



UNITED STATES DEPARTMENT OF COMMERCE
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SEP 02 2011

F/SER3:AH

MEMORANDUM FOR: F/SER2 – Phil Steele

FROM: for F/SE – Roy E. Crabtree, Ph.D.

Miles M. Cronin

SUBJECT: Response to Request for a Revision (“Amendment”) to the Biological Opinion on the Continued Authorization of Fishing under the Fishery Management Plan (FMP) for Spiny Lobster in the South Atlantic and Gulf of Mexico

This responds to your memorandum dated May 20, 2011, requesting that the National Marine Fisheries Service (NMFS) adjust Term and Condition #13 required by the current biological opinion for the spiny lobster fishery in the South Atlantic and Gulf of Mexico (Signed August, 2009; F/SER/2005/07518). The Term and Condition states:

NMFS must work with the Gulf of Mexico and South Atlantic Fishery Management Councils, and the State of Florida, to implement measures requiring that all spiny lobster trap rope be a specific color or have easily identifiable patterns/markings, not currently in use in other fisheries, along its entire length. This will ensure any trap rope affects (*sic*) can be attributed to the appropriate fishery (e.g., stone crab, spiny lobster, or blue crab fisheries). Easily identifiable ropes must be phased into the federal fishery no later than five years after the finalization of this biological opinion.

The above Term and Condition was required to implement Reasonable and Prudent Measure #3 and was meant to help monitor the frequency and magnitude of incidental take. Because of the similarities between trap lines of several fisheries (e.g., stone crab, spiny lobster, and blue crab) prosecuted in Florida, accurately determining which specific fishery incidental take should be attributed to can be difficult. Term and Condition #13 was developed to help address this issue and improve NMFS’ ability to monitor the incidental take of ESA-listed species in the spiny lobster fishery. Participants in the spiny lobster fishery indicated that trap lines are routinely changed every 5-7 years because of operational wear and tear. The implementation time line associated with Term and Condition #13 was specifically chosen to reduce the burden on industry by providing a phase-in period that would allow industry members time to come into compliance with new trap line regulations.

Your memorandum stated that NMFS and Gulf of Mexico and South Atlantic Fishery Management Councils are actively working to implement these line marking requirements via Amendment 10 to the Fishery Management Plan (FMP) for Spiny Lobster in the Gulf of Mexico



and South Atlantic. The memorandum also stated that under the current Term and Condition, rope line marking requirements must be phased into the federal fishery no later than August 2014, since the biological opinion was completed in August 2009. Unfortunately, because of the long time required to properly develop and implement changes via fishery management council process, much of that 5-year phase in period has been used. Therefore, the memorandum requested that Term and Condition #13 be adjusted to acknowledge the time required to move the Amendment through the Council and rulemaking processes (including required public comment periods).

During their June 13-17, 2011, joint council meeting in Key West, Florida, the South Atlantic and Gulf of Mexico Councils chose to take no action on proposed measures to require trap line markings and create new closed areas to protect *Acropora* corals from spiny lobster trap fishing. Instead, the Councils requested that those actions be addressed in a new amendment to the Spiny Lobster FMP (Amendment 11). The current timing of Amendment 11 indicates that a final rule implementing both measures would be effective sometime in July or August 2012. In an e-mail received by F/SER3 on August 25, 2011, F/SER2 requested that the original request for Term and Condition #13 be adjusted to acknowledge the time required to move the Amendment through the Council and rulemaking processes be considered for Spiny Lobster Amendment 11.

My staff has reviewed the request to adjust the current Term and Condition #13 and determined that adjusting the Term and Condition as requested would be appropriate. The intent of the current Term and Condition is to allow NMFS to more accurately identify incidental take of ESA-listed species by the spiny lobster trap fishery. NMFS currently monitors incidental takes in the spiny lobster trap fishery via the Sea Turtle Stranding and Salvage Network for sea turtles; via the National Sawfish Encounter Database for smalltooth sawfish, and via in-water coral monitoring for *Acropora*. Adjusting the current Term and Condition will not diminish NMFS' current ability to monitor incidental take via these other programs. Thus, adjusting the Term and Condition to reflect a 5-year phase in period that begins once the final rule is implemented or no later than August 6, 2017, is appropriate. The specific date of August 6, 2017, is established because it represents the start of the 2017-2018 fishing season, and will provide for full implementation throughout the fishing season.

Therefore, the last sentence of Term and Condition #13 in the August 2009 opinion, which stated trap line marking requirements must be phased into the federal fishery no later than five years after the finalization of this biological opinion, is hereby amended to read as follows: "...Easily identifiable ropes must be phased into the federal fishery no later than August 6, 2017."

cc: F/SER2 – S. Gerhart, K. Michie, J. McGovern
F/SER3 – D. Bernhart

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