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July 5, 2011

VIA FIRST CLASS MAIL

NMFS National Sea Turtle Coordinator
ATTN: Loggerhead Proposed Listing Rule
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway, Building 3, Room 13657
Silver Spring, MD 20910

USFWS National Sea Turtle Coordinator
U.S. Fish and Wildlife Service
7915 Baymeadows Way – Suite 200
Jacksonville, FL 32256

**RE: RIN 0648-AY49, Proposed Loggerhead Status Change, Supplemental
Comments on New Turtle Nesting Numbers in the Peninsular Florida and
Northern Recovery Unit Nesting Areas**

Dear Sir or Madam:

On behalf of the Fisheries Survival Fund (“FSF”), we offer our third set of supplemental comments regarding the proposed division of the global loggerhead sea turtle population into nine “distinct population segments” (“DPS”) and uplisting the two DPS that occur in United States water from “threatened” to “endangered” under the Endangered Species Act (“ESA”). 75 Fed. Reg. 12598 (Mar. 16, 2010). FSF filed its original comments on September 13, 2010, and supplemented those comments with information relating to 2010 loggerhead nest numbers on November 29, 2010. FSF also provided additional information related to the 2010 loggerhead turtle aerial survey and recent legal guidance on the distinction between “threatened” and “endangered” species on April 11, 2011, in conjunction with the National Marine Fisheries Service’s (“NMFS”) and U.S. Fish and Wildlife Service’s (“USFWS,” collectively “the Services”) announcement of the additional six-month review period. *See* 76 Fed. Reg. 15932 (March 22, 2011).

NMFS & USFWS National Sea Turtle Coordinators
July 5, 2011
Page Two

With this third supplement, FSF wishes to draw the Services' attention to early nesting data from the Northwest Atlantic DPS 2011 loggerhead nesting season, which shows returns running ahead of last year's banner season. We have also just received a partial set of answers from NMFS administrator Mr. Eric C. Schwaab to an inquiry made by several members of Congress. A copy of Mr. Schwaab's letter, with attached appendices, is appended hereto. They are significant both for their substantive value to the present issue and due to the fact that this information was not before the Services when the initial determination was made to publish the proposed rule. This is clear from the fact that it took the Secretary some five months to compile the relevant data.

In terms of the 2011 Northwest Atlantic loggerhead turtle nesting numbers to date, early results demonstrate that the increasing trend over the past five or so years continues at an accelerating rate. These numbers are compiled from a variety of published reports and news articles.

The Mote Marine Laboratory's Sea Turtle Conservation and Research Program, for example, has published the appended results of its survey up through the week of June 19, 2011. In 2010, through the eighth week, Mote scientists counted 472 nests. For the comparable period in 2011, the total number of nests is 679—a 44 percent increase. These animals are part of the key Peninsular Florida recovery unit, found along the Gulf Coast from Longboat Key to Venice.

This large increase over 2010 is particularly significant because 2010 itself saw the highest number of nests (as measured in the Florida Wildlife Commission/Florida Wildlife Research Institute ("FWC/FWRI") Nesting Beach Survey Program) since 2000 (83,036 compared to 72,855). If these trends hold, both within the Mote survey area and across the state, nest numbers will have fully recovered to, or surpass, the levels seen in the 1990s.

While FWC/FWRI does not yet have comparable statewide numbers, as some monitoring groups do not report until year's end, there are indications that these increases are broadly seen across the state. In published news accounts, FWRI research assistant Anne Meylan noted that early results are incomplete, "[b]ut for those who have reported, numbers are certainly up. We're expecting a good season this year, without doubt." Kevin Lollar, *Nest Numbers Show Turtles Hurry Here*, THE NEWS-PRESS (June 26, 2011) (attached). Press reports also indicate that nesting is occurring in "record numbers" in Palm Beach County ("Nest counts for 2011 are currently twice as high as last year's record-breaking year."),¹ Naples ("Along Collier County's

¹ *They may be slow, but sea turtles are nesting at a record pace*, THE BOCA RATON JOURNAL (June 28, 2011) (attached). The article goes on to note: "Palm Beach County contains only 5 percent of Florida's nesting beaches, but accounts for approximately 21 percent of loggerhead nesting, 25 percent of green nesting, and 27 percent of leatherback nesting. In other words, nearly a quarter of all nesting in Florida occurs on Palm Beach County beaches, making them extremely important to the survival of these threatened and endangered species."

NMFS & USFWS National Sea Turtle Coordinators
July 5, 2011
Page Three

beaches, there has been a 55 percent increase in sea turtle nesting compared to last year's count for the same time period.”),² and even along the Panhandle (“Panhandle sea turtle nesting looking strong”).³

These early gains can also be seen in other states in the Northern Recovery Unit. According to data collected by Seaturtle.org, 2,290 nests in South Carolina have been counted so far, compared to 2,006 through the same period last year. For Georgia, the comparable numbers are 1,295 and 1,091; North Carolina, 449 and 408. As FSF discussed in its November 29, 2010, supplemental letter, 2010 was an excellent, if not record-breaking year, in each of these states. The data provided to Congress by Mr. Schwaab likewise confirms that for states in the Northern Recovery Unit, the highest years in terms of loggerhead nests for these three states over the past decade was either 2010 or 2008.⁴ If current trends hold, the 2011 nesting season will see the highest level of nests virtually throughout the range of the proposed Northwestern Atlantic DPS in the past decade or longer.

Obviously, this information confirms the recent increasing trend for this species, providing further evidence that the dramatic four or five year decline in the early 2000s was an anomaly, perhaps caused by an epizootic.⁵ Far from considering changing the ESA listing status of this species from “threatened” to “endangered,” the Services should be considering reevaluating their delisting criteria.

The increase in the Northwest Atlantic loggerhead turtle DPS reflected in these nesting numbers is unsurprising. This is a result of the combination of increasingly strict turtle protection measures, most of which have come into effect just over the past ten years, and startling decreases in fishing effort occurring over a slightly longer period. Both these factors are reflected in the data provided by NMFS. *See generally* Schwaab Letter, Attachment 2. This information, explained in greater detail below, also belie the contention that regulatory mechanisms are inadequate to conserve and rebuild threatened and endangered sea turtle species.

² Joanna Chau, *Turtle nesting season off to great start in Collier, Lee*, Naplesnews.com (June 19, 2011) (attached).

³ AP report reprinted in SAN ANTONIO EXPRESS NEWS (June 2, 2011) (attached).

⁴ Letter From Eric C. Schwaab to Rep. Walter Jones, Jr. (“Schwaab Letter”) (June 27, 2011), Attachment 1. For Georgia, 2010 was the highest, 2008 the second highest; for South Carolina, 2008 was the highest and 2010 the second highest; and for North Carolina, 2008 was the highest and 2010 the third highest, lagging 2003 by 14 nests. *Id.*

⁵ For evidence supporting this theory, see the Report of Dr. Trevor Kenchington, 58-65, appended to FSF's September 13, 2010, comment letter.

NMFS & USFWS National Sea Turtle Coordinators
July 5, 2011
Page Four

For instance, the number of vessels in the pelagic longline fishery for highly migratory species, which has long been targeted for special regulatory attention due to observed interactions with loggerhead sea turtles, has declined 73 percent from peak levels in 1989.⁶ Total hooks fished are down 33 percent from 1996. *Id.* Of course, today, these are circle hooks set outside areas and times of known turtle interactions. They are also increasingly baited with species less likely to attract loggerheads and other marine turtles.

Other fisheries with interactions are likewise down. Scallop dredge days-at-sea (many of which are used on Georges Bank, far outside the loggerhead range) are down 57 percent.⁷ As with pelagic longliners, many scallop controls are now in place, including chain mats that prevent turtles from entering dredges, limitations on fishing time during the overlap of the fishery and turtles, and the like. Today, the scallop dredge fishery is estimated to lethally take only the equivalent of three mature females annually, down from estimates in the hundreds early this century.⁸

Gillnet gear use is also down. 2009 saw a fairly significant spike use of this gear in federal waters of the Southeast region, but trips were still down 18 and 10 percent in the Gulf of Mexico and South Atlantic, respectively, from their peaks. Schwaab Letter, Att. 2, Table 6B(5)a. In key North Carolina forage grounds, gillnet vessels are down 41 percent and trips, 32 percent compared to 1996-97. *Id.* Table 6B(5)b. Comparable figures for Alabama are 80 since 1995 and 20 from 2003 levels; however, data on trips was not collected by the state in 1995 when most vessels were active. *Id.* Like all others, fishermen using gillnets now comply with time/area and soak time restrictions designed to prevent loggerhead injuries and deaths.

Most importantly, however, are the changes that have occurred in the in the Gulf of Mexico and South Atlantic shrimp fisheries, which account by far for most incidental loggerhead takes. Respectively, the number of active vessels is down 56 and 58 percent. *Id.*, Table 6B(1)a. More relevant is the decrease in the number of trips. In each region, trips are down a stunning 80 percent. *Id.*, Table 6B(1)b. Of course, as explained below, these vessels have been required to utilize increasingly effective TEDs since their use was first required late in 1992. Viewed in this light, the recent spike in turtle strandings in the Gulf of Mexico this year and last, ostensibly

⁶ *Id.*, Table 6B(2)a. All figures reported here are from peak years compared to values for 2009 (the last year of complete data) and can be found in Attachment 1 to NMFS reply.

⁷ *Id.*, Table 6B(3). This table includes both open area days-at-sea and time fished in access areas. It also appears to include both the limited access and general category fleet, the latter of which has been recently been subject to limited access and significantly constrained. *See* 73 Fed. Reg. 20090 (Apr. 14, 2008).

⁸ Kimberly T. Murray, *Interactions between sea turtles and dredge gear in the U.S. sea scallop (*Placochelys magellanicus*) fishery, 2001–2008*, FISHERIES RESEARCH (in press).

NMFS & USFWS National Sea Turtle Coordinators
July 5, 2011
Page Five

attributable to shrimp fishermen, appear to be the result of increased abundance and, perhaps, residual effects of the Deep Water Horizon oil spill and remediation efforts.

Mr. Schwaab's letter shows that in terms of regulations, the first legal requirements to use turtle excluder devices (by shrimpers) were not in effect until 1987, and then compliance was both voluntary and spotty. *Id.*, 6B(6-9). According to the letter's summary of regulatory initiatives, 1992 saw an effort to "strengthen the effectiveness and enforceability . . . of TEDs" among all Southeast shrimp fishermen. *Id.* These requirements, however, were phased in through 1994. *Id.* NMFS spent the rest of the 1990s, up until 2003, strengthening TED requirements and mandating use of ever larger and more effective TEDs for this fishery. *Id.*

It was not until 2000 that NMFS turned its attention to other fisheries with sea turtle takes. That year, the first time/area closures to protect turtles were implemented for pelagic longliners. *Id.* Gear restrictions were added to the closures in 2001, culminating in the use of circle hooks and specified bait in 2004. *Id.* For their part, bottom longlines in the Gulf of Mexico reef fish fishery saw their first restrictions in 2006. *Id.* Through 2009, these measures largely focused on safe handling and release techniques and equipment to reduce post-release mortality. In that year, however, bottom longlines were prohibited in certain areas on a temporary basis. In 2010, permanent rules institutionalized some of these closures and reduced the number of permitted vessels. *Id.*

For the scallop dredge fishery, NMFS adopted an industry-developed turtle excluder device, the chain mat, in 2006, although voluntary use for the prior two years was fairly widespread. *Id.* Although not listed in Mr. Schwaab's letter, NMFS has implemented a seasonal closure to protect sea turtles and Framework 22 to the Scallop Fishery Management Plan, expected to be finalized any day, contains further measures to reduce scallop fishing effort during times and in areas where loggerheads and the fishery overlap. *See* 76 Fed. Reg. 19929 (Apr. 11, 2011) (Framework 22 proposed rule). The industry has also developed a specialized dredge that prevents the possibility of turtles passing under the dredge and suffering severe injury and death. The New England Council is currently considering mandating use of this new dredge in Framework 23.

Finally, for gillnet and the Virginia pound net fisheries, NMFS has mandated a series of time/area closures, mesh size requirements, and gear restricted areas. These measures have been complemented by state-level protections. Schwaab Letter, Att. 2, Table 6B(6-9).

As FSF originally explained, effort is down and protections for loggerhead sea turtles are significantly up, each dramatically so. Moreover, these factors have only been in play only over the past couple of decades, and most prominently in the 2000s. This is far too short a period to be fully reflected in nesting beach surveys, although it seems very apparent that protections afforded mature female loggerheads are showing results.

NMFS & USFWS National Sea Turtle Coordinators
July 5, 2011
Page Six

Although the information presented herein with respect to the prosecution and regulation of commercial fisheries could have been made available to the Biological Review Team, it is patently clear that it was not compiled or considered during the review leading up to the proposed rule. Given that this information is directly relevant to the relevant statutory inquiry as to whether “existing regulatory mechanisms” are inadequate, 16 U.S.C. § 1533(a)(D), and, more generally, the trends in anthropomorphic impacts to the species, this oversight was not harmless.

At this stage, what is clear is that the Northwest Atlantic DPS of loggerhead turtles numbers in the millions of animals and the population is growing. Under no circumstances does this species meet the definition of an “endangered species.” Therefore, the proposed rule must be rejected.

We appreciate the Services’ consideration of these supplemental comments and of FSF’s prior comments and supporting analysis. Please do not hesitate to contact us if we can answer any questions or provide any further information.

Sincerely,

/s/ David E. Frulla

David E. Frulla
Shaun M. Gehan
Andrew E. Minkiewicz

ATTACHMENTS

cc: Via electronic mail to:
Ms. Barbara Schroeder, NMFS
Ms. Sandy MacPherson, USFWS
Mr. Eric Schwaab, NMFS
Members of Congress