



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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September 14, 2004

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SEP 16 2004

SOUTH ATLANTIC FISHERY
MANAGEMENT COUNCIL

Dr. Roy E. Crabtree
Regional Administrator
National Marine Fisheries Service
Southeast Regional Office
9721 Executive Center Drive North
St. Petersburg, FL 33702

SUBJ: EPA Comments on the NOAA DSEIS for "Amendment 6 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region"; CEQ No. 040361; ERP No. NOA-E91007-00

Dear Mr. Crabtree:

The U.S. Environmental Protection Agency (EPA) has reviewed the referenced National Oceanic and Atmospheric Administration (NOAA) Draft Supplemental Environmental Impact Statement (DSEIS) 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. The DSEIS for Amendment 6 to the Shrimp Fishery Management Plan (FMP) was prepared by the South Atlantic Fishery Management Council (Council) for NOAA and considered penaeid and rock shrimp. Specifically, it considered *Farfantepenaeus duorarum* (pink penaeid shrimp), *F. aztecus* (brown penaeid shrimp), *Litopenaeus setiferus* (white penaeid shrimp) and *Sicyonia brevirostris* (rock shrimp).

The seven actions (problems and objectives) considered in the DSEIS address bycatch, permitting, and status determination criteria for commercial shrimping in the south Atlantic Exclusive Economic Zone (EEZ). The bycatch associated with rock shrimp (pg. 4) includes dusky flounder, inshore lizardfish, spot, brown shrimp, red goatfish, three species of portunid crabs and various other species. Since the targeted rock shrimp only comprised 10% of the composited trawls by weight, the bycatch comprised 90% of the rock shrimp hauls by weight. This was similar for penaeid shrimp trawls (pg. 47). The composite trawls included 23% shrimp species by weight (pink, brown and white penaeid shrimp, seabobs, sugar/blood shrimp and rock shrimp), such that the bycatch was 77% (54% finfish and 23% non-commercial invertebrates) of the hauls by weight. Addressing bycatch through the use of a Bycatch Reduction Device (BRD) and other means was therefore a major objective associated with Amendment 6. The bycatch and other actions considered in the DSEIS are as follows (excerpted: pg. xx):

- 1) Amend the BRD Testing Protocol system;
- 2) Adjust the criteria for certification of new BRDs;

- 3) Establish a method to monitor and assess bycatch in the south Atlantic rock and penaeid shrimp fisheries;
- 4) Minimize bycatch in the rock shrimp fishery to the extent practicable;
- 5) Consider the requirement for a federal penaeid shrimp permit in order for a shrimp trawler to fish for or possess penaeid shrimp in the south Atlantic EEZ;
- 6) Revise, establish and/or retain the status determination criteria for penaeid stocks;
- 7) Revise, establish and/or retain the status determination criteria for rock shrimp.

EPA provides the following NEPA review comments on alternatives, bycatch, and other aspects of the DSEIS:

► **Alternatives**

Preferred alternatives were identified in the DSEIS for the first five of the above seven proposed actions (pg. xiii). No preferred alternatives were selected for the status determination criteria for penaeid or rock shrimp. The five preferred alternatives can be summarized as follows:

- 1) Withdraw the BRD testing protocol from the Shrimp FMP and Shrimp Framework and transfer revision authority from the Council to NOAA;
- 2) New BRDs would need to demonstrate at least a 30% reduction by weight of all finfish in order to be certified;
- 3) Adopt the Atlantic Coastal Cooperative Statistics Program Release, Discard and Protected Species Module as the preferred methodology, but utilize observer coverage on shrimp vessels, logbooks, state cooperation, grant funded projects, and federal penaeid shrimp permits until this preferred module is fully funded;
- 4) Require the use of a BRD approved by the National Marine Fisheries Service on all south Atlantic rock shrimp fishing trips;
- 5) Require a valid commercial vessel permit for a person onboard a shrimp trawler fishing for pink shrimp in the south Atlantic EEZ or in possession of such shrimp in the South Atlantic EEZ (no permit would be needed for trawlers in transit in the south Atlantic EEZ or without a trawl net or try net onboard).

We offer the following comments on these preferred alternatives and request that preferred alternatives for the penaeid and rock shrimp status determination criteria (actions #6 & #7) will be identified in the Final SEIS (FSEIS).

- 1) Withdrawal of BRD Testing Protocol - We note that a precedent for transfer of revision authority to amend the testing protocol already exists since NOAA now has authority to modify the BRD protocol for the Gulf of Mexico shrimp fishery (pg. 2). As such, EPA does not oppose such a transfer to NOAA in the south Atlantic shrimp fishery and understands that the amendment process (and therefore certification of new and presumably more effective BRDs)

would be streamlined. The FEIS should address NOAA funding and resources issues; the success of the amendment process in the Gulf; that any testing actions requiring NEPA would be NEPA-compliant; and that testing sample sizes (tows) would be statistically significant.

2) BRD Certification Criteria - We understand that Spanish mackerel and weakfish were formerly overfished in the south Atlantic. As such, special emphasis is being placed on minimizing juvenile Spanish mackerel and weakfish as bycatch during shrimp hauls by reducing their fishing mortality by 50% or a reduction in numbers by 40%. However, we understand that these two species are no longer considered overfished and that the preferred alternative would replace current requirements. The proposed alternative would require that shrimp hauls have at least a 30% reduction for *all* finfish (we understand from page 149 that the 30% and subalternate 22% figures was based on fisheries research). This course seems reasonable to EPA and is consistent with an ecosystem-based approach to fisheries (i.e., greater overall finfish escapement). However, even though Spanish mackerel and weakfish are no longer overfished, the FSEIS should discuss if juveniles of any other managed or ecologically significant juvenile finfish species (such as juvenile red snapper in the Gulf of Mexico or species of concern in the south Atlantic such as spot) are being substantively impacted as bycatch in south Atlantic shrimp trawls. The document should also discuss if all other bycatch species (molluscs, echinoderms, crustaceans, etc.) would also be treated like finfish for an even broader ecosystem-based approach.

3) Adopt Preferred Module Methodology - EPA agrees with this approach as an interim policy until the preferred module can be adopted. However, the FSEIS should discuss the timetable expected for adoption and indicate if NOAA funds have been secured for the interim observer program for coverage on shrimp vessels (observer program costs are not insignificant and we recall that costs could not be insured for the penaeid shrimp fishery in the Gulf of Mexico, based on the NOAA FSEIS for Amendment 22 of the Shrimp FMP).

4) Require NMFS-Approved BRDs for Rock Shrimp - EPA fully agrees with the use of BRDs and more specifically, the use of BRDs that have been approved by NOAA Fisheries. However, we do not oppose rock shrimp closures proposed in Alternative 3 for management purposes if the south Atlantic rock shrimp fishery is overfished or if its habitat is being substantively damaged by shrimp trawls (the FSEIS should provide information regarding rock shrimp habitat in terms of any structural relief areas that may be damaged by bottom-tending otter trawls used by the shrimp industry). Therefore, to the extent relevant, the use of BRDs in combination with area or time closures may be appropriate. EPA defers to NOAA and the Council regarding the need for additional rock shrimp management (in this or another amendment to the Shrimp FMP) beyond the use of BRDs. We note that the use of closures would also likely result in less bycatch from rock shrimp fishers when compared to no closure requirements.

5) Require Penaeid Shrimp Permit - We agree with the requirement of a federal penaeid permit to provide additional statistics and control for the penaeid fishery. We also agree that holding a state shrimping permit in state waters should not automatically translate into receiving a federal shrimping permit in the south Atlantic EEZ, which would help eliminate latent permits.

6) Provide Status Determination Criteria for Penaeid Stocks - EPA defers to NOAA and the Council on this issue.

7) Provide Status Determination Criteria for Rock Shrimp - EPA defers to NOAA and the Council on this issue.

While EPA finds these preferred alternatives to be generally reasonable, it is unclear why some alternatives only apply to either penaeid or rock shrimp, rather than to both. For example, the preferred alternative for action item #4 only stipulates that BRDs be used for rock shrimp. Similarly, only penaeid fishing vessels would need a federal permit according to the preferred alternative for action item #5. Therefore, for those preferred alternatives where only penaeid or rock shrimp were specified, the FSEIS should explain the rationale for such limitation or modify the preferred alternative as appropriate (e.g., is the applicability for BRDs perhaps still being tested for penaeids; is the limitation perhaps related to differences in shrimp life cycles, the commercial fishery, fishery data available, etc.?).

► Other Comments

* BRD Design/Function - We suggest that photographs or sketches depicting BRDs be provided in introductory chapters or an appendix of the FSEIS. These exhibits should include explanations as to how BRDs function to reduce bycatch.

* BRD Funding - Are BRD modifications to shrimp otter trawls fully funded by commercial fishers or are there any federal subsidies available?

* BRDs vs. TEDs - The FSEIS should explain how BRDs differ from Turtle Excluder Devices (TEDs). We note, for example, that the term TEDs as opposed to BRDs was used on page 59: "However, based on a review of the status of the five species of greatest concern in the south Atlantic (weakfish, king mackerel, Spanish mackerel, Atlantic croaker and spot) there is no evidence to indicate that the mortality of finfish caused by the shrimp trawl fleet (with TEDs implemented) is having a significant adverse effect on finfish stocks." It is unclear if BRDs or TEDs was intended for this passage or if BRDs and TEDs can be used interchangeably. The FSEIS should discuss this.

* Apparent Inconsistency - A sentence similar to the one referenced above on page 59 was noticed on page xv: "Despite the amount of bycatch recorded, a practicality analysis

contained in Section 3.0 concluded that there is no evidence to indicate that the mortality of finfish caused by the shrimp trawl fleet is having a significant, adverse effect on finfish stocks.” However, no reference to the use of TEDs or BRDs was made. We assume that these shrimp trawls are equipped with either TEDs or BRDs as suggested by the sentence on page 59. The FSEIS should discuss this and make the text more consistent.

* List of Acronyms - EPA suggests inclusion of a List of Acronyms for the benefit of the general public. Acronyms should include BRDs, TEDs, DSEIS, etc. A Glossary should also be included for the benefit the reviewing public by defining various fishery terms used in the DSEIS (e.g., “latent” permits).

* Juvenile Shrimp As Bycatch - Although juvenile penaeids mature in nearshore nurseries and therefore are not normally found on commercial shrimp fishing grounds, the FSEIS should discuss if juvenile or sub-adult penaeids (or rock shrimp) are a concern as bycatch for shrimp trawlers in the south Atlantic in addition to certain juvenile and adult finfish.

* Bycatch Composition - For Table 1-1, which characterizes bycatch for rock shrimp, we suggest that the “all other species combined” category be further disaggregated into major species or taxa since it still comprises a large portion (33% by weight) of the composite rock shrimp trawls. Similarly, the finfish (54%) and non-commercial invertebrates (23%) bycatch for penaeid shrimp (pg. 47) should also be dissected into taxa to the extent reasonable to more specifically document the penaeid shrimp bycatch. At a minimum, dominant taxa within these categories should be qualitatively discussed.

► **Summary**

EPA supports Amendment 6 to the Shrimp FMP. We particularly agree with the use of measures such as NMFS-approved BRDs that reduce bycatch, notably for the shrimping industry that produce more bycatch than target species in shrimp hauls. While EPA finds the preferred alternatives to be generally reasonable, it is unclear why some alternatives only apply to either penaeid or rock shrimp, rather than to both. The FSEIS should explain the rationale for such limitation or modify the preferred alternative as appropriate. Preferred alternatives should also be identified for the status determination criteria for both penaeid and rock shrimp.

► **EPA DSEIS Rating**

EPA rates this DSEIS as an LO (Lack of Objections) since we generally agree with the preferred alternatives presented and defer to NOAA and the Council for the shrimp status determination criteria.

EPA appreciates the opportunity to review the DSEIS. Should you have questions about these comments, you may wish to contact Chris Hoberg of my staff at 404/562-9619 or hoberg.chris@epa.gov.

Sincerely,

Handwritten signature of Christine M. Hoberg, followed by a slash and the word "for" written in cursive.

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

cc: Dr. Robert K. Mahood, Executive Director - South Atlantic Fishery Management Council