

## Responses to Public comments on the DEIS for Caribbean EFH

### **Puerto Rico Administracion de Reglamentos y Permisos (ARPE)**

**ARPE-1** – Document received, no comments provided.

**Response** – Comments noted, no response required.

### **Puerto Rico Autoridad de Desperdicios Solidos (ADS)**

**ADS-1** – The Solid Waste Management Authority supports protection of health and the environment.

**Response** – Comments noted, no response required.

### **Puerto Rico Electric Power Authority (PREPA)**

**PREPA-1** – No specific schedule is given to obtain funding and information to complete the management plan.

**Response** – The Environmental Impact Statement is an analytical document that may result in amendments to the management plans. Paragraph 2.a. of the Amended Settlement Stipulation from the AOC v. Daley case provides that the determination of whether to prepare a plan amendment will be made in the Record of Decision. That provision further provides that if the determination is affirmative, NMFS will, in conference with others, set the schedule not to exceed 17 months. As additional information becomes available, the Councils may, at any time, amend the fishery management plans. Furthermore, the EFH Guidelines (50 C.F.R Sec. 600.815 (a)(10) dictate that a complete review of all EFH information be conducted at a minimum of every five years.

Availability of funding for complex fishery research, such as identifying Essential Fish Habitat, is not predictable and cannot be determined in advance. However, funding has been or could be sought from sources such as MARFIN, Saltonstall-Kennedy, Sea Grant, NMFS Cooperative Research Program, the Coral Reef Initiative, and National Undersea Research Program.

The FEIS has expanded Section 4.2.3 to update the research and action plans underway by the Council, NOAA Fisheries Southeast Region, and NOAA Fisheries Southeast Fisheries Science Center.

### **US Environmental Protection Agency (EPA)**

**EPA-1** – No objections to the DEIS

**Response** – Comments noted, no response required.

## **Environmental Defense (ED)**

**ED-1** – Do not use roll-backs as the no action alternative for EFH or HAPC.

**Response** – This DEIS provides the environmental analysis for the FMP amendment that was challenged in the lawsuit, notwithstanding the possibility that the FEIS may indicate the need for a further FMP amendment. That original amendment’s “no action” alternative equates to what is now the “roll-back” alternative in the DEIS, and is a necessary component of the analysis of that amendment. The DEIS’ “no action” alternative equates to the original amendment’s preferred alternative for designating EFH, since that is now status quo, but was not status quo in the amendment. NOAA Fisheries disagrees that the NEPA analysis for the amendment would be adequate without the “roll-back” alternative; rather, the requirement to include a “no action” alternative mandates inclusion of this alternative. 40 C.F.R. § 1502.14(d). The “no action” and “roll back” status quo issue is discussed in section 1.3 of the EIS.

**ED-2** – State preferred alternative for EFH by life stage and by species.

**Response** – The language of the preferred EFH alternative for each FMP (Section 2.2.1) has been clarified to indicate that EFH for demersal eggs and larvae, and juvenile and adult life stages occurs on the insular shelf, and that the EFH for pelagic eggs and larvae occurs throughout the EEZ, and references separate figures. The total EFH designation would consist of the composite of EFH identified for each individual life stage.

**ED-3** – Tables 2.5-2.7 could be organized on an ontogenetic basis.

**Response** – NOAA Fisheries and the Council considered an ontogenetic organization, but determined that an alphabetical organization made finding individual species easier given the several hundred species in the FMPs.

**ED-4** – Add Cane Bay (St. Croix), Los Corchos Reef (Culebra), seagrass communities at Fulladosa Cove and Ensenada Honda (Culebra), and Desecheo reefs as HAPC.

**Response** – NOAA Fisheries agrees with adding the recommended sites as HAPC. A justification for each recommended site was added to Section 2.4.7 and 2.4.8 as appropriate. The Council’s Habitat Advisory Panel and Scientific and Statistical Committee reviewed each site and determined that all of them met the considerations specified for designating HAPC. The HAP/SSC agreed to add these sites. The selection of these sites followed the same procedure used for selection of the original sites.

**ED-5** – Clarify the preferred alternative to reduce fishing impacts on EFH and HAPC.

**Response** – The preferred alternative has been reworded (Section 2.2.3 and subsequently) to clearly state that the current seasonal closures to all gears would have additional closures to specified gears during the remainder of the year, and that Gramanic Bank would have year-around closures to specified gears.

**ED-6** – Disputes that prohibiting bottom tending gears (pots/traps, gill/trammel nets, bottom longlines, and fishing with SCUBA) from known (mapped) coral areas (Alternatives 4) is not practicable, and recommends prohibition of bottom disturbing gear on all coral/hard bottom because of need for effort reductions in the fishery.

**Response** – NOAA Fisheries does not agree that a possible future decision to reduce effort in US Caribbean fisheries will make Alternative 4 practicable. The document contains a wide range of alternatives. Practicability is part of the analysis of these alternatives and not necessarily of the alternatives design. The Caribbean Council used the definition of practicability as “the technology is available and effective, and will not impose an unreasonable burden on the fishers.” In making its practicability decision for the preferred alternative to address adverse fishing impacts, the Caribbean Council determined that the costs to fishers under Alternative 4 exceed the benefits gained for EFH, and are therefore impracticable.

However, the Council is reviewing other possible fishing restrictions that may reduce effort as part of the amendment addressing Sustainable Fisheries Act control rule requirements (SFA Amendment). Future fishing effort reductions could mean that alternative 4 would have less economic burden on fishermen than under the conditions addressed in this EIS. Alternative 4, therefore, might be practicable in the future. Any EFH impacts resulting from programs that may reduce effort to control overfishing, whether beneficial or adverse, will be analyzed in the SFA EIS. The Council can consider additional or modified alternatives if it determines to amend the FMPs (Section 4.5).

**ED-7** – Add a mechanism to begin formal cooperation with governments of Puerto Rico and the US Virgin Islands to address impacts of fishing gears in State waters.

**Response** – NOAA Fisheries agrees that compatible State regulations for addressing adverse fishing impacts in State waters will improve the management of EFH. The Council working with Puerto Rico and the US Virgin Islands to manage fishing impacts on EFH is an extremely important concept, as most fishing impacts on EFH occur within State waters. However, NOAA Fisheries disagrees with the need for a formal mechanism in this case.

The Council is currently working informally with the State governments to address fishery management issues and the impacts of fishing on EFH. The Council is working with Puerto Rico and the US Virgin Islands to protect EFH through enhanced enforcement of fishing regulations, and by mapping and determining functions of coral and other benthic habitat in conjunction with a variety of partners. Puerto Rico’s new fishery law, although not yet implemented, enhances regulation of the fisheries. Section 2.6.3.3 contains further information on the Council’s working with Puerto Rico and the US Virgin Islands to protect EFH.

**ED-8** – Failure to standardize fishery data collection among State agencies hinders evaluation of fishery impacts.

**Response** – NOAA Fisheries agrees that insufficient fishery data has hindered many fishery analyses, including impacts of fishing on EFH. However, mechanisms are in place to work toward data collection procedures. The State/Federal Cooperative Statistics Program that was established in 1983 and fully operational in 1985 attempts to assure standardized data collection. NOAA Fisheries collects Marine Recreational Fishery Statistical Survey (MRFSS) data in Puerto Rico, and has collected MRFSS data in the USVI in the past. NOAA Fisheries does not collect other fishery dependent data in either Puerto Rico or the USVI. The fishery data for the US Caribbean are collected exclusively by personnel employed by the Commonwealth or the Territory. Both Puerto Rico and the USVI are members of the Cooperative Statistics

Program (CSP) and receive funding to collect fishery dependent data. There has been some concern with the quality of the commercial landings statistics collected by the USVI, Department of Fish and Wildlife. To help improve the quality of the landings statistics, principally by reviewing, auditing and correcting historical data, the SEFSC has increased funding to the CSP grant with the USVI so they can hire a full-time staff to provide that quality control function. That funding increase began in April 2003.

**ED-9** – Focus Federal attention on non-fishing impacts and obtain additional resources for remediation.

**Response** – NOAA Fisheries agrees that non-fishing impacts have considerable impact on EFH and the EIS concluded that adverse non-fishing impacts exceed the impacts of adverse fishing impacts. However, NOAA Fisheries lacks the legal authority to regulate non-fishing activities. The EFH regulation guidelines, under 50 CFR 600.920 (a)(1), require Federal action agencies to consult with NOAA Fisheries on actions that may adversely affect EFH. NOAA Fisheries then provides Conservation Recommendations to the agency to minimize any adverse effects on EFH. Although the Conservation Recommendations are not prescriptive, the Federal action agency must justify, in writing, to NOAA Fisheries how it has addressed the recommendations. Information on the NOAA Fisheries consultations is currently available in Section 2 and 2.1.3.1 Consistent with Section 303(a)(7) of the Magnuson-Stevens Act and 50 C.F.R. § 600.915, the EIS contains conservation recommendations in Section 4.7. thus satisfying the EFH regulation guideline requirements under 50 CFR 600.815(a)(4) to identify non-fishing activities that may adversely affect EFH, and describe activities that have known and/or potential adverse effects on EFH.

### **Reef Keeper International (RKI)**

**RKI-1** – Exclude trawls from the Fishing Gear Sensitivity Analysis and reconfigure sensitivity rankings.

**Response** – NOAA Fisheries does not agree that trawls should be excluded from the Fishing Gear Sensitivity Analysis. Scientists and managers from Southeast Region, Councils, and NOAA Fisheries attended a 1999 workshop concerning gear impacts on EFH to examine existing studies on gear impacts, and examine which factors made gear impact studies relevant to the Southeast region (Hamilton 1999). The ranking of gears resulting from that workshop formed the starting point for the sensitivity rankings in the DEIS. We believe that trawls represent a benchmark gear against which to measure impacts of other gears. Not including trawls in the gear sensitivity analysis would skew the gear rankings. While trawls are not used within the region, they are allowed for non-FMP fisheries (50 CFR 600.725). Recent inquiries concerning trawling in the US Caribbean suggests a potential for future use. The DEIS contains a recommendation that the State agencies and NOAA Fisheries prohibit trawls in the US Caribbean for fishery resources not contained in the FMPs. Poison and dynamite are currently discussed in Section 3.5.1.2.12 but were not initially used in the analysis because they had similar rankings as trawls, and would not change the analysis. However, poison and dynamite have been added to the Fishing Gear Sensitivity tables for consistency (Table 3.15). Poison and explosives are not currently used in the US Caribbean. Explosives are prohibited from the US Caribbean EEZ (50 CFR 622.31(a)). Poisons are prohibited in the US Caribbean only for reef fish (50 CFR 622.31(e)(1), and toxins

are prohibited only for coral reef resources (50 CFR 622.31(b)). For consistency with their position on trawls, the HAP/SSC recommended that the Council recommend prohibition of poisons and toxins from the EEZ and from state waters, with considerations for issuing permits use of poisons or toxins for scientific purposes (Section 4.7.2.3). Retaining the trawl ranking in the sensitivity analysis precludes a need to reconfigure the relative sensitivity rankings, although rankings for poison and explosives are added.

**RKI-2** – Revise the Fishing Effort Index rankings for pots/traps on reefs.

NOAA Fisheries does not agree that the Fishing Effort Index for pots/traps should be increased from “moderate” to “high.” The effort index represents a relative scale tied to harvest by the gear and the location of the gear. Pots/traps certainly contribute a major portion of US Caribbean harvest. However, pot/trap fishers typically target habitats adjacent to coral, and few fishers purposefully set pots/traps on coral. The predominant habitats are gorgonian-sponge hard bottom, mud/sand, and algal plain. The available studies that separate coral reefs from gorgonian-sponge hard bottom found pots/traps on coral in a range of 10-20% of observations (see Section 2.1.5.3.1 for expanded details of the methodology, Section 3.3.1.1 for commercial fisher trap effort, and Section 3.5.1.2.3 for an expanded description of pot/trap use on coral habitat). We believe that this range places pots/traps on coral in the moderate category. The Habitat Advisory Panel (HAP) and the Scientific and Statistical Committee (SSC), local experts appointed by the Caribbean Council, concurred with this assessment during review of the DEIS and during the review of the FEIS. The HAP/SSC further noted that recent dive surveys observed that most of the traps on coral were unmarked, indicating fishing by illegal fishers. The reference to “40% of those traps set directly on coral” was intended to give an idea of the small amount of annual damage if such a high trap use on coral occurred; a follow up statement added to the text indicates that 40% is a likely worst case scenario, as the 40% value is substantially higher than in other studies of the proportion of traps set on coral. Retaining the current effort ranking precludes a need to adjust the Fishing Effort Index rankings.

**RKI-3** – Reconfigure the Fishing Impacts Index and the Fishing Threat Analysis for consistency with comments RKI-1 and RKI-2.

NOAA Fisheries does not agree that the Fishing Impacts Index (Table 4.1) and the Fishing Threat Analysis (Table 4.2) require reconfiguration. Not excluding trawls from the fishing gear sensitivity (RKI-1) and maintaining pot/trap effort on coral as moderate (RKI-2) precludes a need to reconfigure Table 4.1 or Table 4.2.

**RKI-4** – Add Desecheo Island reefs to HAPC

**Response** – See Response to ED-4.

**RKI-5**– Add alternatives to endorse State prohibition of pots/traps and gill/trammel nets from coral/hard bottom in HAPC Alternatives 7 and 8.

See response to ED-7. The sites in Alternatives 7 and 8 occur in state waters. NOAA Fisheries has no management authority in State waters. However, the SERO works closely with the Commonwealth and Territorial governments to implement controls in state waters. For example,

SERO has funded a buyback program for gill and trammel nets from St. Croix. The Council decided to work informally with State governments to protect EFH in State waters, and not develop specific alternatives.

**RKI-6** – Add alternatives to prohibit pot/trap lines on mapped coral or in HAPC

NOAA Fisheries does not agree that alternatives to consider a prohibition of trap lines on mapped coral or in HAPC areas are necessary in the EIS. The alternatives to address adverse fishing impacts on EFH range from doing nothing to a complete closure of the EEZ. Each alternative adds restrictions to the management measures of the preceding alternative. Many additional management measures could have been added to any of the alternatives. The alternatives address pots/traps sequentially. Alternative 2 added buoys to pots/traps fished with trap lines to reduce grappling, Alternative 3 prohibited pots/traps on coral/hard bottom inferred from spawning activity, and Alternative 4 prohibited trap lines in the EEZ. If available information had indicated that substantial impact from trap lines occurred on coral, for instance if lifting a pot/trap caused other pots/traps to drag across the bottom, then other alternatives may have been appropriate. Adding alternatives to prohibit trap lines in mapped coral was not deemed necessary (see additional information in Section 3.5.1.2.3). The Council concluded that the lines would have a small impact on habitat, even coral, and that the economic costs to fishers would exceed environmental benefits. The preferred Alternative would prohibit pots/traps in the HAPC of the EEZ (current seasonally closed areas plus Gramanic Bank), and NOAA Fisheries has no authority in State waters where other HAPC sites occur (see response to ED-7).

The Caribbean Council and NOAA Fisheries must decide in a Record of Decision whether to amend the FMPs. If they decide to amend the FMPs, they may consider adding to or modifying the alternatives in the FEIS with supplemental analysis. The wide range of alternatives to address adverse fishing impacts consists of groupings of management measures. The large number of management measures could be regrouped in different alternatives. Adding or modifying alternatives in the amendment may require additional NEPA analysis. This topic is discussed further in Section 1.2 and 4.5 of the EIS.

**Richard S. Appeldoorn, Alfonso Aguilar, and Michael Nemeth (AAN)**

**AAN-1** – Provide more emphasis on bedrock reef habitat.

**Response** – Additional description of bedrock reefs was added to Section 3.2.9.

**AAN-2** – Show areas of unknown habitat on habitat maps with NOS data.

**Response** – The maps (Figures 2.6-2.15) have been changed to show unknown category habitats.

**AAN-3** – Develop a standardized process that reduces subjectivity of determining if habitat degradation has or will occur from fishing and non-fishing impacts.

**Response** – NOAA Fisheries agrees that there is a need for regulating-agencies to develop a standardized process that facilitates decision-making to determine the “degree” of habitat degradation that has occurred or will occur. However, available evidence indicates that habitat is currently being degraded, which requires taking action to minimize those adverse impacts.

Current decisions regarding habitat impacts are made with the best available scientific information and are necessary to prevent continued habitat degradation. Waiting to take action before all conclusive quantitative information is available related to habitat degradation and impacts would be detrimental to EFH. NOAA Fisheries will continue to work with other agencies, groups, and institutions to improve the information and processes used to advise regulating agency decisions regarding habitat impacts.

**AAN-4** – Clarify sampling intensity for Figure 2.29 showing running ripe sites.

**Response** – A new map of all SEAMAP sampling stations was added to Appendix 3, and a reference to this figure added to Figure 2.29.

**AAN-5** – Figure numbers in text on p.2-75 do not refer to correct figures.

**Response** – P. 2-75 occurred in an early draft. The FEIS corrected the figure numbers.

**AAN-6** – Provided additional information on status of stocks for reef fish that indicates overfishing.

**Response** – Stock assessment information from the studies suggested was added to Section 3.2.11.4.1. Determination of overfishing or overfished condition, under AFA guidelines, will occur in the SFA Amendment.

**AAN-7** – Add information on use of habitat by juvenile reef fish.

**Response** – Additional information on habitat use by juvenile fish and ontogenetic migration of juveniles was added to Section 3.2.11.4.2.3, including the table suggested by this comment. The references provided also contained additional information on spawning sites and spawning behavior, which was added to Section 3.2.11.4.2.4.

## **General revisions**

In addition to the revisions in response to the public comments noted above, the following revisions were made in response to internal review.

Section 2.1.3.3.3 – Added a statement on excluding artificial habitat as EFH – edited by HAP/SSC.

Section 3.2.14 – Updated the section on whale biology and stock assessment.

Section 3.3.1.1 – Updated the section on catches to include catch information for the USVI.

Section 4.5 – Added a statement indicating that an amendment to FMPs for EFH could evaluate alternatives not considered in the FEIS.

Section 4.7.1 – The HAP/SSC recommended that Commonwealth and Territorial governments review compliance with existing laws and regulations that control activities that would have an adverse impact on EFH, and noted that decreasing these activities would benefit EFH.