UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

March 3, 2010

Dr. Roy E. Crabtree
Regional Administrator
Southeast Regional Office
National Oceanic and Atmospheric Administration
263 13th Avenue South
St. Petersburg, Florida 33701

Subject: EPA NEPA Comments on NOAA FEIS for Amendment 31 to the "Fishery Management Plan for Reef Fish Resources in the Gulf of Mexico"; Gulf of Mexico Fishery Management Council; Gulf of Mexico; CEQ No. 20100026; ERP No. NOA-E91029-00

Dear Dr. Crabtree:

Consistent with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the U.S. Environmental Protection Agency (EPA) has reviewed the National Oceanic and Atmospheric Administration's (NOAA) Final Environmental Impact Statement (FEIS) for Reef Fish Amendment 31 prepared by the Gulf of Mexico Fishery Management Council (Council). This amendment concerns the reduction of sea turtle bycatch from the bottom longline component of the Reef Fish Fishery. EPA previously provided comments on the Draft EIS (DEIS) in a letter dated December 7, 2009.

Overall, EPA is supportive of Amendment 31's proposed actions. These actions are expected to reduce the reef bottom longline fishing effort by 48-67% and thereby would likely reduce the bycatch of endangered loggerhead and other sea turtles. Secondarily, it would have the benefit of reducing the harvest of commercial target and bycatch reef species that are experiencing overfishing. Specifically, NOAA and the Council are recommending time and area closures, a reduction in the number of hooks per longline set, and endorsements to help ensure compliance with the Endangered Species Act (ESA). Reducing the capacity of the longline fishery may result in a fisher crossover to vertical line gear, which apparently has overall less turtle bycatch than longline gear but may also have some environmental consequences to reef species and habitat.

EPA appreciates that responses to our and other agency comments on the DEIS were made in Appendix E, and that a copy of our comment letter was provided in Appendix D. We have focused our FEIS review on these responses, and offer the following observations.

* Certainty of Actions – EPA can appreciate the dilemma of having to implement changes to a fishery for regulatory compliance (ESA in this case) without the luxury of quantitative data on certain issues potentially being considered for regulation. The FEIS response (pg. E-1) to EPA's suggested additional actions to potentially reduce turtle bycatch (e.g., longline bait preferences, line soak times, circle hooks, hook size, hook guards and other approaches) concluded that not enough data were available for implementation. While definitive data may not exist for these additional approaches, we note that the above FEIS-preferred actions predicted to reduce catch-effort and thereby turtle bycatch are also not a certainty to succeed. However, we assume they are relatively more certain to succeed than the suggested additional actions; therefore, EPA will defer to NOAA and the Council. Nevertheless, we recommend monitoring of Amendment 31's actions to determine sufficient bycatch reductions, and pursuing adaptive management measures as needed to ensure success.

If the proposed actions are not successful enough for ESA compliance, we suggest that the FEIS-reported void in research for other approaches be pursued through NOAA and perhaps other research entities. It is unclear from the responses (pg. E-2) if NOAA is pursuing such research or would pursue such research as a form of adaptive management. If NOAA research funds are limited, perhaps academia (marine institutions) can be made aware of these research needs so that their graduate students might elect to address them in their theses to supplement the database. Intuitively, hook size and guards, baits and soak times should reduce bycatch if properly applied through research. Many of these topics can be addressed in the laboratory and then pilot-tested in the field to provide the desired certainty before rulemaking.

Regarding the circle hook discussion on page E-1, we agree that if circle hooks are so large that they physically preclude adult loggerheads from swallowing them, they would also undesirably preclude smaller-but-legal specimens of target species from swallowing them.[1] However, we suggest that hook size and design could play a significant role in turtle bycatch reduction. Intuitively, turtles would be less vulnerable to all hooks given the anatomical differences in turtle beaks versus softer fish mouth morphologies. Moreover, if hooks are swallowed, turtles are less likely to be gut-hooked by circle hooks than by J-hooks. Research in this area would therefore seem meaningful.[2]

* Vertical Line Gear – We appreciate the requested additional impact information provided on longline versus vertical line gear. It appears that NOAA believes that use of

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[1] Large circle hooks (or J-hooks) could also negatively be selective for large specimens of large target species (grouper, halibut) and thereby harvest large fecund females needed to rebuild or maintain stock populations.

[2] Based on EPA's current review of NOAA's DEIS for Amendment 17A dated February 2010, it is notable that page 275 states that "The use of large circle hooks has been shown to significantly reduce the rate of hook ingestion in loggerhead turtles, reducing post-hooking mortality. Circle hook design typically result in hooking of sea turtle's lower jaw when bitten, and even smaller circle hooks that are swallowed are shaped such that they hook esophageal or digestive tract with much lower frequency than J-hooks (Watson et al. 2003). Because hooking location is one of the primary factors influencing post-release mortality in all species of turtles, circle hooks are generally thought to increase post-release survival." We suggest that the referenced study (studies) and the draft conclusions of Amendment 17A already be considered by NOAA for its Amendment 31 Record of Decision and rulemaking.

vertical lines would result in less turtle bycatch than longlines (pg. E-2). If the reef longline fishery is reduced by Amendment 31, fishers may be able to switch to vertical line gear as a form of mitigation. However, despite less interaction with turtles, such a change to vertical lines may result in greater catch-effort for some target and bycatch reef species -- slowing their recovery from overfishing -- and also impact reef habitat (pg. E-2). If fisher crossover into the vertical line gear indeed results in greater impacts to this fishery, NOAA would presumably ensure that the impacts of increasing this fishery be minimized or regulated as needed.

* Environmental Justice (EJ) – EPA appreciates that NOAA is providing additional consideration and information on minority and low-income (EJ) populations relative to fishers being impacted by proposed amendments. Amendment 31 would result in a downsizing of the longline fishing effort and therefore could socioeconomically impact fishers of all demographics. We appreciate the research to determine that most longline fishers (captain and crew) do not appear to be minorities (pg. E-5); however, it is less clear from the FEIS if these fishers were considered below the state or county poverty lines. Moreover, the following encouraging statement on page E-5 should be confirmed and substantiated: "Although some minorities do participate in the fishery and work in fish houses, it is assumed that they would not be impacted disproportionately as they do not seem to be concentrated within a particular community nor a specific sector of the fishery". That is (as underlined above), are the minority fishers concentrated in community "pockets" or are they reasonably dispersed over the county or other geographic area with other demographics?

Consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), we assume NOAA will consider offsets for affected fishers of all demographics significantly impacted by Amendment 31, including "reliant" fishers. Conversion to a vertical line fishery may be one option, although not without its own set of environmental impacts. The NOAA Record of Decision (ROD) should summarize proposed mitigation for societal effects.

Overall, we believe that outreach to fisher communities is the most direct and reliable method to determine fisher demographics since US Census data often do focus on specific fisher communities and are only compiled every ten years. If data from such surveys is considered too invasive, we suggest that general but substantiated demographic information about the fishers be provided to help determine if substantive numbers of minorities and low-income groups are involved. However, as indicated above, fishers of all demographics should be considered for mitigation to the extent provided in MSFCMA and the intent of Executive Order 12898.

In summary, EPA continues to support Amendment 31 since it is expected to reduce the bycatch of federally-protected loggerheads and other sea turtles by the reef bottom longline fishery. If recommended monitoring demonstrates that the proposed actions do not adequately reduce turtle bycatch, adaptive management efforts should be pursued. These additional approaches to bycatch reduction (e.g., bait type, hook size and design, soak times, etc.) will need to be prefaced by research to help ensure effective

bycatch reduction. Since this amendment would reduce the capacity of the longline fishery, reasonable offsets for affected fishers of all demographics should be pursued. If such mitigation includes a fisher crossover to vertical line gear, the reef species and habitat impacts to that fishery should also be minimized or regulated as needed.

EPA appreciates the opportunity to review the FEIS and notes NOAA's responsiveness to our DEIS comments. Should you have questions regarding these comments, feel free to contact Chris Hoberg of my staff at 404/562-9619 or hoberg.chris@epa.gov.

Sincerely,

Heinz J. Mueller, Chief
NEPA Program Office
Office of Policy and Management

cc: Dr. Paul N. Doremus – NEPA Coordinator (NOAA): Silver Spring, MD