

THE INS AND OUTS OF THE U.S. FAILURE TO REQUIRE TEDS IN SKIMMER TRAWLS



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Incidental drowning in shrimp nets has been recognized as a major threat to sea turtles for more than 35 years, but not all U.S. shrimp trawls are required to use turtle excluder devices (TEDs). TEDs are devices with an escape opening that allows turtles to exit a net and avoid drowning. Since 1992, the National Marine Fisheries Service (NMFS) has allowed skimmer and pusher-head trawls and wing nets (collectively called “skimmers”) to restrict their tow times to 55 minutes from 4/01 - 10/31 and 75 minutes from 11/01 - 3/31 in lieu of using TEDs¹. Because enforcement is difficult and compliance is low, tow time regulations for skimmers are a huge and ongoing mistake that has resulted in thousands of turtle deaths.



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Before it was withdrawn, the new 2012 BiOp for the entire U.S. Southeast shrimp fishery authorized fishermen to kill up to 53,595 turtles, including 44,320 Kemp's ridleys

Making the Case for TED Requirements in Skimmers

July 31, 2001 NMFS publishes a Notice of Intent to Prepare an Environmental Impact Statement to assess the potential impacts on the human environment of sea turtle interactions with fishing activities in the Atlantic and Gulf of Mexico [66 FR 39474].

November 8, 2006 NMFS identifies trawls as the priority gear to regulate in its report characterizing the effect of all Southeast fisheries on sea turtles [71 FR 65473].

February 15, 2007 NMFS publishes an Advance Notice of Public Rule-Making on potential amendments to the TED regulations, including TEDs for skimmers [72 FR 7382].

In 2008, 2009, and 2010 NMFS scientists conduct successful skimmer TED testing in the N. Gulf of Mexico and NC.⁴

May 8, 2009 NMFS publishes a Scoping Document on proposed new TED rules for skimmers [74 FR 21627].

Starting in March 2010, Kemp's ridleys strand in AL, MS and LA in unprecedented numbers. Inshore skimmers are implicated.⁵

June 2010 NMFS prepares but does not publish an emergency closure in MS and AL before the states prohibit fishing to avoid oil contamination from the Deepwater Horizon.

July 14, 2010: TIRN and CBD send NMFS a 60-day notice letter and petition requesting re-initiation of consultation and emergency closure of the Gulf of Mexico shrimp fishery until consultation is complete.

Tow Times Do Not Work

Compliance with tow times has never been good. In 2002 tows in the Gulf of Mexico lasted > 200 minutes in summer and > 60 minutes in winter.² Despite this, the 2002 BiOp allowed the exemption and authorized an annual ITP of 9,390 turtles for the entire fishery.

NGOs have always opposed tow times. In recent years NMFS's failure to address sea turtle mortality in skimmers has resulted in legal action by the Center for Biological Diversity (CBD), Defenders of Wildlife (DOW), Oceana, Sea Turtle Conservancy (STC), and Turtle Island Restoration Network (TIRN).

August 17, 2010 NMFS reinitiates consultation, acknowledging that “monitoring tow times to ensure high compliance is time and man power prohibitive.”⁶

In March 2011 Kemp's ridley stranding numbers in AL, MS, and LA again begin to rise.⁷

April 4, 2011: TIRN petitions NMFS for emergency action to halt strandings through closure of the Gulf of Mexico shrimp fishery, an emergency rule requiring TEDs in skimmers, increased TED enforcement, and increased observer coverage.

May 31, 2011: CBD, TIRN, DOW and STC send NMFS a second 60-day notice letter and petition for emergency closure of the shrimp fishery.

June 24, 2011 NMFS announces it will prepare a Draft Environmental Impact Statement assessing potential impacts of proposed implementation of TEDs in skimmers [76 FR 37050].

July 19, 2011: Oceana sends NMFS a 60-day notice letter of its intent to sue for violating Sections 7 & 9 of the ESA.

July 25, 2011 NMFS denies emergency action requested in NGO petitions of April 4 and May 31, 2011.

October 13, 2011: TIRN, CBD, DOW, and STC file a Complaint for Declaratory Judgment and Injunctive Relief (TIRN vs. NMFS).

May 8, 2012 NMFS issues a new BiOp; six months later it is withdrawn.

May 9, 2012 NMFS and the NGOs announce the settlement of TIRN vs NMFS. By November 27, 2012 NMFS is required to publish the final rule on skimmer TEDs or report to the court why TEDs are not warranted.

May 10, 2012 NMFS publishes a proposed rule to withdraw alternative tow time restrictions and require all skimmers to use TEDs [77 FR 27411].

May 18, 2012 NMFS publishes its Draft Environmental Impact Statement to Reduce Incidental Bycatch and Mortality of Sea Turtles in the Southeast U.S. Shrimp Fisheries, estimating skimmers kill 2,066 - 6,386 turtles annually in the Gulf of Mexico [77 FR 29636].

Starting in May 2012, Gulf Congressmen and state fishery directors lobby NMFS in opposition to requiring TEDs in skimmers. Legislative efforts to eliminate funding for future skimmer TED enforcement fail.

May - August 2012 observers on skimmers collect data on 796 tows, mostly in LA waters; 24 Kemp's ridleys are captured and only 35% of tows are within the 55 minute tow limits.⁸

November 21, 2012 NMFS revises annual mortality estimates in skimmers down to 1,893 turtles, based on new information and determines the final rule requiring TEDs in skimmers is not warranted.⁹

November 26, 2012 NMFS reinitiates consultation on the shrimp fishery, having anticipated that the new BiOp will be completed by the end of March 2013.¹⁰

February 19, 2014: CBD, TIRN, STC and Oceana send NMFS a 60-day notice letter of their intent to sue for the continued authorization of the fishery without a valid BiOp or ITP 451 days after reinitiating consultation (the normal time frame is 90 days).

As of March 31st, 2014 the new BiOp is not available.

In 2001 NMFS committed to developing a Strategy to reduce sea turtle bycatch in Atlantic and Gulf of Mexico fisheries based on gear-type. Subsequently, trawls were identified as the priority gear in need of regulation, but NMFS has not required TEDs in any new trawl fishery. Now, 22 years after exempting skimmers from using TEDs, NMFS estimates it needs 3-4 years to conduct skimmer TED tests and propose a new rule.

Regulatory Requirements

The Endangered Species Act (ESA) obligates NMFS to safeguard sea turtles in U.S. waters. Fisheries that incidentally capture, injure or kill these protected species cannot operate without a Biological Opinion (BiOp) that authorizes interactions in an Incidental Take Permit (ITP). If the ITP is exceeded or new information becomes available, the ESA requires NMFS to re-initiate consultation on the BiOp.



MS Dept of Marine Resources

Skimmers are attached near the vessel bow and pushed through the water. Used in LA, MS, AL, FL, and NC, most boats are licensed in LA, where TED and tow time regulations are not enforced.



Erin E. Seney

Inshore skimmers are implicated in the stranding of hundreds of Kemp's ridleys in AL, MS and LA in 2010 and 2011. Strandings represent only 5-6% of actual mortality.³

Year	Strandings
2008	42
2009	73
2010	644
2011	525
2012	383
2013	822

Kemp's ridleys represent the majority of strandings in LA, MS, and AL from 2008-2013.

FOOTNOTES

1. 12/4/1992 57 FR 57348

2. Epperly et al., 2002. Analysis of sea turtle bycatch in the commercial shrimp fisheries of Southeastern U.S. waters and the Gulf of Mexico. NOAA Tech. Memo. NMFS-SEFSC-490, 88p.

3. PHOTO Sasso, C. R. and Epperly, S. P. 2006. Seasonal sea turtle mortality risk from forced submergence in bottom trawls. Fisheries Research 81: 86-88.

4. Price, B. and Gearhart, J. 2011. Evaluation of turtle excluder device (TED) performance in U.S. Southeast Atlantic and Gulf of Mexico skimmer trawl fisheries. NOAA Tech. Memo. NMFS-SEFSC-615, 22 pp.

5. <http://www.nmfs.noaa.gov/pr/species/turtles/gulfofmexico.htm>

6. Letter from David Bernhart to Roy Crabtree, Re-initiation of ESA Section 7 Consultation on Shrimp Trawling in the Southeastern United States (8/17/2010)

7. Sea Turtle Stranding Network database

8. B. Ponwith, SEFSC, memorandum to R. Crabtree, SERO (9/21/2012)

9. Decision Memorandum to Samuel D. Rausch III from Roy E. Crabtree, Ph.D. Determination on a Final Rule to Require Mandatory Use of Turtle Excluder Devices (TEDs) in Skimmer Trawls, Pusher-Head Trawls, and Wing Nets (Butterfly Trawls) 11/21/2012

10. Ibid.