



November 22, 2013

Mr. Ben Hartig, Chairman
South Atlantic Fishery Management Council
4055 Faber Place Dr.
Suite 201
North Charleston, SC 29405

RE: Regulatory Amendment 17 to the Snapper/Grouper Fishery Management Plan

Dear Chairman Hartig,

On behalf of The Pew Charitable Trusts, please accept these comments for consideration by the South Atlantic Fishery Management Council at its December 2013 meeting. We urge the Council to retain all of the remaining proposed marine protected areas (MPAs) recommended by its Expert Workgroup¹ (EWG) in Snapper/Grouper Regulatory Amendment 17 (RA 17) and approve the amendment for public scoping in January 2014.

The National Environmental Policy Act (NEPA) requires the Council to analyze the full range of alternatives² for establishing MPAs that meet the purpose and need of RA 17. The Council's NEPA analysis of the amendment must therefore rigorously explore and objectively evaluate all reasonable alternatives, "thus sharply defining the issues and providing a clear basis for choice among options by the decision-maker and the public."³ Indeed, the alternatives requirement is the "heart" of NEPA analysis:

*"The existence of reasonable but unexamined alternatives renders an [environmental impact statement] inadequate."*⁴

The central purpose of NEPA's alternatives requirements is to ensure that the agency takes a hard look at *all* of its reasonable management options and their effects *before* selecting certain alternatives. As the Council on Environmental Quality regulations point out:

*"Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made."*⁵

Adopting the full suite of EWG-identified MPA sites for RA17 would meet scientific recommendations to protect at least 20% of essential fish habitat,⁶ increasing protections for

¹ SAFMC. 2013(a). MPA Expert Workgroup: Meeting II Overview, 45pp.

² PL 113-36, 42 USC § 4332(2)(C)(iii),(E); 40 CFR § 1502.14(d).

³ 40 CFR § 1502.14.

⁴ *Ctr. for Biological Diversity v. U.S. Department of the Interior*. 623 F.3d 633, 642 (9th Cir. 2010).

⁵ 40 CFR § 1502.02(g).

speckled hind and warsaw grouper from approximately 8% under the current MPA system to approximately 24% of those habitats where they live and spawn.⁷ This would increase the system's footprint by only 20% while achieving a 160% improvement in protection of the essential habitat for these two species. It would also benefit other struggling deep-water fish such as red snapper, red porgy, and red grouper while limiting impacts to surrounding fisheries and affected communities because they are Type 2 MPAs that allow surface trolling.⁸ This is a sound conservation investment in an environment of limited resources for management.

The Council has yet to comply with requirements under the Magnuson-Stevens Act (MSA)⁹ to end overfishing for speckled hind and warsaw grouper.¹⁰ The MSA states that any regulation:

“shall be necessary and appropriate for the conservation and management of the fishery, to prevent overfishing and rebuild fish stocks, and to protect, restore, and promote the long-term health and stability of the fishery,”¹¹ and be “consistent with the national standards.”¹²

Prohibitions on possession or harvest^{13, 14} and the existing system of MPAs have been insufficient to end overfishing, according to the 2013 3rd Quarter Status of the Stocks Index report from NOAA Fisheries.¹⁵ Because these fish can be caught incidentally while fishing for other deep-water species, they are vulnerable to high bycatch mortality.

In its February 2013 Meeting II Overview, the EWG recommended “a networked set of closed areas for significant protection and recovery of speckled hind and warsaw grouper populations, according to the best available scientific information.”¹⁶ The EWG's recommendations are laid out as state-by-state MPA actions and alternatives in the Draft Scoping Document for RA 17.¹⁷ They meet NOAA Fisheries' National Standards guidance by representing necessary conservation and management measures that:

- 1) *shall be based upon the best scientific information available;*¹⁸
- 2) *are a conservation measure with no discriminatory intent;*¹⁹
- 3) *to the extent practicable, minimize bycatch.*²⁰

⁶ Murawski, S.A. *et al.* 2005. Effort distribution and catch patterns adjacent to temperate MPAs. *ICES J. Mar. Sci.* 62: 1150-1167.

⁷ NOAA Fisheries Service. 2013(a). MPA Rankings, Expert Workgroup, updated October 18, 2013.

⁸ NOAA Fisheries Service. 2013(a).

⁹ PL 113-36, 16 USC §1851(a)(1).

¹⁰ NOAA Fisheries Service. 2013(b). Stock Status for FSSI Stocks, 2013 Third Quarter Update.

¹¹ PL 113-36, 16 USC § 1853(a)(1)(A).

¹² PL 113-36, 16 USC § 1853(a)(1)(C).

¹³ SAFMC. 2013(b). South Atlantic Snapper Grouper Complex Commercial Regulations, updated October 17, 2013.

¹⁴ SAFMC. 2013(c). South Atlantic Snapper Grouper Complex Recreational Regulations, updated August 23, 2013.

¹⁵ NOAA Fisheries Service. 2013(b).

¹⁶ SAFMC. 2013(a), 22.

¹⁷ SAFMC. 2013(d). Magnuson-Stevens Act/NEPA Scoping Document-Draft: Regulatory Amendment 17 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region (Marine Protected Areas)

¹⁸ 50 CFR 600.315(a), National Standard 2.

¹⁹ 50 CFR 600.325(b)(2), National Standard 4.

²⁰ 50 CFR 600.350(a)(1-2), National Standard 9.

Additionally, ensuring that the EWG-recommended MPAs are available for review by scientists, stakeholder groups, and the general public follows national standards guidance to conduct “deliberations regarding the importance of fishery resources to affected communities” without compromising “the achievement of conservation requirements and goals.”²¹ While three EWG-recommended MPAs have been removed from consideration for not containing evidence of occurrence of either species, the remaining sites fulfill RA 17’s approved *Purpose and Need* to protect speckled hind and warsaw grouper where they live and spawn²² and warrant thorough public consideration through a series of regional scoping meetings.

Speckled hind and warsaw grouper populations dropped precipitously between the 1970s and early 1990s²³ and were declared “overfished” in 1997.²⁴ Both are slow-growing, late-maturing,²⁵ potentially long-lived fishes.²⁶ Their life history characteristics and rarity in fishery sampling programs²⁷ indicate that existing measures have been insufficient and additional protections are necessary. A well-monitored and enforced MPA system designed to avoid further losses from incidental take offers the best chance for these populations to recover in the South Atlantic.²⁸

We look forward to engaging in the public scoping process and the opportunity it will provide for additional input from stakeholders. Thank you for considering these comments.

Sincerely,



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Manager, U.S. Oceans, Southeast
The Pew Charitable Trusts

²¹ 50 CFR 600.345(b)(1), National Standard 8.

²² SAFMC. 2013(d).

²³ Huntsman, G.R. *et al.* 1999. Groupers (Serranidae, Epinephelinae): endangered apex predators of reef communities. *AFS Symposium* 23: 226.

²⁴ NOAA Fisheries Service. 1997. Status of the United States Fisheries, Report to Congress, September 1997.

²⁵ Ault, J.S. *et al.* 1997. A retrospective (1997-1996) multispecies assessment of coral reef fish stocks in the Florida Keys. *Fish. Bull.* 96: 395-414.

²⁶ Coleman, F.C., *et al.* 2000. Long-lived reef fishes: the grouper-snapper complex. *Fisheries* 25: 14-21.

²⁷ SC-DNR. 2013. Southeast Reef Fish Survey MARMAP/SEAMAP-SA/SEFIS data, 1990-2011.

²⁸ Huntsman, G.R. *et al.* 1999.