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Turtle Island Restoration Network, and  
8 Mayport Village Civic Association Inc.

9  
10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

13	TURTLE ISLAND RESTORATION	)	Case No.
14	NETWORK, a non-profit corporation, and	)	
15	MAYPORT VILLAGE CIVIC ASSOCIATION	)	
16	INC., a non-profit corporation,	)	
17		)	
18	Plaintiffs,	)	
19		)	
20	v.	)	<b>COMPLAINT FOR DECLARATORY</b>
21		)	<b>JUDGMENT</b>
22	UNITED STATES DEPARTMENT OF	)	
23	STATE,	)	
24		)	
25	Defendant.	)	

26 **INTRODUCTION**

27 1. This case concerns the failure of the United States Department of State (“State  
28 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

1 shrimp products harvested with commercial technology that may harm sea turtles to the United  
2 States has provided adequate documentary evidence to demonstrate, as required by Section 609,  
3 that (1) the nation has in place a regulatory program governing the incidental taking of sea turtles  
4 in the course of harvesting shrimp that is comparable to that of the United States and (2) the  
5 average rate of incidental taking by shrimp harvesting vessels of the foreign nation is comparable  
6 to the average rate of incidental taking of sea turtles by United States vessels. Shrimp and shrimp  
7 products from foreign nations where the harvesting environment poses a threat to sea turtles are  
8 allowed into the United States market if and only if the State Department issues a comparability  
9 certification under Section 609.

10 2. In this action, Plaintiffs Turtle Island Restoration Network and Mayport Village Civic  
11 Association Inc. seek a judgment from the Court (1) declaring that the State Department's annual  
12 Section 609 certification decisions without an analysis of environmental impacts under NEPA and  
13 without consultation under section 7(a)(2) of the ESA, 16 U.S.C. § 1536(a)(2), violates these  
14 laws and (2) ordering the State Department to undertake the required environmental review and  
15 section 7 consultation.

## 16 JURISDICTION AND VENUE

17 3. This Court has jurisdiction in this case pursuant to 28 U.S.C. § 1331 (federal question),  
18 28 U.S.C. § 2201 (declaratory relief), and 16 U.S.C. §§ 1540(c) and (g) (action arising under  
19 ESA citizen suit provisions). Pursuant to 16 U.S.C. § 1540(g), Plaintiffs provided Defendant  
20 State Department with notice of the violations asserted in this Complaint more than 60 days ago.  
21 The State Department has not remedied the violations.

22 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and 16 U.S.C. §  
23 1540(g)(3)(A) because Plaintiff Turtle Island Restoration Network resides in the Northern  
24 District of California and no real property is involved in this action.

25 5. Pursuant to Local Rule 3-2(c)-(d), intradistrict assignment of this case to the San  
26 Francisco Division is appropriate because Plaintiff Turtle Island Restoration Network resides in  
27 Marin County.

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 the  
21 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 failure  
25 to comply with analysis and disclosure requirements of NEPA and the ESA before undertaking  
26 Section 609 certifications and such injury will continue unless and until relief is granted.

27 8. Plaintiff MAYPORT VILLAGE CIVIC ASSOCIATION INC. (“Mayport Village  
28 Association”) is a non-profit corporation operating in Mayport, Florida. The Mayport Village

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

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

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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 after  
6 issuance and are a necessary precursor to importation of shrimp or shrimp products harvested or  
7 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 be  
15 prepared for all major federal action significantly affecting the quality of the human environment.  
16 An EIS must be prepared prior to the initiation of any major federal action so that the  
17 environmental impacts of such action can be considered and disclosed to the public during the  
18 decision making process. Federal agencies may prepare an environmental assessment ("EA") to  
19 determine whether the environmental impacts of an action are significant and, therefore, require  
20 the preparation of the EIS. If the EA determines that the action "may" have a significant effect on  
21 the environment, then an EIS must be prepared. If not, the federal agency must provide a detailed  
22 statement of reasons why the action will not have significant impacts and issue a finding of  
23 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.

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 action  
13 is likely to jeopardize species or destroy or adversely modify critical habitat. If so, the biological  
14 opinion may specify reasonable and prudent alternatives that will avoid jeopardy or adverse  
15 modification and allow the agency to proceed with the action.

16 19. Among other things, the biological opinion must evaluate the cumulative effects of the  
17 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

1 surface at regular intervals. Turtles that become captured in trawl nets and cannot escape will  
2 drown and die.

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

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

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

19 25. Pursuant to Section 609, the importation of shrimp and shrimp products harvested by  
20 foreign nation vessels into the United States is prohibited unless the State Department certifies  
21 that the harvesting operations of the foreign nation vessels are subject to regulatory protections  
22 and incidental sea turtle take rates that are comparable to those applicable to the U.S. shrimp  
23 fleet. On or before May 1 of each year, including most recently on May 1, 2009, the State  
24 Department takes the action of certifying the importation of shrimp and shrimp products pursuant  
25 to Section 609. In 2009, for example, the State Department certified that 15 foreign nations  
26 where shrimp harvesting poses a threat to sea turtles have sea turtle protection programs that are  
27 comparable to that of the United States. 74 Fed. Reg. 21,048 (May 6, 2009). These nations  
28

1 would not be allowed to export shrimp or shrimp products to the United States but for the  
2 certification decisions issued by the State Department. Section 609 certification decisions by the  
3 State Department, therefore, have the effect of allowing shrimp and shrimp products harvested by  
4 foreign nations to be imported into the lucrative U.S. market for such products.

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

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

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

## 21 **CLAIMS FOR RELIEF**

### 22 **First Cause of Action** 23 **(National Environmental Policy Act)**

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

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

1 31. The State Department has violated and continues to violate NEPA by failing to  
2 conduct appropriate environmental review and public disclosure prior to issuing Section 609  
3 comparability certification decisions. In particular, the State Department failed to prepare an EA  
4 or EIS evaluating the direct, indirect and cumulative environmental impacts of the certification  
5 decisions and program as required by NEPA. Additionally, the State Department did not provide  
6 public notice and an opportunity for public comment on the certification decisions and program.

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

13 **Second Cause of Action**  
14 **(Violation of Section 7 of the ESA)**

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

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

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

25 36. The State Department has violated and continues to violate section 7(a)(2) of the  
26 ESA by failing to ensure through consultation that its section 609 certification decisions will not  
27 jeopardize the continued existence of threatened and endangered species, including various  
28 species of sea turtles, or adversely modify their critical habitat. These violations are subject to

1 judicial review under 16 U.S.C. § 1540(g). The State Department also has unlawfully withheld  
2 compliance with the ESA in violation of 5 U.S.C. § 706(1).

3 PRAYER FOR RELIEF

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

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

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

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

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

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

20 Dated: November 5, 2009

Respectfully submitted,

21 ENVIRONMENTAL LAW CLINIC  
22 Mills Legal Clinic at Stanford Law School

23 By: \_\_\_\_\_  
24 Deborah A. Sivas