



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Silver Spring, Maryland 20910

MAY 14 2008

Mr. George J. Geiger
Chairman
South Atlantic Fishery Management Council
4055 Faber Place Drive
Suite 201
North Charleston, SC 29405

Dear Mr. Geiger:

This letter formally provides the South Atlantic Fishery Management Council (SAFMC) with the opportunity to prepare draft sanctuary fishing regulations concerning spearfishing activities for the Gray's Reef National Marine Sanctuary (GRNMS or Sanctuary). Under Section 304(a)(5) of the National Marine Sanctuaries Act (NMSA, 16 U.S.C. § 1434(a)(5)), regional fishery management councils are provided the opportunity to prepare draft NMSA regulations for fishing that fulfill the purposes and policies of the NMSA and the goals and objectives of sanctuary designation. The SAFMC has considerable expertise in developing fishing regulations and could provide valuable assistance to NOAA in developing draft NMSA regulations for fishing in GRNMS.

Actions under Consideration and Request

GRNMS proposed to prohibit spearfishing in 2003 as part of the sanctuary management plan review and after SAFMC had prepared draft regulations pursuant to section 304(a)(5). The Council also recommended revising GRNMS fishing regulations to restrict allowed fishing gear to rod and reel, and handline. The final revised regulations were published in 2006 consistent with the Council's recommendations, except that after consideration of public comments GRNMS decided that spearfishing without powerheads would continue to be allowed for two years while GRNMS collected and reviewed additional socioeconomic information to determine what action to take, if any. Additional information has been obtained and reviewed and GRNMS is now reassessing spearfishing activities in a draft environmental assessment. The following alternatives are being considered:

a. Prohibit all spearfishing activities in Gray's Reef National Marine Sanctuary (Preferred Alternative)

Under this alternative existing regulations would be altered, eliminating "spearfishing gear without powerheads" from the allowable gear exceptions, resulting in a prohibition on all spearfishing. GRNMS would also conduct widespread outreach efforts to inform sanctuary users in order to minimize compliance issues.



b. No Action

Under this alternative NOAA would take no action to alter the current regulations that allow spearfishing without powerheads in GRNMS.

Section 304(a)(5) of the NMSA requires that:

The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this title and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations. The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.

In preparing draft sanctuary regulations for fishing in GRNMS, the SAFMC would be acting under the authority of the NMSA and may address all species of fishes and invertebrates. The SAFMC is therefore not restricted to the species or activities regulated under its current fishery management plans.

In addition to the provisions of the NMSA, a Memorandum of Understanding exists between SAFMC, the National Marine Sanctuary Program/GRNMS and NOAA Fisheries Southeast Regional Office to provide a framework for cooperation and coordination within the SAFMC's area of geographic authority; and to facilitate the exchange of information, advice and technical assistance. The MOU states that:

Regarding fishing regulations for the Sanctuary, GRNMS is required to follow the provisions of section 304(a)(5) of the NMSA, (16 U.S.C. 1434(a)(5)). The process described in section 304(a)(5) is summarized, in part, here:

1. SAFMC will have the opportunity to draft Sanctuary fishing regulations for GRNMS. Regulations drafted by SAFMC, or a determination by SAFMC that

regulations are not necessary, will be accepted and shall be issued as the proposed regulations for GRNMS unless the Secretary of Commerce finds that SAFMC's action does not fulfill the purposes and policies of the NMSA and the objectives of the designation of GRNMS. In that event, the Secretary will draft the fishing regulations.

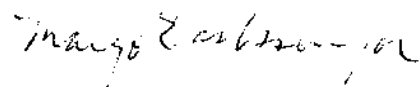
2. GRNMS will also consult with the State of Georgia regarding fishing regulations proposed by GRNMS for the Sanctuary and shall consider the views and comments of the State of Georgia before issuing final fishing regulations. As part of this process, GRNMS will meet with representatives from the State of Georgia to discuss draft fishing regulations prior to issuance of final fishing regulations. GRNMS will also coordinate with the Georgia Coastal Management Program pursuant to the Federal consistency requirement under § 307 of the Coastal Zone Management Act (16 U.S.C. 1456) and implementing NOAA regulations.

To assist the SAFMC, this letter is accompanied by a document that provides background information, describes more fully the sanctuary's goals and objectives, reviews action alternatives, and presents NOAA's preferred action as described in the draft EA. The goals and objectives of Sanctuary designation, together with the purposes and policies of the NMSA, serve as the benchmarks against which a regional fishery management council's draft regulations, or determinations that regulations are not necessary, are measured.

The letter is also accompanied by a memorandum documenting the law enforcement issues surrounding the use of spearfishing gear in the GRNMS.

We appreciate the time and effort of the SAFMC in developing proposals for improved conservation and marine resource protection for GRNMS. Please feel free to contact GRNMS Superintendent Dr. George Sedberry (George.Sedberry@noaa.gov; 912/598-2345) or Stewardship Coordinator Becky Shortland (Becky.Shortland@noaa.gov; 912/598-2381) with questions or for additional information.

Sincerely,



Daniel J. Basta

Director

Office of National Marine Sanctuaries

Enclosures:

- Gray's Reef National Marine Sanctuary Request for Regulation From the South Atlantic Fishery Management Council
- Memorandum from Karen Antrim Raine

**Gray's Reef National Marine Sanctuary
Request for Regulation
From the
South Atlantic Fishery Management Council
June 2008**

Summary

Pursuant to the National Marine Sanctuaries Act (NMSA) (16 U.S.C. § 304(a)(5)), the Gray's Reef National Marine Sanctuary (GRNMS) is presenting the South Atlantic Fishery Management Council (SAFMC) with the opportunity to prepare draft sanctuary fishing regulations that are consistent with the sanctuary's goals and objectives. The specific draft regulations pertain to only spearfishing activities in GRNMS. The draft regulations will be analyzed in a Draft Environmental Assessment accompanying NOAA's preferred alternative. This document provides background information, describes the preferred and alternative management actions, rationales, and model regulatory language.

In preparing draft sanctuary regulations for fishing in GRNMS, the SAFMC would be acting under the authority of the NMSA and may address all species of fishes and invertebrates. The SAFMC is therefore not restricted to the species or activities regulated under its current fishery management plans.

Background

GRNMS protects 16.68 square nautical miles of open ocean and submerged lands of particularly dense and nearshore patches of productive "live bottom habitat." The sanctuary is influenced by complex ocean currents and serves as a crossroads to both temperate (colder water) and sub-tropical species. The series of rock ledges and sand expanses has produced a complex habitat of caves, burrows, troughs, and overhangs that provide a solid base upon which a rich carpet of temperate and tropical marine flora and fauna attach and grow (NMSP 2006).

This flourishing ecosystem attracts mackerel, grouper, black sea bass, angelfish, and a host of other fishes. An estimated 180 species of fish, encompassing a wide variety of sizes, forms, and ecological roles, have been recorded at GRNMS. Loggerhead sea turtles, a threatened species, use GRNMS year-round for foraging and resting, and the reef is also close to the winter calving ground for the highly endangered Northern right whale. GRNMS is one of the most popular sport fishing areas along the Georgia coast. GRNMS is just a tiny part of the vast Atlantic Ocean off the Southeastern U.S. coast yet its value as a natural marine habitat is recognized both nationally and internationally.

Purpose of and Need for Action

NOAA Gray's Reef National Marine Sanctuary is evaluating action on spearfishing activities in the sanctuary. It is anticipated that the action will provide needed protection to the fishes and overall natural live-bottom community for which the sanctuary was designated.

Spearfishing was considered for regulation during the original management plan of 1981, but only spearfishing with powerheads was prohibited at the time. A complete spearfishing prohibition was again considered during the review and revision of the GRNMS Management Plan beginning in 1999. Along with the fact that visitor use (primarily fishing) had increased, evidence of powerhead use despite the 1981 ban created a growing concern. GRNMS proposed to prohibit all spearfishing activities with the 2003 Draft Environmental Impact Statement/Draft Management Plan (DEIS/DMP) and associated proposed rule. The South Atlantic Fishery Management Council (SAFMC) prepared regulations to that affect at that time.

However, after consideration of public comments on the DEIS/DMP, NOAA determined to defer any regulatory action on spearfishing. The 2006 Final EIS/MP reflects instead a commitment to gather additional socioeconomic information on spearfishing in GRNMS and review the issue again in two years.

The socioeconomic information has been collected and the prohibition is under consideration at this time. In addition, law enforcement officials have again as in the past expressed the need to prohibit all spearfishing in order to prohibit powerheading due in part to the similarities in gear and the significant burden of proof. GRNMS is preparing a Draft Environmental Assessment in order to determine a course of action regarding spearfishing activities in the sanctuary.

NMSA Purposes and Policies

The National Marine Sanctuaries Act (NMSA) of 1972, as amended (16 U.S.C. § 1431 et seq.), is the legislative mandate that governs the National Marine Sanctuary Program (NMSP). Under the NMSA, the Secretary of Commerce is authorized to designate and manage areas of the marine environment as national marine sanctuaries. Such designation is based on attributes of special national significance, including conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or aesthetic qualities. The primary objective of the NMSA is resource protection.

GRNMS Designation, Goals and Objectives

GRNMS was designated as the nation's fourth national marine sanctuary in 1981 for the purposes of:

- Protecting the quality of this unique and fragile ecological community;
- Promoting scientific understanding of this live bottom ecosystem; and
- Enhancing public awareness and wise use of this significant regional resource.

While there are several goals for GRNMS, the following six objectives specifically apply to the proposed action, and are consistent with the directives set forth by the National Marine Sanctuaries Act:

GOAL 1: Protect, maintain, restore, and enhance the natural habitats, populations, and ecological processes in the Sanctuary.

Objectives

- a. Develop, implement, and periodically evaluate a comprehensive resource protection plan tailored to Sanctuary resources and uses that provides direction for resource management and protection.
- b. Develop, implement, and maintain an on-site management capability that reviews and assesses resource conditions and human activities, and recommends action if problems arise.
- c. Develop, implement, and maintain the surveillance and enforcement presence needed to ensure compliance with Sanctuary regulations and adequate protection of Sanctuary resources.
- d. Inform and educate the public users on the sensitive nature of the Sanctuary resources, the purpose of Sanctuary designation, and the need for Sanctuary regulations with enforcement.

GOAL 4: Facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the Sanctuary not prohibited pursuant to other authorities.

Objectives

- a. Facilitate uses of the Sanctuary that are consistent with the primary objective of resource protection.
- b. Establish a means to monitor Sanctuary use and resource quality over time to minimize potential user conflicts and environmental degradation.

Interactions with the SAFMC

The sanctuaries are guided by the provisions of section 304(a)(5) of the NMSA, (16 U.S.C. 1434(a)(5)). This section states that:

The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone, as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations. The

Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.

In addition, 15 CFR 922.22(b) outlines the timeline and other guidance for requests to SAFMC for preparation of draft regulations.

(b) If a proposed Sanctuary includes waters within the exclusive economic zone, the Secretary shall notify the appropriate Regional Fishery Management Council(s) which shall have one hundred and twenty (120) days from the date of such notification to make recommendations and, if appropriate, prepare draft fishery regulations and to submit them to the Secretary. In preparing its recommendations and draft regulations, the Council(s) shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed Sanctuary designation. Fishery activities not proposed for regulation under section 304(a)(5) of the Act may be listed in the draft Sanctuary designation document as potentially subject to regulation, without following the procedures specified in section 304(a)(5) of the Act. If the Secretary subsequently determines that regulation of any such fishery activity is necessary, then the procedures specified in section 304(a)(5) of the Act shall be followed.

In drafting regulations pursuant to the requirements of the National Marine Sanctuaries Act, the Council is drafting sanctuary regulations to be promulgated under the National Marine Sanctuaries Act and is therefore not limited to restricting fishing activities for managed species.

In 2003, the SAFMC prepared draft regulations, including a prohibition on spearfishing, for the proposed rule associated with the GRNMS Draft Environmental Impact Statement/Draft Management Plan. However, after consideration of public comments the final rule did not include a spearfishing ban. GRNMS staff presented an update of this issue at the October 2007 meeting of the Joint Habitat/Ecosystem Based Management Advisory Panel and again at the December 2007 and March 2008 SAFMC meetings.

In addition to the provisions of the NMSA, a Memorandum of Understanding exists between SAFMC, the National Marine Sanctuary Program/GRNMS and NOAA Fisheries Southeast Regional Office to provide a framework for cooperation and coordination within the SAFMC's area of geographic authority; and to facilitate the exchange of information, advice and technical assistance. The MOU states that:

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2. GRNMS will also consult with the State of Georgia regarding fishing regulations proposed by GRNMS for the Sanctuary and shall consider the views and comments of the State of Georgia before issuing final fishing regulations. As part of this process, GRNMS will meet with representatives from the State of Georgia to discuss draft fishing regulations prior to issuance of final fishing regulations. GRNMS will also coordinate with the Georgia Coastal Management Program pursuant to the Federal consistency requirement under § 307 of the Coastal Zone Management Act (16 U.S.C. 1456) and implementing NOAA regulations.

Alternative Actions Considered

a. Prohibit all spearfishing activities in Gray's Reef National Marine Sanctuary (Preferred Alternative)

Under this alternative existing regulations would be altered eliminating "spearfishing gear without powerheads" from the allowable gear exceptions. GRNMS would also conduct widespread outreach efforts to minimize compliance issues.

Existing regulation from 15 CFR PART 922—[AMENDED]

(5)

(i) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead, within the Sanctuary by any means except by use of rod and reel, handline, or spearfishing gear without powerheads.

(ii) There shall be a rebuttable presumption that any marine organism or part thereof referenced in this paragraph found in the possession of a person within the Sanctuary has been collected from the Sanctuary.

(6) Except for possessing fishing gear stowed and not available for immediate use, possessing or using within the Sanctuary any fishing gear or means except rod and reel, handline, or spearfishing gear without powerheads.

Model regulatory request language:

(5)

(i) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead, within the Sanctuary by any means except by use of rod and reel, and handline gear;

(ii) There shall be a rebuttable presumption that any marine organism or part thereof referenced in this paragraph found in the possession of a person within the Sanctuary has been collected from the Sanctuary.

(6) Except for possessing fishing gear or means for fishing stowed and not available for immediate use while passing through without interruption or for valid law enforcement purposes, possessing, carrying, or using within the Sanctuary any fishing gear or means for fishing except rod and reel, and handline gear.

Biological Considerations

NOAA recognizes that it has been effectively demonstrated in other areas that selective removal of large individual fish by spearfishing can adversely affect the reproductive viability of a given population. Research has shown significantly reduced populations of larger predatory fishes where spearfishing occurs (SAFMC, 1990; Bohnsack, 1982; Chapman and Kramer, 1999; Jouvenel and Pollard, 2001).

Larger predators are favored targets of spearfishermen (Sadovy et al. 1994; Morales-Nin et al. 2005; Myer 2007) removing males of protogynous (sex-changing) species, which can make the population susceptible to sperm limitation (Alonzo and Mangel 2004). This is especially true for species like gag that form small spawning aggregations. Vulnerable pre-spawning aggregations of gag occur at GRNMS. Spearfishing also removes the most fecund females fishes (those with highest potential spawning output). Overall, spearfishermen remove more biomass per outing (i.e., larger fish) than other recreational fishing modes (Morales-Nin et al. 2005).

Reduction in the larger predatory fishes can have a “top-down” effect on fish populations by allowing other fish populations to increase, altering the composition of the overall natural communities including invertebrates. The largest fish are important as predators in maintaining a balanced and complete ecosystem; their selective removal causes ecological imbalance (McClanahan and Muthiga 1988; Dulvy et al. 2002). Spearfishing is also known to alter fish behavior, causing fish to move to different (and perhaps less favorable) habitats (Jouvenel and Pollard 2001).

Spearfishing is a highly efficient harvesting gear which alters abundance and size structure of grouper and other fish populations (Chapman and Kramer 1999; Jouvenel and Pollard 2001; Matos-Caraballo et al. 2006). Spearfishing has been shown to have a greater overall impact on reef fishes than hook and line fishing, relative to effort expended (Meyer 2007) and this effectiveness and efficiency has resulted in overharvest and restrictions on the fishery (e.g., no scuba; size and bag limits) imposed in many other parts of the world (e.g., Colla et al. 2004). And, finally, there is no catch-and-release spearfishing; regulatory discards are dead.

Socioeconomic Considerations

In September 2007, in-person interviews were conducted with all businesses and organizations offering scuba diving trips along the Georgia coast (Ehler, unpublished). Four charter scuba diving operations and one scuba diving club were identified and interviewed. The interviews gathered information that included operating profiles, preferred diving locations and methods, detailed business data (revenue and costs), and general opinions of the current state of scuba diving and spearfishing off the Georgia

coast. A total of 10 businesses offering scuba diving charter trips at some point during the past 5 years off the Georgia coast were identified. Of these, only 4 currently remain in business. Three are associated with dive shops and one is charter boat only. The 6 others have either gone out of business, moved away from the area, or are dive shops that no longer operate charter trips.

Findings

Person-Days of Scuba Diving:

Dive charters reported a total of 1,747 person-days of scuba diving off the Georgia coast in 2007. Approximately 55 percent of these person-days were non-consumptive (no spearfishing) person-days, 44 percent were consumptive (spearfishing) person-days, and the remaining 1 percent was sightseeing/sportfishing. None of these person-days occurred at GRNMS.

One scuba club reported a total of 24 person-days of scuba diving off the Georgia coast with 6 of these person-days spent at GRNMS.

A person-day is defined as one person undertaking an activity for any part of a day or a whole day.

Revenue and Operating Costs:

The table below summarizes the revenue and operating costs of the Georgia offshore scuba diving charter fleet as of 2007. Charter operations appear to be a break even business with most stating that they use it to get customers in the dive shop. It is important to note that major variable and unexpected costs are not factored in to the table. These variable costs typically include major engine repair or replacement and equipment repair or replacement.

Table 1. Revenue and Operating Costs of the Georgia Offshore Scuba Diving Charter Fleet, 2007

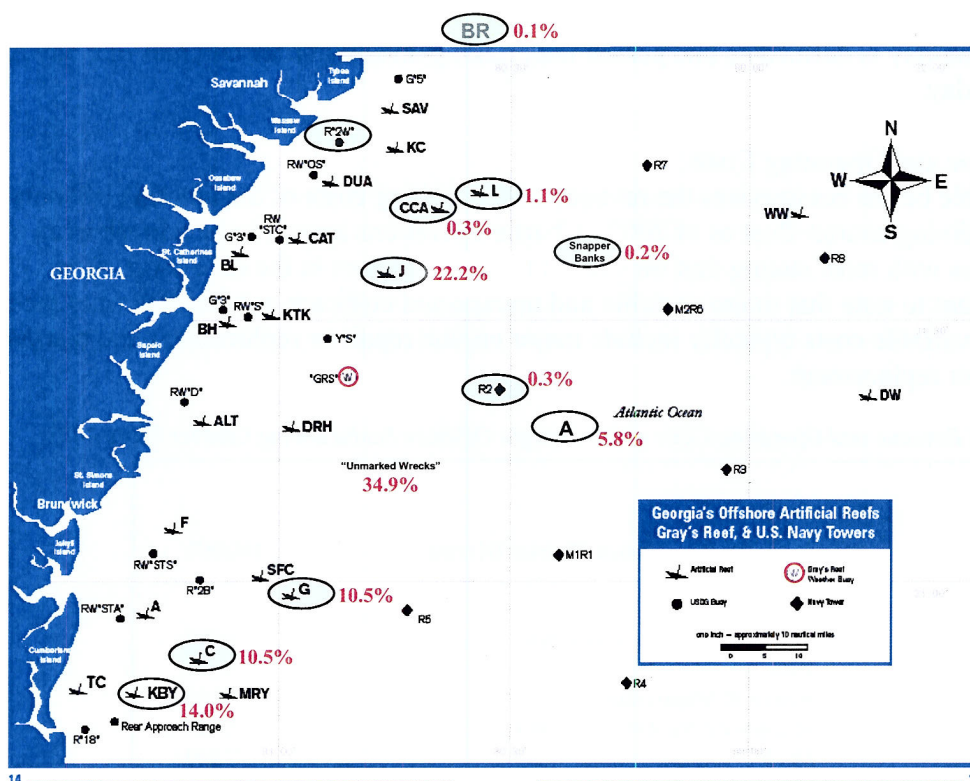
Gross Revenue from Charter Diving	100,000
Operating Costs	
Wages, Salaries and Benefits	3,500
Fuel	21,180
Repair & Maintenance	6,200
Equipment Rental and Leasing	41,920
Dock	7,200
Insurance	6,800
Interest Payments	15,600
Total Operating Costs	101,800
Loss from Charter Diving	(1,800)

Preferred Spearfishing Locations:

Figure 1 below is a map of Georgia's offshore artificial reefs, US Navy towers and Gray's Reef NMS. The spearfishing locations mentioned during the interviews are indicated with green ovals, the percentage of reported visitation is indicated with red numbers, and GRNMS is marked with a red circle. The map demonstrates the extensive substitution opportunities for scuba diving and spearfishing that exist off the Georgia coast. Even if there were significant levels of spearfishing activity reported at GRNMS, the network of other locations would significantly decrease any economic impact. The single most popular site is J Reef. "Unmarked wrecks" are where the majority of trips are made.

GRNMS's location, 17.5 nautical miles off Sapelo Island and more than 30 nautical miles from Savannah and Brunswick, makes accessing the sanctuary difficult. The map below demonstrates the multitude of spearfishing opportunities that exist closer to the primary access points of Savannah and Brunswick.

Figure 1. Georgia Preferred Scuba Diving Locations as Reported by Dive Charters and One Scuba Diving Club.



Private Boat Based Spearfishing at GRNMS:

A formal study of private boat based spearfishing at GRNMS has not been undertaken. A small amount (no more than 1 percent of all fishing) of private boat based spearfishing at GRNMS can be assumed, but has not been documented. This is based on on-water observations from fishermen, scuba divers, and researchers. As mentioned above, any

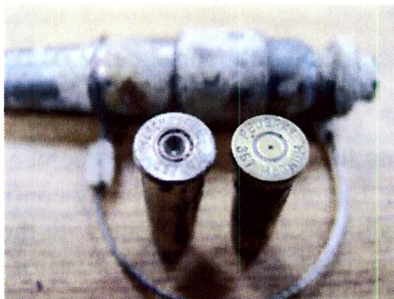
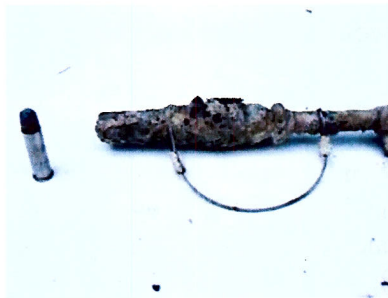
potential economic cost would likely be absorbed by the multiple substitution opportunities off the Georgia coast.

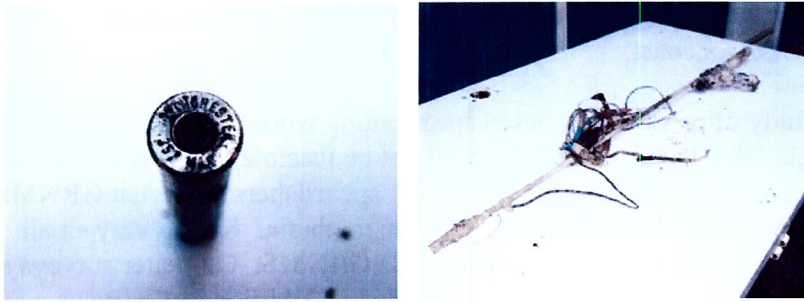
A formal economic study of private boat based spearfishing would be difficult and cost prohibitive to complete. A telephone survey would not be feasible due to the extremely high number of calls that would be required to identify spearfishers who visit GRNMS. A statistically valid sample would be nearly impossible to obtain. Only a very small fraction of calls would result in a spearfisher who visits GRNMS. On-water surveys are also not feasible due to the open ocean weather conditions. Additionally, surveys would be opportunistic with no valid sampling method.

The combination of no charter spearfishing activity at GRNMS and the abundant substitution opportunities lead to the conclusion that a prohibition on spearfishing at GRNMS would result in no measurable economic impact.

Law Enforcement Considerations

Although the use of powerheads is prohibited at GRNMS, powerhead cartridges found on site indicate that this gear is still in use. Law enforcement officials have expressed concerns that some commercial spearfishing operations may be harvesting large numbers of undersized fish from the region including GRNMS. In addition, law enforcement officials have again as in the past expressed the need to prohibit all spearfishing in order to prohibit powerheading due in part to the similarities in gear and the significant burden of proof.





Powerheads and shells found at Gray's Reef NMS

Conclusions

NOAA GRNMS has concluded that given the mounting evidence of biological impacts from spearfishing, the concerns regarding enforceability, the negligible socioeconomic effects, and the abundant substitution opportunities that all spearfishing activities be prohibited in the Sanctuary. This alternative is preferred and would move GRNMS toward reaching its goal to protect, maintain, restore, and enhance the natural habitats, populations, and ecological processes in the Sanctuary.

b. No Action

Under this alternative NOAA would take no action to alter current spearfishing activities in GRNMS.

Biological Considerations

Under this alternative there would be no increased resource protection and spearfishing without powerheads would continue indefinitely.

Socioeconomic Considerations

As described in alternative "a" above, the combination of no charter spearfishing activity at GRNMS and the abundant substitution opportunities lead to the conclusion that a prohibition on spearfishing at GRNMS would result in no measurable economic impact. Therefore, no economic gain would be the result of a continuation of spearfishing in GRNMS.

Law Enforcement Considerations

As noted in alternative a. above, law enforcement difficulties would continue.

Conclusions

This alternative presents a number of concerns including the fact that law enforcement of the powerhead prohibition will continue to be difficult. Illegal spearfishing may continue unabated. Considerable evidence suggests that spearfishing is not compatible with the primary purpose – resource protection – of the NMSA or the Goals and Objectives of GRNMS. Continued spearfishing would have no economic benefit and exacerbate the law enforcement challenges. This alternative is not preferred.

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

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Enforcement and Litigation,
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May 8, 2008

MEMORANDUM TO: The File
FROM: *Karen Raine*
GCEL/SE - Karen Antrim Raine
SUBJECT: Proposed prohibition of spearfishing gear in Gray's
Reef National Marine Sanctuary

The current regulations for the Gray's Reef National Marine Sanctuary prohibit:

Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead, within the Sanctuary by any means except by use of rod and reel, handline, or spearfishing gear without powerheads.

Except for possessing fishing gear stowed and not available for immediate use, possessing or using within the Sanctuary any fishing gear or means except rod and reel, handline, or spearfishing gear without powerheads.

15 CFR 922.92(5)(i) and (6).

In addition to resource management reasons, there are enforcement reasons to expand the current prohibition of spearfishing gear without powerheads to prohibit all spearfishing gear.

Powerheads are so closely associated with spearguns that in order to effectively ban powerheads, all spearguns should be banned. As the regulations are currently written, the government must prove that the speargun has - or had - a powerhead within the Sanctuary. Because it is difficult to determine from a distance whether a speargun has a powerhead, and because the powerhead may be removed without detection upon approach by enforcement, there may be difficulties proving that a speargun with a powerhead was in the Sanctuary in particular cases. And, proof may not be self-evident from the fish itself, which may require forensic testing to determine, if possible, the method of injury or harvest sufficient for evidentiary purposes.

Although from a prosecution perspective, completing banning possession of spearguns in addition to prohibiting injuring, catching, harvesting, or collecting or the attempt to do so



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or carrying or using spearguns in the Sanctuary is preferable, if any possession of spearguns is allowed in the Sanctuary, the following language is suggested:

Except for possessing fishing gear or means for fishing stowed and not available for immediate use while passing through without interruption or for valid law enforcement purposes, possessing, carrying, or using within the Sanctuary any gear or means for fishing except rod and reel, and handline gear.