

# COAST GUARD ENFORCEMENT OF FISHERIES LAWS

---

---

## HEARING

BEFORE THE

SUBCOMMITTEE ON  
COAST GUARD AND NAVIGATION

OF THE

COMMITTEE ON  
MERCHANT MARINE AND FISHERIES  
HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON

REVIEWING THE FISHERIES ENFORCEMENT RESPONSIBILITIES OF THE UNITED STATES COAST GUARD TO PROTECT THE MARINE RESOURCES OF OUR NATION

---

JULY 24, 1991

---

Serial No. 102-39

---

Printed for the use of the Committee on Merchant Marine and Fisheries



U.S. GOVERNMENT PRINTING OFFICE

47-322 →

WASHINGTON : 1991

---

For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-037066-3

H561-12.

## COMMITTEE ON MERCHANT MARINE AND FISHERIES

WALTER B. JONES, North Carolina, *Chairman*

GERRY E. STUDDS, Massachusetts	ROBERT W. DAVIS, Michigan
CARROLL HUBBARD, Jr., Kentucky	DON YOUNG, Alaska
WILLIAM J. HUGHES, New Jersey	NORMAN F. LENT, New York
EARL HUTTO, Florida	JACK FIELDS, Texas
BILLY TAUZIN, Louisiana	HERBERT H. BATEMAN, Virginia
THOMAS M. FOGLIETTA, Pennsylvania	JIM SAXTON, New Jersey
DENNIS M. HERTEL, Michigan	HELEN DELICH BENTLEY, Maryland
WILLIAM O. LIPINSKI, Illinois	HOWARD COBLE, North Carolina
ROBERT A. BORSKI, Pennsylvania	CURT WELDON, Pennsylvania
THOMAS R. CARPER, Delaware	WALLY HERGER, California
ROBIN TALLON, South Carolina	JAMES M. INHOFE, Oklahoma
SOLOMON P. ORTIZ, Texas	PORTER J. GOSS, Florida
CHARLES E. BENNETT, Florida	ARTHUR RAVENEL, Jr., South Carolina
THOMAS J. MANTON, New York	SONNY CALLAHAN, Alabama
OWEN B. PICKETT, Virginia	WAYNE T. GILCHREST, Maryland
GEORGE J. HOCHBRUECKNER, New York	JOHN T. DOOLITTLE, California
BOB CLEMENT, Tennessee	RANDY "DUKE" CUNNINGHAM, California
STEPHEN J. SOLARZ, New York	
FRANK PALLONE, Jr., New Jersey	
GREG LAUGHLIN, Texas	
NITA M. LOWEY, New York	
JOLENE UNSOELD, Washington	
GENE TAYLOR, Mississippi	
GLENN M. ANDERSON, California	
NEIL ABERCROMBIE, Hawaii	
JOHN F. REED, Rhode Island	
WILLIAM J. JEFFERSON, Louisiana	
ENI F.H. FALEOMAVAEGA, American Samoa	

EDMUND B. WELCH, *Chief Counsel*

MARY J. KITSOS, *Chief Clerk*

GEORGE D. PENCE, *Minority Staff Director/Chief Counsel*

## SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

BILLY TAUZIN, Louisiana, *Chairman*

BOB CLEMENT, Tennessee	JACK FIELDS, Texas
JOHN F. REED, Rhode Island	DON YOUNG, Alaska
WILLIAM J. HUGHES, New Jersey	HERBERT H. BATEMAN, Virginia
EARL HUTTO, Florida	HOWARD COBLE, North Carolina
THOMAS R. CARPER, Delaware	JAMES M. INHOFE, Oklahoma
OWEN B. PICKETT, Virginia	PORTER J. GOSS, Florida
GEORGE J. HOCHBRUECKNER, New York	SONNY CALLAHAN, Alabama
FRANK PALLONE, Jr., New Jersey	WAYNE T. GILCHREST, Maryland
GREG LAUGHLIN, Texas	ROBERT W. DAVIS, Michigan (Ex Officio)
NITA M. LOWEY, New York	
GENE TAYLOR, Mississippi	
GLENN M. ANDERSON, California	
GERRY E. STUDDS, Massachusetts	

WALTER B. JONES, North Carolina  
(Ex Officio)

ELIZABETH MEGGINSON, *Staff Director/Counsel*

BILL WRIGHT, *Professional Staff*

HARRY BURROUGHS, *Minority Professional Staff*

# CONTENTS

	Page
Hearing held July 24, 1991 .....	1
Statement of:	
Anderson, Commander Bill, U.S. Coast Guard.....	5
Collins, Julius, member and past president, Texas Shrimp Association; Member at Large, Gulf of Mexico Fisheries Council.....	64
Prepared statement.....	123
Fields, Hon. Jack, a U.S. Representative from Texas.....	3
Fox, Dr. William, Assistant Administrator of Fisheries, National Marine Fisheries Service, NOAA.....	6
Prepared statement.....	92
Kuruc, Michele, Assistant General Counsel for Enforcement and Litiga- tion, General Counsel's Office, NOAA.....	6
Laughlin, Hon. Greg, a U.S. Representative from Texas.....	4
Leahy, Rear Admiral William P., Chief, Office of Law Enforcement and Defense Operations, U.S. Coast Guard.....	5
Prepared statement.....	81
Mialjevich, Tee John, President, Concerned Shrimpers of America.....	59
Prepared statement.....	101
Pallozzi, Morris, Director, Office of Enforcement, NMFS, NOAA.....	6
Schill, Jerry, Executive Director, North Carolina Fisheries Association.....	62
Tauzin, Hon. W.J. (Billy), a U.S. Representative from Louisiana; and Chairman, Subcommittee on Coast Guard and Navigation.....	1
Additional material supplied:	
Coast Guard:	
Coast Guard salvage policy.....	39
Excessive and abusive enforcement complaints.....	21
Mialjevich, Tee John:	
"Error, Deception, or Fraud," an ad.....	120
Former NMFS employee alleges incompetence and deception.....	111
Jefferson Parish letter from Coast Guard.....	113
"Injustice such as TEDs is an Unnecessary Evil," CSA newsletter.....	112
Jimmie Leger letter.....	118
Larry Cotter letter.....	119
Letter to six congressmen from C.S.A.....	117
Office of Enforcement, Southeast Area, FY 90 manhours.....	109
"Out for Fun," by Curt Carpentier, dated July 11, 1991.....	110
Roy E. Crook, III, letter.....	122
Shrimpers poem.....	115
Sonic excluder rejected.....	114
Steven Charpentier letter.....	116
Tauzin asks Bush for TEDs solution.....	115
TEDs not recommended for Mexican shrimp fleet.....	113
University professor says NMFS report not supported by data.....	114
Walter Hicks Letter to the Editor.....	111
"Waterway may threaten port," by Hector F. Garza-Trejo.....	121
NOAA:	
Actions in denying or revoking licenses.....	16
Actions regarding the DuBois Case.....	47
Application of TED regulations north of North Carolina.....	54
Civil penalty assessments.....	13
Criminal prosecution policies regarding TED's.....	9
Definition of gross income as applied to fines and penalties.....	15
Enforcement of TED's violations as required under the Endangered Species Act.....	27

IV

	Page
Additional material supplied—Continued	
NOAA—Continued	
Form letter from Office of General Counsel on Notice of Violation .....	126
Marked turtles found in fishing nets.....	30
Mexico's sea turtles research and protection program .....	31
NAS report linking shrimp trawling as largest human-related cause of sea turtle mortality.....	29
Percentage of compliance.....	32
Prosecution of TED's violators.....	11
Reduced penalties due to inability to pay.....	24
Repeat offenders .....	38
Reporting of delinquent penalties to local credit bureaus.....	14
Settlement history of TED violations .....	34
Table of estimates of human-caused mortality .....	127
Technical memorandum—Kemp's Ridley Head Start Experiment and Other Sea Turtle Research at the Galveston Laboratory.....	128
Turtles found in nets in violation of TED's requirements.....	49
Communications submitted:	
Johnson, Jay S. (NOAA): Letter of August 1, 1991, to Hon. J. Bennett Johnston .....	196
Subcommittee staff: Memorandum of July 22, 1991, to Subcommittee Members on commercial fisheries enforcement responsibilities .....	75

# COAST GUARD ENFORCEMENT OF FISHERIES LAWS

---

WEDNESDAY, JULY 24, 1991

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION,  
COMMITTEE ON MERCHANT MARINE AND FISHERIES,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 10:05 a.m., in Room 1334, Longworth House Office Building, Hon. Billy Tauzin (Chairman of the Subcommittee) presiding.

Members present: Representatives Tauzin, Hughes, Ortiz, Pickett, Hochbrueckner, Pallone, Laughlin, Taylor, Bateman, Coble, Inhofe, Goss, and Callahan.

Also present: Representative Ravenel.

Staff present: Elizabeth Megginson, Rusty Savoie, Sue Stille, Jim Adams, Bill Wright, Laurie Wilkerson, Andrea Wilkinson, Harry Burroughs, Margherita Woods, Rebecca Dye, Sherry Steele, Mark Ruge, Cyndy Wilkinson, Greg Lambert, Melanie Barber, and Tina Frazier.

## OPENING STATEMENT OF HON. BILLY TAUZIN, A U.S. REPRESENTATIVE FROM LOUISIANA; AND CHAIRMAN, SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

Mr. TAUZIN. The Committee will please come to order. Today's hearing has been called to review the fisheries enforcement responsibilities of the United States Coast Guard. This Congress has imposed enormous law enforcement duties on the Coast Guard. These duties include not only fisheries enforcement but also drug interdiction, illegal immigration, oil spill, boating safety, and, of course, many others.

It is our job to ensure that the Coast Guard is able to carry out these law enforcement missions in a fair and consistent manner. The Coast Guard plays a vital role in ensuring that the marine resources of our country are protected, and I applaud their efforts. Much of their work, particularly in the North Pacific, is dangerous, and the Coast Guardsmen are frequently killed or injured in the line of duty.

However, the Coast Guard has been placed in the position of enforcing rules which they do not enact. The National Marine Fisheries Service adopts rules such as those requiring the Turtle Excluder Device or TED's, which are extremely, as you might note, unpopular among those who must comply. The Coast Guard is not consulted during the rulemaking process, yet they must board ves-

sels to enforce these rules. This means that it is the men and women of the Coast Guard on the frontlines of potential confrontations. I am concerned that particularly in the area of fisheries enforcement, the Coast Guard is being put, in many cases, in a no win position.

Our research indicates the Coast Guard and the National Marine Fisheries Service has organized an enormous TED's enforcement effort involving 37 different Coast Guard units with over 1,100 boardings of shrimp vessels this season alone. While the shrimping industry does not fully support these regulations and has made every effort to get them changed, these individuals have certain constitutional rights which should be respected. When the constitutional rights of individuals are not respected by government, then government cannot maintain the respect for the authority of those governed.

I want to make it clear that we all share the goal of protecting endangered species. We must also obey the law even if we do not agree with it. I do not condone any disobedience of the law, and I have made that clear to my own constituents and to others around the country. What I do say to my constituents when I hear of abusive enforcement aimed at one sector of society, however, is a different matter. They will not respect the Coast Guard's authority if the Coast Guard must participate in an unfair or an inconsistent enforcement effort.

I am also concerned about what happens to these cases after they have been sent by the Coast Guard to the National Marine Fisheries Service for further action. I want to ensure that the defendants in these cases are accorded an opportunity for a full and fair hearing and that an administrative law judge in Washington cannot refuse these individuals their constitutional right to a hearing. I am also concerned when a Federal agency attempts to use the threat of the Internal Revenue Service in order to collect penalties from shrimpers. That is just not a proper and ethical way to achieve our enforcement objectives.

Our fishermen and their families deserve better treatment from our government. They have attempted to resolve this problem with suggestions for new devices to detect turtles. They have suggested other means of protecting and propagating turtles. The National Marine Fisheries Service has been slow to respond to these suggestions. Our shrimpers are suffering both emotionally and financially from these regulations. I have already pointed out at a previous hearing we have two documented suicides regarding enforcement of these regulations.

We are watching the decline of a culture which has been in our area for 200 years. In our effort to protect turtles, we must not destroy the ability of our fishermen to feed, clothe, and shelter their families.

I hope that one result of our hearing will be a recognition on the part of the Federal agencies involved who enforce the law, that government must serve the best interest of all of its people. This means protecting not only the turtles but the humans whose living depends upon the resources of the sea.

Mr. TAUZIN. We are pleased today to welcome Members to this hearing, and the Ranking Minority Member, Mr. Jack Fields, as I

understand, is on his way. He has asked that his statement be entered into the record of this proceeding, and I understand there will be other statements offered for the record. I will now ask unanimous consent that any statements offered to the record be accepted without objection. Is there any objection? Without objection, so ordered.

[Statement of Mr. Fields follows:]

STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS

Mr. Chairman, I would like to compliment you for scheduling this most timely oversight hearing.

While the National Marine Fisheries Service is promulgating regulations on a number of issues, I will confine my remarks to the sea turtle enforcement rules.

Mr. Chairman, I have reviewed a copy of the proposed rule and there are certain provisions, including the standards for turtle excluder devices (TED's), which are important improvements.

Nevertheless, I strongly oppose the proposed clarification which directs law enforcement officials to seize the catch of those shrimpers who are found to be in non-compliance.

Mr. Chairman, while all shrimpers must obey the law and should equip their nets with turtle excluder devices, what the National Marine Fisheries Service has proposed is an excessive penalty for not pulling a TED

It is also a draconian approach which, instead of encouraging cooperation and compliance, has had the negative effect of enraging those Americans who are struggling to survive by shrimping in the Gulf of Mexico.

Mr. Chairman, on July 8th, Coast Guard and other government inspectors boarded 126 shrimping vessels off of Galveston. What they found was that nearly 95 percent of those boats were using turtle excluder devices, which if you extrapolate means that almost every shrimper in the United States is complying with the law.

Mr. Chairman, instead of hitting these shrimpers with this newest form of government intimidation, we should be complimenting them for their extraordinary level of compliance.

While I recognize that the Magnuson Fishery Conservation and Management Act provides for seizure of an illegal catch, I would hope that the National Marine Fisheries Service would choose not to use this authority.

During the course of this hearing, it is my hope that we will gain a better understanding of the rationale for this enforcement clarification and why, despite the 95 percent compliance rate, NMFS feels it is necessary to take such drastic action.

Mr. Chairman, I will conclude by sharing with my colleagues an example of what I think will happen if the seizure requirement is retained.

You will have a situation where the owner of a vessel instructs his captain to use TED's at all times. Unfortunately, the captain who has complete control of the vessel may choose otherwise, and he will be stopped by the Coast Guard for non-compliance.

At that point, the Coast Guard will be faced with the prospect of having to seize the catch or impound the vessel. Since the Coast Guard has no onboard facilities to store shrimp or any other seafood products, they will instruct the captain to follow them to shore. As a result, the innocent owner of this vessel, who had instructed compliance, will lose thousands of dollars in shrimp sales. In fact, his whole shrimping season will be at risk.

Mr. Chairman, this scenario will occur and the livelihood of dozens of innocent owners will be destroyed. And, if that happens enough times in the Gulf of Mexico, you can add shrimpers to the list of endangered species.

While I am sure there are some environmentalists who might feel that would be a positive development, this would not help save endangered or threatened sea turtles. In fact, it would have the opposite effect because Americans would continue to consume shrimp and imports would more than offset those shrimp caught by U.S. fishermen. The key difference is, however, that foreign shrimp fishermen do not use TED's, do not have any effective turtle conservation programs and, unlike our shrimpers, don't care whether any of these species survive.

Mr. Chairman, it is my hope that from today's hearing we can have more cooperation and less confrontation between the National Marine Fisheries Service and U.S. shrimp fishermen. We can save both sea turtles and U.S. shrimpers by working together. A first step in that direction would be the removal of the seizure of the catch language from the National Marine Fisheries Service proposed rule.

Mr. Chairman, I look forward to the testimony of our distinguished witness and again thank you for scheduling this important hearing.  
Thank you, Mr. Chairman.

Mr. TAUZIN. I will now, since Mr. Fields is not here, ask, Mr. Bateman, do you have a statement for the record, sir?

Mr. BATEMAN. No, I do not, Mr. Chairman.

Mr. TAUZIN. Mr. Coble? Mr. Goss? How about you?

Mr. LAUGHLIN. I do.

Mr. TAUZIN. Mr. Laughlin has a statement for the record.

#### STATEMENT OF HON. GREG LAUGHLIN, A U.S. REPRESENTATIVE FROM TEXAS

Mr. LAUGHLIN. Thank you, Mr. Chairman, and I would like to thank you for holding this hearing which focuses on the Coast Guard's enforcement of fisheries laws particularly TED's regulations. These regulations are threatening the shrimping industry in my district and in other areas of the Gulf of Mexico.

I certainly believe that endangered sea turtles must be protected. However, our Nation's shrimpers are themselves at risk of becoming extinct due to diminished harvest and income when pulling their TED. I believe that many of the laws which protect sea turtles were made without any respect for their effect on the shrimpers.

Now we are seeing the painful result of this shortsightedness. Reduced catch associated with TED's has thrust many shrimpers into financial hardship and has even put many of them out of business.

This is occurring at a time when shrimpers are already struggling to compete with low-priced imported shrimp. The harsh fines and criminal violations have further compounded shrimpers's problems. As a result, I introduced the Trawlers Relief and Working Livelihood Act of 1991 to relieve the severe economic burden that shrimpers are now bearing. My bill prohibits the Secretary of Commerce from shortening the shrimping season in the Gulf of Mexico and the South Atlantic. It also provides a tax credit to offset the loss of income by shrimpers using TED's. This legislation also removes criminal penalties for violation of Federal requirements concerning the use of TED's. The final provision of my bill directs the Secretary of Commerce to establish and implement a program whereby endangered sea turtle eggs are removed from the wild, hatched in captivity, and released months later into the wild after the greatest period of threat from predators has passed.

I am very concerned that many of the proposed new enforcement measures including authorization to seize nets and catch would push many shrimpers to the brink. The shrimpers in my district and around the country are barely surviving under the status quo. That is why I am pleased, Mr. Chairman, that you have decided to hold these hearings on this very important issue which affects so many families in my district and around the country. I only wish we had the same vigorous prosecution of the thieves in the saving and loan and banking industry. Thank you, Mr. Chairman.

Mr. TAUZIN. Are there any other opening statements? We are pleased to have as a guest on our Committee, Mr. Ravenel, today,

the gentleman from South Carolina. Would you have an opening statement, Arthur?

Mr. RAVENEL. No.

Mr. TAUZIN. Any other opening statements? Then we are pleased to welcome our witnesses. We have organized the hearing today in two panels. The first panel will consist of Rear Admiral William Leahy who is the United States Coast Guard Chief of the Office of Law Enforcement and Defense Operations who is accompanied, I understand, by Commander Bill Anderson. And the second member of the panel will be Dr. William Fox, the Assistant Administrator of Fisheries, National Marine Fisheries Service.

The second panel will then consist of representatives of fishing organizations including the Concerned Shrimpers of America, North Carolina Fisherman's Association, and the Texas Shrimp Association. We will begin this morning and we want to welcome both Admiral Leahy and Bill Fox to our hearing today, and we appreciate the fact that you probably have a lengthy written statement. We have seen them, and we appreciate that, and without objection enter those written statements into the record and ask if you would summarize your statements for us so we can get to the question and answer session as rapidly as we can. We will start with Admiral Leahy, and, Admiral, we are pleased to welcome you here today, sir, and would appreciate your statement.

**STATEMENT OF REAR ADMIRAL WILLIAM P. LEAHY, UNITED STATES COAST GUARD, CHIEF, OFFICE OF LAW ENFORCEMENT AND DEFENSE OPERATIONS; ACCOMPANIED BY COMMANDER BILL ANDERSON**

Admiral LEAHY. Good morning, Mr. Chairman and Members of the Committee. I have a very short summation of my opening statement which will be in the record. I would like to say that fisheries law enforcement is a very important Coast Guard mission. The Coast Guard does not decide what conservation measures are necessary, but we have the responsibility to ensure that those measures can be enforced.

In the last two years, the Coast Guard has responded to numerous changes in fishery requirements. The level of Coast Guard enforcement has increased over that period of time in all areas in which we have fisheries law enforcement requirements. We have also made changes for more effective enforcement, and these have included moving two of our high endurance 378-foot cutters from the East Coast to the West Coast. We have added new radars to our C-130's flying out of Alaska which give us a 300 percent increase over the previous radars that were installed in those aircraft, and we have increased the use of intelligence for fisheries enforcement support. And, we have redirected other Coast Guard resources to fisheries. These opportunities for additional resources were created by such things as the Defense Department taking over the detecting and monitoring mission in the "drug war," and getting some additional 378-foot cutters out of Fleet Renovation and Modernization (FRAM).

I appreciate the opportunity to be here today, and I certainly will be glad to field any questions you may have, sir.

[Prepared statement of Admiral Leahy can be found at end of hearing.]

Mr. TAUZIN. Well, that certainly was an abbreviated summary. Thank you, Admiral. We will get into a lot more detail, I think, in questions.

Admiral LEAHY. I am sure you will.

Mr. TAUZIN. We are now pleased to welcome Mr. Bill Fox. Doctor, would you please proceed with your statement?

**STATEMENT OF DR. WILLIAM FOX, ASSISTANT ADMINISTRATOR OF FISHERIES, NATIONAL MARINE FISHERIES SERVICE; ACCOMPANIED BY MORRIS PALLOZZI, DIRECTOR OF THE NOAA NATIONAL MARINE FISHERIES SERVICE, OFFICE OF ENFORCEMENT, AND MICHELE KURUC, ASSISTANT GENERAL COUNSEL FOR ENFORCEMENT AND LITIGATION, NOAA GENERAL COUNSEL'S OFFICE**

Dr. Fox. Thank you, Mr. Chairman. It is a pleasure to be here this morning to be able to testify on this extremely important issue. I would like to first introduce a couple of staff members that I have with me. I have Mr. Morris Pallozzi who is the Director of the NOAA National Marine Fisheries Service Office of Enforcement to my right, and to his right we have Ms. Michele Kuruc who is the Assistant General Counsel for Enforcement and Litigation out of the NOAA General Counsel's Office to assist in answering questions that the Committee may have.

Mr. TAUZIN. Thank you, Bill. On behalf of the Committee, we welcome you both. Thank you for your attendance.

Dr. Fox. I first would like to say that in the year and a half that I have been at the National Marine Fisheries Service I have been extremely pleased with the Coast Guard and its performance and assistance in the enforcement of the living marine resource regulations that we have in order to conserve and protect marine resources. They have been extremely helpful within the resources that responded to every request that we have made. We have put agents on every platform that is available to do fisheries enforcement, and I just can't say too much about how well the Coast Guard has performed in these fisheries enforcement mission. I am very pleased with them.

Resource management depends upon good science, good management, and good compliance with the regulations developed under management. Compliance depends on good communications, certain apprehension of violators, swift and sure prosecution, and equitable penalties extracted for that effort.

I am very pleased with the level of compliance that has been achieved with the sea turtle conservation regulations in the South Atlantic and the Gulf of Mexico through the efforts of the Coast Guard and the National Marine Fisheries Service and other agencies that we have called on for assistance in ensuring that compliance.

You asked in your letter to the Secretary that the person who testifies be prepared to discuss our sea turtle regulations, those that we are proposing to modify. We will just say that we have drafted several sets of regulations that would modify the current

Turtle Excluder Device regulations and other sea turtle conservation regulations. Those are undergoing review within the Administration. I will be pleased to answer any questions that you might have about those verbally, however.

To ensure good communications, we have put together a good communications strategy on this. We have held a series of meetings where we have talked to the shrimping industry from the South Atlantic to the Gulf of Mexico. At those meetings we discussed these provisions. We have ensured that the Coast Guard has been represented and has been present so they can see and understand and communicate to us how to ensure that the new provisions are as enforceable from their perspective as well as from our perspective.

Last week we met with the environmentalists here in Washington to explain what it is we are proposing to do. I have met personally with you, Mr. Chairman. I had a chance to discuss some of those regulations. Again, I am at your beck and call if you wish to discuss them further. I have also met with, at their request, the Texas Shrimp Association for a couple of hours. The Executive Director, Mrs. Lucy Gibbs, came up along with Mr. Harris Lasseigne and talked over with me their concerns about what it is we are proposing to do. They only had a small number of concerns out of the list that we have been going forward with, and I think that we reached a pretty good understanding about a number of those. And maybe their concerns are lessened at this point.

So we are going through a process of trying to ensure that we are communicating well on what it is we are proposing to do, and I will then end my statement right there and try to answer whatever questions you, Mr. Chairman, or the Committee Members may have. Thank you very much.

[Prepared statement of Dr. Fox can be found at end of hearing.]

Mr. TAUZIN. Thank you, Dr. Fox. One of the issues that is most troubling as you heard from one of the opening statements today is a question of when and under what circumstances does the Coast Guard and the National Marine Fisheries decide to enforce a criminal rather than civil penalty for the enforcement of a TED's regulation. As I read Section 11 of civil penalties it says, "Any person who knowingly violates may be assessed a civil penalty." And when you turn to part B under the same section, it almost similarly says, "Any person who knowingly violates any provision of this Act may be imprisoned or fined." It reads very similar. Obviously, the way it is worded gives a great deal of discretion in determining whether to proceed with a civil or criminal penalty. Both require knowing violations, and both are similarly structured in wording.

I am told that some sort of policy exists between NMFS and the Coast Guard regarding when to proceed with a civil and when to proceed with a criminal penalty, but we have requested copies of that policy and have not been accorded such a copy. Number 1, does such a policy exist in writing? If it does, where is it?

Admiral LEAHY. Well, from the Coast Guard, I don't know of any policy that exists pertaining to what you have just said, sir.

Mr. TAUZIN. We were told at NMFS a dual policy does, in fact, exist between the Coast Guard and NMFS. Dr. Fox, would you like to comment on that?

Dr. FOX. Well, I would like to comment. The policy is that it depends upon whether or not there is a National Marine Fisheries Service agent on the scene when the violation is observed.

Mr. TAUZIN. Is that a policy you have agreed to the Coast Guard with?

Dr. FOX. We have a policy. I will describe the policy in a moment. The policy is—

Mr. TAUZIN. Well, before you do, I just want to find out, is this something you and the Coast Guard have agreed to?

Dr. FOX. Insofar as I am aware of, yes, sir.

Mr. TAUZIN. Admiral Leahy, are you not aware of such an agreement?

Admiral LEAHY. No, sir.

Mr. TAUZIN. Commander Anderson, would you like to—take a mike if you are going to comment, sir, please.

Commander ANDERSON. Yes, sir. I am not aware of it here in Washington. However, that does not mean that the 7th and 8th Coast Guard districts, when working with NMFS, have not discussed how specifically to carry out the enforcement when they are carrying an agent versus when they are not carrying an agent.

Mr. TAUZIN. So you have left it to the various districts to make a decision as to a policy of enforcement of criminal and civil decisions?

Commander ANDERSON. I think I would describe it more, Mr. Chairman, as a procedure, rather than policy, with which to achieve the same goal of deciding when to proceed criminally.

Mr. TAUZIN. You know of no policy here in Washington?

Commander ANDERSON. No, sir.

Mr. TAUZIN. Dr. Fox, what is your understanding of this so-called policy? Is this an agreement on the district level? Is it an agreement here in Washington?

Dr. FOX. It is an agreement amongst the working agents and Coast Guard in the Southeast Region of the National Marine Fisheries Service and the Coast Guard districts. Fundamentally, what happens is that the Coast Guard, if a National Marine Fisheries Service enforcement agent is not there, makes the case, develops the paperwork, turns it over to the National Marine Fisheries Service agent to make a judgment as to whether or not to proceed criminally or whether or not to proceed civilly. If the enforcement agent is there, the enforcement agent makes that determination on the scene.

Mr. TAUZIN. So that—

Dr. FOX. Essentially, the National Marine Fisheries Service is making the determination as to whether or not to prosecute somebody or to cite them criminally or civilly.

Mr. TAUZIN. So that we have a subjective decision being made on the scene as to whether to enforce a criminal or civil penalty against the violator. So two violators may have similarly violated the law, and in one subjective case you are going to prosecute him criminally and in the other you are going to proceed civilly? There is no policy on differentiating between the kinds of violations or the degree of violation?

Dr. FOX. Yes, there is. It is not subjective. I would not describe it as subjective. I would describe it as objective.

Mr. TAUZIN. Well, what are the objective criteria in the policy that establishes a criminal enforcement rather than a civil enforcement? What are they?

Dr. FOX. Would you care to comment, Mr. Pallozzi?

Mr. TAUZIN. Please. Somebody.

Mr. PALLOZZI. Yes. Mr. Chairman, the policy is a regional policy which the headquarters Office of Enforcement and our general counsel—concur in.

Mr. TAUZIN. Is it in writing, number 1?

Mr. PALLOZZI. It is in writing.

Mr. TAUZIN. Can we have a copy of it please?

Mr. PALLOZZI. Certainly. It is a written policy from the special agent in charge in the field to her agents.

Mr. TAUZIN. All right. Well, let me on behalf of the Committee make a formal request as we made a private request that has not been acknowledged.

Mr. PALLOZZI. This is the first I have heard of it. You most certainly can have a copy of the policy.

Mr. TAUZIN. My staff has communicated a request for a written policy. We were told it was not available. If you say there is a written policy available, on behalf of the Committee we would like to make a formal request that a copy of the written policy that describes the objective criteria upon which criminal prosecutions are conducted rather than civil penalties—we would like a copy of that forwarded to us “tout suit” as we say.

[The information follows:]

#### CRIMINAL PROSECUTION POLICIES REGARDING TED'S

The following is the relevant portion of an internal memo, i.e., not for public release, dated November 28, 1990, from Special Agent In Charge, Suzanne Montero, to Southeast Region agents stating the criminal prosecution policy. Representatives of the relevant U.S. Attorneys Office, Department of Justice, NOAA Office of General Counsel, NMFS, and Coast Guard discussed and agreed to this policy:

“Violations of the TED regulations by shrimp trawlers shall continue to be documented by Coast Guard and deputized State boarding officers according to established procedures. Documentation of alleged violations will be collected by the responsible NMFS Special Agent. The Agent will continue to present all cases to the U.S. Attorney which involve the following conditions:

- 1) Vessels trawling with not TED's installed in their nets; or, 2) Vessels trawling with disabled TED's (TED's which have been sewn up); or, 3) Vessels found trawling with TED devices which have been altered in any manner which would stop the release of turtle.

... Any other cases involving minor alleged violations of the TED regulations such as: very slightly overspaced bar spacing, or very slightly undersized escape openings, shall be referred for civil prosecution. Additionally, any case which the U.S. Attorney does not wish to prosecute shall be referred for possible civil prosecution...”

Mr. BATEMAN. Would the Chairman yield?

Mr. TAUZIN. I yield to the gentleman.

Mr. BATEMAN. I would suggest, Mr. Chairman, that we broaden that to include policy or written procedures because I seem to sense a semantic distinction being made between policy and procedures.

Mr. TAUZIN. The gentleman's suggestion is well taken. Mr. Bateman, thank you. We would ask that if it is written as a procedure or a policy, however it is written, we would like a copy of the written statement as to the objective criteria used in making that deci-

sion. Dr. Fox, are you telling me that if a Coast Guardsman takes the action of enforcement and the NMFS agent is not available that it then becomes a civil rather than a criminal proceeding? Is there a difference there? I mean, is the violator only going to be lucky if a NMFS official is on board?

Mr. PALLOZZI. The decision is always made by the National Marine Fisheries Service agent if he is onboard or when he is contacted by telephone. The final decision to go criminal is always made by a National Marine Fisheries Service agent.

Mr. TAUZIN. So that it doesn't matter who makes the arrest?

Mr. PALLOZZI. That is correct.

Mr. TAUZIN. The NMFS agent will make the decision as to whether to go criminal or civil?

Mr. PALLOZZI. That is correct.

Mr. TAUZIN. And you have an objective standard for making that decision?

Mr. PALLOZZI. That is correct.

Mr. TAUZIN. Could you describe the objective standard for us?

Mr. PALLOZZI. Basically, it is used for the most egregious violations. It would be used if they were not pulling a TED or if the TED was so rigged so as to be inoperative.

Mr. TAUZIN. Are there any other violations other than those two?

Mr. PALLOZZI. No.

Mr. TAUZIN. So that you are assessing criminal violations in all cases?

Mr. PALLOZZI. Well, no. There are no other violations that we go criminal. Others would be technical violations; if the TED was tampered with, if it was modified, and then it would be the opening might be too small. Then we would probably seize the net and turn it over to our gear specialist to take a look at it and to see if, in fact, the TED was operative.

Mr. TAUZIN. So NMFS has made a policy decision, a procedural decision, whatever you call it, to criminally prosecute every fisherman who does not have a TED on board or who has as you said modified the TED so it doesn't work properly. Is that right?

Mr. PALLOZZI. That is correct. And it was only after we failed to get compliance in the beginning—when we failed to get the compliance, we went to local U.S. attorneys and reviewed it. With their concurrence, we established this procedure or policy.

Mr. TAUZIN. When was the decision made to criminally enforce in the instances of no TED's or modified TED's? What date was that decision made?

Mr. PALLOZZI. Last year, July the 15th, 1990.

Mr. TAUZIN. Since July the 15th, every time you catch a fisherman who doesn't have a TED on board or who has modified a TED so that it doesn't work in your opinion, you are going to proceed to try to assess a criminal violation; that is, put him in jail?

Mr. PALLOZZI. That is correct. And I also believe that this was done in concurrence with the shrimp fishing industry.

Mr. TAUZIN. You are telling me fishermen wanted to go to jail?

Mr. PALLOZZI. Yes. They wanted their violators to go to jail.

Mr. TAUZIN. It is amazing.

Dr. Fox. In fact, Mr. Chairman, we were asked by members of the shrimping industry to increase criminal penalties to take care of the problem.

Mr. TAUZIN. Well, we are going to have some representatives here today. I am going to be delighted to hear their reaction to that statement, that they wanted you to put them in jail. I mean, this is extraordinary. What States are these fishermen from who asked you to assess criminal penalties against fellow fishermen?

Dr. Fox. Well, I wouldn't characterize it as shrimpers saying that they want to go to jail. I mean, that is a mischaracterization of—

Mr. TAUZIN. Well, what exactly would you say and what States would they represent?

Dr. Fox. Leaders of the shrimp industry that were concerned about the non-compliance with the sea turtle conservation regulations came to my regional director and asked us, "Isn't there some way that we can improve the enforcement of this so that we can get people to comply with the regulations?"

Mr. TAUZIN. So you went criminal at the request of fishermen? That is your statement here today?

Dr. Fox. At the request of the shrimping industry representatives that we met with, yes, and as a part of a policy.

Mr. TAUZIN. Would you give me the names of those shrimping representatives please, sir, for the record?

Dr. Fox. I will be glad to consult with my regional director and supply that for the record, sir.

[The information follows:]

#### PROSECUTION OF TED'S VIOLATORS

Industry members did not ask NMFS to impose heavier penalties on TED's violators. NMFS representatives attended a meeting in Houston, Texas, with major fishing association representatives from Louisiana and Texas in July 1990. During the meeting, NMFS announced that cases were going to be referred for criminal prosecutions, and captains would be subject to arrests. Most representatives supported sanctions that would penalize captains because the fleet owners do not feel they have control over captains once they leave the docks. NMFS had been referring TED violations for civil prosecution and charging both owners and captains.

Mr. TAUZIN. Where are they from? Are they from the Gulf Coast or somewhere else?

Dr. Fox. I know that some of them were from Texas.

Mr. TAUZIN. And you will supply the names for us?

Dr. Fox. I will indeed.

Mr. TAUZIN. We look forward to that. The law which provides an opportunity for a hearing, very clearly states—that, "No penalty shall be assessed under the subsection unless the person is given notice and opportunity for a hearing with respect to the violation." That is a pretty clear statement of the law. My understanding is that the administrative law judge working for the U.S. Department of Commerce is now, however, issuing orders to show cause as to why any fisherman accused under these regulations should be given such a hearing. Isn't the law rather specific that he is entitled to a hearing?

Ms. KURUC. Mr. Chairman, if I might answer that?

Mr. TAUZIN. Yes, please.

Dr. Fox. Let me comment first. First, let me say that the administrative law judges do not work for NOAA, the National Marine

Fisheries Service. They work as independent Judges for the Department of Commerce, and they establish their own policy as to how they handle these matters. But I would like to ask Michele Kuruc from our Office of General Counsel to comment further.

Mr. TAUZIN. Ms. Kuruc, would you, yes, please comment?

Ms. KURUC. Yes. Mr. Chairman, there are regulations which have been issued. They have been on the books since at least 1987. They are furnished to all respondents who are charged civilly with a violation of the TED regulations as well as all other regulatory violations that go before the administrative law judge. Those regulations provide for various time limits in which the respondents must exercise their rights to a hearing after receipt of a NOVA which is the charging document issued by NOAA General Counsel. They have 30 days to request a hearing.

Mr. TAUZIN. The show cause has nothing to do with time limit. Let me read it to you. "The above respondent is hereby ordered to show cause within 20 days why the proceeding described in the above docket" —it is already filed timely— "should not be disposed of in the same manner as Tommy v. Nugent," a case cited in the— apparently an older case—a much older case as to why they should not even be entitled to a hearing when the law itself very clearly says that those accused of violations cannot be assessed a penalty unless they are first given an opportunity for a hearing.

Ms. KURUC. Well, as I mentioned, there are strict time limits within which all requests for hearings and various rights must be acted upon. I am not familiar with the particular Order that you are referring to, and as suggested it is issued under the authority of the administrative law judge's office so perhaps that is where the answer could best be provided.

Mr. TAUZIN. Well, if it is possible, I am not sure whether we can ask it of you, we will certainly ask it of the Department of Commerce for a clarification of their policy in this regard. The statute is pretty clear. We also understand the NOAA Administrator has the right to overrule the law judge in this case from the regulations I will cite to you in NOAA's regs here. It is subject to review by the Administrator and, in fact, can be overturned by the Administrator.

Ms. KURUC. A Petition to the Administrator likewise must be filed within certain time limits.

Mr. TAUZIN. I understand the time limits problem, but that is not what we are looking at. I wish that it were. I wish we were talking about some shrimper who failed to file timely. That is not the case. Here is a case where shrimpers who have filed for a hearing timely and who are told, "I am sorry. You are not going to have your hearing until you proceed through a rule to show cause as to why you are entitled to a hearing." And the law clearly says you can't assess a penalty without a hearing.

Dr. Fox. Mr. Chairman—

Mr. TAUZIN. It seems to me somebody needs to look into this. Mr. Fox?

Dr. Fox. Mr. Chairman, I will convey your question through the Secretary of Commerce to the Office of the Administrative Law Judge, and hopefully he will provide us an answer that we can submit back for the record.

[The information follows:]

CIVIL PENALTY ASSESSMENTS

NOAA's Civil Procedure Regulations (15 CFR Part 904) govern administrative proceedings, such as civil penalty assessments, before the agency. When a Notice of Violation and Assessment charging a statutory violation is issued, the recipient has 30 days in which request a hearing (15 CFR § 904.102(a)). All such respondents are given the opportunity to have their cases brought before, and decided by, a neutral tribunal; the Administrative Law Judge (ALJ). While respondents in NOAA proceedings do have the right to be heard, neither NOAA's procedural regulations, the Administrative Procedure Act, nor due process, require that such right encompass an oral evidentiary hearing in circumstances where there are no genuine issues of material fact.

Because TED cases are so numerous and factually similar, the ALJ has established a practice, in the interest of judicial economy, of requiring the respondent to show cause, i.e., to state his or her position concerning whether there are any factual or legal issues for determination that differ from those considered in *In the Matter of Tommy V. Nguyen, et al.*, NOAA Docket Nos. 035-027 *et seq.*; providing the respondent a copy of the *Nguyen* decision with the Order. *Nguyen*, the first TED decision, involved numerous respondents who had each admitted fishing without TED's. The decision addressed several legal issues such as the legality and effectiveness of the TED regulations, but since there were no facts in dispute, no oral evidentiary hearing was held and the parties filed written submissions.

The ALJ is authorized under 15 CFR 904.204(j) to order a party to a civil penalty proceeding to state his or her position, as was done in *Nguyen*. If, in response to the judge's order, the respondent raises no genuine issue as to a material fact, the judge may rule summarily without further evidentiary hearing under 15 CFR 904.210. If there are facts in dispute, the ALJ orders an oral evidentiary hearing. This approach is comparable to summary judgment procedures in Federal District Court.

**Mr. TAUZIN.** We would certainly appreciate that, Dr. Fox. There seems to be some real concern here about, again, the protections of the rights of the accused in these cases, particularly if you are now criminally prosecuting. In regard to the civil penalties you assess, is it correct that your Department is informing alleged violators that information concerning the delinquent penalties will be forwarded to their local credit bureaus?

**Dr. FOX.** That is part of prosecutorial—

**Mr. TAUZIN.** Would somebody comment?

**Ms. KURUC.** After a certain period of time in which a debt is not paid, the agency has the policy of pursuing various collection methods one of which includes referral to a collection agency. After that attempt is unsuccessful, there are various other methods which are attempted including referral to the IRS ultimately when a debt is written off.

**Mr. TAUZIN.** Well, the letter I have in front of me is from a Karen H. Raine, staff attorney to a man named Joseph Sheremy, and it simply says that the information concerning the delinquent penalty will be forwarded to a credit reporting agency in the cutoff area which is, in effect, a message saying, "We are going to damage your credit. We aren't going to ask the credit agency to enforce it. We are just going to send them information that you haven't paid this in order to damage your credit." Is that authorized in the law or regulations that you have the power or the capacity to do that to individuals?

**Ms. KURUC.** Again, the only thing I can say is I would be happy to check into this individual case. I can tell you our authority under the law for referring cases to the Internal Revenue Service,

but the language that you just read me I am not familiar with, but I would be happy to check it.

[The information follows:]

#### REPORTING OF DELINQUENT PENALTIES TO LOCAL CREDIT BUREAUS

*Credit Reporting Agencies:* The Federal Claims Collection Act, 31 U.S.C. 3711, authorizes Federal agencies to report overdue claims to consumer credit reporting agencies. The Federal Claims Collection Standards issued jointly by the General Accounting Office and Department of Justice (4 CFR Chapter II) direct each Federal agency to develop and implement procedures for such reporting (4 CFR 102.5). The Department of Commerce has established such procedures that cover all delinquent debts, including civil penalties that have become final and are overdue. *See also* Office of Management Budget Circular A-129, paragraphs 9(c) and 11.

*Reporting closed cases to the Internal Revenue Service:* Once a civil penalty case has been written off as uncollectible and all collection efforts have ceased, the penalty amount is regarded as taxable income. Under the Internal Revenue Code any debt that is discharged is considered ordinary income. 26 U.S.C. 61(a)(12). According to 26 U.S.C. 108, with a few exceptions not relevant here, only debts discharged in bankruptcy are excepted from the general rule that discharged debts are treated as income. The U.S. Treasury Financial Manual provides that after all collection efforts have been exhausted Federal agencies *must* report all debts over \$600 (including interest and administrative costs) to the IRS. Treasury Financial Manual Supplement at 5-8. OMB Circular A-129 also requires agencies to make such reports (paragraph 10(b)). An unpaid civil penalty, as an amount of money "that has been determined by an appropriate agency official to be owed to the United States" is a "claim of debt." GAO/DOJ Federal Claims Collection Standards, 4 CFR 101.2(a). Therefore, once it has been closed out as a bad debt, it is subject to reporting to the IRS as income. OMB Circular A-129, paragraphs 10(b), 11. Standards for terminating collection activity that apply to all Federal agencies appear at 4 CFR 104.3. The Department of Commerce has established procedures for reporting such debts to the IRS. Those procedures apply to civil penalties that NOAA either has been, or would be, unable to collect, or where the cost of collection would exceed the return.

Mr. TAUZIN. Well, we are going to make a copy of this letter available to you and ask for your written comment as to where in the statutes or the regulations you are authorized to report information to credit bureaus which, obviously, has the effect of damaging people's credit rating in order to encourage them to pay a bill or a penalty owed to the agency.

I have in my hands a letter from the same Karen H. Raine addressed to a Cindy Fahm in Buras, Louisiana, that, "Further action includes a collection action against you in Federal District Court or reporting the debt as income to the IRS—reporting the debt as income to the IRS." So that a person gets assessed a penalty from you and doesn't pay it, you intend to report that penalty as income to the IRS. Where in the statutes or regulations do you have that authority?

Ms. KURUC. Just a second and I will provide the statutory authority for you.

Mr. TAUZIN. Please.

Ms. KURUC. There are specific procedures provided in OMB Circular A-129. That is issued under the authority of the Budget and Accounting Act of 1921 as amended, the Budget and Accounting Act of 1950 as amended, the Debt Collection Act of 1982 as amended, and the Deficit Reduction Act of 1984 as amended.

Mr. TAUZIN. Those regulations allow you to do what now with reference to the IRS?

Ms. KURUC. Refer unpaid debt to the IRS for the IRS to treat as income.

Mr. TAUZIN. So the alleged violator will then be required to pay taxes on the penalty that he has not yet paid to the agency. Is that correct?

Ms. KURUC. I believe it will be treated as income. Yes.

Mr. TAUZIN. As income to the individual?

Ms. KURUC. That is how I understand it.

Mr. BATEMAN. Mr. Chairman?

Mr. TAUZIN. Yes. I will be happy to yield to the gentleman.

Mr. BATEMAN. I am a little bemused as to this procedure. You mentioned several sources of statutory authority none of which most citizens or even most lawyers would be aware of or even know where to find. Is there anything in the Internal Revenue Code that includes in the definition of income for purposes of the income tax, an unpaid fine or penalty due to the United States government?

Ms. KURUC. It is my understanding that the Department of the Treasury does have policies that are written directly towards these particular issues. I am not familiar with them currently, but I would be happy to secure these policies and get you copies.

[The information follows:]

#### DEFINITION OF GROSS INCOME AS APPLIED TO FINES AND PENALTIES

The Internal Revenue Code, 26 U.S.C. 61(a)(12), defines gross income as including "income from discharge of indebtedness." Basically, the only exception to the general rule that gross income includes discharge of indebtedness, is discharges in bankruptcy. See 26 U.S.C. 108. A civil penalty, because it is a fine or penalty payable to, and for the benefit of, a governmental unit, and not compensation for actual pecuniary loss, is excepted from discharge in a bankruptcy proceeding by 11 U.S.C. 523(a)(7). An overdue civil penalty is a "claim or debt" owed to the United States. GAO/DOJ Federal Claims Collection Standards, 4 CFR 101.2(a). Once it has been closed out as uncollectible, it is subject to reporting to the IRS as income. OMB Circular A-129, paragraphs 10(b), 11.

Mr. BATEMAN. I think it would be of interest to know whether there is anything that you can provide regarding this practice in terms of the Internal Revenue Code itself, as opposed to the Budget Reconciliation Act and other legislation that nobody except congressional staff ever see and then only after they are enacted.

Mr. ORTIZ. Mr. Chairman——

Mr. TAUZIN. I would yield to the gentleman from Texas.

Mr. ORTIZ. I was just wondering under the IRS policy here, are drug traffickers who are caught with loads of cocaine and marijuana treated the same way, that they have a load worth a million dollars and then that is a debt?

Ms. KURUC. It is my understanding that there is no distinction by type of violation.

Mr. TAUZIN. Well, perhaps a different way to ask it is do you treat other violators in the fisheries enforcement the same way?

Ms. KURUC. Yes, we do.

Mr. TAUZIN. So you send all unpaid penalties—you send all those notices to the IRS as income information?

Ms. KURUC. After all other collection efforts have been exhausted. Yes, we do.

Mr. TAUZIN. And do you threaten all those who receive a notice of a penalty of a violation with this action in all the fisheries? Does a similar letter go out to other fishery violators saying that, "We threaten you with the use of this statute and the IRS"?

Ms. KURUC. Well, I think if the question is are they informed of the procedure through a letter like that, I believe that they are, but I would be happy to—

Mr. TAUZIN. We would like to have that answered if you get the drift of what I am saying. We are examining to see whether or not these letters threatening action involving credit bureaus, sending information to them, letters that threaten action with the IRS, letters that threaten other action—we have several of them—seizures, forfeitures—whether those practices are common to all the fisheries enforcement or whether you have got some sort of selective set of threats that you are particularly making to the fishermen in the TED's issues.

Ms. KURUC. Absolutely not.

Mr. TAUZIN. We would love to find out. Do you regularly charge an eight percent interest on all unpaid penalties to the agency?

Ms. KURUC. It is my understanding that that is also provided for by law.

Mr. TAUZIN. Do you regularly charge an additional six percent interest after 90 days?

Ms. KURUC. I believe so but, as I said, I will check—

Mr. TAUZIN. We would like a definitive answer on that. We are receiving letters indicating that not only do you charge eight percent interest but after 90 days you add six percent resulting in numbers that some credit cards don't even charge on unpaid balances. We are interested in finding out where the authority lies, number 1, and whether or not this is a common practice in fisheries enforcement or whether it is selective in this case. What about your authority to deny fishing permits, either revoking them or denying them to fishermen who have not paid a penalty to the agency? Is that authorized in statute anywhere?

Ms. KURUC. Yes, it is.

Mr. TAUZIN. You can deny any other fishing permit to a fisherman because he hadn't paid a penalty in this TED's violation?

Ms. KURUC. They are issued notices of permit sanction, and the procedure begins.

Mr. TAUZIN. And are you doing this for all fisheries violations? You are saying that, "If you violate any fisheries law, we won't give you any other permit to fish"?

Ms. KURUC. Yes, Mr. Chairman, we are.

Mr. TAUZIN. That is common practice?

Ms. KURUC. Yes, it is.

Mr. TAUZIN. And you can verify that to the Committee?

Ms. KURUC. Yes.

Mr. TAUZIN. We would be interested, again, in seeing not only the authority by which you deny or revoke licenses to fishermen for failure to pay a penalty, but we would like also to see evidence that such action is a common practice in fisheries enforcement rather than a selective one in this instance. We would appreciate that for the Committee.

[The information follows:]

#### ACTIONS IN DENYING OR REVOKING LICENSES

*Collection Agencies:* The Debt Collection Act, 31 U.S.C. 3718, authorizes Federal agencies to make contracts for collection services. Procedures and policies governing

such contracts appear in the GAO/DOJ Federal Claims Collection Standards, 4 CFR 102.6. OMB Circular A-129, paragraph 9(d), directs each Federal agency to utilize collection agencies to collect delinquent debts, including penalties (see paragraph 11). In accordance with these requirements, the Department of Commerce has contracts (via GSA) with several collection agencies in various parts of the United States. For several years NOAA has referred overdue civil penalties assessed under the various statutes it enforces to those agencies.

*Forfeitures:* Dunning letters sent by NOAA do not mention forfeitures, although we do advise people if we intend to file a maritime lien against a vessel if the particular violation involves a statute, such as the Magnuson Fishery Conservation and Management Act, where that authority exists (this does not include the Endangered Species Act).

*Interest:* Under 31 U.S.C. 3717, Federal agencies are required to charge interest on outstanding debts. The interest must be charged at the prevailing rate (published quarterly by the Treasury Department), with an additional 6 percent on delinquencies of more than 90 days. Prior written notice to the debtor is required.

*Permit sanctions:* NOAA's civil procedure regulations (which are applicable to administrative proceedings under all of the statutes that NOAA enforces) sets forth procedures for suspending or denying a permit if a penalty is overdue and unpaid. In those fisheries where permits are required this is the most effective (and sometimes the only) means of securing payments of civil penalties, and is used extensively throughout the country. (Permits are not required for shrimp fishermen in the South Atlantic or Gulf of Mexico under either the Endangered Species Act or the Magnuson Act.) See 15 CFR §§ 904.310, 311.

NOAA sends three progressively stronger dunning letters in an effort to collect penalties that are overdue. This is the procedure followed under all of the statutes NOAA enforces. The three letters are required by, and comport with, the General Accounting Office/Department of Justice regulations that apply to all Federal agencies. See Federal Claims Collections Standards, 4 CFR 102.1 and 102.2. The GAO regulations specifically approve an agency's dunning letters advising debtors of the agency's policies with respect to such matters as referral to credit bureaus or collections agencies. 4 CFR 102.2(c). Indeed, NOAA would probably be criticized if it did not put debtors on notice of potential consequences (such notice is required before charging interest on overdue debts, referring individual debts to credit bureaus, or referring matters to the IRS). To demonstrate that these methods of attempting to collect unpaid penalties are not unique to TED violators, a copy of the form dunning letter for Magnuson Fishery Conservation and Management Act violations used in the NOAA Office of General Counsel, Southeast Region, is attached hereto.

[The copy of the form dunning letter can be found at the end of the hearing.]

Ms. KURUC. Yes, sir.

Mr. TAUZIN. What is your authority to seize under the law and regulations for TED violations today? What do you seize? What is your authority? Admiral, you can jump in here. How does it work? What do you do with the seizures? Where do they go? Where do you store them? How do you dispose of them? What are you seizing, and what is your authority? Would either one of you proceed?

Dr. Fox. Well, I can ask, again, Ms. Kuruc to read you the statutory language. We have authority to seize everything that we do seize, and I would like to read you the general—

Mr. TAUZIN. Which is what? What do you seize?

Dr. Fox. We will read the general language.

Ms. KURUC. The Endangered Species Act and perhaps I should cite you the statutory section so then you can verify the language.

Mr. TAUZIN. Please. Yes, ma'am.

Ms. KURUC. The Endangered Species Act in Section 1532[8] defines fish and wildlife. "Fish and wildlife as defined by the Endangered Species Act are not limited to listed species but include any member of the animal kingdom including without limitation any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, anthropoid, or other invertebrate, and includes any part, product, egg, or offspring thereof including dead body parts." The Act also

provides in Section 1540(e)(4)(A) that, "Fish or wildlife taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported or imported contrary to the provisions of the Act or any regulation made pursuant thereto shall be subject to forfeiture to the United States."

Mr. TAUZIN. So that all the fish caught on the boat is subject to seizure?

Ms. KURUC. Yes, sir. That is correct.

Mr. TAUZIN. And forfeiture. Admiral, how is that managed? When you board a vessel and you discover a violation, number 1, are you seizing today any gear, any fish? What are you seizing?

Admiral LEAHY. We seize the net and then we escort the vessel back to port, and at that time the National Marine Fisheries people come on board. We give them an enforcement action report which we have made on scene, and they follow up and either make a civil or a criminal citation.

Mr. TAUZIN. What happens with the net and whatever else you seize?

Admiral LEAHY. They take that, sir. We don't do anything with the fish or the net, the National Marine Fisheries takes care of that dockside.

Mr. TAUZIN. You are not currently seizing catch?

Admiral LEAHY. No, sir.

Mr. TAUZIN. Dr. Fox, what happens at that point? The boat has been brought in, the net has been seized, what do you do at that point?

Dr. FOX. It will depend upon the disposition of the case, and I would like to ask Mr. Pallozzi to describe the various circumstances and what we might do with the net or the vessel or the catch or the other items.

Mr. TAUZIN. Yes. Please proceed, sir.

Mr. PALLOZZI. Mr. Chairman, we would accept custody of the net. We have contractors that would come, load the net. The net would be taken and cleaned and kept in a secure area until we are given the disposition by our NOAA General Counsel.

Mr. TAUZIN. Is the net the only thing you seize?

Mr. PALLOZZI. Currently under TED's, yes.

Mr. TAUZIN. Currently. There is a proposal floating around to seize more than the nets, isn't there?

Mr. PALLOZZI. That is a part of the modification to the regulations we are proposing. It is intended to be simply a notice to individuals that we may also seize catch as part of our enforcement efforts. We currently have the authority to do so and may do so at this point. We felt it was important to put it in the regulations to put people on notice of a level of penalties that is in between civil penalties and criminal penalties.

Mr. TAUZIN. Doesn't there seem at least in the statute to be a distinction between seizure of fish and wildlife and seizure of guns, traps, nets, and other equipment?

Ms. KURUC. Yes, Mr. Chairman.

Mr. TAUZIN. What is the distinction?

Ms. KURUC. I believe that the instrumentality that is used to commit the violation is embodied in that second provision that you were referring to.

Mr. TAUZIN. But isn't there a distinction on what kind of enforcement is being prosecuted?

Ms. KURUC. Well, if you are referring to the fact that the others may be forfeited after the obtaining of a criminal conviction, yes, there is a difference.

Mr. TAUZIN. So that as I read the statute, and correct me if I am wrong, the statute seems to say that the fish and wildlife may be seized for a civil violation, but that guns, traps, nets, and other equipment seized shall be subject to forfeiture upon conviction of criminal violation.

Ms. KURUC. The more general provision is the first provision you are referring to. The fish and wildlife can be seized in either a civil or a criminal violation. The second provision you are referring to is limited to forfeiture upon criminal conviction.

Mr. TAUZIN. All right. So are you seizing nets today for civil violations or only for criminal violations?

Ms. KURUC. For both. A net can be seized for evidentiary purposes.

Mr. TAUZIN. So you are not seizing them for forfeiture, you are seizing them for evidentiary purposes in the civil violations?

Ms. KURUC. Currently that is true.

Mr. TAUZIN. And they are returned once the civil penalty is paid?

Ms. KURUC. As far as I know, that is the practice.

Mr. TAUZIN. I understand you are prosecuting criminally now in all cases of no TED's or modifications. If nets are forfeited, what happens to them?

Ms. KURUC. To the best of my knowledge, those proceedings are handled by United States Attorneys. They are the arm of the Federal Government that has the authority to prosecute criminal violations. NOAA General Counsel does not have that authority, and to the best of my knowledge there have not been criminal cases where nets have been seized that have been attempted to be returned that have been successful. In other words, from what I understand, various shrimpers have been contacted after criminal convictions that they can come and pick up their nets, and they have not come forward to do so.

Mr. TAUZIN. We would be interested in getting a more detailed analysis of that procedure and what is happening if you don't mind.

Ms. KURUC. I will check.

Mr. ORTIZ. May the Chairman—

Mr. TAUZIN. Yes.

Mr. ORTIZ. When you seize the nets and the equipment for evidence, do you charge the shrimpers a fee for the storage?

Ms. KURUC. No, we do not.

Mr. ORTIZ. Thank you.

Mr. TAUZIN. I am going to ask just a couple more, and I promise I will yield. I just want to get these out of the way. One of the last ones—in regard to the seizure of catch, and, Dr. Fox, it is proposed at least, how do you plan to manage that? If a shrimper is caught in violation of a TED—he has got a modified TED that you don't like or it violates your regulations, or he doesn't have a TED's on board and you decide to seize his catch, what are you going to do

with it and how are you going to handle it? And how is the Coast Guard going to manage this?

Dr. Fox. As I said, Mr. Chairman, we have the authority to seize the catch now. We are not proposing to increase that authority. We are proposing to explain through our regulations that, in fact, we will be pursuing that. Now, let me—

Mr. TAUZIN. Well, assuming you are pursuing, how are you going to handle it?

Dr. Fox. Yes. We do that under our other acts, under the Magnuson Fishery Conservation Management Act. If somebody violates the Texas closure and the shrimp fishery, the shrimp catch is subject to seizure. If somebody violates the Lacey Act, the shrimp catch is subject to seizure. This is a fairly common practice in fisheries management, and I would like to ask Morris Pallozzi to describe the process that we go through.

Mr. PALLOZZI. The fish would be promptly sold. We would try to contact at least three dealers in the area to get the best price we can. We would get the proceeds, and these proceeds would be put into escrow until such time as the case reaches final disposition.

Mr. TAUZIN. Again, you get contractors to take the shrimp and hold them?

Mr. PALLOZZI. Buy them.

Mr. TAUZIN. Whatever it is?

Mr. PALLOZZI. And we get the proceeds. The proceeds—

Mr. TAUZIN. Do you sell them on the spot? You don't store them anywhere?

Mr. PALLOZZI. We usually don't. We try to sell them promptly.

Mr. TAUZIN. And you get at least three bidders?

Mr. PALLOZZI. We try to. Yes.

Mr. TAUZIN. Try to?

Mr. PALLOZZI. Yes.

Mr. TAUZIN. What does that mean?

Mr. PALLOZZI. Well, it means if we are in an area where we can only get two, we get two.

Mr. TAUZIN. If you only get one, you get one?

Mr. PALLOZZI. Well, in Alaska that might be true, but I don't think we have had too many cases where they have come against us and said, "You did not to get a fair price." It is usually the fair market price.

Mr. TAUZIN. Dr. Fox, do you or your people regularly consult with the Coast Guard in terms of determining the impact or the effect of their enforcement duties in regards to these laws? Is there some sort of consultation so that the Coast Guard is made aware of what the policies are going to be and what you want and what you expect and how you expect these laws to be enforced? What TED's, for example, are going to be considered violations of the Act and which are not?

Dr. Fox. We work very closely with the Coast Guard in a variety of ways. The Coast Guard actually sits on the Federal fishery management councils where virtually all of our fishery management measures and regulations are developed, and they are involved in the development of those measures and of the regulations that emanate therefrom. And we do consult them on that. As I said, in terms of general consultations, here in Washington, DC, between

Mr. Pallozzi and his counterpart, they actively talk about enforcement matters all the time.

Mr. TAUZIN. Does the council make those decisions about the procedures for enforcement?

Dr. FOX. The procedures for enforcement?

Mr. TAUZIN. Yes, sir.

Dr. FOX. They make the decisions about the management measures and review the regulations.

Mr. TAUZIN. The management measures. But who makes the decisions with reference to the procedures for enforcement?

Dr. FOX. It depends on the area of responsibility. We make the decisions in our area of responsibility, and we communicate those to the Coast Guard and to the General Counsel's Office which are on either—

Mr. TAUZIN. Do you accept input from the Coast Guard in making those decisions about procedures for enforcement?

Dr. FOX. Of course we would.

Mr. TAUZIN. Admiral, is it your opinion that that is occurring today?

Admiral LEAHY. Very definitely, sir.

Mr. TAUZIN. All right. And are you satisfied that the Coast Guard has adequate opportunity to input in regard to how boardings are conducted and how actions are taken against potential violators?

Admiral LEAHY. Yes, sir, we are.

Mr. TAUZIN. In reference to the training of the Coast Guardsmen who have to go on board vessels, how are they trained to know what TED is a violation and which TED is not a violation?

Admiral LEAHY. Most of our people that do boardings go to our five week law enforcement school at Yorktown, Virginia. Others are trained on the west coast. Those that don't go to school get qualified in the districts that they are in. They get trained by district training teams, and everybody who is involved with boarding shrimpers in the 5th, 7th, and 8th Districts have been personally trained by NMFS agents.

Mr. TAUZIN. Have you been satisfied that the enforcement program has not proven to be excessive or abusive to any of the fishermen who are subject to enforcement?

Admiral LEAHY. Yes, sir. We are satisfied.

Mr. TAUZIN. Have you received complaints?

Admiral LEAHY. There may be some at the district level. I don't know if we have received any at the headquarters level.

Mr. TAUZIN. We would be interested in knowing what is the status of that understanding, sir.

Admiral LEAHY. We can determine that, sir.

[The information follows:]

#### EXCESSIVE AND ABUSIVE ENFORCEMENT COMPLAINTS

We are satisfied that our enforcement policies recognize the necessity to minimize the impact of law enforcement boardings on the law abiding fisherman. We have received and responded to a total of 12 letters of complaint and 1 letter of appreciation since January 1990 regarding Coast Guard enforcement of turtle excluder device (TED) regulations. The complaints generally address boarding authority, the frequency of boardings, boarding procedures, and the effect that enforcement of TED regulations has on drug enforcement.

Mr. TAUZIN. And, finally, we have received indications of a rather extensive effort to enforce TED's regulations. The 8th District indicates that for 1989, 1,476 boardings were conducted compared to only 37 in the 7th District. In 1990, 1,315 shrimp vessel boardings were conducted in the 8th District compared to 384 in the 7th District. For 1991, 704 boardings have been conducted compared to 243 in the 7th District. Again, it looks like the great majority of the boardings are shrimp vessels. Out of the 944 boardings in the 8th District, 704 already have been shrimp vessels. Are you concentrating on shrimp vessels, Admiral?

Admiral LEAHY. No, sir, we are not.

Mr. TAUZIN. There seems to be a heavy concentration on boarding shrimp vessels. When you get—

Admiral LEAHY. I have those figures in front of me here.

Mr. TAUZIN. Well, I will read them to you. In 1991, as I said, 704 out of 944. In 1990, it was 1,315 out of 1,821. In 1989, it was 1,476 out of 1,976. There seems to be a heavy concentration on boarding shrimp vessels.

Admiral LEAHY. In that area down in the 8th Coast Guard District, of course, the preponderance of fishing vessels are shrimpers, and that represents, I think, the high percentage of fishing vessels that are boarded there, sir.

Mr. TAUZIN. So you feel you are not concentrating on shrimping vessels other than the percentages they bear to the commercial fleet?

Admiral LEAHY. Yes, sir.

Mr. TAUZIN. A final question. I promise I will turn it over to you guys. In regard to the cases that have been made, our indications are that 232 cases were made in 1989; in 1990, 237 cases were made; and already in 1991, 94 cases have been made. There seems to be a decrease in the number of violations. Is that your reading of the statistics? Either one of you?

Admiral LEAHY. Yes, sir, they are, and I think that probably reflects a little greater compliance too.

Dr. Fox. Yes. I would just add to the Admiral's answer that the compliance rate with regards to the sea turtle conservation regulations is substantially up this year over last year. It went up last year when we moved from civil penalties to criminal penalties. It went up substantially from a low of 29 percent to over 80 percent when we instituted criminal penalties. And this year it is over 90 percent in all areas.

Mr. TAUZIN. The numbers, however, of modified TED's seems to be very high. This is an area of apparently some technical complaint as to whether or not a TED is modified in a way that satisfies the Department or not. In these technical areas of modified TED's, how do you determine whether you are going to criminally or civilly prosecute?

Dr. Fox. Well, the enforcement agent would make a determination as to whether or not it is a technical violation or it is a clear violation of not having a TED or having modified it in such a way so that it would not function. And that is a distinction between a criminal penalty or a civil penalty. I would add, Mr. Chairman, that this is an area of extreme concern to us, and the so-called set

of enforcement regulations that we are attempting to promulgate deals with all these matters to clarify them.

For example, the hard TED's have very detailed specifics in our current regulations. We are proposing to make them generic so that many of the TED's today that will, in fact, exclude turtles will become legal if we can get the enforcement regulations through and improved and out for comment and back through again. The same thing with the soft TED's. The soft TED's—there are certain modifications that may or may not be allowed. The regulations at this point are ambiguous. We propose to make them much more precise so that fishermen will not suffer the consequences of poor regulations. Our shrimpers are also at the hands of net makers who have manufactured TED's that are illegal. We are proposing to extract penalties from net makers for that too. Both sets of regulations—

Mr. TAUZIN. You and I have discussed that privately—

Dr. Fox. That is correct.

Mr. TAUZIN. [continuing]—and we are very concerned about that.

Dr. Fox. So a number of these issues you are concerned about here—

Mr. TAUZIN. Let me ask you the tough one. I remember as a young Catholic boy when it was forbidden to eat meat on Friday and they changed the rules on us and they allowed us to eat meat on Friday, I remember jokingly asking my parish priest what was going to happen to all those people in hell who had eaten meat on Friday and they woke up one morning to find the rules had changed. I imagine it would get rather hot. The bottom line of what you are telling me is if the rules are going to change again, TED's that may have been considered illegal may be considered legal again. What happens to those criminal cases that you have made against people who had a modified TED that may have been considered illegal last week when the TED may be considered legal next week? Are you going to have cases like that? How are you going to deal with them?

Dr. Fox. We haven't made any criminal cases on those types of modifications, sir.

Mr. TAUZIN. There are no such criminal violations?

Dr. Fox. Insofar as I am aware, no.

Mr. TAUZIN. How about the civil violations? How about a guy that has got a big fine or penalty and his credit has been ruined, and now all of a sudden he finds out that the modification is okay this week? How are you going to handle those? Are you going to void the civil violation and report to his credit bureau that he is okay and the IRS he doesn't owe the penalty? Are you going to undo it, or are you just going to leave it stand?

Dr. Fox. I would like, again, Ms. Kuruc to answer how we do that because regulations change all the time.

Mr. TAUZIN. I understand.

Dr. Fox. The regulations are the law at the time, and people have to comply with them.

Mr. TAUZIN. I am conceding that I would like to see them change for the better. I am not arguing that. I am concerned about cases where somebody was in technical violation last week only to find

out that he wouldn't be in technical violation under the new rules, but in the meantime he has got to have a heavy penalty with 14 percent interest assessed against him he couldn't pay. The Department has not taken into consideration what it can apparently take into consideration, criteria for determining whether or not a person can pay, and yet his credit bureau has been informed that he hasn't paid. The IRS has been informed that he owes some income on a penalty that he hadn't paid. He is in deep trouble, and yet today he finds out the rules have changed, and he really wouldn't be in technical violation anymore. Do you plan to go back and look at those cases at all is the simple question? And how do you plan to handle it?

Ms. KURUC. To the best of my knowledge, the regulatory proposals that are currently circulating through OMB and within the agency would not implicate any of the past cases in the way that you suggest. However, I certainly believe that the regional general counsel is very aware of this and will consider that when the case—

Mr. TAUZIN. We would hope so as we would hope that you would look at the statutory authority which gives you the right to lower penalties when a fisherman just can't pay it and just doesn't have the money, when he is bankrupt because he has lost his season.

Ms. KURUC. Ability to pay, certainly, is a factor.

Mr. TAUZIN. Are you using that criteria anywhere?

Ms. KURUC. Yes. We request financial information from those who are charged. They must supply—

Mr. TAUZIN. Have you reduced any penalties as a result of that?

Ms. KURUC. I believe we have.

Mr. TAUZIN. We would like information as to that please.

Ms. KURUC. Yes, sir.

[The information follows:]

#### REDUCED PENALTIES DUE TO INABILITY TO PAY

To date, no civil penalties in TED's cases have been reduced due to inability to pay. In those cases where this issue was raised, the ALJ held that under the circumstances presented, where the violations were deliberate and involved "calculated misconduct," mitigation of the penalty would not be appropriate.

Mr. TAUZIN. Thank you. Let me yield now to my colleagues. I have taken much more time than I should have. I apologize. Mr. Goss, would you like a round of questions, sir?

Mr. Goss. Mr. Chairman, thank you. We have focused very much on one aspect, a somewhat narrow but very vital aspect of the subject at hand today, and that is the question of the Coast Guard enforcement of the fisheries. I wanted to ask in another area whether the Coast Guard is satisfied that we are making progress in other areas, particularly high seas driftnet areas, what I will call raiding of our fishery resources up in the Alaska waters and the Northwest Coast areas. We haven't spent any time on that, and you have made some mention of them in your written testimony. And I just wanted to give you the opportunity to say if there are any problems in those areas that you need to bring to our attention, now would be a good time. And I have some questions about TED's too.

Admiral LEAHY. I don't think I have any problems I would like to bring forth at this time, sir, but as I indicated before that we

have moved two of our high endurance cutters from the East Coast to the West Coast to put some additional assets up in that area for enforcement. We have also, as I said in my opening statement here, put new radars on the C-130's out of Alaska. Three are up there now, three more will be by March 1992 which gives us a tremendous improvement in our surface coverage. We are working with the DOD and their assets to increase our intelligence capability up there. We have put international pressure on some of the countries that have not been playing the game fair up there.

Mr. Goss. Thank you. Your testimony indicates that as it also does make reference to continuing reports of illegal encroachment, and I know that we are about to head out that way and are going to have hearings on that. But I wanted to have a little setup on that before we went.

I had a question on your testimony also, Dr. Fox, which I will put my hands on in a minute here, on I guess it was page eight if I can find it—excuse me—thank you. Your testimony, Dr. Fox, and I am going to read from it, "Second, as fishermen gain more experience with TED's, they experience fewer difficulties. In a voluntary cooperative program involving commercial fishermen in the Gulf of Mexico, we have found that fishermen reduced shrimp losses in TED-equipped nets from about 10 percent early on to less than one percent." Is that a widespread experience or just a single-incident test? Are we really getting to the point where we are getting down to talking about one percent losses?

Dr. Fox. This, Mr. Goss, is the results from the research program that was requested by Congress that we were required to do. The first year aboard the vessels we did experience, approximately on average, a 10 percent shrimp loss, but in the second year of the study, shrimp loss went down to an average of about .7 percent which is less than one percent. That represents 170, I believe, tests throughout the Gulf.

Mr. Goss. Thank you. A final question that I had on this particular subject of TED's, we have had people come forward to us who are, basically, net manufacturers or shrimp fishermen or somehow in the process of those two with varying ideas and varying suggestions. We have referred them to your office, and in our case so far we have found a great deal of receptivity to consider the proposals, and I gather there have been some changes made in modifications of soft nets that are allowed as a result of the initiatives that some people in the industry have taken. Is that an observation that is generally true across the board, or is it only in the one or two instances that I know about?

Dr. Fox. Well, it is generally true. Fishermen are very good innovators, and they have come to us with ideas on how to modify the nets to improve their performance both from shrimp retention and from turtle exclusion. We have a process by which we test and certify those modifications and new TED's and work very closely with some members of the industry that are interested in doing this and work very well with them.

Mr. Goss. Thank you. Thank you very much, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Goss. The gentleman from Texas, Mr. Laughlin.

Mr. LAUGHLIN. Thank you, Mr. Chairman. After listening to your testimony and your proposals, I would like to commend your lawyers and your administrators and recommend them to Attorney General Thornburgh who could use their assistance in pursuing those who have violated the Federal laws and the banking laws of this country in the banking and saving and loan. I think our Nation would be well served with that sort of assistance.

I first want to know what are the policy reasons for treating the shrimpers differently, when you propose seizing their assets and their catch, from those bankers and saving and loan officials who more frequently and more regularly read the Wall Street Journal, Forbes, Business Week, and more frequently contribute substantial sums of money to presidential candidates in both political parties than do the shrimpers who are carrying on pretty much in the same fashion that they have for several centuries? Can you give me, any of you, the policy reasons for treating the shrimpers differently than we are the banking and saving and loan moguls of this country? Or mongrels as some refer to them.

Dr. Fox. Let me answer your question, Mr. Laughlin, this way. First of all, I am not intricately aware of the manner in which the government is enforcing the savings and loan laws.

Mr. LAUGHLIN. Well, let me ask you. Are you familiar with any---

Dr. Fox. Sir, if I may respond to your first question, but if I did have responsibility for enforcing the regulations against them, we would enforce them equally and equitably as we do against all fishermen and all people that we have responsibility to enforce the laws over and under the Endangered Species Act, the Marine Mammal Protection Act, the Magnuson Fishery Conservation Management Act, the Lacey Act, and others, sir.

Mr. LAUGHLIN. As a learned man with a Ph.D., have you in any of your readings heard of any instance where our government has seized the assets or the money of any savings and loan on the detection of a violation of our banking laws or the Federal laws of this country?

Dr. Fox. Again, I am not familiar with the way that we enforce the laws against savings and loans in this country.

Mr. LAUGHLIN. You haven't read any instance where that has happened, have you?

Dr. Fox. I haven't read much about it at all.

Mr. LAUGHLIN. I would think it would be very newsworthy if it ever happened. I am chagrined to say it mildly that you all would go out and catch and find violators of the law and charge them with that which is your job but at that same time seize their assets and seize their catch before they have been tried and convicted. What are the policy reasons for that?

Dr. Fox. Well, assets are seized when violators are apprehended. That is a fairly common practice in law enforcement throughout law enforcement. We follow that practice. It is authorized under the law. I am sure that people have looked at this from decades in the past and feel that these are appropriate things to do in order to ensure compliance with the law.

Mr. TAUZIN. Would the gentleman yield?

Mr. LAUGHLIN. Yes.

Mr. TAUZIN. I suppose, Dr. Fox, what the gentleman is getting to is we don't seize people's cars when we issue them speeding tickets, and there seems to be a vast world of difference between the way we enforce some of these laws and the way we enforce other laws which are probably more dangerous to society—

Dr. Fox. Mr. Chairman—

Mr. TAUZIN. [continuing]—than whether or not somebody has modified a TED in the way you don't like it. I think that is what we are getting to. Why such a tremendously harsh penalty of seizure of all your livelihood for violations of a net requirement when we don't seize a person's income and his car when he violates a speeding law and could end up killing children on the road?

Dr. Fox. Again, I don't care to comment on the enforcement of our speeding laws. We don't have that responsibility. We have the responsibility for conservation laws in the United States. We do this uniformly. When I was in the government of the State of Florida, we would even seize automobiles that are conveying illegally caught fish so we did seize automobiles in those cases.

Mr. LAUGHLIN. Doctor, I think the point that apparently you and your people are missing is that the Federal Government is picking on a group of hardworking people plying their trade as they have for many years and generations and, indeed a couple of centuries, who for the most part are little people in the big definition. I have yet to meet a shrimper who has a fancy MBA from one of our fancy learned eastern universities or even one of our fancy Texas universities.

Why is there a policy to punish the little people, for the most part not very well-educated when we are not applying the same rigorous enforcement to the more privileged. I don't expect you to give me much of an answer today, but I would like your lawyers to give the Chairman a written policy justification for treating the shrimpers differently than we are treating the banks and savings and loan who are stealing from the American taxpayer. And we are not seizing their assets and their ability to make money or to keep their operations going. I think we have had enough on that point.

[The information follows:]

ENFORCEMENT OF TED'S VIOLATIONS AS REQUIRED UNDER THE ENDANGERED SPECIES  
ACT

NOAA's enforcement of the TED regulations is not based on any particular policy to treat TED violations more or less stringently than violations of other Federal laws. The agency is simply carrying out its statutory responsibilities under the Endangered Species Act, and its obligation to "take care that the Laws be faithfully executed." U.S. Const. art. II, § 3. Moreover, forfeiture is a widely-employed enforcement method under a multitude of Federal statutes.

Mr. LAUGHLIN. Last year at this hearing before this Committee we discovered that the TED's were only being required on the nets of shrimpers up to about the North Carolina border starting from the south. Is that still the case?

Dr. Fox. That is correct. We have not changed our regulations.

Mr. LAUGHLIN. And during that hearing we learned that there were substantial turtle strandings on the beaches north of North

Carolina into Virginia, New Jersey, and areas further north. Is that still the case?

Dr. FOX. I am not aware of any unusual strandings north of North Carolina. There are turtles that are taken in other fisheries. We have observed this, and we have done this in the past. One of the provisions in the conservation measures that we are proposing would give the Secretary the authority to control turtle mortality in fisheries beyond just shrimping.

Mr. LAUGHLIN. My memory may have failed me, but I doubt it on this point, that in the testimony there was mention of substantial turtle strandings north of the area where the TED's were required. And I wondered why last year, if you will have someone go back and look at the testimony, why it applied only to the southern fishermen and shrimpers. And so I take it from your testimony that even though we have had a year go by, there has been no requirement of the use of TED's and the nets north of at least North Carolina. Is that still the case?

Dr. FOX. Mr. Laughlin, since the National Academy of Science's report came out last year and we have had a hearing on this, we have been diligently preparing regulations to deal with all the issues that are identified. And they are in process.

Mr. LAUGHLIN. Can any of you on your panel explain the phenomena of the Texas Gulf Coast where there are substantially more turtle strandings in the off-shrimp season? And let me be more concise. We are finding strandings more than six months after the season closes which is about two months before it opens. Can any of you explain that phenomena?

Dr. FOX. Insofar as I am aware, we have not observed that phenomena, Mr. Laughlin.

Mr. LAUGHLIN. We need to pass that on to your people, I suppose.

Dr. FOX. Yes.

Mr. LAUGHLIN. If that were the case, would that indicate to you that perhaps the shrimping industry is not responsible for the strandings that are occurring during that period of time?

Dr. FOX. I would just say that turtles die from a number of causes, not only from being caught in shrimp nets.

Mr. LAUGHLIN. I didn't hear that very well. Could you say that again?

Dr. FOX. Turtles die from a number of causes, and I will repeat—

Mr. LAUGHLIN. Other than shrimp nets?

Dr. FOX [continuing]. Other than shrimp nets. However, all evidence that we have indicates that shrimping is the single largest human cause of mortality in endangered and threatened sea turtles by far.

Mr. LAUGHLIN. What are the large causes that are not human inflicted?

Dr. FOX. After shrimping it gets very minor. I will be glad to take that data from the National Academy report and supply it to you, sir.

[The information follows:]

NAS REPORT LINKING SHRIMP TRAWLING AS LARGEST HUMAN-RELATED CAUSE OF SEA TURTLE MORTALITY

Data in the NAS report linking shrimp trawling as the largest human-related cause of sea turtle mortality is found on pages 90-100 of the report. In summary, these data show that "... the primary source of tag returns from female Kemp's ridleys tagged at the nesting beach at Rancho Nuevo (84 percent of 129 returns) has come from incidental capture of the turtles and reporting of tag numbers by cooperative shrimpers..." "Furthermore, observers on vessels conducting commercial shrimp trawling have reported large numbers of sea turtle captures..." ".83 percent of 78 papers on the incidental capture of all Atlantic sea turtle species in fishing operations inferred that shrimp trawling is a major source of mortality..."

The committee also evaluated data on the relationship between sea turtle mortality in trawls and tow times by Henwood and Stuntz. These data show that "death rates are near zero until tow times exceed 60 minutes; then they rise rapidly with increasing tow times to around 50 percent for tow times in excess of 200 minutes."

Sea turtle strandings data were compared to the opening and closing of shrimp seasons in South Carolina and Texas. The relationship between sea turtle strandings and spatiotemporal pattern of shrimp trawling in North Carolina was also examined. In South Carolina "the 7-year total number of strandings (190 carcasses) in the 2-week periods just after the opening of the fishery was 5 times as large as the number of strandings in the 2-week periods immediately before the opening (38 carcasses)."

In Texas "differences between 2-4 weeks before and 0-2 weeks before intervals were not statistically significant." "As in the South Carolina case, the statistical tests (run by the Academy, emphasis added) suggest that loggerhead strandings increased significantly when shrimp trawling opened in Texas.

In North Carolina, "the spatiotemporal switch in the season and location of apparent sea turtle mortality suggests that shrimp trawling causes substantial mortality of sea turtles south of Ocracoke Inlet..."

The other causes of mortality by rank and certainty of estimate are shown in Table 6-2, page 76 of the report. (A facsimile of Table 6-2 can be found at the end of the hearing).

Mr. LAUGHLIN. Thank you very much. Could you give us some status report on your agency's efforts to take the turtle eggs and to try to generate more turtles in captivity to be released back to the waters of our country?

Dr. Fox. Well, we have done enough research to know that captive breeding works, that sea turtles can be breed in captivity and can produce viable young. That research has been done. We have had a Head Start program cooperatively with the Fish and Wildlife Service and Mexico whereby eggs were taken from Rancho Nuevo Beach, Kemp's Ridley, reared in our laboratory in Galveston, Texas, until they are a little over a year old and then released into the environment; marked so that we can determine whether or not we are getting any returns back to that beach. And I will remind the Congressman that this is probably the most endangered marine animal on the face of the earth that we are putting this extra effort into. We spend on the order of a half million dollars on this effort. We are as yet to get any success of turtles that we have tagged returning and breeding on the beach. But we are continuing that program as best we can. We rely on Mexico to allow us to take some of the eggs in order to do this.

Mr. LAUGHLIN. Have you had any reports of your marked turtles showing up in shrimpers nets?

Dr. Fox. We have recovered marked turtles both I believe as strandings and from fishing vessels. Yes. I can't tell at this moment how many. I would be glad if you are interested to supply that for the record too.

Mr. LAUGHLIN. I would appreciate that very much. And this program you are saying is a year old?

Dr. FOX. No. The program goes back to the mid- to late-1970's and is out of our laboratory in Galveston, Texas. We do keep the turtles for, approximately, a year. They grow up to about dinner plate size before we release them.

Mr. LAUGHLIN. Well, I would appreciate a report, and I am sure the Chairman would. And it is fine with me if you just direct it to Chairman Tauzin. Please include the report that your agency and the Coast Guard and others have reported to you concerning marked strandings on the beaches and also those that have come from your boarding or inspection of the shrimping nets.

[The information follows:]

#### MARKED TURTLES FOUND IN FISHING NETS

A complete accounting of the NMFS headstart project through fiscal year 1989 is found in NOAA Technical Memorandum NMFS SEFC 266. Kemp's Ridley Headstart Experiment and other Sea Turtle research at the Galveston Laboratory: Annual Report-Fiscal Year 1989-June 1990 (a copy can be found at the end of the hearing).

NMFS is currently not involved in a captive breeding program. NMFS operated a captive breeding program between 1979-1988. The program was terminated because it was viewed as a successfully-completed scientific experiment.

Through July 31, 1991, 18,507 captive-reared Kemp's ridley sea turtles have been released into the wild since the program began in 1978. A breakdown of recaptures by source is found on page 54 of the report referenced above.

During TED regulation enforcement boardings (10) turtles have been found in nets not equipped with TED's. None of these were captive-reared Kemp's ridleys.

Mr. LAUGHLIN. My last area of inquiry, Dr. Fox, and again it may be somebody else's area to respond to, can you give us a status report on the efforts of cooperation by the Republic of Mexico on the preservation of the sea turtle and the efforts of enforcement to prevent the citizens of Mexico from procuring and eating the turtle eggs which I understand are a real delicacy? Can you give us the status of any progress in those areas?

Dr. FOX. Let me answer generally by saying that I am aware that the Republic of Mexico has greatly stepped up its efforts to protect sea turtles both on the Pacific side and on the Gulf side, has put together a program of requiring Turtle Excluders Devices on the nets in their vessels that they will institute over a period of time to meet the criteria established by the State Department for the import of shrimp into the United States or exported shrimp from Mexico into the United States. Mexico is exceeding the CITES. That is the Convention for the International Trade and Endangered Species and is doing a much better job than they had in previous years.

They are also improving the enforcement of the beaches with their marines, and I must say although I don't need to speak in Mexico's defense, that they have done a marvelous job with the Rancho Nuevo nesting site of Kemp's Ridley. As I said, this is probably the most endangered marine animal on the face of the earth. They have done a marvelous job of protecting what was left over there, and, in fact, we are starting to see some increases in that colony which we hope will be sustained and get a recovery of Kemp's Ridelys. But I will for the record, if you would like, ask my

international staff to prepare a memorandum explaining what has occurred in the last year with regard to that in Mexico.

[The information follows:]

#### MEXICO'S SEA TURTLE RESEARCH AND PROTECTION PROGRAM

Mexico conducts what is probably the world's largest sea turtle research and protection program. The Mexican program was inaugurated in 1962 and has expanded significantly, it now includes an extensive coastal network of camps designed to protect nesting turtles. The Mexican Government has expended considerable effort and resources in developing and implementing its turtle protection program. The program has been criticized, however, by various environmental groups which were primarily concerned with Mexico's continued allocation of annual turtle fishing quotas. President Salinas addressed these concerns in 1990 when he totally prohibited turtle fishing. Some groups still question the effectiveness of the program, doubting the vigor with which regulations are being enforced and the lack of efforts to protect turtles while they are at sea. The Mexican turtle protection program is basically designed to protect turtle nesting sites and has given little attention to protecting the turtles at sea. Mexico is now addressing this concern and plans to extend protection efforts to coastal waters, but information is not available on the implementation of these plans.

Mexico has one of the world's greatest varieties of sea turtles. Seven of the eight existing sea turtle species are found off its coasts. Several species have important nesting grounds in Mexico. The only major nesting site of one endangered species (Kemp's ridley), for example, is located in Mexico. Mexican fishermen have for years conducted turtle fisheries, the largest being for Olive ridleys along the Pacific coast. The fishery was reserved to indigenous groups forming cooperatives and was the major source of income for these low-income groups. Beginning in 1972, the Secretaría de Pesca (SEPESCA) issued annual quotas to restrict the taking of turtles to levels approved by the Instituto Nacional de Pesca (INP). This practice continued until 1990 when President Salinas totally prohibited directed turtle fisheries.

Mexico has a long history of turtle research which began in 1962, shortly after the creation of the INP. Turtle research was formalized as a permanent INP program in 1964. This research formed the basis for a comprehensive series of regulations which prohibited taking the endangered or threatened species, established quotas for the more common species (primarily Olive ridleys), prohibited the trade in many turtle products, and protected nesting sites.

The Mexican turtle protection program consists of a wide range of activities designed to preserve stocks. It is the most extensive turtle protection program known to be implemented by any developing country. The program is administered by SEPESCA and the Secretaría de Desarrollo Urbano y Ecología (SEDUE) as well as eight other federal agencies, various academic institutions, and a variety of civic groups. The primary elements of the program are: creation of camps to protect nesting sites; government and civilian patrols of nesting sites; collection and hatching of eggs; release of hatchlings; cooperation with U.S. restocking efforts; prohibition on the sale of turtle products; educational programs; and research. SEPESCA/SEDUE have established 36 camps along the Pacific and Gulf/Caribbean coasts to protect nesting sites. During the nesting season, these sites are patrolled, in some cases by armed guards or in less dangerous areas by Boy Scouts and other civic groups. SEPESCA reports that about five million hatchlings return to the sea from the beaches annually, although some U.S. observers believe that this underestimates the number of escapements. About 25 percent of the eggs are gathered and hatched by SEPESCA/SEDUE and released under controlled conditions. The INP tags about 6,000 turtles annually as part of its research program. SEPESCA has donated eggs (1978-88) and hatchlings (1989-91) of the most endangered species (Kemp's ridley) to the United States under the MEXUS-Gulf cooperative research program. A small number of turtles are maintained by several academic/environmental groups for research and captive rearing.

SEPESCA is concerned about declining turtle stocks and the adverse impact of fishing operations. SEPESCA conducted limited trials of Turtle Excluder Devices (TED's) with the assistance of the National Marine Fisheries Service during the 1980's. The trials were too limited to form any conclusions. Some unconfirmed reports, however, suggest substantial turtle mortalities occur along the Pacific coast as a result of shrimp fishing. Other observers are concerned about Gulf of Mexico shrimp fishing, especially in the Rancho Nuevo area. SEPESCA is planning a 30-year program to reduce incidental turtle catches by shrimp fishermen. The program

includes expanding data collection and efforts to introduce TED's, as well as gear developed in Mexico ("suripera" nets).

Mr. LAUGHLIN. In conclusion, Dr. Fox, and to all the panelists who are working very diligently, we join you, and I certainly support the efforts to conserve and preserve the endangered species. But I think some of your people have lost sight that this is not a band of criminals out there shrimping the Gulf waters. I know many of them personally as I am sure other Members of this Subcommittee know, and we would like to see you take an approach that is more compassionate than what has been taken. And we thank you for your efforts. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Laughlin. The gentleman from Texas, Mr. Ortiz, for questions.

Mr. ORTIZ. Thank you, Mr. Chairman. I just have one question, and maybe you can provide the Committee especially with the Coast Guard's estimate of the percentage of compliance with the existing test regulations so far this season for Texas and for all applicable waters. Now, how did this compare with past seasons? Also, do you have any numbers from the number of strandings of dead turtles that have been reported this season in Texas and as a whole? Now, how do these numbers compare with past seasons?

Dr. Fox. Well, I can give it to you, Mr. Ortiz, by district. For the year to date running total, the total for District 8 is 87 percent; out of Corpus Christi, Texas, it is 80 percent; out of Galveston it is 90 percent; out of Mobile it is 94 percent; and out of New Orleans it is 83 percent.

Mr. ORTIZ. Is this for this year?

Dr. Fox. That is this year, and these rates of compliance are substantially up from last year. From last year we had a low compliance of 29 percent at one point before instituting criminal prosecution for violations. It went up to over 80 percent at that time, and now it stands at 90 percent or thereabouts.

Mr. ORTIZ. So you can say that we have had an increase of almost 60, 70 percent from last year as far as compliance?

Dr. Fox. That is correct.

Mr. ORTIZ. Are these the same figures that you have, Admiral? Admiral LEAHY. Yes, sir, they are; the same figures.

[The following was submitted:]

#### PERCENTAGE OF COMPLIANCE

The comparison is as follows: For Gulf area strandings in 1990—400; estimated compliance—68 percent. For Gulf area strandings in 1991—39; estimated compliance—87 percent.

Mr. ORTIZ. What about strandings and dead turtles last season compared to this season? Are you finding less mortality?

Admiral LEAHY. We don't keep the statistics on that. I think maybe the NOAA people have that.

Mr. LAUGHLIN. Mr. Chairman, could I ask a question on that?

Mr. TAUZIN. The gentleman has the time.

Mr. LAUGHLIN. Would you yield for—

Mr. ORTIZ. Let me see if he can get the numbers. Then I will yield to the gentleman.

Dr. Fox. Let me say that the reports that we had right after the opening of the Texas closure and for several days thereafter that

the number of strandings was down to what would be an ambient level of strandings; in other words, strandings without shrimping occurring. And so the amount of strandings was way down with the compliance rate with TED's way up. I have not received any reports in the last week or so, but that was the first week after the Texas closure opened.

Mr. ORTIZ. So the mortality rate has gone down too?

Dr. FOX. We believe so. Yes. Substantially.

Mr. ORTIZ. And what must the shrimpers do at this point? I mean, because they feel harassed. They feel that they are persecuted. They have complied with the regulations; at least from your statement 85 to 90 percent. We see less mortality. What must they do so that they won't feel that they are being harassed and persecuted?

Dr. FOX. Well, I think, Mr. Ortiz, they must continue to do what they have been doing which is complying with the regulations. Hopefully they won't feel harassed and put upon.

Mr. ORTIZ. I yield to the gentleman from Texas.

Mr. LAUGHLIN. I understood the Admiral say the Coast Guard doesn't keep records of strandings and perhaps someone does, but if no record is kept of strandings, how do you know there is a problem?

Dr. FOX. We keep those records, Mr. Laughlin.

Mr. LAUGHLIN. All right. Somebody else does?

Dr. FOX. Yes. We have a stranding network, and we keep records of the strandings. That was the basis for my comments that I made in response to Mr. Ortiz's question.

Mr. LAUGHLIN. OK. Thank you very much.

Mr. TAUZIN. The gentleman from Mississippi, Mr. Taylor.

Mr. TAYLOR. Mr. Fox, I am curious as to how much money NOAA has spent, if any, looking for alternatives to TED's? I mean, basically, when you think about shrimping, you know, you can see the old trawl boards that were pulled behind schooners that were a lot longer and narrower. With the exception of just some very moderate modifications, trawling hadn't changed much since the 1920's, probably 1900. I was just curious with the tremendous amount of money that is spent on enforcement, the tremendous amount of money that I know your agency because I have had people within your agency say you spent up to four million dollars developing TED's, how much money has been spent looking for some alternatives?

Dr. FOX. Well, TED is a general acronym for Turtle Excluder Device. In order to protect sea turtles that get caught in nets, they have to be excluded from the net. And, therefore, almost any alternative would be some sort of device that would exclude them from being caught and dragged in the net. So I am not sure that I get the drift of your question. We have spent substantial amount of moneys looking at alternative ways to exclude turtles from the net working with the shrimp industry. The lion's share of that is the cost of putting observers aboard the vessels working with the shrimp industry to see if the devices work.

Mr. TAYLOR. Well, there is a term that refers to something that happens unfortunately in government, and Congress is certainly not immune from it to where after a while if you spend so much

money, you throw so much money at a problem, you sort of sanctify the result. They say, "Well, we are throwing this money at it, and, therefore, this has got to be the result because we threw money at it." Is there a pretty good chance that NOAA has kind of sanctified TED's, that after so much money and the pressure from the conservationists we said, "Well, it is not a perfect solution, but it is the solution, and we are not going to find another solution"?

Dr. Fox. No.

Mr. TAYLOR. I recall a really hostile attitude on the part of NOAA when Mr. Laughlin and Mr. Tauzin and some others discussed the hatcheries last year and some other alternatives that just—if you have got a problem with the low number of turtles, why don't we just increase the number of turtles rather than going after one of the many causes for turtle decline?

Dr. Fox. Well, we continue, Mr. Taylor, within our resources to work with the shrimp industry to develop other means of excluding turtles. Not only turtles, the shrimp industry has an enormous fin-fish bycatch problem which we are working with the industry on to try to help them resolve as well. So we continue to work on that. We don't sanctify something and say, "That is it. We are done." We continue to work with the industry to try to improve whatever mechanism we have to assist them in continuing their fishing without violating the Endangered Species Act or other ones.

Mr. TAYLOR. Can you name some of the alternative programs that you are working on now or your agency is working on now?

Dr. Fox. Well, there are a series—I can't name a program, but we have work. There are a variety of excluder devices that are various modifications of the various soft excluder devices, the Andrews TED, for example, for different meshes. We have tested that. The Morrison TED—there is some modification to that that the industry has come up with, and we have tested that. We continue to work with them on devices that would exclude turtles from being caught and, therefore, protected.

Mr. TAYLOR. I am just curious. I recall a rather well-publicized case of someone who had connections to the highest portions of government. As a matter of fact, you probably couldn't get any higher as an elected official where someone who is related to them got off paying a nickel on a dollar settlement on an S&L failure. I wonder how many shrimpers get off paying a nickel on a dollar as far as their fines are concerned.

Dr. Fox. Well, I think that we can probably prepare a settlement history if it is not covered by the Privacy Act, and you can determine for yourself what rate people "get off on."

[The information follows:]

#### SETTLEMENT HISTORY OF TED VIOLATIONS

According to our records, the number of civil administrative cases in which the NOAA Office of General Counsel, Southeast Region, took action for TED violations is as follows (the year denotes the year in which the violation was documented):

1988—Written warnings issued in 14 cases to 26 people. Notices of Violation and Assessment (NOVA's) issued in 1 case to 2 people.

1989—Written warnings issued in 68 cases to 126 people (64 cases involved violations of the "tow time" regulations in effect from 12:01 a.m. on August 8, 1989, to 12:01 a.m. on September 8, 1989). NOVA's issued in 58 cases to 85 people.

1990—NOVA's issued in 121 cases to 170 people (charges were dropped in 1 case following hearing).

1991—Written warnings issued in 1 case to 2 people. NOVA's issued in 7 cases to 11 people.

Written warnings and NOVA's are issued to the operator (captain/master) of the vessel as well as the owner(s) of the vessel. Operator and owner(s) are charged either separately or jointly and severally. NOVA's have assessed penalties ranging from \$250 to \$12,000. One case has settled with the assessed penalty being suspended. There are 61 respondents (joint and several respondents counting as one) who either paid or are paying monetary settlement amounts in monthly installments as follows:

Assessed	Settlement	No of Respondents
\$11,500	\$8,625	1
8,000	6,000	14
8,000	4,000	2
7,500	5,625	5
1,000	1,000	2
500	500	36

\* Additional written warnings have been issued in the field by law enforcement officers. The ALJ has upheld all NOVA-assessed amounts except that in one case the penalty was reduced.

Mr. TAYLOR. Admiral, I have got a question for you. I am curious as a former small boat operator for the Coast Guard, I realize that without the cooperation of the public there is really not much we can do as far as when you are out on a search and rescue mission having people—another set of eyes out there for you or hopefully hundreds of other eyes out there helping you trying to find somebody. I picked up a rather large resentment from the people that I have the privilege of representing, the shrimpers. You know, I think there was a time when the Coast Guard was looked on as the good guys, the guys they could count on in the event of a storm or the boat catching on fire.

Admiral LEAHY. Hopefully we still are.

Mr. TAYLOR. Well, I still think you are.

Admiral LEAHY. Thank you.

Mr. TAYLOR. But I am just curious how has the enforcement of this affected your ability to work with the commercial fishermen? Have you lost some of that free help that we had out there as a result of this?

Admiral LEAHY. No. I don't think so. I think the average fisherman or shrimper out there is a good law-abiding citizen, and I think from the statistics we have and the data that we have compiled here, there are just a very few of these people that are not complying with the existing regulations. I think we have a fairly decent relationship with the people down there.

Mr. TAYLOR. Could you give a breakdown, and I am curious just in the 8th Coast Guard District, of your vessels underway, how much time is spent on SAR operations, how much time is spent enforcing fisheries, and how much time is out there looking for drug smugglers? Or do they—for example, would just a routine patrol if he happens to spot a shrimper, would he check him even though he is out there looking for drugs and could be called away on a SAR mission, or is he out there doing strictly fisheries work and would ignore the other things that could happen at that time?

Admiral LEAHY. From being a small boat operator, you are probably familiar with this, but our vessels go out on an assigned mission. It could be a counternarcotics mission. It could be a SAR mission. It could be a fisheries mission. When our units are on a fisheries enforcement mission, if they see a narcotics violation, they are going to go after that. If they are out there on a SAR mission and something else comes up, then they will probably complete the SAR mission and come back and take care of the other matter.

As you well know, all the boats in the Coast Guard are multimission, so it is very difficult to equate exactly how much time is spent on one mission area as opposed to the others.

Mr. TAUZIN. Would the gentleman yield for a second?

Mr. TAYLOR. Certainly.

Mr. TAUZIN. Admiral, isn't the real practice in the Gulf of Mexico almost an assault team effort? Don't you organize an armada with NMFS people on board and go out and do boardings? Isn't that the way it is being carried out?

Admiral LEAHY. Sir, I think if you look at the country as a whole and all the areas in which we are responsible to enforce fisheries regulations and laws—from the Gulf of Maine down the East Coast to the Gulf, working around to the west coast, the high seas drift-net areas and over to the western Pacific—we certainly put our enforcement vessels in the areas where the most activity is.

Mr. TAUZIN. Well, I understand all of that, but I am saying in regards to TED's enforcement in the Gulf of Mexico, isn't it an organized assault team that goes out with NMFS officials on board to try to board as many vessels as you can in that exercise?

Admiral LEAHY. I don't know that to be the case.

Mr. TAUZIN. It is a very specific attempt to catch TED violators, isn't it?

Admiral LEAHY. I wouldn't say it is an assault. I think we are going out to enforce all applicable Federal laws.

Mr. TAUZIN. Well, maybe I used a bad term. It is a mission. It is an organized mission to catch violators of TED's. Isn't that correct?

Admiral LEAHY. Well, our mission down there is to carry out the Federal law.

Mr. TAUZIN. All right. You are back.

Mr. TAYLOR. Admiral, do your local district commanders—and being an enlisted man I am just asking. I remember we all from time to time said, "Well, the big boys want us to do more boardings looking for drugs. The big boys want us to do more safety inspections. The big boys want us to spend a little more time underway training." Do your district commanders receive a word out of Washington to really encourage them to do boardings, to back off on boardings? Is it a fairly level effort all the time or just have peaks and valleys? I am just curious if the mission of the Guard has changed substantially to where this is now one of the primary missions or just a mission like everything else that just happens to receive a lot of publicity because of the very strong feelings that the commercial fishermen have against TED's?

Admiral LEAHY. I don't know of any policy that has come out of Coast Guard Headquarters dictating to the district commanders how to carry out their functions in the field, if that is what you are talking about. In other words, I don't think we have gone out from

Headquarters and said, "90 percent of your time will be spent on fisheries, 10 percent on search and rescue or law enforcement or whatever the case may be."

Mr. TAYLOR. So in the morning most of the chiefs wouldn't go out there and say, "OK. We really want a lot of heavy emphasis on TED violations this summer"?

Admiral LEAHY. We certainly don't tell them that from Washington, and I can't speak for the district commanders.

Mr. TAYLOR. OK. Thank you, sir.

Mr. TAUZIN. The gentleman from New Jersey, Mr. Hughes, for questions.

Mr. HUGHES. Thank you, Mr. Chairman. I want to welcome the panel. I gather that to date this year there have been about 94 violations?

Admiral LEAHY. Yes, sir.

Mr. HUGHES. I understand there were about 237 violations in 1990 and roughly 232 violations in 1989.

Admiral LEAHY. I think those figures are correct as noted earlier. It appeared that there were fewer violations this year than last year if we project out through the end of the fiscal year.

Mr. HUGHES. The violations to date this year, were the citations all the same? They were for failure to use TED's? What is the nature of the violations? Can you give us some breakdown, some analysis?

Admiral LEAHY. Let me give you a breakdown here.

Mr. TAUZIN. The staff has just presented Mr. Hughes with a report on the breakdown.

Admiral LEAHY. OK.

Mr. HUGHES. In how many of the incidents this year was there actually, confrontation on board the vessel? I know that the feelings have been running pretty high because there have been at least two blockades that I am aware of over the years dealing with the TED regulations.

Admiral LEAHY. I can't respond to that. I don't know the answer. None that we are aware of. We can certainly check the degree of confrontation.

Mr. HUGHES. Well, what I am trying to find out is, obviously, the feelings are very, very high over TED regulations and do we have instances of confrontation right aboard the vessel?

Dr. FOX. Let me add our special agents in charge from the Southeast indicates that we are not aware of any things that you might call a confrontation in this year's enforcement.

Mr. HUGHES. Has there been any effort to go in to talk to the shrimp fishermen, the associations? I take it there have been efforts?

Dr. FOX. Oh, yes, sir. Substantial.

Mr. HUGHES. And how would you judge the success of those efforts to try to reach some understanding?

Dr. FOX. I would judge the efforts as quite good. We have had meetings in the South Atlantic and several meetings in the Gulf of Mexico. As I mentioned, when we opened, I even had requests to meet with the Chairman. I have had requests to meet with the Texas Shrimpers Association and honored both of those requests and discussed what it is we are doing, what we are proposing to do.

Mr. HUGHES. Is that an ongoing program? Do you continue to try to reach out to the associations?

Dr. FOX. Yes, sir. We do so in each of our regions. That is the responsibility of our regional directors, and they do a very good job, sir.

Mr. HUGHES. How many of the 94 cases that were reported as of July 2 are repeat offenders?

Dr. FOX. We can find out.

Mr. HUGHES. I wonder if you could provide that for the record.

Dr. FOX. We can provide that for the record. We don't know right now, sir.

Mr. HUGHES. Can you also give us some analysis on the cases that have been disposed of by the attorneys within your department as to what the disposition was in those instances?

Dr. FOX. Yes. We can do so.

[The information follows:]

#### REPEAT OFFENDERS

Insofar as civil administrative proceedings are concerned, repeat offenders include those who have previously violated either TED regulations or other regulations enforced by NOAA. Factors included in assessing a penalty and determining the ultimate disposition of a case, include the type of violations, participation in the violation, and so forth. In the statistics given below, the vessel owner(s) are counted as one person; also, operator-owners whose wives are co-owners are counted as one person. The amounts given may have been assessed either jointly and severally or individually.

Four (4) people with non-TED priors received written warnings for TED violations because our policy at the time of the TED violation was to issue written warnings only.

Ten (10) people had TED written warnings as prior violations. NOVA's were issued as follows: \$500—6 people, 2 of whom have paid; \$7,500—1 person; \$8,000—1 person; \$12,000—2 people.

Twelve (12) people had (1) or more TED NOVA's as prior violations. The most recent NOVA's were issued as follows: \$500—4 people; \$2,000—1 person; \$7,500—1 person; \$11,500—1 person; \$12,000—1 person (paying compromise of \$13,000 for both violations which totaled \$20,000).

Two (2) people had one (1) non-TED prior as well as one (1) TED prior (one was a written warning and one was a NOVA). NOVA's were issued as follows: \$500—1 person; \$7,500—1 person.

Eleven (11) people had at least one non-TED prior, but no TED priors. NOVA's were issued as follows: \$500—4 people, 3 have paid; \$7,500—1 person; \$8,000—2 people; \$10,000—1 person; \$11,500—1 person (paid compromise \$5,500); \$12,000—2 people (one case).

#### CRIMINAL TED CASES WHERE PRIOR VIOLATIONS EXIST:

Case No. SE900483: Criminal case; paid \$1,800 penalty; 3 years probation. 2 priors—NOVA assessed \$7,500 penalty, NOVA assessed \$7,500 penalty.

Case No. SE900548: Criminal case; pending hearing. 1 prior—written warning.

Case No. SE900554: Criminal case; paid \$1,800 penalty; 3 years probation. 1 prior—written warning (tow time violation).

Case No. SE900598: Criminal case; paid \$5,000 penalty; 3 years probation. NOVA assessed \$7,500 penalty.

Case No. SE900645: Criminal case; paid \$2,500 penalty; 3 years probation. 1 prior—NOVA assessed \$8,000 penalty.

Case No. SE900691: Criminal case; not guilty verdict. 1 prior—NOVA assessed \$12,000 penalty.

Case No. SE910091: Criminal case; pending hearing. 1 prior—criminal case; paid \$2,000 penalty; 3 years probation.

Case No. SE910104: Criminal case; pending hearing. 1 prior—written warning (tow time violation).

Case No. SE910128: Criminal case; pending hearing. 3 priors—criminal case, pending hearing; NOVA assessed \$7,500 penalty; written warning (tow time violation).

Case No. SE910159: Criminal case; pending hearing. 1 prior—criminal case, pending hearing.

Case No. SE910182: Criminal case; pending hearing. 1 prior—written warning (tow time violation).

Case No. SE910274: Criminal case; pending hearing. 4 priors—NOVA assessed \$12,000 penalty; NOVA assessed \$12,000 penalty; NOVA assessed \$7,500 penalty; written warning (not using TED).

Case No. SE910369: Criminal case; pending hearing. 1 prior—written warning (tow time violation).

Mr. HUGHES. All right. That is all I have, Mr. Chairman. Thank you.

Mr. TAUZIN. Thank you, Mr. Hughes. Mr. Taylor, you had an additional question?

Mr. TAYLOR. Admiral, this is a little bit off on a tangent, but I am curious. What is the present Coast Guard policy on towing if a vessel, for example, is grounded? Or do the present regulations prevent you from trying to get that vessel off and bring it back in?

Admiral LEAHY. No. Our primary concern, of course, is for the safety of the people. We are not in the salvage business as I think you all know. I think if, in fact, depending where the vessel was, what the tidal conditions were and what they were going to be, in some cases we would probably tow it off. In other cases, we may not, sir.

Mr. TAYLOR. OK. But at some point I think it was in the early 1970's there was a shifting emphasis, and I think it was to protect the government from being sued from trying to get vessels off for fear of liability to just saving the passengers on board the vessel. Is that still the case?

Admiral LEAHY. I can't answer that question.

Mr. TAYLOR. Could someone provide that answer for me?

Admiral LEAHY. Yes, we can.

[The information follows:]

#### COAST GUARD SALVAGE POLICY

The Coast Guard salvage policy evolved along lines similar to our nonemergency maritime assistance policy, i.e., the Coast Guard recognized that our primary mission was to save people in distress, and that we should not be in competition with commercial entrepreneurs capable of providing assistance in nondistress situations. The Coast Guard's primary concern in a grounding situation is to protect the safety of the people aboard. Once their safety is assured, we then determine if commercial assistance is available to salvage the boat. If so, then the Coast Guard may assist the commercial salvor as needed. If no commercial assistance is available, the Coast Guard will undertake to save the property from further damage if such action is within our capabilities and can be done without undue danger to our people and equipment.

Our general salvage policy for other than towing, as stated in the Coast Guard Addendum to the National Search and Rescue Manual, follows:

#### GENERAL SALVAGE POLICY (OTHER THAN TOWING)

Coast Guard units should engage in salvage other than towing only when no commercial salvage facilities are on-scene performing salvage, and limited salvage operations (e.g., ungrounding, pumping, damage control measures, etc.) by the Coast Guard can prevent a worsening situation or complete loss of the vessel. When commercial salvors are on-scene performing salvage, Coast Guard units may assist them within the unit's capabilities, if the salvor requests. Coast

Guard units and personnel shall not be unduly hazarded in performing salvage under the authority of this section.

This policy applies to small craft which need salvage other than towing. However, when no commercial salvage companies are available within a reasonable time or distance, the district commander may modify the policy to provide for refloating a grounded boat which is not in peril of further damage or loss if: a) The Coast Guard units are capable of rendering the assistance; b) The owner requests the assistance and agrees to the specific effort to be made; and c) Coast Guard units and personnel are not unduly hazarded by the operation.

Occasionally an operator will insist that the Coast Guard take action, such as pulling a vessel from a reef, that the Coast Guard personnel on-scene consider unwise. The Coast Guard is under no obligation to agree to any such request or demand. If a decision to comply with such a request is made, it should be made clear to the operator that he is assuming the risk of the operation and the fact that the action is undertaken at his request against our advice should be logged.

Mr. TAYLOR. And I know that from my constituents I have had some rather loud complaints that people have been told to call commercial salvage to tow them back in on occasion, and I also would like the policy on that, sir. Mr. Tauzin, the reason I am asking this question is I find two vastly different things, and I am not pointing at the Coast Guard. They can only do what the Congress tells them to do or must do. But I find it strange that in many instances people who are now paying or getting ready to pay a boat user's fee are being told to call commercial salvage. We are not doing one of the most popular things that the Nation ever did which was rescuing—well, we are still rescuing people, but actually returning the vessel to port as well as the crew. On the other hand, the Coast Guard is being burdened with one of the most unpopular laws, and if this Committee can do anything to reshift the priorities to where they can spend a little bit more time helping a guy to get his boat back and a little less time enforcing an unpopular law, and, again, that is not the Coast Guard's problem, that is our problem. They can only do what we tell them to do.

Mr. TAUZIN. If the gentleman would yield, that is one of my major concerns I have expressed both to the Commandant and to enforcement agencies that, in fact, the role of the Coast Guardsmen is as a protector rather than a policeman. Is it being changed a great deal? And we know the Coast Guard has to police the fisheries laws. It has always had to. The question is whether or not that policing is being done in a fair and impartial manner. That is what we are examining today because it does impact upon the perception of the Coast Guard to its constituent class of boaters and mariners and fishermen. And it is of concern to me, and I thank the gentleman for raising it.

In that regard, Mr. Hughes, I appreciate your attendance because I believe Mr. Laughlin wanted to ask some questions about one of the enforcement techniques, the issues of civil rights in regards to the enforcement of the TED's regulations particularly in regard to the way in which the Administrative hearings are—the law says a fisherman cited with a civil penalty is entitled to an Administrative hearing, but they are being denied those hearings. And Mr. Laughlin perhaps can illustrate that with his case before. Mr. Laughlin.

Mr. LAUGHLIN. Ms. Kuruc, I understand you are a lawyer?  
Ms. KURUC. That is correct, sir.

Mr. LAUGHLIN. I am too, although that doesn't mean anything. But I have prosecuted a substantial number of cases in the criminal Courts of Texas, and if I were to just write you a letter and say, "Distinguish any shrimper's case from the State of Texas v. Richard O. Rodriguez," you would have with your educational background and skills some idea of where to go look for that case, wouldn't you?

Ms. KURUC. Yes, sir.

Mr. LAUGHLIN. In my knocking around, I have yet to find any shrimper at least in the 14th Congressional District of Texas on the Gulf of Mexico that has a law degree. And before I had the skills of law school, I had no idea where to find or how to look for the State of Texas v. Richard O. Rodriguez. The point I was trying to make earlier was your agency seems to me has made a great emphasis to pick upon and to lean on little people, and that ought to be quite clear to senior people in your agency. When an administrative law judge sends out a letter, obviously, addressed to a shrimping family, in this instance, Cathy Cheramie—Mr. Tauzin, I apologize if—

Mr. TAUZIN. It is Cheramie.

Mr. LAUGHLIN. Cheramie. I knew—

Mr. TAUZIN. She is a good friend, by the way.

Mr. LAUGHLIN. And gets a poorly handwritten letter in response, I think we are taking advantage of little citizens in our country.

Mr. TAUZIN. Would the gentleman yield?

Mr. LAUGHLIN. Yes.

Mr. TAUZIN. To further explain, in this case, the administrative law judge says, "I want you"—he wrote back to the fisherman saying, "We are not going to give you a hearing until you show cause why your case differs from some other case," they cite in the letter. The fisherman wrote a handwritten letter back explaining, "I want a hearing. I have been cited. I am penalized. And I can't afford this fine, and I would like a hearing. I am entitled under the law"—a handwritten letter.

Your administrative law judge in the Department writes back saying, "Well, obviously, you haven't distinguished your case from this other case. Obviously, you haven't produced evidence to me that entitles you to a hearing so your hearing is denied even though the law says you are entitled to a hearing." And the poor fisherman without the benefit of a law degree, without the benefit of the knowledge of what some other case said in some other jurisdiction, without the ability to distinguish his problems from that problem, who wrote a simple handwritten letter asking for what our law says he was entitled to, is told, "You have no Administrative hearing on this penalty assessed against you."

Those are the facts. That is what we are looking at. That is the overkill that is going on in this enforcement effort. That troubles the heck out of folks like Greg and I and I hope others who represent little folks that don't have law degrees and are being assessed fines and penalties and criminal penalties now for violating some obscure regulation of one of our agencies. How do we justify that kind of overkill? I thank the gentleman for yielding.

Mr. LAUGHLIN. I thank the Chairman for your observations. Ms. Kuruc, the point I am trying to make is that in the administrative

law judge's letter and the information I have before me, there is not even a citation as we lawyers would know. And I am sure given enough time I might be able to find *Tommy v. Nguyen, et al.*, but I doubt there is a shrimper in the land that could, with no more information than what this administrative law judge included in this letter. And when I look at this, I am grateful that our founding fathers established the framework of this government where we have the checks and balances not only with the Congress but with the Administration and with the Supreme Court. This is hoodwinking citizens. It might even be called tricking citizens. And I think all of us ought to be offended by that approach to law enforcement.

And for your information, Mr. Rodriguez is a fellow I tried for selling heroin and got 99 years in the penitentiary. It was appealed and confirmed. And I am comfortable with that so I am comfortable with representing to you that I believe in law enforcement and Richard O. Rodriguez on the books of the laws of our Court of Criminal Appeals in Texas was affirmed. So I believe in swift punishment that meets the crime. We would ask you to take a look at that, and if you don't know any little people, I will invite you to the 14th District to tour and meet some of them, and you can find out for yourself whether you can live with yourself and sleep with a good conscience with this kind of treatment of American citizens. Thank you very much.

Mr. HUGHES. Would the gentleman yield to me?

Mr. LAUGHLIN. Yes, I will.

Mr. HUGHES. As I understand it, and I know you will correct me if I am wrong, the process is that once a notice of violation and assessment (NOVA) is issued, the respondent has 30 days to respond?

Ms. KURUC. Yes, Mr. Hughes. That is correct.

Mr. HUGHES. And the respondent can either accept the penalty or compromise the penalty, if a compromise has been negotiated, can seek to have the NOVA amended, modified, or rescinded by notifying agency counsel, can request a hearing, can request an extension of time to respond if they don't have enough time, or take no action in which event the NOVA becomes final. Is that pretty much a recitation of the process?

Ms. KURUC. Yes, sir. That is a correct summary.

Mr. HUGHES. OK. Now, apparently, at some point it became policy to issue an Order to show cause for a respondent when a hearing is requested?

Ms. KURUC. It is my understanding that those orders are issued from the administrative law judge's office.

Mr. HUGHES. OK. And what is the basis for that? Is that policy? Is that a rule within the agency?

Ms. KURUC. Again, those are issued by the administrative law judge's—

Mr. HUGHES. Or Administrative Procedures Act?

Ms. KURUC. Administrative law judge's office, sir.

Mr. HUGHES. Why isn't a respondent entitled to a hearing if requested automatically?

Ms. KURUC. He has a certain period of time in which to exercise his right, and if not, that right is waived. And certainly I am sure all of you can appreciate scheduling.

Mr. HUGHES. Sure. But my question is this. You know, people, and I don't know about the circumstances of this case—

Mr. TAUZIN. Would the gentleman yield?

Mr. HUGHES. I would be happy to in just a minute. I don't know about the circumstances of this particular case, but it has been my practice in the past to receive things that look like Answers because the average layperson doesn't know how to respond, deny, and request a hearing. But if a person apparently is requesting a hearing indicating that they don't believe they committed a violation, why shouldn't that in itself justify a hearing?

Dr. Fox. Mr. Chairman, may I respond to—Mr. Hughes, may I respond?

Mr. HUGHES. Sure.

Dr. Fox. I just want to say once again that, while it is fun sitting here being a whipping boy, the issues brought up by the Chairman, by Mr. Laughlin, by you, sir, Mr. Hughes, all relate to the Office of the administrative law judge which is an independent office that is not represented here today. We said that we would be glad to convey these concerns, and these are very real concerns. I share your concerns about the proper treatment of people. We will convey these concerns back to the Secretary's office, to the Office of the administrative law judge and ask him to respond.

Mr. HUGHES. Yes. That would be fine except that, frankly, I know it is your agency that has the responsibility for carrying out any sanctions. The administrative law judge, once there is a contested case, is the agency that would adjudicate. But my question to you as a matter of policy is, shouldn't the policy of your agency be to grant a hearing to anybody that requests it?

Dr. Fox. Well, it is the policy of the Office of the Administrative Law Judge, which is separate from NOAA or the National Marine Fisheries Services, a separate agency within a Department, and I can't comment on why they have such a policy, if, in fact, they have such a policy, Mr. Hughes. We will be glad to convey that to him.

Mr. HUGHES. Mr. Chairman, it might be well in the future to bring in those within the agency that administer; representatives from the Administrative Law Judges Association, those within the agency that handle dispositions.

Mr. TAUZIN. I am not sure we could ask the Law Judge to come in on a given case.

Mr. HUGHES. Not on a given case but policy.

Mr. TAUZIN. Policy perhaps we could do that, and we have the Administrator in front of us. I thought we could get some policy statements today, particularly in regard to how this thing is being enforced through the hearings process. If the gentleman will allow me?

Mr. HUGHES. Sure. I yield to the gentleman.

Mr. TAUZIN. Let me distinguish the case from the answer you received. Ms. Cheramie did not file too late. She filed on time for a hearing. This is her letter to my staff assistant at home. "I missed you again Thursday at the Port Commission Building"—which is where he meets with constituents. "I am trawling right now. I really don't have much free time at the dock. If it is not too much trouble, perhaps we could communicate by mail. I have sent a

letter to the administrative law judge's office saying that I ordered a financial statement with my bookkeeper, and as soon as I received it, they would send it. It cost me \$100 for the statement. I sent it to them as soon as I received it. The letter enclosed is what they sent me. I paid \$100 for nothing. I really don't know what to do next. I wanted to try to have the fine reduced. After all, we tried to obey the law. We didn't have any turtles on board, but they wouldn't meet me halfway. I know Mr. Tauzin is very busy, but I am no less important than the people whose house is flooded. I need help or advice. I have tried to do as much as I could myself. I don't like to ask for help. I am against a brick wall. Do you have any idea what I could do next?"

This is the response the administrative law judge sent to this woman. "Although respondent indicated an inability to pay the fine, no financial statements have been submitted." She says she did. She paid \$100 for one. "Over respondent's file contained an admission of purposely trawling without a TED, and in no case did respondent distinguish his case from Tommy v. Nugent at all." No citation. A fisherman is supposed to distinguish that case from another case with no citation. "The undersigned"—this is the Judge—"is reluctant to dismiss his case from the hearing docket without an evidentiary hearing as authorized by the law and the regulations." Not authorized, it is guaranteed. Read the law. "However, as here, where there are no facts in dispute, there is no need for a hearing. Accordingly, the request for the hearing will and is hereby dismissed." Period. No hearing. No due process. That is the way these cases are being handled.

But I am going to give you another hard case if the gentleman will let me. And perhaps the Administrator can explain this one. Here is a case, and this is Connie DuBois. Her boat was cited during the warning period when the TED's implementation was just beginning. Here is a notice of your Department, Dr. Fox. "The TED's regulations will resume at 12:01 a.m. Friday, September 8th. Shrimpers cited for failure to use a TED on or before September 22nd may settle their violations by the purchase and installation of a qualified TED before October 15th, 1989."

Mrs. DuBois was cited during this warning period and called NMFS to settle the violation. According to your Department's notice, she simply had to provide proof of purchase and installation. She did. When she did, she was informed that she had to sign a promissory note now for \$8,000. I got a copy of the settlement document sent her. It is a promissory note requirement that she would have to sign a promissory note agreeing to pay all reasonable expenses in connection to collection of the note including attorney's fees, Court costs, consents to judgment in the amount of the obligation, expenses, interest less payment, and the issuance of execution under that judgment for seizure of any of her property should she fail to pay the promissory note.

She objected to this. She said, "Wait a minute. This was a warning period. You told me all I had to do was prove to you I put the TED's in. I did before the violation deadline. I am not going to sign any promissory notes. I can't afford to sign a promissory."

So what did the Department do? The Department changed the note into an assessment of an \$8,000 penalty. Now, the \$8,000 pen-

alty has been assessed against her as well as nine percent interest and an additional six percent late payment due. And all of this is now subject to collection under your extraordinary procedures where you are notifying the IRS that it is income to Mrs. DuBois, you are notifying the collection agency, and not only the collection agency, but the credit reporting agency in the area so that her credit is now damaged.

Gentlemen, isn't this overkill? I mean, when you issue a statement saying that people who are going to be caught in that warning period simply can settle their violations by the purchase and installation, proceed to force upon them a promissory note, proceed to push upon them a penalty and fines and interest and God knows what other things you are doing in regard to reporting to everybody you can that this woman is delinquent to the Federal Government now, I mean, how far are you going? We wouldn't allow collection agencies to undertake this kind of an attitude toward their debtors. How do we allow a Federal agency to treat people that way? Mr. Fox, I would appreciate your attention to this particular case and your explanation to me why you are doing this to this woman.

Dr. Fox. Mr. Tauzin, if the case has been settled and we can comment on the details of it, I would be glad to give a report on this specific case and the circumstances surrounding it and why things have happened the way they have.

Mr. LAUGHLIN. Would the gentleman yield?

Mr. TAUZIN. I would be happy to yield.

Mr. LAUGHLIN. Dr. Fox, as a lawyer, I am not real concerned about the one case. I am more concerned about the due process for all Americans, and I think that is what the Chairman is talking about.

Mr. TAUZIN. Well, that is precisely—

Mr. LAUGHLIN. If we are dealing with one, you all are dealing with more than one person like that. I am hopeful that Ms. Kuruc or some lawyer on your staff comes back that this is the only American citizen treated this way. But my instincts tell me that it is not just one case, it is rampant. There are others, and I hope some of the lawyers on your staff have some sense of fairness. And if they disagree with me, then I went to the wrong school of fairness growing up.

Mr. TAUZIN. If the gentleman will allow me, why do you put out a notice telling people that if they have been cited during this warning period they can settle their violation by purchase and installation? And then after they have done that decide to penalize them with a fine on top of that? Why do you do that? What is your purpose? What is your intent?

Dr. Fox. We can describe the policy in that regard.

Mr. TAUZIN. Would someone describe the policy please to me?

Dr. Fox. Michele, can you? When we settled—

Ms. KURUC. It was my understanding that at that particular time there was a feeling that there should be basically a grace period provided so that those who were unfamiliar with the requirements of the regulations could be given a period of time to comply.

Mr. TAUZIN. That is my understanding too. They were given a time to comply. The woman complied, and yet you have insisted on either pushing a promissory note on her in which she wouldn't go for that route. You penalized her with an \$8,000 fine.

Mr. LAUGHLIN. Would the gentleman yield?

Mr. TAUZIN. What is the policy of doing that? What do you want to do? Do you mean you want to assess a criminal penalty on her next? How far do you go?

Ms. KURUC. Mr. Tauzin, I understand that there is a long history behind this case, and perhaps some of what—

Mr. TAUZIN. Well, just give me the policy statement. After constituents who read your policy statement and who complied with it, why would you then decide to start penalizing them with promissory notes and penalties?

Ms. KURUC. It is my understanding that we may be going on a different set of facts.

Mr. TAUZIN. Is it not a fact that you issued a statement saying that violations can be settled with the purchase and installation of qualified TED's on or before October 15th? Is that not a fact? Am I holding up a phantom in my hand?

Ms. KURUC. No, sir.

Mr. TAUZIN. When did you decide to change—

Dr. Fox. Mr. Chairman, this is—

Mr. TAUZIN. [continuing]—the policy on this woman and other people?

Dr. Fox. OK. This is why I suggested that it would be far better if we could take a look into the case and provide you all the circumstances surrounding it so we are operating from the same facts. The explanations may not be readily apparent to you, to the—

Mr. TAUZIN. Mr. Fox, my understanding is that your Department made a policy decision, not an individual case decision, a policy decision to insist upon an \$8,000 promissory note upon every individual who was cited during this grace period—a policy decision that is in contradiction to what you issued in a public statement. All I am asking you is to tell me why you made this kind of a policy decision. I am not asking you about Mrs. DuBois' particular facts. Is it not correct that you made a policy decision contrary to what you said publicly would be required to settle these warning cases by insisting on an \$8,000 promissory note from these people?

Dr. Fox. Well, I am not familiar with the policy that you are describing.

Mr. TAUZIN. Well, don't you have people with you who are?

Dr. Fox. That would be part of the General Counsel's Office. We will—

Mr. TAUZIN. Can anybody tell me why you made a policy decision contrary to your public notice to these constituents?

Dr. Fox. I will be glad to supply that information.

Mr. TAUZIN. You can't tell me now?

Dr. Fox. I cannot tell you now, sir.

Mr. TAUZIN. Can any of you tell me now? I am amazed. I am amazed.

Dr. Fox. I do not know if it is contrary to the statement either but—

Mr. LAUGHLIN. Would the gentleman yield?

Mr. TAUZIN. I will be happy to yield to the gentleman.

Mr. LAUGHLIN. Ms. Kuruc, would you agree, not talking about Mrs. DuBois' case, but would you agree that there is no grace period if there is a representation of a grace period with certain requirements and during that time frame the rules change as to what the requirements are going to be and the changed rules are more severe and more punitive in nature?

Ms. KURUC. I am not really sure I follow the question. If you could try to rephrase it for me, I would like to try to answer it.

Mr. LAUGHLIN. Would you agree with me there is no grace period when I represent to you for the next 60 days if you comply with a request I have that there would be little or no punitive action taken against you and you try to comply within that 60-day period of time, but when you complied with my request I impose substantial penalties against you for complying with my request that, in effect, you don't have a grace period?

Ms. KURUC. I would agree with that.

Mr. LAUGHLIN. And if you try to comply with my request during what I initially represented to you as a grace period, then I have caused a substantial misrepresentation to you. Would you agree with that?

Ms. KURUC. Yes, sir.

Mr. LAUGHLIN. And you might interpret, would you not, that my actions were dishonest?

Ms. KURUC. They might be interpreted that way. Yes, sir.

Mr. LAUGHLIN. Thank you very much.

Mr. TAUZIN. Thank you, Mr. Laughlin. Thank you, Mr. Laughlin. On top of that, the public notice even indicated that even until October 15th after the grace period was over if you were issued a violation, if you came in and complied within 15 days, you would get a reduction in penalties. Not only was Mrs. DuBois' penalty assessed after she was told it wouldn't be, nobody has ever offered to reduce it even though she has complied, as I understand, with the regulations. But I will be interested in getting your version of the facts and, more importantly, your reasons for indeed engaging in the kind of dishonesty that Mr. Laughlin has described.

[The information follows:]

#### ACTIONS REGARDING THE DuBOIS CASE

The attached letter dated August 1, 1991 from Jay S. Johnson, NOAA Deputy General Counsel, to Senator J. Bennett Johnston fully outlines the facts surrounding the DuBois case and the actions taken by NOAA with respect to that case. Since this letter was sent, Mrs. DuBois has filed an appeal with the Administrator. She has not accepted NOAA's most recent settlement offer, but has requested more time.

[EDITOR'S NOTE: The copy of the letter from NOAA to Senator Johnston can be found at the end of the hearing.]

Mr. TAUZIN. I have got a couple more questions. We have a guest that I did want to recognize for questions. Mr. Ravenel from South Carolina had a question or two.

Mr. RAVENEL. Thank you, Mr. Chairman. I appreciate the opportunity. I am a Member of the Full Committee, but I am not a Member of this Subcommittee so I particularly appreciate the opportunity to make a comment or two. On a little bit happier note

because I am from over there on the East Coast—southeast coast of South Carolina, we have got a coastline of about 200 miles long. But on behalf of the overwhelming majority of the people of South Carolina and, of course, the loggerhead turtles that nest along our coast, I want to thank you folks from the National Marine Fisheries for your regulations and you folks from the Coast Guard for your enforcement along our coast.

Loggerhead turtles along the coast are doing well. Since the regulations have gone into effect, the numbers of strandings have dramatically decreased. We had an outstanding nesting year last year which, of course, was the year after the hurricane. We are having a normal year this year. We are flying our last three flights this weekend. As you know, we pick up the eggs, and we put them in little hatcheries so the coons can't dig them out, and we just discharge tens of thousands of little turtles into the waters every year. Everybody turns out their lights along the beaches that are populated. We have got turtle watches. Folks go up and down, and they monitor the turtle crawls and make sure that nothing happens to the nests and that the eggs are preserved, and we are just doing everything that we can.

The responsible shrimpers and most of our shrimpers are responsible. Everybody, I think, is pretty well settled down. They are working on perfecting the technology of the TED's which means that they are losing less shrimp as a result of using the TED's. As you know, the regulations and the laws of South Carolina are a lot more stringent than the Federal laws. Anybody who violates the law trawling illegally in State waters, particularly in inshore waters, bays and estuaries that we have closed and have been closed for years, they really throw the book at them. And as a result, compliance has been very good. The shrimpers associations are encouraging their membership to obey the law, to pull the TED's, and to all cooperate and work towards improving the technology of the TED's.

The only problem we have, Mr. Fox and I have discussed this with you, is that the turtles have apparently realized that they are in friendly and caring waters, and last year they did not want to leave. They hung around beyond the time when they normally hang around, and when the TED's came out at the end of July, we had a significant increase in the number of strandings which, of course, we found, you know, very unsettling.

We understand now that the regs that you all have posted are going to keep the TED's in, my understanding, until the end of the shrimping season. So that is going to take care of that situation. But we just want you to know that we have different problems than they have in the Gulf, and that the problems that we have encountered on the East Coast have pretty well been resolved to the delight of the human population that live there and, of course, the turtles that use our coasts and nest there. Mr. Chairman, I want to thank you very much for the opportunity.

Mr. TAUZIN. Thank you, Mr. Ravenel. Admiral and Dr. Fox, perhaps it is going to take a submission to respond to these questions, but the Committee would be very interested in knowing how many turtles were actually found in nets that were allegedly in violation of the TED's requirement; that is, in the cases that were made this

year, last year, the year before when shrimpers were caught trawling without TED's or with a modified TED since the violation issued, how many turtles were found in those nets? If you have that information, we would appreciate it now. If you don't, perhaps you could submit it for the record. Either one of you?

Dr. Fox. Mr. Chairman, I don't have it with me. I will be glad to submit it for the record. If such data are kept, we will have it. I will be able to supply it.

[The information follows:]

#### TURTLES FOUND IN NETS IN VIOLATION OF TED'S REQUIREMENTS

There have been 10 turtles found in the nets of violators

The finding of 10 turtles in the nets of shrimpers who violated the sea turtle conservation regulations does not indicate a lack of need for turtle excluder devices.

The boarding of vessels to verify compliance with the regulations is not designed to measure turtle capture by the shrimping fleet. The number of vessels boarded and the time spent on a vessel is too small to measure a turtle capture rate. Enforcement boardings are a one-time observation of fishing activity made where vessels are concentrated or where enforcement problems are anticipated. The capture of a turtle in a violator's net may have occurred prior to boarding, or it may occur later, or not at all.

NMFS scientific research has already measured the turtle capture rate by shrimp trawlers. It was based on observers who remained on trawlers throughout the fishing trip to measure turtle capture. This research showed that offshore shrimpers alone account for the annual capture of over 47,000 turtles, of which more than 11,000 die. A report by the National Academy of Sciences (NAS, 1990) states that this research may underestimate the actual mortality of turtles by a factor of four, because it does not take into account the effects of shrimping in inshore waters or the impacts of capture (forced submergence) on the survival of turtles which are released. (Reference: National Academy of Sciences, National Research Council 1990. "Decline of the Sea Turtles: Causes and Prevention." Washington, D.C. National Academy Press. 189 pp.)

Mr. TAUZIN. Is there any question that you would have that data?

Dr. Fox. I am only indicating that I may not have that data, Mr. Chairman.

Mr. TAUZIN. You may not know whether the turtles were in the nets that were in violation of a TED's?

Dr. Fox. I think that is what I said. Yes, sir.

Mr. TAUZIN. In regard to amendments to the regulations, I know you are interested in changing them and improving them—in some areas we have discussed that—why would you want to add additional and more stringent law enforcement measures to your current regulations when you are proudly displaying a 95 percent compliance rate today?

Dr. Fox. Well, let us go over them, Mr. Chairman. The first item that we are proposing to do is to specify general standards for hard TED's so that we don't have precise requirements so that will relieve individuals of the requirement to have those specific measurements. That is relaxing the enforcement regulations. Point number 2 is to identify which modifications are exactly allowed and not allowed so the shrimpers do not get cited for modifications that they may think that they may do. That seems to be in favor of diminishing enforcement capabilities or not capabilities but making it clear so people can comply with the law voluntarily.

Number 3, require that approved TED's be installed in each trawl rig for fishing when TED's are required. Well, that means

that we will have to do less boardings, less asking of shrimpers to pull their nets to see if they have a TED in it. We can look and see if they are in their nets as long as they are required whether or not they are fishing or not.

Mr. TAUZIN. Would the gentleman yield here? What that means to me is even though you are not fishing without a TED in your net, you are going to be guilty if you don't have a TED in the net and you are sitting there in the water.

Dr. FOX. That is correct. In order—

Mr. TAUZIN. That is a much more stringent interpretation of the law than in the past.

Dr. FOX. I guess it is your point of view, but if I were a shrimper out there complying with the law, I would much prefer to have the Coast Guard drive by while I am on my way to the grounds and have TED's in my nets and not stop me and board me when I am shrimping and cause me to haul my nets when I am shrimping to show them that I do have TED's in the net.

Mr. TAUZIN. But, Mr. Fox, as I understand what you are saying in the new regulations is that I will be guilty of a violation even though I am not shrimping yet if I don't already have a TED in my net on my boat. Is that right?

Dr. FOX. That is correct. Again, it is—

Mr. TAUZIN. Isn't that a much more stringent, more restricted interpretation of the law than you currently are engaged in?

Dr. FOX. It depends on one's point of view. Again, if I am a shrimper—

Mr. TAUZIN. Would you cite somebody today if they were on their way back or to the fishing grounds and they didn't have a TED in their net—

Dr. FOX. No, sir. We can only cite them if they are engaged in fishing without a TED—

Mr. TAUZIN. Right.

Dr. FOX. [continuing]—which means that we have to make every vessel that we wish to check pull their nets and stop fishing.

Mr. TAUZIN. I understand that.

Dr. FOX. We won't have to do that, Mr. Chairman, if we change the regulation.

Mr. TAUZIN. I understand you won't have to do that, and the shrimper might appreciate the fact that you won't stop him while he is trawling. But now you can stop him when he is not even trawling, and you can cite him for a violation even though he is not fishing because his net on the deck doesn't have a TED in it.

Dr. FOX. That is correct. That would be a fact. Yes, sir. But it is—

Mr. TAUZIN. You are getting a 95 percent compliance rate, yet you are going to stiffen the law to create some more instances of violations when the fisherman is not even fishing.

Dr. FOX. No, sir. We expect individuals to comply with the law, and they will not be cited.

Mr. TAUZIN. What you are doing—

Dr. FOX. The compliance rate is already 95 percent.

Mr. TAUZIN. Let me ask you this. Are you going to amend it next year to require that the TED be in the net when it is in the truck

on the way to the shrimp boat? How far are you going to take this thing?

Dr. FOX. I would guess we would not do that.

Mr. TAUZIN. I would guess you wouldn't, and I would hope you wouldn't. But you are also going to propose seizing his catch?

Dr. FOX. The fourth provision is to make it illegal to sell TED's that do not comply with the regulation.

Mr. TAUZIN. I suggested to you that that is not a bad idea. That is right.

Dr. FOX. That is one of the regulations. Well, that is four that we have talked about. The fifth one is to—we can already seize the catch for violation of the Endangered Species Act, Mr. Chairman. We have been over that.

Mr. TAUZIN. But you are not doing it?

Dr. FOX. We are going to notify people that we are going to do that by our regulations so that we can—

Mr. TAUZIN. You are going to start doing that.

Dr. FOX. [continuing]—have a penalty that is short of criminal. This panel was focusing in on the use of criminal penalties. This will provide us with a penalty which will be incentive to comply with the regulations—

Mr. TAUZIN. Wait a minute. Are you telling me that you are no longer going to assess criminal penalties under the new regs?

Dr. FOX. No, sir, I am not saying that at all.

Mr. TAUZIN. I would have almost heard you say that just now.

Dr. FOX. It provides—

Mr. TAUZIN. You are saying not only are you going to assess criminal penalties, but you are also going to seize the catch?

Dr. FOX. It provides an intermediate penalty.

Mr. TAUZIN. Are you going to use it as an intermediate penalty?

Dr. FOX. It diminishes the probability that we will have to seek as many criminal violations as we have in the—

Mr. TAUZIN. Well, let me be specific, and, Dr. Fox, I ask you to be specific. Are you going to change the policy so that instead of assessing a criminal penalty for a violation of no TED's or modified TED's that you are only going to seize the catch of the boat first?

Dr. FOX. We will establish a policy as to which violations deal with our—

Mr. TAUZIN. Please answer—

Dr. FOX. We are going to go with a different level—

Mr. TAUZIN. Could I get a yes or no please? Are you going to change your policy so that instead of assessing a criminal penalty for no TED's or modified TED's that you are going to simply seize the catch of the boat?

Dr. FOX. We will change our policy from the standpoint that there will be three tools available rather than two. Therefore, we will have to change—

Mr. TAUZIN. So the answer is no?

Dr. FOX. [continuing]—to take into account this provision.

Mr. TAUZIN. The answer is no?

Dr. FOX. The answer is not no. The answer is the answer I gave you, sir.

Mr. TAUZIN. You have not answered me. You told me that you are going to add a new penalty, but you have not told me whether

you are going to use it in lieu of the other penalty. I am asking you will you use this new penalty in lieu of the criminal penalty?

Dr. FOX. I am sorry. We will be using it in lieu of criminal penalties in some cases.

Mr. TAUZIN. In what cases?

Dr. FOX. We will be using it as an adjunct—

Mr. TAUZIN. In what cases, Dr. Fox?

Dr. FOX. It depends on the nature of the violation and the nature of the situation.

Mr. TAUZIN. I agree. In what cases will you use this new penalty instead of a criminal penalty? Could you be specific?

Dr. FOX. Let me—

Ms. KURUC. Perhaps I could provide some clarification.

Dr. FOX. Let me refer it to—

Mr. TAUZIN. OK.

Ms. KURUC. Under the provisions of the Endangered Species Act which we discussed before, I think that we did try to demonstrate that seizure and forfeiture are permitted under the Endangered Species Act.

Mr. TAUZIN. I am not arguing that, Ms. Kuruc.

Ms. KURUC. And it will be—

Mr. TAUZIN. When will you use the seizure in lieu of a criminal penalty, period?

Ms. KURUC. And if I can make clear? Obviously, I am a lot more conversant with the provisions of the Act than Dr. Fox is, and while I certainly don't mean to correct him, I need to explain to you that that seizure provision is permissible not as an alternative penalty. It is permitted to be exercised when there is a civil violation—

Mr. TAUZIN. Ms. Kuruc, I under—

Ms. KURUC. [continuing]——or a criminal violation. It is not in lieu of anything else.

Mr. TAUZIN. I understand that.

Ms. KURUC. OK.

Mr. TAUZIN. I read the law as clearly as you read the law, perhaps a little more clearer when it comes to the right of hearings. But my understanding of the law is that it can be used on top of the criminal penalty. What Dr. Fox indicated to me was that it might be used in some cases in lieu of the criminal penalty, and that might be a policy of the Department. I am asking you under what circumstances will the seizure of the catch be used in lieu of criminal penalties? Quite simply, what policy are you going to write in the circumstance?

Dr. FOX. I am told that it cannot really be used in lieu of.

Mr. TAUZIN. Ah. Ah. So you amend your testimony now by saying this is an additional penalty, not something to help the fishermen?

Dr. FOX. This is the advice that I am getting from our representative of the General Counsel's Office.

Mr. TAUZIN. I understand. I understand.

Dr. FOX. We will discuss this better and look at it.

Mr. TAUZIN. All right.

Dr. FOX. It is her point of view that we cannot use it in lieu of. It would seem to me that that is one of the things that could be used

in prosecutorial discretion to provide for stages of penalties beyond the two stages that we have.

Mr. TAUZIN. But you are not going to make that a policy?

Dr. Fox. I will be discussing that with the General Counsel's Office. Yes, sir.

Mr. TAUZIN. All right. And then, finally, you are also going to insist on TED use year round. Is that right?

Dr. Fox. I am sorry, sir?

Mr. TAUZIN. You are also, finally, going to insist on TED use year round. Is that right?

Dr. Fox. As part of the conservation measures, we have developed regulations that will propose the use of TED's year round per the recommendation of the National Academy of Science report.

Mr. TAUZIN. So your new regulations are going to include assessing penalties on fishermen who are not fishing or who don't have TED's in their nets on board. They will include a new penalty assessment of seizure of their catch, not in lieu of but in addition to criminal penalties, and the regulations are going to be made year round. That is substantial tightening and increasing of the TED's enforcement as I understand the English language, and my question to you is with a 95 compliance rate, why this overkill, Dr. Fox?

Dr. Fox. Let me say that the 95 percent compliance rate deals with the present regulations dealing with the present seasons in areas for which Turtle Excluder Devices are required. The National Academy of Science's report told us that we should require TED's in other times and places because turtles were dying in those places—

Mr. TAUZIN. And you are going to extend the regulations north of North Carolina?

Dr. Fox. And we have developed proposed regulations to extend it to the other times and places that we are aware of that turtle deaths occur.

Mr. TAUZIN. Let me be specific, Dr. Fox. Are you going to recommend extension of the TED's regulations north of North Carolina?

Dr. Fox. We have a recommended provision in our conservation measures that extends our ability to require TED's or to even close down fisheries in areas where sea turtle strandings occur that is due to fishing.

Mr. TAUZIN. You were going to increase your ability to require them. That is your language. I am asking you are you going to require them? Are you going to issue regulations requiring the use of TED's in fishing trawls north of North Carolina?

Dr. Fox. In this particular set of regulations we are not recommending that.

Mr. TAUZIN. You are not doing that?

Dr. Fox. At this time, no, sir.

Mr. LAUGHLIN. Would the gentleman yield?

Mr. TAUZIN. In addition—I will be happy to yield to the gentleman. Mr. Laughlin.

Mr. LAUGHLIN. In what now is going to be a lengthy response, will you include your policy reasons for not including TED's implementation from North Carolina to the Canadian border on the East Coast?

Dr. Fox. Well, there are no policy reasons.

Mr. LAUGHLIN. I understand that, but will you give us a policy reason for not including areas north of North Carolina, because remember earlier I had asked for a stranding report up the coast, and I didn't say to Maine, but that was implicit. And now I am asking for the policy reasons why you are not going to require the shrimping and fishing industry from North Carolina to the Canadian border to meet the TED's requirement that you are requiring down the coast. And the second part of my request is the policy reasons why you are so rigorously punishing for TED's violations when you are getting a 95 percent compliance, and that is all I have to request. Thank you, Mr. Chairman.

Mr. TAUZIN. I would like perhaps if you would try to answer that one. Why aren't you requiring the use of TED's north of North Carolina when you know that turtles are being caught in nets? Doesn't the law require you to go protect those turtles like it requires you to protect the ones in the Gulf of Mexico and along South Carolina?

[The information follows:]

#### APPLICATION OF TED REGULATIONS NORTH OF NORTH CAROLINA

NMFS has little or no evidence on the catch of sea turtles in trawls north of the North Carolina border. To address this data void and to seek other information on fishery and sea turtle interactions, NMFS will soon publish in the *Federal Register* an advance notice of proposed rulemaking and request for comments. By this notice, NMFS is seeking public comment on fisheries for which sea turtle conservation measures are needed and on appropriate conservation measures that should be applied.

In addition, NMFS is examining the impacts of the Summer Flounder trawl fishery on sea turtles. This fishery occurs throughout the northeast, extending south in the waters off North Carolina. In December 1990, large numbers of stranded turtles led to the closure of this fishery in State waters off North Carolina. Between November 29 and December 7, 1990, 46 sea turtles stranded on beaches between Cape Hatteras and Ocracoke Inlet, including Kemp's ridleys. State waters were closed to all trawling on December 7, 1990, and were subsequently re-opened to TED-equipped trawlers.

Because this fishery is Federally-managed, consultation under section 7 of the Endangered Species Act has been reinitiated since the stranding incident. The full impact of the fishery on sea turtles will be assessed and measures such as seasonal closures, observers, and TED's may be required to protect turtles.

Dr. Fox. We are in the process of developing information on those fisheries from which we will develop appropriate turtle conservation.

Mr. TAUZIN. Dr. Fox, you have been here before—

Dr. Fox. Yes, sir.

Mr. TAUZIN. [continuing]—for a number of years before this Committee. We have recited information. You have recited information. Your people have recited information to us detailing turtle catches in fishing nets north of North Carolina. You know it happens. Does it not happen?

Dr. Fox. It does happen.

Mr. TAUZIN. It does happen.

Dr. Fox. And I said—

Mr. TAUZIN. Does not the law require you to protect those turtles as much as it requires you to protect the turtle off the Gulf Coast of Louisiana?

Dr. Fox. It does require us to—

Mr. TAUZIN. Well, why are you not requiring TED's regulations in those areas?

Dr. FOX. We are not requiring it simply because—well, there are a variety of causes of turtle mortality.

Mr. TAUZIN. That is the same thing true in the Gulf of Mexico. The fact is turtles are being killed in shrimp trawls north of North Carolina. The law requires you to protect those turtles, and I am asking you a simple question. Why aren't your regulations going to require that TED's be used to protect those turtles as it is protecting turtles off the South Carolina coast?

Dr. FOX. Mr. Chairman, we have completed our studies of those problems. We feel that that is an effective way to protect sea turtles. We will be proposing regulations in that area, but at this time we do not—

Mr. TAUZIN. Well, please tell me why it is effective to protect them on the South Carolina coast, and it is not effective to protect them in the Chesapeake Bay where turtles have been found, off the coast of Massachusetts where turtles have been found in shrimp nets or in fishery nets? Why is it effective in South Carolina and not north of North Carolina?

Dr. FOX. In the information that we have, the turtle mortalities are not high. Most of the turtle mortalities are due to the onset of cold water and the onset of—

Mr. TAUZIN. Are some turtles being killed in nets north of North Carolina?

Dr. FOX. I would suspect that they probably are.

Mr. TAUZIN. There are areas off the Gulf Coast where there is no proof that turtles are being caught in nets. TED's are being required. Nowhere in your regulations do you propose relaxing the use of TED's in those areas, yet your regulations are not going to protect turtles that are being caught in nets north of North Carolina. How do you justify that?

Dr. FOX. We know of no areas in the Gulf of Mexico where while shrimping you will not catch turtles at some time. We have proposed in our proposed regulations to provide a flexibility provision whereby if some event occurs where it is difficult to tow a TED and so forth, we will be able to relax those requirements for a short period of time to assist in shrimping in that area.

Mr. TAUZIN. The National Academy of Science's report indicates that turtles are very rare in some areas where you are now requiring TED's in the Gulf of Mexico. That is their report. I can read it, and you can read it. Nowhere in your new regs are you going to be recommending relaxing the regulations on TED's in those areas. Very rarely are they found in those areas. That is the Science's report, and yet you and I know that turtles are being caught in fishing nets north of North Carolina in instances at least greater than rarely. And yet you are not recommending any TED's requirement north of North Carolina.

Dr. FOX. Listen. The point I am making, I am sure you are hearing it, is that there is a great feeling of discrimination here. There is a great feeling that the Department is willing to impose these regulations in one area of the country and not in another. There is a clear reading of the law that says your obligation is to protect turtles whether they are found off of South Carolina or off of

North Carolina or New Jersey or off of the Gulf of Mexico in Louisiana. And yet your regulations are going to remain in place in areas where the National Academy of Science says turtles are rarely found, and you are not going to impose them on other areas where you know they are found and where they are being caught in shrimp nets or fishing nets. I can't understand that, shrimpers can't understand that, constituents can't understand that, and I wish to heaven one day you would explain it to us.

Dr. Fox. Well, we are not extending our regulations in areas where turtles are not found. The National Academy says that there are data which indicate that they may be rare in that area. The takes of turtles outside of north of North Carolina is indeed rare so I wouldn't characterize it at one point as being rare and the other not being rare.

Mr. TAUZIN. But you have TED's requirements in areas where turtles are rarely seen and no requirements in other areas where they are rarely seen?

Dr. Fox. It is adjacent to areas—

Mr. TAUZIN. It smacks of discrimination, Dr. Fox, and I don't know how you are going to address this sooner or later, but you have got to address it. I mean, sooner or later you have got to explain to Members of this Committee whose fishermen are troubled by these regulations, who are having to deal with them, have to go through this incredible array of enforcement mechanisms you have set up to enforce it, why they have to answer to this Federal Government in one case and other fishermen who are represented by other Members of this Committee who vote to support these regulations in our part of the country don't have to endure what we have to endure for our constituents in regard to these regulations in their areas of the country when their fishermen are also catching turtles in their nets.

Now, something is wrong. I mean, we can't have a Federal law that applies to some people because they live in the South and not to other people because they live in the North. There is something wrong with that.

Mr. LAUGHLIN. That went out 100 years ago.

Mr. TAUZIN. It should have gone out 100 years ago. I know we fought a war over that. I don't think we ought to fight another war, I think you ought to give us a good answer or settle it.

And I would urge you, sir, please to either give us an adequate explanation of why the regulations are not going to be imposed in areas north of North Carolina where turtles are found and do occur in nets and why you won't relax the regulations in other areas that are common to those areas where turtles are rarely found in the Gulf of Mexico. If you can give us a good explanation, we would appreciate it.

If you can't, we would appreciate you doing what your job requires you to do; protect those turtles as adequately as you protect turtles off of South Carolina.

Gentlemen, we have, I hope, illustrated to you today that we still have a lot of questions about the manner in which these regulations are being enforced. We certainly have a great concern about the fact that you are stiffening the regulations at a time when you have got 95 percent compliance.

I don't know of any other area of the fisheries where you get 95 percent compliance. If there is another area, I would like to know it. 95 percent compliance with any law in America is pretty dog-gone good.

You have got an extraordinary compliance rate, and yet you are going to stiffen and increase the enforcement of this law even to the point where you are going to enforce it on fishermen who are not even fishing. And you are going to impose new penalties on top of the criminal penalties you are imposing upon people that simply are violating a regulation of the government when we don't impose criminal penalties for many, many other areas of violations in our society.

I can't but wonder why this overkill. I can't but wonder. Let me say to my friend, Mr. Ravenel, that I appreciated his comments. I think cooperation of the fishermen in the clear waters of the Atlantic with the TED's and working with the TED's is something our fishermen would love to be able to do in the dirty waters of the Gulf. Unfortunately, it just doesn't work as well in the dirty waters of the Gulf.

And, secondly, I think we are all interested in propagation programs and protecting nesting sites, and I have offered a bill even to encourage propagation as a proper tool to enhance the species that are threatened. But I only ask the agencies involved here to seriously consider whether there isn't a case of overkill here and whether individual rights are being trampled upon and whether people ought not to be entitled to a hearing when the law says they ought to get a hearing and whether people ought not to be able to rely upon a notice of the Department of its policy not to assess a penalty during a grace period instead of having a penalty assessed against him and their entire credit rating destroyed as a result of that action.

I ask you please to consider the fact that overkill if it continues is going to result in more confrontations, not less. It is going to result in less cooperation, not more. I have got a problem in the Gulf of Mexico right now.

We are going to hear from some of the shrimpers in a minute, but they have reached a point where they have tried to comply for months now. They want to be law-abiding citizens, but they are about to all hang it up together. They are about to say, "Come get our boats, our nets, everything. We are going on welfare because we can no longer operate with the kind of stringent requirements you put on us in the Gulf waters where TED's don't work as well as they do in the nice clean waters of the Atlantic." And what they are asking from you is help and cooperation to save the turtles without losing their families and their businesses and their culture, and we don't get a lot of help, Dr. Fox.

What we get is stricter enforcement, new regulations that are going to put them in jail for not having a TED on their boat when they are not even fishing. Incredible.

Admiral and Dr. Fox, I can't say anything more except to urge you and plead with you again to rethink your policy here. Fishermen are not criminals. They are fishermen. They don't want to go to jail, and they can't pay the kinds of fines and penalties you are

assessing on them, lumping all that interest and extra charges and the damage you do with the IRS and credit bureaus.

I urge you to think in human terms, and consider again the words of President Bush on his way to New Orleans when he told his Chief of Staff, Mr. Sununu, "Find a better way," to protect these turtles without putting these families out of business. And I again urge you to try to find a better way, to look for cooperation rather than confrontation if you can find it, and to try to work with us for God's sake.

I again repeat what I said in my opening statement. I have never once encouraged the fishermen to violate the law. I hate this law the way it is imposed upon my fishermen. I think we could save turtles a much easier way, but I have always told them, "Comply with the law," and the great majority of them are trying. And they are still finding out they are losing their livelihoods in the process.

This is not what our government ought to do to people. It seems to me we ought to find a better way to do what the Endangered Species requires us to do, to do it fairly and equitably to all people who fish shrimp, and to do it in a way we can cooperate with one another rather than always being in these confrontations.

And, finally, when, in fact, you find a violator, I urge you to think about the civil rights of these people. We don't let banks, and we don't let creditors in America do in many cases some of the things you are doing. You don't need to do all of that. If you have got a penalty assessed against them and you go through the hearing process, and it is a good penalty and it stands, do what other creditors do; get a judgment and seize what you have to do and pay off the judgment.

But all of these threats about reporting them to collection agencies and reporting them to collection reporting agencies to damage their credit, get the IRS on their back, well, that is unnecessary. It seems to me to be a great degree of overkill. Yes, you may have the right to do it. I question your judgment in doing it. I question your judgment. I urge you to rethink your policy.

I urge you to think about fairness and equity and the human beings involved here. And I am not going to let you go without giving you a chance to make a final statement. Dr. Fox.

Dr. Fox. Well, I just am here to respond to the Chairman's and the Committee's questions. If there are no further questions, I have no further response. I must say that I do not accept some of the adjectives that were used such as dishonesty and overkill, but I do say that I think we are doing a fair job. And we are trying our best to implement a very, very difficult law, the Endangered Species Act. And it is a very difficult job implementing that law and at the same time ensuring that an industry like our shrimp industry does not go out of business.

And I think we have bent over backwards substantially under the law in order to ensure that that does not occur. We are doing our best, and we will continue to work with you, Mr. Chairman, and work with the Members of your Committee to do what we can to make this work as best we can.

Mr. TAUZIN. Admiral Leahy.

Admiral LEAHY. I have no comment, sir.

Mr. TAUZIN. Thank you very much. Again, our thanks to both of you for enduring this long hearing. We, of course, would appreciate the submissions that have been requested by the Chair and by the Committee and by various Members. We will try to list them all for you in a formal request, but as soon as you can we would appreciate the submission of those documents and those statistics and that information so that we can complete the record. Again, we thank you for your appearance and your testimony.

The next panel will consist of Mr. Tee John Mialjevich, President of the Concerned Shrimpers of America; Mr. Jerry Schill, the Executive Director of North Carolina Fisheries Association; and Mr. Julius Collins, Member and Past President of the Texas Shrimp Association, Member at Large of the Gulf of Mexico Fisheries Council.

Gentlemen, would you please assume your place at the witness table? Let me remind you that if you have written statements, those written statements have already been authorized as a part of the record, and we would appreciate your summarizing your testimony today so that, again, we can get to questions and answers as rapidly as possible. We will begin with Mr. Mialjevich, and, again, Tee John, we would appreciate a summary of your testimony. Tee John.

**STATEMENT OF MR. TEE JOHN MIALJEVICH, PRESIDENT,  
CONCERNED SHRIMPERS OF AMERICA**

Mr. MIALJEVICH. Yes, sir. I will try and keep it short, but, as you know, being a fisherman I can't talk with my hands here too much so it might be a little bit longer. I want to thank you for inviting me to express the concerns of the commercial fishermen at this hearing, and we are surely concerned about the growing number of laws that the Coast Guard is enforcing on our fishing vessels. I estimate 90 percent of the shrimpers don't know exactly what a legal TED or an illegal TED modification is, even after there have been meetings in Thibodaux, and half of the people aren't aware of all the Federal laws that are being passed. People are being caught every day for an undersized fish that is an incidental catch and not a targeted species.

To back up my saying on this, the subject of too many fishery laws, I have attachment number 1 in my display that shows about all the plans that goes from billfish all the way down to swordfish including shrimp that is in the Council system, NOAA system, and etc. And also it shows 33,367 manhours that were cited as enforcement of these laws. I would like to know how many of this was performed by the Coast Guard. If you use eight-hour days, you are looking at over 4,170 days of enforcement. How much did this cost the American taxpayer? Are these laws necessary? Have we passed the point of the needed laws and now we are working on the laws that we would like to have?

At present, shrimpers are asking many questions, and I think you have covered most of them about, "Can they make me pick up my net, and how are they going to measure the TED hole? Can they seize my shrimp? What is going to happen if I bought a TED that was supposed to be legal, and they say it is not?" Our problem is there are too many different versions of enforcement policy

going on about the same law. One guy calls something legal one day for Texas. The next day another enforcement person calls the same thing illegal off Louisiana or Alabama. There is no written policy.

I think this Committee needs to hold field hearings to find out the whole story and why the Coast Guard describes the atmosphere when they board a shrimp boat as tense and hostile. Also, why some of the Coast Guard boardings last for about 15 to 30 minutes and others take one to two hours. Is the list of rules, laws, and regulations becoming so long that it is going to take hours of our fishing time away? Give us a break. We are already losing shrimp with the TED's. We are already losing shrimp when we have to unclog the TED's and clean them, and now we are going to lose fishing time while the Coast Guard inspects us.

Are we going to have a police state to ensure perfect enforcement of fisheries and endangered species and marine mammal laws? Let us get real. For over 1991 years we have been trying to get perfect enforcement under the Ten Commandments and failed. Does the benefits gained to turtles offset the enormous enforcement costs and manpower being used by National Marine Fisheries and the Coast Guard? Does it offset the loss of income being experienced by the shrimpers and the social and economic suffering felt by our families and related businesses?

Another problem is uncertainty of enforcement officers from the National Marine Fisheries and Coast Guard as to what is legal and what isn't with the various laws they have to enforce. On the last page of this package, I have a letter from a shrimper out of Texas, and I would like you to read what happened to him. When they brought him to the dock, they could determine whether his TED was legal or illegal. It took five guys in a discussion, and phone calls to six or seven different places to find out if it (TED) was legal or not. What would have happened if the TED would have been legal after losing all that fishing time and having to come all the way back to port? Would they pat you on the head and say, "I am sorry?" That won't do!

Next. What is going to happen—well, I already covered that. Isn't this \$8,000 fine for criminal charges enough? Why do they have to take the nets? Why do they want to take the shrimp? That is rubbing salt in a wound. It is time for our Congressmen to step in and look at the justification of the laws, and I believe you were touching on that about this above North Carolina and below it discussion, and the people that are making these laws and the people enforcing the laws. And I want to add another one; the interpretation of the laws by the people that are enforcing these laws. I believe the Endangered Species Act is a great law. I want clean air, clean water. I don't want nothing to die unless it has to. But, I mean, some people are interpreting laws in a radical way.

Before we start passing more regulations about TED enforcement and more turtle conservation, I believe this Committee should hold those field hearings across the Gulf, get input directly from the shrimpers instead of information, and I stress, instead of information filtered through National Marine Fisheries; not that I even suspect the National Marine Fisheries would lie or not be truthful,

but most shrimpers don't trust the National Marine Fisheries or the Gulf Council.

In my research, I found the FY 1990 National Marine Fisheries Office of Law Enforcement statement where they say, "Enforcement of Turtle Excluder Regulations threatened to eclipse all our other work in Fiscal Year 1990." And you already pointed out the point of 1,100 boardings with 229 civil TED violations, and there were no turtles involved. The only turtle that was involved was when they caught a shrimp boat on anchor with a turtle tied on a string. And it is assumed he caught it in the shrimp trawl unless he made a statement otherwise. But the point is we are protecting turtles with TED's that we are not catching. Because I believe if I was lying about us not catching turtles and 1,100 boardings, don't you think they (Coast Guard) would have seen one turtle in the Gulf of Mexico while enforcing the law?

OK. Next. After they went from the civil to criminal charges to get compliance in 1990 as you read in that report, this year they got the largest assemblance of people and vessels enforcing this law. I think we are going to have to sit back and say, "How many millions of dollars are being spent to use intimidation, harassment, and a show of force just to get compliance?" Gentlemen, there has to be something wrong with this law that we have to spend this kind of money and manpower to get compliance.

Before we make those new TED regulations, let us go back and re-evaluate the old ones. I mean, you know, I was in the back when you were asking, what do they figure to do next to get compliance, after seizing shrimp. Well, maybe they are going to start sterilizing shrimpers so we don't have any more new violators born. I mean, they did it in Germany. Why not here? I mean, we have got to have compliance! Jeez! I don't know what is wrong that I don't understand this great necessity. You know, if I were in North Carolina and South Carolina and we saw those dead turtles (on the beach) coming up, I could say I agree with you, but not in the Gulf.

OK. Like I said, something is wrong with the law. More intimidation by seizing shrimp will not get compliance except when the Coast Guard is around, and, you know, I hate to bust a ball, but with all this compliance, let me ask you. Everybody speeds once in a while, but does anybody speed when they have a State Trooper on the side of the road every quarter mile? They have so many Coast Guard boats out there, the people don't have a chance not to comply, not that they don't want to, but, I mean, if a Coast Guard boat was anchored off your bow while you were sleeping that day and you got up to put your nets overboard and you ask them to come over and check your nets to see if the hole is legal and that, and they say no, you have got to be dragged to be checked.

Are you going to close the hole in that net or alter that TED with them sitting off your bow? That is how they got 90 percent compliance. And I am going to tell you. With these new proposed regulations, all the things that the shrimpers have sweated blood and tears for while trying to modify and alter these TED's (to work better), which they are now giving us tickets for being illegal, to stop the loss of shrimp, are all those modifications going to be made illegal? I saw the new regs that they got in. The little piece of chain—the little piece of rope—the couple of meshes extra

stitched to help the shrimp loss is going to be made illegal because they are too lazy to take those modifications and bring them somewhere where they can test them on turtles to see if the turtle can still escape.

It is easy to make a law outlawing our modifications. And let me tell you, it seems that Congress has not understood as of yet, and the National Marine Fisheries surely hasn't, that TED's do not work except on paper. The National Marine Fisheries reports are on a very clean bottom where there is little or no shrimp. And I will invite anybody on the whole Committee to come. I will get the boats, and you all come see it for yourself on our shrimp boats. We are not lying.

We can prove it, but when we asked Andy Kemmerer and Dr. Fox to come on our boat, they never came. When we asked them to show us the document that says here is where they are losing less than one percent of shrimp, tell me who the captains are so I can contact them and get the information to give to the other shrimpers, the answer, "It is confidential." You can't get the material. All you can get is a summary. If I had a TED that lost less than one percent of the shrimp catch, I would be on the radio, the television. I would be up there with Billy Graham proclaiming it to the people to use it. We would not have a problem with TED's. I would not be here today. So somebody is lying, Congressman. I hate to use such a strong word. Let me get off of that before I get mad.

I ask you please hold congressional hearings about the old TED regulations and find out the real reason for low compliance before we make any new ones.

In conclusion, I would like you to look at the enclosures, especially the one about the 700-mile intracoastal waterway from Brownsville, Texas, to Veracruz, Mexico, right through the Kemp Ridley nesting ground. It is hard for an American shrimper to pull a TED—I have got to laugh—when Mexican shrimpers are not, and now the oil industry is going to get an intercoastal canal built through the endangered species nesting ground to barge oil to the United States. The oil industry is more important than turtles, but shrimpers aren't; another double standard. And it is in this package.

I wish I could make the people understand the problems of the commercial shrimper, and I think that has been my major mistake, trying to make people understand. I think I am going to have to change my tactics, and I am going to settle for trying to help them understand our point of view. I thank you, and I am ready for questions after the other gentlemen speak.

[Prepared statement of Mr. Mialjevich can be found at end of hearing.]

Mr. TAUZIN. Thank you, Mr. Mialjevich. Mr. Schill.

**STATEMENT OF MR. JERRY SCHILL, EXECUTIVE DIRECTOR,  
NORTH CAROLINA FISHERIES ASSOCIATION**

Mr. SCHILL. Thank you, Mr. Chairman. I certainly appreciate the opportunity to speak to the Subcommittee today. My name is Jerry Schill, and I am Executive Director of the North Carolina Fisheries Association which is a private trade group representing commer-

cial fishermen, seafood dealers, and processors in our State. I am also a Member of the South Atlantic Fishery Management Council, and serve on its law enforcement committee. However, my comments this afternoon only reflect the official position of the North Carolina Fisheries Association.

I would like to digress just a moment, Mr. Chairman, and mention that I am sure that if Tee John and myself and Julius were the first ones to testify before the Subcommittee today, that we would have had the courtesy to stay and listen to the Feds. However, they have left and are not willing to——

Mr. TAUZIN. They scooted out in a hurry, didn't they?

Mr. SCHILL. Pardon?

Mr. TAUZIN. They scooted out in a hurry, didn't they?

Mr. SCHILL. They are hungry. I understand that they are going to eat shrimp undoubtedly. I also would like to make a bit of a confession. Being Catholic, I am into that sort of a thing. I didn't know quite the crux of this hearing. As a result, I did not go into my concerns over NOAA General Counsel's Office. They are very deep, sir. I can attest to that, and I will be certainly sending you additional information on some cases that I am involved with.

But, Mr. Chairman, for generations, the United States Coast Guard has had a reputation as a friend of the commercial fisherman. Their efforts over the years have saved hundreds of lives through their lifesaving efforts, and I am sure that it would be no exaggeration to say that they have saved millions of dollars in fishing vessels and equipment by their willingness to answer distress calls.

However, that cooperative attitude is being eroded by an increasing amount of duties and responsibilities that are bringing to light a somewhat adversarial relationship. Let me say that a large portion of this change is due to the Coast Guard playing the hand that is dealt by Congress. But there are some genuine concerns that we have that can certainly help with the Coast Guard's good standing within the commercial fishing community.

Some may argue that being in the good graces of the commercial fishing industry is not one of the Coast Guard's prime concerns. While we recognize the fact that the Coast Guard's mission includes that of enforcement of fisheries, safety, and drug regulations, we also know that when it comes to fisheries conservation rules, they simply cannot be effective without the acceptance, albeit grudgingly, of the fishermen themselves.

In other words, Mr. Chairman, it is very important in the fisheries management business to make sure that the fishermen have adequate input in the process when the regulations are being enacted. This will make the Coast Guard's job much easier. What can the Coast Guard itself do to help their enforcement efforts? For starters, it would help if their recruits were better trained in what they are enforcing. For a management agency to change its regulations simply because an enforcement agent cannot tell the difference between two species is absurd, and it has happened.

Second, there needs to be better communication between the National Marine Fisheries Service and the Coast Guard about new regulations, exactly what they mean, and the date of implementation. For example, on June 26th of this year, the fishing vessel,

Sylvia Jean, out of Fort Pierce, Florida, was boarded by Coast Guard personnel on the Point Charles. The boarding officer was enforcing minimum size regulations for swordfish that were originally proposed by the National Marine Fisheries Service, rather than the subsequent reg adopted by NMFS after consultations with industry.

Third, it would prove to be beneficial if the Coast Guard communicated with industry groups regarding problem areas or concerns over boardings and/or violations. It should be noted that commercial fishing vessel owners seldom communicate with industry groups, and it would help those of us in trade associations to know of problem areas on both sides of this issue.

Fourth, it is probably the most common complaint that I hear, and that is the bad attitude of the boarding party. Horror stories abound with fishermen's accounts of standing on the stern for long periods of time in freezing weather at gunpoint with a lack of warm clothing. Admittedly, these stories tend to decrease when I ask for dates, times, latitude, longitude, boarding officer's name, and so on. But nonetheless it appears that some Coast Guard personnel have been coached that every commercial fishing vessel is a drug runner until proven otherwise.

Mr. Chairman, while all of these concerns are valid, my personal greatest worry is the growing trend to enact more and more stringent regulations based on the unenforceability of fisheries regulations. And I think, sir, that what we are looking at is just the tip of the iceberg, and I don't think shrimpers are going to be the only ones. I see this coming and coming in more and more fisheries. Time and time again, I have participated in discussions where regulation would have its desired effect from a conservation standpoint but be made twice as stringent only because the original reg is perceived to be unenforceable.

While concern should be raised here about giving enforcement agencies the proper resources when heaping on additional responsibilities, I would temper that belief with a personal observation that it is being used in some cases by those bureaucrats who are looking for an easy way out in fisheries management. I would also add that if we are looking at true enforceability of regulations, we can just totally shut down the commercial and recreational fishing industries because that is enforceable.

Mr. Chairman, another real problem area in the enforcement of fisheries regulations is the NOAA General Counsel's Office, but I thought that was a subject for another hearing. I was wrong, but I will be forwarding more comments in the future. Thank you very much, sir.

Mr. TAUZIN. Thank you, Jerry. It may indeed be a subject for another hearing. Mr. Collins.

**STATEMENT OF JULIUS COLLINS, MEMBER AND PAST PRESIDENT, TEXAS SHRIMP ASSOCIATION, MEMBER AT LARGE, GULF OF MEXICO FISHERIES COUNCIL**

Mr. COLLINS. Thank you very much, Mr. Chairman. Even though I am representing the Texas Shrimp Association, Mr. Chairman, my heart still is in Louisiana.

Mr. TAUZIN. You sound like you may have been in Louisiana at one time in your life.

Mr. COLLINS. I was born in your congressional district so you make me feel right at home. You touch very well on people not being lawyers that are in the shrimp business. I, for one. I had to quit school at age 15 to go for full-time work, and I have been a shrimper all my life, and I am 63 years old now. So that is all I know. I too like you, Mr. Chairman, are very confused about the new amendments to the sea turtle regulations that are being proposed by the National Marine Fisheries Service. I am so very confused and disappointed with the actions of some of the Coast Guard boardings when they go and inspect the TED regulations.

And on behalf of the members of the Texas Shrimp Association, we strongly oppose all of the regulations that you have mentioned a while ago. I was recently, in the last couple of weeks, at the Gulf of Mexico Fisheries Management Council in Key West, Florida. And at that council I was asked or I asked the Regional Director of National Marine Fisheries Service how the compliance were in Texas waters when they opened the season on I believe it was July the 6th, and he said to me that after strong or a very, very big force of National Marine Fisheries Service agents and Coast Guard, the compliance was good. After the first 140 somewhat boardings, he mentioned the fact to me there was only five violations, and of the five violations, there was only one which was criminal. All the rest was in some sort of compliance. So to me that 95 percent that you mentioned a while ago is probably 99 percent or better if the trend continues.

And while we were there I also asked the gentleman how many strandings were there at the same time, and he said after 10 days—well, I found out later on it was after 10 days, but he mentioned the fact that there was two turtles that were stranded. And I found out after 10 days they found three turtles stranded, but they could not say whether it was the shrimping industry that caused them or not. But believe me, off of Texas by three weeks there were all the boats out of Louisiana, Mississippi, Alabama, Florida, Georgia, and everywhere. So if there were any turtles to be caught and stranded, there should have been some during that time; yet he can't find those.

While we were at the Gulf Council also there was a gentleman for the Fish and Wildlife Service. The U.S. Fish and Wildlife Service gave a report on the Rancho Nuevo farm where the Ridley turtles go and lay eggs, and he informed me that—let me see if I can find it here—that this year there were over 1,100 nestings. And it was the first time since 1977 I believe—I have it here in my paper—you can read it—that it went over 1,000. Now, with all this in mind, gentlemen, why does National Marine Fisheries Service and why does the Coast Guard want to punish the shrimp industry when it is trying to comply instead of rewarding them? I ask you why.

If these new regulations pass, gentlemen, I don't see anything else to be done to the shrimp industry. The only thing left is to impose the death penalty—impose the death penalty for anyone attempting to make a living using a net in the Gulf of Mexico. That

is the only thing left if this passes; every other one would have been done.

Ladies and gentlemen, we are hardworking human beings here trying to survive in this ever-changing world and trying to comply with all rules and regulations that they put on us. All we need is for you to give us a chance to do just that. I will be glad to answer any questions. I want to thank you gentlemen for inviting me here today.

[Prepared statement of Mr. Collins can be found at end of hearing.]

Mr. TAUZIN. Thank you, Mr. Collins. You all have been very helpful today. I was looking for whomever it was that told National Marine Fisheries that they wanted to go to jail, and you guys have come up with sterilization and the death penalty on top of going to jail. Let me ask the question. Did any of you ask the Service to impose criminal penalties on you? Put you in jail for violations? Any of you? Are you going to be on that list, Mr. Collins?

Mr. COLLINS. Mr. Chairman, he talked about some of the people in Texas wanted the criminal—

Mr. TAUZIN. Yes. Do you know who those people are?

Mr. COLLINS. I attended that meeting. I believe Mr. Mialjevich attended that meeting, and the concern of the Texas Shrimp Association was that if we sent boats out with TED's on the boat, if the crews alter the TED's in any way, shape, or form or take them out, why should the owner be liable for the action of the crews? And that was the question asked.

Mr. TAUZIN. That was your concern?

Mr. COLLINS. That was my concern. They came up and said, "Well, we are going to give them criminal penalties," but we did not ask for that, Mr. Chairman. In fact, I begged Mr. Kemmerer not to impose criminal on the crews, to keep it as a civil case. They said, no, that is the only way they can have compliance. But I personally—

Mr. TAUZIN. So in other words, they decided on criminal penalties on the crews as their suggestion to protect the boat owner from a crew changing or not using a TED. Is that right? It wasn't your request?

Mr. COLLINS. That is exactly right, Mr. Chairman, but we begged them not to do it, to find some other way of doing it.

Mr. TAUZIN. In regard to the information, Tee John, that you shared with us today, we are going to get the agency report. I have asked for it in writing, but let me reiterate. In all those boardings where TED's violations were found, if I didn't have a TED or somebody had a TED that was modified, in not one of those cases did the Coast Guard and NMFS find a turtle in the net?

Mr. MIALJEVICH. Not one that I am aware of, and I handle most of the cases because they catch mostly my members. I don't know how. But the thing is, there is some other background I have to share with you (seven page handout). Not only did they not catch any turtles, and, I mean, for people (Dr. Fox and NMFS) that are supposed to be handling our country like this that don't know, how much are we paying them people not to know, you know? I am not getting paid anything, and it looks like I know more than them. But the thing is, don't you think they would have given a more

severe fine to myself if I had been caught without a TED, and there would have been a live or dead turtle involved in the violation?

Mr. TAUZIN. Sure. Sure.

Mr. MIALJEVICH. And surely if there would have been criminal charges that it would have been brought to the attention of the newspaper, the media, and the Judge to put a more severe fine because there is a turtle involved with this criminal offense?

Mr. TAUZIN. The head of the agency says he doesn't even know if any turtles were caught.

Mr. MIALJEVICH. I can leave this (seven page handout) copy if you all want it, but this is locations of all turtles captured in two years with Ed Klima by this report that Dr. Fox says has the shrimp loss down to less than one percent. The only turtle they caught in two years was three off the coast of Louisiana in deep water, and the rest were over farther than the panhandle of Florida, and the majority were caught off of the East Coast. But this isn't a rare area. They caught only three turtles I guess from the panhandle over by Port St. Joe or something in Florida all the way to Brownsville and not a one off of Texas.

And another thing that I wanted to bring up. They had 30 or 40 turtles that washed up dead last year, and that is what they told us at the meeting was they had to make compliance. We were killing the turtles. The season wasn't even open yet, and we were killing the turtles.

Mr. TAUZIN. In fact, when they did a mortality study on those turtles, they found other causes of death not related to drowning. Is that correct?

Mr. MIALJEVICH. It proved that we didn't kill one turtle. But it was circumstantial. But at the same time, they had 30 some turtles off of Galveston (stranding) going up. The big fleet was down between Corpus Christi and Brownsville. Do you know how many dead turtles washed up? None. And that was last year with 60 percent compliance. Do you know how many washed up in that area this year? One. So, I mean, is TED's preventing the strandings? There is something else making the strandings. We are not saving anything with TED's, but I assure you with the TED's clogging, if we did catch a turtle, that it would get caught up in the mess and maybe suffer some kind of injury. But I am going to tell you, off the coast of Texas and Louisiana a turtle caught in a trawl is a rarity. And I am glad the National Academy of Science put it in, and I am glad that Senator Heflin wrote a letter about areas of rare turtle occurrence, and I agree with his letter that most of the scientists, not just those couple of radicals that want perfect enforcement, are in agreement, we don't need TED's everywhere all the time. And I believe that maybe you all can expand on that with Dr. Fox before he puts his new regulations.

Mr. TAUZIN. Well, you know, Tee John, we asked that question. You heard me, and we didn't get an answer.

Mr. MIALJEVICH. He plays around with words.

Mr. TAUZIN. I suppose what I have got to ask you guys is how do you fishermen feel about the notion that you have to comply with the regulation when you don't see turtles in your nets? When Dr. Fox says he knows they are catching turtles in nets north of North

Carolina but he is not going to impose the regulation over there, how does that make you feel?

Mr. MIALJEVICH. Personally, I think somebody above North Carolina cut a deal with them seriously. That is my personal feeling, and it don't set well. It is like an upset stomach with me.

Mr. COLLINS. We feel the same way. What is good for us should be good for the rest of the country. And what is good for the rest of the country, if they are not supposed to have these Turtle Excluder Device, then it should be good for us also.

Mr. TAUZIN. It also should be good for the Mexicans if they are going to import shrimp in their economies. Right?

Mr. COLLINS. That is exactly right. Another thing that is going on, Mr. Chairman, that you should be aware of is the way the Coast Guard is boarding boats. They are not consistent year from year on how they measure the TED's. Last year, for instance, they measured the TED one way. This year they measure it another way. I brought an example if you want me to show it to you.

Mr. TAUZIN. Please do. Why don't you do that?

Mr. COLLINS. All right. Last year they were measuring TED's a certain way, and this year it seems that for some reason they decided to do something else just like they decide or they want to decide to put more restrictions while we are complying with the law. But if I can get this contraption out. I don't know. I just made that handy yesterday maybe for some people around here that maybe doesn't even realize what—this, for instance, you have to use your imagination.

Mr. TAUZIN. OK.

Mr. COLLINS. All right. This is part of a TED. You can use your imagination. You will have a Georgia jumper which will be oval shaped. In the middle of the Georgia jumper, you have 32 inches wide. We set the opening which is the escape hatch. You have got to imagine there is a net coming here. This is the escape hatch.

Mr. TAUZIN. All right.

Mr. COLLINS. We set the escape hatch at the lower half of the oval.

Mr. TAUZIN. Right.

Mr. COLLINS. Where we set it at from here to here is 26 inches.

Mr. TAUZIN. OK.

Mr. COLLINS. Last year, they used to measure 26 inches, and they bring it down. They measured this and this which would be 64 inches. 32 inches across. This particular one is about 70 inches all the way around. Now, recently in Brownsville, they boarded a boat, and they came aboard, and they measured. This year they changed it to a stick, a broomstick 36 inches long. They cut a broomstick, and they are going to measure it with a broomstick. They aren't going to use a triangle anymore. They took the broomstick, and they measured across here. "Oh, you are in violation. That is only 26 inches." They have failed to do this and go in the opening.

So they brought it aboard in Brownsville, the Dengay. He had 146 boxes aboard. It was last week. The agent put a tag on each net. They put a tag on the hold where the shrimp is at. They put a tag on the brine tank. It took the effort of the owner by making a bunch of calls to the National Marine Fisheries Service agents in Florida. He asked them to take a plywood which is 32 inches

around and slip in this, and he done so back and forth. Even so, they wanted to bring this captain to jail again because it was only 26 inches. It should be standard, Mr. Chairman. We should have a handbook, a manual that National Marine Fisheries Service, the industry, and the Coast Guard should go by.

Mr. TAUZIN. Mr. Collins, are you telling me criminal penalties would be imposed because they changed to measuring with a broomstick instead of a triangle?

Mr. COLLINS. That is exactly right.

Mr. TAUZIN. That is amazing.

Mr. COLLINS. And this boy would have been brought in, charged for criminal offense. He might have gotten out of it, but, you know, I don't know how long it would have taken him to get out of it. But that is what is happening now. And that is what burns the hell out of us.

Mr. TAUZIN. I hear you. Mr. Schill?

Mr. SCHILL. Mr. Chairman, I would like to address in North Carolina, of course, there was a lot of talk about the East Coast and the clean waters and all, but only 10 percent of the shrimp that is landed in North Carolina is caught in what we call outside waters. Now, with the advent of these new regulations if indeed they are adopted, you are looking at TED's inside and out, and instead of looking at a 90-minute tow time option, they are talking about a 40-minute tow time if they adopt the National Academy study. Pamlico Sound is full of grass. TED's will not work in Pamlico Sound. So while it may seem quiet on the East Coast, just be prepared.

Mr. TAUZIN. In other words, as soon as TED's are required in an area of grass where it is not a clean bottom on the East Coast, you are expecting to see some of the same problems we have seen in the Gulf of Mexico?

Mr. SCHILL. Absolutely.

Mr. TAUZIN. Well, maybe misery loves company. Maybe we will be in better shape by then I suppose.

Mr. SCHILL. Well, another thing, Mr. Chairman, that Dr. Fox brought up, and I hate to bring this up without him being here, but it was his option to leave, he mentioned the proposed enforcement reg, and you expounded on that very well, of enforcing TED regulations while they are tied up at the dock.

Mr. TAUZIN. Right.

Mr. SCHILL. And the fact is that if we would see some sort of a guarantee which is laughable that, no, they would not be boarded, you know, "We are going to look at your boat on the dock, give you a certificate for this trip, and we are not going to board you anymore," that would be one thing. But I can guarantee you that will not stop a boarding party.

Mr. TAUZIN. They will do the boarding during the trawls anyhow on the suspicion that you put the TED in just at the dock and took it off on your way to the fishing grounds?

Mr. SCHILL. Right.

Mr. COLLINS. One other scenario, Mr. Chairman.

Mr. TAUZIN. Yes.

Mr. COLLINS. You might tear up a net, you know. You are tired. You might have lost a TED so you put everything on deck. You go

to bed, and the first thing you know, the boarding officer is waking you up. "You have a TED on there that doesn't have a net in it." I mean—

Mr. TAUZIN. A net without a TED.

Mr. COLLINS. A net that doesn't have a TED in it or vice versa because he has lost it, and he hadn't had a chance to change and put another one on it.

Mr. TAUZIN. I hear you.

Mr. COLLINS. And, you know, we don't trust them guys anymore. We used to have a very good relationship with the Coast Guard. I don't know what has prompted all this. I don't know if it is—it looks like we are enemies. It looks like the war in Iran or Iraq. We have been chased all over the place. We are the bad guys. We are not. We all breathe the same air they do. We worship in the same church they do. We send our kids to the same schools they do. I mean, why should we be different than them? We are not enemies. We are human beings, and we want to survive, and we want to obey the laws if we are given a chance to. But don't change every five minutes. Don't punish us like you are trying to do now. It is not fair.

Mr. TAUZIN. Mr. Collins, thank you for your testimony. Sonny, do you have a question?

Mr. CALLAHAN. Yes. Mr. Chairman, let me apologize for not being here especially when Rear Admiral Leahy was here. Tee John, I have heard your testimony and Mr. Schill's and Mr. Collins'. We actually told these people before TED's were imposed that this is exactly what was going to happen, and history has proved that we were right.

Mr. Chairman, I might point out that each year here in Washington we have sort of a private party for Members of Congress. The President generally comes, and it is my responsibility to bring the shrimp. Well, they have been asking me for the last six or seven years to bring 100 pounds of shrimp, and I have been bringing them. But this year, Mr. Chairman, I only bought 70 pounds. And my reason is that that is the equivalent of 100 pounds last year and the years before TED's were imposed.

Mr. TAUZIN. Did he get the message?

Mr. CALLAHAN. Well, I don't know. I am going to give it to the President at our party tonight.

But, you know, we can't fault the Coast Guard except, Mr. Chairman, for one thing. Let me tell you something that happened in Mobile, Alabama, off the coast of Dauphin Island a couple of months ago. A young man drowned who was on a surfboard.

When he was spotted too far away from the beach to obviously be able to safely return with the tide and the winds blowing him out, the Coast Guard was called. And it took them two and a half hours to get a rescue vehicle there, and by the time the rescue helicopter got there, the young man had drowned.

My point is, Mr. Chairman, that the Coast Guard has its priorities out of order. The Coast Guard, if indeed they cannot prioritize the needs and the importance of their enforcement capabilities, ought to come to the United States Congress and demand that they be given the moneys necessary to enforce everything rather than spending thousands of manhours out there checking TED's with no

success with respect to finding turtles, and at the same time letting people die when they could be saving their lives. If drugs are not a higher priority over TED's, I don't know what should be. What we have permitted, and it is certainly not the will of Congress, what we have permitted we have turned the United States Coast Guard into the meter maids of our national defense.

And, Mr. Chairman, I once again apologize for not being here to express this to Admiral Leahy. The Coast Guard has the authority to prioritize, but they are spending all of their time in trivial matters. And this is even going to be compounded more when they start the enforcement of the new user fee because the Coast Guard is going to be responsible for checking every boat in the United States that has a motor on it to see if it has a little decal—a decal that is nothing more than a disguised tax on the American taxpayer. Also, Mr. Chairman, two weeks ago we had the Alabama deep sea fishing rodeo in Alabama, the greatest fishing rodeo in the world.

Mr. TAUZIN. Next to Grand Isle I know it is.

Mr. CALLAHAN. And let me tell you the Coast Guard was there, but they weren't there to provide safety for the people participating in the rodeo. They were there to board the boats to check the size of the fish, and the people fishing in this rodeo are the greatest conservationists in the world.

While I'm not denying the Coast Guard might fine some people who come along once in a while who have one snapper too many, or who have committed a violation, the point is, the agency is misusing its time. It's misplacing its priorities. They do not have the money to do this, and if the Congress will not give them the money to do it, then the Coast Guard ought to tell Congress: "If you want us to be the meter maids of law enforcement, then give us meter maid money and earmark it for that, but let us stop the drugs that are coming into America. Let us save people when they are about to drown or when they are in distress."

Prioritizing is the key to this, Mr. Chairman, and you and I and other Members of this Committee ought to go to the United States Coast Guard, and we ought to insist that they rate on a priority list how their money is going to be spent. And the top priority ought to be the welfare of American people and stopping drugs from coming into this country.

So, once again, Mr. Chairman, thank you for letting me vent my anger and my frustration especially about this very unfortunate incident where the young man drowned because the Coast Guard was enforcing TED's and not doing what we envisioned them to do hundreds of years ago when we started the United States Coast Guard—to be a viable part of our water system's safety and defense. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Callahan. I should tell the witnesses here today that we at least save you from that decal. The Coast Guard regulations exempt fishing vessels from that awful decal. You wanted to comment, Mr. Collins?

Mr. COLLINS. Yes. Could I add a story to the gentleman, Mr. Callahan? It just happened about a month ago. Another story so you can—the Cathy Ann, this shrimp boat out of Brownsville fishing off of Louisiana 80 miles offshore June the 19th at 1:30 a.m. The

boat breaks from winch. The rig man gets his three fingers crushed. The captain's call goes to Galveston. He was asked if it was life threatening. He said no. It took him 13 and a half hours to bring him to the doctor just in time to save his fingers. That was all right, you know. He could live with that.

Two weeks ago the front page of the Brownsville Herald has two Coast Guard helicopters flying small turtle hatchling from Rancho Nuevo in Mexico to Galveston so they have money to transfer the little turtles from Rancho Nuevo which is a long way, and they don't have enough money to go pick up an injured seaman offshore.

Mr. CALLAHAN. Mr. Chairman, with respect to that, maybe next year when we go into the budget process, we ought to tell the Coast Guard to come to us with a priority of needs, and tell us that they need 100 million dollars for drug enforcement and that they need 100 million dollars for search and rescue and that they need another 100 million for this or that. And whatever their priority is, then we will determine how that money would be spent. Maybe that would be a way to eliminate some of these problems.

Mr. TAUZIN. We will have that chance, Mr. Callahan, and we will welcome your comments when it is due. Again, Arthur, would you like to ask any questions as our guest?

Mr. RAVENEL. You see, I didn't walk out, and I stayed to listen to your side. And, you know, all I can speak for is the South Carolina coast, Mr. Schill, and, of course, you know the proof of the pudding is in the eating. And our experience has been, and we don't have the grass bottoms and we don't have the rocks and we don't have the sticks and this and that. We have comparatively clean bottoms all along the 200 miles of our coast.

Incidentally, we are having a great year with the shrimp this year. It is probably the best year they have had in years and years and years. But, anyhow, when the TED's come out of the nets, the turtles start washing up. And insofar as I am concerned and our wildlife resources people are concerned and the environmental community down there, and as a matter of fact a great many of the shrimpers, we feel that the TED's on the South Carolina coast have really worked well to cut down on the number of turtles drowning in the nets. And, generally speaking, we are pleased.

Tee John, you came to South Carolina and spoke to our shrimpers association. I don't know what in the world you told them because shortly after that, they had a big meeting, and, you know, one of the guys got up there and he said, talking about me now, and, you know, I didn't pass the law. I just supported its enforcement on the South Carolina coast, and he said, "What we need to do is," he said, "I am going to kill that SOB," you know. And then my wife got several death threats at the house so I don't know what in the world you told that crowd, but, man, please, for gosh sakes, if you come back, come stay with me, man, and, you know—

Mr. MIALJEVICH. I will invite you to the meeting.

Mr. RAVENEL. All right. I will come to the meeting, but, anyhow, the FBI went over there and had a little word of prayer with this gentleman, and we haven't had any problem. But I can only speak for me and us and the South Carolina coast, but on our coast

things are pretty well settled down. Compliance is almost 100 percent, and the number of strandings has just about dropped to zero.

Mr. TAUZIN. Arthur, you know you have the right to revise your remarks for the record if you would like to do that.

Mr. RAVENEL. That is all right.

Mr. COLLINS. Mr. Chairman, I just want to say is the same thing happens in Texas. I mean, the compliance is 99 percent. Why don't you leave it as it is? Why do you want to change it again? You get something going first, and then the first thing you know you want to change again and—

Mr. RAVENEL. Not Texas. I can just speak for South Carolina. You know, that is all I can do.

Mr. TAUZIN. Well, Tee John?

Mr. MIALJEVICH. Yes. I know you yourself and Dr. Fox had quite a discussion and exchange about the enforcement regulations that they have in OMB right now.

Mr. TAUZIN. Yes.

Mr. MIALJEVICH. If I may, I would like to make just a short statement on the five of them. On this generic standards for hard TED's, I am really puzzled by this. With exact standards as written in the Federal Register, these guys cannot enforce the TED regulation and recognize what a legal TED is and isn't. And if they are going to make generic standards, how are they possibly going to be able to enforce what a legal TED is? That is my question on that one.

Require the TED in all nets that are rigged for fishing. I was on the original TED negotiating team when that was the number 1 priority of the environmentalists side. They wanted a TED in every net on the boat. And my question is are they going to come up next year, after the nets are connected to the trawl doors have a TED, that every net that is in your possession has to have a TED?

Mr. TAUZIN. That is the question I asked.

Mr. MIALJEVICH. They would make it illegal to possess shrimp caught in violation. Again, that is overkill. You did that one beautifully because it is not going to get any more compliance except when the Coast Guard is in the area because that is the only thing I can see there. Clarify modifications for the hard and soft TED's. From what I read, I will reiterate again, all the modifications we made to slow down the shrimp loss were made illegal. And they did not give us the justice of going and testing these modifications to see if they still allowed turtles to escape.

And, number 5, make it illegal for TED manufacturers to say that their TED is legal. I will go back to number 1. If they can't define what a legal TED is now with a picture in the Federal Register, what are they going to do with generic? How is that manufacturer going to make a legal TED in the first place?

Mr. TAUZIN. Let me respond to you, Tee John. We are not through, of course, with these new regs. They are just now talking about depositing them and publishing them and all that sort of thing. There is going to be a period of comment where you all can comment once OMB releases them. You will have a chance to interact with them. We had a chance to look at them like you did in this early stage, and we had a chance to meet with Mr. Fox in my office. The one thing I asked him to do for God's sake was to at

least require the people that manufacture TED's manufacture legal TED's, that you guys quit buying TED's that you think are legal only to find out they are illegal. And so I am not upset about that part. I hope they really make a good rule on that one. But the rest of them, you heard my discussion with Bill Fox.

We are not through interacting with them, and we are going to ask you and others from around the country to comment publicly and officially when it is time with all the points you have made. I am particularly impressed with your point that the modifications they are going to make illegal they haven't even tested. And we are going to make some noise about that before we do. Mr. Schill?

Mr. MIALJEVICH. I am hoping that there is some way, and I don't know how to do it, if there would be some way you could have a separate hearing before they start the hearings on these new modifications and TED's.

Mr. TAUZIN. We may indeed be able to do that.

Mr. MIALJEVICH. In the field.

Mr. TAUZIN. Yes. We have a lot to do in that, Tee John.

Mr. MIALJEVICH. Thank you.

Mr. TAUZIN. Particularly in view of accumulating the right comments for the purpose of the agency to hear from you.

Mr. MIALJEVICH. Maybe we could set one up in—

Mr. TAUZIN. I don't want them saying again you wanted criminal penalties and not be able to tell us who wanted them. I mean, that is enough of that. Mr. Schill?

Mr. SCHILL. Thank you, Mr. Chairman. Just to sum up, I hope we don't get so enveloped just with TED's here that we don't look at the mind-set that I saw here. I don't mind telling you, Mr. Chairman, that I started walking from the Bellview Hotel a little early and sat over there on the Capitol steps and felt good about America and the job and watching people when I was on my way over here. I don't feel so good right now after listening to that exchange earlier. It really has disturbed me, and I think that we are looking in a mind-set that needs to be delved into a lot greater.

Mr. TAUZIN. I hear you.

Mr. SCHILL. Thank you.

Mr. TAUZIN. I think you are right. Mr. Collins, finally?

Mr. COLLINS. Yes. Like he said, this isn't the only problem that is going to face us in the future. Sitting on the Gulf of Mexico Fisheries Management Council I am seeing what is coming up on the bycatch issue.

Mr. TAUZIN. Well, the bycatch is a big one coming. You have got crabbers who are going to be concerned about what gets caught in the crab net. You have got a lot of things coming up in other fisheries. We have got a lot of issues. I think the mind-set issue is going to be a big one for us.

Gentlemen, let me thank you. You have done a good job not only of giving us a firsthand impression of what the fishermen are going through, but I think you help make our case that there is a lot of overkill going on. And we are going to need you to help make the right comments when these new regulations come down. Thanks again with our deep appreciation. This hearing is adjourned.

[Whereupon, at 1:25 p.m., the Subcommittee was adjourned and the following was submitted for the record:]

ONE HUNDRED SECOND CONGRESS

WALTER B. JONES NORTH CAROLINA CHAIRMAN  
 GERRY E. STUDS MASSACHUSETTS  
 CARROLL HUBBARD JR. PENNSYLVANIA  
 WILLIAM F. HUGHES NEW JERSEY  
 EARL WITTO FLORIDA  
 BILLY TAUZER LOUISIANA  
 THOMAS P. HOYLE PENNSYLVANIA  
 DENNIS M. HEISTEL MICHIGAN  
 WILLIAM D. LUTHERY ILLINOIS  
 ROBERT A. HODGES PENNSYLVANIA  
 THOMAS R. CARPER DELAWARE  
 ROBERT TALTON SOUTH CAROLINA  
 BOLDRON F. D'ARZ TEXAS  
 CHARLES B. BENNETT FLORIDA  
 THOMAS J. WASTON NEW YORK  
 OWEN P. MCKEY MISSISSIPPI  
 BOB CLEMENT TENNESSEE  
 STEPHEN J. SOLAR NEW YORK  
 FRANK MALONE JR. NEW JERSEY  
 GREG LAUGHON TEXAS  
 MITCHELL M. LOWERY NEW YORK  
 J. DENNIS RUSSELL WASHINGTON  
 ZENE TAYLOR MISSISSIPPI  
 GLENN M. ANDERSON CALIFORNIA  
 NEIL ABERCROMBIE HAWAII  
 JOHN F. REED BRIDGE ISLAND  
 WILLIAM J. EFFERSON LOUISIANA  
 ERIC H. FALCOWSKI AMERICAN  
 SAMOA

ROBERT W. DAVIS MICHIGAN  
 DON YOUNG ALABAMA  
 NORMAN F. LERT NEW YORK  
 JACK HENRICH TEXAS  
 HERBERT H. BATEMAN VIRGINIA  
 JIM BROWN NEW JERSEY  
 JULEN DELIC BENTLEY MARYLAND  
 JOHN W. COOPER NORTH CAROLINA  
 CURT WELDON PENNSYLVANIA  
 WALLY HENGER CALIFORNIA  
 JAMES M. HANCOCK DELAWARE  
 PORTER J. GILES FLORIDA  
 ARTHUR BARNETT JR. SOUTH CAROLINA  
 SONNY DALLAMER ALABAMA  
 WYNNE SACCHETT MARYLAND  
 JOHN T. DOOLITTLE CALIFORNIA  
 RANDY DUKE CANNON CALIFORNIA

— HILL CLAUSE  
 EDWARD B. WILSON  
 — JEFFERSON  
 BARBARA J. LEE  
 — MARY M. STANT  
 DONALD W. HENNING  
 — JAMES H. HENNING

**U.S. House of Representatives**  
**Committee on**  
**Merchant Marine and Fisheries**  
 Room 1334, Longworth House Office Building  
 Washington, DC 20515-6230

July 22, 1991

**BACKGROUND MEMORANDUM**

**TO: MEMBERS, SUBCOMMITTEE ON COAST GUARD AND NAVIGATION**  
**FR: SUBCOMMITTEE STAFF**  
**RE: COMMERCIAL FISHERIES ENFORCEMENT RESPONSIBILITIES**

On Wednesday, July 24, 1991, the Subcommittee on Coast Guard and Navigation is conducting this oversight hearing to review the fisheries enforcement responsibility of the United States Coast Guard. Specifically, the subcommittee will include in its review proposed amendments to the endangered sea turtle regulations to be proposed by the National Marine Fisheries Service (NMFS). The hearing will also include discussion of any fisheries enforcement issue presently being confronted on United States and/or international waters.

The hearing will be in the Merchant Marine and Fisheries Committee hearing room, 1334 Longworth House Office Building at 10:00 a.m. Witnesses scheduled to testify are the United States Coast Guard, the National Marine Fisheries Service, Concerned Shrimpers of America, the Texas Shrimp Association, and the North Carolina Fishermen's Association.

**FISHERIES LAWS**

The Coast Guard is authorized to enforce or assist in the enforcement of all federal laws and international treaties applicable on and under the high seas and waters subject to the jurisdiction of the United States. This authorization includes laws which require the Coast Guard specifically to act, and those which the Coast Guard enforces for another federal agency. However, the Coast Guard does not have the authority to prosecute fisheries violations. Instead, the Coast Guard detects and documents alleged violations and forwards the evidence to the appropriate agency.

In the area of fisheries enforcement, the Coast Guard is responsible for enforcing a large number of laws. Three major laws relating to fisheries which the Coast Guard must enforce are the Endangered Species Act of 1973, the Magnuson Fishery Conservation and Management Act of 1976, and the Marine Mammal Protection Act of 1972.

### Endangered Species Act (ESA)

The ESA is designed to protect all species and to consider habitat protection as an integral part of that effort. Under the ESA, species of plants and animals are listed as either "endangered" or "threatened" according to assessments of the risk of their extinction.

Protection of most listed species is administered by the Secretary of the Interior through the Fish and Wildlife Service (FWS). However, marine species, including many marine mammals, are the responsibility of the Secretary of Commerce, acting through NMFS. In the marine area, the Coast Guard is primarily responsible for the preliminary stages of enforcement of the ESA.

The enforcement provisions of the ESA are in Title 16, Section 1540 and are divided into civil and criminal penalties. A maximum civil penalty of \$10,000 may be assessed for a "knowing violation." A maximum penalty of \$500 may be assessed for all other civil violations. No penalty may be assessed unless the alleged violator is given notice and opportunity for a hearing.

Depending upon the violation, a maximum penalty of \$20,000 and/or incarceration for up to one year or a maximum penalty of \$10,000 and/or incarceration for up to six months may be assessed for certain criminal violations. Fish taken in civil or criminal violation of the ESA shall be subject to forfeiture. All nets, equipment, vessels, etc., used to aid a criminal violation shall be subject to forfeiture upon conviction.

All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws shall apply unless they are inconsistent with the provision of this act.

### Magnuson Fishery Conservation and Management Act (Magnuson Act)

The enactment of the Magnuson Act brought all marine fisheries resources located within 200 miles of United States' coasts under U.S. Federal jurisdiction. In addition, eight Regional Fishery Management Councils were established for the New England, Mid-Atlantic, South Atlantic, Caribbean, Gulf of Mexico, Pacific, Western Pacific, and North Pacific regions. These Councils have collectively implemented complex fishery management plans for various fish and shellfish resources.

The Department of Commerce through National Oceanic and Atmospheric Administration (NOAA) and NMFS and the Coast Guard are responsible for the implementation and enforcement of the

Magnuson Act. A maximum civil penalty of \$100,000 may be assessed against any person who after notice and opportunity for a hearing is found guilty of a violation. A person against whom a civil penalty is assessed may obtain review in a U.S. District Court by filing a complaint within 30 days from the date of the order. A fishing vessel, including its gear and cargo, may be liable "in rem" (or against the vessel itself) for any civil penalty assessed and may be proceeded against in District Court.

A maximum criminal penalty of \$100,000 and/or incarceration for up to six months may be assessed for certain violations of the Magnuson Act. Any fishing vessel (including its gear, furniture, appurtenances, stores, and cargo) used, and any fish taken, in connection with a prohibited act is subject to forfeiture. Federal jurisdiction exists over any criminal offense.

#### Marine Mammal Protection Act (MMPA)

MMPA protects more than 100 species of marine mammals within the United States' jurisdiction by establishing a moratorium on the taking of marine mammals and trade in marine mammal products without a permit. The federal administration of marine mammal programs is split between NOAA and NMFS within the Department of Commerce and the FWS within the Department of Interior.

The Coast Guard has general authority to enforce MMPA which establishes both civil and criminal penalties for violations. A maximum civil penalty of \$10,000 may be assessed against any person after such person is given notice and opportunity for a hearing. A maximum criminal penalty of \$20,000 and/or incarceration for up to one year shall be assessed against any person upon conviction of a "knowing" violation.

Any vessel that is used to assist in the violation of this act shall have its entire cargo or its monetary value subject to seizure and forfeiture and shall be liable for a maximum civil penalty of \$25,000. All provisions of law relating to the seizure, forfeiture, and condemnation of cargo for violation of the customs laws shall apply to violations of the act.

#### **COAST GUARD BOARDING POLICY**

The standard procedure followed during all fishery enforcement boardings is a dual policy derived by the Coast Guard and NMFS. Apparently the policy is confidential and not released by the Coast Guard for public information.

For general safety purposes, the Coast Guard is required

to conduct random stops of all vessels. However, to specifically check for Turtle Excluder Devices (TEDs) violations. The Coast Guard will stop only shrimp boats engaged in trawling. This process represents a policy change, as in the past, the Coast Guard also conducted boardings while the boats were anchored. The policy was altered because the government, in order to establish a case against a shrimper, must show that the vessel was trawling at the time of the violation. The Coast Guard still routinely boards anchored vessels to conduct general safety inspections.

Upon boarding a shrimp vessel, the Coast Guard unit inspects the nets and documents any alleged TEDs violations. Depending upon their District Commander's policy, the unit contacts their District office to determine whether the violation is civil or criminal and whether the vessel should be escorted to port. Depending upon the circumstances, the Coast Guard issues an Enforcement Action Report (EAR), escorts the vessel to the closest port or Coast Guard station and seizes the nets. NMFS is then contacted as NOAA is in charge of adjudication of all fisheries violations. NMFS arranges for the pickup, cleaning and storage of the nets pending the outcome of the case.

#### NMFS VIOLATIONS PROCEDURE

Violations of federal fisheries laws, including TEDs regulations, are governed by 15 CFR 904.1-904.273 which sets forth the procedures for NOAA's administrative assessment of civil penalties, suspension, revocation, modification or denial of permits, issuance and use of written warnings, and release or forfeiture of seized property.

After being contacted by the Coast Guard, the law enforcement division of NMFS refers a case to NOAA's General Counsel's office where the case is reviewed by a chief enforcement attorney. The attorney determines whether the elements of a violation have been established. A "more likely than not" standard is used to determine whether these elements have been satisfied.

NOAA attorneys exercise broad discretion in setting penalties against alleged violators. Although the attorneys must follow NOAA penalty guidelines, the attorneys assess the penalties themselves rather than making recommendations. Factors considered in assessing a penalty may include gravity of offense, circumstances surrounding offense, respondent's degree of culpability, history of prior offenses (any NOAA offense), and respondent's ability to pay. Attorneys have discretion to penalize a respondent from \$8,000-\$12,000 for a first violation of a NOAA statute. Attorneys may increase a penalty if a higher payment is needed to deter future violations.

Upon receipt of the Notice of Violation and Assessment (NOVA), the respondent has 30 days to respond. A respondent may (1) accept the penalty or a compromise penalty, if a compromise has been negotiated; (2) seek to have the NOVA amended, modified, or rescinded by notifying Agency counsel; (3) request a hearing; (4) request an extension of time to respond; or (5) take no action in which case the NOVA becomes final.

A hearing request is reviewed by the Administrative Law Judge in Washington, D.C. The Judge can docket the hearing, usually near the site of the violation. The United States Constitution, the ESA, the Magnuson Act, and the MMPA require that all alleged violators receive opportunity for a hearing. Recently, in TEDs violation cases, the Judge has been issuing orders that the respondent "show cause" for a hearing. The judge may also require parties to file preliminary positions on the issue and the procedures. After reviewing these documents, the Judge sets a hearing date.

Although cases are usually settled, if a case does go to a hearing, the normal procedure is (1) the agency presents their case; (2) the respondent cross-examines and presents his case; (3) the agency cross-examines the respondent; (4) no closing arguments are given at the hearing. The parties submit closing briefs instead; (5) the judge issues an initial decision; (6) the parties may file a petition for reconsideration of the decision within 20 days unless the judge specifically excludes this right; (7) the parties may seek the Administrator's review of the judge's decision within 30 days of the decision; and (8) the respondent may seek redress in the District Court.

#### **TURTLE EXCLUDER DEVICE REGULATIONS**

Over the past several years the regulations to protect endangered and threatened sea turtles requiring the use of a TED have been debated by the shrimp industry of environmental groups. Studies by the NMFS estimated that shrimp trawling causes the drowning of 11,000 turtles annually. Because of the conservation and protection language in the ESA, NMFS developed a TED so that endangered or threatened sea turtles could escape and avoid drowning. First there was only a voluntary effort to get shrimpers to use a TED. However, the majority of the shrimp fishermen were not using them because of high shrimp loss.

On June 29, 1987, NMFS issued its final rule establishing mandatory requirements for shrimp trawls to be equipped with a qualified TED. Since then, the implementation of these regulations have been delayed for several reasons.

During July, 1989 several shrimpers in the Gulf of Mexico

revolted against the regulations by creating blockades with their vessels. Only after several hours of negotiation with leaders of shrimping organizations was the Coast Guard able to disband the blockade and return traffic to normal in the Houston-Galveston Channel. Furthermore, in September, 1989, thirty-five shrimp boats tied themselves together to block a channel in Louisiana. This event occurred during a Presidential visit to the state. Again, the Coast Guard was able to get the vessels to disband only after several hours. Both of these events required an enormous amount of the Coast Guard's time, money and personnel.

Since the implementation of the TEDs regulations, NMFS has recorded 232 violations in 1989, 237 violations in 1990, and 94 violations as of July 2, 1991. The Coast Guard has utilized their vessels and personnel to conduct boardings and report the violations in virtually all of these cases. These figures do not include the even larger number of vessels boarded and found to be in compliance with the TEDs regulations. Most if not all of these boardings were made specifically to check for such compliance.

Currently, NMFS is preparing to release amendments to the TEDs regulations. The proposed regulations would contain several critical changes that could greatly affect the Coast Guard's role in enforcement of the regulations. One of these changes is that the federal government will seize a vessel's catch when a vessel is found in violation of the regulations. This change would require the Coast Guard to escort the vessel to the closest port and confiscate the shrimp.

Recently, NMFS has instructed the Coast Guard to begin seizing the shrimper's nets if he is cited for a violation. The proposed regulations will also increase the time periods for when TEDs will be required. In some areas, it will be year-round. Another problem lies in allowing NMFS to close specific areas to shrimping at different times. Such action would place a logistical burden on the Coast Guard's vessels. Overall, the risk exists that the Coast Guard will face similar, if not more serious problems as they did in July and September, 1989.

DEPARTMENT OF TRANSPORTATION

U. S. COAST GUARD

STATEMENT OF REAR ADMIRAL WILLIAM P. LEAHY, JR

CHIEF, OFFICE OF LAW ENFORCEMENT AND DEFENSE OPERATIONS

ON COAST GUARD ENFORCEMENT OF FISHING LAWS

BEFORE THE

SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

COMMITTEE ON MERCHANT MARINE AND FISHERIES

HOUSE OF REPRESENTATIVES

WASHINGTON, DC

JULY 24, 1991

Rear Admiral William P. Leahy, Jr.  
Chief, Office of Law Enforcement  
and Defense Operations  
United States Coast Guard

Rear Admiral William P. Leahy, Jr. became Chief, Office of Law Enforcement and Defense Operations, United States Coast Guard Headquarters, Washington, DC in June 1991. As such, Admiral Leahy is responsible to the Commandant for establishing the program requirements for surface and aviation operations.

Prior to this assignment, Admiral Leahy was Commander, Joint Task Force Five, located in Alameda, California. This command's mission is to conduct operations to detect and monitor aircraft and surface vessels suspected of smuggling illegal drugs within the U.S. Pacific Command area of responsibility.

Rear Admiral Leahy has served aboard many vessels during his career including Coast Guard cutters MCCULLOCH, DUANE, CASTLE ROCK, RESOLUTE, SHERMAN, DALLAS, and COMANCHE. He served as Commanding Officer of cutters DECISIVE and GALLATIN.

His shore assignments include: Commanding Officer of the Long Range Aids to Navigation (LORAN) Station on Marcus Island; Commander, Coast Guard Group Buffalo, New York; Office of Search and Rescue, Washington, DC; Readiness Branch, Coast Guard Atlantic Area; and Commanding Officer of Vessel Traffic Service New York. Rear Admiral Leahy served two tours in Vietnam - first as Division Commander Division 13 in 1970, and later as Senior Coast Guard Officer in 1972. He also served as Chief, Operations Division, and Chief of Staff, Twelfth Coast Guard District in Alameda, California, and as Chief of Staff, Coast Guard Pacific Area Command located at Coast Guard Island.

Rear Admiral Leahy's awards include: Defense Superior Service Medal, the Legion of Merit with Gold Star, Bronze Star medal with combat "V" device, the Meritorious Service Medal with "O" device and Gold Star, the Coast Guard Commendation Medal, the U.S. Navy Commendation Medal with combat "V" device, the Combat Action Ribbon, and the Vietnam Service medal with four Bronze Stars. Rear Admiral Leahy is also authorized to wear the Cutterman Insignia.

Rear Admiral Leahy was born and raised in Worcester, Massachusetts. Upon graduation from Classical High School, he entered the U.S. Coast Guard Academy in New London, Connecticut and graduated in 1959.

Rear Admiral Leahy is married to the former Margaret P. Peirce of Stratham, New Hampshire. They have three children: Sarah, Mark and Matthew.

DEPARTMENT OF TRANSPORTATION  
U. S. COAST GUARD  
STATEMENT OF REAR ADMIRAL WILLIAM P. LEAHY, JR.  
CHIEF, OFFICE OF LAW ENFORCEMENT AND DEFENSE OPERATIONS  
ON COAST GUARD ENFORCEMENT OF FISHING LAWS  
BEFORE THE  
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION  
COMMITTEE ON MERCHANT MARINE AND FISHERIES  
U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, DC  
JULY 24, 1991

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. IT IS A PLEASURE TO APPEAR BEFORE YOU TODAY TO REPRESENT THE COMMANDANT AND REPORT ON THE COAST GUARD'S ENFORCEMENT OF FISHERIES LAWS. AT THE CONCLUSION OF MY PREPARED STATEMENT I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE REGARDING COAST GUARD ACTIVITIES IN THE AREA OF FISHERIES LAW ENFORCEMENT.

MR. CHAIRMAN, AS YOU KNOW, THE COAST GUARD IS OUR NATION'S PRIMARY FEDERAL LAW ENFORCEMENT AGENCY IN THE MARITIME ENVIRONMENT. WE SHARE RESPONSIBILITY FOR THE ENFORCEMENT OF FISHERIES REGULATIONS UNDER THE MAGNUSON FISHERIES CONSERVATION AND MANAGEMENT ACT WITH THE NATIONAL OCEANOGRAPHIC AND ATMOSPHERIC ADMINISTRATION (NOAA). ADDITIONALLY, THE COAST GUARD AND NOAA HAVE SIGNIFICANT ENFORCEMENT RESPONSIBILITIES WITH REGARD TO INTERNATIONAL FISHERIES AGREEMENTS, SUCH AS THE HIGH SEAS DRIFTNET AGREEMENTS, AND DOMESTIC LAWS WHICH IMPACT ON FISHERIES, SUCH AS THE ENDANGERED SPECIES ACT. THE COAST GUARD AND NOAA WORK TOGETHER TO DEVELOP INTERNATIONAL FISHERIES AGREEMENT PROVISIONS AND DOMESTIC REGULATIONS WHICH WILL CONSERVE AND MANAGE LIVING MARINE RESOURCES. COMPLIANCE WITH THESE REGULATIONS AND PROVISIONS IS CRITICAL TO THE SUCCESS OF RESOURCE CONSERVATION AND MANAGEMENT GOALS.

EFFECTIVE ENFORCEMENT IS A KEY FACTOR IN PROMOTING COMPLIANCE. IT IS THE PRODUCT OF THREE CRITICAL FACTORS....

1. THE LAWS AND REGULATIONS;
2. THE CAPABILITIES OF THE ENFORCER; AND
3. THE PROSECUTION OF VIOLATORS.

FIRST - THE COAST GUARD REVIEWS AND ADVISES ON THE ENFORCEABILITY OF FISHERY MANAGEMENT PLANS AS A NONVOTING MEMBER ON REGIONAL FISHERY MANAGEMENT COUNCILS. WE ALSO PARTICIPATE AS ENFORCEMENT AND LEGAL ADVISORS ON UNITED STATES DELEGATIONS PARTICIPATING IN INTERNATIONAL FISHERIES NEGOTIATIONS.

SECOND - THE COAST GUARD STRIVES TO EMPLOY AN APPROPRIATE LEVEL OF ENFORCEMENT EFFORT TO PROMOTE LEVELS OF COMPLIANCE NECESSARY TO MAKE MANAGEMENT MEASURES EFFECTIVE.

THIRD - THE COAST GUARD DEPENDS ON THE SUPPORT OF OTHER AGENCIES AND FLAG STATES TO ADJUDICATE VIOLATIONS AND ASSESS PENALTIES WHICH CREATE A DETERRENT TO FUTURE VIOLATIONS.

WITHIN OUR EXCLUSIVE ECONOMIC ZONE (EEZ) COAST GUARD ENFORCEMENT OF THE MAGNUSON ACT COMMENCED IN 1977 AND TARGETED A CLEARLY VISIBLE THREAT TO OUR NATION'S FINITE STOCK OF HARVESTABLE FISHERY RESOURCES - THE LARGE FOREIGN FISHING FLEETS WHICH OPERATED RIGHT OFF OUR COASTS. WITH THE RAPID AMERICANIZATION OF FISHERIES IN OUR ZONE, THAT THREAT STILL REMAINS, ONLY NOW WITH DIFFERENT FISHERMEN. THERE ARE PRESENTLY OVER 30 DOMESTIC FISHERY MANAGEMENT PLANS IN EFFECT; IN 1980, THERE WERE ONLY FOURTEEN. THE NUMBER AND COMPLEXITY OF THOSE PLANS ARE INCREASING AS A LARGER AND MORE EFFICIENT AMERICAN FISHING FLEET CONTINUOUSLY EXPANDS INTO YET-TO-BE-MANAGED

FISHERIES. OTHER DOMESTIC LAWS AND REGULATIONS (SUCH AS THE ENDANGERED SPECIES ACT, THE MARINE MAMMAL PROTECTION ACT, AND THE MARINE SANCTUARIES ACT), ARE EQUALLY COMPLEX AND REQUIRE COMPLIANCE BY COMMERCIAL FISHERMEN AS THEY PURSUE THEIR LIVELIHOOD.

AS WAS THE CASE WHEN FOREIGN FLEETS FISHED OUR WATERS, THE COAST GUARD CONTINUES TO PROVIDE AN ACTIVE, VISIBLE ENFORCEMENT PRESENCE IN OUR EXCLUSIVE ECONOMIC ZONE. TO ENSURE COMPLIANCE, THE COAST GUARD DEPENDS ON ITS ABILITY TO MONITOR, BOARD, AND INSPECT FISHING VESSELS AT SEA TO OBSERVE THEIR ACTIVITY, GEAR, CATCH, AND RECORDS. OUR BOARDING PROGRAM IS CARRIED OUT IN A MANNER DESIGNED TO CAUSE MINIMAL INCONVENIENCE TO THE FISHERMAN, YET AT THE SAME TIME ENSURE COMPLIANCE WITH ALL APPLICABLE UNITED STATES LAWS. THE COAST GUARD WORKS CLOSELY WITH NOAA IN EACH REGION TO ENSURE COAST GUARD BOARDING OFFICERS ARE PROPERLY TRAINED IN FISHERIES REGULATIONS. THE COAST GUARD'S AT SEA ENFORCEMENT PROGRAM, COUPLED WITH NOAA'S DOCKSIDE ENFORCEMENT PROGRAM, COMPLEMENT EACH OTHER AND PROMOTE COMPLIANCE.

OUTSIDE OUR EXCLUSIVE ECONOMIC ZONE, THE COAST GUARD HAS ASSUMED INCREASING FISHERIES LAW ENFORCEMENT RESPONSIBILITIES. AS FOREIGN FLEETS WERE DISPLACED FROM OUR EEZ, THEY FOUND NEW FISHING GROUNDS IN AREAS WHICH ALLOWED THEM TO STILL HAVE AN INDIRECT IMPACT ON UNITED STATES RESOURCES. THIS IMPACT HAS BEEN FELT PRIMARILY IN THE PACIFIC, AS FOREIGN TRAWLERS NOW EXPEND CONSIDERABLE EFFORT IN THE CENTRAL BERING SEA "DONUT HOLE", AN AREA OF INTERNATIONAL WATERS SURROUNDED BY UNITED STATES AND SOVIET EXCLUSIVE ECONOMIC ZONES. ADDITIONALLY, HIGH SEAS

DRIFTNETTERS TARGET SQUID AND TUNA STOCKS IN THE NORTH PACIFIC. THE DONUT HOLE FISHERY HAS REQUIRED COAST GUARD PATROLS TO MONITOR OUR EEZ BOUNDARY TO ENSURE FOREIGN TRAWLERS ARE NOT ILLEGALLY ENTERING OUR WATERS TO FISH IN MORE ABUNDANT GROUNDS. SCIENTISTS HAVE ALSO RAISED CONCERNS OVER THE IMPACT OF THIS FISHERY ON UNITED STATES STRADDLING STOCKS, THOSE STOCKS WHICH EXTEND BEYOND THE EXCLUSIVE ECONOMIC ZONE INTO UNREGULATED INTERNATIONAL WATERS. IN THE NORTH PACIFIC, THE COAST GUARD HAS ACTIVELY CONDUCTED BOTH AIRCRAFT AND CUTTER PATROLS TO ENSURE COMPLIANCE WITH THE HIGH SEAS DRIFTNET AGREEMENTS WITH JAPAN, THE REPUBLIC OF KOREA, AND TAIWAN. WE HAVE ALSO DETECTED ILLEGAL ACTIVITY IN THE WESTERN PACIFIC. IN FISCAL YEAR 1990, A TAIWANESE LONGLINER WAS SEIZED BY THE COAST GUARD FOR ILLEGAL FISHING IN THE UNITED STATES EEZ OFF GUAM. THERE HAVE BEEN SIMILAR REPORTS OF ILLEGAL ENCROACHMENT THIS YEAR. WITH THE REAUTHORIZATION OF THE MAGNUSON FISHERIES CONSERVATION AND MANAGEMENT ACT (MFCMA), TUNA -- A HIGHLY MIGRATORY SPECIES PREVIOUSLY NOT MANAGED UNDER THE ACT -- WILL BE SUBJECT TO PROVISIONS OF THE ACT FOR THE FIRST TIME. REGIONAL COUNCILS, IN THEIR DEVELOPMENT OF FISHERY MANAGEMENT PLANS FOR TUNA, ARE PROJECTED TO INCLUDE SIGNIFICANT LEVELS OF AT-SEA ENFORCEMENT. THESE NEW DEMANDS, WHEN BALANCED WITH THE BROAD RANGE OF COAST GUARD AT-SEA RESPONSIBILITIES, MAY REQUIRE A SIGNIFICANT COAST GUARD PRESENCE IN AREAS THAT WE DO NOT ROUTINELY PATROL. IT WILL ALSO BROADEN THE DRIFTNETTING ISSUE SINCE THAT METHOD IS USED TO TARGET TUNA IN THE WESTERN PACIFIC.

IN RESPONSE TO THESE IMPACTS, THE COAST GUARD INCREASED BOTH THE LEVEL AND EFFECTIVENESS OF ITS FISHERIES ENFORCEMENT EFFORT IN FISCAL YEARS 1989 AND 1990. DEPARTMENT OF DEFENSE PARTICIPATION IN THE "DRUG WAR" HAS ALLOWED THE COAST GUARD TO APPLY INCREASED CUTTER AND AIRCRAFT RESOURCES TO FISHERIES LAW ENFORCEMENT. IN FISCAL YEAR 1991, WE CONTINUE TO IMPROVE OUR FISHERIES LAW ENFORCEMENT PROGRAM. WE ARE RELOCATING TWO 378-FOOT HIGH ENDURANCE CUTTERS FROM THE ATLANTIC TO THE PACIFIC COAST. THIS, COUPLED WITH OTHER HIGH ENDURANCE CUTTERS COMPLETING THE FLEET REHABILITATION AND MODERNIZATION PROGRAM (FRAM), WILL PROVIDE THE COAST GUARD RESOURCES TO BETTER MEET THESE AND OTHER PROJECTED PACIFIC FISHERIES LAW ENFORCEMENT REQUIREMENTS. THE ADDITION OF APS-137 RADARS ON OUR C-130 LONG RANGE SURVEILLANCE AIRCRAFT HAS IMPROVED PATROL COVERAGE AND OUR ABILITY TO DETECT FOREIGN FISHING VESSELS OPERATING IN ILLEGAL AREAS. IMPROVED USE OF INTELLIGENCE HAS ALSO ALLOWED US TO EMPLOY OUR RESOURCES WHERE THEY ARE MOST LIKELY TO DETECT TARGETS OF INTEREST.

A TOPIC OF CURRENT INTEREST INVOLVES HIGH SEAS DRIFTNETS. IN THE PACIFIC, WE ARE EXPERIENCING AN INCREASING PRESENCE OF LARGE SCALE, HIGH SEAS PELAGIC DRIFTNETTING (LEGAL AND ILLEGAL). THE LEGAL DRIFTNETTING PRIMARILY TARGETS SQUID AND TUNA STOCKS, BUT HAS BEEN DOCUMENTED TO INCIDENTALLY TAKE LARGE AMOUNTS OF OTHER FISH, BIRDS, AND MARINE MAMMALS. ILLEGAL DRIFTNETTING ACTIVELY TARGETS SALMON STOCKS IN CLOSED FISHING AREAS, WELL NORTH OF LEGAL FISHING AREAS. THE COAST GUARD HAS BEEN WORKING SUCCESSFULLY TO PREVENT THE ILLEGAL DRIFTNET HARVEST OF UNITED STATES SALMON IN THE NORTH PACIFIC OCEAN BY PARTICIPATING IN

NEGOTIATIONS FOR AND ENFORCEMENT OF INTERNATIONAL AGREEMENTS. CURRENTLY, WE CONDUCT BOARDINGS ON THE HIGH SEAS AND PROCESS VIOLATIONS UNDER THE AUTHORITY OF THE CONVENTION FOR THE HIGH SEAS FISHERIES OF THE NORTH PACIFIC OCEAN (INPFC), AND THE DRIFTNET AGREEMENTS GOVERNING HIGH SEAS OPERATIONS FOR VESSELS OF JAPAN, SOUTH KOREA AND TAIWAN.

THE COAST GUARD'S DETECTION AND DOCUMENTATION OF ILLEGAL DRIFTNET ACTIVITIES OVER THE LAST SEVERAL YEARS HAS BEEN A MAJOR FACTOR IN THE SUCCESSFUL CONCLUSION OF DRIFTNET AGREEMENTS. THE DRIFTNETTING COUNTRIES WERE NO LONGER ABLE TO DOWNPLAY THE EXTENT OF ILLEGAL SALMON FISHING, AND HAVE SUBSEQUENTLY BEEN PLACED UNDER STIFF PRESSURE FROM THE INTERNATIONAL COMMUNITY, PARTLY THROUGH UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 44/225. WE ALSO EXPOSED ATTEMPTS TO CIRCUMVENT THE DRIFTNET AGREEMENTS BY REFLAGGING WHEN COAST GUARD AIRCRAFT DETECTED NORTH KOREAN DRIFTNET VESSELS OPERATING IN THE NORTH PACIFIC IN MAY, 1990. WE PUT THE UNITED STATES/SOVIET ENFORCEMENT MEMORANDUM OF UNDERSTANDING (MOU) TO EFFECTIVE USE BY PROVIDING THIS INFORMATION THROUGH DIPLOMATIC CHANNELS TO THE SOVIETS, WHO ULTIMATELY SEIZED THE NORTH KOREAN VESSELS FOR ILLEGAL DRIFTNET FISHING. IN MAY OF THIS YEAR, THE SOVIETS AGAIN SEIZED ILLEGAL TAIWANESE DRIFTNET VESSELS ON THREE SEPARATE OCCASIONS, AFTER BEING PROVIDED COAST GUARD SIGHTING INFORMATION.

THE COAST GUARD FOCUSES ITS DRIFTNET ENFORCEMENT OPERATIONS IN AREAS WHERE UNITED STATES SPAWNED SALMON ARE LIKELY TO BE TAKEN. REPORTS THAT DRIFTNET VESSELS ILLEGALLY FISHING FOR SALMON ARE OPERATING IN THE WESTERN PORTION OF THE NORTH PACIFIC

IS FURTHER INDICATION OF THE EFFECTIVENESS OF OUR OPERATIONS. THIS INDICATES THAT WE ARE FORCING ILLEGAL ACTIVITY AWAY FROM UNITED STATES SALMON.

THE COAST GUARD VIEWS THE HIGH SEAS EFFORT AS A VERY IMPORTANT MISSION, AND WE ARE CONTINUING TO IMPROVE OUR CAPABILITIES IN THIS AREA. WE HAVE NOT YET SEEN THE BENEFITS OF RELOCATING THE TWO HIGH ENDURANCE CUTTERS, AND WE ARE ONLY BEGINNING TO SEE THE BENEFITS AND POTENTIAL OF FISHERIES INTELLIGENCE COLLECTION AND ANALYSIS ENHANCEMENTS BEING MADE WITH THE ASSISTANCE OF DOD. AS HIGH ENDURANCE CUTTERS CONTINUE TO COME OUT OF FRAM, AND WITH DOD ASSISTING IN DRUG INTERDICTION OPERATIONS, WE WILL GAIN MUCH MORE ENFORCEMENT FLEXIBILITY. TEAMING THIS ENFORCEMENT CAPABILITY WITH EFFECTIVE INTERNATIONAL FISHERIES AGREEMENTS, THE COAST GUARD WILL BE BETTER POSITIONED TO EFFECTIVELY PROTECT UNITED STATES FISHERIES INTERESTS.

ANOTHER CURRENT TOPIC OF INTEREST CONCERNS THE REGULATIONS REQUIRING TURTLE EXCLUDER DEVICES (TEDS), WHICH WERE PROMULGATED BY NOAA IN ACCORDANCE WITH THE ENDANGERED SPECIES ACT, AND WHICH ARE NOW IN EFFECT IN THE OFFSHORE WATERS OF THE GULF OF MEXICO AND THE ATLANTIC OCEAN OFF THE SOUTHEASTERN UNITED STATES. COAST GUARD ENFORCEMENT IS CONDUCTED THROUGH REGULAR PATROLS, COUPLED WITH COORDINATED NATIONAL MARINE FISHERIES SERVICE (NMFS) OPERATIONS. SINCE THE FIRST IMPLEMENTATION OF TEDS REGULATIONS OFF FLORIDA IN 1987, EFFECTIVE ENFORCEMENT, ALONG WITH THE INCREASED EXPERIENCE OF SHRIMP FISHERMEN USING TEDS, HAS CONTRIBUTED TO IMPROVED LEVELS OF COMPLIANCE. WE HOPE THIS TREND CONTINUES. MOST VIOLATIONS NOW OBSERVED, SUCH AS ESCAPE OPENINGS

SEWN SHUT, REFLECT A DELIBERATE INTENT TO CIRCUMVENT THE REGULATIONS, AS OPPOSED TO IGNORANCE OF THE REGULATIONS.

COAST GUARD ENFORCEMENT OF CURRENT TEDS REGULATIONS REQUIRES THAT INSPECTIONS BE DONE AT SEA WHILE SHRIMPERS ARE OBSERVED ACTUALLY TRAWLING. SHRIMPING WITHOUT A TED IS A VIOLATION, BUT HAVING A NET ON DECK WITHOUT AN INSTALLED TED IS NOT. IT SHOULD BE NOTED THAT COAST GUARD BOARDINGS ARE CARRIED OUT TO ENFORCE ALL APPLICABLE UNITED STATES LAWS. COAST GUARD BOARDING OFFICERS ARE TRAINED TO CONDUCT INSPECTIONS IN A MANNER WHICH MINIMIZES INTERFERENCE WITH LEGITIMATE OPERATIONS, YET AT THE SAME TIME ENSURES COMPLIANCE WITH THE LAW. THIS MEANS THAT A SHRIMP FISHERMAN MAY BE REQUIRED TO TEMPORARILY CEASE TRAWLING OPERATIONS AND RETRIEVE HIS NETS TO ALLOW FOR A TED INSPECTION. IN OTHER CASES, IF THE OPERATOR EXPECTS TO RETRIEVE HIS TRAWL WHILE THE BOARDING IS IN PROGRESS, HE WOULD BE ALLOWED TO COMPLETE HIS TRAWL AS PLANNED.

IN REVIEWING PROPOSED AMENDMENTS TO TED REGULATIONS, THE COAST GUARD DOES NOT DETERMINE WHAT CONSERVATION MEASURES ARE NECESSARY TO MEET THE REQUIREMENTS OF THE ENDANGERED SPECIES ACT. HOWEVER, IN REVIEWING THOSE MEASURES, IT IS OUR RESPONSIBILITY TO ENSURE THAT THEY REFLECT THE PRACTICAL REALITIES OF AT-SEA ENFORCEMENT. THE COAST GUARD HAS, THEREFORE, CONSISTENTLY OPPOSED MEASURES WHICH DO NOT PRODUCE "THE EVIDENCE OF COMPLIANCE" AND ARE PRIMARILY DEPENDENT ON VOLUNTARY COMPLIANCE TO BE EFFECTIVE. EXAMPLES OF THIS ARE TIMED TRAWLS AND OTHER MEASURES, SUCH AS SIGNALLING DEVICES, WHICH REQUIRE A VOLUNTARY ACTION ON THE PART OF THE SHRIMP FISHERMAN TO BE EFFECTIVE. THE

COAST GUARD HAS SUPPORTED TEDS BECAUSE THEY DO NOT REQUIRE ACTIONS ON THE PART OF THE SHRIMP FISHERMAN OR IMMEDIATE PRESENCE OF AN ENFORCEMENT UNIT TO BE EFFECTIVE.

ADDITIONALLY, THE COAST GUARD SUPPORTS THE NMFS-PROPOSED REQUIREMENT TO INSTALL TEDS IN ALL NETS THAT ARE RIGGED TO SHRIMP. WITH THIS REQUIREMENT, A DETERMINATION CAN BE MADE AT ANY TIME AT SEA AS TO WHETHER OR NOT THE VESSEL IS IN COMPLIANCE. THE PROBABILITY OF A VIOLATION BEING DETECTED BY THE COAST GUARD IS INCREASED AND NO LONGER DEPENDENT ON HAVING TO OBSERVE THE VESSEL IN THE ACT OF TRAWLING TO ENFORCE THE REGULATION. THIS WILL MAKE COAST GUARD RESOURCES MORE EFFECTIVE. THE SHRIMPERS' KNOWLEDGE OF THIS IS LIKELY TO RESULT IN GREATER COMPLIANCE WITH THE TED'S REQUIREMENT, IMPROVING THE EFFECTIVENESS OF THIS PARTICULAR CONSERVATION MEASURE.

I CAN ASSURE YOU, MR. CHAIRMAN, THAT FISHERIES ENFORCEMENT IS A VERY HIGH PRIORITY COAST GUARD MISSION. I FURTHER ASSURE YOU WE WILL CONTINUE TO WORK WITH NOAA TO MEET OUR NATIONAL GOALS FOR FISHERIES MANAGEMENT AND CONSERVATION.

I WOULD BE HAPPY TO ANSWER ANY QUESTIONS AT THIS TIME.

Testimony  
of  
WILLIAM W. FOX, JR.  
ASSISTANT ADMINISTRATOR FOR FISHERIES  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

SUBCOMMITTEE ON COAST GUARD AND NAVIGATION  
COMMITTEE ON MERCHANT MARINE AND FISHERIES  
HOUSE OF REPRESENTATIVES

JULY 24, 1991

Mr. Chairman, and Members of the Subcommittee:

I am William Fox, Assistant Administrator of Fisheries, National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce. I am pleased to be here to discuss the enforcement of our Nation's fishing regulations.

Compliance with fisheries management measures is an essential element in our efforts to conserve and wisely use living marine resources. Besides ensuring the proper conservation of resources, promoting compliance helps ensure that fishermen who abide by the rules do not operate at a disadvantage with those fishermen who do not. Compliance is good for the resource, good for fishermen, and good for the public.

Enforcement in the narrow sense--meaning apprehension and prosecution of regulation violators--is an important element in insuring compliance with fishery conservation laws. But it is not the only element. Compliance begins with communication.

Through public hearings on proposed regulations, NMFS promotes discussion and understanding of the need for fishery management measures. In developing fishery management plans, the regional fishery management councils involve fishermen from the earliest stages in identifying problems and solutions.

When fishermen do not voluntarily comply with fishery conservation measures, we must rely on enforcement of the regulations for protection of the interests of other fishermen and the public in the conservation of living marine resources. Enforcement that is even-handed and sure, and able to demonstrate that anyone breaking the law will be prosecuted is in everyone's interest.

Currently, there are in force more than 30 fishery management plans and associated regulations promulgated under the authority of the Magnuson Fishery Conservation and Management Act. Additionally, NMFS and the Coast Guard have significant enforcement responsibilities under the Atlantic Tunas Convention Act, the Inter-American Tropical Tuna Commission, other international conventions, the Endangered Species Act, the Marine Mammal Protection Act, the Marine Sanctuaries Act, the Driftnet Act and the Lacey Act. This workload has prompted us to devise innovative approaches to ensuring compliance with marine resource conservation laws.

The Office of Enforcement within NMFS is led by Morris Pallozzi. The headquarters office coordinates enforcement activities with the Coast Guard, NOAA General Counsel, and other agencies of the Federal Government. It also develops policy guidance, budget request, and maintains our computerized enforcement information management system. In the field, enforcement activities in each region are led by a Special Agent in Charge, assisted by a deputy. These individuals are responsible for day-to-day operations in the field and for carrying out policies and procedures set at the headquarters office.

Our Enforcement Office has an authorized strength of 122 enforcement personnel and 32 support personnel. Our enforcement positions are deployed around the country as follows: Northeast Region (29), Southeast Region (22), Southwest Region (19), Northwest Region (20), Alaska Region (21), and headquarters (11). Seventeen lawyers assigned by NOAA General Counsel support the enforcement program by prosecuting civil penalties and forfeitures, collecting fines and penalties, assisting the Department of Justice with judicial actions, and providing legal training to NMFS agents, U.S. Coast Guard, and cooperating state law enforcement agencies. Thirteen of these lawyers are co-located with our regional enforcement staffs and four are located at NMFS headquarters in Silver Spring.

The Enforcement Office spends more than three-fourths of its time enforcing the Magnuson Fishery Conservation and Management Act, the Marine Mammal Protection Act, the Endangered Species Act, and the Lacey Act. In fiscal year 1990, we opened a total of 3,601 cases. Nearly half of them were Magnuson Act cases, 9.3 percent were Lacey Act cases, 9.1 percent were Marine Mammal Protection Act cases, and 18.2 percent were Endangered Species Act cases.

I would like to highlight several enforcement actions in the last year. Coordinated NMFS/Coast Guard activities led to the detection and prosecution of individuals and companies involved in an illegal reflagging scheme on the high seas. In coordination with the Soviet Union, we succeeded in interdicting 12 vessels engaged in high seas salmon piracy. In the Bering Sea, NMFS seized the Japanese fishing vessel Koei Maru No. 20, after it was found illegally fishing within our Exclusive Economic Zone; two weeks later, the vessel owners agreed to a \$900,000 settlement. In a cooperative investigation with the Washington Department of Fisheries, NMFS enforcement agents documented the illegal sale of halibut and salmon by a sportsman, who later pled guilty and forfeited his fishing vessel to the State. We have also made great progress in addressing probably the greatest enforcement challenge NMFS has ever faced. Through persistent efforts of NMFS and the Coast Guard as well as the Department of Justice, recent compliance with TED regulations has reached about 90 percent in most areas. These are just a few of

our successes, many of which have been achieved in cooperation with the Coast Guard and state agencies.

The Administration does recognize the importance of promoting compliance with fishery laws through funding for enforcement. For fiscal year 1992, the Administration has requested \$10.016 million. That's 10 percent more than Congress appropriated just two years ago, and more than Congress appropriated for any year during the last decade. Additionally, the 1990 amendments to the Magnuson Act have expanded the uses NMFS can make of money collected from the fines, penalties and forfeited proceeds from fisheries violations, to include such costs as equipment, training, travel and witness reimbursement, storage costs, maintenance of seized items, rewards, and reimbursements to states for cooperative enforcement activities.

Furthermore, we have taken steps to ensure that we use our funding as efficiently as possible. For instance, in the last year, we have trained our first class of Fishery Enforcement Officers, whose primary duty is to inspect vessels, catches, gear, logbooks and processing houses. NMFS Special Agents will eventually give up these activities entirely and devote their efforts primarily to investigations, training, and coordination of our efforts with other Federal, State and local agencies. NMFS realizes a savings using this approach because Fishery Enforcement Officers have fewer training, equipment and support needs than Special Agents, and so can be deployed for about

\$25,000 less per person per year than Agents. In the future, we hope to add a number of Fishery Enforcement Officers to our enforcement staff and expect to hire relatively few additional Special Agents.

Throughout the country, NMFS, in conjunction with NOAA General Counsel, has established a summary settlement system with cooperating enforcement units. This system operates much like traffic tickets: a violator may pay the penalty or contest the violation. We have also outfitted some of our Special Agents with laptop computers so that they can more efficiently use the time they must spend processing cases. In the western Pacific longline fishery, we are testing the use of satellite transponders for confirming that a vessel is not operating in a prohibited area. As you know, the use of even less advanced transponder technology has been integral to our efforts to monitor high seas driftnet operations by Japan, Korea, and Taiwan. This satellite/transponder system allows us to identify when Japanese, Korean, or Taiwanese vessels are fishing in areas where they are likely intercepting salmon spawned in North American rivers.

NMFS has had a long and beneficial relationship with the United States Coast Guard in our mutual efforts to ensure compliance with marine conservation laws and regulations. Historically, NMFS has provided fisheries expertise on Coast Guard aerial and surface patrol craft, and training to Coast

Guard personnel in our specialized area of resource conservation law. In order to optimize our enforcement resources, we have emphasized our training role and relied more heavily on Coast Guard personnel to conduct, without direct NMFS participation, at-sea enforcement. We will continue to make Agents available to accompany Coast Guard patrols when circumstances require our presence, but with the virtual total Americanization of U.S. fisheries, we find an increasing need to provide an investigative, inspection and patrol capability ashore.

We have also placed a greater emphasis on encouraging Fishery Management Councils to write fishery management plan measures that can be enforced ashore rather than at sea, and we have used the same approach in the implementing regulations. Such regulations allow us to more fully utilize cooperative enforcement opportunities with the states and the U.S. Fish and Wildlife Service, and to rely more heavily upon Fishery Enforcement Officers.

The importance of an adequate at-sea enforcement component is, however, as critical now as it was ten years ago when hundreds of foreign vessels were permitted to fish in U.S. waters and large numbers of American fishermen first began fishing under Federal regulations. In Alaska, for example, the presence of floating processors and buy boats requires an adequate seagoing patrol capability for monitoring the fisheries, especially the groundfish and halibut fisheries.

In the Southeast, enforcement of TEDs regulations is impossible without a Coast Guard presence. The Coast Guard has always fully supported TEDs enforcement.

Compliance with the TEDs regulations this season has substantially improved over previous years, and we hope shrimpers will continue cooperating with us in helping to protect increasingly rare sea turtles. We believe that this improved compliance is due to several factors. First, we have increased the disincentive to break the rules by seeking criminal penalties for flagrant violations of the TED requirements. Such violations undermine not only conservation of endangered turtles, but also the good-faith efforts of law-abiding citizens to comply with the laws of the land. Second, as fishermen gain more experience with TEDs, they experience fewer difficulties. In a voluntary cooperative program involving commercial fishermen in the Gulf of Mexico, we have found that fishermen reduced shrimp losses in TED-equipped nets from about 10 percent early on to less than one percent.

As you know, we are examining how best to respond to our experience enforcing current regulations and to the National Academy of Sciences' study on sea turtle conservation, which Congress mandated in the 1988 Amendments to the Endangered Species Act.

Public hearings will be held on any new regulations we propose. This will allow fishermen every opportunity to comment upon the possible regulations and make suggestions for improving them. Already, our Southeast Regional Director has held meetings with shrimp fishermen and their leaders regarding potential regulations, and met just last week with representatives of the national environmental community.

That concludes my statement, Mr. Chairman. I would be pleased to answer any questions.

TESTIMONY PRESENTED BY TEE JOHN MIALJEVICH

ON BEHALF OF

CONCERNED SHRIMPERS OF AMERICA

TO

THE MERCHANT MARINE AND FISHERIES SUBCOMMITTEE

ON

COAST GUARD AND NAVIGATION

HONORABLE BILLY TAUZIN, CHAIRMAN

AT

THE OVERSIGHT HEARING

ON

JULY 24, 1991

IN

ROOM 1334 LONGWORTH HOUSE OFFICE BUILDING

WASHINGTON, D.C.

TO

DISCUSS COAST GUARD ENFORCEMENT OF FISHERY LAWS

**CONCERNED SHRIMPERS OF AMERICA**

P.O. Box 637  
Belle Chasse, Louisiana 70037-0637

**TESTIMONY BY TEE JOHN MIALJEVICH**

I want to thank Congressman Tauzin for inviting me to testify today. The increased responsibility of enforcing a greater number of fishery laws by the Coast Guard is also a concern of the commercial shrimp harvester. I would estimate that less than half of the commercial shrimpers are aware of all of the expanded federal fishery laws that are being made by the Fishery Management Councils, NMFS, the Endangered Species Act, Marine Mammala Act, and the U.S. Coast Guard. At this time, I estimate 90% of the shrimpers don't know exactly what is a legal ted or an illegal ted modification. The shrimpers doubt the authority being used and questions the way the Coast Guard enforces the laws. We also wonder if there are too many laws for them to check at one time and the "pressing" necessity for all these rules, laws and regulations.

One thinks of the Coast Guard as our first line of "home defense" against invasion; search and rescue missions; boating accidents; marine safety; smuggling; water pollution control; and last as a "police force" for National Marine Fisheries, the Gulf Council, Endangered Species Act and Marine Mammals Act. (This list was compiled by asking people that are recreationals, commercial fishermen and business people) The man on the street type, didn't even know the Coast Guard was a "police force" to enforce fishery laws.

On the subject of too many fishery laws, see attachment number one. There are 13 Magnuson Fishery Conservation and Management Act plans (billfish; coral; mackerel; red fish; reef fish; sea scallops; shrimp; snapper/grouper; spiny lobster; stone crab; swordfish;

general prohibitions; and multi-species) under the Councils. Also, there is the Marine Sanctuaries; Marine Mammals Act; Lacey Act; Endangered Species-TEDs; Endangered Species and Atlantic Tuna laws for the Coast Guard to enforce. How many of the total 33,367 man-hours cited were performed by the Coast Guard? If you use an eight hour day, you are looking at over 4,170 days of enforcement. How much did this cost the American tax payer? Are all these laws necessary? Have we passed the point of the needed laws and we are now working on the laws we would like to have?

At present, shrimpers are asking questions like what authority does the Coast Guard have in enforcing these regulations. Can they make me pick up my nets before the normal time? Can the board me two or three times in one night? After the first boarding in one trip, do they have to check everything again, or can they just check the TED and let us get on with our work, instead of being on board for several hours. Why is it impossible for the Coast Guard to set down in writing a "standard Boarding procedure" for TEDs inspection? Does TEDs compliance boardings by the Coast Guard come under the probable cause or the routine boarding status of marine law? Where does the Coast Guard get the authority to seize our nets, would a picture do? What is gained if our TED is seized for a minor mistake or modification? Why can't the minor modification be corrected instead making a punishment upon those trying to make the damn things work. Too many different versions of enforcement policy is going on about the same law. Who is calling the shots, Coast Guard or NMFS? Does anyone know what they are doing? I think this committee needs to hold field hearings to find out the whole story and why the Coast Guard describes the atmosphere when they board shrimp

boats as "tense" and "hostile".

Also, why some boardings are for 15-30 minutes and others take 1-2 hours? Is the list of rules, laws and regulations becoming so long, that it could become an all day affair? Give us a break, we already lose shrimp using TEDs, lose shrimp when we have to unclog TEDs, and now we have to lose fishing time, while the Coast Guard makes several hour inspections. When will the Coast Guard have time for its other duties? Maybe this hearing is all about getting more money for the Coast Guard so we can have a "police state" to insure "perfect enforcement" of fishery, endangered species and marine mammal laws. Get real! For 1,991 years, we have been trying to get "perfect enforcement" of the 10 Commandments, and failed. Does the benefits gained to turtles offset the enormous cost and manpower being used by NMFS and the Coast Guard, the loss of income being experienced by the shrimpers and the social and economical suffering felt by their families and related businesses?

Another problem is the uncertainty of enforcement officers from the NMFS and the Coast Guard as to what is legal and what isn't with the various laws they have to enforce. For example with the TED regulations, on July 16, 1991, the shrimp vessel Romans 1:16 was boarded by the U.S. Coast Guard off Freeport, Texas around 2 pm. After all the other inspections were made, the vessel pulled in the nets for TEDs inspection. After a lengthy inspection and "private" discussion between the officers they decided to call the C.G. Cutter Pt. Spencer. The cutter called Galveston and around 4-4:30 Galveston instructed the Cutter to escort the shrimp vessel to the Coast Guard station in Freeport. When they arrived around 5:30 pm, they were met by two NMFS people. After inspecting the TEDs at

least five times they decided to call NMFS in Florida to determine what action should be taken. Over the phone, NMFS in Florida instructed them to issue a citation and confiscate the nets and TEDs "for trawling with altered TEDs". Repeatedly, it was said that the captain could go to jail and be fined up to \$50,000.00. A photographer from the local press tried to get pictures showing that the nets had legal size openings, but a Mr. Mac Fuss from NMFS, would not allow the press aboard. (see attached letter from Mr. Roy Crook III) When the Coast Guard has to call the cutter, then call a landbase and they have to call NMFS in Florida to get a decision on what to do, there is a real problem with the law they are trying to enforce. What is going to happen when a man has to quit shrimping, come in to the dock, and then be told his TED was legal? When a man buys a new net, has a TED installed at the net shop and does not modify it, but uses it just as delivered is charged with an illegal modification and has to come to the dock to surrender the nets and TEDs, that is rubbing salt into the wound. Isn't an \$8000 fine or criminal charges enough? Why are we being treated as hardened criminals? It is time for our Congressmen to step in and look at the "justification" of the laws, the people making the laws and the people enforcing the laws to see if the laws are worthy of enforcement as they are written.

Before we start passing more regulations about TED enforcement and more turtle conservation, for the Coast Guard to enforce, I believe this committee should hold field hearings across the Gulf States, to get input directly from the shrimpers instead of information filtered through NMFS. Not that NMFS would lie, but most shrimpers don't trust NMFS or the Councils.

In my research, I found the FY 1990, NMFS Office of Law Enforcement, Southeast Area Annual Report, interesting reading. It stated:

"Enforcement of Turtle Excluder Device Regulations threatened to eclipse all our other work in Fiscal Year 1990. In that regard FY 1990 should be looked back upon as the year in which Southeast Area Enforcement prevailed "Against All Odds". NMFS Special Agents assisted by 37 different Coast Guard units and three federally deputized states organizations conducted over 1100 shrimp vessel boardings and documented 229 civil TED violations. Early in the 1990 season a significant number of TED cases were documented off Georgia and the northern Gulf area which revealed a trend in sewing or closing the opening in the TED to render it inoperative. The compliance rate was extremely low in some areas, ranging from 20 to 50 percent. Enforcement's first attempt to improve compliance was to conduct pulse boarding operations with civil penalties being issued on scene. This tactic succeeded in boosting compliance, but only in the geographic area of the pulse operation, and only for the period of the operation and a few days afterward. Meantime, shrimpers began to devise more clever ways to disable their TED devices in an attempt to fool boarding officers. Realizing that a change in tactic was necessary to improve compliance throughout the Gulf and South Atlantic, a meeting was held with industry leaders on Monday, July 16, 1990, in Houston, Texas. At that meeting it was announced that, in cooperation with the United States Department of Justice and the U.S. Coast Guard, NMFS

prosecutorial policy on TED violations was changing from civil to criminal referrals. Southeast Area Enforcement immediately launched into a string of pulse operations and began arresting non-complying vessel captains in 6 different judicial districts."

Since that report, this year for the Texas opening, the largest fleet of Coast Guard vessels and NMFS personel from as far away as California has been assembled to insure TED compliance. How many million dollars are being spent to use intimidation, harrassment and a show of force, just to get compliance for a regulation to "USE A TED". Not to punish people with dead turtles, but criminal charges for not pulling a qualified TED. I have to ask this committee, did you ever see or hear of such force needed to get compliance with any other rule, law or regulation? Is this necessary? By now, don't you think something is "seriously wrong" with the TED regulations, that all these people are needed to get compliance. Does the cost of enforcement justify the questionable benefits gained? What good are fishery laws, E.S.A. regulations, and Marine Mammal rules, if the "constant presence" of the Coast Guard is needed to get over 50% compliance? Something must be wrong with the law? or a very good reason why the people can not obey the law.

I will not comment in writing at this time about the newly proposed enforcement regulations or conservation regulations for sea turtles, but I will be glad to answer any questions you may have. I must emphasize the need to justify the old regulations to the actual commercial shrimper that uses the TED, before you can get acceptable compliance with the TEDs regulations. Furthermore, more intimidation by seizing shrimp will only get compliance when the

Coast Guard is around as it is getting now. It seems that Congress has not understood as of yet, "That TEDs do not work, except on paper, in NMFS reports and on very clean bottom where there is little or no shrimp." I "implore" you to hold Congressional Hearings about the "old TED regulations" as to how they are working and the "real reason" for low compliance.

In conclusion, I would like to ask you to take a look at the enclosures, especially the one about a 700 mile intracoastal waterway from Brownsville, Texas to Veracruz, Mexico, right through the Kemp's Ridley Sea Turtle nesting grounds. It is hard for an American shrimper to pull a TED when Mexican shrimpers are not, and now the "oil industry" is more important than endangered turtles, but shrimpers are not. I wish I could "make you understand" the problems of the commercial shrimper, but I will settle for trying to "help you understand" our point of view.

Enclosures:

Office of Enforcement - Southeast Area  
 Out for Fun, Curt Carpentier, July 11, 1991  
 Walter Hicks letter to editor  
 Former NMFS Employee Alleges Incompetence and Deception  
 Injustice such as TEDs is an Unnecessary Evil  
 TEDs not recommended for Mexican Shrimp fleet  
 Jefferson Parish letter from Coast Guard  
 University Professor says NMFS Report...not supported by...data  
 Sonic Excluder Rejected  
 Tauzin Asks Bush For TEDs Solution  
 Shrimpers poem  
 Steven Charpentier letter  
 Letter to six Congressmen from C.S.A.  
 Jimmie Leger Letter  
 Error, Deception, or Fraud  
 Larry Cotter Letter  
 The Seedling  
 Waterway may threaten port  
 Roy Crook III Letter

Office of Enforcement - Southeast Area  
 FY 90 Manhours by Statutory Authority

<u>Act</u>	<u>Manhours</u>
MFCMA	14,895
Lacey Act	6,581
Marine Mammal Protection Act	674
Endangered Species Act	3,389
Endangered Species - TEDs	7,099
Atlantic Tunas Convention Act	508
Other	221
 Total	 <u>33,367</u>

-----  
MFCMA PLANS

Foreign Fishing . . . . .	287
Billfish . . . . .	1,751
Coral - Gulf of Mexico & So. Atlantic . . . . .	692
Mackerel . . . . .	1,627
Red Fish . . . . .	1,806
Reef Fish - Gulf of Mexico . . . . .	3,981
Reef Fish - Puerto Rico/Virgin Islands . . . . .	581
Sea Scallops . . . . .	586
Shrimp . . . . .	1,106
Snapper/Grouper . . . . .	1,245
Spiny Lobster - Gulf of Mexico & So. Atlantic . . . . .	527
Spiny Lobster - Puerto Rico/Virgin Islands . . . . .	179
Stone Crab . . . . .	38
Swordfish . . . . .	489
 Total . . . . .	 <u>14,895</u>

## PART OF PRESS RELEASE FROM CONCERNED SHRIMPERS OF AMERICA

PORT ISABEL-SOUTH PADRE PRESS, THURSDAY, JULY 11, 1991

OUT FOR FUN, by CURT CARPENTIER

I rubbed my eyes in disbelief. There on the tv tube in living color were the mighty and courageous Coast Guardsmen in their big expensive cutters boarding shrimp boats.

Did you see it? Yeah...multimillion dollar cutters pulling trawlers over to check their TEDs(turtle excluder devices). Dozens of uniformed sailors storming aboard like it was a life or death situation. It even showed on video down below deck a crew of sailors sacked out. Then the signal sounded! "A shrimper has been spotted. Man your battle stations and don't be taken in by the tender turtle talk!" Batton down the hatches! Get your TED sticks out and measure those things. "Heave to, Captain, raise your nets! Get'em on deck now! We're coming aboard, so heave to, mate!"

The next scene showed a fleet of rubber boats manned by sailors strapped in bright life vests. They churned and crashed through the chops and leaped aboard the shrimpers like pirates attacking the old tail ships.

I didn't hear any code name for the raiding of trawlers but you can bet there probably was one. Like "TX NET Zinger or something similar with a catchy ring to it.

You'd think those highly trained swabies and all that expensive equipment could be kept busy chasing drug runners and smugglers. If there isn't sufficient demand on them other than TEDs, then maybe we ought to take another long, hard look at why we shell out so many millions and millions of tax dollars to keep them on our payroll these days.

I can tell you that all those TEDs ain't gonna keep us safer and freer. The U.S.A. ain't going down the tube if we rip all those awkward gadgets from the nets. And the turtles won't be any better off, likewise!

What I'd like to know is exactly when did the Coast Guard take on the responsibility of enforcing our game and fishing laws? We've got people trained at Texas A&M who we pay to do that.

I took time out recently to check out these TEDs. My wholelife has been connected with fishing and I've never seen any kind of contraption like that that would work. The only sure way, we could honestly know if they work would be to go down like a turtle under actual conditions and test them out. On television we saw a turtle struggle under controlled conditions to shove the trapdoor open. But with a net moving along and all that pressure against that same turtle I seriously doubt if it could have found the TED, much less escape.

I've talked with a dozen or more captains and they all assure me that very seldom if ever do their nets pick up turtles in Texas waters. My father used to shrimp and he'd get right in next to the beach at times with his nets. Not once did he ever pick up a turtle.

Fortunately I can understand where all this is coming from. For many years back in the 60's and 70's I was a professional conservationist. I worked with biologists and game wardens and rubbed shoulders with the so-called naturalists and environmentalists. We used to sit in on meetings and discussions and conferences where things like TEDs would get a good working over. They'd come up with ideas just as crazy and ridiculous. But once it was agreed on you couldn't force anyone to change his mind at any cost, no matter how many times they were proved wrong.

TEDs simply won't work. They're a waste of time and money and expensive Coast Guard cutters and crews.

SHIPS AHoy! See you OUT where the FUN is...

Tuesday, May 22, 1990 at approximately 8:00 pm.

May 23. The boarding resumed at approximately 8:00 PM that same day and continued until approximately 4:00 AM, Thursday, May 24. These were not random boardings. Almost every boat in the area was boarded and checked for TEDs.

I have a few questions about these boardings.

(1) What was the cost of this massive operation to the taxpayers?

(2) How many taxpayers were put in danger those two nights when these operations were taking place? The first night I know for a fact that a teenage boy was missing in the Gulf offshore of Pensacola in a 12 foot Jon Boat. The boy was rescued Wednesday morning by the "Cajun Princess". If the cutters involved in these boardings came out of Mobile like they did Wednesday afternoon, they were as close to that boy, as they were to the shrimpers they checked for TEDs.

(3) If the information of this operation some way, got into the hands of drug smugglers a week in advance, how many drugs were smuggled into this country along the Alabama and Mississippi coast those two nights?

Shrimpers do not like being singled out and harassed

by anyone, including law enforcement agencies. Shrimpers were forced to haul in their nets so they could be checked for TEDs resulting in loss of towing time, thus, a loss of more money which they could not afford. The fact is most of the viola-



tion, most of which two years ago the boarding officer would point out to the captain and there would have been no violations.

To my personal knowledge they only wrote two boats up for TED violations. The majority of shrimpers are trying to use TEDs; why do we have to be exposed to harassment like this by our own government? Shrimpers are not the only people who are dealing with the new fishing regulations. Sport fishermen are too. I doubt that we will see an armada of Coast Guard vessels outside the pass at Panama City checking those boats for fishing violations. In the beginning of this controversy over TEDs it was said for me to think that fishermen who once meant so much to the economy of the Gulf Coast could

be treated like second class citizens. Now I realize it's worse than I first thought. No citizen of any kind would be treated this way.

Walter Hicks  
Niceville, FL

## Former NMFS Employee Alleges Incompetence and Deception

C.R. "Comy" Mock, formerly the shrimp culture leader for the National Marine Fisheries Service, openly blasted his former employer for incompetence and deception.

According to Mock, his troubles began in 1979 when NMFS imported the non-native blue shrimp from the Pacific to its Galveston, Texas lab for culture experiments. Mock told his superiors, Edward Klima, director of the lab, and James McVey who was aquaculture division chief, that "we should be concerned with new diseases, parasites, and if these shrimp escaped they may breed in our waters and be in competition with our natural stocks." According to Mock, Klima told him "what difference did it make if these shrimp were diseased, the Gulf of Mexico was so big that there would be no effect." McVey told him, "others have imported these shrimp so if they are diseased, then the diseases are already here, so what."

After filing an official complaint, Mock said he was told by Klima to keep his mouth shut and asked if he wanted to see shrimp farming begin in North America. Mock replied "not at the expense of the fishery" and my (Mock's) concern was for our natural resources and generations to come, not the short term, quick profit that shrimp farming offered.

Mock also accuses Klima, McVey and Addison Lawrence of Texas A & M University, of ordering that shrimp hatchery records be falsified as a cover-up

Mock states that when he questioned what happened, he was told by Klima "that I would no longer have anything to do with aquaculture, that Texas A & M would take over the facility and that he would make it so rough on me that I would resign from the service."

Mock feels that this was the beginning of shrimp farming, not only in the U.S., but in other countries as well.

Mock supports his claims about the dangers of importing non-native shrimp with evidence of a problem at South Carolina's Waddell Mariculture Center. According to evidence Mock has accumulated, the research center is contaminated with the IHEN virus, which causes deformities, slower growth and sometimes death in shrimp. Research has shown that this is a disease of the non-native Pacific white shrimp (*Penaeus vannamei*) and the blue shrimp (*Penaeus stylirostris*). However, experiments have also shown that our native brown, white, and pink shrimp can be infected with the disease.

One researcher has recommended that all shrimp at the Waddell mariculture facility be destroyed and that all the ponds at the facility would be disinfected by treating with chlorine and drained for a year.

Mock, who has put together a 14 page paper on the subject, is currently an aquaculture consultant in Galveston, Texas. His paper is available upon request by calling (409) 774-1172.

The Publisher

# Newsletter

In This Wonderful Country of Freedom,

## Injustice, Such as TEDs, Is An Unnecessary Evil.

DEAR CONGRESSMEN:

THE BASIS OF ALL TRUE LAW, IS JUSTICE. SOMETHING THE TED REGULATIONS ARE LACKING.

A TURTLE-TEDS MEETING TOOK PLACE IN WASHINGTON, ON MARCH 4-5, 1991. AT THAT MEETING, AN INTERNAL NOAA-NMFS COMMITTEE MADE RECOMMENDATIONS TO MODIFY THE EXISTING TED REGULATIONS IN SEVERAL WAYS:

1. EXTEND SEASONAL REQUIREMENTS FOR USING TEDS AND TOW TIMES
2. REDUCE TOW TIME LIMITS FROM 90 MINUTES TO 60 and 45 MINUTES
3. ADOPT A SMALL TURTLE TESTING PROTOCOL FOR CERTIFYING TEDS

INSTEAD, AFTER LOOKING OVER THE MATERIAL AND DISCUSSIONS FROM THE MEETING, TEE JOHN FEELS CONGRESS HAS AN OPEN DOOR TO RELAX THE CURPENT TED REGULATIONS. THE NATIONAL ACADEMY OF SCIENCES STATED IN THEIR REPORT, "RESTRICTIONS COULD BE RELAXED WHERE TURTLES ARE AND HISTORICALLY HAVE BEEN RARE." THE GULF OF MEXICO IS AN AREA OF RARE TURTLE OCCURANCE BASED UPON:

1. COAST GUARD BOARDING - NMFS ASSISTED BY 37 DIFFERENT COAST GUARD UNITS CONDUCTED OVER 1100 SHRIMP VESSEL BOARDING AND DID NOT DOCUMENT ANY LIVE OR DEATH TURTLES IN ANY OF THESE BOARDING.
2. A TED OBSERVER STUDY DONE BY ED KLIMA (NMFS) FROM MARCH 1988 to 1991, MADE 1551 TED TOWS IN THE GULF AND SOUTH ATLANTIC.
  - 742 TOWS OFF THE WESTERN GULF, CAPTURED ONLY 4 LIVE TURTLES
  - 187 TOWS OFF THE EASTERN GULF, CAPTURED ONLY 11 LIVE TURTLES
  - 622 TOWS OFF THE ATLANTIC STATES, CAPTURED ONLY 52 LIVE TURTLES
3. STRANDINGS VS EXTRAPOLATION
  - NAS REPORT SHOWS TURTLE STRANDINGS IN CONFLICT WITH OBSERVED CAPTURES
  - NMFS GULF STRANDINGS IN CONFLICT WITH FISHING EFFORT
    - 32 TEXAS STRANDINGS (July 8-17, 1990) GALVESTON TO PORT O'CONNOR
    - EXTREMELY LOW FISHING EFFORT
    - 0 TEXAS STRANDINGS (July 8-17, 1990) CORPUS CRISTI TO MEXICO
    - EXTREMELY HIGH FISHING EFFORT
4. PROFESSOR SCHWARTZ'S REVIEW OF THE NAS REPORT. THE REPORT:
  - USED EXTRAPOLATED DATA WHICH MAY BE FAULTY OR COMPLETELY IN ERROR
  - USED WEASEL WORDS TO IMPLY ACCURACY WITH NO BACK UP
  - COMMITTEE APPROACHED THE STUDY WITH PRECONCEIVED BIASED CONCLUSIONS
  - COMMITTEE DID NOT KNOW TURTLES CAN GO UP TO 20 HOURS BETWEEN BREATHS
  - PROPORTION OF DEAD TURTLES DOES NOT INCREASE WITH LENGTH OF TOW TIME
  - HAS MANY CLAIMS THAT ARE NOT SUPPORTED WITH DATA

THE PEOPLE SHOULD GET POLITICALLY ACTIVE TO PERSUADE CONGRESS TO:

- STOP THE NOAA-NMFS PROPOSED EXPANSION OF TED REGULATIONS
- RELAX TED REGS AND TOW TIMES IN THE GULF & SOUTH ATLANTIC
- HAVE ALL CIVIL PENALTIES DROPPED
- HAVE ALL CRIMINAL CHARGES REVERSED
- PAY BACK ALL MONIES SPENT BY GULF SHRIMPERS THAT PURCHASED TEDS
- PAY LOSS INCOME TO SHRIMPERS THAT USED TEDS
- AMEND THE ENDANGERED SPECIES ACT TO INCLUDE ECONOMICS
- INVESTIGATE THE TRUE MOTIVES BEHIND THE TED INJUSTICE

Readers of this CSA newsletter can contact Tee John at the Gretna office, (504) 391-1177, to join our "Let's Get Political Movement" and for detailed information to inform your politicians on the state and national level.

## TEDs not recommended for Mexican Shrimp fleet

The following information was written from a study conducted jointly by the Ministry of Fisheries of Mexico and the NMFS. During the 8th meeting of Mexus-Gulf, held in Yucalpeten, Yucatan in November of 1983, American researchers suggested that a Mexican technical expert on fishing participate in research relating to the TED and experimental fishing with trawling nets. As a consequence, plans of action were formulated to begin testing the TEDs in Mexico. The NMFS would provide the technical information concerning the TEDs and would send trawling nets with attached TEDs for experimentation off the coasts of Tampico, Mexico. The actions begin in 1984 and continued through 1987 aboard research vessels of the National Institute of Fisheries and certain commercial vessels of fishing cooperatives.

In 1984, the first tests were done aboard a commercial shrimp fishing vessel, "Captain Mario", in five days of fishing off the coast of Tamaulipas. The nets equipped with TEDs netted 48% less shrimp and records indicated that turtles were not caught in any of the tows.

In 1985, another experimental fishing trip was conducted off the Pacific coast aboard the vessel "Fatima." TED design used corresponded to the pliable model type NMFS-II. In none of the tows run with conventional nets adapted with the TED, was there any capture of shrimp or marine turtles. Consequently, a comparative study was not feasible.

In 1986, nine experimental trips were taken off the

coast of the Pacific ocean, from the port of Mazatlan, Sin., aboard three commercial vessels; the "Mar De Cortes X," "21 de Agosto IV" and the "Punta Prieta II." Fifty-five tows were run, with an average of 18 tows per vessel. An average of 15.4% less shrimp were captured when utilizing the TED and again no evidence of captured marine turtles was indicated.

In 1987, two trips were made aboard the "Banpesca 70" and "Marquez XVI", vessels of 69 and 71 feet in length. The depths ranged from 10 to 20 fathoms. A comparative study of the TEDs indicated that the soft type captures 15% less shrimp. In none of the tows done in both vessels were turtles captured.

During the period between 1984 and 1987, 82 tows were made in order to compare experimental fishing in 14 trips aboard seven commercial shrimping vessels and one research fishing vessel. It was concluded that no marine turtles were ever captured in nets with or without excluder devices. The results observed off the Pacific coast shores using the TED type NFMS-II indicated that the reduction in the shrimp accompanying Fauna varies between 5.1% to 66.7%, with a global average of 28.4%. The use of the TED brings a considerable reduction in the volume of shrimp. In the Gulf of Mexico the average loss was approximately 17% with the use of a TED. The Pacific ocean study showed a reduction of approximately 14.2%. The global percentage including all 14 trip averaged 15.6%. Considering the results obtained, utilizing the TED by the Mexican fleet was not recommended.

*The following letter was in response to a request by the Jefferson Parish Marine Advisory Board for Information on Coast Guard boardings and the number of turtles recovered from commercial fishing vessels since the TED law went into effect. It seems obvious that the U.S. Coast Guard Office of Enforcement is not ready to admit that no turtles were found on commercial vessels...*

Dear Mr. Pearce,

I am enclosing our latest TEDs enforcement statistics. We don't break statistics down by state, but rather by the areas covered by our major field commands. Most of Louisiana is covered by Coast Guard Group New Orleans which is represented by "NOLA" in the report. The Group New Orleans area of responsibility extends from Gulfport, Ms. to Cameron, La. District-wide statistics are shown under heading "D8".

We don't keep statistics on the number of criminal cases, nor the number of turtles found on vessels. I recommend you contact the National

Marine Fisheries Service at (813) 893-3145 for this information.

Sincerely, J.J. Surbey  
Captain, U.S. Coast Guard  
Chief, Operations  
by direction of the Commander



A North Carolina university professor has expressed skepticism regarding the contents of a report by the National Marine Fisheries Service on the declining sea turtle population.

The comments of Professor Frank J. Schwartz of the Institute of Marine Sciences at the University of North Carolina at Chapel Hill were made in a critical letter to Nancy Foster and Dr. William Fox of NMFS in response to a request for review input on an NMFS document entitled, "Decline of the Sea Turtles: Causes and Preservation."

While Schwartz's comments were not intended to reflect the stance of the institute or the university, he has 36 years experience with publications on sea turtles in Maryland and North Carolina.

"It is rampantly evident that the committee approached the study with preconceived biased conclusions that TEDs are the solution to...sea turtle deaths," charged Schwartz.

Of the ten experts on the panel who prepared the report, he noted, only four have studied and published on the subject of sea turtles. Two have never studied sea turtles and have no knowledge of the subject other than what they may have gleaned during the project.

Although the committee was charged with reviewing scientific and technical information on sea turtles, wrote Schwartz they "re-invented the wheel" by apparently rehashing information already available in published literature, instead of reviewing up-to-date information or aspects to resolve the problem they were entrusted to resolve.

He accused the committee of spending too much time using "extrapolated data which may be faulty or completely in error, (such as) total numbers of turtles killed," producing a report "fiddled with weasel words

that imply accuracy when the committee has none to back up a statement or observation."

According to Schwartz, the committee "ignores NMFS's own data that shows that the escape aspect (of) trawling with TEDs is great. Tests...constantly confirm that the large escape...of turtles...occurs) at the expense of other fisheries such shrimp. The committee insists that turtle deaths are linked to commercial fishing efforts when...just the opposite is true."

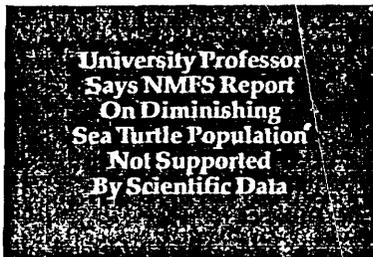
Schwartz said the committee failed to show that autopsied turtles had died from dry drowning, adding that in autopsies he had conducted on many North Carolina turtles, dry drowning was the cause of death in less than five percent.

"The committee was not aware that sea turtles can go long intervals between breaths, up to 20 hours," he pointed out. And the committee also was unaware that "depth behavior of males (sur-

face) and females (bottom) makes all...population estimates from aerial surveys useless, for all sexes are not visible equally on the surface in a 50-50 ratio, as one would expect," he added.

Schwartz also criticized the use of extrapolated data, a procedure which "has many pitfalls, for effort is not the same by geographic area, nor can one simply assume that if one boat catches one turtle per day, then X boats will catch X turtles per day, season, etc. Such captures are useless or erroneous when...extrapolated for a season, area of fishery, as a total effect on turtles."

In nine typed pages of rebuttal of the committee's findings, Schwartz explained, page by page and line by line, his basis for concluding that "many areas in the report make claims that are not supported with data."



## Sonic Excluder Rejected

At a Red Snapper hearing held in Cameron, Louisiana this past August, the people were told about the rejection of the testing of a sonic excluder device. Daniel Leveque, P.E., submitted the following testimony regarding a practical alternative to cage-type excluder devices.

During the TEDs Hearing in Cameron, Michal Tribco announced that he, Dr. Martin Lenhardt, and I had worked together to develop an idea for an alternative type of excluder device, one that could be used to prevent turtles and any other unwanted species from getting caught in shrimp nets.

We called the device a Sonic Excluder Device because it works on the principle of sound energy, sort of like blowing the horn of your car to warn an animal to get out of the road. It was a very simple idea, a good idea, one that the shrimpers immediately said that they would like to see tested since it would be so much more practical than cage-type excluder devices.

What happened to the Sonic Excluder Device idea? If a new Excluder Device is to be accepted as a legal alternative for already-approved Excluder Devices, it must be tested according to a rigid set of rules established by the Federal government.

To properly meet the minimum requirement for the testing would have cost over \$200,000. We did not have that kind of money but we were told that there was a program available that could provide money for that purpose. We prepared a detailed proposal in order to

get a grant to do the work needed in order to have the Sonic Excluder Device tested and accepted as an alternative.

After many months, we were told that the proposal was rejected. No specific reasons for the rejections were given. We have received no reply to a May 22, 1990 letter we sent to the National Marine Fisheries Service, our most recent attempt to find out why the idea has been rejected.

Mr. Tribco met with representatives of the Louisiana Wildlife and Fisheries July 24, 1990 to ask for their assistance in having the Sonic Excluder Devices considered as alternatives to cage-type excluder devices. As late as this week, even the LWFD has not been able to find out why the Sonic Excluder Device idea was rejected without ever being tested in the field.

It works in Dr. Lenhardt's turtle tanks at the Manne Institute in Virginia and we think that it would work in the Gulf.

We believe that it should be possible and practical to use sound waves to repel from the path of a shrimp boat species not being sought by the shrimper.

We believe that we have a practical solution to everyone's problem, a solution that would save the turtles, the snappers, the shrimpers, everyone, and we cannot understand why it has been rejected.

Mr. Daniel Leveque, P.E.  
Lake Charles, LA 70605

## Tauzin Asks Bush For TEDs Solution

U.S. Rep. Billy Tauzin (D-La.) expressed his disappointment with the Bush Administration's apparent selective sympathy regarding turtle excluder devices (TEDs) and U.S. shrimping families.

In a letter to the president, Tauzin cited his disappointment for the administration taking "immediate and direct involvement" in a recent delay of steps to protect the northern spotted owl because the White House had concerns that such steps could harm the timber industry in the Pacific Northwest.

In the letter Tauzin said he has been working for over a year with several of his congressional colleagues with the current and previous administrations on the issue. He said that numerous ideas have been put forth to the Department of Commerce and to the Bush administration to strike a balance between protection of endangered sea turtles and the commercial shrimpers.

Tauzin also reminded Bush of the conversation that he had with Tauzin, Reps. Lindy Boggs (D-La.), and Bob Livingston

(R-La.) aboard Air Force One on the way to New Orleans on September 8, 1989, for a presidential visit. During that flight Bush told White House Chief of Staff John Sununu that he did not want to put shrimping families out of business and instructed Sununu that something should be done to alleviate the problem, Tauzin said.

In May of this year the long awaited National Academy of Sciences study on the effectiveness of TEDs in turtle conservation was presented to Congress. Tauzin cited the study for its recommendation to seek modifications in the application of TEDs. He urged the president to modify the regulations to protect the livelihoods of shrimping families.

Negotiations with foreign governments to

protect endangered sea turtles may be drawn out, Tauzin wrote. He also pointed out that shrimpers are "feeling the effects of imports and rising costs of operation as their small and uncontrollable profit margins dwindle."

"I know the president is just as genuinely concerned about the livelihood of the shrimping families as he is with the timber families," Tauzin said in a statement from his Washington office.

A little boy sat upon the wharf,  
cause Daddy was coming home!  
His little eyes were filled with pride,  
Daddy's been gone so long...  
He just knew that in the hold,  
a good catch had been laid,  
Mom wouldn't worry now so much,  
the bills could all be paid.  
We wouldn't even lose the house,  
for which they'd worked and slaved,  
Before the TEDS, when times were good,  
and hard work really paid.  
But something was wrong; something  
terribly bad!  
Dad's shoulder's were dropped and  
his eyes seemed so sad.  
His arms were so tense, as he hugged  
his son tight,  
He couldn't look him in the face;  
something just wasn't right.

He said, "Daddy, please, tell me  
what is wrong if you can.  
I'll help you fix it, I'll understand!"  
His daddy said, "Son, I'd love to, but,  
I simply don't know how;  
The shrimp we managed to haul aboard,  
fills less than half the bow.  
We dragged and worked so very hard,  
and the shrimp were really there;  
But, to save the turtles, they made us  
pull TEDs and that made us lose half  
the boat's share!  
They say we must save the endangered  
species, and don't care what happens  
to our families!

There's something gone wrong with the  
laws of our land-  
abortions okay, kill the unborn babies'

I just don't understand!  
But save the turtles that we never see!  
They don't give a damn about you and me!  
Save the turtles! Kill unborn babies?  
Destroy families! With laws made by men!  
This was not God's intention, my son,  
We'll fight until the end!"

by Juanita Matherne

GENESIS: Chapter 1, Verse

26

*And God said, "Let us make man in our image, after our likeness; and let him have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth."*

I am 59 years of age, own my own vessel and have been a shrimp fisherman for the past 42 years. My two sons have been fishermen all of their lives and my son-in-law is also a fisherman.

Concerning the TED issue it seems as though the public has only heard one side of the story, as told by environmentalists. They make you believe that the trawler is the bad guy and responsible for killing the turtle population.

Before the Texas season even opened, the news media had a story showing a crippled turtle washing up on the Texas shore. The environmentalists said this had to be a poor turtle caught by a shrimp trawler illegally (bootlegging) off the Texas coast. They made it seem like this was the only way it could have died and washed ashore. I do not think this true.

Then after the season opened another story said that 31 turtles were found dead and washed ashore from Galveston to Madagada Beach. Again, before investigating, environmentalists made you believe that the "terrible trawlers" were the cause of this.

I would like to tell you that these 31 turtles were found dead about the same time and in the same area as the burning tanks and oil spill off of Galveston. Remember all of the chemicals sprayed in trying to put out that fire. But no one said that this tragic accident could have harmed the turtles.

We then travelled further West to Aransas Pass to follow the shrimp. I know that there were at least 500 other fishing boats besides myself who went West.

There was not one TV story showing dead turtles. I did not personally hear of any turtles that were killed in that area.

If any turtles would have been killed I am sure the environmentalists would have made a big issue of this.

Personally, I do not recall the last time I caught a turtle in my nets.

Some people try to say that we are not catching any more turtles in our nets because we killed them all and they are becoming extinct.

I am sure most of you by now have seen the TV programs showing what is happening on Mexico's beaches. The local citizens there are butchering the turtles on the hatching grounds. The people are getting the turtle eggs and either selling them or using them for themselves or to feed their animals. I understand that most of these people are poor and use what nature will send them. But by far these people are a much greater threat to the turtle population than we are.

As a man who makes his living off of natural resources, I do not want to see one of nature's creatures become extinct.

I cannot understand how environmentalists can say that the TEDs are the answer. This device is a drastic measure to save a few turtles at the cost of making the fisherman extinct.

Tests show that we will loose up to 42% of our catch

if these things are put on our nets. The authorities accuse us of not knowing how to install the TEDs. I know for a fact that these "authorities" experimented with the TEDs on a fishing vessel and when all was said and done these experts also lost 42% of the catch...

...An environmentalist said that it did not matter how much shrimp was lost with the TEDs. Well I want to tell you that was an awful big statement and very hard to swallow.

My boat is tied up for five months out of the year from December to April. During that time I do not collect unemployment or take advantage of any governmental subsidizing program.

If I have to put a device that loses 1/3 to 1/2 of my catch, I will most definitely go out of business and then the government will have to support me. I want to tell you that I do not want to see this happen.

All of these problems don't even address the dangers TEDs pose to the crew members. I know of one instance where a fisherman was knocked overboard by a TED. Fortunately, he was not hurt but he most certainly could have been severally injured...

...I feel that when our cause is honestly told to the people and President George Bush, the truth will prevail and we will be freed from the harms of the TEDs.

I ask you, Mr. Environmentalist, to tell me how many turtles you have found while boarding our boats and checking our nets during the day and in the middle of the night; delaying our work for hours on end.

Why don't you show the truth and stop putting all the blame on the fisherman?

Why don't you invest your time and money in farming turtles instead of exterminating fishermen?

There are thousands of dollars spent each year in shrimp farming and I am sure turtle farming can be productive and yield much more than 8,000 turtles each year.

The public has been misinformed from the very beginning and we, the fishermen, are paying the price.

One trip to Mexico will show you where part of the problem lies. Just go there and you can buy purses, boots, shoes, belts and jackets made with turtle skin.

Mr. Environmentalist you are trying to stop us from making a living. How would you like it if we stopped your paycheck, credit cards, retirement and insurance or not let you be able to have your car or vacation?

Recently in Texas one of my fellow fishermen was arrested, his boat seized, he was put in jail and his bond set at \$10,000.00. For what? He did not kill a turtle, he did not even have a turtle in his possession! Can you tell me this is fair?

So what will the TEDs prove? Will they prove to save the turtle? I don't think so but I can assure you the TEDs will not save our industry.

Mr. Environmentalist, I invite you on my boat on my next trip out. I will bet you that no turtle will be caught.

Steven Charpentier  
Galliano, La.

## Letters

May 9, 1990

Honorable Billy Tauzin, Honorable Solomon Ortiz, Honorable Bob Livingston, Honorable Gregg Laughlin, Honorable Earl Hutto, Honorable Gene Taylor:

Dear Congressmen:

The members of this association appreciate all your endeavors to assist the industry through an Oversight Hearing on TEDs, and to allow the Subcommittee of Fisheries and Wildlife to be made aware of the existing conditions of the most valuable fishery of the U.S.

During the oral testimony of Mr. William Fox, he advised that there was documented take of the sea turtles in the shrimp fishery that extended beyond the present TED regulations. The shrimp industry from North Carolina to Texas expresses their concern that this regulation excluded the inclusion of those states at the time of the implementation of the present mandatory regulation and questions why the exclusion by NMFS existed. We strongly support an immediate expansion of the regulations to include that shrimp fishery in the New England states.

We are astonished to learn from Ambassador Edward Wolfe's statement on the bottom of Page 2 and top of Page 3... "The Department of State and the Commerce Department's National Marine Fisheries Service (NMFS) have been consulting on how this provision of the law should be implemented. NMFS is currently working to determine the average incidental take rate for the U.S. fleet, which is necessary before standards for comparability can be developed."

Is the Henwood & Stuntz Report on Capture and Mortality of Sea Turtles in Shrimp Trawls obsolete? The statistics in that report (47,000 capture and 11,000 mortality by the shrimp industry) forms the basis supporting the mandatory regulation.

Also, we would like to remind the Congressmen that Mexico was given the TED option 1984-1988, but rejected the TEDs because of shrimp loss and that they felt their trawlers posed no threat to sea turtles of any magnitude. Other countries have been approached, but the Mexico report of rejection is the only report that has been seen by the industry.

This association again stresses that the pond raised

shrimp must be included with wild production under the embargo system. There are countries of the pond raised shrimp involved in the direct and indirect use of sea turtles and those countries are using the U.S. market in which the domestic fleet must compete. Those countries are contributing to the decline of the turtle populations and will ignore, if allowed, conservation measures to enhance sea turtle populations.

Because of the condition of the shrimp industry, and the delay anticipated by the State Department to embargo shrimp under the Pelly Amendment, we feel that the regulation should be placed with the General Accounting Office for a complete review and analysis of impact on the industry. NMFS should be held accountable to the General Accounting Office, with skepticism toward the use of "extrapolations in terms of" and "best scientific data available," in sea turtle capture and mortality by shrimp trawlers, and the supporting data that TEDs incurred insignificant shrimp loss. Therefore, economic impact on the industry would be under a "minor rule." Evidence of loss of income by the industry is now present, as stipulated by the shrimp industry at the public hearings on the proposed regulation, that the majority of the most valuable fishing industry would fall into a state of bankruptcy from a regulatory taking of income, and NMFS has begun to speak in terms of a 10 percent shrimp loss with the use of TEDs. Industry contends 30 percent loss.

We are baffled about the ineffectiveness of the Head Start Program. This program has been in effect for over 12 years and

received glowing reports, and funds continued to be appropriated at the request of NMFS and USFW. Perhaps the reason we have seen no return on nesting females is the fact that for the first few years, until scientific data revealed that temperature determined sex, a male population was being released into the wild. It may be that this program has potential and should not cease rearing wild hatchlings without a further study. Would it not be feasible for members of Congress to review a thorough field study of the facilities at the Galveston Lab for a determination of whether the experimental population should be continued or cease?

Thank you for all your assistance and we look forward to working with you on all aspects affecting this industry.

*Concerned Shrimpers of America*

***This letter was written to six Gulf Coast Congressmen praising their visible support of the Concerned Shrimpers of America.***

April 11, 1990

Senator J. Bennett Johnston  
136 Hart Eldg.  
Washington, D.C. 20510

Dear Senator Johnston:

I am a shrimper from Erath, Louisiana and find myself trapped in a dilemma created by the United States Congress. I am appealing to you for help and guidance concerning the TED issue. The following is an account of how the TED regulation is impacting my efforts to make a living.

Since late January, I have been shrimping off of Key West Florida. For two months, I trawled with TED's in all four of my nets. My boat, the Brothers Fride, was checked by agents of the Florida Marine Fisheries Patrol on February 10, 1990 and found to be in compliance with the TED regulations, as well as, other marine regulations. During that time period, I was catching about \$3,000.00 worth of shrimp per week. That was barely enough to justify going out.

In talking to other fishermen in the area, the one's that were catching good, were not pulling TED's. I experimented for myself by removing the TED's from two of the nets and leaving them in the other two. There was a dramatic difference. The nets without the TED's consistently caught 100 to 150 pounds more shrimp.

On March 26, 1990, I removed the other two TED's. During that week of fishing my catch jumped to \$5,700.00 worth of shrimp - nearly double when compared to trawling with TED's.

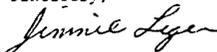
On April 2, 1990, I was boarded again by Florida Marine Fisheries Patrol. The agent turned out to be the same one who checked me on February 10th. I was given a citation for not pulling TED's. The agent noted on the citation that previously I was using TED's. This boarding by the Florida agency took place in federal waters and no other violations were found.

Senator Johnston, what do I need to do? What can you do in Congress to correct this burden on the shrimper? The ironic thing about the whole mess is that during the entire time I was down there, I did not catch any turtles.

I will be going out again in a few days. Should I put the TED's back in? Should I keep loosing shrimp? Please let me know something. My address is 710 West Pine Street, Erath, Louisiana, 70533. My phone number is (318) 937-6705.

Thank you for whatever assistance you can offer.

Sincerely,



Jimmie Leger

Mr. Tee John Mialjevich  
 P.O. Box 477  
 Delcambre, Louisiana 70528

Dear Tee John:

Knowing that your Board meeting is coming up in the near future to consider approval of the agreement reached in Houston, I thought it appropriate to send you -- and your Board -- this letter outlining my thoughts.

The decision for the Board is not going to be easy. The prospect of using TEDs, particularly given your justifiable concerns with the amount of accompanying shrimp loss, is not something your members are likely to be enthused about. However, it is my firm belief the Houston deal is the best deal available for your membership. I am not trying to say the Houston deal is the right or the best way to approach the problem, or that it is not. In my opinion, that is now academic. A deal has been struck, and unless you have the political clout to overturn it, it will go into effect.

To complicate matters for your Board, the Louisiana Variable is a substantially better deal for your constituency than the Gulf-wide regulations. As you know, however, the Louisiana Variable is not available to Louisiana if you don't buy off on the entire deal. Therefore, you and your Board have to decide whether or not you've got the political clout to overturn the entire deal. If you don't, then you should grab the Louisiana Variable and sign off.

My perception of your "political clout" is that you probably don't have enough. If that is an accurate assessment then it simply is not worth the risk of losing the Variable. I'm not trying to be negative Tee John -- I'm just trying to assess political reality. And the political reality of this situation is that the leading commercial shrimp industry organizations (with the exception of yours) from South Carolina to Texas, and the environmental community, have signed off and endorsed a set of regulations which deal with a very difficult, controversial, and contentious problem. The fact they have done so represents substantial political clout.

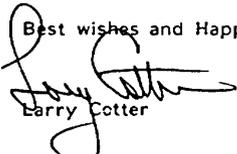
In the face of that consensus is it really reasonable to believe there will be enough political enthusiasm in the Senate to reject an agreement which has been endorsed by everyone except the Concerned Shrimpers? I think not. This is particularly true if the alternative is the distinct possibility of more restrictive regulations in the event NMFS is forced to discard this agreement (the environmental community won't agree to less) or the possibility of a very dangerous lawsuit by the environmental community under the Endangered Species Act. With those as the alternatives, and with everyone else signed off,

Mr. Tee John Mialjevich  
 December 17, 1986  
 Page 2

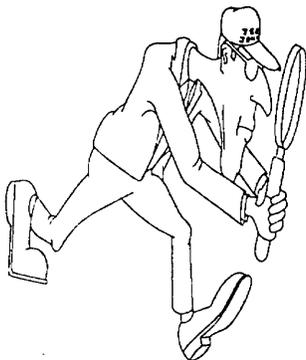
why would any politician want to run the risk of leading the charge?

Tee John, you may not like the Houston deal, but my conclusion is that it is the best deal you will get. I urge you to sign off and take the Louisiana Variable. If you or your Board wishes to discuss this with me further please don't hesitate to call me.

Best wishes and Happy Holidays,



Larry Cotter



## ERROR, SELF-DECEPTION OR FRAUD?

*"The incidental capture of sea turtles in shrimp trawls was identified by this committee as the major cause of turtle mortality as a result of human activities; it kills more sea turtles than all other human activities combined"--from the N.A.S. conclusions. "Offshore Gulf shrimp trawls are the number one killer of snapper, responsible for killing 12 million of the popular food and gamefish annually" NMFS says.*

**IS IT ERROR, SELF-DECEPTION OR FRAUD?** As we are faced with the "scientific findings" that create a problem for shrimpers with turtles, bycatch and red snapper, I feel my comments about scientists are in order. Scientists are not infallible, even the most responsible scientist can make an honest mistake. Mistakes made while trying to do one's best are tolerated when corrected. But mistakes made through negligent work are not. Haste, carelessness, inattention and a number of other faults can lead to work that fails to meet the standards demanded in science. These errors can cost years of effort, both for the scientist who make the errors and for others who try to build on that work.

Some scientists feel that the pressures on them are an inducement to speed up results whether the results are right or wrong. They may cut corners to complete a project while sacrificing quality. Sometimes, scientists have a tendency to see what they expect to see and fail to notice the most obvious conclusions. Self-delusion or self-deception is not only confined to an individual scientist, scientists as a group often get caught up in the scientific pursuit that later proves to be unfounded.

Sometimes there is fraud. A significant difference exists between preventable error and outright fraud. In the case of error the scientists do not intend to publish inaccurate results, but when scientists commit fraud, they know what they are doing. It can range from selecting only one side of a position, to changing the data to meet expectations, to the outright fabrication of results. Fraud can undermine the confidence and trust of society in science with potentially serious consequences.

A scientist can no more be a little bit dishonest than a woman can be a little bit pregnant. Honest scientists are witnessing scientific misconduct. I believe they have an obligation to protect their research from internal erosion and predetermined conclusions of funding agencies. If the proper investigations are started, these honest scientists will come forward to uphold the integrity of science.

So which is it? Error, Self-deception or fraud. Is the shrimping industry really the villain or are some scientists playing with numbers until they come out saying what they want? A general accounting office investigation and an investigation by the inspector general of the Department of Commerce would answer these questions. Contact your congressman and demand that these investigations be started immediately.

This Ad is Paid for by The Concerned Shrimpers of America

Author-Tee John Mailjevich, President

# VALLEY

Valley Morning Star

D Section

Wednesday, July 17, 1991

## Waterway may threaten port

### Officials keeping eye on proposal

By HECTOR F. GARZA-TRUJO  
Valley Freedom Newspapers

BROWNSVILLE — The construction of a proposed intra-coastal waterway between the Mexican ports of Matamoros and Veracruz could take away half the business from the Port of Brownsville, Port Director Jim Kruss said.

"It would not kill us, but it's something we need to watch," Kruss said.

The Mexican government is studying the possibility of dredging about 700 miles of waterway along the Gulf of Mexico, from an area 16 miles south of Matamoros all the way to Veracruz, said Vernon Behrhorst, executive director of the Gulf Intra-coastal Canal Association.

Behrhorst said his organization recently signed a consulting agreement with the Mexican firm Constructora, Consultora y Comercializadora to look into the potential construction of the waterway. CCC, a private company, is doing a feasibility study for the Mexican government, he said.

The proposed waterway would take care of domestic commerce along the coast. It would be used largely to transport oil, Behrhorst said.

Behrhorst said the proposed waterway could divert some of the traffic that goes through Brownsville between Mexico and the United States and Canada. "But it also has the potential of increasing traffic," he said.

Kruss said the new waterway likely would decrease the traffic through the port of Brownsville. Though he pointed out he did not have precise statistics at hand, Kruss estimated that about half the business at the Port of Brownsville comes from intra-coastal commerce.

"I understand the project is still in its early stages ... it may not go through," Kruss said. "But if it goes through, it's going to affect us all — (the ports of) Corpus Christi and Brownsville."

Brownsville Economic Development Council Chairman of the Board Irv Downing said he did not know much about the Mexican waterway project, yet. "But it's something we need to look at," he said.

"Anything that affects the Port of Brownsville affects the entire area," he said. "That's why we need to follow it closely."

Intra-coastal waterway plans also were included in a report the Mexican tourist agency FONATUR put out regarding the proposed development of La Pesca as a multi-million dollar tourist resort.

FONATUR's report said the waterway would go from Matamoros to Tampico, passing from La Pesca, which is halfway between the two coastal cities. FONATUR's plans indicate that the waterway would serve to attract tourism from the United States along the waterway, in addition to increasing commerce along the coast.

According to FONATUR, the La Pesca development would rival other resorts developed by the same agency, such as Cancun, in the Yucatan peninsula.

*This is all over*

*the Kemp's ridley sea*

*turtles' nesting area!*

*It's the DOC's*

*head?*

July 17, 1991

John Mialjevich  
Concerned Shrimpers of America  
722 Bellemeade Blvd.  
Gretna, LA 70056

This is a brief synopsis of the events leading up to the Coast Guard boarding my vessel, Romans 1:16, and my receiving a citation claiming I was pulling altered TEDs.

On Tuesday, July 16, 1991, I was shrimping off Freeport, Texas. At approximately 2:00 p.m. my vessel was boarded by four officers of the U.S. Coast Guard. Upon boarding, the officers inspected safety equipment, boat papers, etc. After which I was instructed to haul back in order that they could inspect the TEDs. After a lengthy inspection and "private" discussion between the officers, they decided to contact the C.G. Cutter Pt. Spencer from where they had departed. The Spencer notified the Galveston office. Around 4:00-4:30 p.m., Galveston instructed the Spencer to escort my vessel to the Coast Guard station in Freeport. We arrived there around 6:30 p.m. and were met by two officers from NMFS. The Marine Fisheries officers and Coast Guard personnel inspected the TEDs at least five times. At this time they decided to contact NMFS headquarters in Pensacola, Florida to determine what action should be taken. Over the phone NMFS in Pensacola instructed them to issue me a citation and confiscate my nets for trawling with altered TED's. I was repeatedly informed that I could go to jail and be fined up to \$50,000.00.

One of NMFS' officers had been transferred from California for the Texas opening specifically for TEDs enforcement. He told me that he had been led to believe that Gulf Shrimpers caught 2, 3 and 4 turtles per drag and hauled in "tons" of shrimp when in actuality he had seen no turtles and the largest total catch he had seen for an entire trip on a boat was 3,000 lbs. This proves the misinformation that is being distributed even within their own agency.

As per our conversation, for two years I have complied with the law by using TEDs. My TEDs were built by a commercial net man here in Freeport. Since he supplied many shrimpers I had no reason to question the legality of my TEDs.

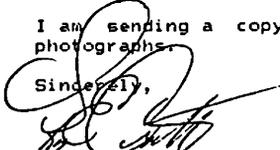
I am enclosing photographs taken by a local press photographer showing that the hole in my TEDs was regulation size and nothing blocking the hole. The photographs were taken from a distance due to the fact that Mac Fuss with NMFS would not allow the photographer on the vessel.

I have contacted my congressman's office and they say he has already begun taking action.

I also contacted my friend in Brownsville and she says Johnny Jerome owner of the fishing vessel Jason Wade is the man arrested for not having any TEDs and was fined \$50. His telephone number is (512) 544-7761. I tried to contact him but apparently he is out fishing. I was unable to get the name of his attorney at this time.

I am sending a copy of this by mail with copies of the photographs.

Sincerely,



Roy E. Crook, III

TESTIMONY OF JULIUS COLLINS  
BEFORE THE COAST GUARD AND NAVIGATION SUBCOMMITTEE  
OF THE MERCHANT MARINE AND FISHERIES COMMITTEE  
U.S. HOUSE OF REPRESENTATIVES  
WEDNESDAY, JULY 24, 1991  
WASHINGTON, D.C.

Good morning ladies and gentlemen, I am Julius Collins of Brownsville, Texas. I have been in the shrimp business all my life. Son of a shrimper, I started working at age 15 after going to school for 8 years. I started on the bays and bayous of Louisiana, gradually worked to the offshore Gulf, and in 1952 moved to Brownsville, Texas where I now work strictly in Gulf waters. I currently own five Gulf vessels. I am a member of the Board of Directors and a past President of the Texas Shrimp Association. I also serve on the Gulf of Mexico Fishery Management Council, a post I have held since 1981.

I am very confused about these new amendments to the sea turtle regulations that are being proposed by the National Marine Fisheries Service. I am also very confused and disappointed with the actions of some Coast Guard personnel when boarding vessels for TED inspections.

On behalf of the membership of the Texas Shrimp Association, we strongly oppose these regulations and urge you to oppose them also. The shrimp industry in the Gulf is currently operating at a distinct disadvantage because of the requirement to use turtle excluder devices (TEDs) in their nets 9 months out of the year. The most productive time for shrimp occurs during those 9 months. Now for no apparent reason NMFS is proposing to extend the use of TEDs year round. The National Marine Fisheries Service admits to a 15% loss of catch using TEDs and believe me at times it's alot more than that. We don't like it but we are complying with the law.

There is also a proposal to confiscate the shrimp catch for any TED violation. That could bankrupt some of us as we do not have control of our

boats once they leave the dock. We are at the mercy of the crews. I don't believe it happens very often, but there is the possibility that the crews could alter the nets once they are on the fishing grounds.

This year's shrimp season in Texas opened on July 6th, and at a recent meeting of the Gulf of Mexico Fishery Management Council in Key West, Florida, I asked the NMFS Regional Director about compliance with TED regulations since the start of the season. His answer was that after a massive enforcement effort in which NMFS and Coast Guard agents were brought in from all over the country, the first 2 days of the season there were over 140 boardings off the Galveston area with only 5 violations cited. Four of those violations were technical and only one was a criminal violation -- which tells you that over 99% of the shrimpers were in compliance.

With this in mind ask yourselves, why does NMFS want to impose more turtle regulations on the shrimp industry?

I also asked the Regional Director how many strandings were recorded. His answer was 2. I later found out that after 10 days of massive effort by the shrimp fleet, only 3 strandings were observed and none could be directly blamed on shrimp trawl operations.

Again, with that in mind, why does NMFS want to impose more TED regulations on the shrimp industry?

At the Gulf Council meeting in Key West a report was given by a representative of the U.S. Fish and Wildlife Service on nesting female Kemp's ridley sea turtles. As of July 1st of this year over 1,100 nests had been documented on the beach at Rancho Nuevo, Mexico and they expect more nestings before the end of the season. That's a significant increase over last year and the first time since 1977 that the number of nests has

gone over the 1,000 mark.

With this in mind, why does NMFS want to impose more turtle regulations on the shrimp industry?

Why are these new regulations being proposed at a time when things are going so well and the conflict between industry and government is beginning to settle down? Why is the shrimp industry being threatened instead of rewarded for complying with TED regulations? When Dr. Fox, Assistant Administrator of NOAA, was asked that question he indicated that the agency is responding to a threat of a lawsuit by an environmental group. Since when is it the policy of a government agency to propose regulations on its citizens in response to a threat? To me this sounds as if NMFS is being blackmailed. And if this is the case, what does NMFS intend to do the next time an environmental group threatens to sue? -- impose the death penalty for anyone attempting to make a living using a net in the Gulf of Mexico? If these new regulations pass, that is the only option remaining.

Ladies and gentlemen, we are hard working human beings trying to survive in this ever-changing world. At least give us a fair opportunity to do so.

I want to thank you for giving me the opportunity to testify before the subcommittee. I would be happy to answer any questions.

Office of General Counsel  
 Southeast Region  
 2450 Koger Boulevard  
 St. Petersburg, FL 33702

Re: Case No.

Dear

On , 1991, this office issued you a Notice of Violation and Assessment charging you with a violation of the Magnuson Fishery Conservation and Management Act. The NOAA assessed a penalty of \$ . The penalty became a final agency assessment on , 1991. That penalty is now due and payable to the federal government.

There are two immediate consequences of your failure to pay the penalty. First, permit applications filed with or issued by the National Marine Fisheries Service will be denied or revoked. Second, a maritime lien has been created against the vessel used in the violation. Additionally, failure either to pay this penalty (by check or money order made payable to the "Treasurer of the United States") or to make suitable arrangements to pay such penalty within thirty days of receipt of this letter will result in further action by the Government. Further action includes filing a collection action against you in federal district court, asserting the maritime lien (resulting in seizure and sale of the vessel to pay the penalties assessed, plus interest, non-payment penalty, and an administrative fee), or reporting the debt as income to the Internal Revenue Service (IRS).

Please be further advised that, commencing as of the date of this letter, you will be charged interest on the outstanding civil penalty at the rate of eight percent (8%) per annum, unless the civil penalty is paid within thirty (30) days from such date. In addition, you will be assessed charges to cover the cost of processing and handling this delinquent claim; you will be assessed a further penalty, not to exceed six percent (6%) per annum, should this debt become more than ninety (90) days past due.

If you have any questions concerning this matter, please contact me at 813-893-3617.

Sincerely,

Staff Attorney

TABLE 6-2 Order-of-Magnitude estimates of human-caused mortality on juvenile to adult loggerhead and Kemp's ridley sea turtles, an index of the certainty of the mortality estimates, and a list of preventative or mitigative measures needed or in place for each type of mortality.

Source of Mortality Caused by Humans	Mortality (number/year)		Bank of Certainty of Estimate*	Preventative and Mitigative Measures in Place
	Loggerheads	Kemp's Ridleys		
Shrimp Trawling	5,000-50,000	500-5,000	1	Turtle excluder devices, tow times, time and place restrictions.
Other fisheries (trawl and release, passive gear, including entanglement in lost nets and debris)	500-5,000	50-500	3	Open and closed seasons and fisheries, and Maritime Pollution International Protocol
Dredging	50-500	5-50	2	Seasons and turtle removal
Collisions and boats	50-500	5-50	3	None
Oil-rig removal	10-100	5-50	3	Surveys and turtle removal
Entrainment in power plants	5-50	5-50	1	Turtle removal with tended barrier nets
Directed take	5-50	5-50	3	Prohibition

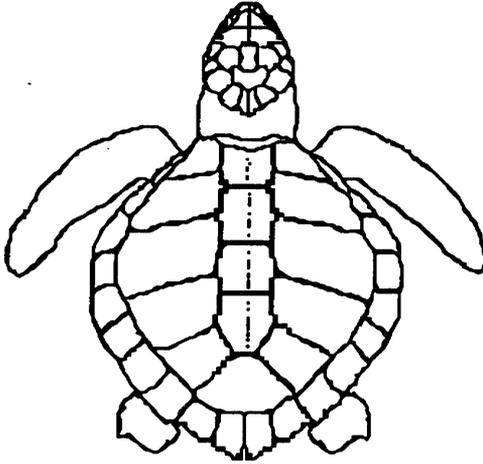
\*1 = most certain, 3 = least certain



## **NOAA Technical Memorandum NMFS - SEFC - 266**

---

**Kemp's Ridley Head Start Experiment and Other Sea  
Turtle Research at the Galveston Laboratory:  
Annual Report-Fiscal Year 1989**



**U. S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Southeast Fisheries Center  
Galveston Laboratory  
Galveston, TX 77551-5997**

**JUNE 1990**



**NOAA TECHNICAL MEMORANDUM  
SEFC-NMFS-266**

**Kemp's Ridley Head Start Experiment and Other Sea  
Turtle Research at the Galveston Laboratory:  
Annual Report-Fiscal Year 1989**

**BY**

**Clark T. Fontaine, Marcel J. Duronslet, Dickie B. Revera,  
Theodore D. Williams, Jo A. Williams, Sharon A. Manzella,  
Erich K. Stabenau, Andre M. Landry, Jr. and Charles W. Caillouet, Jr.**

**U.S. DEPARTMENT OF COMMERCE  
Robert A. Mosbacher, Secretary**

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
John A. Knauss, Administrator**

**NATIONAL MARINE FISHERIES SERVICE  
William W. Fox, Assistant Administrator for Fisheries**

**JUNE 1990**

**This Technical Memorandum series is used for documentation and timely communication of preliminary results, interim reports, or similar special-purpose information. Although the memoranda are not subject to complete formal review, editorial control, or detailed editing, they are expected to reflect sound professional work.**

The National Marine Fisheries Service (NMFS) does not approve, recommend or endorse any proprietary product or proprietary material mentioned in this publication. No reference shall be made to NMFS, or to this publication furnished by NMFS, in any advertising or sales promotion which would indicate or imply that NMFS approves, recommends, or endorses any proprietary product or proprietary material mentioned herein or which has as its purpose any intent to cause directly or indirectly the advertised product to be used or purchased because of this NMFS publication.

**This report should be cited as follows:**

**Fontaine, Clark T., Marcel J. Duronslet, Dickie B. Revera, Theodore D. Williams, Jo A. Williams, Sharon A. Manzella, Erich K. Stabenau, Andre M. Landry, Jr. and Charles W. Caillouet, Jr. 1990. Kemp's ridley head start experiment and other sea turtle research at the Galveston Laboratory: Annual report-fiscal year 1989. NOAA Technical Memorandum NMFS-SEFC-266, iv plus 28p.**

**Copies may be obtained by writing:**

National Technical Information Service  
5258 Port Royal Road  
Springfield, VA 22161

## EXECUTIVE SUMMARY

The National Marine Fisheries Service (NMFS), Galveston Laboratory completed its eleventh year of the head start experiment by releasing 808 tagged Kemp's ridley sea turtles (Lepidochelys kempi), of the 1988 year-class on 25 May 1989 offshore of Padre Island, Tx. One wild live-stranded and rehabilitated Kemp's ridley (found stranded as a hatchling) also was released with the 1988 head start year-class. Another 45 head started Kemp's ridleys of the 1986 year-class and 45 of the 1987 year-class were released offshore of Panama City, FL between 17-24 May 1989 during turtle excluder device (TED) certification trials conducted by the NMFS Mississippi Laboratories.

Currently, 19,657 Kemp's ridley hatchlings have been received for head starting of which 14,655 have been tagged and released (74.6%). Most hatchlings have been imprinted to Padre Island but some have been imprinted to Rancho Nuevo and Grand Cayman Island. Experiments on captive propagation of head started Kemp's ridleys was successfully completed by the Cayman Turtle Farm (1983) Ltd., Grand Cayman, B. W. I. but relocation of stunted, abnormal, incurably sick or permanently handicapped head started Kemp's ridleys to other organizations or agencies continued.

In July 1989, 2,012 hatchlings of the 1989 year-class were flown by U. S. Coast Guard helicopter to the head start facilities from the primary nesting beach at Rancho Nuevo, Tamaulipas, Mexico, where they had been incubated, hatched and "imprinted."

The Galveston Laboratory continued its participation in NMFS' Sea Turtle Stranding and Salvage Network (STSSN), documenting strandings of sea turtles along the coasts of Texas and southwest Louisiana on a two-week sampling interval. Stranding reports were prepared and submitted to STSSN state coordinators in Louisiana and Texas. Texas A&M University necropsied carcasses of dead-stranded sea turtles to determine sex, reproductive development, food habits and possible cause of death. Marine debris and sea turtle entanglement sampling surveys were continued once per month from West Matagorda Peninsula, TX to the Mermentau River, LA in conjunction with STSSN activities. Sixteen aerial surveys for sea turtles and Sargassum concentrations were conducted along the lower coast of Texas during the Fiscal year (1 October 1988 - 30 September 1989).

During fiscal year 1989, DNA analyses of blood samples from Kemp's ridley and green sea turtles was successfully used to determine sex and routine histological examination for sex determination of gonads and kidneys taken from ridleys that died during head starting continued. In addition, two and three year-old head started Kemp's ridleys were used in stress physiology studies related to turtle excluder device (TED) certification trials in Florida. Preliminary results indicate that post-trawl

changes in blood variables are the results of a mixed acidosis containing metabolic and respiratory components.

A study was initiated in fiscal year 1989 to ascertain the level of genetic variation present in populations of Kemp's ridley and to investigate phylogenetic relationships of Kemp's to other sea turtles. There may be major implications to sea turtle conservation and management if the genetic relationship of Kemp's ridley to other sea turtles, especially the olive ridley, are clearly understood. Further, biochemical characterization of Rathke's gland exudate was completed on Kemp's ridley and loggerhead sea turtles and possible functions of the gland were indicated. Amino acid and amino sugar composition of high molecular weight fractions indicated similarities between the two species and the presence of lactic acid, a metabolite produced during anaerobic glycolysis, suggested a possible excretory function of this gland.

On 10-11 August 1989, a Blue Ribbon Panel comprised of Drs. Peter Pritchard, John Hendrickson, Nat Frazer, Mark Grassman and Thane Wibbels conducted a program review of the Kemp's Ridley Head Start Experiment and made recommendations to the NMFS Southeast Regional Office in St. Petersburg, FL concerning future work.

## INTRODUCTION

Kemp's ridley sea turtle (*Lepidochelys kempi*) is the most endangered of the sea turtles. In June 1947, an estimated 40,000 turtles nested in a single day at the principal nesting beach near the village of Rancho Nuevo, Tamaulipas, Mexico, bordering the western Gulf of Mexico (Hildebrand, 1963). During the nesting season from 8 April to 16 August 1989, only 835 nests were found there (Richard Byles, U.S. Fish and Wildlife Service, Albuquerque, NM, personal communication, September 1989).

Head starting is an experiment and is part of an international recovery program aimed at restoring the Kemp's ridley sea turtle population (Klima and McVey, 1982; Woody, 1986). Phases of head starting include collecting, incubating and hatching the eggs, "imprinting" the hatchlings, rearing the hatchlings in captivity for 9-11 months, and tagging and releasing the turtles into the wild (Klima and McVey, 1982; Mrosovsky, 1983; Caillouet, 1984; Burchfield and Foley, 1989; Fontaine *et al.*, 1985, 1989b). One goal of head starting has been to establish a new nesting colony in the United States at the National Park Service's (NPS) Padre Island National Seashore near Corpus Christi, TX.

One working hypothesis for head starting is that eggs and hatchlings become imprinted to their natal beach in such a way that the turtles return as adults to copulate and nest at the same location when mature (Owens, Grassman and Hendrickson, 1982; Klima and McVey, 1982; Caillouet, 1984; Fontaine and Caillouet, 1985; Fontaine *et al.*, 1985, 1989b). This hypothesis remains unproven for any sea turtle species, but recent genetic research by Meylar, Bowen and Avise (1990) on green turtles (*Chelonia mydas*) supports it. The Kemp's ridley head start experiment is perhaps the largest field test of this hypothesis ever attempted. Another working hypothesis of head starting is that the head started turtles have at least as good a chance of survival after their release as their wild counterparts of the same age or size. Head starting clearly increases survival during the first year of life in captivity as compared to survival of hatchlings in the wild.

The ultimate success of head starting will depend upon documented evidence showing that head started Kemp's ridleys survive, mature and nest on beaches to which they were "imprinted." So far, this criterion of success has not been achieved. Reasons for the failure could include, but are not necessarily limited to:

- (1) a longer time to sexual maturity than the current 12 year lifespan of the experiment;
- (2) survival rates at sea that are too low to produce sufficient numbers of mature, head started animals for copulation and nesting;
- (3) a lack of imprinting;
- (4) imprinting to other than the natal beach; and

- (5) habituation of turtles to conditions of captive-rearing and human contact that could not be overcome after release.

Of these, item 2 above seems the most likely, considering the wide array of causes of at-sea mortality in sea turtles (Henwood and Stuntz, 1987; Manzella, Caillouet and Fontaine, 1988; Klima, Gitschlag and Renaud, 1988; Fontaine *et al.*, 1989a). However, this does not preclude other reasons.

International teams of biologists and volunteers have collected a small portion (< 5%) of the eggs laid during each nesting season at Rancho Nuevo since 1978. The Instituto Nacional de la Pesca (INP) of Mexico, the U.S. Fish and Wildlife Service (FWS) and its contractors and volunteers have been primarily involved in this phase. Most of the eggs were collected in plastic bags then placed in polystyrene foam boxes containing sand from the Padre Island beach (Burchfield and Foley, 1989). In this way, they were not allowed to touch the Rancho Nuevo sand. Boxes containing the eggs and sand were then transferred by aircraft to the U. S., either to Corpus Christi and thence by vehicle to the Padre Island National Seashore, or by direct flight to the National Seashore. There the eggs were incubated in a hatchery under the surveillance of NPS personnel. Beginning in 1985, incubation temperature was controlled to increase the proportion of female hatchlings (Shaver *et al.*, 1988b). In some years (1978, 1979, 1980, 1983, and 1989) hatchlings also were obtained directly from Rancho Nuevo.

Upon emergence, hatchlings from eggs incubated at the National Seashore were taken by NPS personnel to the Padre Island beach and allowed to crawl into the surf where they were scooped up in dip nets and placed in boxes. After being weighed and measured, the "imprinted" hatchlings were transferred to the National Marine Fisheries Service's (NMFS) laboratory in Galveston, TX, where they were head started for 9-11 months. Most survivors in good health and condition were tagged and released into the Gulf of Mexico. Some were held longer than 1 yr by various cooperating organizations, oceanaria, agencies and universities as a potential brood stock (Caillouet 1984; Caillouet *et al.*, 1986a) and to determine if a longer period of head starting increased survivability following release. Head started turtles kept at the Cayman Turtle Farm, Grand Cayman Island, B.W.I., have been successfully mated, and have produced viable F<sub>1</sub> generation hatchlings (Wood and Wood, 1984, 1989). When the Kemp's Ridley Working Group, comprised of representatives of INP, NMFS, FWS and NPS, held its annual meeting in Brownsville, TX in October 1988, it concluded that enough Kemp's ridleys had been "imprinted" at Padre Island to test the hypothesis of imprinting and to test feasibility of establishing a new nesting colony on Padre Island with head started animals. Thus, Kemp's ridley hatchlings of the 1989 year-class were imprinted at Rancho Nuevo. Since 1985, the NPS has increased its beach patrol intensity at the National

Seashore during the nesting season to search for head started nesters (Shaver et al., 1988a; Shaver, 1989).

#### ACCOMPLISHMENTS

There have been 19,657 Kemp's ridleys representing year-classes 1978-1989 received alive for head starting as of 30 September 1989 (Table 1). Of these, 14,655 (74.6%) had been head started, tagged and released into the Gulf of Mexico and adjacent estuaries (Table 2). Most (80%) of the hatchlings received alive had been "imprinted" to Padre Island, but some had been "imprinted" to Rancho Nuevo (19%) and Grand Cayman Island (1%).

Feeding, growth and survival of Kemp's ridleys during head starting have been reported by Klima and McVey (1982), Fontaine et al. (1985), Caillouet et al. (1986b) and Caillouet et al. (1989). Growth, migration and survival of the head started, tagged and released turtles have been determined from reports of their recapture or stranding (Manzella et al., 1988; Fontaine et al., 1989a). Diseases have been investigated by Clary and Leong (1984) and Leong et al. (1989).

Sporadic nestings of Kemp's ridleys and observations of a few hatchlings in the surf at Padre Island have been reported by the NPS since 1979, but to date there has been no evidence that such events are linked to head started Kemp's ridleys (Shaver, 1989).

A captive stock of head started Kemp's ridleys was established for experiments in captive propagation as a "safety net" for the species (Caillouet, 1984; Caillouet et al. 1986a). Successful captive propagation of Kemp's ridleys was achieved by Cayman Turtle Farm (1983) Ltd., Grand Cayman, B. W. I. with production of viable hatchlings in 1986, 1987 and 1988 (Wood and Wood, 1984, 1989). Responsibility for the captive stock was transferred from NMFS to FWS following the meeting of the Kemp's Ridley Working Group in October 1988 at which time captive propagation was phased out of the recovery program. It was clear at that time that captive propagation was feasible and a proven success, and could be used in the future if all other recovery efforts failed.

Head started Kemp's ridleys that were stunted, otherwise abnormal, incurably sick, or permanently handicapped by injuries were transferred to other organizations, agencies or investigators to be used in research, or to be euthanized (Fontaine et al., 1985, 1989b).

Gonads and kidneys were routinely excised from Kemp's ridleys that died during head starting so that sex of these turtles could be determined histologically (Wibbels et al., 1985). This provided NPS with information necessary to determine the relationship between incubation temperature and sex ratio in Kemp's ridley (Shaver et al., 1988b; King, 1989). Recently, DNA analyses based

on blood samples from live individuals were used successfully to determine sex in Kemp's ridley and green turtles by the Division of Reproductive Genetics, Department of Obstetrics and Gynecology, University of Tennessee, Memphis, TN, in cooperation with the NMFS Galveston Laboratory (Duronslet *et al.*, 1989b; Demas *et al.*, 1990).

Two-year-old and three-year-old Kemp's ridleys reared at the Galveston Laboratory were submerged in trawls containing turtle excluder devices (TED) during TED certification trials off Panama City, FL on 17-24 May 1989. Blood samples were collected from the paired cervical sinuses, before and after 5 min of trawling, and were analyzed for pH, lactate, sodium, potassium, chloride, bicarbonate, total  $\text{CO}_2$  and  $\text{P}_{\text{CO}_2}$ . Results indicated that post-trawl changes in blood variables were the result of a mixed acidosis containing metabolic and respiratory components (Stabenau and Heming, 1989; Stabenau, Heming and Mitchell, MS). This research is being conducted in cooperation with the University of Texas Medical Branch (UTMB), Department of Internal Medicine, Marine Biology Institute and Department of Physiology and Biophysics, as well as the NMFS Mississippi Laboratories and Panama City Laboratory.

A study is underway to ascertain the level of genetic variation present in populations of Kemp's ridley sea turtle and to investigate phylogenetic relationships of Kemp's ridley to other sea turtles, particularly the olive ridley (*L. olivacea*). Blood samples have been obtained from head started Kemp's ridleys representing three year-classes (1986, 1987, and 1988) and 17 clutches, none of which were laid by the same female. Knowledge of the level of intraspecific variation in the Rancho Nuevo population will aid in determining breeding structures and could lead to more effective management and conservation. This work is being conducted by the Department of Radiation Therapy, Biology Division, UTMB in cooperation with the Galveston Laboratory.

It is important to determine how Kemp's ridley sea turtle is related to other sea turtles especially the olive ridley. Clearly, these two closely related species have been shown to be taxonomically and morphologically distinct (Pritchard, 1989), but it would be useful to determine the degree to which they are genetically distinct or similar. For example, if Kemp's ridley and olive ridley sea turtles were shown to be genetically conspecific, though exhibiting morphological differences related to environmental variability over their ranges, this could have major implications to their conservation and management.

The Galveston Laboratory has participated in the STSSN and has conducted a systematic survey of sea turtle strandings on southwest Louisiana and Texas coasts resulting in documentation of 859 stranded sea turtles since 1985. These strandings are preliminary and do not include all strandings reported to STSSN Headquarters in Miami, FL. Total strandings from southwest Louisiana and Texas

are available from STSSN Headquarters and are shown in preliminary summaries in Tables 3-8 for the years 1984-1989, respectively (see also Schroeder 1988, 1989). Of 859 strandings documented by the Galveston Laboratory's survey, 79 were recovered alive of which 19 Kemp's ridleys were rehabilitated and released. Some rehabilitated wild caught or live-stranded turtles have been tagged with radio-tag, sonic-tag or satellite transmitters and tracked when released.

Sea turtle carcasses collected during STSSN surveys were necropsied by the Department of Biology and Marine Biology, Texas A&M University at College Station and Galveston, respectively, to record biological observations and measurements, and to attempt to determine cause of death (Heinly et al., 1988; Plotkin and Amos, 1988; Plotkin, 1989). Surveys of beached marine debris were conducted in the area from West Matagorda Peninsula, TX to the Mermentau River, LA, and provided an opportunity to document ingestion of marine debris by sea turtles and their entanglement in marine debris (Plotkin and Amos, 1988; Stanley, Stabenau and Landry, 1988).

A study of the biochemistry and possible functions of Rathke's gland secretions of head started Kemp's ridleys and loggerheads (Caretta caretta) has been conducted by Radhakrishna et al. (1989) and Weldon and Tanner (1990) of Texas A & M University in cooperation with the Galveston Laboratory. Rathke's gland secretions were found to contain 10 mg of protein per ml in Kemp's ridley and 24 mg per ml in loggerhead. Glucosamine and proline were major constituent amino acids. Amino acid and amino sugar composition of high molecular weight fractions indicated similarities between the two turtle species. It remains to be determined why these two species secrete such large volumes of soluble protein into the environment. Lactic acid, a metabolite produced during anaerobic glycolysis, is also present in the secretions, suggesting a possible excretory function of Rathke's glands (Weldon and Tanner, 1990).

#### HEAD START FACILITIES AND OPERATIONS

Head start facilities and operations have been described in detail by Fontaine et al. (1985, 1989b).

#### Hatchlings Received

During 13-20 July 1988, 925 Padre Island-"imprinted" Kemp's ridley hatchlings representing 10 clutches of the 1988 year-class were received from the NPS (Duronslet et al., 1989a, Tables 1 and 14). The incubating, hatching, "imprinting," packing and transporting operations were carried out by the staff at the National Seashore (Shaver et al., 1988a). All of the clutches came from eggs collected in the usual manner at the Rancho Nuevo beach.

Eggs of the 1988 year-class were incubated at the National

Seashore at 22.5-37.7°C (Shaver *et al.*, 1988a). Sex in Kemp's ridley is influenced by incubation temperature, with the pivotal temperature (that producing a 1:1 F:M sex ratio) near 30°-31°C (Shaver *et al.*, 1988b). Therefore, the sex ratio of the 1988 year-class should have been predominantly female. The sex ratio of hatchlings that died during the year was 2.8:1 (Donna Shaver, National Park Service, Padre Island National Seashore, Corpus Christi, TX, personal communication, March 1989).

The U. S. Coast Guard transported 2,012 Rancho Nuevo-"imprinted" Kemp's ridley hatchlings of the 1989 year-class from the primary nesting beach at Rancho Nuevo to Galveston via helicopter (Table 1) on 9 July 1989. Two hatchlings were dead on arrival. Unlike years past, clutches of hatchlings from the 1989 year-class were mixed together, so the hatchlings were indistinguishable by clutch.

#### Distribution of Hatchlings Among the Raceways

In prior years (through the 1988 year-class), as the clutches of hatchlings were received, they were assigned more or less sequentially to the raceways arranged from east to west in the rearing facilities (Caillouet *et al.*, 1986b; Caillouet *et al.*, 1989; Duronslet *et al.*, 1989a). However, in 1989 the clutches were not kept separated at Rancho Nuevo so the clutches were mixed and the hatchlings were placed in the raceways as they were received.

#### Schedule for Weighing and Measuring Turtles

All hatchlings of the 1988 year-class were weighed (Duronslet *et al.*, 1989a, Table 17) and measured (carapace length and width) at the National Seashore by NPS personnel between 14 and 19 July 1988. Hatchlings of the 1989 year-class were weighed after arrival at the head start facilities (Table 9). Thereafter, at the Galveston Laboratory, a random sample of 5 turtles was selected from each of the 10 clutches of the 1988 year-class for weighing at weekly intervals, and these same five turtles in each clutch were tracked throughout the head start period (Table 10). If a turtle in any of these groups died, became ill or was mislocated, a substitution from the appropriate clutch was made. A random sample of 125 turtles of the 1989 year-class was selected for weighings at weekly intervals (Table 10). Prior to release, all surviving turtles were weighed and measured.

Growth curves of each year-class were fitted by regression of natural logarithms of weight on the square root of age (Table 11). The detransformed growth curves are shown in Figure 1.

#### Food and Feeding

The foods and feeding methods used in head starting Kemp's ridleys were elaborated by Fontaine *et al.* (1985, 1989b) and

Caillouet *et al.* (1986, 1989b). The food used in head starting the 1988 and 1989 year-classes was a dry, floating, pelleted, diet manufactured by Purina, Richland, IN. It is the same diet used for rearing green sea turtles (*Chelonia mydas*) at the Cayman Turtle Farm (1983), Ltd. (James Wood, Cayman Turtle Farm, Personal Communication, August 1984).

The relationship between the average daily food ration (g) per turtle and average weight (g) per turtle in the 1988 year-class was linear (Figure 2). This relationship was used to determine daily rations for the 1989 year-class.

#### Health Care

Health care for the head started turtles consisted of prophylactic and therapeutic measures developed from previous research and experience (Clary and Leong, 1984; Fontaine *et al.*, 1985; Leong *et al.*, 1989). Maintaining clean seawater and warm temperature throughout head starting are among the most effective means of preventing diseases. The Texas Veterinary Medical Diagnostic Laboratory Systems, College Station, TX conducted necropsies on 4 of the 27 turtles that died during head starting of the 1988 year-class. Cause of death was not determined in these turtles due to advanced post-mortem change. Also during the year, a few turtles were provided medical treatment by Dr. Joseph Flanagan, DVM, Houston Zoo, Houston, TX. Overall, the 1988 year-class exhibited 97% survival to release.

#### Environmental Variables

Seawater temperature, salinity and pH were monitored (usually daily) in selected raceways beginning in July 1988 and ending in May 1989, during head starting of the 1988 year-class of Kemp's ridleys. These measurements served as general guides to environmental conditions in the raceways. The daily measurements of temperature, salinity and pH are summarized as monthly means in Table 12.

Average daily weight gain was determined for 50 turtles of the 1988 year-class weighed weekly throughout the head start period. The relationship between average daily weight gain (g) and average daily temperature and average daily salinity during head starting of the 1988 year-class is shown in Figure 3. Temperature ( $^{\circ}\text{C}$ ) and salinity (ppt) averages were grouped in intervals of  $3^{\circ}\text{C}$  or 3 ppt, respectively. As temperature increased and salinity decreased, weight gain increased during head starting. Weight gain also is a function of age and size.

The overall means and ranges in daily temperature, salinity and pH for the head start period were  $27.6^{\circ}\text{C}$  ( $24.8$ - $29.5^{\circ}\text{C}$ ), 27.3 ppt ( $21.0$ - $34.7$  ppt) and 7.7 ( $7.4$ - $7.8$ ), respectively.

Seawater temperature was controlled through heating the air in the quonset huts with forced-air heaters and the incoming seawater with immersion heaters during winter. These measures stabilized the temperature in the raceways quite well.

#### Tags and Tagging

Tags were applied to all Kemp's ridleys of the 1988 year-class that were determined to be healthy (Table 13). Types of tags included: inconel flipper tags, living-tags, and internal, binary-coded magnetic tags (Fontaine *et al.*, 1989b). Inconel flipper tags were applied to the trailing edge of the right front flipper. The flipper tag code series included QQA000-QQA974 for Padre Island-"imprinted" turtles and QQA975-QQA999 for Cayman Island-"imprinted" turtles. Living tags were applied to left costal scute 1 (Fontaine, Williams and Caillouet, 1988). Binary-coded, magnetic tags were inserted into the distal end of the left front flipper.

All head started turtles held longer than one year in captivity had been tagged with metal flipper tags before distribution to cooperating organizations, agencies and institutions (Duronslet *et al.*, 1989a, Table 2). These turtles provided observations on flipper tag retention in captivity. In determining flipper tag loss rates, no data from turtles that died in captivity with the original tag intact were included. Retention time was measured in calendar years from the date of application of the tag. Three year-classes (1978, 1982 and 1984) provided the data.

The cumulative loss rate for monel flipper tags in head started Kemp's ridleys held in captivity beyond one year was calculated for each of the three year-classes using a logistic function (Prager, Recksiek and Saila, 1988):

$$P = 1 / ( 1 + \exp ( -K [ T - T_{50} ] ) )$$

where

K and  $T_{50}$  (the estimated number of years at which 50% of the tags had been lost) are empirical constants,  
 P = cumulative tag loss rate (= probability of tag loss), and  
 T = time (in years).

The estimates of K,  $T_{50}$  and  $r^2$  are shown by year-class in Table 14, and graphs of fitted curves of cumulative tag loss are shown in Figure 4. The 1978 year-class had better tag retention than the other two year-classes. However, within five years of tagging, most tags had been shed. This retention is somewhat better than that for monel tags on loggerheads in the wild (Henwood, 1986). The cumulative recoveries of head started-tagged-released Kemp's ridleys (Figure 5) could reflect tag loss as well as mortality and detection/reporting rates of tagged animals. These three effects cannot be distinguished from one another in the recovery data.

Metal flipper tag shedding rates have been examined in loggerheads (Henwood, 1986) and green turtles (Balazs, 1982 and 1983). Henwood (1986) concluded that the monel flipper tag is not a permanent tag for loggerheads and gave three primary reasons:

- (1) improper tag application,
- (2) tissue necrosis and
- (3) tag corrosion.

Balazs (1983) showed good success with inconel alloy flipper tags applied to Hawaiian green turtles. Apparently, flipper tag loss can be substantially reduced through use of inconel alloy tags and by improved application techniques.

The 1985 year-class of Kemp's ridleys was tagged with inconel alloy flipper tags, and results were similar to those of Balazs (1983). After 4 years, no inconel flipper tags have been shed from Kemp's ridleys of the 1985 year-class in captivity. However, the tissue of the flipper surrounding the tag has almost grown over the tag in some instances, and in others the tag is slowly being extruded from the tissue by the wound repair reaction. It appears that these tags will soon fall out, leaving a large crescent shaped tagging scar on the trailing edge of the flipper.

Anyone encountering a tagged or marked Kemp's ridley should contact the NMFS Miami Laboratory, 75 Virginia Beach Drive, Miami, FL 33149 (commercial telephone no. 305-361-4488, -4225, or -4487), or the NMFS Galveston Laboratory, 4700 Avenue U, Galveston, TX 77550 (commercial telephone no. 409-766-3500, -3507, -3523, -3516, -3525). The location and number of the tag or mark, and measurements (straight line) of the carapace length and width, weight of the turtle, location, date and method of recapture, sighting or stranding should be reported to NMFS.

#### Release

There were 808 multi-tagged survivors of the 1988 year-class of head started Kemp's ridleys packed into plastic boxes on 25 May 1989 and transported by truck to the University of Texas' Marine Science Institute at Port Aransas, TX. All turtles to be released were transferred to the University of Texas' research vessel LONGHORN and from there to the release site in the Gulf of Mexico about 12 nautical mi off Padre Island. All turtles were alive and appeared to be in good condition at the time of their release. As has been observed in previous offshore releases most of the turtles floated on the surface for a short time before diving.

A total of 100 multi-tagged turtles of the 1988 year-class was retained at the laboratory (Table 15). These are being held pending possible use in turtle excluder device (TED) certification trials in the Gulf of Mexico offshore of Panama City, FL during

spring 1990.

**SUMMARY OF HEAD STARTED KEMP'S RIDLEY SEA TURTLE RELEASES AND RECOVERIES**

Release data for head started Kemp's ridley year-classes 1978-1988 is summarized in Table 2. Of the 14,655 tagged Kemp's ridleys released, 621 had been recovered as of 30 September 1989 (Table 16). Of these, 159 from the 1982 year-class washed ashore at Padre Island shortly after the release. Many of these stranded turtles had ingested or become covered with oil after being released only 4 nautical miles from shore near Sargassum concentrations (Table 17). Also, many of the 117 recaptures of the 1985 year-class were caught within the bays in which they were released, or in adjacent bays, shortly after their release. The smallest number of recoveries (2) was from the 1988 year-class which had been at sea only 4 months as of 30 September 1989.

Most of the recoveries have occurred in Texas (Table 18) near the release site. Louisiana and Florida ranked second and third in number of recoveries, followed by North Carolina and South Carolina, respectively. Three turtles have been recovered as far away as France and Morocco (Manzella et al., 1988; Fontaine et al., 1989a).

The method of recovery was not reported (Table 19) in 16.4% of the cases. Of the reported methods of recovery, two dominated: stranded (43.6%) and shrimp trawl (22.7%). Of the stranded recoveries, 38.4% were found alive and 61.6% were found dead. Of the 141 shrimp trawl-caught recoveries, 51.8% were reported from Texas and 30.5% from Louisiana, for a combined percentage of 82.3% (Table 20). Table 21 shows the condition of the tagged sea turtles at the time of their recovery. More than half (57.3%) of the turtles were reported as being recovered alive and released back into the environment. More recoveries of head started turtles occurred in Spring (58.4%) and summer (25.9%) than in other seasons (Table 22).

**Captive Propagation**

The successful production of Kemp's ridley hatchlings by the captive breeding experiment conducted at Cayman Turtle Farm, Grand Cayman, B. W. I., and their export to the U.S. for head starting proved that captive propagation is feasible (Caillouet et al., 1986a). Therefore, the Kemp's Ridley Working Group decided that no more hatchlings would be produced at the turtle farm, and some of the breeders (Table 23) were exported to the U.S. and released in 1989. The 1988 year-class of hatchlings was the last to be produced at the turtle farm and head started at the Galveston Laboratory.

During fiscal year 1989, 121 Kemp's ridleys were conditioned

in outside, semi-natural enclosures preparatory to their release. The first group included 90 turtles (45 of the 1987 year-class and 45 of the 1986 year-class) used in TED certification trials offshore of Panama City, Florida. These turtles were conditioned in two earthen ponds at Sea-Arama Marineworld in Galveston for two weeks before transfer by NOAA aircraft to Florida on 17 May 1989.

Another 31 Kemp's ridleys were placed in Sydnor Bayou (part of the Galveston Bay System) for conditioning in August 1989 (Table 23). The entrance to the bayou was blocked off with a wire fence in August which was removed in October, thus releasing the turtles. The turtles placed in Sydnor Bayou included: 15 head started breeders returned from Cayman Turtle Farm (one was found dead of unknown causes three days after introduction into the bayou); 7 head started subadults of the 1984 year-class that had been maintained at Sea-Arama Marineworld; one subadult of the 1984 year-class that had been returned from Bass Pro Shops, Springfield, MO.; 5 1987 year-class and 2 1986 year-class that were part of the Kemp's ridleys held at Sea-Arama Marineworld; and 1 1984 year-class ridley that had been returned from Audubon Park and Zoological Gardens, New Orleans, LA. In addition, 1 loggerhead sea turtle (*Caretta caretta*) that had been received from the Florida Department of Natural Resources in 1987 was also released into Sydnor Bayou.

The twelve adult Kemp's ridleys of the 1978 and 1979 year-classes, previously held at Sea-Arama Marineworld, were transferred to Sea World of Texas in San Antonio during 1988, where Dr. David Owens continued his experiments on their reproductive physiology.

#### OTHER ACTIVITIES

##### By-Catch of Wild Sea Turtles

The wild sea turtle by-catch data file being maintained at the Galveston Laboratory includes turtles reported as by-catch by commercial and recreational fishermen. As of 30 September 1989, 82 by-caught turtles had been reported with shrimpers accounting for 86.6% of the total. Of the shrimp-caught turtles, 42.7% were caught in standard trawls (with no TED), off vessels participating in the Galveston Laboratory's TED evaluation program. One was caught by gill net and 7 by hook-and-line.

Of the 82 turtles recorded in the by-catch file, 41 were loggerheads, 21 Kemp's ridleys, 1 leatherback (*Dermochelys coriacea*), and 5 hawksbills (*Eretmochelys imbricata*), with no species identification reported for 14 specimens. Sixty-eight of the turtles were reported alive and 12 dead. For 2 of the turtles the condition upon capture was not reported. Turtles were reported from five states including: Florida (35), Texas (32), Louisiana (9), Georgia (4) and South Carolina (1).

### Sea Turtle Sightings

The Galveston Laboratory maintains a sea turtle sighting data file. A sighting is an event in which a sea turtle is seen, usually swimming at the surface. Sea turtle strandings or turtles caught in trawls are excluded from this file. Some of the sightings were reported by divers belonging to dive clubs and some have been reported by oil companies cooperating with Galveston Laboratory observers on oil rig severance and salvage operations under Section 7 of the Endangered Species Act. Additional sightings were made by NMFS employees, boat operators, fishermen and the general public.

There were 152 sightings on file as of 30 September 1989. Four species were represented: 3 leatherbacks, 63 loggerheads, 14 Kemp's ridleys and 12 greens (*Chelonia mydas*). An additional 60 sightings were recorded, but no species identification was possible. Sightings were reported from Texas (65), Louisiana (63), Florida (17) and Alabama (5). For 2 of the turtles, no location was reported. One-hundred forty-four of the turtles were alive when sighted, 5 were dead, and 3 reports did not indicate whether the turtles were dead or alive. Of the 152 sightings, 122 were associated with some type of structure such as an oil platform, dock, or shrimp boat, etc.

In late June 1989, two "Sea Turtle Sighting Signs" were erected at the Fish Pass Jetties in Mustang Island State Park near Port Aransas, TX. These signs described the different species of sea turtle that inhabit the Gulf of Mexico and explained that numerous turtles had been sighted in the area. The signs requested that beachgoers, surfers and recreational fishermen report to NMFS any sea turtles seen around the jetties. Between 28 June 1989 and 30 September 1989, 67 sighting reports were received from the general public. Four species were reported including: 14 Kemp's ridleys, 13 hawksbills, 10 greens and 8 loggerheads. For 22 sightings no species identification was given. Such sighting information provides a valuable index of sea turtle occurrence near the north jetty at Port Aransas. When positive identifications of species were made by NMFS personnel, results showed that juvenile green sea turtles were the most common species near the jetty. Most turtles were seen during the hours of 10:00 a.m. and 6:00 p.m., probably the part of the day the jetties are most frequented by the public. Turtles were more frequently seen on the north side of the north jetty, as compared to either side of the south jetty. This was probably because the north side of the north jetty is most protected from the prevailing wind driven waves. Plans are to expand this project to other passes and jetties in Texas.

### Radio and Sonic Tracking

Radio and sonic transmitters are attached when possible to

juvenile and sub-adult sea turtles that have been rehabilitated after being stranded or caught alive from the estuarine or bay environment. Such turtles are released into the same area where found or caught, and are tracked for about 30 days. Data are collected on submerged and surfaced times, movements, habitat and environmental conditions such as salinity and water and air temperatures. Such data will help determine what areas are important habitats for sea turtles and will provide a better understanding of their life cycles.

Two separate inshore tracking studies were completed during the year. The first, in Lake Calcasieu, LA, involved a 1985 year-class head started Kemp's ridley that was originally released on 6 May 1986 offshore of North Padre Island, TX. The turtle was caught in a fisherman's gill net in the West Cove area of Lake Calcasieu on 9 April 1988, 704 days after the original release date. After rehabilitation the turtle was re-released into West Cove on 23 September 1988, with radio and sonic transmitters attached, and tracked for 24 days.

The second tracking study involved a wild green turtle that was found cold stunned in the southern Laguna Madre near Port Isabel, TX in February 1989. After rehabilitation, the turtle was re-released on 24 August 1989, with radio and sonic transmitters attached, into the southern Laguna Madre and tracked for 26 days. Results of both studies are currently being analyzed.

#### **Sea Turtle Stranding and Salvage Network (STSSN)**

Sea turtle stranding surveys not only provide a means of quantifying the numbers, species, and sizes of stranded sea turtles, but also provide valuable information concerning life history and possible causes of sea turtle mortality at sea. The temporal-spatial distribution of sea turtles can be surmised from strandings in combination with information on ocean currents, stomach contents and sessile organisms (e.g., barnacles, etc.) growing on their shells.

The Galveston Laboratory continued its participation in the NMFS STSSN, with a focus on the coasts of Texas and southwest Louisiana. The STSSN area surveyed by the Galveston Laboratory covers the entire Texas coast from the Rio Grande River to the Sabine River (excluding the Padre Island National Seashore covered by NPS, and the Wynn Ranch covered by FWS on Matagorda Island) and the southwestern Louisiana coast from the Sabine River to the Mermentau River. Accessible beaches are surveyed using 4-wheel drive vehicles, 4-wheel all-terrain vehicles, or dirt bikes, depending upon their remoteness and conditions on the beach. In addition, reports from the public concerning strandings are responded to by Galveston Laboratory STSSN participants who collect the data and salvage the specimens. From 1 October 1988 through 30 September 1989, the STSSN documented 184 stranded sea turtles in

the survey area (Table 8). Nueces, Cameron and Galveston counties ranked highest in number of reported strandings.

A severe cold spell was responsible for 18 of the strandings reported from Cameron County, TX in February 1989. Seawater temperatures in the lower Laguna Madre, where the turtles were found, reached a low of 3°C (Don Hockaday, Pan American University, Personal Communication 1989). The cold-stunning event involved 16 green sea turtles, one loggerhead and one unidentified species. Thirteen of the green turtles were still alive when found. They were rehabilitated and released by either Sea Turtle, Inc. or Pan American University Marine Laboratory, South Padre Island, TX.

Sea turtle strandings in bays and estuaries can also yield valuable information about sea turtle biology. However, inshore beaches and marsh edges are generally inaccessible to vehicular traffic, and strandings are difficult to locate from boats. As a consequence, observations in inshore areas have been made through aerial surveys by Galveston Laboratory observers aboard U. S. Coast Guard helicopters.

A total of 25 aerial reconnaissance surveys for sea turtle strandings were conducted from 4 October 1988 through 26 September 1989. Surveys were made in conjunction with U. S. Coast Guard helicopter training flights within the Galveston, Matagorda, San Antonio and Corpus Christi bay systems. Only 1 stranded marine mammal (a bottlenose dolphin) was found on 8 August 1989, on the shoreline of upper Corpus Christi Bay near Portland, Texas. Although no stranded sea turtles were observed from the helicopter, 5 live sea turtles were sighted in the Matagorda (3 turtles) and Corpus Christi (2 turtles) bay complexes. These sightings, along with the 35 verified inshore strandings reported by volunteers, give further evidence that inshore areas are important sea turtle habitat.

Sea turtle carcasses have been collected for necropsy by Texas A&M University with the intent of obtaining biological information and determining cause of death. However, only in a few specific cases can death be attributed to a specific cause based on necropsy (Plotkin, 1989). In most stranded animals, tissue decomposition is too advanced to definitely establish a cause of death. Necropsies also provide valuable biological data on sex, reproductive development and food habits. From 1 October 1988 through 30 September 1989 25 necropsies were performed. Stomach contents were removed from 21 animals and sexes were positively identified in 6 loggerheads (2 F, 4 M), 5 Kemp's ridleys (4 F, 1 M) 1 green (M) and 1 species unknown (M).

There is increasing evidence, however, for a number of possible causes of mortality in sea turtles at sea including (1) incidental capture in shrimp trawls (Henwood and Stuntz, 1987), (2) underwater explosions associated with petroleum platform

salvage operations (Klima *et al.*, 1988), (3) hook-and-line fisherman, both commercial and recreational (Manzella *et al.*, 1988), (4) ingestion of debris, especially plastics and tar-balls (Stanley *et al.*, 1988; Plotkin, 1989), and (5) collision with boats/propellers and entanglement in plastic monofilament fishing lines and other plastic debris (Heinly *et al.*, 1988; Plotkin and Amos, 1988).

Year around sampling of sea turtle strandings is essential as one means of evaluating conservation and management measures such as NMFS' implementation of mandatory use of TEDs, regulations concerning petroleum platform severance (through Section 7 Consultation under the Endangered Species Act), and Section 7 Consultations concerning the impacts of U. S. Army Corps of Engineers dredging projects. Longtime-series of data are especially important in this respect, and the STSSN's data base of strandings provides such a series, going back to 1980 (Schroeder, 1988, 1989).

#### Hatchling and Juvenile Sea Turtle Habitat

It has been postulated that Atlantic coast populations of sea turtles spend their first year of life in offshore convergence zones in association with accumulations of Sargassum (Carr, 1987). Large floating mats of this seaweed may provide both shelter and forage for the hatchlings. Cruises were conducted off the south Texas coast in April and July of 1989 to sample in offshore Sargassum mats in search of hatchling and juvenile sea turtles and forage organisms. The mats were first located by Galveston Laboratory observers aboard U. S. Coast Guard aircraft flying over the Gulf of Mexico. Flights were made on 10 Oct and 15 Nov 1988; 1 Feb, 24 and 30 March, 3, 7, 5, 11, and 28 April, 31 May, 7 and 29 June, 18 and 25 July and 29 August, 1989. Once Sargassum concentrations were located, their coordinates were radioed to sampling crews onboard the University of Texas' R/V LONGHORN.

Thirteen Sargassum mats were sampled by divers and surface trawls during 5 days in two offshore cruises. Divers failed to observe sea turtles from beneath the mats, and surface trawl hauls, producing 1.2 - 2.1 m diameter balls of the seaweed, also failed to capture sea turtles. Stomach contents of pelagic fish caught near the mats did not contain hatchling turtles or sea turtle parts. Pelagic fish included 22 dolphin (Coryphaena hippurus, 38.0 - 51.5 cm fork length), 7 King mackerel (Scomberomorus cavalla, 83.0 - 115.0 cm fork length), 2 bonita (Sarda sarda, 40.0 and 58.5 cm fork length), and 1 wahoo (Acanthocybium solandri, 115 cm fork length).

#### Marine Debris and Entanglement

Galveston Laboratory staff served on the Texas Coastal Cleanup Steering Committee sponsored by the Center for Marine Conservation

(CMC) and on the Texas General Land Office's "Adopt-a-Beach" Task Force. The Galveston Laboratory's SSTS and marine debris-entanglement survey activities were coordinated with these two programs.

The marine debris and entanglement study was funded by NMFS' Northwest and Alaska Fisheries Center. Sampling for marine debris and entanglement was completed. Monthly samples were collected at five locations on the upper Texas coast and at one location in southwest Louisiana from June 1987 through September 1989. Characterization of the types and quantities of debris is being made. Stranded sea turtles found entangled or fouled in marine debris and those determined to have ingested such debris are being documented for the same time period.

#### **Sea Turtle Rehabilitation**

Live-stranded sea turtles and those captured alive by divers for future satellite tracking studies were held and rehabilitated (when necessary) and were either tagged and returned to their natural habitat or transferred to oceanaria. Those collected by divers were fitted with satellite transmitters and were released in the same general area offshore from which they were caught, while rehabilitated live-stranded turtles were tagged with radio and sonic tags and tracked in estuarine areas. Twelve live-stranded or live-captured sea turtles were held or rehabilitated in fiscal year 1989. Rehabilitation also gave sea turtle biologists and cooperating veterinarians further experience in medical treatment and rehabilitation of live-stranded sea turtles.

#### **BLUE RIBBON PANEL REVIEW**

The Kemp's ridley head start experiment was reviewed in August 1989 by a Blue Ribbon Panel of sea turtle experts including Drs. Peter Pritchard, John Hendrickson, Nat Frazer, Mark Grassman and Thane Wibbels. The Panel's summary conclusions are paraphrased below:

There is worldwide interest in the question of whether or not head starting is an effective tool for conserving endangered sea turtle populations. The NMFS' Kemp's ridley head start experiment represents an unprecedented opportunity to address this question. If head starting works, this experiment has the potential of contributing significantly to population recovery of Kemp's ridley. Through the head start experiment, the Galveston Laboratory has refined first-year captive-rearing of sea turtles into an exact science. There is no better facility or staff in the world for this purpose.

Long-term tag return data indicate that head started turtles can adapt and grow in the wild, and breeding experiments have shown that head started turtles can successfully reproduce in captivity. However, based on tag return, stranding, by-catch, and nesting beach data collected by NMFS, U. S. Fish and Wildlife Service and Instituto Nacional de la Pesca, it is presently impossible to determine if head started ridleys are recruited into the natural breeding pool. Shrimp trawling-induced mortality of Kemp's ridleys (both wild and head started) is so high that few if any head started ridleys are expected to reach sexual maturity.

The head start experiment should be continued for a 10 year period following implementation of TED regulations in U. S. Gulf and Atlantic waters. This recommendation was based in part on current estimates of the time required by Kemp's ridleys to reach sexual maturity in the wild (8-10 years) and the apparently high rate of mortality all sea turtles are exposed to from various causes in the wild.

The Kemp's ridley head start experiment and HEART (Help Endangered Animals - Ridley Turtles) have greatly increased public awareness of the endangered status of sea turtles. Though enhanced public awareness is a worthwhile aspect of the work it should be made clear to the public that head starting is an experiment and it should not be viewed as the panacea of sea turtle conservation. There is a risk that head starting might be viewed by the public as the means of restoring the Kemp's ridley, thus detracting from the primary element of the Kemp's ridley recovery plan (i.e., protection of ridleys in their natural habitat). Thus, the survival of this species could be jeopardized by undue emphasis on head starting.

#### **Public Outreach**

The head start facility received approximately 5,900 visitors during the fiscal year. HEART held its annual open house on 11 February 1989, and about 1,000 people visited the head start facility on that day. Other community outreach activities included slide presentations at various schools, organizations and nature clubs. Numerous packets of information on sea turtles were sent out in response to requests.

#### **CHANGES IN DIVISION STAFF**

The current permanent staff of the Life Studies Division working on sea turtles includes:

Charles Caillouet, Marcel Duronslet, Clark Fontaine, Sharon Manzella, Dickie Revera and Theodore Williams.

Throughout fiscal year 1989 a number of temporary staff members resigned including George O'Donohoe, George Wyatt, Carolin Turner, Mervin Doucet, Alan Gielen and Kirsten Loop. The current temporary staff of the Life Studies Division working on sea turtles includes:

**STSSN:** Robert Barber, Jane Boslet, John Pitre, Hank Nieuwendaal, Robert Heinly, Gerilyn Jewett-Smith, Sherman Jones, Mark King, Will Vanoy, Pam Plotkin, Kerry Stanley and Anthony Williams.

**Head Start:** Gregg Sloat, Billy Ross, Steve Hollenbeck and Christy Giessinger.

**Physiological Studies:** Erich Stabenau

**Tracking:** Jo Anne Williams

#### PUBLICATIONS IN FISCAL YEAR 1989

Caillouet, C. W., Jr. (1990). Sea turtle conservation and management: the need for a unit stock approach. Accepted for publication in Marine Turtle Newsletter.

Caillouet, C. W., Jr. and A. M. Landry, Jr. (Editors). 1989. Proceedings of the First International Symposium on Kemp's Ridley Sea Turtle Biology, Conservation and Management. Texas A&M University, Sea Grant College Program, TAMU-SG-89-105, vi plus 260 p.

Caillouet, C. W., Jr., S. A. Manzella, C. T. Fontaine, T.D. Williams, M. G. Tyree and D. B. Koi. 1989. Feeding, growth rate and survival of the 1984 year-class of Kemp's ridley sea turtles (*Lepidochelys kempi*) reared in captivity, p. 165-177. In: Caillouet, C. W., Jr. and A. M. Landry, Jr. (Editors). Proceedings of the First International Symposium on Kemp's Ridley Sea Turtle Biology, Conservation and Management. Texas A&M University, Sea Grant College Program, TAMU-SG-89-105, vi plus 260 p.

Caillouet, C. W., Jr., D. B. Revera, M. J. Duronslet and J. Brucks. 1989. Dermatoglyphic patterns on Kemp's ridley sea turtle flippers: can they be used to identify individuals?, p. 146-150. In: Caillouet, C. W., Jr. and A. M. Landry, Jr. (Editors). Proceedings of the First International Symposium on Kemp's Ridley Sea Turtle Biology, Conservation and Management, Texas A&M University Sea Grant College Program,

TAMU-SG-89-105, vi plus 260 p.

- Demas, S., M. Duronslet, S. Wachtel, C. Caillouet and D. Nakamura. 1990. Sex-specific DNA in reptiles with temperature sex determination. *Journal of Experimental Zoology* 253:319-324.
- Duronslet, M. J., D. Nakamura, C. W. Caillouet and S. Demas. 1989. Sex identification in young Kemp's ridley sea turtles (Lepidochelys kempii). *Marine Turtle Newsletter* No. 47, p. 2-3.
- Duronslet, M. J., C. W. Caillouet, Jr., C. T. Fontaine, D. B. Revera, T. D. Williams, J. A. Williams, S. A. Manzella, A. M. Landry, Jr. and E. K. Stabenau. 1989. Kemp's ridley head start and sea turtle research at the Galveston Laboratory: annual report-fiscal year 1988. NOAA Technical Memorandum NMFS-SEFC-223, iii plus 40 p. and 19 Tables.
- Fontaine, C. T., K. W. Indelicato and J. P. Flanagan. (1990). A congenital lung disorder in a juvenile head started Kemp's ridley sea turtle, Lepidochelys kempii. *Herpetological Review* (accepted for publication).
- Fontaine, C. T., S. A. Manzella, T. D. Williams, R. M. Harris and W. J. Browning. 1989. Distribution, growth and survival of head started, tagged and released Kemp's ridley sea turtles (Lepidochelys kempii) from year-classes 1978-1983, p. 124-144. In: Caillouet, C. W. Jr. and A. M. Landry, Jr. (Editors). *Proceedings of the First International Symposium on Kemp's Ridley Sea Turtle Biology, Conservation and Management*. Texas A&M University, Sea Grant College Program, TAMU-SEFC-89-105, vi plus 260 p.
- Fontaine, C. T., T. D. Williams and C. W. Caillouet, Jr. 1989. Scutes reserved for living tags: an update. *Marine Turtle Newsletter* No. 43, p. 8-9.
- Fontaine, C. T., T. D. Williams, S. A. Manzella and C. W. Caillouet, Jr. 1989. Kemp's ridley sea turtle head start operations of the NMFS SEFC Galveston Laboratory, p. 96-110. In: Caillouet, C. W., Jr. and A. M. Landry, Jr. (Editors). *Proceedings of the First International Symposium on Kemp's Ridley Sea Turtle Biology, Conservation and Management*. Texas A&M University, Sea Grant College Program, TAMU-SG-89-105, vi plus 260 p.
- Fontaine, C. T., T. D. Williams and C. Turner. 1989. Hatchling Kemp's ridley strands at Galveston Island, Texas. *Marine Turtle Newsletter* No 43, p. 9.
- Heinly, R. W., E. K. Stabenau, A. M. Landry and M. Duronslet. 1988. Mutilation of stranded sea turtles along the Texas Coast, p.

- 33-34. In: Schroeder, B. A. (Compiler), Proceedings of the Eight Annual Workshop on Sea Turtle Conservation and Biology, NOAA Technical Memorandum NMFS-SEFC-214, 136 p.
- Leong, J. K., D. L. Smith, D. B. Revera, J. C. Clary III, D. H. Lewis, J. L. Scott and A. R. DiNuzzo. 1989. Health care and diseases of captive-reared loggerhead and Kemp's ridley sea turtles, p. 177-200. In: Proceedings of the First International Symposium on Kemp's Ridley Sea Turtle Biology, Conservation and Management, Texas A&M University, Sea Grant College Program, TAMU-SG-89-105, vi plus 260 p.
- Plotkin, P. and A. F. Amos. 1988. Entanglement in and ingestion of marine debris by sea turtles stranded along the south Texas coast, p. 79-82. In: Schroeder, B. A. (Compiler), Proceedings of the Eighth Annual Workshop on Sea Turtle Conservation and Biology, NOAA Technical Memorandum NMFS-SEFC-214, 136 p.
- Radhakrishna, G., C. C. Q. Chin, F. Wold and P. J. Weldon. 1989. Glycoproteins in Rathke's gland secretions of loggerhead (Caretta caretta) and Kemp's ridley (Lepidochelys kemp) sea turtles. Comparative Biochemistry and Physiology, 94B(2):375-378.
- Shaver, D. J., D. W. Owens, A. H. Chaney, C. W. Caillouet, Jr., P. Burchfield and R. Marquez M. 1988. Styrofoam box and beach temperatures in relation to incubation and sex ratios of Kemp's ridley sea turtles, p. 103-108. In: Schroeder, B. A. (Compiler), Proceedings of the Eighth Annual Workshop on Sea Turtle Conservation and Biology, NOAA Technical Memorandum NMFS-SEFC-214, 136 p.
- Stabenau, E. K. and T. A. Heming. 1989. Trawl stress in Kemp's ridley sea turtles American Zoologist 29:139A.
- Stabenau, E. K. T. A. Heming and J. S. Mitchell (1990). Effects of trawl stress on the respiratory acid-base and ionic status of Kemp's ridley sea turtles (Lepidochelys kemp). MS submitted to Physiological Zoology.
- Stabenau, E. K., A. M. Landry and C. W. Caillouet, Jr. (1990). Swimming capacity in captive reared Kemp's ridley sea turtles: II. Swimming kinematics. MS submitted to the NMFS SEFC.
- Stabenau, E. K., A. M. Landry and C. W. Caillouet, Jr. (1990). Swimming capacity in captive reared Kemp's ridley sea turtles: I. swimming performance, speed and behavior. MS submitted to Herpetologica.

- Stabenau, E. K., M. King, A. M. Landry, and C. W. Caillouet. 1988. Swimming performance of head started Kemp's ridley sea turtles, p. 113-117. In: Schroeder, B. A. (Compiler), Proceedings of the Eighth Annual Workshop on Sea Turtle Conservation and Biology, NOAA Technical Memorandum NMFS-SEFC-214, 136 p.
- Stanley, K. M., E. K. Stabenau and A. M. Landry. 1988. Debris ingestion by sea turtles along the Texas coast. p. 119-121. In: Schroeder, B. A. (Compiler), Proceedings of the Eighth Annual Workshop on Sea Turtle Conservation and Biology, NOAA Technical Memorandum NMFS-SEFC-214, 136 p.
- Weldon, P. J. and M. J. Tanner. 1990. Lipids in the Rathke's gland secretions of hatchling loggerhead sea turtles (Caretta caretta). Copeia 1990(2):570-573.
- Weldon, P. J., J. A. Williams and D. C. Rostal. (1990). Rathke's glands: selective discharge and secretion production in loggerhead (Caretta caretta) and Kemp's ridley (Lepidochelys kempi) sea turtles. Manuscript approved by SEFC and submitted to Journal of Experimental Zoology.
- Weldon, P. J. and J. A. Williams. 1989. Rathke's glands: pattern of secretion discharge and tests of antipredator activity. American Zoologist 28:162A.

#### ACKNOWLEDGEMENTS

The success of head starting depends upon the cooperation, assistance and contributions of many agencies, organizations and individuals. This work was conducted under NMFS, INP, and FWS permits as well as permits from Texas Parks and Wildlife Department (TPWD), Louisiana Department of Wildlife and Fisheries, Florida Department of Natural Resources (FDNR) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Programmatic support and guidance by Drs. Edward Klima and Walter Nelson throughout the year are greatly appreciated.

The Kemp's ridley eggs from year-classes 1988 and 1989 were made available through the efforts of Rene Marquez M. (INP, Mexico), Jack Woody and Richard Byles (FWS, Albuquerque, NM), Pat Burchfield (Gladys Porter Zoo, Brownsville, Texas), and their staffs and volunteers. The efforts of Dr. Milford Fletcher (NPS, Santa Fe, NM) and John Hunter, Jenny Bjork, Donna Shaver and staff (NPS, Corpus Christi, Texas) in providing Padre Island-"imprinted" hatchlings of the 1988 year-class for head starting were appreciated.

The efforts of Rene Marquez, Jack Woody, Richard Byles and Pat Burchfield in providing Rancho Nuevo-"imprinted" hatchlings of

the 1989 year-class are appreciated. The hatchlings were transported by U. S. Coast Guard helicopter from Rancho Nuevo to Galveston. We are indebted to and greatly appreciate the efforts of the U. S. Coast Guard and its aircrews (Pilots David Poulsen, Robin Starrett, Mark Wallace, Jim Van Sice, Don Klingenberg, Bob Lamborne, Bob Jones, Jim Coffee, Mel Garver, Brian McCarthy, Dave Vermillion, Mark Kowalski, John Lang, Gerald Von Antz, and Gary Beam; Co-pilots Bob Baxter, Phil Colletti, Jim Larkin, Ivan Pupulidy, Elvis Thomas, Wayne Carter, and Ken Rickabaugh; and crewmen Lewis Larsen, Pat Carroll, Scott Taylor and Steve Hightower) who, during the year, transported hatchlings from Rancho Nuevo to Galveston, and who accommodated NMFS observers on sea turtle, sea mammal and Sargassum weed survey flights.

We appreciated the assistance of Larry Ogren, NMFS Panama City Laboratory in preparing for the TED certification trials.

HEART, a non-profit, special committee of the Piney Woods Wild-life Society, North Harris County College, Houston, TX, chaired by Mrs. Carole Allen, funded graduate assistantships, provided food for the 1988 and 1989 year-classes, and continued to lend the Galveston Laboratory an electronic balance for weighing turtles. HEART received donations totaling \$19,200 during fiscal year 1989 in support of sea turtle conservation. Included among the donors were EXXON Company USA, the Kempner Foundation of Galveston, TX, Piney Woods Wildlife Society, and the general public.

Many thanks go to Dr. Robert Jones, Director, University of Texas, Marine Science Institute, Port Aransas, TX, who provided the R/V LONGHORN for the offshore release in May 1989. The assistance of Anthony Amos, LONGHORN Captain Don Gibson and his crew in the release also was greatly appreciated.

We are grateful to Dr. Richard Henderson, Galveston Veterinary Clinic, and to Dr. Joseph Flanagan, Houston Zoo, for their assistance in veterinary medical treatment, rehabilitation and studies of diseases of Kemp's ridleys, and to Donna Shaver (NPS), Dr. Dean Nakamura and Dr. Stephen Wachtel of the Center for Reproductive Biology, Collierville, TN, and Dr. David Owens and his students at Texas A&M University for collaboration in sex determination research on Kemp's ridley.

Dr. Thomas Heming, Department of Internal Medicine and Marine Biomedical Institute, University of Texas Medical Branch (UTMB), Galveston, TX contributed significantly to the extremely important work on stress physiology of sea turtles as related to the trauma of submergence of Kemp's ridleys in trawls. Further, we acknowledge the work of Dr. David McCullough, Department of Radiation Therapy, Biology Division, UTMB, on genetic variations in Kemp's ridley and other sea turtles.

Administrative, personnel and procurement support by Terry Johnstone, Connie Thompson and Frances Garcia are greatly appreciated. We are especially grateful to Ronnie Elizondo, Billie Morrow and Bob Caplinger who provided secretarial support. The assistance of Dennis Boss, Fred Mattes and John Von Cannon was greatly appreciated.

We especially thank those affiliated with Sea-Arama Marineworld for providing ponds for and assistance in conditioning head started Kemp's ridleys under semi-wild conditions for later release off Panama City, FL and in Sydnor Bayou.

## LITERATURE CITED

- Balazs, G. H. 1982. Factors affecting the retention of metal tags in sea turtles. Marine Turtle Newsletter No. 20, p. 11-14.
- Balazs, G. H. 1983. Recovery records of adult green turtles observed or originally tagged at French Frigate Shoals, Northwestern Hawaiian Islands. NOAA Technical Memorandum NMFS-SWFC-36, 42 p.
- Burchfield, P. M. and F. J. Foley. 1989. Standard operating procedures for collecting Kemp's Ridley sea turtle eggs for the head start project, p. 67-70. In: Caillouet, C. W., Jr. and A. M. Landry, Jr. (Editors). Proceedings of the First International Symposium on Kemp's Ridley Sea Turtle Biology, Conservation and Management, Texas A&M University, Sea Grant College Program, TAMU-SG-89-105, vi plus 260 p.
- Caillouet, C. W., Jr. 1984. Essai de prevention de l'extinction de la tortue de Kemp. Les Carnets de Zoologie 44(2):28-34.
- Caillouet, C. W., Jr., C. T. Fontaine, T. D. Williams, S. A. Manzella, A. M. Landry, Jr., K. L. Indelicato, M. J. Duronslet and D. B. Revera. 1986a. Can we save Kemp's ridley sea turtle? Believe it or not!, p. 20-43. In: Peterson, K. H. (editor), 10th Herpetological Symposium on Captive Propagation and Husbandry, Zoological Consortium Inc., Thurmont, MD, 206 p.
- Caillouet, C. W., Jr., D. B. Koi, C. T. Fontaine, T. D. Williams, W. J. Browning and R. M. Harris. 1986b. Growth and survival of Kemp's ridley sea turtle, *Lepidochelys kempi*, in captivity. NOAA Technical Memorandum NMFS-SEFC-186, iii plus 34 p., 12 Tables and 7 Figures.
- Caillouet, C. W., Jr., S. A. Manzella, C. T. Fontaine, T. D. Williams, M. G. Tyree and D. B. Koi. 1989. Feeding, growth rate and survival of the 1984 year-class of Kemp's ridley sea

- turtles (*Lepidochelys kempi*) reared in captivity, p. 165-177. In: Caillouet, C. W., Jr. and A. M. Landry, Jr. (Editors). Proceedings of the First International Symposium on Kemp's Ridley Sea Turtle Biology, Conservation and Management, Texas A&M University, Sea Grant College Program, TAMU-SG-89-105, vi plus 260p.
- Carr, A. 1987. New perspectives on the pelagic stage of sea turtle development. *Conservation Biology* 1(2):103-121.
- Clary, J. C. III and J. K. Leong. 1984. Disease studies aid Kemp's ridley sea turtle head start research. *Herpetological Review* 15(3):69-70.
- Demas, S., M. Duronslet, S. Wachtel, C. Caillouet and D. Nakamura. 1990. Sex-specific DNA in reptiles with temperature sex determination. *Journal of Experimental Zoology* 253:319-324.
- Duronslet, M. J., C. W. Caillouet, Jr., C. T. Fontaine, D. B. Revera, T. D. Williams, J. A. Williams, S. A. Manzella, A. M. Landry, Jr. and E. K. Stabenau. 1989a. Kemp's ridley head start and sea turtle research at the Galveston Laboratory: annual report - fiscal year 1988. NOAA Technical Memorandum NMFS-SEFC-223, iii plus 40 p. and 19 Tables.
- Duronslet, M. J., D. Nakamura, C. W. Caillouet and S. Demas. 1989b. Sex identification in young Kemp's ridley sea turtles (*Lepidochelys kempi*). *Marine Turtle Newsletter* No. 47, p. 2-3.
- Fontaine, C. T. and C. W. Caillouet, Jr. 1985. The Kemp's ridley sea turtle head start research project: an annual report for fiscal year 1984. NOAA Technical Memorandum NMFS-SEFC-152, ii plus 13 p. and 3 Tables.
- Fontaine, C. T., R. M. Harris, W. J. Browning and T. D. Williams. 1989a. Observations on distribution, growth and survival of captive-reared, tagged and released Kemp's ridley sea turtles (*Lepidochelys kempi*) from year-classes 1978-1983, p. 124-144. In: Caillouet, C. W., Jr. and A. M. Landry, Jr. (Editors), Proceedings of the First International Symposium on Kemp's Ridley Sea Turtle Biology, Conservation and Management, Texas A&M University, Sea Grant College Program, TAMU-SG-89-105, vi plus 260 p.
- Fontaine, C. T., K. T. Marvin, T. D. Williams, W. J. Browning, R. M. Harris, K. L. W. Indelicato, G. A. Shattuck and R. A. Sadler. 1985. The husbandry of hatchling to yearling Kemp's ridley sea turtles (*Lepidochelys kempi*). NOAA Technical Memorandum NMFS-SEFC-158, iv plus 34 p., 10 Tables, 22 Figures and 2 Appendices.

- Fontaine, C. T., T. D. Williams and C. W. Caillouet, Jr. 1988. Scutes reserved for living tags: an update. *Marine Turtle Newsletter* No. 43, p. 8-9.
- Fontaine, C. T., T. D. Williams, S. A. Manzella and C. W. Caillouet, Jr. 1989b. Kemp's ridley sea turtle head start operations at the NMFS-SEFC Galveston Laboratory, p. 96-110. In: Caillouet, C. W., Jr. and A. M. Landry, Jr. (Editors), *Proceedings of the First International Symposium on Kemp's Ridley Sea Turtle Biology, Conservation and Management*, Texas A&M University, Sea Grant College Program, TAMU-SG-89-105, vi plus 260 p.
- Heinly, R. W., E. K. Stabenau, A. M. Landry, Jr. and M. J. Duronslet. 1988. Frequency of mutilations in stranded sea turtles along the upper Texas coast, p. 33-34. In: Schroeder, B. A. (Compiler), *Proceedings of the Eighth Annual Workshop on Sea Turtle Conservation and Biology*, NOAA Technical Memorandum NMFS-SEFC-214, 136 p.
- Henwood, T. A. 1986. Loss of monel flipper tags from loggerhead sea turtles, *Caretta caretta*. *Journal of Herpetology* 20(2m):272-279.
- Henwood, T. A. and W. E. Stuntz. 1987. Analysis of sea turtle captures and mortalities during commercial shrimp trawling. *Fisheries Bulletin* 85(4):813-817.
- Hildebrand, H. H. 1963. Hallazgo del area de anidacion de la tortuga marina "lora", *Lepidochelys kempi* (Garman), en la costa occidental del Golfo de Mexico. *Ciencia* 22(4):105-112.
- King, R. E. 1989. Beach temperature versus polystyrene foam box temperature in incubation of Kemp's ridley sea turtle eggs, p. 71-76. In: Caillouet, C. W., Jr. and A. M. Landry, Jr. (Editors), *Proceedings of the First International Symposium on Kemp's Ridley Sea Turtle Biology, Conservation and Management*, Texas A & M University, Sea Grant College Program, TAMU-SG-89-105, vi plus 260 p.
- Klima, E. F., G. Gitschlag, and M. L. Renaud. 1988. Impacts of the explosive removal of offshore petroleum platforms on Sea turtles and dolphins. *Marine Fisheries Review* 50 (3):33-42.
- Klima, E. F. and J. P. McVey. 1982. Head starting the Kemp's ridley turtle, *Lepidochelys kempi*, p. 481-487. In: Bjorndal, K. A. (Editor), *Biology and Conservation of Sea Turtles*, *Proceedings of the World Conference on Sea Turtle Conservation*, Smithsonian Institution Press, Washington, D.C., 583 p.

- Leong, J. K., D. L. Smith, J. B. Revera, J. C. Clary III, D. H. Lewis, J. L. Scott and A. R. DiNuzzo. 1989. Health care and diseases of captive-reared loggerhead and Kemp's ridley sea turtles, p. 177-200. In: Caillouet, C. W., Jr. and A. M. Landry, Jr. (Editors), Proceedings of the First International Symposium on Kemp's Ridley Sea Turtle Biology, Conservation and Management, Texas A&M University, Sea Grant College Program, TAMU-SG-89-105, vi plus 260 p.
- Manzella, S. A., C. W. Caillouet, Jr., C. T. Fontaine, T. D. Williams, K. L. W. Indelicato, M. J. Duronslet, D. B. Revera, A. M. Landry, Jr. and E. K. Stabenau. 1988. Kemp's ridley head start and sea turtle research at the Galveston Laboratory: annual report - fiscal year 1987. NOAA Technical Memorandum NMFS-SEFC-201, i plus 28 p., 20 Tables and 1 Appendix.
- Manzella, S. A., C. W. Caillouet, Jr. and C. T. Fontaine. 1988. Kemp's ridley, *Lepidochelys kempi*, sea turtle head start tag recoveries: distribution, habitat and method of recovery. Marine Fisheries Review 50(3):24-32.
- Meylan, A. B., B. W. Bowen and J. C. Avise. 1990. A genetic test of the natal homing versus social facilitation models for green turtle migration. Science 248(4956):724-727.
- Mrosovsky, N. 1983. Conserving sea turtles. The British Herpetological Society, 176 p.
- Owens, D. W., M. A. Grassman and J. R. Hendrickson. 1982. The imprinting hypothesis and sea turtle reproduction. Herpetologica 38(1):124-135.
- Prager, M. H., C. W. Recksiek and S. B. Salla. 1988. Nonlinear parameter estimation for fisheries, FISHPARM. Available from the senior author, Department of Oceanography, Old Dominion University, Norfolk, VA.
- Plotkin, P. T. 1989. The feeding ecology of the loggerhead sea turtle in the northwestern Gulf of Mexico. Master of Science Thesis, Texas A & M University, College Station, TX, 124 p.
- Plotkin, P. and A. F. Amos. 1988. Entanglement in and ingestion of marine debris by sea turtles stranded along the south Texas coast, p. 79-82. In: Schroeder, B. A. (Compiler), Proceedings of the Eighth Annual Workshop on Sea Turtle Conservation and Biology, NOAA Technical Memorandum NMFS-SEFC-214, p. 136.
- Pritchard, P. C. H. 1989. Evolutionary relationships, osteology, morphology and zoogeography of Kemp's ridley sea turtle, p. 157-164. In: Caillouet, C. W., Jr. and A. M. Landry, Jr.

- (Editors), Proceedings of the First International Symposium on Kemp's Ridley Sea Turtle Biology, Conservation and Management, Texas A&M University, Sea Grant College Program, TAMU-SG-89-105, vi plus 260 p.
- Radhakrishna, G., C. C. Q. Chin, F. Wold and P. J. Weldon. 1989. Glycoproteins in Rathke's gland secretions of loggerhead (*Caretta caretta*) and Kemp's ridley (*Lepidochelys kempii*) sea turtles. Comparative Biochemistry and Physiology, 94B(2):375-378.
- Schroeder, B. A. 1988. Sea turtle stranding and salvage network (STSSN): 1987 results, p. 99-101. In: Schroeder, B. A. (Compiler), Proceedings of the Eighth Annual Workshop on Sea Turtle Conservation and Biology. NOAA Technical Memorandum NMFS-SEFC-214, 136 p.
- Schroeder, B. A. 1989. Marine turtle data base management: National Marine Fisheries Service - Miami Laboratory, p.153-156. In: Caillouet, C. W., Jr. and A. M. Landry, Jr. (Editors). Proceedings of the First International Symposium on Kemp's Ridley Sea Turtle Biology, Conservation and Management. Texas A&M University, Sea Grant College Program, TAMU-SG-89-105, vi plus 260 p.
- Shaver, D. J. 1989. Padre Island National Seashore, Kemp's ridley sea turtle project, 1989 report. National Park Service, Padre Island National Seashore, Corpus Christi, Texas, p. 4.
- Shaver, D. J., E. Cheeseman, S. Chacon and J. Bjork. 1988a. Padre Island National Seashore, 1988 report. Kemp's ridley sea turtle restoration and enhancement project: incubation and imprinting phase. National Park Service, Padre Island National Seashore, Corpus Christi, Texas, 51 p.
- Shaver, D. J., D. W. Owens, A. H. Chaney, C. W. Caillouet, Jr., P. B. Burchfield and R. Marquez. 1988b. Styrofoam box and beach temperatures in relation to incubation and sex ratios of Kemp's ridley sea turtles, p. 103-108. In: Schroeder, B. A. (Compiler), Proceedings of the Eighth Annual Workshop on Sea Turtle Conservation and Biology. NOAA Technical Memorandum NMFS-SEFC-214, 136 p.
- Stabenau, E. K. and T. A. Heming. 1989. Trawl stress in Kemp's ridley sea turtles. America Zoologist 29:139A.
- Stabenau, E. K., T. A. Heming and J. S. Mitchell. (1990). Effects of trawl stress on the respirator acid-base and ionic status of Kemp's ridley sea turtles (*Lepidochelys kempii*). MS submitted to Physiological Zoology.
- Stanley, K. M., E. K. Stabenau and A. M. Landry. 1988. Debris

- ingestion by sea turtles along the Texas coast, p. 119-121. In: Schroeder, B. A. (Compiler). Proceedings of the Eighth Annual Workshop on Sea Turtle Conservation and Biology, NOAA Technical Memorandum NMFS-SEFC-214, 135 p.
- Weldon, P. J. and M. J. Tanner. 1990. Lipids in the Rathke's gland secretions of hatchling loggerhead sea turtles (Caretta caretta). Copeia 1990(2):570-573.
- Wibbels, T., D. Owens, G. Dienberg and J. Noell. 1985. Determination of sex ratios produced in the Kemp's ridley head start program. Final Report to the National Park Service, Contract No. PX7490-5-0100, 14 p.
- Wood, J. R. and F. E. Wood. 1984. Captive breeding of the Kemp's ridley. Marine Turtle Newsletter No. 30, p. 12.
- Wood, James R. and Fern E. Wood. 1989. Captive rearing and breeding Kemp's Ridley sea turtle at Cayman Turtle Farm (1983) Ltd., p. 237-240. In: Caillouet, C. W., Jr. and A. M. Landry, Jr. (Editors). First International Symposium on Kemp's Ridley Sea Turtle Biology, Conservation and Management, Texas A&M University, Sea Grant College Program, TAMU-SG-89-105, vi plus 260 p.
- Woody, J. B. 1986. Kemp's ridley sea turtle, p. 919-931. In: Eno, A. S., R. L. Di Silvestro and W. J. Chandler, Audubon Wildlife Report 1986, The National Audubon Society, New York, NY.

Table 1. Summary of "imprinted" Kemp's ridley sea turtle hatchlings received by the NMFS Galveston Laboratory as of 30 September 1989.

Year-Class	Inclusive Dates	Imprinting Location	Number Received	
			Alive	Dead
1978	6 July - 3 August 11 August	Padre Island Rancho Nuevo	1,854	1
			<u>1,226</u>	<u>0</u>
			3,080	1
1979	26 June - 23 July	Padre Island Rancho Nuevo	1,656	2
			<u>187</u>	<u>1</u>
			1,843	3
1980	24 June - 14 July 7 July	Padre Island Rancho Nuevo	1,608	4
			<u>207</u>	<u>3</u>
			1,815	7
1981	24 July - 22 August	Padre Island	1,864	1
1982	6 July - 16 August	Padre Island	1,524	0
1983	8 July - 12 August 8 July	Padre Island Rancho Nuevo	230	0
			<u>20</u>	<u>0</u>
			250	0
1984	24 July - 27 July	Padre Island	1,441	106
1985	9 July - 7 August	Padre Island	1,684	8
1986	6 July - 26 July	Padre Island	1,759	0
1987	6 July - 23 July 31 August	Padre Island G. Cayman Isl.	1,278	4
			<u>159</u>	<u>1</u>
			1,437	5
1988	13 July - 20 July 14 July	Padre Island G. Cayman Isl.	925	0
			<u>25</u>	<u>0</u>
			950	0
1989	9 July	Rancho Nuevo	2,010	2

Table 1. (continued).

Year- Class	Inclusive Dates	Imprinting Location	Number Received	
			Alive	Dead
1978 - 1988		Padre Island	15,823	126
1978 - 1980, 1983,1989		Rancho Nuevo	3,650	6
1987 - 1988		G.Cayman Isl.	184	1
Total			19,657	133

Table 2. Summary of head started Kemp's ridley sea turtle release sites, dates of releases, numbers of turtles released and flipper tag code series used, by year-class, as of 30 September 1989.

Year-class	Imprint location <sup>a</sup>	Release site	Release type <sup>b</sup>	Release date	Number released	Flipper <sup>c</sup> tag series
1978	PINS	Sandy Key, FL	O	22 Feb 1979	135	G----
	PINS	East Cape, FL	N	22 Feb 1979	52	G----
	PINS	East Cape, FL	O	28 Feb 1979	1	13582
	PINS	East Cape, FL	O	28 Feb 1979	166	G----
	PINS	Sandy Key, FL	O	5 Mar 1979	172	G----
	RN	Homosassa, FL	N	8 May 1979	751	G-----, F----
	PINS	Homosassa, FL	O	8 May 1979	628	G-----, F----
	PINS	Padre Island, TX	O	7 July 1979	112	G-----, F----
	RN	Padre Island, TX	O	7 July 1979	1	G0985
	PINS	Homosassa, FL	O	3 June 1980	1	NNA260
					<u>2,019</u>	
	1979	PINS	Homosassa, FL	O	3 June 1980	665
RN		Homosassa, FL	N	5 June 1980	66	NNA---
PINS		Homosassa, FL <sup>d</sup>	N	5 June 1980	608	NNN----
Unknown		Key Largo, FL	B	9 July 1980	24	NNA---
PINS		Padre Island, TX	O	2 June 1981	5	K----
PINS	Galveston, TX	O	28 Sept 1981	1	J0096	
				<u>1,369</u>		
1980	PINS	Padre Island, TX	O	2 June 1981	1,426	NNB----, K----
	PINS	Padre Island, TX	O	2 June 1981	100	8001 - 8100
	RN	Campeche, MX	O	3 Mar 1981	197	NNB----
				<u>1,723</u>	K----	
1981	PINS	Padre Island, TX	O	2 June 1982	1,521	NNG----, NNH----
	PINS	Sabine Pass, TX	O	14 July 1982	118	NNG----, NNH----
				<u>1,639</u>		

Table 2. (continued)

Year-class	Imprint location <sup>a</sup>	Release site	Release type <sup>b</sup>	Release date	Number released	Flipper <sup>c</sup> tag series
1982	PINS	Padre & Mustang Islands, TX	N	7 June 1983	1,159	NNL---, NNM---
	PINS	Nueces Bay, TX	I	7 June 1983	96	NNL---, NNM---
	PINS	Sabine Pass, TX	O	15 July 1983	69	NNL---, NNM---
	PINS	Mustang Island, TX	O	5 June 1984	1	NNM428
	PINS	Galveston, TX	O	19 Oct 1989	4	BBB---, NNZ---, AAK---
					<u>1,329</u>	
1983	PINS	Mustang Island, TX	O	5 June 1984	172	NNQ---
	RN	Mustang Island, TX	O	5 June 1984	<u>18</u> 190	NNQ---
1984	PINS	Padre & Mustang Islands, TX	O	21 May 1985	1,017	NNT---, NNV---
	PINS	Galveston, TX	I	19 Oct 1989	20	AAL---, BBB---, NNT---, NNZ---
					<u>1,037</u>	
1985	PINS	Copano Bay, TX	I	22 Apr 1986	448	NNX---, NNY---
	PINS	Italian Bend, TX	I	22 Apr 1986	22	NNX---, NNY---
	PINS	Port Bay, TX	I	22 Apr 1986	49	NNX---, NNY---
	PINS	Padre Island, TX	O	6 May 1986	961	NNX---, NNY---
	PINS	Galveston, TX	O	23 Sept 1986	<u>54</u> 1,534	NNX---

Table 2. (continued)

Year-class	Imprint location <sup>a</sup>	Release site	Release type <sup>b</sup>	Release date	Number released	Flipper <sup>c</sup> tag series
1986	PINS	Mustang Island, TX	O	21 Apr 1987	1,630	PPK---, PPL---
	PINS	Padre Island, TX	O	17 May 1988	50	PPK---, PPL---
	PINS	Panama City, FL	O	17-24 May 1989	45	PPK---, PPL---
	PINS	Galveston, TX	I	19 Oct 1989	2	PPL---, BBB---
					<u>1,727</u>	
1987	PINS	Padre Island, TX	O	17 May 1988	1,100	PPR---, PPS---
	CAY	Padre Island, TX	O	17 May 1988	130	PPS---
	PINS	Panama City, FL	O	17-24 May 1989	45	PPR---, PPS---
	PINS	Galveston, TX	I	19 Oct 1989	5	PPR---, PPS---, BBB---
					<u>1,280</u>	
1988	PINS	Padre Island, TX	O	25 May 1989	794	QQA---
	CAY	Padre Island, TX	O	25 May 1989	<u>14</u> 808	QQA---
1978- 1988	PINS	Padre Island, TX			13,454	
1978- 1980, 1983, 1988	RN	Mustang Island, TX			1,033	

Table 2. (continued)

Year-class	Imprint location <sup>a</sup>	Release site	Release type <sup>b</sup>	Release date	Number released	Flipper <sup>c</sup> tag series
1986, 1988	CAY	Padre Island, TX			144	
1979	Unknown				24	
Total					14,655	

<sup>a</sup>PINS = Padre Island National Seashore  
 RN = Rancho Nuevo; and  
 CAY = Cayman Turtle Farm, Grand Cayman, B.W.I.

<sup>b</sup>I = bay or estuarine release;  
 N = release less than 3 nautical miles from shore;  
 O = release greater than 3 nautical miles from shore;  
 B = released from beach.

<sup>c</sup>Model tags, unless noted otherwise. For example, inconel tags were used on the 1985 and 1986 year-classes. Each dash represents a numerical digit from 0-9. Actual numerical series are not given because they were mixed. Details concerning the numerical series can be obtained from the NMFS SEFC Galveston Laboratory, 4700 Ave U, Galveston, TX 77550 (telephone: commercial 409-766-03507; FTS 527-6507) upon request.

<sup>d</sup>This release included turtles also tagged with radio-transmitters (see Klima and McVey, 1982; Wibbels, 1984).

Table 3. Numbers of sea turtles stranded during calendar year 1984 by species and county arranged in geographical order from north to south in southwestern Louisiana and Texas (Preliminary).<sup>a</sup>

County	State	Logger-head	Green	Leather-back	Hawks-bill	Kemp's ridley	Unknown	Total
Calcasieu	LA	0	0	0	0	0	0	0
Cameron	LA	0	0	0	0	3	0	3
Orange	TX	0	0	0	0	0	0	0
Jefferson	TX	4	0	2	0	40	3	49
Chambers	TX	0	0	0	0	2	1	3
Galveston	TX	7	0	0	1	2	10	20
Brazoria	TX	2	0	0	0	2	0	4
Mataforda	TX	0	0	0	0	0	0	0
Calhoun	TX	0	0	0	0	1	0	1
Aransas	TX	1	0	0	0	1	0	2
Nueces	TX	31	5	3	5	11	3	58
Kleberg	TX	26	2	1	1	2	11	43
Kenedy	TX	6	1	0	0	1	4	12
Willacy	TX	1	0	0	0	0	0	1
Cameron	TX	3	1	0	0	0	0	4
St. Patricio	TX	0	0	0	0	0	0	0
Refugio	TX	0	0	0	0	0	0	0
Unknown		1	1	0	1	0	0	3
<b>Total</b>		<b>82</b>	<b>10</b>	<b>6</b>	<b>8</b>	<b>65</b>	<b>32</b>	<b>203</b>

<sup>a</sup> Survey area extends from the Mermentau River, LA to Brownsville, TX. Adapted from STSSN data file, NMFS, Miami, FL.

Table 4. Numbers of sea turtles stranded during calendar year 1985 by species and county arranged in geographical order from north to south in southwestern Louisiana and Texas (Preliminary).<sup>a</sup>

County	State	Logger-head	Green	Leather-back	Hawks-bill	Kemp's ridley	Unknown	Total
Calcasieu	LA	0	0	0	0	0	0	0
Cameron	LA	0	0	0	0	0	0	0
Orange	TX	0	0	0	0	0	0	0
Jefferson	TX	4	0	1	0	24	6	35
Chambers	TX	0	0	0	0	0	0	0
Galveston	TX	12	2	0	1	10	4	29
Brazoria	TX	2	0	0	0	0	1	3
Matagorda	TX	0	0	0	0	0	0	0
Calhoun	TX	1	2	0	0	1	1	5
Aransas	TX	3	0	0	0	0	0	3
Nueces	TX	28	5	0	0	8	8	49
Kleberg	TX	20	1	0	1	2	7	31
Kenedy	TX	5	0	0	1	3	10	19
Willacy	TX	0	0	0	0	0	1	1
Cameron	TX	0	0	0	0	0	1	1
St. Patricio	TX	0	0	0	0	0	0	0
Refugio	TX	0	0	0	0	0	0	0
Unknown		0	1	0	0	0	0	1
<b>Total</b>		<b>75</b>	<b>11</b>	<b>1</b>	<b>3</b>	<b>48</b>	<b>39</b>	<b>177</b>

<sup>a</sup> Survey area extends from the Mermentau River, Louisiana to Brownsville, TX. Adapted from STSSN data file, NMFS, Miami, FL.

Table 5. Numbers of sea turtles stranded during calendar year 1986 by species and county arranged in geographical order from north to south in southwestern Louisiana and Texas (Preliminary).<sup>a</sup>

County	State	Logger-head	Green	Leather-back	Hawks-bill	Kemp's ridley	Unknown	Total
Calcasieu	LA	0	0	0	0	0	0	0
Cameron	LA	24	1	3	1	72	11	112
Orange	TX	0	0	0	0	0	0	0
Jefferson	TX	9	0	1	1	50	5	66
Chambers	TX	0	0	0	0	3	0	3
Galveston	TX	34	1	4	1	52	16	108
Brazoria	TX	2	0	0	0	1	3	6
Matagorda	TX	0	0	0	0	1	2	3
Calhoun	TX	2	0	0	2	4	4	12
Aransas	TX	6	0	0	4	67	5	82
Nueces	TX	42	2	0	18	19	7	88
Kleberg	TX	7	0	1	2	5	4	19
Kenedy	TX	15	0	1	0	3	2	21
Willacy	TX	3	0	0	0	1	0	4
Cameron	TX	11	1	0	0	2	1	15
St. Patricio	TX	1	0	0	0	1	0	2
Refugio	TX	0	0	0	0	4	0	4
Unknown		0	0	0	0	0	0	0
<b>Total</b>		<b>156</b>	<b>5</b>	<b>10</b>	<b>29</b>	<b>285</b>	<b>60</b>	<b>545</b>

<sup>a</sup> Survey area extends from the Mermentau River, LA to Brownsville, TX. Adapted from STSSN data file, NMFS, Miami, FL.

Table 6. Numbers of sea turtles stranded during calendar year 1987 by species and county arranged in geographical order from north to south in southwestern Louisiana (Preliminary).<sup>a</sup>

County	State	Logger-head	Green	Leather-back	Hawks-bill	Kemp's ridley	Unknown	Total
Calcasieu	LA	0	0	0	0	1	0	1
Cameron	LA	12	0	1	0	13	6	32
Orange	TX	0	0	0	0	0	1	1
Jefferson	TX	4	0	0	0	8	3	15
Chambers	TX	0	0	0	0	2	0	2
Galveston	TX	21	1	1	0	10	2	35
Brazoria	TX	2	1	0	0	2	1	6
Matagorda	TX	7	0	0	1	3	8	19
Calhoun	TX	13	0	0	0	9	12	34
Aransas	TX	1	0	0	0	14	5	20
Nueces	TX	35	8	0	7	17	3	70
Kleberg	TX	18	2	0	0	6	1	27
Kenedy	TX	9	0	0	1	1	7	18
Willacy	TX	0	0	0	0	0	3	3
Cameron	TX	17	2	0	0	0	8	27
St. Patricio	TX	0	0	0	0	0	0	0
Refugio	TX	0	0	0	0	1	0	1
Unknown		0	0	0	0	0	0	0
<b>Total</b>		<b>139</b>	<b>14</b>	<b>2</b>	<b>9</b>	<b>87</b>	<b>60</b>	<b>311</b>

<sup>a</sup> Survey area extends from the Mermentau River, LA to Brownsville, TX. Adapted from STSSN data file, NMFS, Miami, FL.

Table 7. Numbers of sea turtles stranded during calendar year 1988 by species and county arranged in geographical order from north to south in southwestern Louisiana and Texas (Preliminary).<sup>a</sup>

County	State	Logger-head	Green	Leather-back	Hawks-bill	Kemp's ridley	Unknown	Total
Calcasieu	LA	0	0	0	0	0	0	0
Cameron	LA	1	0	0	0	5	0	6
Orange	TX	0	0	0	0	1	0	1
Jefferson	TX	1	0	2	0	3	0	6
Chambers	TX	0	0	0	0	0	0	0
Galveston	TX	8	0	2	0	9	0	19
Brazoria	TX	1	0	2	0	2	0	5
Matagorda	TX	11	0	0	0	9	2	22
Calhoun	TX	9	0	0	0	5	1	15
Aransas	TX	1	0	0	0	6	1	8
Nueces	TX	32	5	1	4	15	6	63
Kleberg	TX	21	1	0	7	6	4	39
Kenedy	TX	14	1	0	0	2	2	19
Willacy	TX	3	0	0	0	1	0	4
Cameron	TX	10	0	0	1	1	1	13
St. Patricio	TX	0	0	0	0	0	0	0
Refugio	TX	0	0	0	0	0	0	0
Unknown		0	0	0	0	0	0	0
Total		112	7	7	12	65	17	220

<sup>a</sup> Survey area extends from the Mermentau River, LA to Brownsville, TX. Adapted from STSSN data file, NMFS, Miami, FL.

Table 8. Numbers of sea turtles stranded from 1 January 1989 to 30 September 1989 by species and county arranged in geographical order from north to south in southwestern Louisiana and Texas (Preliminary).<sup>a</sup>

County	State	Logger-head	Green	Leather-back	Hawks-bill	Kemp's ridley	Unknown	Total
Offshore						1		1
Calcasieu	LA	0	0	0	0	0	0	0
Cameron	LA	1	0	0	0	3	2	6
Orange	TX	0	0	0	0	0	0	0
Jefferson	TX	2	1	0	0	7	0	10
Chambers	TX	0	0	0	0	0	0	0
Galveston	TX	22	2	5	0	4	0	33
Brazoria	TX	5	1	2	0	3	0	11
Matagorda	TX	5	1	0	1	7	1	15
Calhoun	TX	5	2	0	0	3	0	10
Aransas	TX	5	0	0	0	3	1	9
Nueces	TX	16	3	2	7	11	1	40
Kleberg	TX	1	1	0	2	0	0	4
Kenedy	TX	0	0	0	0	0	0	0
Willacy	TX	1	0	0	0	0	1	2
Cameron	TX	13	19	0	1	4	2	39
St. Patricio	TX	1	0	0	0	0	0	1
Refugio	TX	0	0	0	0	0	0	0
Unknown		0	0	0	0	0	0	0
<b>Total</b>		<b>77</b>	<b>30</b>	<b>9</b>	<b>11</b>	<b>46</b>	<b>8</b>	<b>181</b>

<sup>a</sup> Survey area extends from the Mermentau River, LA to Brownsville, TX. Adapted from STSSN data file, NMFS, Miami, FL.

Table 9. Arithmetic mean weight (g) of Rancho Nuevo "imprinted" Kemp's ridley sea turtle hatchlings of the 1989 year-class<sup>a</sup>.

Raceway Number	Rearing facility	Number weighed	Mean weight(g)
1	Old Quonset Hut	5	16.1
2	"	5	17.1
3	"	5	15.9
4	"	5	16.3
5	"	5	15.1
6	"	5	14.4
7	"	5	16.1
8	"	5	16.5
9	"	5	16.8
10	"	5	14.1
25	New Quonset Hut	5	16.8
26	"	5	16.9
27	"	5	16.6
<b>Total</b>		<b>65</b>	<b>16.1</b>

<sup>a</sup> All weights were taken on 10 July 1989. The clutches of hatchlings were not kept separated at Rancho Nuevo, Mexico.

Table 10. Dates for weighing of samples of head started Kemp's ridley sea turtles of the 1988 and 1989 year-classes.

1988 Year-class		1989 Year-class	
Date	Number	Date	Number
14-19 July 1988	925	6 Jan 1989	50
29	50	13	50
5 Aug	50	27	50
12	50	3 Feb	50
18	250	10	50
19	50	17	50
26	50	24	50
2 Sep	50	3 Mar	50
9	50	10	50
23	50	17	50
30	50	24	50
7 Oct	50	31	50
14	50	7 Apr	50
21	50	14	50
28	50	21	50
4 Nov	50	28	50
11	50	5 May	50
18	50	12	50
25	50	14-19	883
2 Dec	50		
9	50		
16	50		
23	50		
30	50		

Table 10. (continued).

1989 Year-class	
Date	Number
10 July 1989	65
14	125
21	125
28	125
4 Aug	125
11	125
18	125
1 Sept	125
8 <sup>a</sup>	125
12 Oct	125
9 Nov	125
8 Dec	125
5 Jan 1990	125
2 Feb	125
2 Mar	125
30	125
27 Apr	125
25 May	TBA

<sup>a</sup> After the 8 September 1989 weighing the schedule was changed from weekly to monthly.

Table 11. Statistics for the linear regressions of the natural logarithms of weight (g) on square root of age (years)<sup>a</sup>

Year-class	n	Slope, b	Intercept, a	s <sup>2</sup>	r <sup>2</sup>
1978	7379	5.084	-4.874	0.213	0.83
1979	6448	4.712	-4.389	0.104	0.87
1980	5084	4.916	-4.376	0.084	0.90
1981	7828	4.984	-5.062	0.060	0.94
1982	5832	5.109	-4.838	0.119	0.91
1983	647	3.653	-4.203	0.079	0.79
1984	5159	4.400	-4.572	0.098	0.86
1985	5515	6.566	-5.563	0.077	0.95
1986	4944	5.030	-4.272	0.061	0.93
1987	2815	6.273	-5.317	0.053	0.95
1988	1950	4.880	-4.773	0.013	0.98

$$^a Y=a+bX,$$

where

$Y=\ln(W)$  for  $W$ =weight in g,

$X=T^{0.5}$  with  $T$ =age in years,

$n$ =number of  $W$  and  $T$  pairs,

$s^2$ =variance of residuals, and

$r^2$ =coefficient of determination.

Table 12. Monthly mean temperature, salinity and pH during head starting of the 1988 year-class of Kemp's ridley sea turtles.

Month	Mean observations <sup>a</sup>	Mean temperature (C°)	Number of salinity (ppt)	pH
July 1988	43	27.2	32.6	7.8
August	81	28.1	34.7	7.9
September	82	26.1	31.5	7.8
October	78	28.0	27.1	7.4
November	73	28.1	29.0	<sup>b</sup>
December	94	27.2	27.2	—
January 1989	77	27.2	26.3	—
February	63	25.6	21.0	—
March	94	27.2	24.7	—
April	75	29.5	23.0	—
May	48	29.4	22.8	—

<sup>a</sup> Represents more than one raceway.

<sup>b</sup> No data

Table 13. Schedule of tagging the 1988 year-class of head started Kemp's ridley sea turtles.

Clutch	Living Tag <sup>a</sup>	Dates of Tagging Internal Tag <sup>b</sup>	Flipper Tag <sup>c</sup>
2	4 Jan 1989	8-9 Mar 1989	18 May 1989
3	4,8	9	17-19
4	4,5,10	9,12	14,17,19
5	5,8,9	9,12	16,17,19
6	3,6,7,9	10,12	14,16,19
7	6,7,9	10,12	15,19
8	4,7,9	9,10,12	14,16,19
9	7,8	10	15
10	9,10	11,12	12,19
11	9,17,27	11,12	18,19
Cayman Island Farms <sup>d</sup>	none	18	23

<sup>a</sup> Applied to left costal scute 1.

<sup>b</sup> Binary-coded, magnetic metal tag inserted into the left foreflipper.

<sup>c</sup> Inconel tag inserted into the right foreflipper.

<sup>d</sup> Clutches were mixed at the Cayman Turtle Farm, Grand Cayman, B.W.I.

Table 14. Estimated parameters and statistics for the logistic functions<sup>a</sup> to cumulative proportion of tags lost vs age (years) among three head started Kemp's Ridley sea turtle year-classes held in long-term captivity.

Year-class	K	T <sub>50</sub>	r <sup>2</sup>
1978	0.666	2.188	0.723
1982	3.248	1.830	0.914
1984	1.437	2.567	0.979

$$^a P = 1 / (1 + \exp[-K(t - t_{50})]),$$

where

P=tag loss probability,

K=empirical constant,

T=age in years,

T<sub>50</sub>=estimated age at which 50%  
of the tags have been lost, and

r<sup>2</sup>=coefficient of determination.

Table 15. Clutch identification numbers and inconel flipper tag codes for head started Kemp's ridley sea turtles of the 1988 year-class held for more than one year in captivity. All turtles received a living tag on left costal scute 1 and a magnetic wire-tag encoded D1:2; D2:81 in the left foreflipper.

Clutch Number	Tag Number	Clutch Number	Tag Number
8	QQA233	4	QQA775
8	QQA157	4	QQA922
8	QQA920	4	QQA726
8	QQA004	4	QQA701
8	QQA936	4	QQA860
8	QQA916	4	QQA869
8	QQA919	4	QQA863
8	QQA263	4	QQA911
8	QQA972	4	QQA457
8	QQA084	4	QQA960
8	QQA230	4	QQA909
8	QQA930	4	QQA931
8	QQA918	4	QQA965
8	QQA974	4	QQA121
8	QQA934	4	QQA437
8	QQA837	4	QQA941
8	QQA784	4	QQA532
8	QQA855	6	QQA086
8	QQA599	6	QQA184
8	QQA903	6	QQA927
8	QQA025	6	QQA957
8	QQA948	6	QQA002
8	QQA969	6	QQA237
8	QQA018	6	QQA942
8	QQA912	6	QQA973
8	QQA078	6	QQA850
8	QQA952	6	QQA921
8	QQA907	6	QQA087
8	QQA104	6	QQA264
8	QQA947	6	QQA273
8	QQA039	6	QQA915
8	QQA938	6	QQA615
8	QQA111	6	QQA945
8	QQA106	6	QQA706

Table 15. (Continued)

Clutch Number	Tag Number	Clutch Number	Tag Number
4	QQA056	6	QQA906
4	QQA226	6	QQA239
4	QQA496	6	QQA380
4	QQA434	6	QQA854
4	QQA038	6	QQA393
4	QQA033	6	QQA085
4	QQA608	6	QQA246
4	QQA092	6	QQA913
4	QQA063	6	QQA905
4	QQA006	6	QQA953
4	QQA027	6	QQA083
4	QQA959	6	QQA158
4	QQA098	6	QQA453
4	QQA954	6	QQA089
4	QQA956	6	QQA162
4	QQA722	6	QQA962

Table 16. Summary of recoveries of head started tagged and released Kemp's ridley sea turtles as of 30 September 1989. Release percentage is based on the number of hatchlings received alive and the recovery percentage is based on the number of turtles released.

Year-class	Imprinting Location	Released		Recovered	
		Number	Percent <sup>a</sup>	Number	Percent
1978	Padre Island	1,267	68.3	50	3.9
	Rancho Nuevo	<u>752</u>	<u>61.3</u>	<u>25</u>	<u>3.3</u>
		2,019	65.6	75	3.7
1979	Padre Island	1,279	77.2 <sup>b</sup>	22	1.7
	Rancho Nuevo	66	35.3 <sup>b</sup>	0	0.0
	Unknown	<u>24</u>	<u>0</u>	<u>0</u>	<u>0.0</u>
	1,369	74.3	22	1.6	
1980	Padre Island	1,526	94.9	78	5.1
	Rancho Nuevo	<u>197</u>	<u>95.2</u>	<u>5</u>	<u>2.5</u>
		1,723	94.9	83	4.8
1981	Padre Island	1,639	87.9	50	3.1
1982	Padre Island	1,329	87.2	159	12.0
1983	Padre Island	172	74.8	11	6.4
	Rancho Nuevo	<u>18</u>	<u>90.0</u>	<u>1</u>	<u>5.6</u>
		190	76.0	12	6.3
1984	Padre Island	1,037	72.0	24	2.3
1985	Padre Island	1,534	91.1	117	7.6
1986	Padre Island	1,727	98.2	47	2.7
1987	Padre Island	1,150	90.0	26	2.3
	G. Cayman Isl.	<u>130</u>	<u>81.8</u>	<u>4</u>	<u>3.1</u>
		1,280	89.1	30	2.3
1988	Padre Island	794	85.8	1	0.1
	G. Cayman Isl.	<u>14</u>	<u>56.0</u>	<u>1</u>	<u>7.1</u>
		808	85.1	2	0.2

Table 16. (continued).

Year-class	Imprinting Location	Released		Recovered		
		Number	Percent <sup>a</sup>	Number	Percent	
1989	Rancho Nuevo	(presently being head started)				
1978 - 1988	Padre Island	13,454	85.0 <sup>b</sup>	585	4.3	
1978 - 1980, 1983, 1989	Rancho Nuevo	1,033	28.3 <sup>b c</sup>	31	3.0	
1987 - 1988	G. Cayman Isl.	144	78.3	5	3.5	
1979	Unknown	24	?	?	?	
<b>Total</b>		<b>14,655</b>	<b>74.6<sup>c</sup></b>	<b>621</b>	<b>4.2</b>	

<sup>a</sup> Based upon number of hatchlings received alive by imprint group, or with imprint groups combined (see Table 1).

<sup>b</sup> Minimum estimated percentage, because some of the recoveries; in the unknown imprint group of the 1979 year-class could have added to this group.

<sup>c</sup> Based on all year-classes except the 1989 year-class which had not been released (see Table 1).

Table 17. Percent of total recoveries of head started flipper-tagged and released Kemp's ridley sea turtles by year-class.

Year-class	Recoveries	
	Number	Percent
1978	7	12.1
1979	22	3.5
1980	83	13.4
1981	50	8.0
1982	159	25.6
1983	12	1.9
1984	24	3.9
1985	117	18.8
1986	47	7.6
1987	30	4.8
1988	2	0.3
Total	621	100.0

<sup>a</sup> As of 30 September 1989.

Table 18. Recoveries of head started, flipper-tagged and released Kemp's ridley sea turtles of the 1978-1983 year-classes, by country, state and recovery zone (oceanside vs bayside), as of 30 September 1989.

Country	State	Oceanside	Bayside	Not reported	Total
U. S. A.					
	Texas	176	164	54	394
	Louisiana	46	27	8	81
	Mississippi	1	5	0	6
	Alabama	2	1	1	4
	Florida	25	19	9	53
	Atlantic	9	9	4	22
	Georgia	6	0	3	9
	S. Carolina	2	4	6	12
	N. Carolina	1	16	3	20
	Virginia	0	1	1	2
	Maryland	0	0	2	2
	New Jersey	1	1	0	2
	New York	0	1	1	2
Mexico		7	1	1	9
France		2	0	0	2
Morocco		0	1	0	1
<b>Total</b>		<b>278</b>	<b>250</b>	<b>93</b>	<b>621</b>
<b>Percent</b>		<b>44.8</b>	<b>40.3</b>	<b>15.0</b>	<b>100.0</b>

Table 19. Recoveries of head started, flipper-tagged and released Kemp's ridley sea turtles of the 1978-1988 year-classes, by method of recovery, as of 30 September 1989.

Recovery method	Number	Percent
Method not reported	102	16.4
Stranded		
Dead	167	26.9
Alive	104	16.7
Shrimp trawl		
Dead	27	4.3
Alive	101	16.3
Not reported	13	2.1
Hook and line	36	5.8
Gill net	19	3.1
Swimming	35	5.6
Dip net	7	1.1
Cast net	2	0.3
Butterfly net <sup>a</sup>	2	0.3
Flounder net	2	0.3
Beach seine	1	0.2
Pound net	1	0.2
Crab pot	1	0.2
Oyster dredge	1	0.2
<b>Total</b>	<b>621</b>	<b>100.0</b>

<sup>a</sup> Wingnet used to catch shrimp.

Table 20. Shrimp trawl by-catch of head started, flipper-tagged and released Kemp's ridley sea turtles of the 1978-1988 year-classes, by country and state, as of 30 September 1989.

Country	State	Number	Percent
Mexico		5	3.6
USA			
	Texas	73	51.8
	Louisiana	43	30.5
	Mississippi	1	0.7
	Alabama	1	0.7
	Florida		
	Gulf	3	2.1
	Atlantic	3	2.1
	Georgia	5	3.6
	South Carolina	4	2.8
	North Carolina	2	1.4
	Virginia	1	0.7
<b>Total</b>		<b>141</b>	<b>100.0</b>

Table 21. Condition of head started, flipper-tagged and released Kemp's ridley sea turtles when recovered, by year-class, as of 30 September 1989.

Year-class	Alive	Dead	Not reported	Total
1978	62	8	5	75
1979	14	3	5	22
1980	45	16	22	83
1981	26	19	5	50
1982	95	54	10	159
1983	9	3	0	12
1984	13	11	0	24
1985	45	71	1	117
1986	26	18	3	47
1987	20	10	0	30
1988	1	1	0	2
<b>Total</b>	<b>356</b>	<b>214</b>	<b>51</b>	<b>621</b>
<b>Percent</b>	<b>57.3</b>	<b>34.5</b>	<b>8.2</b>	<b>100.0</b>

Table 22. Recoveries of head started, flipper-tagged and released Kemp's ridley sea turtles of the 1978-1988 year-classes, by season, as of 30 September 1989.

Season	Number	Percent
Spring (April-June)	363	58.4
Summer (July-September)	161	26.0
Autumn (October-December)	55	8.9
Winter (January-March)	41	6.6
Not reported	1	0.2
<b>Total</b>	<b>621</b>	<b>100.0</b>

Table 23. Head started captive stock of Kemp's ridley sea turtles released into Sydnor Bayou in August 1989.

Year-class	Left fore-flipper	Right fore-flipper	PIT tag	Living Tag	Carapace length, width,		Weight kg	Source <sup>a</sup>
					cm	cm		
1982	BBB921	NNZ604	7F7FOC236E	None	60.1	56.3	0	CAY
1982	BBB927	NNZ607	7F7F081030	None	58.2	55.4	0	CAY
1982	None	BBB926	7F7FOC222A	None	55.9	54.3	0	CAY
1982	BBB924	NNZ606	7F7F090E33	None	62.5	59.5	0	CAY
1984	BBB904	NNZ755	7F7F09123A	LC5	48.5	48.4	0	-SA
1984	BBB906	None	7F7FOC1A18	LC5	50.3	48.5	0	SA
1984	BBB907	NNZ754	7F7F091514	LC5	55.1	51.3	0	SA
1984	BBB909	NNZ758	7F7FOC1D13	LC5	53.3	50.9	0	SA
1984	BBB910	NNZ606	7F7F0F0511	LC5	49.3	49.8	0	SA
1984	BBB908	NNZ757	7F7F0F0025 <sup>b</sup>	LC5	50.0	49.6	0	SA
1984	BBB912	None	7F7F090A3F	LC5	52.9	49.3	0	CAY
1984	BBB917	None	7F7F091411	LC5	50.1	46.2	21.6	CAY
1984	BBB918	NNZ602	7F7FOE7A5E	LC5	48.1	45.7	0	CAY
1984	BBB916	NNZ601	7F7FOC2119	LC5	50.7	47.4	0	CAY
1984	None	BBB992	7F7FOC2763	LC5	48.0	46.2	17.2	AZ
1984	BBB925	None	7F7F090D6F	LC5	50.7	46.4	0	CAY
1984	BBB904	NNZ756	7F7E124B66 <sup>c</sup>	LC5	51.0	50.1	0	SA
1984	BBB914	None	7F7FOE7A18	LC5	52.2	48.6	21.1	CAY
1984	BBB928	NNZ608	7F7FOC2061	LC5	49.3	46.5	0	CAY
1984	None	BBB902	7F7F0F0049	LC5	61.5	64.1	30.9	BPS
1984	BBB913	None	7F7FOE7B45	LC5	53.2	47.7	20.9	CAY
1984	BBB919	NNZ603	7F7FOC2E2E	LC5	53.4	47.4	26.8	CAY
1984	BBB923	NNZ605	7F7FOC2263	LC5	52.4	47.6	0	CAY
1984	BBB922	None	7F7FOC2020	LC5	55.6	50.2	0	CAY
1986	PPL718	BBB994	7F7E1B452C	N4	48.7	46.6	22.1	NMFS
1986	None	BBB993	7F7E1B372D	N4	51.5	48.5	18.2	NMFS
1987	None	PPR885	7F7FOC1D68	RC1	37.0	36.5	7.7	NMFS
1987	None	PPR818	7F7FOC2544	RC1	34.5	34.3	6.2	NMFS
1987	None	PPR847	7F7F08752B	RC1	34.7	33.2	5.9	NMFS
1987	None	BBB911	7F7FOE7E32	RC1	32.7	30.7	4.5	NMFS
1987	None	PPS254	7F7FOC2B30	RC1	37.6	37.2	8.4	NMFS

<sup>a</sup>CAY = Cayman Turtle Farm, Grand Cayman, B.W.I.; SA = Sea-Arama Marineworld, Galveston, TX; AZ = Audubon Park and Zoological Gardens, New Orleans, LA.; BPS = Bass Pro Shops, Springfield, MO.

<sup>b</sup>Turtle has second PIT tag 7F7E1B420E.

<sup>c</sup>Turtle has second PIT tag 7F7FOC2945.

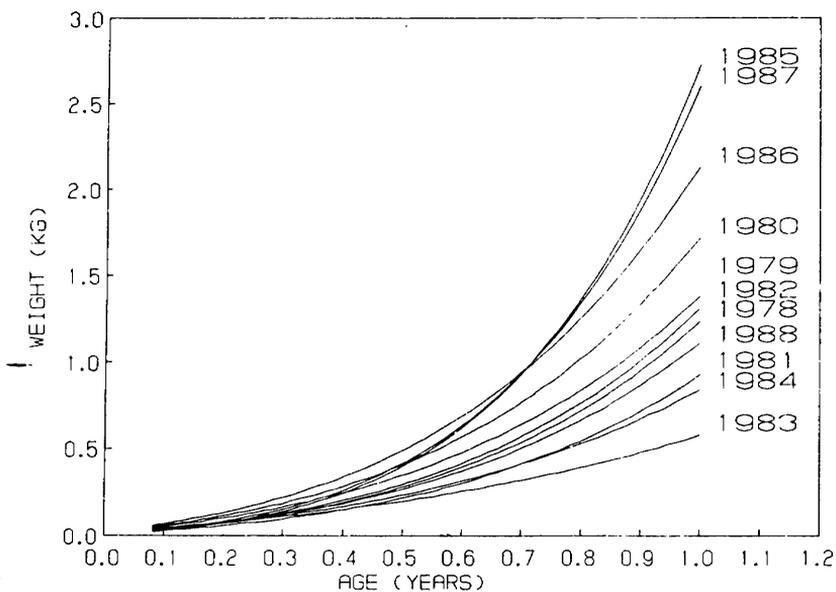


Figure 1. Fitted growth curves for head started Kemp's ridley sea turtles year-classes 1978-1988. Curves were fitted by linear regression of  $\ln(W)$  on  $T^{0.5}$ , where  $W$  is weight (kg) and  $t$  is age (years). The figure represents detransformed results (see also Caillouet *et al.* 1986a).

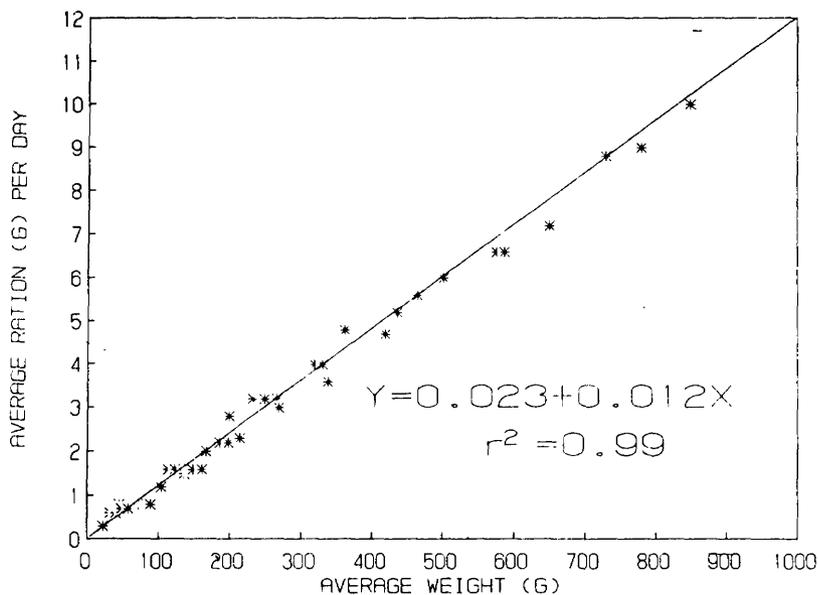


Figure 2. Fitted linear relationship between Y=weekly average food ratio (g) per turtle per day and X=weekly average weight (g) per turtle during head starting of the 1988 year-class of Kemp's ridleys. This relationship was used to set feeding rates of the 198 year-class.

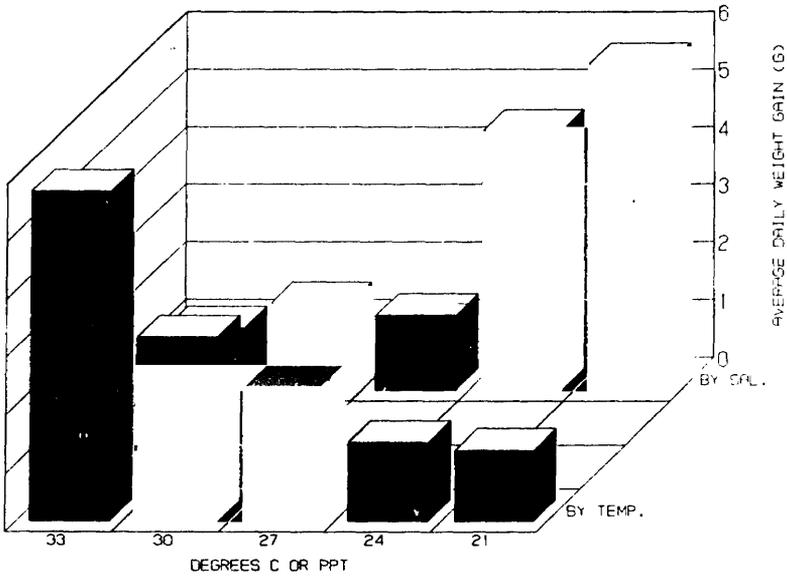


Figure 3. Relationship between weekly average weight gain per turtle per day for 50 Kemp's ridleys of the 1988 year-class and weekly averages of temperature ( $^{\circ}\text{C}$ ) and salinity (ppt) grouped into  $3^{\circ}$  or 3 ppt intervals, respectively.

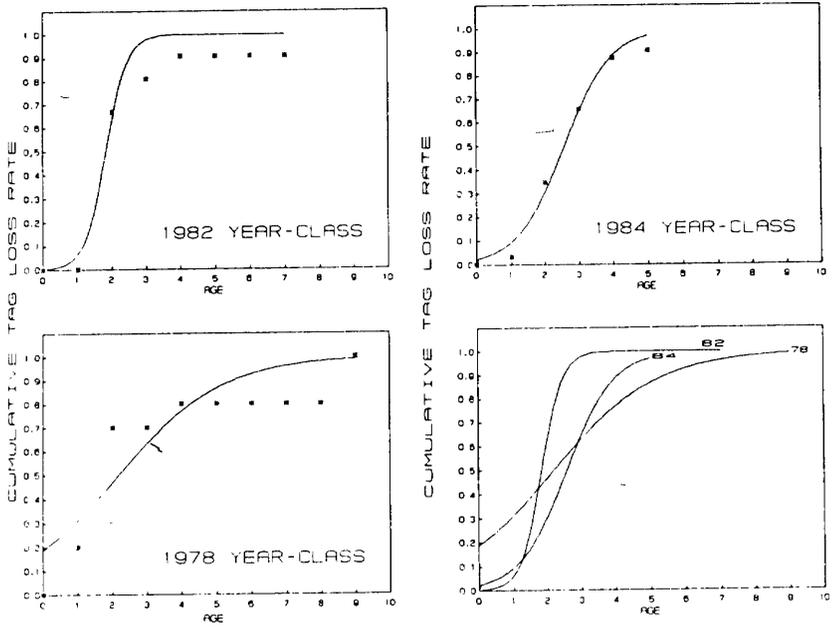


Figure 4. Cumulative tag loss rate with age (years) for three head started Kemp's ridley sea turtle year-classes (1978, 1982, 1984) held in long-term captivity. All tags were Hasco style 681 made of monel alloy.

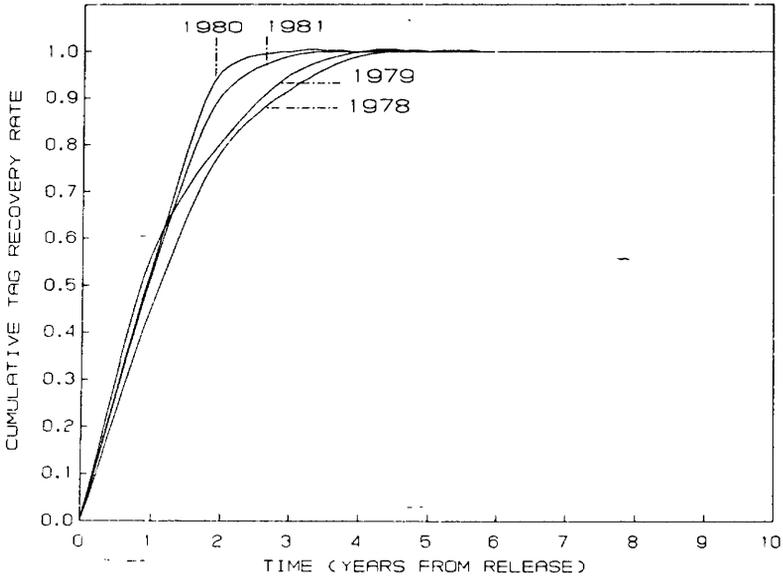


Figure 5. Cumulative tag recovery rate with time (years from release) for head started, tagged and released Kemp's ridley sea turtles of the 1978-1981 year-classes released offshore of Mustang and Padre Islands, Texas.

SEP 18 '91 10:38AM NOAA GC



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL  
August 1, 1991

Honorable J. Bennett Johnston  
United States Senate  
Washington, DC 20510-6150

Dear Senator Johnston:

Your July 18, 1991, letter to the Secretary of Commerce requested information concerning an enforcement proceeding initiated by NOAA in 1989. The respondents in that enforcement proceeding are Euris DuBois, his wife, Connie Pitre DuBois, and her father, Witney Pitre. Mr. DuBois is the captain of a shrimp vessel that is owned by his wife and his father-in-law. All three were charged, jointly and severally, with shrimp trawling without using a turtle excluder device (TED) as required by NOAA regulations. The correspondence you received was written by Mrs. DuBois, who has also sought the assistance of Congressman Tausin. Since the case may be appealed within NOAA, the NOAA General Counsel is precluded from answering your letter.

The TED regulations were first issued in June 1987, but a combination of judicial, legislative, and administrative actions delayed full implementation in the Gulf of Mexico until September 8, 1989. At that time, the Secretary of Commerce announced that that for the first two weeks violators of the regulations would be given the opportunity to settle their cases by buying and installing TEDs. The DuBois' violation occurred during that initial two week period.

An enforcement attorney in NOAA's Southeast Region sent the DuBois and Mr. Pitre a Notice of Violation and Assessment imposing an \$8,000 civil penalty. Included with the notice was an offer to settle the case by suspending the penalty if they installed TEDs and did not commit any further violations of the Endangered Species Act with respect to sea turtles during a two-year period.

As is standard practice when penalties are suspended, the NOAA attorney asked Mr. and Mrs. DuBois and Mr. Pitre to sign a settlement agreement and a contingent promissory note in the amount of the suspended penalty. The note would become due and payable only if the terms of the suspension were violated by a failure to submit required documentation of the installation of TEDs or by a subsequent violation of the Endangered Species Act with respect to sea turtles within the stated two year period.

At this point, Mrs. DuBois, acting on behalf of her husband and her father, adamantly refused to execute the settlement agreement and the promissory note, apparently believing that all they were required to do was buy TEDs. She also failed to request a hearing on the violation within the time limits specified



SEP 18 '91 10:38AM NOAA GC

P.3/3

by NOAA regulations. Failure to settle the case or request a hearing results in the proposed penalty becoming final.

On August 21, 1990, at Congressman Tausin's request, the NOAA enforcement attorney renewed the offer to settle the case by suspending the \$8,000 penalty that had, by that time, become final but only if the settlement agreement and the contingent promissory note were signed. Again, Mrs. DuBois refused to sign. On April 19, 1991, NOAA's second offer to settle this case was withdrawn because Mrs. DuBois had not accepted the settlement.

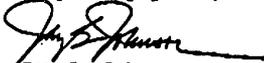
On May 7, 1991, Mrs. DuBois requested a hearing before an Administrative Law Judge (ALJ). On July 10, 1991, the ALJ denied the hearing request because it was not timely filed. On July 23, 1991, the ALJ denied Mrs. DuBois' request for reconsideration. On July 31, 1991, I telephoned Mrs. DuBois and informed her that she could either settle the case according to NOAA's original proposal or seek to appeal the ALJ's denial of her request for an administrative hearing on the TEDs violation. I provided her the address to submit such an appeal.

Contrary to Mrs. DuBois' protestations, I assure you that this agency has done nothing dishonest and nothing out of the ordinary. Our efforts have been directed to a fair and uniform enforcement of the regulations. We have not suspended Mr. DuBois' shrimp fishing permit, because no Federal permit is required for the shrimp fishery. We have denied Mrs. DuBois' and Mr. Pitre's applications for permits to take other species. This is the usual first step to collect an unpaid civil penalty after it has become final, as it did in this instance back in 1989.

The DuBois and Mr. Pitre were offered the same opportunity to settle as everyone else who violated the TED regulations in the first two weeks. In fact, they have been offered the opportunity to settle on three separate occasions, most recently by telephone on July 31st. The decision to refuse to accept the first settlement offer -- which would have cost them nothing so long as they remained in compliance with the regulations -- has now led to their owing the government \$8,000 plus interest from the date the penalty became final and denial of their other fishing permits. Nevertheless, Mrs. DuBois is free to respond to my renewal of NOAA's settlement offer within the next 30 days.

Please contact the undersigned if you have any questions concerning the DuBois' situation.

Very truly yours,



Jay S. Johnson  
Deputy General Counsel

cc: Connie Pitre DuBois