provided below.

Sincerely,



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Wildlife Biologist

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