

June 28, 2012

BY ELECTRONIC SUBMISSION

The Honorable Dr. Jane Lubchenco
Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Avenue, NW
Room 5128
Washington, DC 20230

RE: Comments on Proposed Sea Turtle Conservation Rule Imposing New Shrimp Trawling Requirements

Dear Administrator Lubchenco:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) respectfully submits these comments to the National Oceanic and Atmospheric Administration (NOAA) regarding its proposed sea turtle conservation rule to require the use of turtle excluder devices in the nets of all skimmer trawls, pusher-head trawls, and wing nets rigged for shrimp fishing.¹

About the Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),² gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.³

Comments

Through a series of regional roundtables and meetings, Advocacy has conducted extensive outreach with small businesses operating in the southeastern U.S. shrimp

¹ National Oceanic and Atmospheric Administration, Sea Turtle Conservation; Shrimp Trawling Requirements, Proposed rule, 77 *Fed. Reg.* 27411 (May 10, 2012).

² *Small Business Regulatory Enforcement Fairness Act of 1996*, Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.) (*SBREFA*).

³ *Id.*

fisheries that are concerned that the proposed rule will cause significant economic harm to the already fragile shrimping industry in the Gulf of Mexico. Advocacy believes that further analysis of the economic impacts of various alternatives to the proposed rule, as well as further study of the impact shrimping activities have on sea turtle populations, are warranted before NOAA finalizes new sea turtle conservation rules.

Further Examination of Small Entity Impacts and Regulatory Alternatives Necessary

Advocacy is very concerned that the proposed rule will compound the economic hardship small businesses in the Gulf region have experienced in recent years, and strongly urges NOAA to consider adopting regulatory alternatives that would avoid putting undue pressure on the fragile recovery of the Gulf region economy. In its Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule, NOAA estimates a loss of nearly 5% of the current shrimp harvest per vessel, in addition to annual and recurring costs associated with acquiring and maintaining multiple TEDs per vessel. Stakeholders have informed Advocacy that they believe these estimates are low, and that they do not take into account the impact of the TED requirement on businesses operating very small vessels. Participants in Advocacy's roundtables have asserted that TEDs cannot be safely used on vessels less than 30 feet in length. As a result, a significant portion of shrimping vessels would drop out of the industry entirely if the proposed rule were finalized. NOAA has not accounted for these economic impacts in its IRFA; however, the IRFA does mention that NOAA considered proposing alternatives to the rule that would exempt vessels under 30 and 20 feet in length respectively. Advocacy believes that NOAA should conduct further analysis of these alternatives in light of the impracticability of requiring TEDs on these smaller vessels. NOAA's IRFA indicates that excluding vessels that are less than 30 feet in length could reduce economic impacts to small entities by nearly 40 percent.

New Sea Turtle Conservation Rules Should be Data Driven

Given the high economic stakes for the Gulf shrimping industry, it is particularly important than any decision to impose new sea turtle conservation rules on commercial shrimping be supported by data showing that shrimping activity is the likely cause of the recent increase in observed sea turtle strandings. The proposed rule might be not only burdensome, but also ineffective at reducing sea turtle mortality, if commercial shrimping is not responsible for the increased strandings. Small business stakeholders have expressed strong concerns to Advocacy about what they believe is a lack of data supporting the proposed rule. NOAA admits it does not have a definitive explanation for the cause of elevated sea turtle strandings, but speculates that the strandings were caused by commercial fishing because necropsy results indicated that a significant number of stranded sea turtles perished by drowning.⁴

Advocacy believes that the issue of whether the increase in observed sea turtle strandings has been caused by commercial shrimping merits further consideration before NOAA proceeds with this rulemaking. While some portion of observed sea turtle drowning

⁴ *Supra* note 1 at 27412.

incidents could have been caused by forced submergence in commercial shrimping nets, there could be other causes that NOAA has not considered. Small shrimping businesses have informed Advocacy that they believe the increase in reported sea turtle strandings is more likely the result of sea turtles ingesting fish killed by oil and dispersants as a result of the Deepwater Horizon oil spill. They argue that chemical dispersants used to clean up oil spilled into the Gulf of Mexico contain neurotoxins which, when ingested by sea turtles, could cause nervous system malfunctions resulting in sea turtle drowning and stranding.

Advocacy strongly encourages NOAA to reconsider implementing this proposed rule unless it can show a stronger link between sea turtle strandings and commercial shrimping, and rule out other causes. Several initiatives are currently underway that could provide NOAA with better information on which to base its decision, but the data is not reviewable at this time. For instance, NOAA recently initiated an on-board sea turtle observer program that will continue through the current shrimping season. The initiative should be able to provide NOAA with a clearer picture of the relationship between sea turtle populations and commercial shrimping. Additionally, the Gulf States Marine Fisheries Commission is conducting a comprehensive stock assessment of Kemp's ridley sea turtles which could provide invaluable information regarding the state of recovery for the species.

Conclusion

In light of the significant economic impact the proposed rule would have on small businesses in the commercial shrimping industry, as well as uncertainty regarding the cause of recent sea turtle strandings, Advocacy suggests that NOAA withdraw the proposed rule and re-open a comment period at a later date, when more data is available. Advocacy appreciates this opportunity to forward the concerns of small businesses to NOAA. Please contact me or Jamie Belcore Saloom of my staff at 202/205-6890 or jamie.belcore@sba.gov if you have any questions or require additional information.

Sincerely,



Winslow Sargeant, Ph.D.
Chief Counsel for Advocacy



Jamie Belcore Saloom
Assistant Chief Counsel for Advocacy