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U.S. DISTRICT COURT
SAN FRANCISCO, DISTRICT OF CALIFORNIA

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15 UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

MEJ

18 TURTLE ISLAND RESTORATION
19 NETWORK, a non-profit corporation, and
20 MAYPORT VILLAGE CIVIC ASSOCIATION)
21 INC., a non-profit corporation,

Case No.

EW 09

5239

Plaintiffs,

v.

COMPLAINT FOR DECLARATORY
JUDGMENT

22 UNITED STATES DEPARTMENT OF
23 STATE,

Defendant.

INTRODUCTION

1. This case concerns the failure of the United States Department of State ("State Department") to comply with the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq., and the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 et seq., in connection with its annual action certifying compliance with section 609 of Pub. L. 101-162, 103 Stat. 1037 (Nov. 21, 1989) (hereinafter "Section 609") to authorize the entry into the United States of shrimp and shrimp products harvested by foreign nations. Every year, on or about May 1, the State Department makes a determination whether each foreign nation that exports shrimp or shrimp products harvested with commercial technology that may harm sea turtles to the United

1 **PARTIES**

2 6. Plaintiff TURTLE ISLAND RESTORATION NETWORK (“TIRN”) is a non-profit
3 membership organization based in Marin, California. TIRN is dedicated to the preservation of
4 marine species and their habitats through public education, scientific and policy advocacy, and
5 litigation. The Sea Turtle Restoration Project of TIRN advocates for the protection of
6 endangered and threatened sea turtles in ways that make cultural and economic sense to the
7 communities that share the beaches and waters with these gentle creatures. With offices in
8 California, Texas, Papua New Guinea, and Costa Rica, the Sea Turtle Restoration Project has for
9 decades been leading efforts to protect sea turtle populations worldwide. Through its Sea Turtle
10 Restoration Project, TIRN works with international grassroots organizations, biologists, and local
11 communities in the United States and abroad to protect and restore sea turtle populations from
12 the impacts of fishing and other harmful activities. TIRN’s staff and members regularly visit
13 waters and nesting beaches both in the United States and abroad where sea turtles are present and
14 have observed and studied each of the sea turtle species affected by shrimp harvesting operations
15 and intend to continue doing so in the future. TIRN’s members and staff derive scientific,
16 recreational, conservation, educational, and aesthetic benefit from the existence, observation, and
17 study of sea turtles.

18 7. TIRN’s staff and members rely on the State Department’s compliance with NEPA and
19 the ESA, including the ESA consultation requirements, to protect sea turtles. The scientific,
20 recreational, conservation, educational, and aesthetic interests of TIRN’s staff and members in
21 the protection and restoration of sea turtles has been adversely affected and injured by the State
22 Department’s failure to comply with NEPA and the ESA in connection with the annual Section
23 609 certifications and will continue to do so unless and until relief is granted. TIRN’s staff and
24 members have also suffered procedural and information injury from the State Department’s
25 failure to comply with analysis and disclosure requirements of NEPA and the ESA before
26 undertaking Section 609 certifications and such injury will continue unless and until relief is
27 granted.

28 8. Plaintiff MAYPORT VILLAGE CIVIC ASSOCIATION INC. (“Mayport Village

1 Association”) is a non-profit corporation operating in Mayport, Florida. The Mayport Village
2 Association seeks to foster and promote the private, as well as commercial, interests of its
3 members and real property owners in the Mayport Village area and to promote the public welfare
4 of Mayport Village’s citizens. Among its member are 15 shrimp fishers, crews and their
5 families, totaling about 100 people who live in and around Mayport Village. This small village
6 is mainly comprised of a few fresh-from-the-boat seafood shacks and a fleet of shrimping boats,
7 and, as such, shrimp fishing is the economic lifeblood for Mayport Village and many of its
8 residents. The commercial shrimp fleet and the restaurant industry contribute significant revenue
9 to the community of Mayport Village. Members of the Mayport Village Association are affected
10 by the certification actions of the State Department. The shrimpers of Mayport Village,
11 including the shrimper members of the Mayport Village Association, are committed to the use of
12 Turtle Excluder Devices in their fishing and the protection of sea turtles. The import of shrimp
13 from foreign nations that do not meet the U. S. requirements to protect endangered sea turtles
14 through the use of Turtle Excluder Devices or comparable measures places an undue burden on
15 the small family shrimp operations in Mayport Village and on the members of the Mayport
16 Village Association.

17 9. The citizens of Mayport Village and the members of the Mayport Village Association
18 rely on the State Department’s compliance with NEPA and the ESA, including the ESA
19 consultation requirements, to protect sea turtles and thus create a fair domestic market for their
20 shrimp products. The financial interest of the Mayport Village Association’s members and
21 constituency in the protection and restoration of sea turtles has been adversely affected and
22 injured by the State Department’s failure to comply with NEPA and the ESA in connection with
23 the annual Section 609 certifications and will continue to do so unless and until relief is granted.
24 The Mayport Village Association’s members and constituents have also suffered procedural and
25 information injury from the State Department’s failure to comply with analysis and disclosure
26 requirements of NEPA and the ESA before undertaking Section 609 certifications and such
27 injury will continue unless and until relief is granted.

28

1 12. Each year, the State Department certifies foreign nations' compliance with Section
2 609 requirements by determining either that the nations' shrimp harvesting fleet undertakes sea
3 turtle protective measures comparable to those employed by the U.S. domestic shrimp trawling
4 fleet or that the fishery takes place in waters where sea turtles are not often found and therefore
5 presents a minimal risk to sea turtles. Those certification decisions remain valid for one year
6 after issuance and are a necessary precursor to importation of shrimp or shrimp products
7 harvested or produced by foreign nations, fleets and vessels.

8 13. Congress enacted NEPA to promote efforts by federal agencies that will prevent or
9 eliminate damage to the environment in carrying out their actions and decisions. NEPA requires
10 federal agencies to analyze the direct, indirect, and cumulative effects of their actions that may
11 have a significant impact on the environment. NEPA also ensures that the public is notified of,
12 and allowed to comment on, the environmental impacts of a proposed action or decision before
13 the agency proceeds with the action or finalizes its decision.

14 14. The cornerstone of NEPA is the environmental impact statement ("EIS") that must
15 be prepared for all major federal action significantly affecting the quality of the human
16 environment. An EIS must be prepared prior to the initiation of any major federal action so that
17 the environmental impacts of such action can be considered and disclosed to the public during
18 the decision making process. Federal agencies may prepare an environmental assessment ("EA")
19 to determine whether the environmental impacts of an action are significant and, therefore,
20 require the preparation of the EIS. If the EA determines that the action "may" have a significant
21 effect on the environment, then an EIS must be prepared. If not, the federal agency must provide
22 a detailed statement of reasons why the action will have not have significant impacts and issue a
23 finding of no significant impact.

24 15. In either an EIS or an EA, federal agencies must broadly consider the direct, indirect,
25 and cumulative impacts of their actions. NEPA regulations provide that significant impacts are
26 likely where, among other things, endangered or threatened species or their habitat will be
27 impacted.

28

1 16. Congress enacted the ESA, in part, to provide a means whereby the ecosystem upon
2 which endangered species and threatened species depend may be conserved and to provide a
3 program for the conservation of such endangered and threatened species.

4 17. In order to fulfill the substantive purposes of the ESA, federal agencies are required
5 by section 7(a)(2) of the statute to engage in consultation with the National Marine Fisheries
6 Service and/or the U.S. Fish and Wildlife Service to ensure that any action authorized, funded, or
7 carried out by such agency is not likely to jeopardize the continued existence of any endangered
8 or threatened species or result in the destruction or adverse modification of the critical habitat of
9 any such species. Consultation is required whenever a federal agency action may affect a listed
10 species.

11 18. Upon completion of such consultation, the National Marine Fisheries Service and/or
12 the U.S. Fish and Wildlife Service issues a biological opinion that determines if the agency
13 action is likely to jeopardize species or destroy or adversely modify critical habitat. If so, the
14 biological opinion may specify reasonable and prudent alternatives that will avoid jeopardy or
15 adverse modification and allow the agency to proceed with the action.

16 19. Among other things, the biological opinion must evaluate the cumulative effects of
17 the action or decision on listed species and must utilize the best scientific and commercial data
18 available.

19 **FACTUAL BACKGROUND**

20 20. Six of the seven extant species of sea turtles are listed as endangered or threatened
21 under the ESA. 43 Fed. Reg. 32,800 (July 28, 1978) (green, loggerhead, olive ridley); 35 Fed.
22 Reg. 18,319 (Dec. 2, 1970) (kemp's ridley); 35 Fed. Reg. 8491 (June 2, 1970) (hawksbill,
23 leatherback). One of the primary threats to the continued existence of listed marine turtle species
24 is injury and death caused by interaction with fisheries and fishing gear, including the capture of
25 sea turtles in the trawl nets of shrimp harvesting vessels.

26 21. Marine turtles frequently become caught in shrimp trawl nets when they are
27 swimming and feeding in the water column. Because turtles breathe air, they must be able to
28 surface at regular intervals. Turtles that become captured in trawl nets and cannot escape will

1 drown and die.

2 22. To reduce the takes of endangered and threatened sea turtles by shrimp trawl fishing
3 activities, trawl nets can be equipped with turtle excluder devices ("TEDs"). TEDs consist of a
4 grid of bars and a net opening on the top or bottom of a trawl net. When a captured turtle bangs
5 against the bars of the TED, it will be freed through the opening in the net.

6 23. The use of TEDs is particularly important to long-term sea turtle conservation
7 because many of the turtles captured in trawl fishery are juveniles. The loss of these pre-
8 reproductive individuals can be particularly devastating to turtle populations because they have
9 not yet contributed to the perpetuation of the species. See Deborah T. Crouse, Larry B. Crowder,
10 & Hal Caswell, *A Stage-Based Population Model for Loggerhead Sea Turtles and Implications*
11 *for Conservation*, 68 Ecology 1412, 1416 (1987).

12 24. In order to reduce the take of sea turtles, U.S. shrimp fishing vessels have been
13 required to use TEDs since 1990. Pub. L. 100-478, 102 Stat. 2322 (Oct. 7, 1988). The federal
14 government administers and enforces this requirement with respect to U.S. shrimp fishing
15 vessels. The regulation of the U.S. shrimp fishing fleet is and has been subject to compliance
16 with both NEPA and the ESA, including section 7(a)(2). 52 Fed. Reg. 24,244 (June 29, 1987);
17 57 Fed. Reg. 18,446 (Apr. 30, 1992).

18 25. Pursuant to Section 609, the importation of shrimp and shrimp products harvested by
19 foreign nation vessels into the United States is prohibited unless the State Department certifies
20 that the harvesting operations of the foreign nation vessels are subject to regulatory protections
21 and incidental sea turtle take rates that are comparable to those applicable to the U.S. shrimp
22 fleet. On or before May 1 of each year, including most recently on May 1, 2009, the State
23 Department takes the action of certifying the importation of shrimp and shrimp products pursuant
24 to Section 609. In 2009, for example, the State Department certified that 15 foreign nations
25 where shrimp harvesting poses a threat to sea turtles have sea turtle protection programs that are
26 comparable to that of the United States. 74 Fed. Reg. 21,048 (May 6, 2009). These nations
27 would not be allowed to export shrimp or shrimp products to the United States but for the
28 certification decisions issued by the State Department. Section 609 certification decisions by the

1 State Department, therefore, have the effect of allowing shrimp and shrimp products harvested by
2 foreign nations to be imported into the lucrative U.S. market for such products.

3 26. The purpose of Section 609 is to promote and encourage sea turtle conservation
4 efforts by foreign shrimp fishing fleets comparable to the sea turtle conservation efforts
5 employed by the domestic shrimp fishing fleet. The statute achieves this objective through the
6 use of U.S. market power to influence fishing fleet behavior and conservation regulation by other
7 nations. In this way, Section 609 certification decisions are intended to and do affect the
8 conservation of listed sea turtles that interact with shrimp fishing operations by foreign-flagged
9 vessels.

10 27. In carrying out its certification responsibilities under Section 609, the State
11 Department has never prepared an EIS or EA or otherwise undertaken environmental review of
12 its Section 609 comparability certification decisions pursuant to NEPA. Such NEPA review is
13 necessary to determine the effects of State Department certification decisions on sea turtles.

14 28. In carrying out its certification responsibilities under Section 609, the State
15 Department has never sought or initiated formal consultation pursuant to section 7 of the ESA for
16 its Section 609 certification decisions or obtained and used the results of such consultation to
17 ensure that its Section 609 certification decisions will not jeopardize listed sea turtles. Such ESA
18 Section 7 consultation is necessary to determine the effect on sea turtles of State Department
19 certification decisions.

20 CLAIMS FOR RELIEF

21 First Cause of Action 22 (National Environmental Policy Act)

23 29. Each and every allegation set forth in paragraphs 1 through 28 of this Complaint is
24 incorporated herein by reference.

25 30. The State Department's comparability certification decisions pursuant to Section 609
26 are major federal actions that have significant impacts on the human environment, including but
27 not limited to, impacts on listed sea turtles.

28 31. The State Department has violated and continues to violate NEPA by failing to
conduct appropriate environmental review and public disclosure prior to issuing Section 609

1 comparability certification decisions. In particular, the State Department failed to prepare an EA
2 or EIS evaluating the direct, indirect and cumulative environmental impacts of the certification
3 decisions and program as required by NEPA. Additionally, the State Department did not provide
4 public notice and an opportunity for public comment on the certification decisions and program.

5 32. The State Department's failure to comply with NEPA in connection with the Section
6 609 certification decisions and program is arbitrary, capricious, an abuse of discretion, otherwise
7 not in compliance with law, and without observance of procedures required by law within the
8 meaning of the Administrative Procedure Act and is subject to judicial review thereunder. 5
9 U.S.C. § 706(2). The State Department also has unlawfully withheld compliance with NEPA in
10 violation of 5 U.S.C. § 706(1).

11 **Second Cause of Action**
12 **(Violation of Section 7 of the ESA)**

13 33. Each and every allegation set forth in paragraphs 1 through 28 of this Complaint is
14 incorporated herein by reference.

15 34. The State Department's comparability certification decisions pursuant to Section 609
16 are federal agency actions that may affect sea turtle species listed as threatened and endangered
17 under the ESA.

18 35. The State Department's failure to consult under the ESA in connection with the
19 Section 609 comparability certification decisions and to ensure that its comparability decisions
20 do not jeopardize threatened and endangered sea turtles is arbitrary, capricious, an abuse of
21 discretion, otherwise not in accordance with law, and without observance of procedures required
22 by law within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2).

23 36. The State Department has violated and continues to violate section 7(a)(2) of the
24 ESA by failing to ensure through consultation that its section 609 certification decisions will not
25 jeopardize the continued existence of threatened and endangered species, including various
26 species of sea turtles, or adversely modify their critical habitat. These violations are subject to
27 judicial review under 16 U.S.C. § 1540(g). The State Department also has unlawfully withheld
28 compliance with the ESA in violation of 5 U.S.C. § 706(1).

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully requests that the Court enter judgment providing the following relief:

1. Declare that the State Department violated and continues to violate NEPA by issuing Section 609 comparability certification decisions without preparing an EA or EIS, without evaluating the effects of those decisions, and without providing for public review and comment on those decisions;

2. Declare that the State Department violated and continues to violate section 7(a)(2) of the ESA by issuing Section 609 comparability certification decisions without completing consultation;

3. Order the State Department to prepare an environmental review of the Section 609 comparability certifications that complies with NEPA, including provision for public review and comment;

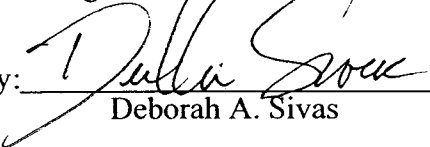
4. Order the State Department to initiate consultation with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service under section 7 of the ESA for its Section 609 comparability certification decisions; and

5. Award Plaintiffs' costs and reasonable attorneys fees for this case.

Dated: November 5, 2009

Respectfully submitted,

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By: 
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