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Re: 0648-AT87: Red Snapper DEIS Comments

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November 27, 2006

Dr. Roy E. Crabtree
Regional Administrator
NOAA Fisheries Service
263 13th Avenue, South
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Dear Dr. Crabtree:

On behalf of the Orange Beach Fishing Association ("OBFA") I am pleased to submit comments on the Draft Environmental Impact Statement to Evaluate Alternatives to Set Gulf of Mexico Red Snapper Total Allowable Catch and Reduce Bycatch in the Gulf of Mexico Directed and Shrimp Trawl Fisheries ("DEIS"). These comments will focus on three major areas: (1) the data used by the National Marine Fisheries Services ("NMFS") in the DEIS is not the best scientific data; (2) the proposed size limit for red snapper harvested in the commercial fishery will adversely affect the stock and will conflict with the Reef Fish Management Plan, as modified by Amendment 1 to that Plan; and (3) the DEIS admits its proposed measures will fail because NMFS is not proposing an adequate bycatch reduction strategy.

The DEIS Does Not Use The Best Scientific Data Available

The DEIS fails to use the best scientific data available, instead relying on outdated, inconsistent, and scientifically unsound data. Reliance on the flawed data in the DEIS violates the requirement in the National Environmental Policy Act ("NEPA") that the agency decision

maker have a complete and accurate analysis of the ramifications of a proposed decision prior to making a final decision. Equally important, any regulatory action which NMFS might take under the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”) in reliance on the DEIS would violate National Standard 2 of the MSA, which also requires that the agency use the best available scientific information. A summary of the principal problems with the data follows.

The models used by NMFS to estimate the red snapper biomass use South East Monitoring and Assessment Program (“SEAMAP”) data. However, the SEAMAP data does not include areas east of Cape San Blas, Florida. The result is that in computing red snapper biomass, NMFS has excluded significant areas of red snapper habitat. If biomass data east of Cape San Blas had been available in NMFS’ models it would undoubtedly have demonstrated a larger biomass than that on which the conclusions in the DEIS are based.

A NMFS scientist reported to the Gulf of Mexico Regional Fishery Management Council (“Gulf Council”) that the red snapper stock in the eastern Gulf of Mexico has increased every year based on NMFS’ visual surveys in the eastern Gulf. The DEIS ignores this data. Indeed, observations by recreational fishermen confirm a larger and increasing biomass. Fishermen operating off Florida’s west coast are reporting red snapper in areas where red snapper have not been seen in decades. Further, for the first time in years, fishermen are able to regularly land their bag limit.

NMFS’ data for the longline fishery shows a large population of mature red snapper in deep waters off the Louisiana and Texas coasts. NMFS has not included this data in its model to determine biomass because NMFS asserts the data comes from a short time series. The fact that

the data is new does not mean it is inaccurate. Again, NMFS has excluded data showing the red snapper biomass is larger than that assumed in the DEIS.

The State of Alabama has sampled red snapper population sizes within established artificial reef zones offshore of the State for many years. However, the DEIS does not even consider this data in evaluating red snapper biomass. NMFS argues the State data are not compatible with NMFS' data because the State's data are collected over artificial reef zones, while NMFS' data are collected over natural hard bottom. Regardless of the habitat for which the data was collected, both data sets address the size of the red snapper population. Yet, NMFS has chosen to exclude from the DEIS an important and very significant data set. The facts are that 60% of the commercial red snapper harvest comes from areas over improved habitat generated by artificial reef programs. Although that is where the fish are found, the DEIS ignores this data set.

A significant component of the DEIS analysis of red snapper stock size is based on assumptions about fishing effort. To estimate fishing effort, NMFS relies on the Marine Recreational Fisheries Statistical Survey ("MRFSS"), which is universally acknowledged to be a flawed tool. Indeed, the National Research Council reviewed the MRFSS data set and the Chairman of the National Research Council stated it was fatally flawed. A new, and more accurate, charter boat survey implemented in 2000 concluded that MRFSS overestimates effort in the recreational for-hire red snapper fishery by 30-35%. Nevertheless, the DEIS uses the MRFSS data for private recreational anglers.

Although the DEIS uses the MRFSS methodology to estimate recreational fishing effort, the DEIS declined to use the exact same MRFSS methodology to estimate red snapper discards in the recreational fishery because NMFS decided the MRFSS system is flawed. If the MRFSS

methodology is fatally flawed for one computation, how can it not also be fatally flawed for the other computation? The DEIS' selective use of data sets is inappropriate.

The current red snapper stock assessment shows a steady decrease in recreational discards in the eastern Gulf of Mexico starting in 2001, with the last data showing a 10% decrease from 1995 levels. This is critically important because the eastern Gulf is where approximately 77% of red snapper are landed recreationally. Ignoring the stock assessment report, the DEIS concludes that recreational discards and associated mortality have increased.

The models used in the DEIS also contain no habitat component and no evaluation of the impact of improved habitat on stock size. The significance of habitat factors is demonstrated by the historic data. In the 1880's, numerous exploratory voyages to the northwestern Gulf of Mexico found insignificant red snapper populations. Today, 60% of the commercial harvest comes from that area. Indeed, a new report by the Interior Department's Minerals Management Service ("MMS") titled "Effect of Depth, Location, and Habitat Type On Relative Abundance and Species Composition of Fishes Associated With Petroleum Platforms and Sonnier Bank In The Northern Gulf of Mexico" indicates that standing oil and gas platforms are important habitat areas and support fish densities that can be 10-1,000 times greater than densities found over adjacent sand and mud bottom habitats. The MMS study found from 10,000-30,000 large fish associated with individual oil and gas platforms. In fact, fish densities at standing platforms almost always exceeded densities found at artificial reefs and natural habitats. Given that there are approximately 4,500 oil and gas platforms in the western Gulf of Mexico with 10,000-30,000 large fish per platform, and assuming 25% of the fish were red snapper at an average weight of 4 pounds, the impact of this artificial habitat enhancement on red snapper biomass is huge. Yet, the models used in the DEIS fail to account for or assess the impact on stock size of this habitat

phenomenon. Instead, the data relied on in the DEIS assumes a constant and unchanging stock distribution through time. This is simply not supported by existing literature and, in fact, the literature suggests the opposite. As noted above, whereas approximately 60% of the current commercial harvest is taken from the area between the mouth of the Mississippi River and South Padre Island, the exploratory voyages in the 1880's found no commercially viable populations of red snapper in that area.

The facts are that the preponderance of biomass data utilized in the DEIS models are fishery dependent, that is, it is based on what is caught by the fishermen. But fishery dependent data are inherently biased because the data does not reflect fish populations in unfished areas. Datasets, which are not fishery dependent and, therefore, not biased, do not show that the red snapper stock is in trouble. For example, the SEAMAP samples show red snapper recruitment is still improving and has been higher than predicted for the last ten years. Further, data from the longline fishery off Louisiana and Texas showing a large population of mature red snapper in deep water where there is no red snapper fishery was not included in the assessment. Finally, a senior NMFS scientist from the agency's Pascagoula, Mississippi laboratory stated in a presentation to the Gulf Council that there is persuasive data showing increases for red snapper and, in fact, that red snapper is "increasing everywhere" along Florida's west coast.

The DEIS analysis is based on similar models that were used in 2003 to determine that the vermilion snapper fishery was overfished and overfishing was occurring. However, the most recent stock assessment showed that fishery was never overfished and overfishing had never occurred. And two weeks ago, NMFS told the Gulf Council that the model analysis used in the DEIS had inaccurately shown that red grouper was overfished and that overfishing was occurring. Indeed, model projections have a documented history of error and inaccuracy. In the early 1990's, the models predicted that red snapper stock would crash unless shrimp bycatch was

reduced by 60% and the directed red snapper harvest was reduced to 1 million pounds annually. In the late 1990's, similar dire predictions were made. Nevertheless, in his recent report to Congress, NMFS Assistant Administrator Bill Hogarth reported that red snapper stocks are improving. Most significantly, the DEIS totally ignores the fact that when using the same model that was used in the 1999 assessment there were model outputs showing that the red snapper fishery almost recovered.

Assertions that the red snapper fishery is overfished are also belied by the fact that the current maximum sustainable yield ("MSY") projections from the fishery are at least twice the size of the largest harvest in the history of the fishery. Logically, how can a stock be overfished if it has never been harvested at even half of the projected MSY? It has been suggested that this anomaly may be explainable because of the enormous bycatch of juvenile snapper in the shrimp fishery. Assuming the accuracy of that explanation, then the issue is not overfishing by the red snapper fishery, but bycatch incidental to other fisheries.

In sum, the preferred alternatives in the DEIS are premised on incomplete and inaccurate data and analyses in clear violation of NEPA's requirements. For that reason alone, the DEIS should be withdrawn and the fundamental analyses upon which the DEIS is premised must be redone. Further, any action taken under the MSA to implement the DEIS preferred alternatives would violate National Standard 2 in the MSA which requires that actions be based on the best scientific information available.

In addition to the failings in its biological analyses, the DEIS does not adequately address the economic impact to coastal communities and the economy of Gulf States associated with the recreational fishery. Red snapper is the most important targeted species for recreational anglers. For the DEIS to assume that red snapper targeted trips will transfer to grouper trips is not reasonable. There are areas of the Gulf of Mexico where grouper are not available.

Additionally, king mackerel and dolphin (both pelagic and warm water species) are not available during the proposed closed recreational season in many areas of the Gulf of Mexico. Further, the DEIS fails to address the cumulative effects of the increased closure proposed in the DEIS when added to the current six month closure. The failure to address these economic and social impacts further violates NEPA's standards that environmental analyses be complete and accurate.

Reducing the Commercial Minimum Size Limit Will Adversely Affect Stock Recovery And Will Enhance User Conflict While Increasing Near Shore Fishing Mortality

Currently, there is a 15-inch total length ("TL") commercial minimum size limit for red snapper. The DEIS proposes to reduce the minimum size to 13-inches TL. A 13-inch TL will adversely affect red snapper recovery and is in direct conflict with Amendment 1 to the Reef Fish Management Plan, which clearly outlines management objectives "[t]o reduce user conflicts and near shore fishing mortality." A user conflict currently exists with a 1-inch size difference between the commercial and recreational sectors.

If a 13-inch TL is allowed, the commercial sector will likely target 13-inch fish because such fish are more marketable. Eventually, the result will be depletion of fish larger than 13-inches. Equally important, 13-inch fish are generally found closer to shore, where juvenile red snapper less than 13-inches are found. If allowed to target 13-inch fish in nearshore areas, the commercial sector will inevitably take even greater numbers of juvenile fish to the detriment of the stock. Since commercial fishermen acknowledge that they often kill 2,000 pounds of red snapper to catch 2,000 pounds, the implications for stock survival from a lower TL standard are significant. In fact, the adverse effects of lowering the TL are amplified by the fact that lowering the TL means more fish will be removed from the ocean. The red snapper TAC is set in pounds and a lower TL simply means more fish will be harvested to reach the TAC pound limits. Some

observers think that by lowering the TL the number of fish removed from the stock could increase twofold. This will significantly harm stock recovery.

Rather than reduce TL for the commercial sector, thereby increasing the impact of that sector on red snapper stocks, NMFS should not change the minimum TL and should focus instead on reducing the impact of the commercial sector on the red snapper stock. For example, requiring larger size hooks will stop the wasteful catch of small, undersized fish, thereby reducing the numbers of red snapper that die as discards. Further, setting a boundary line for the commercial fishery that is farther offshore will reduce interactions with juvenile fish since adult fish congregate in offshore areas while juvenile fish tend to be found in the inshore areas. Additionally, recognizing that any surface interval over approximately 3 minutes greatly increases post-release mortality (“PRM”), a significant PRM reduction can be achieved if the surface interval is reduced. Restricting the number of hooks and gear that are used would accomplish a reduction in bycatch mortality by reducing surface time needed to release hooked fish. Similarly, a requirement for venting (*i.e.*, releasing air from the fish prior to release) in water depths over 25-30 meters will further lower PRM. The DEIS completely fails to consider any of these alternatives in violation of NEPA’s requirement that reasonable alternatives be evaluated.

The failure of the DEIS to consider the alternatives of larger hooks, a commercial fishery conducted farther offshore, and a combination of reducing the number of hooks fished and venting to reduce PRM is further evidence of the incomplete and flawed analysis in the DEIS which requires that this document be withdrawn and redone.

It should also be noted that if the TL limitation is reduced from 15-inches to 13-inches for the commercial sector, then NMFS must also recognize that decreasing the minimum size limit

will reduce yield-per-recruit and could create growth overfishing. As stated in the last regulatory amendment to set the allowable catch levels for 2000 and 2001, such a result will require a reduction in the commercial TAC to account for the additional numbers of fish being caught.

Not only does the DEIS fail to meet NEPA's requirements to analyze reasonable alternatives, but if the preferred alternatives are implemented through the MSA, they will violate several National Standards, including the requirement of National Standard 2 to use the best scientific information and the requirement of National Standard 9 to control bycatch.

The DEIS Overestimates Bycatch In The Recreational Fishery and Fails To Control Bycatch In Other Fisheries

A fundamental flaw in the DEIS is that recreational discards are double-counted. When anglers are intercepted and interviewed by NMFS after a fishing trip, they are asked how many fish were discarded dead, eaten, or used for bait. These are the so-called B1 fish. The stock assessment model used by NMFS for the DEIS counts B1 fish as landed and dead.

Interviewed anglers are also asked how many fish were released alive. These are the B2 fish and they are identified as live discards. Although these B2 fish were reported as released alive, the DEIS model counts 20% of the B2 fish in the eastern Gulf of Mexico and 40% of the B2 fish in the western Gulf of Mexico as dead discards, in total disregard of the survey. Additionally, these numbers were generated by the model, which estimated almost four fold the number of discards estimated by MRFSS, thereby artificially inflating the estimate of bycatch mortality in the recreational fishery.

One of the most significant flaws in the analysis contained in the DEIS is that the DEIS acknowledges its preferred alternatives will not work because the DEIS contains no mechanism to control the most significant source of bycatch. The DEIS proposes in Action 1 to reduce the

red snapper harvest in order to achieve stock recovery. However, the DEIS states at several points that the success of Action 1 depends entirely on a 74% reduction in bycatch “in all sectors,” including the shrimp fishery, the most significant source of red snapper bycatch. The DEIS then admits that its preferred alternative establishes a “target reduction” of shrimp trawl red snapper bycatch mortality of only 50%. The DEIS specifically admits that this target “does not meet” the 74% mortality reduction level required. In fact, the 50% reduction in bycatch is just a “target” and the DEIS admits its preferred action will have “no immediate impacts to the shrimp fishermen.”

The significance of this flaw in the DEIS is nowhere more apparent than in the DEIS’ statement that red snapper discards in the shrimp fishery account for 24-45 million red snapper annually. In contrast, the directed red snapper fisheries land 3-4 million fish annually and discard dead an additional 1.5-1.8 million red snapper. The DEIS’ failure to address the critical bycatch problem fully illustrates the reasons why the DEIS needs to be withdrawn and redone in order to comply with NEPA’s requirements for proper and complete analysis.

If NMFS were to implement the DEIS’ preferred alternatives through the MSA, NMFS would not only be violating that Act’s National Standard 2 requirement to use the best available scientific information, but NMFS would also be violating National Standard 9’s requirement to reduce bycatch and National Standard 1’s requirement to achieve optimum yield. In addition, NMFS would violate National Standard 4’s requirements that allocations be fair and equitable and promote conservation because the failure to control bycatch is a de facto allocation of red snapper away from the directed fishery to the bycatch fishery.

Conclusion

The DEIS should be withdrawn and rewritten. The DEIS has relied on outdated and flawed data and analyses. The DEIS is also internally inconsistent in its use of data, declaring one dataset fundamentally flawed and unusable, but later relying on that same data for other analyses. Equally important, the DEIS admits its preferred alternatives will fail to address the problem. In sum, the DEIS fails to satisfy NEPA's fundamental tenet that the decision maker have in front of himself or herself the best possible analysis of the environmental consequences of a proposed action. That is simply not possible when incomplete and flawed data and analyses are the basis for the DEIS' conclusions and recommendations. Furthermore, if the actions proposed in the DEIS are implemented pursuant to the MSA, NMFS will be violating several of that statute's National Standards.

Sincerely,

Bobbi M. Walker

BMW:apk

cc: Rodney F. Weiher

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