



SAN FRANCISCO BAY AREA OFFICE

Protecting endangered species and wild places through science, policy, education, and environmental law

June 14, 2004

SENT VIA FAX AND CERTIFIED MAIL

Secretary Donald Evans
Office of the Secretary, Room 5854
U.S. Department of Commerce
14th and Constitution Aves., NW
Washington, DC 20230
Fax: (202) 482-4576

Laurie Allen, Director
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway, 13th Floor
Silver Spring, MD 20910
Fax: (301) 713-0376

Dr. Roy E. Crabtree
Regional Administrator
Southeast Regional Office
National Marine Fisheries Service
9721 Executive Center Drive, N.
St. Petersburg, FL 33702
Fax: (727) 570-5300

Dr. William T. Hogarth
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East West Highway, SSMC3
Silver Spring, MD 20910
Fax: (301) 713-2258

RE: Sixty Day Notice of Intent to Sue Over Violations of Section 4 of the Endangered Species Act; Failure to Make a 90-Day Finding on the Petition to List Elkhorn Coral, Staghorn Coral, and Fused-Staghorn Coral.

To Whom It May Concern:

This letter serves as a 60-day notice of intent to sue the National Marine Fisheries Service ("NMFS") on behalf of the Center for Biological Diversity ("the Center") and its members and staff for violations of the Endangered Species Act, 16 U.S.C. §§1531-1544. NMFS has failed to make a 90-day finding pursuant to 16 U.S.C. §1533(b)(3)(A) on the Center's petition to list elkhorn coral (*Acropora palmata*), staghorn coral (*Acropora cervicornis*), and fused-staghorn coral (*Acropora prolifera*) as "endangered" or "threatened" under the Endangered Species Act. Without further support this unlawful withholding of the 90-day finding is arbitrary, capricious, and in violation of the Endangered Species Act and the Administrative Procedure Act, 5 U.S.C. §706 ("APA"). This letter is provided pursuant to the 60-day notice requirement of the citizen suit provision of the Endangered Species Act, to the extent such notice is deemed necessary by a court. 16 U.S.C. §1540(g). The reasons for this letter are set out more fully below.

Tucson • Phoenix • Idyllwild • San Diego • Oakland • Sitka • Portland • Silver City • Denver

Brent Plater, Esq.
370 Grand Avenue, Suite 5 • Oakland, CA 94610
PHONE: (510) 663-0616 • FAX: (510) 663-0272
bplater@biologicaldiversity.org • www.biologicaldiversity.org

On March 4, 2004, NMFS received a formal, detailed petition requesting the listing of elkhorn coral, staghorn coral, and fused-staghorn coral as “endangered” pursuant to the Endangered Species Act. The petition provided a summary of the best available science indicating that the species are endangered and requested that NMFS designate critical habitat concurrent with listing. Pursuant to 16 U.S.C. §1533(b)(3)(A), within 90 days after receiving the petition, NMFS was required to make a finding as to whether the petition presented substantial scientific or commercial information indicating that the listing might be warranted. NMFS has failed to make the required finding by the 90-day deadline, which expired on June 2, 2004.

NMFS’ failure to comply with the Endangered Species Act’s 90-day finding requirement deprives elkhorn, staghorn and fused-staghorn corals of statutorily mandated protection. These three corals face a high risk of extinction in the near future. The best available scientific evidence indicates that over the last 30 years these species have suffered an 80-98 percent decline throughout significant portions of their range due to disease, thermally induced bleaching, physical destruction from storms, predation, competition, and anthropogenic activities that degrade habitat and water quality. The best available science indicates that each of these threats has been exacerbated and accelerated by global climate change. These threats, coupled with the inadequacy of existing protections, place the corals in grave danger of extinction and therefore the species must be protected under the Endangered Species Act.

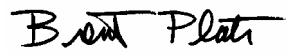
The Center and its members and staff are vitally concerned about and actively involved in the protection of the elkhorn, staghorn and fused-staghorn corals and their habitat. On their behalf I urge you to take prompt action to list the corals and to designate critical habitat for these species as required under the Endangered Species Act. NMFS’ prompt compliance with the Endangered Species Act’s 90-day finding requirement in response to the petition is necessary to protect the species and to fulfill the intent of Congress. Any further delay in your response to the petition frustrates the intent of the Endangered Species Act.

I would like to emphasize that the Endangered Species Act requires NMFS to make all listing determinations solely on the basis of the “best scientific and commercial data available.” 16 U.S.C. §1533(b)(1)(A). Economic, political, or any other non-biological issues may not properly be considered. See, e.g., Northern Spotted Owl v. Hodel, 716 F.Supp. 479, 480 (W.D. Wash. 1988). Thus, legally you can only consider whether the three coral species, as a matter of biological fact, are threatened or endangered species. If so, as we believe the data cited in the petition conclusively shows, you must list these species.

If NMFS does not act within sixty days to correct the above violations, the Center plans to pursue legal action. An appropriate remedy would be to immediately issue a finding that the petition to list the corals is warranted, initiate a status review of the species, and publish a proposed rule within the twelve-month deadline. If you have any

questions, or would like to discuss this matter further, please contact me at (510) 663-0616.

Sincerely,

A handwritten signature in black ink that reads "Brent Plater". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Brent Plater