



Southern Shrimp Alliance

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Dear Mr. Feinberg:

The Southern Shrimp Alliance (“SSA”) is hereby submitting comments with regard to the Gulf Coast Claims Facility (“GCCF”) Announcement of Payment Options Eligibility and Substantiation Criteria and Final Payment Methodology released on February 2, 2011.

The SSA is a non-profit alliance of members of the shrimp industry in eight states committed to preventing the continued deterioration of America’s domestic shrimp industry and to ensuring the industry’s future viability. SSA is comprised of members of the U.S. warmwater wild shrimp fishery from eight states: Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. The association represents the U.S. shrimp industry in a wide range of issues including trade, fisheries management, and industry enhancement efforts.

SSA has previously submitted to the GCCF a Proposed GCCF Payment Methodology for the shrimp industry. We continue to believe that the payment methodology described in that proposal would best address the harm to the domestic shrimp industry resulting from the massive oil spill arising from the April 2010 explosion of the Deepwater Horizon.

The GCCF’s final determination regarding a payment methodology for members of the shrimp industry is vitally important to everyone involved in the industry – not just those that stand to directly receive payments from the fund. As currently proposed, the methodology

assumes that there is likely to be only minimal adverse impacts on the shrimp fishery going forward. Based on this assumption, the methodology offers members of the industry payment options that would result in limited funds to hedge against future risks caused by the oil spill. While some in the industry may accept these terms and move on with their working lives, we believe, based on what we have heard throughout the region since the release of the draft final payment methodology, that there are many more in the industry who will not accept the terms of the proposed methodology.

Many in the industry have reacted negatively to the GCCF's proposed methodology because it results in only limited payments as protection against unknown future risks. Thus, the number of those that will decline to participate in the GCCF likely will be significant. The lack of broad, nearly universal participation in the GCCF would threaten the industry as a whole, as some of the parties seeking more compensation than offered by the methodology will be compelled to publicize any and all concerns regarding the impact of the oil spill on the industry. These concerns undoubtedly will include criticism of the safety of Gulf shrimp and, by extension, the health and safety of consumers. As such, unsupported views regarding the safety and wholesomeness of Gulf shrimp will be amplified and the industry will continue to suffer from the oil spill – even if the optimistic projections apparently adopted by the GCCF come to fruition.

The GCCF has requested comments with regard to the proposed methodology described in its February 2011 Announcement. As such, these submitted comments address that GCCF proposed methodology specifically. These recommendations are intended to apply to boat owners, crew, and others in the industry, to the extent applicable.

The Oil Spill's Impact on the Shrimp Industry

As an initial matter, the GCCF's proposed methodology unjustifiably treats the oyster industry differently than the shrimp industry. In fact, the inference to be drawn from the methodology is that a shrimp fisherman does not bear future risks similar to those of an oyster harvester, but rather, faces the same level of risk as a restaurant owner, a hotel worker, or a cashier at Wal-Mart. This suggestion is illogical and cannot be defended. Shrimp fishermen face far more uncertainty and greater future risk than those in other industries who earn a living

on dry land. While a hotel owner, for example, can assess with reasonable certainty what his future risk of losses might be, a shrimp fisherman can't be nearly so sure.

When the Deepwater Horizon exploded, the Gulf shrimp population was in the process of spawning in deep water – at the very depths where oil gushed from the ruptured well, and where unprecedented levels of toxic dispersants were used in an effort to keep the oil from rising to the surface where it could be seen by the human eye. Thus, a significant part of the shrimp population may have been destroyed or otherwise compromised before the shrimp larvae even migrated toward shore. Then the 2011 shrimp crop went through the maturation process in the Gulf's estuaries, which suffered contamination from the oil and dispersants. As a result, many of those shrimp that survived the oil spill's first assault may not have survived its second.

The potential impact on the Gulf shrimp species is severe not only for the 2011 crop, but for future years' crops as well. If fewer shrimp survived the effects of the spill in 2010, there will be fewer that spawn in 2011. This would then have a multiplier effect for future generations of the Gulf shrimp crop. Moreover, exposure to oil and dispersants makes those shrimp that do survive more susceptible to disease and mutations. In addition, the presence of these toxins in the water will have an adverse impact on those species down the food chain that shrimp rely on for a food source, making the chances of survival even more perilous. As a result, it is grossly inappropriate to even suggest that a shrimp fisherman shares the same level of risk of future losses as those who do not rely directly on the Gulf's waters for their livelihood. GCCF officials have publicly stated their desire "to pay claims in a manner that will be equitable and fair," however, compensating shrimp fisherman in the same manner as a hotel worker, and at only half the rate of an oyster harvester, is neither equitable nor fair.

In addition to the serious unanswered questions regarding the long-term ecological impact of the oil spill on the Gulf, consumer concerns about the safety of domestic shrimp remain. Uncertainty about the effects of the largest oil spill in history and the resulting decision to use unprecedented levels of chemical dispersants on future stocks of shrimp in the Gulf means that the shrimping industry may be looking at significant economic losses for years to come.

There are numerous reports and studies analyzing the effects of the oil spill and providing predictions of the rate of recovery, both economically and ecologically, of the Gulf region. The

only consistency in these reports is their inconsistency. The fact is that no one knows how soon the region will recover. While some reports and studies optimistically predict only a limited future impact on the shrimp fishery as the result of the oil spill, these reports and studies – including the opinion of Dr. Tunnell commissioned by the GCCF – are heavy with caveats and qualifications. And yet, individuals and businesses must make decisions soon about whether to accept GCCF final payments now or assume unknown risk going forward.

Compensation for Future Risk

To better take into account the significant risks and considerable uncertainty, SSA recommends that the following changes be made to the GCCF proposed methodology for calculating payments for the shrimp industry for future years. These changes will modestly improve the calculation methodology in a way that will provide more fair and equitable treatment to those in the shrimp industry who have been harmed by the oil spill, and who are being asked to cede their rights to seek other remedies, especially in the event that the future harm is greater than what the GCCF has predicted. These changes also would result in a much greater number of individuals being willing to accept the GCCF's final payment offer in lieu of seeking redress through other means.

1. The GCCF proposal contemplates payments in 2011 and 2012 (70% and 30%, respectively). As previously noted, there is tremendous uncertainty as to how fully and how quickly the Gulf will recover, and there are a broad range of estimates for when the recovery will be complete. Nevertheless, full recovery in only two years is extremely optimistic. In order to accept the GCCF offer, the domestic shrimp industry, which is among the most vulnerable to a slower recovery, would be effectively required to rely on these very optimistic projections. SSA recommends that the future payment period be extended to four years to account for this substantial risk. Thus, we recommend that the future payment structure include projected losses for 2011–2014, at 100% of the annual loss amount, as discussed further in paragraph 4 below.

2. The GCCF proposed methodology for determining future payments is based on amounts that would be paid for 2010. That is, individuals and businesses would receive 70% and 30% of the amount that would be paid under the methodology for 2010 for the years 2011 and 2012 respectively.

2010 was an aberrational year for the shrimp industry in virtually every respect and should not serve as the base year for future payments. Some fishermen received Vessel of Opportunity (“VOO”) oil spill cleanup income and income for other efforts directly related to the oil spill crisis, such as turtle relocation, water sampling, beach cleanup, boom cleanup, marsh protection, and test trawling, to name a few. Also, some fishermen were able to return to fishing for longer or shorter periods of time, some were unable to fish, and still others simply chose not to return to fishing for the year. The relative income levels varied widely and are in no way indicative of the economic and ecological issues that members of the industry will confront in future years because of the oil spill.

VOO payments and other similar oil spill recovery income will not be available in future years to offset any losses to shrimp fishing income. They certainly must not be included in the calculation of a base amount that is used to calculate future payments.

Similarly, fishing income in 2010 should not be included in the calculation of amounts to be received in future years. GCCF officials frequently urged individuals and businesses to return to work in 2010. In meetings with SSA representatives, GCCF officials made clear that fishermen and others in the fishing industry had a responsibility to mitigate damages by returning to work. Based on these discussions, SSA encouraged all in the industry to begin fishing and other related shrimping operations to the fullest extent possible. Some were able to return to work on a limited basis, and others were not. Nevertheless, as was widely reported in the press and discussed with GCCF officials, some in the industry refused to return to work, acknowledging that they believed they would be more highly compensated by the GCCF if they had no fishing income in 2010.

By basing future payments on a comparison of 2010 income to prior years’ income, the GCCF proposal, perversely and contrary to its public statements, penalizes those who did return to work (at the urging of the GCCF) while rewarding those who elected not to do so (put simply, those who decided not to fish in 2010 would be able to show greater losses and, therefore, would receive more compensation for 2011 and 2012). The alternative of requiring parties to demonstrate their mitigation efforts would be nearly impossible, since some were unable to work while others may have chosen not to work. Determining the particular circumstances of each

party would be administratively impracticable, and would be dependent on an inherently subjective analysis of each claim by the GCCF. It almost certainly would result in inconsistent determinations which, at best, would be perceived as arbitrary and unfair within the industry.

Further, the risks that the industry confronts for future years are the same for both those who fished in 2010 and those who did not. The fact that one person earned fishing income in 2010 is in no way an indicator that the same person will earn fishing income in 2011 or future years. Similarly, the fact that another person did not fish in 2010, either because it was not possible due to closures, or because of the ability of particular boats to fish in shallower or deeper waters, etc., or because of simple personal choice, is no indication that this person's losses will be greater than others' in future years.

To properly take into account the wide variations of disparate sources of income when calculating risk of future income, 2010 data should be ignored in the calculation of future payments. Instead, a calculation based on data from years prior to the oil spill (discussed further below) should be used in determining the base amount for calculating future years' payments.

3. The GCCF proposed methodology compares 2010 income to average income for 2008 and 2009. As discussed above, a more accurate calculation of future risk would be based on prior years' income data without regard to 2010. Further, in the highly volatile fishing industry that has been subject to natural disasters and considerable fluctuations in costs and prices, there is considerable discrepancy in operating results not only from year-to-year but also region-to-region. One region in the Gulf or South Atlantic could be successful in one year while a region not far away geographically could have had a difficult year. The very next year, the situation may be reversed. To better take into account these wide variations, SSA recommends that the base year period be 2005-2009 with the high and low years disregarded. Thus, the base year calculations would be determined according to the average of a three-year period between 2005 and 2009 without regard to the high and low year. This is a standard method used in the insurance industry and is appropriate here.

4. The GCCF payment methodology should establish a uniform expense factor in the shrimp fishing industry. Expenses associated with shrimp fishing can vary greatly from year-to-year, and are heavily impacted by fuel costs, which can fluctuate greatly. SSA recommends

that the base period (2005-2009, as discussed above) calculation be determined according to a party's particular average gross income, reduced by a standard 50% expense ratio. The resulting amount would be the annual loss amount, mentioned in paragraph 1 above.

Compensation for 2010 Injury

For the reasons stated above, fishing income and income related to oil spill recovery efforts (e.g., VOO payments) should not be deducted from any payment for losses incurred in 2010. These oil spill recovery efforts were extraneous to the principal business of those in the fishing industry and are not determinative of the losses that these individuals and businesses incurred in 2010 resulting from the oil spill. Moreover, those who fished in 2010 should not be penalized for going back to work at the urging of the GCCF. Thus, compensation for 2010 injury should equal 100% of the annual loss amount, as discussed in paragraph 4 of the previous section. Total compensation (for 2010 injury and future injury), therefore, would equal five times the annual loss amount.

Easing the Burden on Atlantic Coast Industry Harmed by the Oil Spill

The Atlantic Coast shrimp industry also has been impacted by the oil spill crisis, as demand for all warmwater shrimp landed domestically has suffered. The GCCF proposed methodology suggests that *each* individual claimant would need to demonstrate that he or she has been harmed by the oil spill. It would be extremely difficult, if not impossible, for each member of the Atlantic coast shrimp industry to obtain the necessary documentation from purchasers of their product to demonstrate that injury. Accordingly, the GCCF should seek to work with members of the East Coast industry to develop a workable standard for shrimpers based on the Atlantic Coast to meet in order to demonstrate harm.

Sincerely,



John Williams
Executive Director