

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

CIVIL ACTION NO.: 4:14-cv-138

NORTH CAROLINA FISHERIES )  
ASSOCIATION, INC.; and )  
CARTERET COUNTY FISHERMAN’S )  
ASSOCIATION, INC., )

Plaintiffs, )

vs. )

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

PENNY PRITZKER, Secretary, United )  
States Department of Commerce; SALLY, )  
JEWELL, Secretary, United States )  
Department of Interior; DR. KATHLEEN )  
SULLIVAN, Administrator, National )  
Oceanic and Atmospheric Administration; )  
DANIEL ASHE, Director, United States )  
Fish and Wildlife Services; JOHN E. )  
SKVARLA, Secretary, North Carolina )  
Department of Environment and Natural )  
Resources; DR. LOUIS DANIEL, )  
Executive Director, North Carolina )  
Division of Marine Fisheries; and, )  
GORDON S. MYERS, Executive )  
Director, North Carolina Wildlife )  
Resources Commission, )

Defendants. )

**I. INTRODUCTION**

1. North Carolina Fisheries Association and Carteret County Fisherman’s Association (collectively “Plaintiffs”) challenge the failures of the Secretary of the U.S. Department of Commerce, the Secretary of the U.S. Department of Interior, the Administrator of the National Oceanic and Atmospheric Administration (“NOAA”), the Director of the United

States Fish and Wildlife Service (“USFWS”), the Secretary of the North Carolina Department of Environment and Natural Resources (“NCDENR”), the Executive Director of the North Carolina Division of Marine Fisheries (“NCDMF”), and the Executive Director of the North Carolina Wildlife Resources Commission (“NCWRC”), (collectively “Defendants”) to comply with mandatory obligations under the Endangered Species Act (“ESA”), 16 U.S.C. § 1531, *et seq.*, and properly utilize their authority to conserve, manage, and regulate recognized marine environmental threats to prevent the known unlawful takes of threatened and endangered marine sea turtles.

2. Specifically, the Defendants have long recognized that the recreational hook and line fishery has been in violation of the ESA, yet even with this knowledge, Defendants have failed to take action to prevent the illegal take of sea turtles in this fishery and failed to ensure that the fishery is not likely to jeopardize the continued existence of federally listed sea turtle species.
3. While Defendants’ own scientific data acknowledge significant numbers of illegal incidental takes of protected sea turtles by the recreational hook and line fishery Defendants have ignored this data and instead, arbitrarily and capriciously placed virtually the entire burden of sea turtle conservation efforts and regulation on commercial fisheries. The commercial fishery has been, and continues to be, highly regulated regarding conservation efforts directed at sea turtles. There currently exists no comparable management, regulation, or oversight for the recreational hook and line fishery despite knowledge of significant numbers of unlawful takes by these resource user groups.

4. By failing to respond to documented threats to sea turtle recovery and continuing to authorize, approve, and license recreational hook and line fishery without observation, oversight, documentation, or regulation of sea turtle takes, Defendants continue to violate the ESA and its requirements to utilize its authorities in furtherance of species conservation and prevent the illegal taking of protected sea turtles.

## **II. JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201, 2202, and 16 U.S.C. §§ 1540(c) and 1540(g).
6. Pursuant to 16 U.S.C. § 1540(g), sixty (60) days notice of the violations alleged in this Complaint was provided to Defendants prior to the filing of this action.
7. Venue is proper in this district pursuant to 28 U.S.C. §1391(e).

## **III. PARTIES**

8. Plaintiff North Carolina Fisheries Association, Inc. (“NCFA”) is a non-profit corporation organized and existing under North Carolina law, with its principle place of business in Pamlico County, North Carolina. NCFA’s mission objectives include the study, promotion, and development of growth and conservation and use of fish, seafood, and other marine resources; to assemble and disseminate information with respect to conservation, preservation and use of products of the sea; to gather and disseminate information which will be beneficial to those engaged in catching, taking, preparing, preserving, distributing, or using any form of marine life; and, to cooperate with other organizations and state and federal agencies created for any of the foregoing purposes. NCFA members include, but are not limited to, commercial fishermen from all coastal counties in North Carolina, seafood dealers, processors, and distributors which are

directly affected by the Endangered Species Act and regulations promulgated therefrom regarding threatened and endangered sea turtles.

9. Plaintiff Carteret County Fisherman's Association, Inc. ("CCFA") is a non-profit corporation organized and existing under North Carolina law, with its principle place of business in Carteret County, North Carolina. CCFA's mission objectives include the study, promotion, and development of growth and conservation and use of fish, seafood, and other marine resources; to assemble and disseminate information with respect to conservation, preservation and use of products of the sea; to gather and disseminate information which will be beneficial to those engaged in catching, taking, preparing, preserving, distributing, or using any form of marine life; and, to cooperate with other organizations and state and federal agencies created for any of the foregoing purposes. Its members include commercial fishermen in the Carteret, Onslow, and Pamlico counties of North Carolina which are directly affected by the Endangered Species Act and regulations promulgated therefrom regarding threatened and endangered sea turtles.
10. Plaintiff NCFA and CCFA and its members have suffered injury to their economic and environmental interests which are uniquely entwined with endangered and threatened sea turtles.
11. Defendant Penny Pritzker, in her official capacity as Secretary, U.S. Department of Commerce is the chief officer and bears ultimate responsibility, concurrent with the Secretary, Department of the Interior, for implementation and fulfillment of the agencies under her Department duties under the ESA, specifically, NOAA.
12. Defendant Sally Jewell, in her official capacity as Secretary, U.S. Department of the Interior, is the chief officer and bears ultimate responsibility, concurrent with the

Secretary, Department of Commerce, for implementation and fulfillment of the agencies under her Department duties under the ESA, specifically, USFWS.

13. Defendant Dr. Kathryn Sullivan in her official capacity as Administrator, National Oceanic and Atmospheric Administration, has responsibility for implementing and fulfilling the agency's duties under the ESA.
14. Defendant Daniel Ashe, in his official capacity as Director, U.S. Fish and Wildlife Services, has responsibility for implementing and fulfilling the agency's duties under the ESA.
15. Defendant John E. Skvarla III in his official capacity as Secretary, North Carolina Department of Environment and Natural Resources, is the chief officer and bears ultimate responsibility for the protection of the environment and natural resources of North Carolina including sea turtles in state waters and the direction of agencies under the control of NCDENR.
16. Defendant Dr. Louis Daniel, in his official capacity as Executive Director, North Carolina Division of Marine Fisheries, has responsibility for ensuring sustainable marine and estuarine fisheries and habitats in North Carolina. In addition, NCDMF regulates the recreational hook and line fishery in inshore and coastal waters of North Carolina.
17. Defendant Gordon S. Myers, in his official capacity as Executive Director, North Carolina Wildlife Resources Commission, has responsibility to conserve and sustain the state's fish and wildlife resources through research, scientific management, wise use, and public input. NCWRC is responsible for the enforcement of North Carolina fishing and boating laws in state waters as well as licensing of recreational hook and line fishermen.

#### **IV. THE ENDANGERED SPECIES ACT**

18. Congress enacted the ESA to provide both “a means whereby the ecosystems upon which endangered and threatened species depend may be conserved,” and “a program for the conservation of such endangered species and threatened species.” 16 U.S.C. § 1531(b).
19. The ESA affords first priority to the preservation of endangered and threatened species. Section 2(c) of the ESA states it is “the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.” 16 U.S.C. § 1531(c)(1). The ESA defines “conservation” as “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.” 16 U.S.C. § 1532(3). “Such methods and procedures include, but are not limited to, all activities associated with scientific resource management such as research, census, law enforcement [and] may include regulated taking” of protected species. *Id.*
20. Further, federal agencies “shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.” 16 U.S.C. § 1531(c)(2).
21. The ESA makes it illegal for any person to “take” threatened or endangered species. 16 U.S.C. §1538(a)(1). The term “person” means any “individual [...] or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State [...]” 16 U.S.C. § 1532(13). The term “take” is broadly defined to include actions that “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or [...] attempt to engage in such conduct.” 16 U.S.C. § 1532(19). Congress intended the term “take” to be

defined in the “broadest possible manner to include every conceivable way” in which a person could harm or kill fish or wildlife.<sup>1</sup>

22. The ESA “not only prohibits the acts of those parties that directly exact the taking, but also bans those acts of a third party that bring about the acts exacting a taking[.]” *Strahan v. Coxe, et al.*, 127 F.3d 155 (1<sup>st</sup> Cir. 1997); 16 U.S.C. § 1538(g). A governmental third party pursuant to whose authority an actor directly exacts a taking of a protected species may be deemed to have violated the ESA prohibition of taking protected species. *Id.*
23. The take of protected species may only occur in very limited circumstances closely regulated by the Federal agencies. The U.S. Department of Commerce, through NOAA, and the U.S. Department of Interior, through USFWS may issue permits or incidental take permits (“ITP”) sanctioning the taking of a protected species where such taking is “incidental to, and not the purpose of, carrying out of an otherwise lawful activity.” 16 U.S.C § 1539(a)(1)(B). Unless a particular fishery has been properly exempted in accordance with this section, any incidental take of protected species is unlawful and in violation of the ESA. No such ITP exists for the recreational hook and line fishery despite documented evidence that incidental takes in this fishery occur in high numbers.

## V. LEGAL FRAMEWORK

24. All species of sea turtles found in U.S. waters are listed as endangered or threatened under the ESA and as such are protected by the take prohibitions set forth in Section 9 of the ESA.

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<sup>1</sup> See S. Rep. No. 307 93<sup>rd</sup> Cong., 1<sup>st</sup> Sess. 1, reprinted in 1973 U.S. Code Cong. & Admin. News, 2989, 2995.

25. Both the Department of Commerce (through NOAA) and the Department of Interior (through USFWS) are charged with the administration of the ESA with respect to sea turtles.

26. To help identify and guide the protection, conservation and recovery of sea turtles, the ESA requires NOAA and USFWS to develop and implement recovery plans for the U.S. sea turtle population. 16 U.S.C. § 1533(f). Each recovery plan outlines “management actions as may be necessary to achieve the plan’s goal for the conservation and survival of the species” and “objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of [the ESA], that the species be removed from the list”. *Id.* To date, no sea turtle populations have been delisted or reclassified under the ESA.

27. Despite having no mandatory reporting or observation requirements in the recreational hook and line fishery by which to obtain objective, measurable criteria, Defendants have long recognized that the recreational hook and line fishery has significant numbers of illegal takes of sea turtles. By refusing to respond to these known threats and allowing the continued illegal takes of sea turtles in violation of the ESA, Defendants have failed to utilize their authorities in furtherance of the ESA for the survival, conservation, and recovery of sea turtles.

## **VI. ILLEGAL TAKES OF SEA TURTLES IN THE RECREATIONAL HOOK AND LINE FISHERY**

28. Over 30 years ago, NOAA and USFWS formally recognized that sea turtle population losses from incidental take were particularly costly to the recovery of endangered or threatened sea turtles.<sup>2</sup> In 1984, NOAA and the USFWS formulated a multi-species

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<sup>2</sup> 1984 Plan, p. 19

recovery plan for five sea turtle species occurring in the U.S. which formally identified the recreational hook and line fishery as a threat to the recovery of protected sea turtles. This initial plan was followed by individual species plans developed by recovery teams for the U.S. Atlantic turtle species in the early 1990's and the U.S. Pacific species in the late 1990's. The most recent revisions to certain recovery plans were approved in 2013.

29. Each of these recovery plans, promulgated by ESA mandate, identify specific marine environmental threats to sea turtle recovery. Among other threats, the recovery plans specifically identify incidental takes by recreational hook and line fishermen as significant threats to the recovery of sea turtles.

30. In the multi-species *Recovery Plan for Marine Turtles*; 1984 ("1984 Plan"), NOAA and USFWS state that in addition to incidental encounters with commercial fishing gear, these Defendants knew of turtle takes "with baited hook and line, including sport fishing tackle."<sup>3</sup> Despite recognizing illegal recreational takes are a threat to species recovery, virtually all regulations and reporting requirements have been placed on the commercial fishery while ignoring increasing incidental recreational takes.<sup>4</sup>

31. In 1991, NOAA and USFWS approved its *Recovery Plan for Atlantic Green Turtle*. ("AGT Plan"). In drafting the AGT Plan, these Defendants acknowledge that in addition to incidental takes in the commercial fishery, the recreational fishery is extensive and turtle takes on hook and line gear are not uncommon.<sup>5</sup> The AGT Plan requires that "[i]f any fisheries are found to result in significant take of sea turtles, regulations to protect turtles should be published by NOAA Fisheries or appropriate State Resource

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<sup>3</sup> *Id.*, p. 54

<sup>4</sup> *Id.*, p. 80

<sup>5</sup> AGT Plan, p. 8

Agencies.”<sup>6</sup> Despite this requirement, virtually no oversight, enforcement or regulation regarding unlawful takes of sea turtles by the recreational hook and line fishery exists.

32. The *Bi-National Recovery Plan for the Kemp’s Ridley Sea Turtle*; 2011 (“Kemp’s Plan”), also published and approved by NOAA and USFWS, states that significant takes of Kemp’s ridley turtles occur in the recreational fisheries.<sup>7</sup> Based on 2006 data from NOAA, the Kemp’s Plan reveals that an estimated 27,291 hard shell turtles were taken by recreational hook and line fishermen along the Gulf Coast (excluding Texas) alone.<sup>8</sup> Defendants NOAA and USFWS admit efforts are needed that would reduce the number of interactions with both recreational and commercial fisheries.<sup>9</sup> Scientists for these Defendants have determined that the recreational hook and line fishery results in an estimated mortality of Kemp’s ridley turtles equal to that of the demersal gill net commercial fishery that is highly regulated and observed.<sup>10</sup> Defendants have focused conservation and regulation efforts almost solely on commercial fisheries while ignoring significant illegal turtle takes by the recreational hook and line fishery and its impact on sea turtle recovery.

33. The *Recovery Plan for the Northwest Atlantic Population of the Loggerhead Sea Turtle*; 2008, recognizes that the recreational hook and line fishery is extensive, particularly in the southeastern U.S.<sup>11</sup> Defendant NOAA has determined that aside from the highly regulated commercial fishery, recreational hook and line takes of loggerhead turtles rank

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<sup>6</sup> *Id.*, p. 27

<sup>7</sup> Kemp’s Plan, p. II-13

<sup>8</sup> *Id.*, p. I-59

<sup>9</sup> *Id.*, p. II-13

<sup>10</sup> *Id.*

<sup>11</sup> Loggerhead Plan, p. I-49

among the highest of bycatch fisheries.<sup>12</sup> Despite this acknowledgement, virtually no regulation, enforcement, or oversight exists for the recreational hook and line fishery.

34. The *Recovery Plan for Leatherback Turtles*; 1992 (“Leatherback Plan”) states that in addition to commercial fisheries, recreational fisheries, such as hook and line, incidentally take leatherback turtles.<sup>13</sup> In recognizing these takes by recreational fisherman, Defendant’s recovery team notes that efforts are needed to monitor incidental takes both commercial and recreational fisheries to determine the full extent of their impacts.<sup>14</sup>

35. While commercial fisheries with similar incidental take numbers are highly scrutinized through mandatory reporting and on-board observers to document these takes, there are no such similar requirements on the recreational hook and line fishery to report or observe unlawful takes of protected sea turtles.

36. The unlawful takes of sea turtles in North Carolina fisheries has been known for several decades by Defendants but only a few fisheries management measures have been put in place to mitigate these illegal takes.<sup>15</sup> By-catch has been assessed and mitigated in some fisheries but completely ignored in others.<sup>16</sup> Defendant NCWRC has even determined that fundamental changes are required to manage sea turtle takes but have taken no such steps to protect sea turtles from illegal takes in the recreational hook and line fishery.

37. Since 1997, North Carolina has monitored sea turtle strandings in its state waters through weekly reporting. In addition to the mandatory reporting of interactions in certain commercial fisheries, these reports include some voluntarily reported takes by

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<sup>12</sup> *Id.*, p. V-11

<sup>13</sup> *Leatherback Plan*, p. 9

<sup>14</sup> *Id.*, p. 29

<sup>15</sup> C.M. McClellan et. al., *Marine Policy* 35 (2011)

<sup>16</sup> *Id.*

recreational fishermen. The data shows that in the period between January 1 and September 6, 2013, over 45% of the reported strandings were directly attributable to the hook and line fishery.<sup>17</sup> As no requirement exists mandating the reporting of takes by recreational hook and line fishermen, the actual number of illegal takes in this fishery is believed to be much higher.

38. NCDMF, through its Sea Turtle Advisory Committee (“STAC”), has specifically identified recreational hook and line as a gear of primary concern in its state regulated waters.<sup>18</sup> The STAC notes that potential interactions result from high recreational effort, known interactions of turtles striking baited hooks, and documented mortality.<sup>19</sup> One sea turtle rescue facility veterinarian in North Carolina estimates that 15% of the sea turtles seen in the facility are a result of entanglement in hook and line gear.<sup>20</sup> Despite identifying recreational hook and line as a gear of primary concern, Defendants have instituted no mandatory regulations on this fishery to prevent illegal turtle takes, instead focusing virtually all management efforts on the commercial fishery.

39. Defendant Dr. Louis Daniel, executive director of NCDMF, has known of unlawful takes of sea turtles by the recreational hook and line fishery and has refused to take action to monitor or prevent these illegal takes of protected species. After the NCDMF’s Sea Turtle Advisory Committee determined recreational hook and line to be a gear of primary concern, requests were made through the STAC and personally to Defendant Daniel to observe this fishery and to determine the extent to which it resulted in unlawful takes of sea turtles. Defendant Daniel, himself an avid recreational fisherman, has ignored these

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<sup>17</sup> North Carolina weekly stranding reports, Jan. – Sept 6, 2013

<sup>18</sup> NCDMF Sea Turtle Advisory Committee, 2006, p. 31

<sup>19</sup> *Id.*

<sup>20</sup> NCDMF publication, *Fish Eye News*, Oct. 2010

requests and taken no steps to decrease or even document such illegal takes after requested to do so.

40. In the October 2010 edition of the NCDMF's publication, Fish Eye News, there was an article entitled "Sometimes They Bite the Hook", regarding sea turtle interacting with recreational hook and line fisheries. In the article, a prominent recreational fisherman and fishing guide was interviewed. In the interview, he indicated that he "see[s] sea turtles about every trip we go in the ocean" ... "I've caught them on shrimp beside the turning basin on a two-hook bottom rig." This particular fisherman was appointed to the North Carolina Marine Fisheries Commission ["MFC"] in July 2011. The MFC is the rule making body of the NCDMF, responsible for the adoption of regulations to be followed in the management, protection, preservation and enhancement of the marine and estuarine resources within its jurisdiction, including commercial and sports fisheries resources. Notwithstanding knowledge at the highest level of North Carolina's fisheries rule making body, no measures have been taken to protect endangered and threatened sea turtles from illegal takes by the recreational hook and line fishery.

41. With knowledge of unlawful takes in the hook and line fishery, it has been requested that Defendant Daniel take the following actions to protect sea turtles in accordance with the ESA:

- a. Provide for on-water and land based observation of recreational hook and line fisheries for turtle interactions in all coastal waters of North Carolina to help determine the number of takes and collect valuable data to better quantify the magnitude to these illegal takes.
- b. Enact measures to reduce illegal takes by the recreational hook and line fishery.

- c. Require operators of For Hire fishing guide services to comply with sea turtle release procedures published by NOAA and have onboard specific gear to ensure the proper release of incidentally caught sea turtles.
- d. Require recreational hook and line fishermen to report incidental takes.

As of this filing, Defendant Daniel has refused to formally implement any observation or means to ensure sea turtles are protected from illegal takes in the recreational hook and line fishery despite the acknowledgement that this fishery results in significant number of turtle takes.

42. The Defendants, USFWS and NOAA have failed to implement any measures to observe and prevent the illegal take of protected sea turtles by recreational hook and line fishermen.

43. A study between 1997 and 2009 of fishery gear interactions in Florida, conducted in part by scientists for Defendant NOAA, noted the most common gear for interaction was hook and line.<sup>21</sup> These scientists documented over 1,000 protected sea turtles with fishing gear interactions. Of these, interactions, 75.3% were attributable to hook and line fishing gear.<sup>22</sup> Due to the large numbers of recreational hook and line fishermen, these interactions occur more often than any other gear type.<sup>23</sup>

44. Since 2010, over 500 turtles have been reported caught by anglers from fishing piers in Mississippi.<sup>24</sup> On May 5<sup>th</sup> and 8<sup>th</sup>, 2014, five Kemp's ridley sea turtles were caught by recreational hook and line fishermen from a single fishing pier on Topsail Island, North Carolina, according to the Weekly Summary of Stranded Sea Turtles in North Carolina, NC Sea Turtle Project, NCWRC.

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<sup>21</sup> N.M. Adimey et al., Marine Pollution Bulletin 81 (2014)

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> 34<sup>th</sup> Annual Symposium on Sea Turtle Biology and Conservation; 2014

45. Between the period of January 1 and September 6, 2013, the Sea Turtle Project indicated that over 45% of all strandings reported during this time frame were directly attributable to the hook and line fishery. As no requirement exists mandating the reporting of takes by recreational hook and line fishermen, either in North Carolina or other coastal states, these voluntarily reported numbers are believed to be much lower than the actual number of takes by recreational hook and line fishermen.
46. An article in the June 27, 2014 *Virginian Pilot* stated that in the weeks between mid-May and June 27, 2014, nine turtles had been reported hooked by recreational fishermen in Virginia Beach, Virginia. Upon information and belief, similar numbers of illegal takes of sea turtles by the recreational hook and line fishery occur in every state in which sea turtles are found.

#### **VII. VIOLATION OF THE ESA TAKE PROVISIONS BY THE RECREATIONAL HOOK AND LINE FISHERY**

47. Plaintiff's reallege and incorporate by reference each allegation set forth above in this Complaint.
48. Section 9 of the ESA prohibits the "take" of endangered species. 16 U.S.C. § 1538(g)(a)(1). It also prohibits the causing of take to occur. *Id.* 1538(g). These prohibitions on take extend to endangered or threatened sea turtles.
49. With full knowledge that the recreational hook and line fishery result in high numbers of illegal takes of protected sea turtles, Defendants have violated and continue to violate Section 9 of the ESA by allowing and authorizing this resource use to occur without any oversight or regulation to account for, or prevent further detrimental impacts to sea turtle recovery.

#### **VIII. STATUS OF THE SPECIES**

50. Regular population assessments are necessary to measure progress toward achieving recovery goals for all sea turtle species to provide the foundation for evaluating recovery.<sup>25</sup> Before any sea turtle species can be delisted and or downlisted, a determination must be made “solely on the basis of the best scientific and commercial data available **after** conducting a review of the status of the species”.<sup>26</sup>
51. Upon information and belief, despite Defendants failure to comply with the ESA, all sea turtle species within the Northwest Atlantic Distinct Population Segment have continued to experience significant population increases.
52. Based on data beginning in 1966, a 2013 Kemp’s ridley stock assessment documents the number of nests increased exponentially through 2009 when 19,163 nests were observed on the primary nesting beaches in Mexico.<sup>27</sup> The average rate of increase of nesting Kemp’s ridleys was on the order of 19%.<sup>28</sup> In 2010, 2011 and 2012, the preliminary estimates of nests observed were 12,377, 19,368 and 20,197 respectively.<sup>29</sup> It was estimated over one million hatchlings were released in 2011 and 2012 and it was estimated the total population of Kemp’s ridley in recent years is likely in excess of one million turtles including about a quarter million subadults and adults.<sup>30</sup>
53. The *Bi-National Recovery Plan for the Kemp’s Ridley Sea Turtle*; 2011 provides the following downlisting criteria:

#### C.1 Downlisting Criteria

1. A population of at least 10,000 nesting females in a season (as estimated by clutch frequency per female per season) distributed at the

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<sup>25</sup> NMFS Sea Turtle Assessment Status and Research Needs; July 2013

<sup>26</sup> 16 U.S.C. § 1533(b)(emphasis added).

<sup>27</sup> Gulf States Marine Fisheries Commission, *Kemp’s Ridley Stock Assessment Project*; June 2013

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* (Note 2010 nesting numbers were 12,377 but quickly recovered to 2009 levels or higher).

<sup>30</sup> *Id.*

primary nesting beaches (Rancho Nuevo, Tepehuajes, and Playa Dos) in Mexico is attained.

2. Recruitment of at least 300,000 hatchlings to the marine environment per season at the three primary nesting beaches (Rancho Nuevo, Tepehuajes, and Playa Dos) in Mexico is attained to ensure a minimum level of known production through *in situ* incubation, incubation in corrals, or a combination of both.

54. Upon information and belief, the Kemp's ridley species is ripe for downlisting according to recovery criteria for this turtle species.
55. A 2010 NOAA report of the northwestern Atlantic population segment of loggerhead sea turtle documents an abundance estimate of positively identified loggerheads at 588,000.<sup>31</sup> When an appropriate proportion of observed turtles which could not be positively identified as loggerheads was included in the study, the regional abundance estimate increased to about 801,000 with an inter-quartile range of about 521,000 – 1,111,000 loggerhead turtles in the Atlantic Ocean from the beach to the continental shelf in the area from Cape Canaveral Florida to the mouth of the Gulf of St. Lawrence, Canada.<sup>32</sup>
56. The loggerhead, green, and leatherback sea turtle recovery plans identify no similar quantitative methodology to determine a point at which those species may be delisted or downlisted and therefore, no real manner to gauge the effectiveness of protection efforts or ability to conduct a review of the status of the species as required by 16 U.S.C. § 1533(b).
57. Upon information and belief all turtle species continue to experience significant population increases like the examples above and an immediate stock assessment should be required to evaluate the stock of the loggerhead, green, and leatherback sea turtles and

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<sup>31</sup> Preliminary Summer 2010 Regional Abundance Estimate of Loggerhead Turtles in Northwestern Atlantic Ocean Continental Shelf Waters; April 2011.

<sup>32</sup> *Id.*

whether or not they have attained delisting and/or downlisting status pursuant to 16 U.S.C. § 1533.

58. Upon information and belief, the northwestern Atlantic population segment of the loggerhead sea turtle is ripe for delisting.

59. Defendants own scientific data recognizes the recreational hook and line fishery results in significant numbers of illegal sea turtle takes in violation of the ESA. Until such time as it is determined the Kemp's ridley, green, loggerhead, and leatherback sea turtles are appropriate for delisting and/or downlisting, the regulations to protect sea turtles should include observation and enforcement of take prohibitions in the recreational hook and line fishery.

#### **IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff's request that this Court:

1. Adjudge and decree that Defendants have violated and continue to violation Section 9 of the ESA and implementing regulations by allowing the recreational hook and line fishery to operate in a manner that has caused and is continuing to cause the illegal take of endangered Kemp's ridley sea turtles, and the unauthorized take of threatened loggerhead, green, and leatherback sea turtles;
2. Order the Defendants to apply the take prohibitions of Section 9 and implementing regulations with respect to the unauthorized take of sea turtles by the recreational hook and line fishery unless and until the fishery has received a incidental take permit;
3. Order National Oceanic and Atmospheric Administration and US Fish and Wildlife Service to conduct in-water abundance surveys and nesting population surveys for the northwestern Atlantic population segment of the loggerhead sea turtle, the green sea

turtle, and the leatherback sea turtle, in order to assess the status of the species as required by 16 U.S.C. § 1533(b).

4. Enjoin Defendants from allowing the ongoing operation of the recreational hook and line fishery until such time as an incidental take permit is issued;
5. Award Plaintiffs their costs of litigation, including reasonable attorney and expert witness fees, pursuant to the citizen suit provision of the ESA; and,
6. Grant Plaintiff's such further additional equitable relief that the court deem just and proper.

This the 5<sup>th</sup> day of August, 2014.

**WHEATLY, WHEATLY, WEEKS,  
LUPTON & MASSIE, P.A.**

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