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April 19, 2010

Ms. Kate Mitchie

Southeast Regional Office
National Marine Fisheries Service
263 13th Avenue South
St. Petersburg, FL 33701

RE: <u>Draft Environmental Impact Statement (DEIS) for Amendment 17A to the South Atlantic Snapper Grouper Fishery Management Plan, FR 73 No. 43 March 5, 2010</u>

Dear Ms. Mitchie,

Ocean Conservancy[1] submits the following comments regarding the DEIS to analyze the impacts of the South Atlantic Fishery Management Council's (SAFMC) Amendment 17A to the Snapper Grouper Fishery Management Plan (Amendment 17A). Considering that Amendment 17A must be implemented during the 2010 fishing year, we urge the National Marine Fisheries Service (NMFS) to finalize and approve a legally-compliant Amendment 17A without further delay. We further urge NMFS to extend the interim rule so that management measures that reduce overfishing of red snapper are in place through the implementation of final regulations implementing the ending overfishing and rebuilding provisions in Amendment 17A. Our specific recommendations for the various actions contained in Amendment 17A are found below.

The DEIS evaluates a range of alternatives, as required under the National Environmental Policy Act (NEPA), for actions that set maximum sustainable yield (MSY), establish a red snapper rebuilding plan, set an annual catch limit and accountability measures, set management measures to achieve mortality reduction goals and limit bycatch in the South Atlantic red snapper fishery and establish a research monitoring program. Notice of Availability was published in the Federal Register on March 5, 2010[2]. Considering the decades of overfishing on

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[1] Ocean Conservancy is a non-profit organization committed to protecting ocean environments and conserving the global abundance and diversity of marine life. Through science-based advocacy, research and public education, Ocean Conservancy informs, inspires and empowers people to speak and act for wild, healthy oceans.

[2] FR 73 No 43, March 5, 2010.

this population and the clear Congressional direction to end overfishing and rebuild depleted populations, it is critical that NMFS ensure that Amendment 17A fulfills the ending overfishing and rebuilding mandates set forth by the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

Applicable Law and Procedural Background

When Congress reauthorized and amended the MSA in 2006, it added new provisions aimed at ending overfishing in our nation's fisheries and ensuring it does not reoccur. The new provisions require FMPs to include mechanisms for setting ACLs for each of its fisheries that do not exceed fishing level recommendations of the Council's Scientific and Statistical Committee (SSC), as well as AMs to ensure those limits are not exceeded.[3] These measures must be in place for all fisheries experiencing overfishing by 2010, and for all other fisheries by 2011. The National Standard 1 (NS1) guidelines, which provide guidance to fishery managers in implementing the new ACL and AM requirements, reinforce the requirement for science-based ACLs, stating that the ACL set by the Council cannot exceed the acceptable biological catch (ABC) recommended by the SSC and must prevent overfishing, and that the ACL is the limit that triggers AMs.[4]

For any stock that has been declared "overfished," the MSA requires a rebuilding plan that will rebuild the fishery in as short a time as possible.[5] Red snapper has been overfished for decades, and under the law, both NMFS and the SAFMC have the obligation to rebuild this population. Specifically, the MSA requires quick action to prepare and implement a rebuilding plan and requires that "within one year of an identification" of overfishing and/or overfished status, the Council shall prepare a fishery management plan, amendment, or proposed regulations to end overfishing and rebuild affected stocks.[6] The SAFMC must finalize a legally adequate rebuilding plan via Amendment 17A or NMFS should step in and develop and implement a plan instead.

The DEIS for 17A includes alternatives that propose science-based options for ending overfishing of red snapper. The amendment, however, does not include adequate AMs and does not include the key components of the NS1 guidelines, and therefore falls short of the stated goal of implementing the requirements of the MSA. In addition, it appears that the amendment may not be approved and implemented in time to meet the 2010 legal deadline for putting ACLs and AMs in place for species experiencing overfishing. We urge NMFS to move expeditiously to approve and implement a legally compliant Amendment 17A.

SUMMARY OF RECOMMENDATIONS

In summary, we recommend that NMFS:

- Use the SEDAR and SSC endorsed red snapper MSY proxy
- Select a rebuilding schedule that has a 50% chance of rebuilding by T-mid and a 90% chance of rebuilding by T-max (2044)
- Reconsider the assumption that management measures will be fully effective in the calendar year 2010 and recalculate the rebuilding ACL or annual catch target (ACT) to account for discard only F rates in 2010
- Establish in-season AMs to ensure ACLs are not exceeded and overfishing does not occur
- Evaluate management, compliance and other uncertainty and establish an ACT to adequately account for them

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[3] 16 U.S.C. §1853(a)(15).
[4] 50 C.F.R. §600.310(f)(5).
[5] 16 U.S.C. §1854(e)(3) and (4).
[6] 16 U.S.C. §1854(e)(3). While the recent reauthorization of the MSA changed the timeframe to two years, that change did not take effect until after this Council was notified that red snapper was overfished.

- Evaluate the existing proposed red snapper management measures against the ACT calculated to account for uncertainty; Alternative 4A and 4C appear to be the only options that may be adequate
- Use caution when assuming the value of circle hooks in reducing red snapper mortality reductions
- Explicitly account for any lethal take of red snapper authorized in a monitoring program and reduce the ACL/ACT accordingly
- Regard Amendment 17A as temporary until the SSC ABC control rule can be formally adopted and scientific uncertainty can be incorporated

DETAILED RECOMMENDATIONS

Action 1 – Proxy Maximum Sustainable Yield (MSY) for Red Snapper

We recommend adoption of (preferred) Alternative 2, MSY as defined by the most recent SEDAR/SSC, in this case F(49%SPR). This alternative is based on the recommendation of the SAFMC's SSC and the SEDAR review panel.

Action 2 – Red Snapper Rebuilding Plan

A. Rebuilding Schedule

Consistent with the Restrepo guidelines,[7] we strongly recommend adoption of Alternative 3 that sets rebuilding at the midpoint between the shortest and longest allowable timelines, or 25 years. Management measures should be designed to ensure a 90% chance the fishery rebuilds by T-max and Alternative 3 would account for management and projection uncertainty as well as rebuild to a healthy and sustainable population much faster.

In addition, we caution NMFS against the stated assumption that 2010 will be year one of the rebuilding plan. It is impossible to implement management measures in the calendar year such that overfishing has ended. The Interim Rule closing the South Atlantic red snapper fishery to catch and possession was implemented in January 2010 and it seems prudent to base rebuilding projections on a 2011 start year for management measures and explicitly account for somewhat reduced fishing mortality rates in 2010.

B. Rebuilding Strategy, Optimum Yield and Accountability Measures

The rebuilding strategy based on the existing OY definition of 75%F(msy) falls short of the recommended 90% certainty that the fishery will be rebuilt by T-max.[8] A safer option would be to adopt Alternative 4 which sets the rebuilding strategy at 65%F(msy) and has a 94% chance of rebuilding to SSB(msy) by 2044. Note that SSB(msy) is not the actual goal, and that rebuilding to SSB(oy) is the desired outcome, making Alternative 4 a more consistent option with the stated purpose and need of the Amendment.

1) Accountability Measures

The AMs included for each of the alternatives are not true AMs and are not consistent with the NS1 guidelines. The MSA requires that FMPs include AMs to accompany ACLs. The catch-setting framework developed in Amendment 17A must apply an AM *each and every time* the ACL is exceeded. The NS1 guidelines state that "AMs are management controls to prevent ACLs, including sector ACLs, from being exceeded, and to correct or mitigate overages of the ACL if they occur."[9] Based on this definition, the proposed AMs in Amendment 17A are

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[7] Restrepo, et al,. Technical Guidance on the Use of Precautionary Approaches to Implementing National Standard 1 of the MSFCMA. NOAA Technical Memorandum NMFS-F/SPO-##July, 1998.
[8] Public Hearing Draft of Amendment 17A to the Fishery management Plan for the Snapper Grouper Fishery of the South Atlantic Region and Draft Environmental Impact Statement at 27, October 2009.
[9] 50 C.F.R. §600.310(g)(1).

insufficient. Amendment 17A should include in-season AMs where possible to ensure the ACL is not exceeded and overfishing does not continue. The following are some recommendations for improving the AMs:

a. In-season AMs should be the default

In order to reduce the probability that overfishing will occur and to achieve the goal of ending and preventing overfishing of South Atlantic red snapper, the amendment should use ACTs (which are considered in-season AMs under the NS1 guidelines) as the base AM. This means that management measures will need to be designed to ensure that there is a high degree of probability that the ACT is met. The amendment should also require the use of additional in-season AMs to further ensure that the ACL is not exceeded and overfishing does not occur. Since this is a case where data and monitoring limitations exist, the amendment should describe those limitations, identify key components necessary to address these limitations and investigate analytical tools that can be used to overcome these limitations in the future (for example, the use of effort as a proxy for red snapper bycatch in Gulf of Mexico shrimp trawls).

b. Post-season AMs must also be included

The amendment should establish a system of post-season AMs for instances when the combination of management measures, ACTs and in-season accountability measures are not successful in keeping fishing mortality within the ACL. The amendment should require overage deductions from a following year's ACL and ACT when an ACL is exceeded. This should be done by prescribing a designated increase in the closure area to account for overages and keep rebuilding on track for this severely depleted species. This can help address the biological consequences of exceeding catch limits, and more importantly, serves as a valuable incentive for staying within the catch limit.

c. AMs should be based on annual data, whenever possible

In the establishment of the post-season AM described above, multi-year averages should be used rarely, if at all, to determine if the ACL has been exceeded. NMFS and the SAFMC should provide clear and compelling reasons as to why the use of multi-year average data is necessary and develop a plan for moving the fishery to AMs based on annual data. Regardless of whether multi-year averages are used, the average catch must annually be compared to average ACL, and AMs should be triggered when the average catch exceeds the average ACL in any given year.

d. The ACL-AM system must be re-evaluated when ACL is exceeded more than once in 4 years

Under the NS1 guidelines, the system of ACLs and AMs should be re-evaluated if catch exceeds the ACL more than once in a four-year period, and the system should be modified to improve its performance.[10] Amendment 17A must incorporate this recommendation in order to ensure that the system put in place truly ends and prevents overfishing. The use of ACLs can be an effective tool in efforts to prevent overfishing, but not if ineffective systems are allowed to languish over many years without improvement. NMFS should also consider a higher performance standard, for instance re-evaluating the system upon an ACL overage more than once in six years in order to ensure timely rebuilding is not compromised.

2) Annual Catch Targets

As stated above, the use of an ACT should be the default in-season AM for the red snapper fishery. It is well-established that fishery management systems should incorporate a system of targets and limits set with appropriate margins between them.[11] By establishing targets with appropriate margins below the limit to account for management uncertainty and then managing toward that target, the probability of meeting appropriate legal

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[10] 50 C.F.R. §600.310(g)(3).

[11] See references in: Prager, M et al. (2003). Targets and limits for management of fisheries: a simple probability-based approach .

mandates, such as ending and preventing overfishing and achieving optimum yield, is greatly enhanced. In addition, setting an ACT below the ACL is the best measure for ensuring that additional, more disruptive AMs will not be needed.

Regardless of the effectiveness of the fishery's management controls and the quality of data monitoring and collection in the fishery, some degree of management uncertainty will always be present in a fishery. Management uncertainty results from uncertainty in the true catch amount (estimation error) and uncertainty in the ability of managers to constrain catch sufficiently to prevent exceeding the ACL. Estimation error results from misreporting of landed catch and uncertainty about the amount of discards and associated discard mortality. Time lag in reporting and data-availability to managers presents a major source of management uncertainty and often prevents in-season management control, especially for recreational fisheries.

In the case of the regulations proposed for governing the snapper grouper fishery in Amendment 17A, management effectiveness, enforceability of the regulations, and the ability to monitor mortality are all highly uncertain. Given that the size of the closure necessary to achieve the ACLs is highly sensitive to assumptions about recent recruitment events, the rate of compliance, changes in discard mortality based on fisher effort shift, and that tracking self-reported discards is difficult under the best of circumstances, we strongly recommend explicit discussion of and accounting for these factors in the EIS. The level of management uncertainty should be evaluated based on these and other factors and an ACT should be set at an appropriate level and applied in the red snapper fishery. Where management has proven unsuccessful in constraining catch in a fishery, and/or data quality is poor, management uncertainty is higher and the ACT must be set sufficiently below the ACL in order to ensure a high probability that overfishing will not occur.

In the case of the snapper grouper fishery, the reporting requirement and catch monitoring system should be adjusted to track not only landings but also bycatch in an accurate and verifiable way. This is necessary if ACLs or AMs are going to be based on bycatch, as they should be and as some of the measures in Amendment 17A suggest.

Action 3 – Red Snapper Management Measures

We strongly support the adoption of Alternative 2 in conjunction with another alternative or alternatives that ensure management measures taken in Amendment 17A adequately end overfishing, rebuild in a timely manner, and account for management uncertainty, preferably by using an ACT in conjunction with post-season AMs that include a payback provision. Alternatives 4A and 4B appear to be the only options that could achieve the 90% removal reduction goal defined by the rebuilding strategy[12] and thus only two, and potentially *none* of the proposed management scenarios are sufficient to capture any of the significant management and compliance uncertainty. We strongly encourage NMFS to evaluate and include an appropriate ACT that explicitly considers this uncertainty and establish a snapper grouper closure area designed to achieve that target.

We also strongly encourage NMFS to examine sector-specific ACLs, ACTs and AMs and what kinds of data collection and fishery monitoring tools they require to enable management on this fine scale. Vessel level accountability is a laudable, if currently unattainable, goal for South Atlantic snapper grouper management, and we encourage consideration of this and other alternative management solutions in a subsequent amendment when the proper tools and protocols for collection, processing and verification of the data are in place.

Action 4 – Require Circle Hooks

Circle hooks may have some benefits, but are of questionable value in a management framework where the vast majority of the known snapper area will be closed to bottom fishing and the rate of current use is unknown in the allowable fishing areas outside of the proposed closure. We caution NMFS not to rely on assumptions about red snapper mortality reductions based on any action mandating circle hooks.

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[12] DEIS for Amendment 17A to the Fishery management Plan for the Snapper Grouper Fishery of the South Atlantic Region and Draft Environmental Impact Statement at 63, March 2010.

Action 5 – Establish a Red Snapper Monitoring Program

We support the effort to establish a monitoring program for the red snapper fishery in order to track mortality against assumptions, and to ensure overfishing is truly ended and prevented and rebuilding remains on track. If there are lethal capture methods involved in the monitoring program, a portion of the ACL or ACT should be explicitly established in a research set-aside and the remaining allowable mortality used as the basis of the management measures. With an acceptable biological catch as low as the one recommended for red snapper, it is essential that all sources of mortality are accounted for.

Other Considerations

The SAFMC is currently in the process of amending the Snapper Grouper FMP to end overfishing of red snapper in Amendment 17A using temporary ABC recommendations from the SSC and then assigning a temporary ACL for this species. Since this ABC was derived for the purpose of ending overfishing, it is critical that the comprehensive ACL amendment that the SAFMC is in the process of developing establish and use an ABC control rule that guides the determination of the ABC relative to the OFL based on estimates of the amount of scientific uncertainty.

Under the MSA, SSCs are directed to provide ongoing scientific advice for fishery management to their councils, including recommendations for ABC.[13] The revised NS1 guidelines state that "each council must establish an ABC control rule based on the scientific advice from its SSC" for all species it manages. Environmental processes, population dynamics and fishery science are inherently uncertain. This uncertainty must be incorporated into the process of setting ABCs so that they are increasingly conservative as scientific uncertainty increases and stock size decreases, thus reducing the risk of overfishing to acceptably low levels.[14]

It is clear that further amendments to the Snapper Grouper FMP are needed to ensure the system of ACLs and AMs incorporate the SSC's control rule such that the catch limits sufficiently account for scientific uncertainty and truly end and prevent overfishing, as required under the law. The amendments needed to meet the legal requirements can be achieved in the comprehensive ACL amendment. It is imperative that all South Atlantic FMPs be updated to incorporate the components of the NS1 guidelines to ensure measures truly meet Congress' intent to end and prevent overfishing, keep catch within the prescribed ACLs, ensure that rebuilding goals are met, and achieve optimum yield.

Further, we recommend NMFS and the SAFMC design and implement an ACT control rule such that the uncertainty in managing mortality to the catch limit can be quantified and explicitly accounted for. If a thorough discussion evaluating management and compliance uncertainty cannot be incorporated into Amendment 17A at this time, we strongly recommend taking the most precautionary red snapper management action possible until such time that the uncertainty can be evaluated and adequately accounted for in the comprehensive ACL amendment or sooner.

CONCLUSION

The preparation of a DEIS for Amendment 17A offers NMFS an excellent opportunity not only to meet the legal requirements of the MSA and NEPA, but to improve fishery management in the South Atlantic. We urge NMFS to evaluate the critical changes needed to ensure Amendment 17A meets the MSA legal requirements and incorporates key provisions of the NS1 guidelines. It is imperative that NMFS move as quickly as possible to finalize and implement Amendment 17A, as it appears the 2010 legal deadline is in jeopardy. Thank you for considering our comments.

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[13] MSA Sec. 302(g)(1)(B); 16 U.S.C. §1852(g)(1)(B).
[14] Rosenberg, A, et. al. (2007). Setting Annual Catch Limits for U.S. Fisheries: An Expert Working Group Report. Lenfest Ocean Program.

Sincerely,

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