



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

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F/SER31:DK

Dr. Louis Daniel
Director
North Carolina Division of Marine Fisheries
3441 Arendell Street
Morehead City, NC 28557

NOV 30 2009

Dear Dr. Daniel:

This letter is a follow-up to the November 13, 2009, conference call regarding the allegations made in the 60-day notice of intent to sue issued by the Duke Environmental Law & Policy Clinic on behalf of the Karen Beasley Sea Turtle Rescue and Rehabilitation Center. We felt it would be helpful to send you a letter expressing the National Marine Fisheries Service's (NMFS) concerns and understanding of the situation, along with what steps need to be taken in order to satisfy the requirements of the Endangered Species Act (ESA).

Within the Southeast U.S., North Carolina is the only state with extensive gillnet fisheries. The State has obtained incidental take authorization for the flounder gillnet fishery in the designated Pamlico Sound Gillnet Restricted Areas from September 1 through December 15, each year from 2005 through 2010. However incidental captures of listed species of sea turtles have been documented in gillnet fisheries in other areas. As a result, steps need to be taken to ensure that those fisheries are operating consistent with the legal requirements of the ESA. Any takes of sea turtles without legal coverage under the ESA leaves individual fishermen vulnerable to prosecution by NMFS for violation of the ESA and leaves the fishery vulnerable to injunctions as a result of litigation which could be brought by the Federal Government or by a third party under the citizen suit provisions of the ESA.

Accordingly, NCDMF expressed an interest in a section 10 permit to cover incidental takes in the Core Sound fishery as well as other fisheries. This would include the segment of the gillnet fishery within Pamlico Sound outside of the current dates of the section 10 permit. The section 10 process would begin with North Carolina's submission of an application for incidental take authorization and a conservation plan. The plan would have to specify the impact of the likely to result from the take, a description of measures to minimize and mitigate the level of take anticipated, and a description of alternatives considered that might avoid the take. The specifics of a plan are subject to agency and public review, including a review under the National Environmental Policy Act. NMFS may require additional measures to ensure the take will not appreciably reduce the likelihood of the survival and recovery of the listed species involved. Therefore, the details that would be incorporated into any section 10 permit cannot be determined at this time. NMFS would work with the State to complete the process as soon as



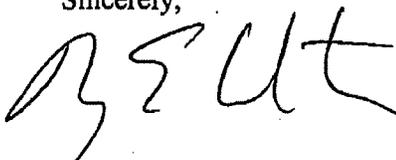
possible. However, given the requirements for development of an application and NEPA review, processing and issuing an incidental take permit before the next fishing season is unlikely.

During the conference call you inquired about segments of the fishery that you feel may be able to continue prior to the issuance of a section 10 permit, such as gillnet fisheries in the river mouths and other areas where sea turtle interactions may not occur, or during times of year when sea turtles are not expected in the area. If you feel that the information is sufficient to allow gillnet fisheries in those areas prior to obtaining ESA coverage, you could proceed on that basis. However, you may wish to consider implementing an observer program for that segment of the fishery to monitor whether the assumption of no sea turtle interactions is in fact correct.

An additional consideration to take into account is the potential presence of another ESA-listed species in the area, the shortnose sturgeon. Although gillnet fishing in riverine areas may not result in the take of sea turtles, it could result in the take of shortnose sturgeon. In developing a section 10 permit, NCDMF should consider the inclusion of shortnose sturgeon to ensure the gillnet fisheries' compliance with the ESA.

If you have any questions, please contact the NMFS Southeast Regional Office Sea Turtle Coordinator, Dennis Klemm, at (727) 824-5312 or by e-mail at dennis.klemm@noaa.gov. Thank you for your continued cooperation in the conservation of listed species. We look forward to continuing to work with you and NCDMF to resolve this issue.

Sincerely,



Roy E. Crabtree, Ph.D.
Regional Administrator