



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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June 1, 2011

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

**Subject: EPA NEPA Review Comments on NOAA's DEIS for "Amendment 10 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic"; CEQ #20110116**

Dear Dr. Crabtree:

The U.S. Environmental Protection Agency (EPA) has reviewed the subject National Oceanic and Atmospheric Administration (NOAA) Draft Environmental Impact Statement (DEIS) in accordance with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. EPA understands that the purpose and need for Amendment 10 is to bring the spiny lobster fishery management plan into compliance with new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and to meet requirements of the Endangered Species Act (ESA). EPA also understands that the spiny lobster fishery management plan (FMP) is the jointly managed by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils).

It is our understanding that NOAA proposes 11 actions within the DEIS which include: 1) removal of lobster species from the FMP; 2) modification of maximum sustainable yield (MSY), overfishing & overfished; 3) establishment of sector allocations; 4) establishment of an acceptable biological catch (ABC) rule, annual catch limits (ACL), annual catch targets (ACT); 5) establishment of accountability measures (AM); 6) update of the framework procedure and protocol for enhanced cooperative management; 7) modification of regulations regarding use of undersized lobster as attractants; 8) modification of regulations regarding tailing permits; 9) closure of areas to protect threatened coral species; 10) requirement of trap line markings; and 11) removal of derelict traps.

The proposed action will impact the management of the following species<sup>1</sup>:

- Caribbean spiny lobster, *Panulirus argus*
- Smoothtail spiny lobster, *Panulirus laeviscauda*

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<sup>1</sup> P. S-3

- Spotted spiny lobster, *Panulirus guttatus*
- Spanish slipper lobster, *Scyllarides aequinoctialis*
- Ridged slipper lobster, *Scyllarides nodifer*

EPA has a responsibility to review and comment on major Federal actions significantly affecting the quality of the human environment, including FMPs and FMP Amendments (Amendments) as developed, approved, and implemented under the MSA where those Plans and Amendments are subject to the EIS requirement of NEPA, but it should be clear that we defer to NOAA and the Councils as to the development of fishery statistics and the relative importance of the commercial and recreational fisheries for each species.

EPA appreciates that several alternatives for proposed actions were presented and that preferred alternatives were identified in the DEIS. Based on our review, we offer the following comments for the preferred alternatives for the 11 actions covered within the DEIS.

### **Actions and Alternatives:**

#### Action – 1: Removal of lobster species from the FMP

- It is unclear from the table on page S-6 if all four of the species listed under the preferred alternative are being removed from the FMP, although it is somewhat clarified at the bottom of the page with a small table that has proposed species for removal. EPA notes that the text on page 17 is also unclear regarding how many species are being proposed for removal from the FMP. Later in the DEIS it is stated that **preferred alternative 4** would remove any or all of the other lobster species from the FMP.<sup>2</sup> EPA recommends that the preferred alternative in the FEIS specifically identify which species are being proposed for removal from the FMP.
- It is stated in the summary section of the DEIS that two species are currently managed under the existing FMP, while five species are included in plan. It is unclear in the summary section which species are currently managed in the FMP. EPA recommends clarification in the FEIS.
- EPA recommends additional discussion in the FEIS on why certain species are not managed under the existing FMP.
- It is stated in the DEIS that some of the species proposed for removal may not meet the National Standard 1 guidelines for an ecosystem component species designation. Based on our review of the DEIS it is our understanding that designating species as ecosystem component species as proposed under **alternative 3** would allow for continued data collection. This additional data could be used to determine if future management is needed. EPA recommends additional discussion be provided in the FEIS regarding the “pros and cons” of listing or not listing species as ecosystem component species.

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<sup>2</sup> P. 115

### Action 2: Modification of MSY, overfishing & overfished

- EPA defers to the Councils in setting the Maximum Sustainable Yields, Overfishing and Overfished Thresholds for the Caribbean Spiny Lobster.
- Under the preferred alternative the Councils propose to use 7.90 million pounds for the MSY proxy, which is the overfishing limit recommended by the Gulf of Mexico Scientific and Statistical Committee (Gulf SSC). The FEIS should provide further discussion on how the MSY proxy value was derived by the Gulf SSC.

### Action 3: Establishment of sector allocations

- EPA defers to the Councils in establishment of sector allocations.
- The following statement is made when referring to the potential for ecological, biological, and physical impacts of setting sector allocations under Action 3, “The range of commercial allocations (74-80%) is not sufficient to affect the number of lobster traps used so there would be no change in the impacts from lobster traps.”<sup>3</sup> EPA believes that additional background on the potential impacts to the environment from commercial versus recreational fishing for Caribbean Spiny Lobster should be provided in the FEIS. This additional information should be presented in a manner to assist the reader in understanding the true environmental impact of setting versus not setting sector allocations.

### Action 4: Establishment of ABC, ACL, ACT

- EPA defers to the Councils in setting acceptable biological catch control rules, annual catch limits, and annual catch targets for the Caribbean Spiny Lobster, however EPA does request clarification on **preferred alternative 2 option C**. Specifically, EPA recommends additional information be provided in the FEIS regarding the basis for setting the ACT at 6.0 million pounds.
- Two preferred alternatives are selected for the ACT on page S-11, while only one preferred alternative is selected for the ACT on page 29. The preferred alternative should be clearly defined in the FEIS.
- A description of the relevance of bolding certain values in Table 4.4.2.2 should be provided in the FEIS. EPA notes that the discussion provided on the preceding page (p.136) does provide some clarification of this table.

### Action 5: Establishment of accountability measures

- EPA defers to the Councils in establishment of accountability measures.
- A note provided at the top of page 31 indicates that more than one alternative, option, sub-option, or combination thereof, may be chosen as preferred, yet **alternative 4** is selected as the preferred alternative. EPA suggests clarification in the FEIS regarding the selection of a preferred alternative.

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<sup>3</sup> P. 128

- Under the preferred alternative, **alternative 4**, the Councils propose to use an ACT of 6.0 million pounds as the AM. As stated above, EPA recommends additional information be provided in the FEIS regarding the basis for setting the ACT at 6.0 million pounds.

Action 6: Update of the framework procedure and protocol for enhanced cooperative management

- EPA notes that two preferred alternatives have been selected under Action 6. The first preferred alternative (**alternative 2**) addresses the current Protocol for Enhanced Cooperative Management and the other (**alternative 4: option a**) addresses the current Regulatory Amendment Procedures to develop a Framework Procedure to modify ACLs and AMs. EPA finds the discussion of Action 6 to be somewhat confusing for the reader, since two preferred alternatives have been selected and essentially two actions are being discussed. It may be more appropriate to separate Action 6 into two separate actions with their own alternatives analysis.
- Although EPA does not oppose the selection of **alternative 4: option a** as one of the preferred alternatives under Action 6, we do encourage more robust public involvement/engagement similar to **alternative 4: option c**.
- The preferred alternative should be labeled in table 2.6.2.

Action 7: Modification of regulations regarding use of undersized lobster as attractants

- EPA notes that preferred **alternative 4** tracks the State of Florida regulations and would make enforcement more effective.
- EPA agrees that bringing federal regulations more in line with the State of Florida regulations for the possession and handling of juvenile Caribbean Spiny Lobsters as “undersized attractants” will ease some of the enforcement concerns. However, EPA notes that the preferred alternative is less protective of juvenile Caribbean Spiny Lobsters than the existing regulation, 50CFR 640.21 (c), which allows no more than 50 undersized Caribbean Spiny Lobsters, or one per trap aboard the vessel, whichever is greater. Based on EPA’s understanding of the preferred alternative, a fisherman could possess 50 juvenile Caribbean Spiny Lobsters in addition to one per trap. As stated in the DEIS, some mortality, although low, would be expected. EPA finds it unclear why fisherman would need more juvenile Caribbean Spiny Lobsters than traps aboard. Please clarify in the FEIS.

Action 8: Modification of regulations regarding tailing permits;

- EPA supports the selection of both preferred **alternatives 3 and 4**, which would result in the greatest biological benefit.
- EPA recommends combining **alternatives 3 and 4** into a fifth alternative, since both have been selected as the preferred alternative. This would allow for the selection of alternative 3, 4, or a combination of the two.

#### Action 9: Closure of areas to protect threatened coral species

- A note provided at the top of page S-22 indicates that more than one alternative may be chosen as preferred, yet only one alternative is selected as the preferred throughout the DEIS (with one exception on p. 167), **alternative 3: option a**. The preferred alternative should be clearly defined in the FEIS.
- EPA notes that **alternative 2** would provide the greatest biological benefit to the *Acropora* corals but would also have the greatest economic impact because it would close approximately 73 square miles of the EEZ off Florida to trapping. EPA recommends that quantification of economic impacts in the context of all of the alternatives be included in the FEIS. This additional information would assist the reader in understanding the potential economic impact of the proposed alternatives.
- EPA notes the statement: “Alternative 4 differs from Preferred Alternative 3 in that it covers all fishing for spiny lobster, but the economic difference may be small if the waters are sufficiently deep that the lobsters are accessible primarily with traps and not diving.”<sup>4</sup> It is unclear why **alternative 4: option a** was not selected as the preferred alternative, due to being more protective of the *Acropora* corals and minimal differences of economic impact between **alternative 3: option a** and **alternative 4: option a**. EPA notes that the Councils’ decision may be based on Action 1 – removal of species from the FMP, but this should be made clear in the FEIS. In addition, as stated in the DEIS, “alternative 4 would be easier to enforce because any boat in a closed area with lobster on board would be in violation of regulations.”<sup>5</sup> EPA recommends additional clarification in the FEIS regarding why **alternative 3: option a** was selected as the preferred alternative.

#### Action 10: Requirement of trap line markings

- Action 10 appears to be specific to gear markings for spiny lobster traps used in the EEZ off Florida only. Although EPA notes that the majority of the Caribbean Spiny Lobster fishing takes place off the coast of Florida, it is unclear why a similar action hasn’t been proposed for gear markings off waters in other states covered by this DEIS (North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Texas).

#### Action 11: Removal of derelict traps

- Similar to Action 10, Action 11 appears to be specific to the removal of derelict or abandoned spiny lobster traps found in the EEZ off Florida only. EPA is unclear on why similar action is not being proposed for the removal of traps off waters in other states covered by this DEIS (North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Texas).

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<sup>4</sup> P. 176

<sup>5</sup> P. 178

## **General Comments:**

Demographics/Social Vulnerability - EPA appreciates NOAA's efforts to evaluate potential environmental justice issues posed by Amendment 10 of the Spiny Lobster Fishery Management Plan. The DEIS examines county and state demographics for minority and low-income populations using 2000 and 2007 estimates from the U.S. Census Bureau. According to the DEIS, the demographic information presented includes those South Florida Counties that are most reliant on Spiny Lobster, commercially and recreationally. According to the DEIS, there are two coastal Florida counties (Miami-Dade and Broward Counties) along the proposed Fishery-Management areas that are considered minority and/or low-income. Both counties contain substantial minority populations. Miami-Dade County also has a substantial percentage of residents living below poverty relative to the state (16.1% vs. 12.6%). EPA notes a demographic error on page 108 which indicates that the residents in Miami-Dade are **74.4%** White (77.8% State) and **61.7%** Hispanic populations (20.5% State). We are also unclear why the county demographics in other coastal states affected by this fishery management plan are not included in the DEIS. EPA request clarification on how the fishing port cities and counties were determined to be "representative" of the fisheries of concern.

EPA appreciates the inclusion of the map in the DEIS of South Florida Counties with fishing communities that are geocoded based on their social vulnerability (i.e., unemployment, poverty, education, etc) using 2000 Census data. The social vulnerability map indicates that fishing communities in Miami-Dade, Martin, Palm Beach, Sarasota, St. Lucie, and Charlotte Counties are highly vulnerable to coastal environmental hazards and social disruptions including regulatory changes.<sup>6</sup>

Environmental Justice – Although proposed FMPs/Amendments are implemented for the sake of recovering the fishery, they can have societal effect on fishers. These affects can be equally or unequally distributed among fishers. Section 3.5.1. (Page 112) states that, "it is anticipated that the impacts of this amendment may affect communities with environmental justice concerns..." It is then stated that the impacts of Amendment 10 should not discriminate against any group and implies that the FMP will affect all groups in the same manner. While this may be true, the effect of the impact may vary based on the vulnerability of populations affected. For example, the DEIS documents landings and values for the top fifteen species for several coastal areas in south Florida (Figures 3.5.3 – 3.5.14). According to the DEIS, Caribbean spiny lobster is by far the most valuable species landed in Miami with over 60% of the value of the total landings and accounting for over 30% of the landings (Figure 3.5.12),<sup>7</sup> yet Miami-Dade County has higher than average poverty and is listed as highly vulnerable (Figure 3.5.1) which is not the case for other coastal areas described in the DEIS.

Public Participation – It is important to incorporate and discuss the public participation activities related to EJ associated with the project. There is no discussion of the public participation process related to EJ communities. Given that two coastal counties Miami-

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<sup>6</sup> p. 99

<sup>7</sup> P. 108

Dade and Broward have substantial Hispanic populations, the DEIS should include some discussion about the strategies used to meaningfully engage or outreach to these communities in the decision-making and assessment process (i.e., Spanish materials/translators provided during the public involvement process, etc). EPA notes that two public hearing were held to discuss the Spiny Lobster Amendment 10, one in Key West Florida and the other in Marathon Florida (Appendix F). However, it is not clear that representatives of these communities were involved or that any issues they have were identified. EPA recommends more EJ specific outreach efforts for these public participation opportunities.

Section 5 – Fishery Impact Analysis/Social Impact Statement

No information is provided under this section in our copy of the DEIS. Please provide Section 5 in the FEIS.

Color Figures and Tables in DEIS

EPA found figures and tables in the DEIS copies delivered to the Region very difficult to review. Several figures and tables required color copies to interpret. EPA was able to download a pdf version off the Council’s website for review. For future documents, please provide color copies of documents that require color to interpret. EPA does note that NOAA provided additional color copies of proposed closure areas which were helpful.

**EPA DEIS Rating:**

Although some clarification comments were offered for this DEIS, EPA generally supports NOAA and the Councils on Amendment 10 and gives deference to their fishery expertise. Therefore, EPA rates this DEIS as “LO” (Lack of Objections). Nevertheless, we request that NOAA and the Councils directly respond to our comments in a dedicated section of the FEIS.

EPA appreciates the opportunity to review the DEIS. Should NOAA have questions regarding our comments on the Amendment actions, please feel free to contact Dan Holliman at 404/562-9531 or [holliman.daniel@epa.gov](mailto:holliman.daniel@epa.gov) and for EJ comments please contact Ntale Kajumba at 404/562-9620 or [kajumba.ntale@epa.gov](mailto:kajumba.ntale@epa.gov) of my staff.

Sincerely,



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