



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
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F/SER25:FH

Mr. Mel Bell, Chair
South Atlantic Fishery Management Council
4055 Faber Place Drive, Suite 201
North Charleston, South Carolina 29405

Dear Mr. Bell:

By this letter, I am disapproving Amendment 10 to the Fishery Management Plan (FMP) for the Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region (Coral FMP). As you know, Amendment 10 to the Coral FMP (Coral Amendment 10) would establish an approximately 22 mi² shrimp fishery access area (SFAA) along the eastern boundary of the northern extension of the Oculina Bank Habitat Area of Particular Concern (OHAPC) where fishing for and possessing rock shrimp are currently prohibited. The South Atlantic Fishery Management Council (Council) developed Coral Amendment 10 to help achieve optimum yield in the South Atlantic rock shrimp portion of the shrimp fishery and increase economic and social benefits to rock shrimp fishermen by increasing access to historic rock shrimp fishing grounds.

The Council approved Coral Amendment 10 for Secretarial review and implementation at its September 2021 meeting. In undertaking this review, section 304(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Secretary of Commerce (Secretary) to make a determination as to whether Coral Amendment 10 is consistent with the Magnuson-Stevens Act and other applicable laws and publish a notice of availability for the amendment in the *Federal Register*. Section 304(a)(2) of the Magnuson-Stevens Act requires this review to take into account the information, views, and comments received on the amendment from interested persons.

NOAA Fisheries noticed the availability of Coral Amendment 10 on April 29, 2022, and accepted public comments on the amendment through June 28, 2022 (87 FR 25438) [RIN 0648-BL09]. NOAA Fisheries received 353 distinct comments during that time period; however, several were form letters signed by many individuals, bringing the total number of people who commented on the Amendment to 32,200. Commenters included the Florida Fish and Wildlife Commission, commercial and recreational fishermen, fishing organizations, environmental groups, and the general public. The vast majority of comments opposed the proposed action stating that it is not based on the best scientific information available; fails to minimize adverse fishing impacts on essential fish habitat (EFH) to the extent practicable; is inconsistent with the goals and objectives of the Coral FMP; and is inconsistent with the goals and recommendations of the Biden-Harris Administration's *America the Beautiful* initiative, including the goal to conserve at least 30% of U.S. lands and waters by 2030, per Executive Order 14008 on *Tackling the Climate Crisis at Home and Abroad*.

NOAA Fisheries' review of Coral Amendment 10 determined the amendment and supporting analyses do not adequately demonstrate how the Council's proposed action is consistent with (1) Section 303(a)(7) of the Magnuson-Stevens Act, which requires FMPs to minimize to the extent practicable the adverse effects of fishing on EFH, and the goals and objectives of the Coral FMP, specifically in regards to protection of EFH; and (2) Section 301(a)(9) of the Magnuson-Stevens Act, which requires fishery conservation and management measures to minimize bycatch to the extent practicable and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.



Essential Fish Habitat

Section 303(a)(7) of the Magnuson-Stevens Act and its implementing guidelines require that amendments to FMPs or the regulations implementing the amendments ensure the FMP continues to minimize to the extent practicable adverse effects on EFH caused by fishing. FMPs must explain the reasons for the Council's conclusions regarding new actions that minimize to the extent practicable the adverse effects of fishing on EFH (50 CFR 600.815(a)(2)(ii)).

The action proposed in Coral Amendment 10 has the potential to adversely affect habitat within the proposed SFAA and OHAPC. While *Oculina* coral, including coral rubble and high relief mounds, have not been reported inside the proposed SFAA, rock shrimp trawling could impact any low-relief hard bottom and coral rubble within the proposed SFAA that are providing substrate for corals to recruit and recover from previous trawling events. Such impacts could be direct impacts from shrimp trawl gear interactions with coral habitat or indirect impacts from sediment plumes created by shrimp trawl gear. However, the likelihood and degree of any such impacts are unknown due to a paucity of habitat mapping and characterization data for this area. By reducing between 42%-54% of the existing buffer between fishing grounds and known high relief habitat occurring west of the OHAPC boundary, the proposed action also could indirectly impact coral habitat within the OHAPC through sedimentation.

The Council established the OHAPC in the original 1984 Coral FMP. The Coral FMP restricted the harvest of corals, with one of the FMP Objectives being to “minimize, as appropriate, adverse human impacts on coral and coral reefs.” To further this goal, the Council prohibited bottom trawling for snapper-grouper species through Amendment 1 to the Snapper-Grouper FMP in 1988. In 1991, Amendment 1 to the Coral FMP defined overfishing for prohibited corals (including *Oculina* coral) as an annual harvest that exceeds optimum yield, with the optimum yield equal to zero.

When the Council expanded the size of the OHAPC via Amendment 4 to the Coral FMP (effective in 2000), they added more fishing gear restrictions, including prohibiting bottom trawling and fishing for rock shrimp. Coral Amendment 4 was part of the Council’s Comprehensive EFH Amendment, and in that amendment, the Council also established the OHAPC as an EFH-habitat area of particular concern (EFH-HAPC) for coral and snapper-grouper species. An EFH-HAPC for these species is a portion of EFH that is “particularly vulnerable to fishing activities.” (50 CFR 600.815(a)(2)(i)). The Council stated that expanding the OHAPC would provide additional protection for EFH.

In 2015, the Council’s Amendment 8 to the Coral FMP (Coral Amendment 8) further expanded the OHAPC to include the area at issue in Coral Amendment 10 based on new scientific information showing an extensive deep water coral ecosystem. From Amendment 8, page 86: “Bottom trawling is considered the most ecologically destructive fishing method (Chuenpagdee et al. 2003; Morgan and Chuenpagdee 2003). This gear type, used to target shrimp species in the South Atlantic living on or just above the seafloor, has been shown to severely impact deep-water coral ecosystems (Fosså et al. 2002; Puglise et al. 2005).”

In determining whether it is practicable to minimize an adverse effect from fishing, Councils should consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the Nation, consistent with National Standard 7. In approving Coral Amendment 10, the Council considered that future trawling activity would likely occur where rock shrimp have been previously harvested, in low relief bottom areas already impacted by past fishing activities. However, the Council also recognized that the risk of directly impacting such habitat cannot be completely eliminated, as the rock shrimp portion of the fishery is prosecuted along the boundary of a closed area on a regular basis. To address the concerns that a portion of the proposed SFAA was identified through modeling as suitable deep-water coral habitat, NOAA

Fisheries proposed conducting scientific surveys (video, remotely operated vehicle, and possibly multi-beam sonar) to better characterize the area. The agency was able to survey a portion of the SFAA from May 30 - June 3, 2022 (30.11% of the North-South range of the SFAA; <1% of the total SFAA), and was unable to verify the presence of rock shrimp, *Oculina* coral, coral rubble, or suitable coral habitat in the area. Coral Amendment 10 concludes the net economic benefits of the SFAA cannot be quantified given the likely variability in usage of the area, as well as the exhibited variability in overall participation in the regional rock shrimp portion of the shrimp fishery. More robust analysis is needed to demonstrate these benefits support a determination that the proposed action in Coral Amendment 10 minimizes adverse impacts to EFH to the extent practicable.

Bycatch

The national standard guidelines for complying with Section 301(a)(9) of the Magnuson-Stevens Act require Councils to assess the effects of each management measure on the amount and type of bycatch and bycatch mortality in the fishery and to select measures that, to the extent practicable, will minimize bycatch and bycatch mortality. A determination of whether a conservation and management measure minimizes bycatch or bycatch mortality to the extent practicable, consistent with other national standards and maximization of net benefits to the Nation, should consider the following factors: (A) Population effects for the bycatch species; (B) Ecological effects due to changes in the bycatch of that species (effects on other species in the ecosystem); (C) Changes in the bycatch of other species of fish and the resulting population and ecosystem effects; (D) Effects on marine mammals and birds; (E) Changes in fishing, processing, disposal, and marketing costs; (F) Changes in fishing practices and behavior of fishermen; (G) Changes in research, administration, and enforcement costs and management effectiveness; (H) Changes in the economic, social, or cultural value of fishing activities and nonconsumptive uses of fishery resources; (I) Changes in the distribution of benefits and costs; and (J) Social effects. The Councils should adhere to the precautionary approach found in the Food and Agriculture Organization of the United Nations Code of Conduct for Responsible Fisheries (Article 6.5), when faced with uncertainty concerning any of these factors (50 CFR 600.350(d)(3)).

The comprehensive bycatch practicability analysis supporting Coral Amendment 8 concluded the action to expand the OHAPC to include the area at issue in Coral Amendment 10 would benefit coral communities and ecosystems. From Coral Amendment 8, page G-3: “These proposed actions would prevent fisheries from expanding into the proposed areas along with associated bycatch. Therefore, the actions in Coral Amendment 8 would likely result in long-term, positive ecological benefits and prevent disruptive changes that could occur in the community structure of coral reef ecosystems.” The cursory discussion of bycatch in section 3.2.2 of Coral Amendment 10 concludes the proposed action is not expected to result in significant changes in bycatch within the proposed areas since there is only a small amount of predicted fishing effort. More robust analysis through a Bycatch Practicability Analysis is needed to demonstrate that the proposed action in Coral Amendment 10 minimizes bycatch and bycatch mortality to the extent practicable.

Conclusion

If a Council FMP or amendment is disapproved based on inconsistencies with the Magnuson-Stevens Act or other applicable law, section 304(a)(3) of the Magnuson-Stevens Act requires the Secretary to recommend actions the Council could take to conform the amendment to the relevant legal requirements. Section 304(a)(4) of the Magnuson-Stevens Act provides Councils the opportunity to revise and submit revised amendments for Secretarial review after addressing the relevant legal requirements. As discussed above, to conform Coral Amendment 10 to the requirements of applicable law, the Council must adequately address through more robust analyses (1) how the proposed action minimizes to the extent practicable the adverse effects of fishing on EFH, as required by Section 303(a)(7) of the Magnuson-Stevens Act, and is consistent with the goals and objectives of the Coral FMP,

specifically in regards to protection of EFH; and (2) how the proposed action minimizes bycatch to the extent practicable and, to the extent bycatch cannot be avoided, minimizes the mortality of such bycatch, as required by National Standard 9 of the Magnuson-Stevens Act. In addition, the Council should consider input received during the public comment period when revising the amendment, including comments related to best scientific information available, minimizing impacts to EFH, inconsistencies with goals and objectives of the Coral FMP and the *America the Beautiful* initiative.

Thank you for your work on Coral Amendment 10. I appreciate and share your desire to increase economic and social benefits in the rock shrimp fishery, along with the interest many have expressed in ensuring the continued protection of vulnerable coral habitat. Our nation's valuable ecosystems, like the OHAPC, play an important role in combating the climate crisis. I trust you will agree that it is in the best interest of all stakeholders and resources potentially impacted by this action to ensure we sufficiently analyze and balance the tradeoffs and practicability of this important decision.

Sincerely,

Andrew J. Strelcheck
Regional Administrator

cc: John Carmichael
Myra Brower
John McGovern, Ph.D.
Rick DeVictor
Frank Helies
Monica Smit-Brunello