



**PET INDUSTRY JOINT
ADVISORY COUNCIL**
1146 19th Street, N.W., Suite 350
Washington, DC 20036
Tel: 202-452-1525
Fax: 202-452-1516

February 11, 2014

VIA CERTIFIED MAIL

Regulatory Branch Chief
Protected Resources Division
National Marine Fisheries Service
Pacific Islands Regional Office
1601 Kapiolani Blvd., Ste 1110
Honolulu, HI 96814

Re: Additional Scientific Information; 66 Coral Species

To Whom It May Concern:

We submit this letter on behalf of the Pet Industry Joint Advisory Council (“PIJAC”), a non-profit trade organization that advocates for the pet industry. This letter responds to a notice published by the National Marine Fisheries Service (“NMFS”) extending the period to make final listing determinations under the Endangered Species Act (“ESA”) on 66 coral species by an additional six months, until June 7, 2014. *See* 78 Fed Reg. 57,835 (September 20, 2013).

Background

On September 20, 2013, NMFS published a notice in the *Federal Register* extending the period to make final listing determinations for 66 coral species for an additional 6 months on the basis of “substantial scientific disagreement.” NMFS stated in this notice that during the public comment period, a number of parties recommended that NMFS extend the period to make final listing determinations on the basis of scientific disagreement, as well as the questionable accuracy of available scientific information. In the notice of extension, NMFS states that any new scientific information must be submitted by October 1, 2013 - seven (7) business days after notice for extension was published in the *Federal Register*.

As indicated in correspondence concerning this matter, PIJAC requested an extension of the time period for making final listing determinations to enable development of additional scientific information concerning the proposed species. PIJAC, working with the Western Pacific Fishery Management Council (“WESPAC”), contacted Dr. John (Charlie) Veron, a world-renowned coral expert, and discussed the NMFS status review with him. Dr. Veron is cited more than 750 times in NMFS’ status review of the 66-coral species, and his work was extensively relied on by NMFS in the proposed listing determinations.

Dr. Veron indicated in preliminary discussions with PIJAC that he did not agree with the conclusions contained in NMFS' proposed rule, and that NMFS had not contacted him to discuss the use of his scientific information prior to its use in the proposed rule. Dr. Veron also indicated that he possessed substantial new scientific information regarding the proposed species that NMFS failed to consider in its proposed rule, and that such additional scientific information could be made available after additional analysis by his team.

PIJAC and WESPAC jointly funded the development of this additional scientific information by Dr. Veron and his team. Representatives from WESPAC and PIJAC also co-authored an analysis of Dr. Veron's work which he reviewed and incorporated into his final report. This effort was a substantial one, and took nearly six months to complete. The results of this additional work have now been provided by WESPAC to NMFS for inclusion in the administrative record for this proceeding. Dr. Veron and WESPAC have likewise presented the results of this effort in several different public presentations held in late-January, 2014. Representatives from NMFS participated in these presentations.

Summary of Available Scientific Information

Dr. Veron's report, including an analysis of his data prepared by WESPAC and enclosed as Appendix A to his report, clearly demonstrate that none of the 66 coral species proposed by NMFS for protection under the ESA warrant listing. Indeed, Dr. Veron stated at the January 29, 2014, meeting of the WESPAC Protected Species Advisory Committee, a meeting to be summarized by WESPAC in a forthcoming report, that NMFS' proposal to list 66 species "is based on either incorrect data, or no data at all."

Beyond Dr. Veron's report and his public statements, a number of well-respected coral scientists have stated publicly that no legitimate scientific basis exists to conclude listing of these species is warranted. For example, many coral scientists believe that many, if not all, of the coral species proposed for listing occur at depths below which scuba surveys have been completed. Researchers are now finding that with every new survey, the depth records for all proposed species are being extended. This point was discussed at a Special Seminar held in Honolulu, Hawaii, on January 27, 2014, at the Pacific Biosciences Research Center, Kewalo Marine Laboratory attended by representatives from NMFS.

The available record strongly suggests that NMFS disregarded the best available scientific information in developing this proposed rule, and that the agency may have been unduly influenced by political pressure to list these species.¹ This is evidenced by the fact that NMFS failed to contact Dr. Veron to solicit his views of his data prior to issuing a proposed rule. It is highly concerning that the agency would cite a world-renowned coral scientist over 750 times and not seek out his views regarding the use of his work. When PIJAC did contact Dr. Veron, we were shocked to find out that

¹ PIJAC has requested through the Freedom of Information Act comments made by the NMFS Administrator, Dr. Veron, and other coral scientists prior to, and after the proposed listing. However, to date, NMFS has failed to respond to such requests. This lack of transparency suggests that NMFS may in fact have pre-decided the outcome of the listing process, and purposefully avoided seeking out the best available scientific information to avoid conflicting results.

Dr. Veron strongly disagreed with NMFS' proposed listing determinations, and did not believe NMFS' conclusions reflected an accurate portrayal of his research. Even more troubling is the fact that NMFS likely knew Dr. Veron possessed more current scientific data conflicting with the agency's conclusions, yet the agency plunged ahead with the proposed rule in the face of such knowledge.

The situation as it currently exists is, to say the very least, troubling. NMFS, apparently bowing to political pressure, appears to have purposefully avoided contacting Dr. Veron to discuss the use of his data, and instead, the agency elected to publish a flawed proposed rule that misinterprets Dr. Veron's work. NMFS has now heard first-hand from Dr. Veron his views of the science through public presentations, emails, and submissions of his written work product. This new scientific information contradicts NMFS' conclusions, and it calls into question the process NMFS has used to date to evaluate these species.

Under the circumstances, NMFS has no choice but to withdraw the proposed rule, and engage in a more rigorous scientific assessment that incorporates the scientific views of Dr. Veron and other scientific experts. Failing to do so would be in direct conflict with the statutory requirements of the ESA that NMFS make use of the best available scientific information when making listing determinations.

Summary

PIJAC wishes to emphasize several points made in Appendix A to Dr. Veron's technical report. First, as indicated in Appendix A to this letter, the coral species proposed for listing by NMFS are wide-ranging, occur over millions of square miles of ocean area, and occur in numerous, ecologically-diverse ecoregions. As noted in Dr. Veron's report, this wide distribution helps buffer against extinction risk. As indicated in comments submitted by WESPAC on the listing determination tool developed by NMFS, NMFS failed to consider the broad and diverse distribution of these species in its proposed listing determinations.

Second, the best available scientific information produced by Dr. Veron contradicts conclusions reached by NMFS in its proposed rule. For example, Dr. Veron concludes that only 2 of the 66 species are both rare, and narrowly distributed. These conclusions are markedly different than those reached by NMFS in its proposed rule, which in turn were based on a flawed assessment of Dr. Veron's previous work.

Third, it is important to note that abundance surveys used to derive the semi-quantitative abundance estimates do not allow a projection of abundance trends over time, nor do available data provide an estimate of overall species abundance within and across all sampled ecoregions. At most, these data allow for a semi-quantitative assessment of relative species abundance, providing some insight as to the geographic distribution of species across a range of diverse ecoregions.

Finally, it is clear that most, if not all of the proposed coral species occur at ocean depths below which scuba surveys have been completed. Ongoing research continues to show the proposed species occur at such depths. Thus, recent research shows that the proposed coral species are more

Regulatory Branch Chief

February 11, 2014

Page 4

abundant than NMFS assumed, and such coral species are likely buffered against purported extinction risks given their range of depth distributions.

Based on the foregoing, PIJAC respectfully requests that NMFS withdraw the proposed rule to list 66 coral species under the ESA, and that NMFS engage in a more transparent, scientifically-rigorous process that includes information produced by Dr. Veron, WESPAC, and PIJAC. Failing to do so at this point would simply compound the errors made by NMFS to date in this proceeding.

Please contact me at the number provided above if you have any questions concerning this matter.

Very truly yours,

PET INDUSTRY JOINT ADVISORY COUNCIL



By

N. Marshall Meyers

Enclosures

Cc: Assistant Regional Administrator for
Protected Resources
National Marine Fisheries Service
Southeast Regional Office
263 13th Avenue South
St. Petersburg, FL 33701

Marta Nammack
National Marine Fisheries Service
Office of Protected Resources
1315 East-West Highway
Silver Spring, MD 20910

Appendix A. Comparison of Veron and NMFS Proposed Rule data for the Indo-Pacific coral species proposed for listing under the ESA. (Prepared by PIJAC from Information Supplied by Dr. Veron).

Species	Veron Data						NMFS Proposed Conclusions		
	Global Distribution (No. Ecoregions Confirmed or Strongly Predicted)	Size of all Ecoregions of Occurrence (million square miles)	Occurrence in % Present at Sites Surveyed	Total Occurrences Observed	Ecoregion Most Frequently Observed In	Size of Reef Area Most Frequently Observed (square miles)	Proposed Listing	Geographic Distribution	Rangewide Abundance
<i>Acanthastrea brevis</i>	46	8.8	6.53	195	Fiji	1,109	T	Wide	Uncommon
<i>Acanthastrea hemprichii</i>	70	9.0	11.39	340	Moreton Bay	16	T	Wide	Uncommon
<i>Acanthastrea ishigakiensis</i>	44	7.8	2.68	80	Fiji	1,109	T	Wide	Uncommon
<i>Acanthastrea regularis</i>	33	7.8	5.13	153	Milne Bay	1,322	T	Moderate	Uncommon
<i>Acropora aculeus</i>	84	13.4	32.10	958	NW Madagascar	471	T	Wide	Common
<i>Acropora acuminata</i>	72	12.6	4.66	139	S Vietnam	38	T	Wide	Uncommon
<i>Acropora aspera</i>	85	12.7	7.54	225	SW Papua	34	T	Moderate	Common
<i>Acropora dendrum</i>	52	9.5	2.04	61	SW Papua; Milne Bay	34; 1322	T	Moderate	Rare
<i>Acropora donei</i>	67	10.4	4.66	139	Gulf of Aden; Bismarck Sea; Milne Bay	118; 893; 1322	T	Moderate	Uncommon
<i>Acropora globiceps</i>	38	9.3	3.22	96	Yap; Palau	98	T	Moderate	Common
<i>Acropora horrida</i>	83	14.4	8.85	264	Banda Sea	1,698	T	Wide	Uncommon
<i>Acropora jacquelineae</i>	17	2.7	1.61	48	Sulu Sea	2,971	E	Narrow	Rare
<i>Acropora listeri</i>	68	11.6	5.50	164	Fiji	1,109	T	Wide	Uncommon
<i>Acropora lokani</i>	20	2.7	2.75	82	Fiji	1,109	E	Narrow	Rare
<i>Acropora microclados</i>	74	13.3	15.18	453	Cenderawasih Bay	453	T	Wide	Uncommon

	Veron Data						NMFS Proposed Conclusions		
Species	Global Distribution (No. Ecoregions Confirmed or Strongly Predicted)	Size of all Ecoregions of Occurrence (million square miles)	Occurrence in % Present at Sites Surveyed	Total Occurrences Observed	Ecoregion Most Frequently Observed In	Size of Reef Area Most Frequently Observed (square miles)	Proposed Listing	Geographic Distribution	Rangewide Abundance
<i>Acropora palmerae</i>	59	11.1	2.65	79	Pohnpei	128	T	Moderate	Uncommon
<i>Acropora paniculata</i>	66	13.0	14.31	427	Sunda Shelf	470	T	Wide	Uncommon
<i>Acropora pharaonis</i>	19	2.4	3.62	108	North & Central Red Sea	2,440	T	Narrow	Common
<i>Acropora polystoma</i>	67	11.6	6.74	201	Pohnpei	128	T	Wide	Uncommon
<i>Acropora retusa</i>	44	10.2	0.47	14	Fiji	1,109	T	Wide	Uncommon
<i>Acropora rudis</i>	9	0.91	0.13	4	Andaman Sea	54	E	Narrow	Uncommon
<i>Acropora speciosa</i>	38	10.2	8.31	248	Bismarck Sea	893	T	Moderate	Uncommon
<i>Acropora striata</i>	53	10.4	3.22	96	Banda Sea	1,698	T	Moderate	Uncommon
<i>Acropora tenella</i>	24	4.4	0.40	12	Pohnpei; Celebes Sea	128; 159	T	Moderate	Uncommon
<i>Acropora vaughani</i>	72	13.5	7.54	225	S Vietnam	38	T	Wide	Uncommon
<i>Acropora verweyi</i>	80	14.0	4.69	140	N Philippines	728	T	Wide	Common
<i>Alveopora allingi</i>	80	12.4	1.24	37	Sunda Shelf; Banda Sea	490; 1698	T	Wide	Uncommon
<i>Alveopora fenestrata</i>	58	9.7	1.98	59	North & Central Red Sea; Cenderawasih Bay; Milne Bay	2,440; 453; 1322	T	Wide	Uncommon
<i>Alveopora verrilliana</i>	58	12.9	0.27	8	SW Papua	34	T	Wide	Uncommon
<i>Anacropora puertogalerae</i>	33	5.2	4.56	136	Banda Sea	1,698	T	Moderate	Uncommon
<i>Anacropora spinosa</i>	19	2.3	1.47	44	Solomon Islands	920	E	Narrow	Uncommon
<i>Astreopora cucullata</i>	46	9.7	6.80	203	Pohnpei	128	T	Wide	Uncommon

Species	Veron Data						NMFS Proposed Conclusions		
	Global Distribution (No. Ecoregions Confirmed or Strongly Predicted)	Size of all Ecoregions of Occurrence (million square miles)	Occurrence in % Present at Sites Surveyed	Total Occurrences Observed	Ecoregion Most Frequently Observed In	Size of Reef Area Most Frequently Observed (square miles)	Proposed Listing	Geographic Distribution	Rangewide Abundance
<i>Barabattoia laddi</i>	37	11.4	5.19	155	Celebes Sea	159	T	Moderate	Uncommon
<i>Caulastrea echinulata</i>	27	3.8	0.34	10	Solomon Islands	920	T	Narrow	Uncommon
<i>Euphyllia cristata</i>	49	8.1	12.13	362	Pohnpei	128	T	Moderate	Uncommon
<i>Euphyllia paraancora</i>	34	5.4	1.88	56	Halmahera	208	T	Moderate	Uncommon
<i>Euphyllia paradivisa</i>	16	3.7	0.20	6	Celebes Sea	159	E	Narrow	Uncommon
<i>Isopora crateriformis</i>	30	6.7	0.34	10	Birds Head	308	T	Moderate	Common
<i>Isopora cuneata</i>	52	10.8	5.09	152	S Vietnam; Solomon Islands	38; 920	T	Wide	Common
<i>Montipora angulata</i>	60	7.9	0.34	10	Sulu Sea; Lesser Sunda	2,971; 367	T	Wide	Uncommon
<i>Montipora australiensis</i>	33	6.2	0.40	12	Sunda Shelf	470	T	Wide	Uncommon
<i>Montipora calcarea</i>	49	8.1	5.80	173	Milne Bay	1,322	T	Wide	Uncommon
<i>Montipora caliculata</i>	82	15.1	12.13	362	Pohnpei	128	T	Wide	Uncommon
<i>Montipora dilatata</i>	4	2.1	0.03	1	Lesser Sundas	367	T	Wide	Common
<i>Montipora flabellata</i>	3	2.1	-	0	Not encountered	-	T	Wide	Common
<i>Montipora lobulata</i>	17	54.6	-	0	Not encountered	-	T	Wide	Uncommon
<i>Montipora patula</i>	7	3.3	-	0	Not encountered	-	T	Narrow	Common
<i>Montipora turgescens</i>	101	17.5	16.66	497	Pohnpei	128	T	Wide	Common
<i>Pachyseris rugosa</i>	74	12.6	23.46	700	Halmahera	208	T	Wide	Common

	Veron Data						NMFS Proposed Conclusions		
Species	Global Distribution (No. Ecoregions Confirmed or Strongly Predicted)	Size of all Ecoregions of Occurrence (million square miles)	Occurrence in % Present at Sites Surveyed	Total Occurrences Observed	Ecoregion Most Frequently Observed In	Size of Reef Area Most Frequently Observed (square miles)	Proposed Listing	Geographic Distribution	Rangewide Abundance
<i>Pavona diffluens</i>	8	TBD	0.47	14	NW Madagascar	1,222	T	Narrow	Uncommon
<i>Pectinia alcornis</i>	55	TBD	16.59	495	S Vietnam	38	T	Wide	Uncommon
<i>Physogyra lichtensteini</i>	72	TBD	30.86	920	Pohnpei	128	T	Wide	Common
<i>Pocillopora danae</i>	55	TBD	24.10	719	North & central GBR	9,394	T	Moderate	Uncommon
<i>Pocillopora elegans (Indo-Pacific)</i>	46	TBD	4.12	123	Pohnpei	128	T	Wide	Common
<i>Porites horizontalata</i>	41	TBD	4.16	123	Fiji	1,109	T	Wide	Common
<i>Porites napopora</i>	26	TBD	3.15	94	Celebes Sea; Halmahera	159,453	T	Moderate	Common
<i>Porites nigrescens</i>	74	TBD	29.05	866	Cenderawasih Bay	453	T	Wide	Common
<i>Seriatopora aculeata</i>	26	TBD	10.29	307	Sunda Shelf	470	T	Moderate	Uncommon