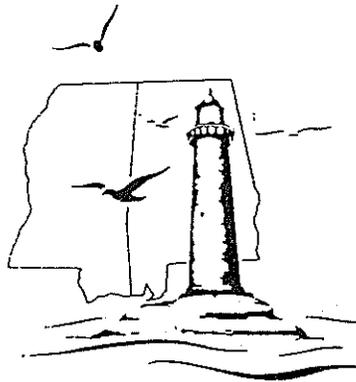


# WATER LOG

*A Legal Reporter of the  
Mississippi-Alabama Sea Grant Consortium*



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## SPECIAL ISSUE: THE TED CONTROVERSY

Turtles, Trawlers, and TEDs: What Happens When the Endangered Species Act Conflicts with Fishermen's Interests

With replies by Tee John Mialjevich of the Concerned Shrimpers of America and Michael Weber of the Center for Environmental Education

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# TURTLES AND THE TELLICO DAM SYNDROME

by  
Michael Weber

There is a grain of truth in comparisons drawn between the current controversy over sea turtles and shrimp trawlers and the controversy of a decade ago over snail darters and the Tellico Dam. In both cases, the focus on compliance with federal endangered species law has obscured broader economic and conservation issues.

At the time of the Tellico Dam controversy, press accounts and government debates seldom touched upon the economic costs and benefits of the Tellico Dam itself. Rather, discussion gravitated toward the greater drama found in the image of the lowly snail darter apparently undermining the economic promise of a mighty TVA dam.

Somewhat in response to this facile but politically potent dramatization of a complex issue, Congress established a high-level committee, sometimes referred to as the "God Committee," to decide conflicts between large-scale projects and endangered species conservation. Ironically, the committee found the economic benefits of the Tellico Dam so questionable that it recommended the project not be exempted from the Endangered Species Act. In the end, only the influence and persuasiveness of Senator Howard Baker from Tennessee managed to save the project from its own economics by securing a specific exemption in the Endangered Species Act.

Opponents of requirements that shrimp fishermen use gear to exclude sea turtles from their nets have also sought to divert attention from broader issues by setting turtles up as the shrimp fisherman's snail darter, about to bring economic ruin to the entire shrimping industry. However, the issues are more complex and far-reaching than this convenient dichotomy.

Southeastern commercial shrimp fishermen have caught sea turtles incidentally in their trawls for many years. As long as sea turtle populations were large and the shrimp fleet was small, incidental capture probably posed little problem for these reptile species. However, with the decline of sea turtle populations and growth in the shrimp fleet, incidental capture of sea turtles became a major problem by the early 1970s.

And the problem continued to grow: not only did the shrimp fleet grow in numbers and harvesting capacity, but several sea turtle populations declined toward oblivion. Take the Kemp's ridley sea turtle, for example. At most, there are 500 adult female Kemp's ridley in the earth's oceans. The Kemp's ridley has continued to decline despite 20 years of conservation efforts by the Mexican government and nine years by the U.S. government. Scientists who know these animals best believe that the species continues to decline because too many Kemp's ridleys are being drowned in the Gulf of Mexico and the South Atlantic shrimp fisheries.

Nor are sea turtle scientists complacent about the more abundant loggerhead sea turtle, which nests on beaches from North Carolina to Florida. Populations of loggerheads nesting on beaches in South Carolina and Georgia—some of which have been studied for more than 20 years—have been decreasing in size at a rate of about three percent annually. A recent analysis of loggerhead population biology concludes that this decline is likely to continue unless incidental mortality in shrimp trawls ends.

The situation became grave enough that by 1985 the U.S. Sea Turtle Recovery Team, which is composed of scientists who have worked with these animals for many years, concluded that the time had passed for promoting voluntary use of TEDs and that reversing the decline in sea turtle populations required use of TEDs in all waters from North Carolina to Texas.

But the matter doesn't stop with turtles, which were formerly a commercially valued resource. In catching more than 300 million pounds of shrimp and 47,000 sea turtles, Southeastern shrimp fishermen also catch billions of pounds of other marine life. Annually the Gulf shrimp fleet alone catches about 10 pounds of finfish for every pound of shrimp, or about 1.5 billion pounds of finfish total. After culling the relatively small amount of shrimp from their catches, shrimp fishermen throw nearly all finfish, sharks, jellyfish, and crabs overboard. The amount of groundfish caught and discarded by the commercial shrimp fishery in the Gulf is five times the amount of groundfish caught by the commercial groundfish fleet. Most of this discarded by-catch is dead or dying.

The costs associated with the discard of just the most immediately marketable of these fishes run into the millions of dollars. Whatever the actual value, discussions of TED requirements have generally not addressed the value of by-catch discarded in the shrimp fishery—but not by choice of conservationists.

The incidental capture of finfish and sea turtles has not been totally ignored by responsible government agencies. The Gulf of Mexico Fishery Management Council acknowledged the problem in fishery management plans for reef fish and for shrimp and in the draft plan for groundfish. The Gulf shrimp plan, approved in 1981, called for the development of shrimping gear that would reduce incidental catch of finfish by shrimpers. The plan also recognized the capture and drowning of sea turtles as a problem in the fishery and identified consistency with the Endangered Species Act as an objective of the fishery management plan.

The draft plan for the Gulf groundfishery concluded that the size of the fishery was limited by the size of the resource and that the size of the resource was being limited by incidental capture in the shrimp fishery, among other things.

In 1986, after years of inaction by the Gulf Council, the U.S. Fish and Wildlife Service and the Center for Environmental Education and other conservation organizations asked the Council to consider requiring TEDs in the Gulf shrimp fishery. The Council decided to avoid the issue and its responsibilities under the Magnuson Fishery Conservation and Management Act (MFCMA). Instead, the Council handed management of the matter over to the National Marine Fisheries Service (NMFS).

NMFS itself has been acutely aware of the problem of incidental catch since at least 1978, but had hoped to avoid regulating a solution by devoting hundreds of thousands of dollars to promoting voluntary use of TEDs from 1981 through 1985. But active cooperation of the fishing industry could not be bought. After several years of such efforts, less than one percent of the fleet was using TEDs, and some shrimp industry leaders were still acting as if the problem would go away if they ignored it long enough.

The lack of progress in reducing the illegal capture and mortality of endangered sea turtles and the failure of the Council and NMFS to carry out statutory responsibilities to conserve sea turtles and finfish convinced the Center for Environmental Education (CEE) and other conservation organizations that the voluntary approach to TED use was ineffective. On August 22, 1986, therefore,

CEE notified the Secretary of Commerce that we were prepared to file suit to compel compliance with the ESA and the MFCMA.

Instead of immediately pursuing TED requirements or a closure of the fishery through the courts, CEE and other conservation organizations decided to sit down once again with the industry in an attempt to forge an agreement on ending the drowning of endangered and threatened sea turtles in shrimp trawls. We initially pushed for reductions in the wastage of finfish, but our attempts were categorically rejected not only by the industry but also by NMFS. After 14 long days of mediated negotiations we arrived at an agreement that, for all its shortcomings, fairly reflected the interests of both endangered species conservation and the shrimping industry.

Since then, some industry representatives have pursued a concerted campaign of misinformation and deception. (If readers would like a summary of this misinformation and our responses, please feel free to write to me at the Center for Environmental Education, 1725 DeSales Street NW, Washington, D.C. 20036.) Let me just take up one example here.

Some Louisiana state officials have claimed that requiring TEDs in Louisiana will cause a \$50 million loss of shrimp income. In support, these officials cite unsubstantiated reports that TEDs reduce shrimp catch by 25 percent. The validity of these allegations hinges upon acceptance of the unsubstantiated reports and upon application of that loss rate to 26,000 Louisiana fishermen, rather than to the 2,000 or so who will actually be required to use TEDs by 1989. In accepting these visions of gloom and doom, one must also believe that TEDs not only exclude shrimp from nets but actually destroy shrimp so that they cannot be caught by another fisherman. Such arguments by the doomsayers, built upon shallow assumptions and strained extrapolations, amount to a kind of economic blackmail, the likes of which we have seldom seen since the days of Tellico Dam.

By the end of the year, Congress will have voted on proposed amendments to the Endangered Species Act that would exempt inshore and offshore shrimp fishermen from the TED requirements. I trust that Congress will peel away the rhetoric of the TED opponents and see in the TED regulations an initial step toward conserving both sea turtles and finfish, resources that belong to the American people above all and not just to shrimp fishermen.

The capture and loss of sea turtles and finfish in the shrimp fishery is a needless and wasteful subsidy of current shrimp fishing practices. It is effectively an allocation made at the expense of other commercial and recreational fishermen and of efforts to rebuild sea turtle populations.

Shrimp fishing in the Gulf and South Atlantic will never be the same. And many of us, environmentalists and fishermen alike, believe that's the way it should be.

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