



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, FL 33701
727.824.5312, FAX 824-5309
<http://sero.nmfs.noaa.gov>

AUG 03 2011

F/SER31:MCB

Mr. Michael Hirshfield
Senior Vice President, North America and Chief Scientist
Oceana, Inc.
1350 Connecticut Avenue NW, 5th Floor
Washington, DC 20036

Dear Mr. Hirshfield:

This letter is in response to your July 19, 2011, petition to the National Marine Fisheries Service (NMFS) on behalf of Oceana, Inc. Your letter incorporated by reference the May 31, 2011, Notice of Intent to Sue and accompanying petition to NMFS sent by Ms. Sakashita on behalf of the Center for Biological Diversity, Turtle Island Restoration Network, Sea Turtle Conservancy, and Defenders of Wildlife seeking emergency closure of the shrimp fishery and protective regulations for sea turtles. Your letter also stated Oceana, Inc. "joins in the claims against the Fisheries Service related to sea turtles, as well as the petition for emergency closure."

Your petition for rulemaking, as well as the referenced May 31, 2011, petition, is appropriately submitted pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e). After carefully reviewing these petitions, however, we have decided to deny them. A detailed explanation of our denial of all the petitioned actions is included in the enclosed July 25, 2011, response letter to Turtle Island Restoration Network and Center for Biological Diversity.

On July 14, 2011, you also submitted four questions to Eric Schwaab, Assistant Administrator for NMFS. Those questions, along with our answers, are included below.

1) How many additional enforcement agents have been assigned to deal with TED compliance?

Our Office of Law Enforcement (OLE) has re-prioritized enforcement personnel in Louisiana (two available personnel) and Texas (four available personnel), placing turtle excluder device (TED) compliance as their primary mission. Investigative work is only being conducted to address ongoing non-Endangered Species Act violations and other necessary work. Additionally, we have assigned up to four agents from other Southeast Division Districts to the western and northern Gulf of Mexico on temporary duty assignment to work two-week assignments.



2) Since you ramped up efforts, what percent increase in TED inspections has occurred?

OLE personnel have completed 265 TED inspections through July 20, 2011. Conservatively, this is 10 to 15 times the number of inspections OLE averaged over the last three years. Last year was unique with Southeast Division OLE personnel heavily involved in the enforcement of the Deepwater Horizon Fishery Closed Area, which took priority over other enforcement concerns. However, OLE inspected the TEDs of every shrimp vessel boarded during the operation.

Observed compliance has been improving as a result of the increase in TED inspections and the active role by OLE, as well as through outreach efforts and TED workshops conducted by the Southeast Fisheries Science Center's Gear Monitoring Team (GMT) and the industry groups Southern Shrimp Alliance and Gulf and South Atlantic Fisheries Foundation. When the increased OLE inspections began, observed compliance was very low. Since that time, OLE and GMT have received numerous requests for TED inspections to verify compliance prior to use. In early May, the observed compliance rate rose quickly to approximately 60%, then upwards to about 68% at the beginning of June. By mid-July, inspection data shows an observed compliance rate of nearly 87%.

Following is a cumulative boarding summary. The final disposition of pending cases will be based on a review of fact patterns by both OLE and our Office of General Counsel for Enforcement and Litigation.

TED INSPECTION SUMMARY (04/15/2011 – 07/20/2011)							
TED INSPECTIONS		VIOLATIONS					
<u>LOCATION</u>	<u>TOTAL</u>	<u>VW</u>	<u>WW</u>	<u>SS</u>	<u>NOVA</u>	<u>PENDING</u>	<u>TOTAL</u>
DOCKSIDE	130	35					35
AT-SEA	135	17	2			34	53
GRAND TOTAL:	265					GRAND TOTAL:	88

VW: verbal warning; WW: written warning; SS: summary settlement; NOVA: Notice of Violation and Assessment.

3) How do you plan to maintain these efforts into the future?

OLE personnel will remain engaged in TED compliance for the foreseeable future. We have allocated additional funding to our Joint Enforcement Agreement (JEA) partners for increased TED compliance inspections through the current JEAs, which are effective July 1, 2011, for most Gulf of Mexico states. Maintaining an effective TED compliance program into the future will be more challenging. OLE is actively exploring additional measures to strengthen our partnerships with the states and U.S. Coast Guard to better coordinate TED compliance efforts over the long term, and will continue to temporarily assign OLE personnel to increase coverage when other assets are not scheduled. Additionally, we are also working with industry groups and gear manufacturers to help insure sustained TED compliance over the long term.

4) Has an increase in observer coverage occurred?

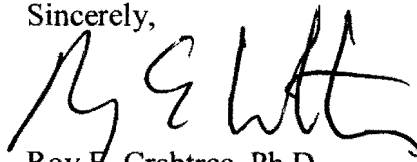
No, there has not been an increase in observer coverage through our National Observer Program. We currently have approximately 2 percent observer coverage in the Gulf of Mexico shrimp fishery. While additional observer coverage may provide beneficial information, given the size of the shrimp fishery (i.e., 5,000+ vessels), the need for observer coverage in other fisheries in the Gulf of Mexico, and current fiscal austerity in the Federal government, we are not in a position to increase observer coverage in the shrimp fishery at this time. Furthermore, the primary role of fishery observers is to collect catch and bycatch data from U.S. commercial fishing and processing vessels. Due to numerous issues, they do not engage in enforcement-related activities, such as conducting TED compliance evaluations.

While there has not been an increase in coverage through the National Observer Program, there have been some limited efforts to improve near real-time observation of the shrimp fishery in the region. For example, the National Fish and Wildlife Foundation provided funding that allowed the Mississippi Division of Marine Resources to place observers on 48 otter and skimmer trawlers working in state waters from April through June of this year.

In summary, because we have substantially accomplished or begun actions requested in your petition and determined that emergency or interim measures or regulations are not warranted at this time, we are denying your petition.

I appreciate your interest in this matter. If you have further questions, please contact Michael Barnette, NMFS Southeast Regional Office, at (727) 824-5312.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. E. Crabtree', written over a faint circular stamp.

Roy E. Crabtree, Ph.D
Regional Administrator

Enclosure



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JUL 25 2011

F/SER31:MCB

Ms. Teri Shore
Program Director
Turtle Island Restoration Network
P.O. Box 370
Forest Knolls, CA 94933

Dr. Chris Pincetich
Campaigner and Marine Biologist
Turtle Island Restoration Network
P.O. Box 370
Forest Knolls, CA 94933

Ms. Miyoko Sakashita
Oceans Program Director
Center for Biological Diversity
351 California Street, Suite 600
San Francisco, CA 94104

Dear Ms. Shore, Dr. Pincetich, and Ms. Sakashita:

This letter is in response to the April 4, 2011, petition to the National Marine Fisheries Service (NMFS) sent by Ms. Shore and Dr. Pincetich on behalf of Turtle Island Restoration Network requesting "Emergency Action to Halt Sea Turtle Strandings in the Gulf of Mexico." This letter also responds to the May 31, 2011, Notice of Intent to Sue and accompanying petition to NMFS sent by Ms. Sakashita on behalf of the Center for Biological Diversity, Turtle Island Restoration Network, Sea Turtle Conservancy, and Defenders of Wildlife seeking emergency closure of the shrimp fishery and protective regulations for sea turtles. Because of the substantial overlap in the actions that you have petitioned for, we have consolidated your petition requests and are responding to both petitions through this letter.

Your petitions for rulemaking are appropriately submitted pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e). After carefully reviewing your April 4 and May 31, 2011, petitions, we have decided to deny your petitions. Below is a detailed explanation of our denial of all the petitioned actions.

Both petitions seek emergency closures or restrictions of shrimp fishing in the Gulf of Mexico pending completion of identified tasks; both petitions seek issuance of a determination of the causes of the recent sea turtle strandings, including whether they are wholly or in part due to contact with oil and dispersants; both petitions seek promulgation of new regulations (emergency, interim, or other) requiring TEDs on all commercial shrimp trawls and nets, including skimmer trawls; both



petitions seek increased observer coverage of shrimp fishing; the April 4 petition seeks immediate increases in enforcement of TED use within the shrimp fishery; and the May 31 petition seeks preparation of a supplemental environmental impact statement to evaluate new information brought to light by the Deepwater Horizon oil spill and recent sea turtle strandings, and assess impacts on sea turtles. The April 4 letter also requests that we release the findings to date of the reinitiated section 7 consultation on shrimp fishing in the Gulf of Mexico, and the May 31 letter requests that NMFS take other actions necessary to conserve sea turtles, such as effort reduction, area closures, and gear conversion.

The April 4, 2011, petition requested that the "...strandings are investigated, findings made public..." and the May 31, 2011, petition requested that we "issue a determination as to the primary cause of the strandings and whether the strandings are wholly or in part due to the sea turtles' contact with oil and dispersants." We have closely monitored the strandings in the northern Gulf of Mexico throughout the year. When we started to see increasing sea turtle strandings we immediately engaged our Sea Turtle Stranding and Salvage Network, as well as our veterinary pathologist, to investigate the cause of these strandings. Our veterinary pathologist determined that the majority of the strandings that were able to be assessed consisted of healthy turtles that most likely died either as a result of forced submergence or acute toxicosis. No visible external or internal oil was observed in these animals and no evident signs of infectious disease or a chronic/underlying disease as cause of death. As soon as we had conducted a sufficient investigation, we released this information to the public on our website (<http://www.nmfs.noaa.gov/pr/species/turtles/gulfofmexico.htm>) and through engagement with the media on April 4, 2011.

We have also deployed personnel from our Southeast Regional Office (SERO), gear experts from the Gear Monitoring Team (GMT) of our Southeast Fisheries Science Center (SEFSC), and agents from our Office of Law Enforcement (OLE) to the northern Gulf of Mexico to investigate potential explanations for the elevated strandings, as well as to monitor shrimp fishing activity and compliance with TED requirements. While our personnel found low shrimp fishing effort in April and May, they did find several TED compliance issues. During dockside evaluations, personnel looked for evidence that any of the gear had been actively fished. All of the information gathered indicated the shrimp fleet had been largely inactive, and had just started preparations for the upcoming season; many of the vessels were installing TEDs at the time of the evaluations. In many instances, new TEDs purchased from net shops being installed in nets were noted to be out of compliance with TED requirements. Fishermen and net shops were informed of these issues, and advised how to correct the situation.

Increased TED enforcement by NOAA personnel continues in the northern Gulf of Mexico. We have also engaged several of the state resource agencies in the northern Gulf of Mexico, resulting in additional enforcement activities. NOAA OLE's inspections are conservatively estimated to be occurring at a level of about 10 to 15 times the average over the last 3 years. As of July 20, 2011, our agency's efforts include the inspection of 265 vessels; 135 of these vessels were boarded while actively trawling. Eighty-eight (88) of the 265 vessels boarded had non-compliant TEDs at some level. The 35 vessels found with TEDs out of compliance dockside were given verbal warnings due to the courtesy nature of the inspections. Of the 53 vessels boarded at-sea found to have TED compliance problems, 17 were given verbal warnings for minor issues, 2 were given written warnings, and 34 are pending review within the agency. Observed compliance has been improving as a result of the increased TED enforcement and outreach, and we have noted an immediate difference in the industry approach to TED training and compliance as a result of these efforts. In

early May the observed compliance rate rose quickly to approximately, 60%, then to about 68% at the beginning of June. Mid-July inspection data shows an observed compliance rate of nearly 87%. These efforts continue to be a priority, and numerous TED workshops have been conducted in Florida, Alabama, Mississippi, Louisiana, and Texas; SEFSC GMT gear experts recently completed a series of TED workshops in Texas prior to the opening of the Texas shrimp season on July 15. These workshops discuss TED requirements, and demonstrate the correct way to install and inspect a TED. Workshops have been held for fishermen, as well as for state resource agency enforcement personnel. Industry is also working to remedy the situation internally, as the Southern Shrimp Alliance and Gulf and South Atlantic Fisheries Foundation have held meetings and workshops to improve TED compliance in recent months.

Sea turtle stranding levels have also declined compared to the peak experienced this spring. Through July 19, 2011, there were a total of 443 stranded turtles documented in Louisiana, Mississippi, and Alabama. Strandings were highest in April, with 187 turtles (45 percent of the year total). The latest full month, June, had only 76 sea turtle strandings. This number is still high compared to past years, but we are evaluating changes in stranding coverage since the Deepwater Horizon oil spill, as well as potential sea turtle population trends (e.g., increases in sea turtle nesting numbers), to try and determine the cause and significance of these annual changes in stranding numbers. We continue to monitor sea turtle stranding numbers closely to determine if any additional short-term actions need to be taken. We invite you to regularly check <http://www.nmfs.noaa.gov/pr/species/turtles/gulfofmexico.htm> for the most up-to-date information.

Your April 4, 2011, petition requested that we “issue an emergency regulation or interim rule to require Turtle Excluder Devices (TEDs) on all skimmer trawls.” The subsequent May 31, 2011, petition requested that we “impose an emergency closure of the federal and state shrimp trawl fishery in the Gulf of Mexico...until the Fisheries Service promulgates rules requiring TEDs on all commercial shrimp trawls...” Your May 31, 2011, petition went on to request that we “prepare a supplemental environmental impact statement to address new information brought to light by the Deepwater Horizon oil spill and recent sea turtle stranding data and assess the impacts to sea turtles.”

We have decided not to issue an emergency or interim regulation at this time. Given the actions already taken and the reduction in stranding levels from the April peak, we do not believe that an emergency action is warranted. While the June 2010 spike in Mississippi sea turtle strandings correlated strongly with the opening and closing of the Mississippi shrimp season, we did not see any association with fishing effort to the high level of strandings that occurred in early 2011. Furthermore, we do not have evidence of any significant skimmer trawl fishing effort in the area during the time of the peak strandings this year, particularly given state fishery closures during this period kept most, if not all, of these shallow-water boats tied to the dock. Regardless, we do have concerns about potential impacts to sea turtles due to the regulatory reliance on limited tow times rather than use of TEDs in the skimmer trawl fishery. Therefore, we think it is most appropriate that we pursue potential rulemaking following evaluation of various alternatives in a draft environmental impact statement (DEIS), which will allow the public an opportunity to engage in the process and provide feedback to the agency. Furthermore, by starting this process now, we will be able to establish a long-term solution instead of diverting resources to initiate a short-term fix. We have set forth an ambitious timeline to carry-out this process, and the DEIS will take into consideration the recent strandings and the impacts of the Deepwater Horizon oil spill, as will the reinitiated section 7 consultation that is underway.

On June 24, 2011, the *Federal Register* published our Notice of Intent to prepare an EIS. We recently held five scoping meetings through the Gulf of Mexico and the South Atlantic (see related information on our website at http://sero.nmfs.noaa.gov/pr/ShrimpFishery_SeaTurtle.htm). We believe this is the most appropriate action at this time to address sea turtle stranding issues potentially associated with the shrimp fishery.

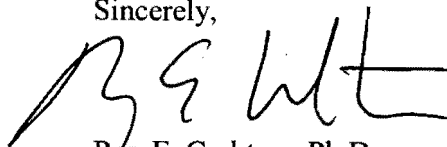
The April 4, 2011, petition requested that we “immediately increase observer coverage on all shrimp vessels.” Additionally, the May 31, 2011, petition requested that we “impose an emergency closure of the federal and state shrimp trawl fishery in the Gulf of Mexico for the protection of threatened and endangered sea turtles until the Fisheries Service promulgates rules...requiring 100 percent observer coverage, or a level of observer coverage adequate to enforce those regulations.” We currently have approximately 2 percent observer coverage in the Gulf of Mexico shrimp fishery. While additional observer coverage may provide beneficial information, given the size of the shrimp fishery (i.e., 5,000+ vessels), the need for observer coverage in other fisheries in the Gulf of Mexico, and current fiscal austerity in the Federal government, we are not in a position to increase observer coverage in the shrimp fishery at this time. Furthermore, the primary role of fishery observers is to collect catch and bycatch data from U.S. commercial fishing and processing vessels. Due to numerous issues, they do not engage in enforcement-related activities, such as conducting TED compliance evaluations. However, we expect the issue of increasing observer coverage and exploring other mechanisms to ensure compliance with TED requirements and other sea turtle conservation regulations will be one of the areas evaluated in our DEIS and, potentially, in subsequent rulemaking.

Finally, on August 16, 2010, we reinitiated consultation on the biological opinion for Shrimp Trawling in the Southeastern United States, under the Sea Turtle Conservation Regulations and as Managed by the Fishery Management Plans for Shrimp in the South Atlantic and Gulf of Mexico. Since this is an on-going consultation, we are not in the position to release pre-decisional information. However, we are working to complete the consultation this summer.

In summary, because we have substantially accomplished or begun actions requested in your petitions and determined that emergency or interim measures or regulations are not warranted at this time, we are denying your petitions.

I appreciate your interest in this matter. If you have further questions, please contact Michael Barnette, NMFS Southeast Regional Office, at (727) 824-5312.

Sincerely,

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Roy E. Crabtree, Ph.D
Regional Administrator