



Southern Shrimp Alliance

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June 21, 2023

TO: David Bernhart
Assistant Regional Administrator
Protected Resources Division
NMFS Southeast Regional Office
263 13th Avenue South
St. Petersburg, FL 33701

RE: NOAA Notice of receipt of petition; request for comments regarding Rice's Whale
protections. RTID 0648-XC760, 88 FR 20846, April 7, 2023

The Southern Shrimp Alliance (SSA) appreciates the opportunity to provide input to the Agency on this Petition. Founded in 2002, SSA's membership is comprised of many small, family-owned shrimp fishing businesses and associated shoreside enterprises operating in coastal communities in all eight warm-water shrimp producing states from North Carolina to Texas. This includes shrimp fishermen and associated shoreside business and communities that would be directly and indirectly affected by the regulatory provisions proposed in this Petition.

General Comments

Since its founding in 2002, SSA has demonstrated its commitment through both its words and actions to avoid and minimize any adverse impact of U.S. shrimp fisheries on marine mammals and endangered species consistent with the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). That said, SSA has insisted that the assessment of such impacts and the evaluation of measures taken to avoid and minimize such impacts must have a solid basis in high-quality data and peer reviewed science.

With that in mind, SSA first requests the Agency to carefully evaluate the scientific merits of the rationale for the Proposed Regulatory Language set forth in Section V. of the Petition. (see Appendix 1).

While the Petition does cite peer reviewed and Agency scientific literature, the rationale for such regulatory measures set forth in the Petition text itself is rife with ‘worst-case scenario’ presumptions and speculations (e.g., “may”, “could”, “suggest”, “potential”, etc.) presented under the guise of conclusions of scientific fact that may not be entirely supported by such literature, if at all. Given the extraordinary impacts these proposed regulatory measures would have on economics and safety of many vessel types and sizes operating in the Gulf of Mexico, the Agency must ensure that any action taken with respect to this Petition or otherwise pursuant to its statutory authorities is exceptionally well founded in the conclusions of high-quality data and peer reviewed science, not the pessimistic ‘conclusions’ of the Petitioners.

To that point, the Agency might find instructive the recent findings of the U.S. District Court of Appeals for the District of Columbia vacating the 2021 Biological Opinion regarding north Atlantic right whales¹. Again, speculative ‘worst-case scenarios’ such as are presented in this Petition cannot serve as a substitute for a proper evaluation of the science to determine what is or is not ‘likely’ under the ESA.

Secondly, SSA requests that the if the Agency decides to move forward with a proposed rulemaking to implement all or any part of the regulatory measures proposed in this Petition, or any other regulatory measures, then it work with the Gulf of Mexico Fishery Management Council (GMFMC) to provide the Shrimp Advisory Panel (AP) and other relevant Council APs with the opportunity to review and provide inputs prior to such proposed rulemaking.

Specific Comments on Proposed Regulatory Measures in the Petition

1) Speed Limit

“(a) The following restrictions apply to: All vessels subject to the jurisdiction of the United States, all other vessels entering or departing a port or place subject to the jurisdiction of the United States, and all other vessels within the Exclusive Economic Zone of the United States, regardless of flag.

(1) Vessels shall travel at a speed of ten knots or less over ground year-round in the area bounded by the 100-m and 400-m isobaths from approximately Pensacola, FL, to just south of Tampa, FL (i.e., from 87.5° W to 27.5° N) plus an additional 10 km around that area.”

Shrimp vessels targeting brown, white and pink shrimp generally do not fish in the proposed Vessel Slowdown Zone described above. That said, there are some very small pockets of

¹[https://www.cadc.uscourts.gov/internet/opinions.nsf/74FBF6DF682DDF30852589D000504654/\\$file/22-5238-2003771.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/74FBF6DF682DDF30852589D000504654/$file/22-5238-2003771.pdf)

historical fishing grounds for these species included in the proposed Slow Down Zone offshore of the Panama City/Port St. Joe area. Shrimp vessels typically tow at a very slow speed (i.e., less than 3 knots). Therefore, vessels targeting this species would be transiting and towing (fishing) at speeds that do not exceed the proposed ten knot limit.

The proposed Slow Down Zone partially overlaps the known distribution of and important historical fishing grounds for Royal Red shrimp.² Vessels targeting this species would be transiting and towing (fishing) at speeds that do not exceed the proposed ten knot limit.

With this in mind, it is unlikely that the proposed ten knot speed limit would *in itself* directly impact shrimp fisheries operating in the Gulf of Mexico.

However, SSA is well aware that this restriction would likely have substantial economic and safety impacts on a wide range of small and large vessels of different types including those operating in other commercial and recreational fisheries. The Agency should very seriously consider the economic and safety impacts on those other vessel types and consider if not develop alternative measures and technologies for minimizing vessel strikes to Rice's whales while minimizing such economic and safety impacts on other fisheries.

2) Nighttime restriction

“(c) Except as noted in paragraph (d) of this section, vessels transiting through the area described in paragraph (a)(1) of this section shall adhere to the following mitigation measures:

(1) All vessel operators must avoid transiting through the Vessel Slowdown Zone at nighttime.”

This proposed prohibition on vessels operating (transiting or fishing) in the proposed Vessel Slowdown Zone would likely cause threats to vessel and human safety on a massive, unprecedented scale. This prohibition would apply to virtually all private and commercial vessels of all sizes with very limited exceptions set forth in section (d)(3) of the Petition.

Because the area is too deep to anchor, the consequence of this prohibition would be for potentially large numbers of private and commercial vessels of all types and sizes to be drifting in proximity to the boundaries of this proposed Zone in the dark for extended periods of time and in all manner of weather and sea conditions. The threat to vessel and human safety is difficult to comprehend while these vessels are drifting and/or maneuvering in order to remain outside of the boundaries of the proposed Vessel Slowdown Zone in compliance with the prohibition notwithstanding prevailing winds and currents and limitations on visibility. This presents a navigational nightmare with potentially catastrophic results for human safety especially given the size of some of the vessels (ships) that would be involved. SSA urges the Agency to consult closely with the U.S. Coast Guard and other authorities responsible for safety of navigation and life at sea in evaluating this proposed regulatory measure.

² Nance, James & Cole, John & Hart, Rick & Gallaway, Benny. (2011). The Royal Red Shrimp Fishery of the Gulf of Mexico.

Further, as noted above, the proposed Vessel Slowdown Zone includes important historical fishing grounds of the Royal Red shrimp fishery and, to a limited extent, historical fisheries for other shrimp species. The proposed nighttime prohibition on vessels operating (fishing and transiting) within this Zone would directly impact these fisheries notwithstanding the fact that as noted above, shrimp vessels typically tow at a very slow speed (i.e., less than 3 knots) which would be extremely unlikely to result in a whale strike much less a serious injury or mortality. Therefore, this proposed nighttime restriction represents an excessive and scientifically unjustified regulatory and economic burden on the shrimp fisheries.

Further, what will constitute “nighttime”? The local time of sunset and sunrise? Those times change literally every day over a wide range annually. And, while it might be possible for NOAA to at some time after the fact identify violations of this prohibition by those vessels required to be equipped with vessel position monitoring and recording devices, how would NOAA possibly enforce this prohibition on vessels that are not so equipped? Disparate enforcement of this prohibition would be extremely unjust.

SSA requests the Agency to reject this proposed nighttime restriction regulatory measure.

3) Observers and Vessel Reporting to NOAA Fisheries

“(2) All vessels must maintain a minimum separation distance of 500 m from Gulf of Mexico whales. If a whale is observed but cannot be confirmed as a species other than a Gulf of Mexico whale, the vessel operator must assume that it is a Gulf of Mexico whale and take appropriate action for avoidance.

(3) Visual observers must monitor the vessel strike avoidance zone (500 m). Observers can be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish aquatic protected species to broad taxonomic groups. Operators transiting through the Vessel Slowdown Zone must report their plans to NOAA Fisheries.

(4) All vessels 65 feet or greater must have a functioning Automatic Identification System (AIS) onboard and operating at all times, as required by the U.S. Coast Guard. If the vessel does not require AIS and/or is less than 65 feet in length, AIS is strongly encouraged. Vessels that lack an operating AIS must provide the vessel’s name and call signs to NOAA Fisheries and notify NOAA Fisheries when they are transiting through the Vessel Slowdown Area.

(5) If a vessel operates in violation of these conditions, the operator must report the noncompliance to NOAA Fisheries within 24 hours.”

SSA finds these measures to be highly unrealistic and requests the Agency to carefully evaluate the practicalities and costs/benefits of implementing several of these proposed regulatory measures. The Agency is very unlikely to have the resources or authorities to implement and enforce these measures in a fair and equitable manner for all the many different vessel types, sizes and flags.

For example –

- Would the Agency be responsible for providing “sufficient training” of vessel crew members – even including those on foreign flag vessels? If not, who would? - and according to what standards or criteria? Even if the Agency was not involved in such training, how would the Agency verify that such crew members received “sufficient training”? Further, what would be the cost of third-party observers and who would be responsible for those costs? Certainly the U.S. commercial shrimp fishery could not afford the cost of such third-party observers.
- Does the Agency have any existing mechanism or resources to receive and process the substantial volume of information generated by the multiple vessel reporting requirements in these proposed regulatory measures? And, even if the Agency were to devote its scarce resources to such a mechanism, what exactly would the Agency do with all that information? How would this information contribute meaningfully to protecting whales from vessel strikes? And finally, do the Petitioners actually believe that vessels - especially foreign-flag vessels - will report their non-compliance with these measures to the Agency?

Again, SSA does not believe these proposed observer and reporting regulatory measures are realistic or that they will accomplish anything meaningful for preventing vessel strikes. Further, SSA does not wish to see the Agency divert its scarce resources away from high-priority scientific and management activities in order to implement these proposed regulatory measures. SSA requests that the Agency confirm SSA’s concerns through a cost-benefit analysis of these proposed regulatory measures, and that it consider alternative measures and technologies for minimizing vessel strikes to Rice’s whales.

SSA requests the Agency to reject these proposed observer and reporting regulatory measures.

As always, SSA greatly appreciates the Agency’s serious consideration of our inputs. We would be happy to respond to any questions or requests for information.

Sincerely,



John Williams,
Executive Director

cc: Andy Strelcheck, Regional Administrator, NMFS Southeast Region
Clay Porch, Director, NMFS Southeast Fisheries Science Center
Greg Stunz, Chair, Gulf of Mexico Fishery Management Council
Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council

APPENDIX 1:

V. PROPOSED REGULATORY LANGUAGE

Although petitioners are not legally required to submit proposed regulatory language, they do so here for the agency's convenience. Petitioners note, however, that irrespective of the extent to which NOAA Fisheries chooses to adopt or reject some or all of this proposed regulatory language, the agency must conclude the petitioned action as stated *supra* at 2 within a reasonable time.

(a) The following restrictions apply to: All vessels subject to the jurisdiction of the United States, all other vessels entering or departing a port or place subject to the jurisdiction of the United States, and all other vessels within the Exclusive Economic Zone of the United States, regardless of flag.

(1) Vessels shall travel at a speed of ten knots or less over ground year-round in the area bounded by the 100-m and 400-m isobaths from approximately Pensacola, FL, to just south of Tampa, FL (*i.e.*, from 87.5° W to 27.5° N) plus an additional 10 km around that area.

(b) Except as noted in paragraph (d) of this section, it is unlawful under this section:

(1) For any vessel subject to the jurisdiction of the United States to violate any speed restriction established in paragraph (a) of this section; or

(2) For any vessel entering or departing a port or place under the jurisdiction of the United States to violate any speed restriction established in paragraph (a) of this section; or

(3) For any vessel within the Exclusive Economic Zone of the United States, regardless of flag, to violate any speed restriction established in paragraph (a) of this section.

(c) Except as noted in paragraph (d) of this section, vessels transiting through the area described in paragraph (a)(1) of this section shall adhere to the following mitigation measures:

(1) All vessel operators must avoid transiting through the Vessel Slowdown Zone at nighttime.

(2) All vessels must maintain a minimum separation distance of 500 m from Gulf of Mexico whales. If a whale is observed but cannot be confirmed as a species other than a Gulf of Mexico whale, the vessel operator must assume that it is a Gulf of Mexico whale and take appropriate action for avoidance.

(3) Visual observers must monitor the vessel strike avoidance zone (500 m). Observers can be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish aquatic protected species to broad taxonomic groups. Operators transiting through the Vessel Slowdown Zone must report their plans to NOAA Fisheries.

(4) All vessels 65 feet or greater must have a functioning Automatic Identification System (AIS) onboard and operating at all times, as required by the U.S. Coast Guard. If the vessel does not require AIS and/or is less than 65 feet in length, AIS is strongly encouraged. Vessels that lack an operating AIS must provide the vessel's name and call signs to NOAA Fisheries and notify NOAA Fisheries when they are transiting through the Vessel Slowdown Area.

(5) If a vessel operates in violation of these conditions, the operator must report the noncompliance to NOAA Fisheries within 24 hours.

(d) The restrictions and measures set forth in paragraphs (b) and (c) of this section shall not apply to:

(1) Vessels owned, operated, or under contract by the United States Department of Defense or the United States Department of Homeland Security, or engaged in military operations with such vessels, provided, however, that this exception does not preempt or supersede obligations under the ESA and MMPA, and further provided that such vessels are encouraged to abide by the speed restriction whenever it is, in the judgement of such vessels, feasible and practicable to do so without impairing the operations in which they are engaged;

(2) Vessels of the Federal Government, or of a state or local government when engaged in law enforcement, or operations concerning the life and safety of persons or the prevention of loss or damage to vessels or harm to the environment; or

(3) Other vessels when engaged in operations concerning the life or safety of persons or the prevention of loss or damage to vessels or harm to the environment, provided that the master of the vessel shall enter into the logbook of the vessel information pertaining to the reasons for the deviation, the speed at which the vessel is operated, the latitude and longitude of the area, and the time and duration of such deviation and attest to the accuracy of the logbook entry by signing and dating it.