



1636 DELAWARE AVENUE CAPE MAY, NEW JERSEY 08204
office (609) 898-1100 fax (609) 898-6070
gregdi@voicenet.com

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David Cottingham, Chief, Marine Mammal and Turtle Division
Office of Protected Resources
NMFS
1315 East-West Hwy
Silver Spring, MD 20910
submitted via fax (301) 427-2522

Comments on: Sea Turtle Conservation, Observer Requirements for Fisheries (71 FR 76265)

Dear Mr. Cottingham:

Please accept these comments on behalf of the Garden State Seafood Association (GSSA) regarding the Proposed Rule to implement sea turtle observer requirements for fisheries. *See* 71 FR 76265. The GSSA is comprised of commercial fishermen, shore-based seafood processors, commercial dock facilities, seafood markets and restaurants, and various NJ-based commercial fishing industry support businesses. The GSSA membership represents every major port in the State, harvesting approximately \$125 million dollars worth of seafood products annually, supporting 2000 jobs, and contributing significantly to the coastal economy of the State of New Jersey.

GSSA offers 9 specific comments on the Proposed Rule.

(1) The stated purposes of the PR are for NMFS to collect “statistically valid information” and “sufficient scientific data” using increased observer coverage. However, the Agency has yet to provide statistically valid information or accurate, up to date scientific data on the actual status and population trends of turtle stocks along the U.S. East Coast. As such, the PR appears to be the proverbial cart before the horse. The Agency is also required to produce the best available science on sea turtle populations if the new observer data are to prove useful. The Agency is proposing to: annually categorize individual fisheries; increase observer coverage to statistically valid levels; maintain fisheries on the categorical list for a minimum of 5 years; and design a new observer sampling program – all in the absence of knowledge regarding the current condition of turtle populations. To date the GSSA does not see any progress being made by the Agency to generate accurate and precise sea turtle population estimates. To what will the newly estimated interaction rates be linked with in terms of the number of

turtles? What constitutes a significant take rate for a particular fishery if we do not know the condition of a given sea turtle population? How will the Agency utilize this information to conduct jeopardy determinations and legitimate ESA Section 7 & 10 consultations? Will the Agency use this observer information to implement “broad based” regulatory measures among similar gear types coast wide or will regulations be applied to specific fisheries where there is a known risk of sea turtle interactions? Many of these questions are a direct result of industry participation during the Sea Turtle and Trawl Bycatch Workshop conducted in January 2007 in Ocean city, Maryland and should be resolved before the Agency proceeds with new observer requirements.

(2) Fisheries that are selected for observer coverage will remain on the list for a minimum of 5 years. There is no process identified in the PR which indicates how a fishery is removed from the list in a period of less than 5 years. How much coverage is sufficient? For example, if participants in a NJ-based gillnet fishery carry adequate observer coverage (either in the past -- or -- in any given year of the new observer coverage requirements -- or -- in combination) and the fishery is reported to have an insignificant level of take – how is this fishery removed from the list? There should be no need for observer coverage to continue once a fishery is shown to have a low level of take. The PR must identify a clear process whereby individual fisheries are removed from the list using the scientific data collected by observers in a period of less than 5 years.

(3) Many NJ fishermen already carry (and have for several years) more than their share of protected species, fisheries and population dynamics observer coverage. The PR must clearly specify that the annual review by the Assistant Administrator shall include consideration of applicable past observer coverage before final categorization of a given fishery. From GSSA’s perspective, it is likely that given this pre-listing review of available observer data that numerous NJ gillnet fisheries can be excluded from listing.

(4) Commercial and recreational fishing sectors are not treated equally in the PR. The Agency intends to use the universe of the MMPA-driven “List of Fisheries” (LOF) as a starting point to categorize commercial fisheries. However, no such process is specified for observer coverage in recreational fisheries. In fact, the PR is heavily geared toward observing commercial fishing activities despite clear scientific evidence of sea turtle interactions (and documented mortalities) with recreational fishing gear and associated vessels. The Agency states in the PR under the “Annual Determination Process” section that recreational fisheries “may” also be included. This weak position statement is not based on the best available science and is simply not good enough for the GSSA. In its current form the PR does not treat sectors equally and should not be finalized until a specific process is designed to implement and achieve “statistically valid” observer coverage for the recreational fishing sector.

(5) It is unclear what substantive comment opportunities are available to the public if the Agency intends to publish the AA’s annual notification as both a proposed and final notice with a 30-day delay before initiating observer coverage. The perceived lack of a comment process is wholly inappropriate and does not track the public comment process available pursuant to the MMPA LOF. Adequate time for public comment and Agency review of those comments must be provided to participants, especially those in fisheries targeted for listing.

(6) The Agency intends to add fisheries to the annual notification list simply because they may be “similar” to other listed fisheries. This amounts to guilt by association and provides the Agency with absolute power and no restriction regarding the listing process. Fisheries should be taken on a case by case basis and examined for temporal and spatial overlap with sea turtle distribution, for regionally prevailing fishing practices, past observer coverage, and should not be listed simply because they happen to be in an Agency (un)defined state of similarity.

(7) There are inconsistencies in the PR regarding the economic impacts and requirements that no fisherman or group of fishermen will be expected to carry excessive observer coverage, that fairness and equitability are of paramount concern, and that there is no significant economic impact on fishermen. While the Agency specifies this in the section titled “Observer Program Design” they also anticipate coverage will rotate “among a limited number of vessels in a fishery at a given time”. This is troublesome for the members of GSSA. We have documented that the observer program contractor and its employees flatly abused NJ fishermen in the past with an excessive share of observer training trips/coverage – 72 trips in 2005. We have ongoing disputes with the Agency regarding coverage in fisheries that continually have little or no observed interactions – more than 179 observed trips in just two “clean” fisheries. We have no faith the proposed turtle program will be any different and therefore do not concur that the protections afforded under this PR are sufficient to prevent abuse. This must be addressed to protect fishermen and their homeport groupings from excessive coverage rates. The Agency should consider the social and economic burdens of sea turtle observer coverage cumulatively and in total with all observer coverage for fisheries/population dynamics/training/other protected species for individual fisherman and groups of fishermen (i.e. at the homeport level). A formula to determine a maximum cap on the number of total observer trips (fisheries/protected species/population dynamics/training, combined) that can be carried by any one vessel or group of vessels at a given homeport should be considered.

(8) The provisions of the PR do not clearly specify that sea turtle observers should be required to collect as much data as possible to augment the sea turtle data base. For example, all sea turtle sightings (not just interactions) should be carefully recorded by species and number, location, time of day, water temperature, behavior, etc.... These types of data will enable the Agency to clearly tailor regulations and not overburden the industry with unnecessary requirements. These data may also be used to determine temporal and spatial habits of turtles in the context of a management plan.

(9) We support the provision ensuring that vessels without adequate facilities for accommodating an observer would not be required to carry observers under the PR.

On behalf of the GSSA thank you for the opportunity to comment on the Proposed Rule to implement sea turtle observer requirements for fisheries.

Sincerely,

Gregory DiDomenico
Executive Director
Garden State Seafood Association

Rick Marks
Robertson, Monagle & Eastaugh

cc: James Lecky, Chief, Office of Protected Resources
Dan Furlong, Executive Director, MAFMC
Pete Jensen, Chairman, MAFMC