



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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July 26, 2016

Dr. Roy E. Crabtree, PhD
Regional Administrator
Southeast Regional Office
National Marine Fisheries Service, NOAA
263 13th Avenue South,
St. Petersburg, Florida 33701-5505

SUBJECT: Draft Environmental Impact Statement (DEIS): Amendment 37 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region, Modification to the Hogfish Fishery Management Unit; CEQ No. 20160135.

Dear Dr. Crabtree:

The Environmental Protection Agency (EPA) reviewed the subject document pursuant to its Clean Air Act (CAA) §309 responsibilities consistent with the National Environmental Policy Act (NEPA) §102(2)(C). The South Atlantic Fishery Management Council (the Council) and the National Marine Fisheries Service (NMFS) propose 12 actions to manage hogfish including addressing the Florida Keys/east Florida hogfish stock's *overfished* and *overfishing* status.

The EPA rates this DEIS as lack of objections (LO) per its EIS criteria (Please see: <http://www2.epa.gov/nepa/environmental-impact-statement-rating-system-criteria>.)

The EPA defers to the NMFS and the Council's expertise in addressing the complex challenges with managing this popular fishery. However, it is unclear whether the DEIS' scope appropriately addresses what the EPA perceives as three NEPA-connected actions: 1) Action 1 preferred alternative's connectedness to the requisite Gulf of Mexico Fishery Management Council's Amendment, 2) Action 2's proposed future establishment of *maximum sustainable yield* (MSY) and the connectedness of any future regulatory action based on the MSY, and 3) Action 7's proposed *annual catch targets* (ACT) and the connectedness of any future decision to use the ACT in the future, whether such decision will require NEPA review (i.e., Amendment). These three potential actions are the basis for our enclosed comments. The EPA requests that the NMFS consider these technical comments in its development of a Final EIS. Should you have any questions, please contact Ms. Beth Walls of my staff at walls.beth@epa.gov or 404-562-8309.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris A. Militscher".

Christopher A. Militscher
Chief, NEPA Program Office
Resource Conservation and Restoration Division

Enclosure: EPA comments

ENCLOSURE

Amendment 37 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region, Modification to the Hogfish Fishery Management Unit, Fishing Level Specifications for the Two South Atlantic Hogfish Stocks, Rebuilding Plan for the Florida Keys/East Florida Stock, and Establishment/Revision of Management Measures for Both Stocks CEQ No: 20160135.

Key or Significant Environmental Impacts

The proposed action concerns hogfish, one of 59 species managed under the Snapper Grouper FMP by the South Atlantic Fishery Management Council (the Council). It proposes to increase the commercial and recreational minimum hogfish-size limit from 12 to 16 inches for the Florida Keys/East Florida (FLK/EFL) stock and to 17 inches for the Georgia – North Carolina (GA-NC) stock. It establishes commercial trip limits for both stocks: 25 lbs. whole weight (ww) for the FLK/EFL stock and 500 lbs. ww GA-NC stock. It decreases the recreational bag limit from 5 to one (1) fish per person per day for the FLK/EFL stock and establishes a two-fish per person per day limit for the GA-NC stock. It recalculates the commercial to recreational sector allocations at 9.63 to 90.37 percent for the FLK/EFL stock and 69.13 to 30.87 percent for the GA-NC stock. It proposes a stock rebuilding plan to rebuild the FLK/EFL stock in 10 years with a 72.5% probability of rebuilding success because this stock has been determined to be overfished and undergoing overfishing. It also establishes an annual recreational fishing season from July through October for the FLK/EFL hogfish stock.

Proposed Action

The National Oceanic Atmospheric Administration (NOAA) Fisheries (also known as the National Marine Fisheries Service (NMFS)) is the federal agency responsible for the management, conservation and protection of living marine resources within federal waters. The Magnuson Fishery Conservation and Management Act (the Act) created 8 regional fishery management councils to develop fishery management plans needed to manage fishery resources. NMFS works with the eight Councils to manage fisheries.

NMFS and the Council propose 12 management actions for hogfish. The proposed Action 1 redefines the Council's single hogfish stock fishery into two stocks: the FLK/EFL stock and the GA-NC stock based on the 2014 stock assessment indicating 3 separate and distinct hogfish populations exist, each specific to a geographic area, i.e., the Florida Keys - southeast Florida (FLK/EFL stock), the Georgia – North Carolina (GA-NC stock), and the eastern Gulf of Mexico. Action 2 specifies for the FLK/EFL stock the MSY, which is the largest, long-term average catch that can be sustained from a stock under average conditions. Action 3 specifies for the FLK/EFL stock a *minimum stock size threshold* (MSST), the biomass level below which stock is considered overfished.

Action 4 establishes *annual catch limits* (ACLs) for the GA-NC stock while the proposed Action 6 establishes ACLs for the FLK/EFL stock. The Act requires the use of ACLs and *accountability measures* (AMs) to end and prevent overfishing.¹ The ACL is the level of annual catch that if met or exceeded, triggers some corrective action or AMs. AMs are management controls to prevent ACLs from being exceeded or to correct any exceedances. Action 12 establishes AMs for both hogfish stocks. Action 7 establishes a recreational ACT for both hogfish stocks at 85-percent of the ACL. For both

hogfish stocks: Action 8 increases the minimum size limit; Action 9 establishes a commercial trip limit; and Action 10 establishes (or modifies) recreational bag limits.

The Florida Fish and Wildlife Conservation Commission's 2014 hogfish stock assessment indicates the FLK/EFL hogfish stock is *overfished*, meaning its stock biomass falls below the MSST, and it is undergoing *overfishing* because the fishing mortality rate exceeds the stock's capacity to produce MSY. Since the Act requires a rebuilding plan to address the FLK/EFL stock's status, Action 5 proposes such a plan. Additionally for the FLK/EFL hogfish stock, Action 11 establishes an annual recreational fishing season, July through October.

Affected Environment

The proposed action will likely affect hog-fishermen, hogfish, and the reef environment within the Council's defined geographic area and a portion of the Gulf of Mexico Fishery Management Council (Gulf Council)'s area. Hogfish are a reef species that inhabit the discontinuous rocky bottoms, ledges, and reef habitats. Using their long, hog-like snout, hogfish root in the sediment for food including bottom-dwelling mollusks and crustaceans. Consequently, they are not commonly caught on hook and line. Instead, primarily harvested by spearfishing. Their flesh is considered to be of excellent food quality. Hogfish support a modest commercial and recreational fishery in the southeastern United States, especially in Florida, where about 70% of the U.S. commercial hogfish catch was landed during 2000–2004.

The hogfish life cycle consists of a 30-40 day planktonic larval phase after which juvenile hogfish settle in estuaries, seagrass beds, or shallow reef habitats. Hogfish are protogynous hermaphrodites: juvenile hogfish are female then mature into males at around three years in age and 14 inches in length. For the GA-NC stock, the estimated size at which half the hogfish population is male is 24 inches fork length (FL) with nearly all hogfish being male by 30 inches. For the FLK/EFL stock, the estimated size at which half of the hogfish population is male is 16 inches FL with nearly all hogfish being male by 25 inches. Each male forms a harem of 5 to 15 females. The removal of the dominant male may significantly impact harem stability and decrease hogfish reproductive potential.

Recommendations

The EPA appreciates the significance of the NMFS and the Council's challenge in managing the hogfishery from being overfished particularly in light of this fish's popularity for sport fishing and consumption. The hogfish's protogynous hermaphrodite biology and the discontinuous nature of its habitat can make it difficult to determine and ensure a sufficient female population matures to reproductive age and subsequently matures into males. Further compounding this challenge is the need for sufficient data to accurately estimate existing hogfish stock levels, determine when stocks have reached maximum sustainable levels, and identify when a stock is no longer overfished or undergoing overfishing. We defer to the NOAA and the Council's expertise in these matters. From the documents provided, the EPA was unable to determine whether NMFS had considered the issues raised below.

Recommendation #1 –

For Action 1, it is unclear whether the DEIS's scope appropriately addresses the connected action of the preferred alternative and the need for the Gulf Council to remove a portion of its jurisdiction over the Florida Keys hogfish stock. Connected actions are expected to be discussed within the same impact statement whether it is within this EIS or a future NEPA review pursuant to the Council on

Environmental Quality (CEQ)'s NEPA regulations.² According to the DEIS, *[u]nder Preferred Sub-alternative ... the Florida Keys would be managed exclusively by the South Atlantic Council. However, the Gulf Council will need to remove the portion of hogfish in Monroe County, Florida, from [its] Reef Fish Management Unit and give management jurisdiction to the South Atlantic Council.* The above needed Gulf Council action requires a future amendment. NMFS's approval of FMPs and amendments appear to typically be considered as major federal actions triggering NEPA review. Additionally, it is unclear whether the Gulf Council will be doing the action necessary to implement this action's preferred alternative.

Recommendation #2 –

For Action 2, it is unclear whether the DEIS's scope appropriately addresses the connected action of a future MSY determination based on future available scientific information (i.e., a suitable GA – NC stock assessment), with future management actions requiring some form of NEPA review. The preferred alternative gives the Council flexibility to adopt a new (i.e., the GA – NC stock) or revise an existing (i.e., the FLK/EFL stock) MSY value to incorporate new scientific findings (e.g., future stock assessments) without preparing an additional amendment (NEPA review). It is unclear whether this proposed action is consistent with the NOAA/NMFS' environmental review process for fishery management actions pursuant to the Act and the NEPA.

Because of the unavailability of a suitable stock assessment, Actions 2 and 3 are unable to establish the MSY and the MSST for the GA – NC stock. Consequently, the preferred alternative allows the Council to adopt new MSY values to incorporate scientific findings as they become available without having to prepare an additional amendment. NMFS's approval of FMPs and amendments appear to typically be considered as major federal actions triggering NEPA review. Since the Act³ requires each FMP to include an estimate of MSY for fishery stocks and stock complexes⁴ and since fishery management actions are typically considered as NEPA *major federal actions*, it appears to EPA that a change in MSY without the appropriate NEPA review could be inconsistent with NEPA's requirements for connected actions.⁵

The Act establishes the MSY as the basis for fishery management to end and prevent overfishing.⁶ The MSY serves as the foundation for most FMP biological reference points (or benchmarks),⁷ which are the primary output of stock assessments. Fishing regulations are set to meet these benchmarks, e.g., the F_{msy} is the fishing mortality that produces the MSY and the SSB_{msy} is the amount of spawning stock biomass needed to produce the MSY. According to the DEIS, specifying the MSY establishes the platform for future management, specifically from the perspective of bounding allowable harvest levels. *In this sense, MSY may be considered to have indirect effects on fishery participants.* The MSY sets off the parameters that condition subsequent management actions, and as such, defining MSY takes special significance. An MSY level that reflects the best available information can result in lower fishing mortality values in the rebuilding plan and consequentially lower ACLs, which will likely affect fishermen targeting hogfish.

Connected actions are expected to be discussed within the same impact statement whether it is within this EIS or a future NEPA review.⁸ It would be helpful to understand why the establishment of a MSY value for the GA – NC stock based on information not available for this NEPA review would not be connected to any future regulatory action (e.g., determining overfishing or overfished status). In other words, any future hogfish-related amendment making regulatory changes based on any MSY value developed associated with this action would appear to be so connected that it should be a part of the future NEPA review. The EPA also suggests this EIS could differentiate when the adoption of new

MSY values will likely qualify for a NEPA *categorical exclusion*⁹ or will likely constitute a *major federal action* that triggers some level of NEPA review pursuant to NOAA's NEPA regulations.¹⁰

Recommendation #3:

For Action 7, it is unclear whether the DEIS's scope appropriately addresses the connected action of the proposed ACTs in this action with any future decision to use them, which is outside the scope of this action. According to the DEIS, the objective for establishing an ACT and related AMs is to prevent the ACL from being exceeded. Here, the Council chose to define ACTs without these ACTs triggering AMs because it anticipates enacted reporting improvements will reduce management uncertainty. The ACT being the level of catch set below the ACL to account for any management uncertainty.¹¹ The DEIS seems to indicate the Council may elect in the future to use ACTs to manage recreational harvest based upon this action. The DEIS states: *[s]hould the South Atlantic Council, in the future, use ACTs to manage recreational harvest, these values will already have been specified and become part of the regulations.* The DEIS does not indicate whether an amendment (or NEPA review) will be done should the decision be made to use the ACTs established in this action in the future to manage recreational harvest (e.g., when an acceptable GA-NC stock assessment is complete and improved reporting requirements do not reduce management uncertainty). It is unclear whether AMs will be developed in a future action to implement the ACTs in order to prevent the ACL from being exceeded. It appears the ACTs adopted now could potentially impact later actions that may realize a NEPA-connected action.¹²

Connected actions are expected to be discussed within the same impact statement whether it is within this EIS or a future NEPA review.¹³ It would be helpful to understand why the establishment of ACTs for both hogfish stocks in this action would not be connected to any action or decision to use ACTs or to develop ACT-specific AMs.

¹ Annual Catch Limit Monitoring Frequently Asked Questions March 2016

http://sero.nmfs.noaa.gov/sustainable_fisheries/acl_monitoring/documents/pdfs/acl_monitoring_faqs_mar16.pdf

² Agencies are to consider closely related, connected actions when determining the scope of environmental impact statements. Connected actions should be discussed within the same impact statement. Actions are connected if they: (i) automatically trigger other actions which may require environmental impact statements. (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously. (iii) Are interdependent parts of a larger action and depend on the larger action for their justification. 40 CFR § 1508.25.

³ 50 C.F.R. Part 600.310(b)(2)(ii).

⁴ 50 C.F.R. Part 600.310(e)(1).

⁵ 40 CFR § 1508.25.

⁶ 50 C.F.R. Part 600.310(b)(2)(ii).

⁷ Cooper, A. A Guide to Fisheries Stock Assessments: from data to recommendations. Department of Natural Resources, University of New Hampshire.

⁸ 40 CFR § 1508.25.

⁹ Establishing and Applying Categorical Exclusions under the National Environmental Policy Act (February 18, 2010) Council on Environmental Quality Memorandum to Heads of Federal Departments and Agencies.

¹⁰ 50 CFR § 700.

¹¹ Annual Catch Limit Monitoring Frequently Asked Questions March 2016

http://sero.nmfs.noaa.gov/sustainable_fisheries/acl_monitoring/documents/pdfs/acl_monitoring_faqs_mar16.pdf

¹² 40 CFR § 1508.25.

¹³ 40 CFR § 1508.25.