UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

December 12, 2008

Mr. Chris Rilling
Highly Migratory Species Management Division F/SF1
Office of Sustainable Fisheries
1315 East West Highway
Silver Spring, MD 20910

Re: Amendment 1 to the Consolidated Atlantic Highly Migratory Species Fishery Management Plan Essential Fish Habitat, Draft Environmental Impact Statement (September 2008)
CEQ # 20080360

Dear Mr. Rilling:

In accordance with the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the U.S. Environmental Protection Agency (EPA) has reviewed Amendment 1 to the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) Essential Fish Habitat (EFH) Draft Environmental Impact Statement (DEIS). Based on our review of the DEIS, EPA has rated the DEIS as "LO" (Lack of Objections). A copy of EPA's ranking system is enclosed for your reference. We offer the following comments for you consideration in the Final EIS and subsequent Amendments.

Project History

In 2004, the National Marine Fishery Service (NMFS) began the comprehensive review of all HMS EFH in the Consolidated HMS FMP, which was released in 2006. In that document, the National Marine Fishery Service provided new information collected since the EFH boundaries were established in 1999. NMFS did not modify or update any of the existing EFH identifications, descriptions, or boundaries in the consolidated HMS FMP or propose any new measures to minimize impacts from fishing gear. The document presented new EFH information and data collected since 1999.

Purpose and Need

The purpose of this Amendment is to update and revise existing HMS EFH as necessary, to consider any new Habitat Areas of Particular Concern (HAPC) or modifications to existing HAPCs, analyze fishing and non-fishing impacts on EFH, and consider measures to minimize fishing impacts as necessary, if any types of fishing gear are determined to have a negative effect on EFH. The Magnuson-Stevens Act regulations call for a comprehensive review of all EFH

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information at least once every five years, and this Amendment constitutes Phase 2 of the comprehensive review and update of EFH for all HMS that began with the Consolidated HMS FMP. In addition, new information has become available since 2006, including information on the biology, distribution, habitat requirements, life history characteristics, migratory patterns, spawning, pupping, and nursery areas of the Atlantic HMS, and has been taken into consideration when updating EFH in this Amendment.

Alternatives

The DEIS evaluates alternatives for two actions: (1) identifying EFH and (2) designating HAPCs. For identifying EFH, this DEIS evaluates three alternatives in detail, including a No Action. For designation of HAPCs, four alternatives, including No Action, were developed to identify designation strategies. HAPCs are areas within the EFH that should be identified based on one or more of the following considerations: importance of the ecological function, extent to which the habitat is sensitive to human induced environmental degradation, whether and to what extent development activities are or will be stressing the habitat type, and the rarity of the habitat. The DEIS also analyzes fishing impacts on EFH.

For Essential Fish Habitat, the identified Preferred Alternative is Alternative 3 – establish new EFH boundaries based on the 95 percent probability boundary. Alternatives 4 and 5 were dismissed because they were more precautionary and would identify larger areas for EFH and may run counter to the intent of identifying areas that are considered essential. The DEIS identifies Alternative 2 for designation of HAPC: designate a HAPC for spawning bluefin tuna in the Gulf of Mexico while maintaining current HAPCs.

A preliminary determination was made that HMS gears, with the exception of BLL, were not having negative impact on EFH. Similarly, the DEIS states that other state and Federally managed gears do not appear to have an impact on HMS EFH, with the possible exception of some bottom-tending gears in shark nursery areas in coastal bays and estuaries. If the analysis determines that bottom longline gear, or any other gears, are having a more than minimal and not temporary effect on EFH then NMFS will propose alternatives to avoid and minimize those impacts in a subsequent rulemaking.

Comments

Based on the information provided for Alternative 3 (Preferred Alternative for EFH boundaries), the disadvantage of this alternative is that data-poor species result in smaller, discontinuous areas than data-rich species. The species with limited data should be clearly listed, as well as an approach to try to verify or modify these EFH boundaries, to ensure they are protective. The DEIS does not provide adequate information to show that this is a protective approach for all species covered in the document.

Additional information should be provided on how determinations will be made regarding impacts from fishing gear. Further assurance should be given as to how any impacts will be addressed. Additional information on the conservation measures in Chapter 6, and how they relate to the Alternatives, should also be included in the Final EIS.

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A discussion should be provided to discuss the monitoring plans, data gaps and how future data will be obtained and used. A glossary and list of acronyms should be provided in the document.

Thank you for the opportunity to offer these comments. If you have any questions, please contact Barbara Okorn at (215)814-3330.

Sincerely,

for William Arguto
NEPA Team Leader
Office of Environmental Programs

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