



National Headquarters

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Gina Raimondo, U.S. Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Janet Coit, Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
1315 East-West Highway
Silver Spring, MD 20910

Via certified U.S. Mail, return receipt requested

June 28, 2022

RE: Notice of Intent to Sue for Violation of the Endangered Species Act; Failure to Make a Timely 12-month Determination on Petition to List the Shortfin Mako Shark

Dear Secretary Raimondo and Assistant Administrator Coit,

On behalf of Defenders of Wildlife (“Defenders”) and the Center for Biological Diversity (“Center”), we write to inform you that you are in violation of section 4(b)(3)(B) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1533(b)(3)(B), by failing to issue a timely 12-month finding on Defenders’ petition to list the shortfin mako shark (*Isurus oxyrinchus*) and to designate critical habitat under the ESA. We provide this notice pursuant to the ESA’s 60-day notice requirement. *Id.* § 1540(g)(2)(A)(i).

Shortfin mako populations have been devastated by an unsustainable demand for the species’ fins and meat. Shortfin mako sharks are overfished and have suffered unsustainable population declines globally. The International Union for Conservation of Nature estimates that shortfin mako sharks have experienced a median reduction of 46.6%. It has assessed the species as “endangered” on the Red List of Threatened Species. Time is of the essence to protect this species to ensure its continued survival.

Under section 4(b)(3)(A), to the maximum extent practicable, the Secretary of Commerce (“Secretary”) must respond to a petition to list a species and designate critical habitat within 90 days (“90-day finding”). If the Secretary finds that the petition “presents substantial scientific or commercial information indicating that the petition action may be warranted,” the Secretary begins a status review of the species. 16 U.S.C. § 1533(b)(3)(A). Twelve months after receiving a petition on which a positive 90-day finding has been made, the Secretary must publish a determination that listing the species is warranted, not warranted, or warranted but precluded by more immediate listing concerns (“12-month finding”). *Id.* § 1533(b)(3)(B).

On January 25, 2021, Defenders petitioned the Secretary, acting through the National Marine Fisheries Service (“NMFS”), an agency within the National Oceanic and Atmospheric

Administration that has been delegated authority to implement the ESA for marine species, to list the shortfin mako shark and to designate critical habitat in U.S. waters concurrent with the listing. 86 Fed Reg. 19,863, 19,864 (Apr. 15, 2021). Defenders also petitioned NMFS for a section 4(d) rule to confer full take protections on the species concurrent with final listing in the event the agency determines to list the shortfin mako or any distinct population segment (“DPS”) thereof as threatened, and for a section 4(e) rule for species similar in appearance to the shortfin mako, specifically the longfin mako (*Isurus paucus*), in the event the agency lists the shortfin mako or any DPS thereof as endangered or threatened.

NMFS published a positive 90-day finding that the requested action may be warranted on April 15, 2021. *Id.* Defenders, joined by the Center and other conservation allies, submitted a comment letter on the positive 90-day finding on June 14, 2021. Section 4(b)(3)(B) required NMFS to issue a 12-month determination no later than January 25, 2022. To date, NMFS has failed to do so.

The ESA states that the Secretary shall determine whether a species warrants listing as endangered or threatened based on any one or a combination of five factors. 16 U.S.C. § 1533(a)(1). The shortfin mako qualifies for listing under four of these five factors—destruction of habitat; overutilization for commercial, recreational, scientific, or educational purposes; inadequacy of existing regulatory mechanisms; and other natural or manmade factors.

First, the ongoing pollution of the oceans from mercury, pesticides, polychlorinated biphenyls, and other chemicals has created a current and future threat to shortfin mako habitat. Shortfin makos already show considerably higher pollutant accumulation levels relative to other shark species. Second, and most importantly, the shortfin mako sharks are being killed at unsustainable rates both as bycatch and as intentional targets of commercial and recreational fishing, leading to steep population declines in the Atlantic Ocean and more moderate declines in the North Pacific Ocean and Indian Ocean. Third, federal, state, foreign national, or international protections for the shortfin mako are inadequate because they are too patchwork and weak to be effective. Finally, the shortfin mako will suffer or is already suffering from ocean acidification, migration of prey, and other direct and indirect effects of climate change. The cumulative and synergistic effects of the numerous threats this species faces, compounded by low reproductive rates, has brought the species to the point where listing is warranted.

Apex predators such as the shortfin mako are an integral part of marine ecosystems, helping to regulate the populations of species below them on the food chain. Massive depletion of shark populations has been shown to have a cascading effect throughout oceanic ecosystems. Sharks are a vital part of keeping marine ecosystems healthy. Overfishing of the shortfin mako has had, and will continue to have, deleterious effects on those systems.

The ESA requires this 60-day written notice requirement before a citizen suit may be filed, during which time NMFS may remedy its error and publish its 12-month finding without risk of litigation. 16 U.S.C. § 1540(g)(2)(A)(i). However, if NFMS does not publish a 12-month finding by the end of the 60-day period, Defenders and the Center intend to file a civil suit in federal district court under section 11(g)(1)(A), 16 U.S.C. § 1540(g)(1)(A), seeking declaratory relief and an order directing publication of the required 12-month finding by a date certain.

Please do not hesitate to contact us to discuss this matter further.

Sincerely,

A handwritten signature in blue ink that reads "Jane P. Davenport". The signature is written in a cursive style with a small dot at the end of the last word.

Jane P. Davenport, Senior Attorney
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