UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910

THE DIRECTOR

RECORD OF DECISION

FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT (FSEIS)

FOR

AMENDMENT 11 TO THE FISHERY MANAGEMENT PLAN (FMP) FOR SPINY LOBSTER IN THE GULF OF MEXICO AND SOUTH ATLANTIC

National Marine Fisheries Service
Southeast Region
St. Petersburg, Florida

Introduction

Background

This Record of Decision (ROD) documents the determination by NOAA's National Marine Fisheries Service (NMFS), on behalf of the Secretary of Commerce (Secretary), to approve Amendment 11. The subject amendment contains an action to prohibit lobster trap fishing in 60 areas (5.9 mi^2) in the Florida Keys to protect threatened *Acropora* species of coral. The Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) also considered alternatives to implement trap line-marking requirements; however, they chose to take no action until testing of line-marking methods is completed. These measures are in accordance with the procedures prescribed in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This ROD is issued pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations at 40 CFR Parts 1500-1508, and NOAA's Administrative Order NAO 216-6, Sections 6.03(a)(2) (Consolidated NEPA Documents, Management Plans and Plan Amendments), and 6.03(d)(2) (Fisheries Actions that Require an Environmental Impact Statement). The decision to approve Amendment 11 is based on analyses in the FSEIS prepared in association with this action and in accordance with NEPA. The FMP is jointly managed by the Councils.

The Endangered Species Act (ESA) requires federal agencies to ensure actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of threatened or endangered species or result in the destruction or adverse modification of the critical habitat of such species. To satisfy the ESA requirements, in 2009 NMFS completed a formal consultation and resulting biological opinion on the continued authorization of the Gulf of Mexico and South Atlantic spiny lobster fishery. The biological opinion stated the fishery was not likely to adversely affect ESA-listed marine mammals, Gulf sturgeon, or designated critical habitat for elkhorn and staghorn corals. However, the biological opinion determined that the spiny lobster fishery would adversely affect sea turtles, smalltooth sawfish, and elkhorn and staghorn corals, but would not jeopardize their continued existence. Therefore, the biological opinion issued an incidental take statement for these species, and reasonable and prudent measures to reduce the

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impact of the spiny lobster fishery. Specific terms and conditions required to implement the prescribed reasonable and prudent measures include, but are not limited to: Creation of new or expansion of existing closed areas to protect coral, implementation of trap line-marking requirements, and consideration of allowing the public to remove trap-related marine debris. Amendment 10 to the FMP provided authority to Florida to remove derelict traps in federal waters through the state trap clean-up program. For Amendment 11, staff from NMFS and the Councils worked with fishermen, scientists, and managers to choose areas that would protect the most coral without overly restricting fishing. In total, 60 closed areas that cover 5.9 square miles were identified. Maps of the closed areas can be found in Amendment 11 and at http://gulfcouncil.org/resources/Spiny_Maps.php.

The Councils chose to take no action on trap line markings until additional testing of line-marking methods is completed. The Florida Fish and Wildlife Conservation Commission (FWC) is conducting a study of various methods for marking trap lines that should be completed in 2013. The Councils intend to revisit this issue when the results of that study are available. The biological opinion, as amended, requires implementation of the term and condition concerning trap line marking by August 6, 2017.

Scoping Process and Public Involvement

Through the FSEIS, as documented in this ROD, the Councils and NMFS have analyzed the various alternatives, the associated environmental impacts, and the extent to which the impacts could be mitigated, in relation to the objectives of the proposed action. As summarized below, NMFS and the Councils have considered public and agency comments received during the various EIS review periods. Consequently, NMFS concludes that all practical means to avoid, minimize, or compensate for environmental harm from the proposed action have been adopted, and the public has had adequate opportunity for involvement, input, and comment during the deliberative phases of amendment/FSEIS development.

On September 19, 2011 (76 FR 57957), NMFS published a Notice of Intent in the *Federal Register* to prepare a draft SEIS. The range of actions and alternatives considered in the draft SEIS was based on information derived from scoping meetings held by the Councils on Amendment 10 during September 2009 in Key West and Marathon, Florida. Details of the meetings are presented in Appendix F of the FEIS for Amendment 10.

A public hearing draft of Amendment 11 was reviewed and approved by the Gulf Council at its October 2011 meeting and by the South Atlantic Council at its December 2011 meeting. Public hearings were conducted in Marathon, Key West, and Key Largo, Florida, during January 2012 (See Appendix H in the FSEIS for meeting details). The Councils also accepted written comments on the public hearing draft. The Notice of Availability (NOA) for the draft SEIS was published in the *Federal Register* on February 3, 2012 (77 FR 5513), with a 45-day comment period. Including comments from the Environmental Protection Agency, five individuals and organizations submitted comments on the draft SEIS. These comments were evaluated and used by NMFS to improve the FSEIS and the final rule implementing Amendment 11. A summary of the comments and responses to those comments can be found in Appendices I and J of Amendment 11/FSEIS. The NOA for the FSEIS was published in the *Federal Register* on May 4, 2012 (77 FR 26547).

Decision and Reasons for the Decision

Decision

Following a review of Amendment 11 and supporting analyses for compliance with the Magnuson-Stevens Act and other applicable law, including NEPA, the Coastal Zone Management Act, and the Information Quality Act, NMFS approves the actions contained in the amendment. The rationale for this decision is supported by the FSEIS, and is summarized below. The proposed actions are viewed as those that achieve the purpose and need for action in a way that best addresses Magnuson-Stevens Act mandates and the multiple objectives outlined in the FMP. Additional alternatives considered by the Councils and NMFS in developing the rule and Amendment 11, but eliminated from detailed study, are described in Appendix B of the FSEIS.

Rationale for Decision

Action 1: Limit Spiny Lobster Fishing in Certain Areas in the Exclusive Economic Zone (EEZ) off the Florida Keys to Protect Threatened Staghorn (*Acropora cervicornis*) and Elkhorn (*Acropora palmata*) Corals

Preferred Alternative 3: Create new closed areas in the EEZ off the Florida Keys with identified *Acropora* spp. colonies inside straight-line boundaries.

Preferred Option a. In the closed areas, spiny lobster trapping would be prohibited.

NMFS has **approved** creating new closed areas to spiny lobster trap fishing in the EEZ off Florida to protect threatened staghorn and elkhorn corals.

The Councils, with NMFS concurrence, chose **Preferred Alternative 3, Option a** because the proposed closures would best meet the requirements of the biological opinion while minimizing impacts to the extent possible on the spiny lobster fishery. Additionally, the proposed closed areas were selected in coordination with various stakeholders to protect coral colonies with high conservation value and areas of high coral density.

<u>Rejected alternatives to the proposed action</u>

Alternative 1: No Action – do not limit spiny lobster fishing in the EEZ off the Florida Keys in areas where threatened staghorn and elkhorn corals (*Acropora* spp.) occur.

Alternative 2: Close all known hardbottom in the EEZ off the Florida Keys where *Acropora* spp. occur and in water depths less than 30 meters (approximately 98 feet).

Option a. In the closed areas, spiny lobster trapping would be prohibited.

Option b. In the closed areas, <u>all</u> spiny lobster fishing would be prohibited.

Alternative 3: Create new closed areas in the EEZ off the Florida Keys with identified *Acropora* spp. colonies inside straight-line boundaries.

Option b. In the closed areas, <u>all</u> spiny lobster fishing would be prohibited.

Alternative 2, Option b is the **<u>environmentally preferable alternative</u>** because it would reduce

the likelihood of interactions between spiny lobster fishing gear and *Acropora* spp. in a larger area. However, the Councils did not choose this alternative because it would be overly restrictive to fishermen.

The Councils determined that prohibition of spiny lobster harvest by commercial and recreational divers (**Alternatives 2** and **3, Option b**) was not necessary at this time because there was not adequate information on the impact of diving on the threatened *Acropora* spp. corals, and that additional enforcement would be required to monitor all harvest in the closed areas, including marking the areas to alert divers to harvest prohibitions. Additionally, the Councils determined that the upcoming zoning plan review by the Florida Keys National Marine Sanctuary would be more appropriate to address comprehensive closed areas that may include prohibiting spiny lobster harvest from divers. **Alternative 2, Option a** would restrict only lobster trap fishing, but would close an excessive area to lobster trap fishing.

Action 2: Require Gear Markings for Spiny Lobster Trap Lines in the EEZ off Florida

Preferred Alternative 1: No Action – do not require markings for spiny lobster trap lines.

NMFS has **approved** no action to require gear markings on spiny lobster trap lines in the EEZ off Florida.

The Councils, with NMFS concurrence, chose **Preferred Alternative 1** to allow more time for industry representatives to work with NMFS and FWC staff to determine appropriate and cost-effective ways to mark lines. Staff from Florida FWC have begun a study to test the effectiveness of different methods of trap line marking. The Councils intend to revisit this issue when the results of that study are available. Because the revised biological opinion requires implementation by August 6, 2017, the Councils have time to develop new regulations after the study is complete.

Rejected alternatives to the proposed action

Alternative 2: Require all spiny lobster trap lines in the EEZ off Florida to have a white marking along its entire length, such as an all white line or a white tracer throughout the line. The marking must be visible at all times when traps are in use. All gear must comply with marking requirements no later than August 6, 2017.

Alternative 3: Require all spiny lobster trap lines in the EEZ off Florida to have a permanently affixed white marking at least 4-inch wide spaced at least every 15 ft along the trap line, or at the midpoint if the line is less than 15 ft. The marking must be visible at all times when traps are in use. All gear must comply with marking requirements no later than August 6, 2017.

The Councils and NMFS did not choose any of these alternatives because they wanted to be sure the line marking requirements were not overly burdensome on fishermen. Trap line marking requirements would allow greater accuracy in identifying fishery interaction impacts to benthic habitats and protected species, leading to more targeted measures to reduce the level and severity of those impacts. **Alternative 2** is the **environmentally preferable alternative** because any length of rope impacting protected species would be identifiable as belonging to the lobster

fishery. However, costs and labor for the fishery could be high, with little evidence of the durability of the markings.

Mitigation, Monitoring and Enforcement

CEQ regulations direct agencies to identify in the ROD whether all practical means to avoid or minimize environmental harm from the proposed actions have been adopted, and if not, why they were not (40 CFR Part 1505.2(a)(b)(c)). Mitigation measures are the practical means to avoid, minimize, and reduce impacts, and compensate for unavoidable impacts. Additionally, the regulations require a monitoring and enforcement program be adopted and summarized where applicable for any mitigation.

NMFS has thoroughly analyzed in the FSEIS, and described in this ROD, a range of reasonable alternatives and their associated environmental impacts. NMFS has attempted to mitigate those impacts to the extent practicable. The implementation of closed areas for lobster trapping is expected to have a negative short-term effect on the social and economic environment. Some alternatives have relatively small short-term economic costs and administrative burdens, but would also provide smaller and more delayed long-term benefits. Other alternatives have greater short-term costs, but provide larger and more immediate long-term benefits. Therefore, mitigating these measures would be difficult, and managers must balance the costs and benefits when choosing management alternatives for the fishery. The effect of the spiny lobster fishery on the environment is, and will continue to be, monitored through collection of landings data by NMFS, stock assessments and stock assessment updates, life history studies, economic and social analyses, and other scientific observations.

Although no action was taken to require trap line markings, NOAA Fisheries Service will continue to monitor the impacts of the fishery on ESA-listed species as it currently does. NOAA Fisheries Service will monitor reports submitted to the stranding network for incidences of spiny lobster gear entanglement with sea turtles. NOAA Fisheries Service will review *Acropora* survey data for evidence of spiny lobster trap damage to these species. Smalltooth sawfish interactions with spiny lobster trap gear will be monitored by NOAA Fisheries Service by periodic review of the National Sawfish Encounter Database.

As a consequence of these considerations, NMFS concludes that all practical means to avoid, minimize, or compensate for environmental harm from the proposed actions have been adopted, and the public has had adequate opportunity for involvement, input, and comment during the development of Amendment 11 and FSEIS, as well as via the amendment approval and rulemaking process. Regulations contained within FMPs are enforced through actions of the NMFS Office for Law Enforcement, the United States Coast Guard, and various state authorities. To better coordinate enforcement activities, federal and state enforcement agencies have developed cooperative agreements.

Findings Required by Other Laws and Regulations

This ROD reflects NMFS' decision to approve the actions as identified and analyzed in the integrated Amendment 11/FSEIS. NMFS has determined the actions are in compliance with applicable law. These determinations are documented in other NMFS documents, including a

regulatory flexibility analysis under the Regulatory Flexibility Act and determinations regarding the Coastal Zone Management Act, Essential Fish Habitat regulations, Endangered Species Act, and the Information Quality Act.

The purpose of this amendment, as analyzed in the SEIS, is to implement conservation measures to help protect endangered and threatened species in a manner that complies with measures established in the 2009 biological opinion on the spiny lobster fishery. The proposed action is expected to directly or indirectly benefit the overall health of the biological, physical, and human environment.

Implementation

Actions proposed, analyzed, and approved by the Secretary will be implemented by promulgation of a final rule in the *Federal Register*.

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