Gentlemen:

Either maintain the status quo or open only for summer and early fall. Once floured season opens north of here and BSB are a by catch, the price on these fish drops out of sight. Opening in the winter will allow Florida boats to dominate the fishery because their weather is so much better in the winter than ours. Leave it alone. There's only one good y ear class of Bass that accounts for the increase in the population and allowing a year round fishery will put us right back where we started…Tony Austin

Dear Sir,

I have just read in the Carteret County News-Times about the SAFMC meeting at Atlantic Beach last Wednesday. I was unaware of the meeting until I read about it or I would have attended.

Before the restrictions on these winter black bass pots, it was hard to catch a legal-sized black bass in the waters off the Crystal Coast. When regulators finally but wisely closed the season on black bass and instituted the pot restrictions, the black bass population came back strong. All our local fishermen have benefited from these regulations and the species has recovered.

Why would we want to go back to the practices that put black bass in that predicament in the first place? What you folks did was the right thing and it worked. Please don't undo your good work.

Thank you for listening. Boyd M Brown, Bogue, N. C.

My name is Scott Buff and I am the owner/operator of 6 snapper/grouper boats and 1 retail/wholesale market. I wanted to try and make you aware of one thing that I think you are missing when you close these fisheries. The restaurants that purchase our fish take those particular fish off of their menus and once they reopen it takes weeks to get the market back to its full potential. I also believe that being there has NOT been a study done - that the quota should be upped a minimum of 100,000 lbs because this was the only fishery that kept our boats running and our crews working during certain parts of the season.

I understand the concept of a 12 month fishery - I want it worse than you do. I also think that there should be a 10 box trip limit of Triggerfish as well.

Seabass pots -
Closing the sea bass traps from Nov - June is devastating to our fishery because that is the prime season that it is profitable. As far as the whales go - we already met the criteria for the break aways and the sinking rope - and most of the trapping is done IN SHORE in shallower water.

Thank you for your time!

Best Regards

Scott Buff
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January 18, 2014

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

Dear Chairman Hartig,

Thank you for the opportunity to provide input on a number of proposed fishery management plan amendments that are up for either scoping or public hearings this month

Below are our comments for council consideration.

Snapper Grouper Regulatory Amendment 16 (Scoping):

Black sea bass pot fishery closure November 1 through April 30 -

We believe the actions the fishery council took in Snapper-Grouper Amendment 18A in 2012, such as capping the number of vessels utilizing pot gear at 32, limiting vessel to 35 pots, requiring that pots be brought back to shore after each trip and establishing a commercial trip limit of 1,000 lb., reduced the potential for any interactions with right whales, even though there never have been any documented interactions between whales and pot gear.

The CFSF supports allowing a black sea bass pot fishery November 1 through April 30, even if it is restricted to areas outside the defined right whale critical habitat, such as considered in new Alternative 6 of the proposed Amendment.

Snapper Grouper Amendment 29 (Public Hearing):

Only Reliable Catch Stocks (ORCS) Approach -

We support amending the fishery council's ABC Control Rule proposed in Action 1, Alternative 2, to adopt the SSC's recommended approach to determine ABC values for Only Reliable Catch Stocks.

Action 2: We support the application of the revised ABC Control Rule to the selected unassessed snapper-grouper species in the low, moderate and high risk categories using the Risk Tolerance scalars in Sub-alternatives 2b, 3b and 4b.

Fishermen would benefit for the higher ACLs that would result from the amended ABC control rule and the application of the higher Risk Tolerance scalars.

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Gray Triggerfish –

Action 3: We support Alternative 4, which would specify a minimum size limit for gray triggerfish of 14 inches fork length in federal waters off North Carolina, South Carolina, Georgia, and east Florida.

From the standpoint of yield from a 12 inch or smaller triggerfish, it is not large enough to benefit commercial markets and is small even for personal consumption. We think the fishery would benefit from a minimum size limit of 14 inches.

Action 4: We support Alternative 2, which would change the allocation of the commercial ACL to 50 percent from January 1 through June 30 and the other 50 percent from July 1 through December 31 each year. The gray triggerfish seasons would then mirror the seasons for vermilion snapper and since these are co-occurring species that are caught together, this Alternative would reduce bycatch of both species.

Action 5: We support the use of trip limits to manage commercial fisheries, however this action needs more alternatives for analysis.

Consideration should be given to establishing a trip limit for gray triggerfish that is combined with a step-down trip limit when 75 percent of the commercial ACL is met or is projected to be met. A range of step-down trip limits such as 50 lb., 75 lb., 100 lb., and 150 lb. should be considered.

Coastal Migratory Pelagics Amendment 24 (Scoping):

Modifying sector allocations for Atlantic migratory group Spanish mackerel and Gulf migratory group king mackerel -

The CFSF supports optimization of fishery ACLs. It's clear that in both fisheries, the total ACLs have never been landed in the 10 year time series within Tables S-1 and S-2 in the scoping document, and that the commercial sector has exceeded its ACL while the recreational sector has landed decreasingly lower proportions of its ACL.

The fishery council should consider reallocation alternatives in both fisheries.

Coastal Migratory Pelagics (Mackerel) Framework Amendment 1 (Public Hearing):

Modify the Annual Catch Limit (ACL) for Atlantic and Gulf Spanish mackerel migratory groups -

The CFSF supports the alternatives that would increase the ACLs for these fishery groups.

Consideration of our comments is appreciated.

Respectfully,

Wayne Mershon
President

my name is jeff emery, I hold an unlimited snapper/grouper permit. I have been commercial fishing/diving offshore Daytona beach since 1980. I would like to see the hook and line fishery be able to fish for seabass before the pot fishing season opens. to give us a fair chance before they have their 1200 pound trips greatly decreasing the population. I support the pot closure from November through april.. thanks, jeff emery
please send me a return email so I know you have received this, thanks...

F/V HULL'S SEA LOVER

Mr. Robert Mahood, Executive Director
South Atlantic Fishery Management Council
4055 Faber Place Drive, Suite 201
North Charleston, SC 29405

SGRegAmend16Comments@safmc.net

Date: Saturday January 18, 2014

Mr. Mahood,

I thank you for the opportunity to comment to the South Atlantic Fishery Management Council (Council) about the Snapper Grouper (SG) Fishery Management Plan (FMP) Regulatory Amendment (RA) 16, which is considering the removal of the Black Sea Bass (BSB) pot fishery closure, shortening of the prohibition temporally, and spatially, either by depth and/or distance, to designate the potential closure boundaries for the BSB pot fishery. The Council goal should be to minimize socio-economic impacts to BSB pot endorsement holders, while maintaining protection for the Endangered Species Act (ESA) listed Right whales in the South Atlantic Council region.

As a long time participant and endorsement holder in the BSB pot fishery I would like to comment on SG FMP RA-16 and the Preferred Alternative 4 for Action 1. Since 1990, I have been using BSB pots at the very southern end of the BSB pot fishing range by federal regulation. This is an area where the south end of the range starts at a line due east of the Cape Canaveral NASA Vertical Assembly Building (VAB) and we can fish north to St. Augustine Inlet and beyond normally. The bottom fished for BSB in this area is from 60 to 100 feet of depth and very productively robust.

I have traditionally fished BSB pots in the winter months because of the winter movement of fish inshore and southward. The winter BSB stock caught are very different than the summer BSB pot fish. They are larger, fatter and more abundant. I would not want to BSB pot fish in the summer months if I could fish in the winter instead. The prohibition on the use of BSB pots annually from November 1 through April 30 has caused great economic harm to the BSB pot fishermen, consumers and coastal fishing businesses.

With the current BSB stock status recently found to be rebuilt, and the annual catch limit (ACL) significantly increased, we need the opportunity to harvest BSB in the winter months with our BSB pots. The goal and ***need*** for this SG FMP RA-16 is to minimize socio-economic impacts to BSB pot endorsement holders and provide an optimum yield (OY) for consumers to use, while maintaining protection for the ESA-listed Right whales found in our Council region. I believe the Council is right on target and has already done the job to accomplish this goal.

With the recent BSB endorsement program implemented with the SG Amendment 18A the following requirements that reduced the potential for interactions with protected species became effective:

- Limit of 35 pots per vessel
- Pots must be brought back to shore after each trip
- Commercial trip limit of 1,000 pounds (lbs) gutted weight (gw)

All that is needed is to eliminate the prohibition on winter pot fishing **outside** of the current Right whale critical habitat area as seen in the chart pasted below. In my entire life of fishing off Ponce de Leon Inlet, Florida, I have never seen a Right whale further off shore than two to three miles. In fact, of the dozen or so Right whales I have seen most have been closer to the surf line. With the Right whale migration route and calving area along the shore line within 2 to 3 miles of shore there is no need for a prohibition of BSB

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pot fishing for whale protection, except near the beaches. I fish BSB pots from 10 to 20-miles offshore of the beach and I prefer Alternative 4 for Action 1 based on a distance offshore of approximately 7 miles and not a depth contour.

"PROPOSED ACTION"

"Action 1. Modify the annual November 1 to April 30 prohibition on the use of black sea bass pot gear"

I would prefer to see Alternative 4 for Action 1 as the ***Council Preferred Alternative*** *as pasted below. Also, the Snapper Grouper Advisory Panel chose Alternative 4 as their Preferred choice.*

Identification as to the spatial representation is needed. Obviously the closer to shore and shallower the depth of water of the eastern boundary of the Right whale critical habitat, the better it is for fishermen and seafood consumers. The Right whales migrate along the shoreline normally in less than 60 feet of water depth and within 3 miles of the beach. I prefer to have the critical habitat boundary based on miles off the beach. The critical habitat offshore of Central Florida appears to extend approximately 7-miles offshore of the beach down to the south end of the BSB pot fishing range potential. This would extend protection for whales along the beach in the calving area from vertical lines and open up the BSB pot fishery offshore of the critical habitat when it is most productive during the winter months each year. This would also be much easier to enforce and still allow BSB pot fishing on our traditional bottom.

"Action 1"

[Preferred] **"Alternative 4.** The black sea bass pot closure applies only in designated right whale critical habitat in the South Atlantic region."

The Council has done a good job understanding how and where we BSB pot fish, and also how and where Right whales are calving annually. With the SG FMP RA-16 **[Preferred]** Alternative 4 we can accomplish the stated goals.

Thank you,

Jimmy Hull

F/V Hull's Sea Lover
BSB pot endorsement holder
Snapper Grouper AP member
SEDAR 25 BSB Assessment Workshop panelist
Bottlenose Dolphin Take Reduction Team (BNDTRT) member

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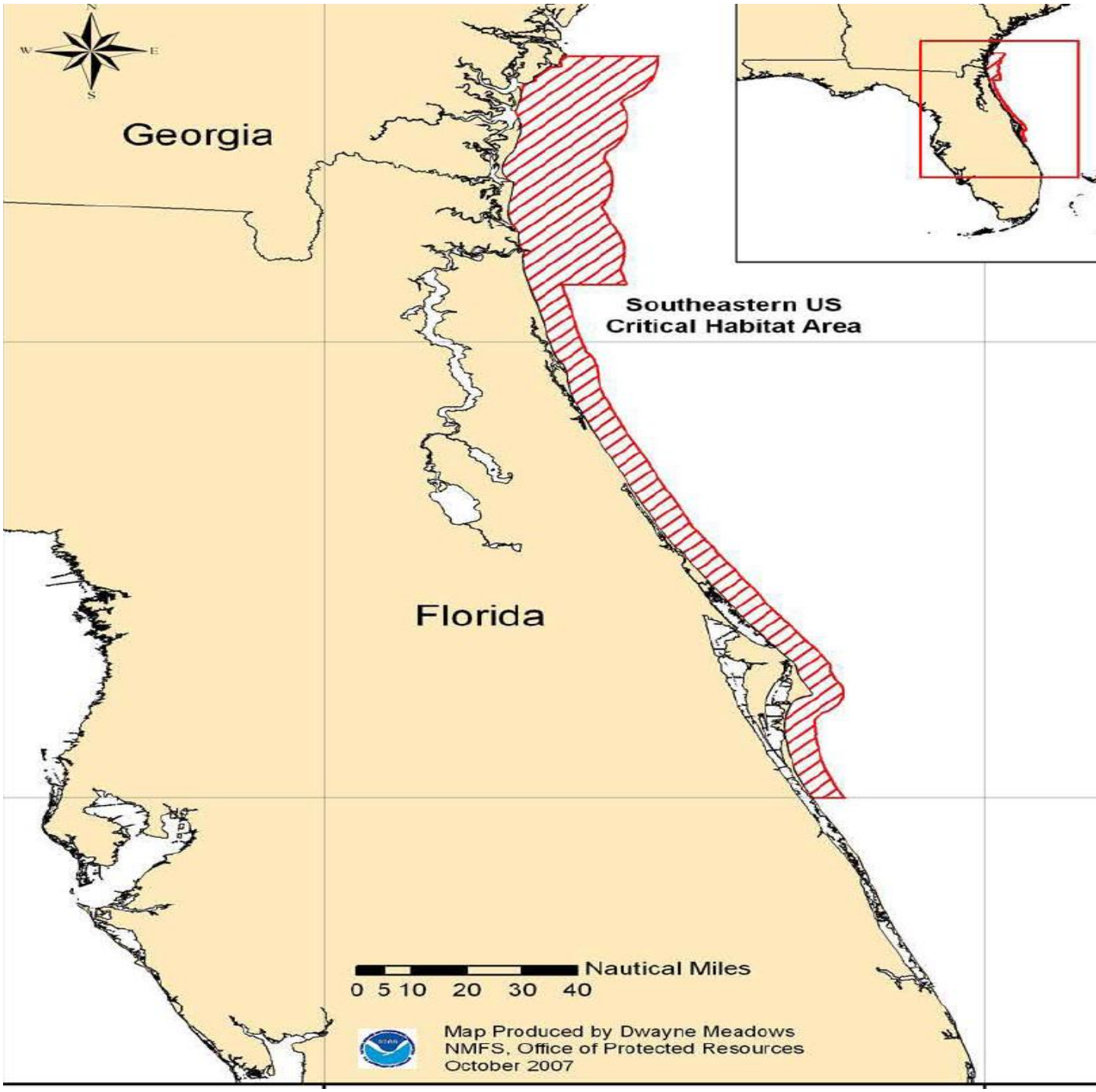
F/V HULL'S SEA LOVER



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Mr. Mahood, I am submitting comment on Amendment 16 considering the removal of the black sea bass closure.

On Action 1, I like Alternative 4. The closure only applies to the designated right whale critical habitat area in the South Atlantic region.

Thankyou. Paul Nelson (Blood Line Fishing)

Rick DeVictor
Southeast Regional Office
National Marine Fisheries Service
263 13th Avenue South
St. Petersburg, FL 33701
Submitted via: www.regulations.gov

January 3, 2014.

RE: Notice of Intent to Prepare a Draft Environmental Impact Statement [NOAA-NMFS-2013-0165]

Dear Mr. DeVictor,

The following comments on your Notice of Intent (NOI) to prepare a Draft Environmental Impact Statement (DEIS) and the accompanying scoping document [78 Fed. Reg. 72868, December 4, 2013] are submitted on behalf of the seventeen organizations signed below and our millions of members and constituents. We support the "no action" alternative: the seasonal prohibition that was established under Amendment 19 to the snapper-grouper management plan. Four of the five alternatives that were put forward are inadequate to meet the stated need for action, which includes "maintaining protection for ESA-listed whales in the South Atlantic region." (SAFMC 2012) However, we must also point out that reasonable alternatives were omitted from the scoping document and must be analyzed for the Draft Environmental Impact Statement (DEIS).

The Agency Must Ensure Adequate Protection of Right Whales

Many of the signatories of these comments are appointed members of the National Marine Fisheries Service (NMFS) Atlantic Large Whale Take Reduction Team (TRT) whose charge under the Marine Mammal Protection Act (MMPA) is to "immediate[ly]" reduce risk of entanglement to Endangered Species Act (ESA) listed large whales to levels below Potential Biological Removal (PBR) in order to reduce, within 5 years, incidental mortality and serious injury "to insignificant levels approaching a zero mortality and serious injury rate." 16 U.S.C. § 1387(f)(2). While the TRT is concerned with reducing entanglement risk for a number of species of endangered large whales, including humpback whales, the focus of the TRT's concerns in the southeast is the North Atlantic right whale. Despite the existence of the TRT since 1997, entanglement of large whales, including right whales, have continued and continue to exceed the PBR.

Where a cause of death can be determined, over half of all right whale deaths are a result of entanglement in commercial fishing gear (NMFS 2012). NMFS has found that there is no level of mortality, however low, that can be considered "insignificant" to this imperiled population (*id*.). Yet the observed level of serious injury and mortality for right whales from entanglement *doubles* the PBR for the species (*id*.), and estimated entanglement rates based on scarification indicate serious injury and mortality may be even higher (Knowlton *et al*. 2012). Because serious injury and mortality of right whales exceeds PBR and vastly exceeds insignificant levels approaching zero, the recovery rate for the stock will be retarded, by definition, and will preclude the species from reaching its optimum sustainable

population as also required by the MMPA. 16 U.S.C. §§ 1361(6), 1362(9). Both trap/pot gear and gillnets are involved in entangling right whales. Though it is not always possible to determine the origin of line entangling whales, where the gear could be identified, rope associated with vertical lines and trap/pot gear was more frequently found on entangled right whales than rope associated with gillnets (Johnson *et al*. 2005). These entanglements are impeding attainment of the MMPA's mandate to reach ZMRG and the ESA's recovery mandate for the North Atlantic right whale and other endangered whales, 16 U.S.C. § 1531(b).

In addition, the ESA prohibits the unpermitted "take" of an endangered species. *Id.* §§ 1538(a)(1), (g) (also prohibiting any entity, including an agency, from "caus[ing] take"). The ESA defines take as conduct that will "harass, harm . . . wound, kill, [or] trap" an individual of a listed species. *Id.* § 1532(19). Similarly, the MMPA establishes a "moratorium on the taking" of marine mammals and specifically prohibits "any person . . . or any vessel [from] tak[ing] any marine mammal." *Id.* §§ 1371(a), 1372(a). The statute broadly defines take to mean "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal." *Id.* § 1362(13). Although both the ESA and the MMPA contain provisions to authorize take incidental to an otherwise lawful activity, including commercial fishing, *see* 16 U.S.C. §§ 1536(b)(4),1371(a)(5)(E), 1387(a), NMFS has not invoked these limited exceptions to permit incidental take of MMPA-protected whales by commercial fisheries in the Atlantic. Nevertheless, commercial fisheries continue to operate, entangle, and kill endangered whales. In other words, more protections – not fewer -- are needed to reduce the risk of entanglements and to ensure that fisheries operate in compliance with applicable laws. Changing or removing the seasonal prohibition on the black sea bass fishery would be a step in the wrong direction.

Tragically, right whale calves and juveniles are more likely to become entangled than adults (Knowlton *et al*. 2012). It is well documented and acknowledged by the agency that this species travels to and gives birth in the waters off the southeastern United States, from Florida to at least as far north as Cape Fear, North Carolina (NMFS 2012). Some, but not all of these waters are within designated critical habitat. In 2007, the NMFS Southeast Fisheries Science Center issued a Technical Memorandum to assist in the agency's consideration of revisions to the boundaries of the southeast right whale critical habitat that included most of these waters (Garrison 2007). Based largely on that report, NMFS enacted broad time and area restrictions to protect right whales from entanglement within the seasonal gillnet restricted area. [72 Fed.Reg. 34632, 34636; June 25, 2007] In designating the restricted area, NMFS characterized the waters within the boundaries of the southeast gillnet restricted area, which extends to the southern border of North Carolina, as a "*substantial and core portion of the right whale calving area*" [emphasis added].

Despite the paucity of sighting effort, in recent years, there has been increasing evidence of right whales outside of this restricted area apparently using the waters of North Carolina for calving. Systematic surveys that had been conducted off the coast of North Carolina during the winters of 2001 and 2002 sighted at least eight calves, suggesting the calving grounds may extend as far north as Cape Fear. Four of the calves were not sighted by surveys conducted further south. One of the mothers photographed was new to researchers, having effectively eluded identification over the period of its maturation (McLellan *et al*. 2004). NMFS itself suggests that calving likely extends into the waters of southern North Carolina (NMFS 2012). There are also more recent media reports of newborns off North Carolina. In

December 2008, a newborn right whale "stranded off the coast of Avon, N.C. It was less than a week old and had failed to thrive." (WAVY 2008). A female right whale nicknamed "Calvin" is believed to have given birth twice off North Carolina, in the years 2004 and 2008, with one of the instances apparently just off Wrightsville Beach, North Carolina (StarNews 2008). Two mothers with small calves were seen in North Carolina in March of this year (NOAA/NMFS, undated). The area from Florida through North Carolina requires increased vigilance and precaution.

In September 2013, NMFS presented information to the South Atlantic Fishery Management Council (SAFMC) to inform the Council's consideration of risk to right whales. (NMFS 2013 A) In this PowerPoint presentation, the agency provided information on the perilous status of the population, limits on our understanding of temporal and spatial distribution based solely on sightings, the preponderance of buoy line entanglements, and limits on detectability of entanglements. The agency also provided results of recent modeling by Good (2008) and Keller (2012) that indicated broader distribution of vital habitat than previously considered. (*Id*.) This information, based on the best available scientific and commercial information, does not appear to have been given proper consideration in the current proposals contained in Amendment 16.

The need for precaution in protecting right whales was further underscored by both the Council and NMFS in the Amendment 19 regulations increasing the Annual Catch Limits (ACL) for black sea bass. NMFS stated in this rulemaking that right and other large endangered whales migrate through the area targeted by the black sea bass pot fishery starting November 1, thus necessitating protections beginning on that date. In the past several years, largely due to quota restrictions, the fishery has not operated after that date; however, with the dramatically increased ACL, we may expect the pot fishery to remain active after November 1, as the ACL will likely not have been reached prior to that date. In the Amendment 19 rulemaking to increase the ACL and institute a seasonal prohibition to protect right whales, NMFS reiterated that the right whale calving season in the South Atlantic occurs from approximately November 1 through April 30 each year in the southeastern US. [78 FR 58249, September 23, 2013]

The Best Available Scientific and Commercial Evidence Supports the Status Quo Alternative

The Status Quo alternative proposed in the scoping document leaves in place the Amendment 19 seasonal prohibition on the use of black sea bass pots in the southeast region between November 1 and April 30 annually. As NMFS acknowledges in the Federal Register notice, Regulatory Amendment 19 established higher ACL for black sea bass fishery while imposing this seasonal prohibition on the use of black sea bass pots or possession of black sea bass by vessels with pot gear aboard. [78 FR 58249, September 23, 2013] In establishing the prohibition, NMFS stated that it had "determined that the increase in the commercial ACL contained in this rule could extend the commercial black sea bass fishing season beyond November 1 and into a time period when a higher concentration of endangered whales are known to migrate through black sea bass fishing grounds." [*Id*. at 58250] The agency went on to say that "a seasonal black sea bass pot prohibition, along with the existing regulations related to pot gear, *are necessary to prevent interactions* between black sea bass pot gear and whales during periods of

large whale migrations and during the right whale calving season off the U.S. southeastern coast. The large whale migration period and the right whale calving season in the South Atlantic occurs from approximately November 1 through April 30, each year."[*Id*., emphasis added]This risk and concomitant concern have not changed in the past three months since the September promulgation of the prohibition.

In the 2013 Draft Environmental Impact Statement (DEIS) issued in conjunction with proposed amendments to the Atlantic Large Whale Take Reduction Plan (ALWTRP), NMFS stated in the section on Purpose and Need that, "[d]ue to the continuing risk of serious injury and mortality of large whales since the most recent revisions of the ALWTRP have gone into effect, NMFS believes additional modifications to the ALWTRP are needed to meet the goals of the MMPA and the ESA."(NMFS 2013) In addition, in its proposed rule, the agency specifically stated that, with regard to black sea bass pots in the southeast, recent changes in fishery management have reduced risk to right whales, saying "[m]ost notably, the black sea bass fishing season has not co-occurred with the right whale season for the last four years." [78 Fed. Reg. 42654, July 16, 2013] The fact that the fishery has not operated after November 1 resulted in NMFS itself essentially counting on a seasonal prohibition as a key baseline underpinning of its strategy to reduce risk to right whales. Given the stated need in the DEIS to reduce the number of vertical lines—and the assumption that black sea bass fishing would not occur within the right whale season in the southeast—it would be counterproductive to allow increased use of vertical lines by this fishery during the winter season. Indeed, it would call into question the assumptions on which the DEIS and proposed amendments to the ALWTRP are premised. The status quo prohibition should be maintained.

Finally, although the Federal Register notice for the NOI states that the intent is "to minimize socio-economic impacts to black sea bass pot fishers while maintaining protection for whales in the South Atlantic region that are listed as endangered and threatened under the Endangered Species Act," we do not see the need to modify the prohibition on the basis of the economics of the fishery. When it promulgated Amendment 19 and instituted the broad area prohibition, NMFS stated that the fishery has not traditionally been operating after November 1st, but if a closure became necessary, other types of gear could be used. Further, the economic analysis section of the regulation stated that "revenues foregone by vessels using black sea bass pots will likely be gained by vessels using other gear types. Thus the black sea bass pot prohibition will mainly have distributional effects within the commercial sector, *with the overall industry revenues and likely profits expected to increase*." [78 FR at 58251, emphasis added] There is no reason to suspect that this economic analysis has changed just in the past three months and thus there is no evidence of an adverse economic impact to the overall black sea bass fishery as a result of maintaining the prohibition.

All of the foregoing clearly indicate the need to maintain the prohibition put in place under Amendment 19. It is clearly unnecessary to lift all or part of the prohibition to ensure a profitable industry and it would unnecessarily place critically endangered North Atlantic right whales at elevated risk of potentially fatal entanglements in vertical lines.

The Proposed Alternatives are Inadequately Protective

In the scoping document that NMFS provided in the NOI, there are five alternatives considered. Other than the status quo alternative that would maintain the extant prohibition, the alternatives presented all would increase risk to whales and fail to meet the NMFS Office of Protected Resources regulatory goal of reducing vertical lines in areas of significant risk, thereby violating the agency's duty to conserve and recover the species under both the MMPA and ESA. 16 U.S.C. §§ 1361(6), 1531(b).

Alternative 2 would simply repeal the prohibition on trap/pot fishing that was put in place to protect right whales. As previously discussed, this will dramatically increase risk and undermine current efforts to reduce vertical lines being undertaken by the NMFS Office of Protected Resources, and is unnecessary for the economics of the fishery.

Alternative 3 would reduce the amount of time the prohibition is in place by 30 days. The prohibition would begin on November 15 instead of November 1 and would end on April 15 instead of April 30. Yet Amendment 19 and the NMFS ALWTRP both document this time frame as critical for right whale protection. Similarly, rules that have been in place since 2008 to slow large vessels traversing the area establish protective measures during this same time period [78 FR 73726, December 6, 2013]. Right whales are in the area from at least November 1 through April 30. To reduce the period of time during which they are protected not only increases risk to whales, but is also counter to NMFS findings in other rulemakings.

Alternative 4 would maintain the prohibition only within the right whale's currently designated critical habitat. Again this is insufficiently protective. As we have noted, the NMFS stock assessment documents calving as far north as Cape Fear, NC (NMFS, 2012). The southeast gillnet restricted area designates a far larger area as being "core" right whale calving habitat and seeks to reduce risk of entanglement in this area. [72 Fed.Reg. 34632, 34636, June 25, 2007] A number of signatory groups to these comments co-authored an ESA petition for revisions to the boundaries of critical habitat. In response, the agency made a positive 12 month finding that the petition presented substantial evidence that the boundaries of existing critical habitat do not conform to the findings in the most recent scientific information. In the Federal Register notice, the agency committed to "completing our ongoing rulemaking" that is considering revised critical habitat boundaries. [75 Fed. Reg.61690, October 6, 2010] Beginning as far back as 2007, the agency's own scientists have published research demonstrating the need for much broader areas of protection than the currently designated but outdated boundaries of critical habitat in the southeast (Garrison 2007; Keller *et al*. 2012) Shockingly, the scoping document indicates that the meager area outlined in Alternative 4 is the Council's preferred alternative to date.

Alternative 5 would provide for a prohibition only in waters shallower than 25 meters of depth (although the illustrative map in the scoping document only shows the 30 meter bathymetric contour). We believe that this water depth was chosen based on published research that examined right whale visual sightings that found that "peak sighting rates occurring at water temperatures of 13 to 15°C and water depths of 10 to 20 m." (Keller *et al*. 2012). However, the graphic in the scoping document clearly

indicates that this shallow water prohibition would not protect the entire designated right whale critical habitat. This is entirely inappropriate. Indeed, this does not even cover the existing critical habitat, which as just described, is also inadequate. Further, the area outlined in the scoping graphic in Alternative 5 does not include the areas in Georgia and Florida that were suggested by NMFS researchers as needing broader protection (*id*.) At the very least, if relying on the 2007 Technical Memorandum by Garrison and on Keller's 2012 published research, the protected area should include the much broader area that includes the 75th percentile of sightings off Georgia and Florida suggested by Garrison and by Keller (*id*. at page 83) rather than simply cutting off protection seaward at 25 meters of depth. It should also provide protection in shallow water inside the 30 meter depth contour that is outlined in Alternative 5 extending northward through North Carolina.

The Agency Must Consider Other Feasible Alternatives that Meet the Stated Need While Adequately Protecting Right Whales

The agency and the SAFMC have clearly failed to consider all reasonable alternatives due to their sole consideration of alternatives that fail to meet the NMFS Office of Protected Resources' regulatory goal of reducing vertical lines in areas of significant risk. However, pursuant to its duties under the National Environmental Policy Act, NMFS must provide a "detailed statement of alternatives" to the proposed action. 42 U.S.C. § 4332(2)(c). The CEQ describes the alternatives requirement as the heart of the environmental analysis. 40 C.F.R. § 1502.14. The purpose of this section is "to insist that no major federal project should be undertaken without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means." *Envt'l Defense Fund v. U.S. Army Corps of Eng'rs*, 492 F.2d 1123, 1135 (5th Cir. 1974). The analysis should address "the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for the choice among options by the decision maker and the public" and must "rigorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14. While an agency is not obliged to consider every alternative to every aspect of a proposed action, reviewing courts have insisted that the agency "consider such alternatives to the proposed action as may partially or completely meet the proposals goal." *Nat. Resources Defense Council, Inc. v. Callaway*, 524 F.2d 79, 93 (2d Cir. 1975).

Here, the agency's scoping document does not offer a sufficient range of alternatives, particularly alternatives that adequately maintain protection for ESA-listed whales in the South Atlantic region. We offer two other alternatives that utilize NMFS Science Center data in delineating the boundaries of protected waters. These alternatives, based on the best available scientific information, merit the agency's current attention and full analysis in its coming NEPA documentation.

A. Closure in Petitioned Critical Habitat

The first alternative the agency should consider is a prohibition on black sea bass traps within the area that was petitioned for critical habitat in 2009 (CBD *et al*., 2009). That petition, which NMFS found presented substantial information demonstrating that a revision of critical habitat may be warranted, relied on the best scientific evidence available at that time to redefine right whale critical habitat to capture sightings at the 75th percentile (Garrison at Figure 19, Keller *et al*. at page 83). The petition, and

thus this alternative, would adopt the boundary proposed in the Garrison and Keller papers and extend the protection northward from the shore of South Carolina through North Carolina out to 30 nautical miles. This distance from shore was chosen because a focal study of the area found 94.1% of sightings occurred within 30 nm of the coast during migrations (Knowlton 2002). Under this alternative, there would be a prohibition on black sea bass trap/pot fishing would be in place throughout this area from Florida through North Carolina from November 1 through April 30 annually to comport with published data delineating the dates and areas in which right whales are expected to be present in southeastern U.S waters.

A graphic illustrating boundaries of the seasonal trap/pot area that would be included in this proposed alternative is below (Fig. 1).

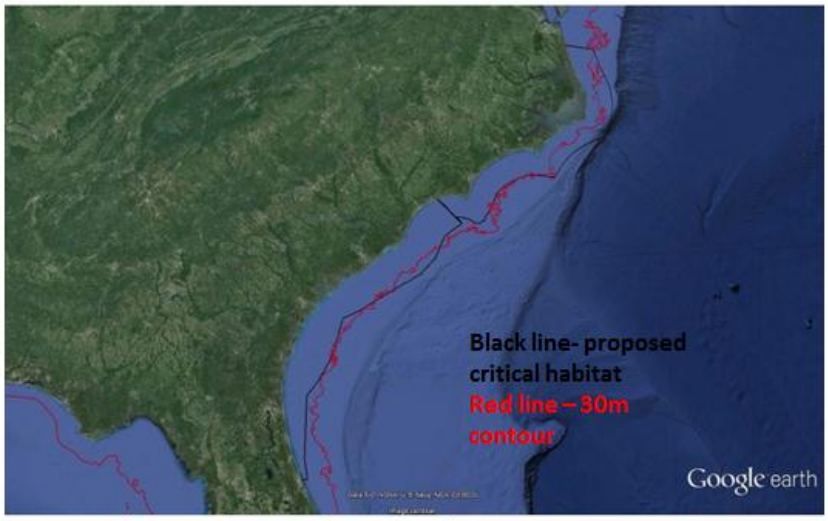

Figure 1. Closure in Petitioned Critical Habitat

B. Southeast Seasonal Gillnet Restricted Area

The second additional alternative the agency should evaluate is to prohibit black sea bass fishing in waters already designated as a southeast seasonal gillnet restricted area that was put in place by NMFS in 2007 to prevent entanglement of right whales in high use areas off Florida and Georgia. [72 Fed.Reg. 34632, 34636; June 25, 2007] This area is already delineated in regulations and, as such, is familiar to commercial fishermen. To protect migratory and other high value seasonal habitat, this proposed alternative would also prohibit black sea bass pot gear in waters shallower than 30 meters in depth northward from the designated seasonal restricted area off Georgia through North Carolina along the area outlined in Alternative 5 north of the Restricted Fishing Area. Again, the prohibition would be in place from November 1 through April 30 to comport with published NMFS data on the regular presence of right whales in the southeast.

A graphic illustrating boundaries of the seasonal trap/pot area that would be included in this proposed alternative is below (Fig. 2).

Figure 2. Southeast Seasonal Gillnet Restricted Area

Procedural Issues

Finally, we briefly note our concern with NMFS' decision making process for this action. NEPA requires agencies to consider all phases of a project together as part of a single review so that all those decisions can be made with a full consideration of environmental impacts of the project as a whole. *See* 40 C.F.R. § 1508.25(a). Here, through Amendment 19, NMFS increased the black sea bass commercial and recreational ACLs, but even as the agency developed this Amendment, the Council was considering proposing to remove the seasonal closure. 78 FR 58249 (Sept. 23, 2013). NEPA prohibits this type of piecemeal decision making.

Conclusion

Right whales are a fragile population of only around 450 individuals. They migrate seasonally through waters in which black sea bass fishing has occurred, though the trap/pot season has generally terminated before their arrival starting November 1. The increased ACL makes it likely that the fishery will operate past that date. The extant prohibition that NMFS put in place under Amendment 19 was designed to prevent adverse interactions between right whales and entangling trap/pot gear in this migratory and calving area that is key to the species' survival. In September 2013, the economic impact analysis for Amendment 19 indicated no adverse consequences to the black sea bass fishery as a result of the prohibition. The scoping document accompanying the NOI clearly indicates a desire on the part of the Council to lift the black sea bass pot prohibition at a time when right whales are most vulnerable to entanglement. With the exception of the no action alternative, the alternatives presented are

inadequate to ensure reduced risk of entanglement and death. We have suggested that the NOI and a DEIS should provide two additional alternatives to the five inadequately protective alternatives presented in the council scoping document. However, we maintain that the no action alternative must be selected as preferred alternative. This alternative maintains the prohibition that NMFS itself said in regulations issues only three months ago was necessary to protect right whales.

Sincerely,

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for

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Origami Whales Project

Will Anderson
Green Vegans

Karen Vale
Cape Cod Bay Watch

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Mr. Robert Mahood, Executive Director
South Atlantic Fishery Management Council
4055 Faber Place Drive, Suite 201
North Charleston, SC 29405

SGRegAmend16Comments@safmc.net

Date: Saturday January 25, 2014

Re: Snapper Grouper Fishery Management Plan Regulatory Amendment 16 to consider the removal of the Black Sea Bass Pot Fishery Closure

Mr. Mahood,

The Southeastern Fisheries Association (SFA), East Coast Fisheries Section (ECFS) submits this written comment to the South Atlantic Fishery Management Council (Council) about the Snapper-Grouper (SG) Fishery Management Plan (FMP) Regulatory Amendment (RA) 16. The SG FMP RA-16 action is considering the removal of the Black Sea Bass (BSB) pot fishery closure, shortening of the prohibition temporally, and spatially, either by depth and/or distance, to designate the potential closure boundaries for the BSB pot fishery. The Council goal should be to minimize socio-economic impacts to BSB pot endorsement holders, while maintaining protection for the Endangered Species Act (ESA) listed Right whales in the South Atlantic Council region, based on their current critical habitat as designated.

The BSB endorsement program implemented by the SG FMP Amendment 18A (SG FMP 18A) became effective with requirements greatly reducing the potential for protected species interaction by a:

- Limit of 35 pots per vessel
- Pots must be brought back to shore after each trip
- Commercial trip limit of 1,000 pounds (lbs) gutted weight (gw)

The SFA ECFS wants the Council to eliminate the prohibition on winter BSB pot fishing **outside** of the **current ESA Right whale critical habitat area** as illustrated in the chart pasted below. The BSB Pot fishermen stay close to their fishing gear while fishing since SG FMP 18A became effective, and return the same gear home each trip as required by law. This fishing gear has no known interactions with the Right whales, and are not like the American lobster traps fished to the north of the South Atlantic Council region with known interactions.

The SAFMC has proposed the following Action, with Alternatives, including Alternative 4, Preferred by the SFA ECFS;

"PROPOSED ACTION"

"Action 1. Modify the annual November 1 to April 30 prohibition on the use of black sea bass pot gear"

"Alternative 4. The black sea bass pot closure applies only in designated right whale critical habitat in the South Atlantic region."

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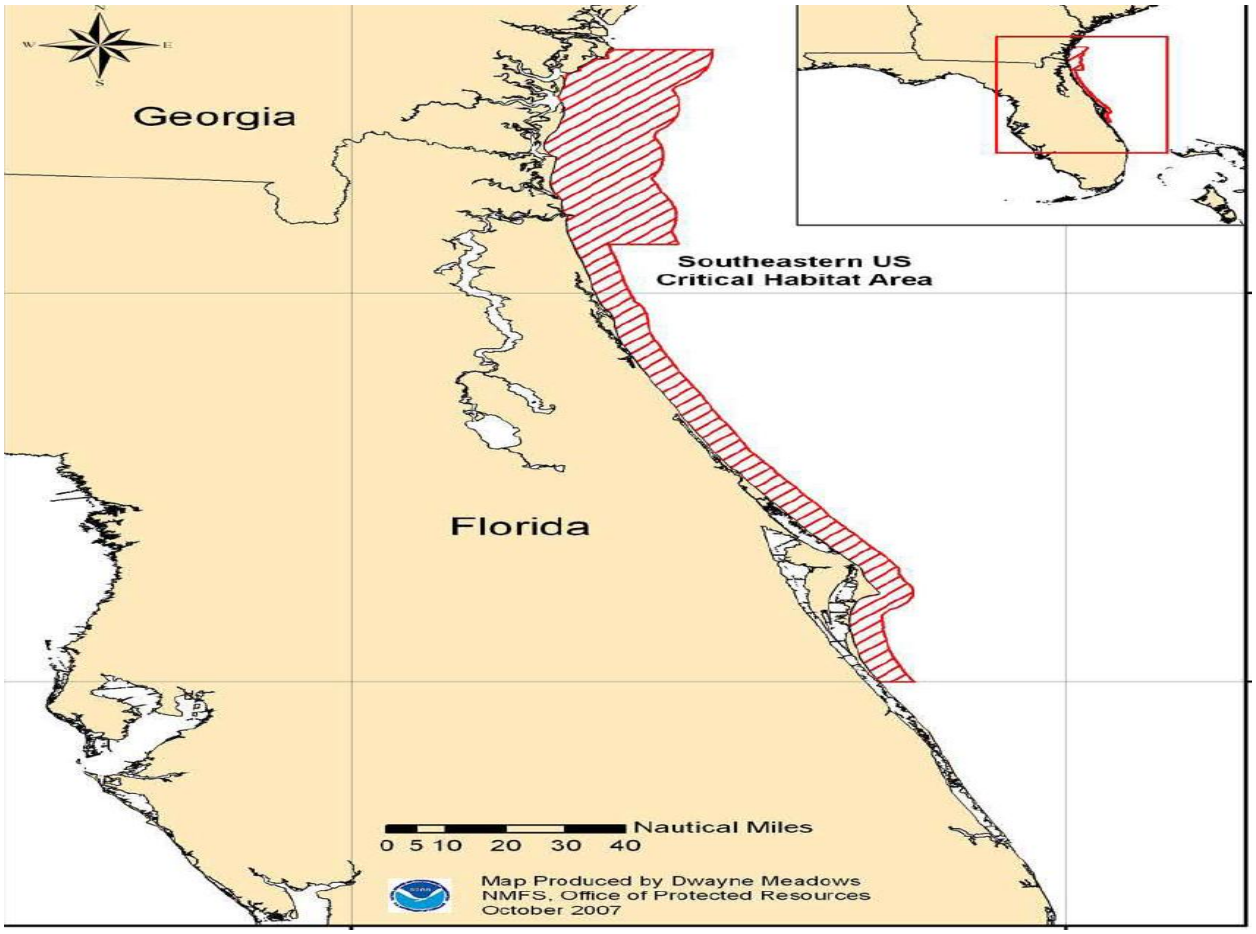
The SFA ECFS prefers to see Alternative 4 for Action 1 as the ***Council Preferred Alternative*** *as pasted below. The Snapper Grouper Advisory Panel chose Alternative 4 as their Preferred choice.*

See the following NMFS image below, copied and pasted from the SG FMP RA-16 scoping document.



Finally, SFA ECFS is opposed to the revised Alternative 5 and the new Alternative 6 recently submitted from the NMFS Protected Resources Division using the 25-meter (>82-feet) of depth for the offshore contour. Even depths of less than 20-meters (<66-feet) would create a bigger closure than does the SFA ECFS "**Preferred**" Alternative 4 by using the **historical Right whale critical habitat** as produced recently by Dwayne Meadows with NMFS, Office of Protected Resources.

Latitude and longitude **coordinates should be based** on the **distance from shore of the current eastern boundary for the Right whale critical habitat** as designated by the NMFS, and seen above. The SAFMC needs to finish this work so that November 01, 2014 allows the BSB Pots to keep fishing after that date outside the Right whale critical habitat.

Jimmy Hull, Chairman
SFA ECFS
jgh/rhh

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The National Park Service has reviewed ER 13/0755 Amendment 16 to FMP for the Snapper-Grouper Fishery of the South Atlantic Region (Prohibition on the use of Black Sea Bass Pots in EEZ) and offer the following comments:

The National Park Service manages numerous marine areas in the South Atlantic region with grouper-snapper habitat including: Dry Tortugas National Park, Biscayne National Park, Canaveral National Seashore, Timucuan Ecological and Historic Preserve, Cumberland Island National Seashore, Cape Hatteras National Seashore, Cape Lookout National Seashore, Fort Sumter National Monument, Fort Pulaski National Monument. Dry Tortugas National Park and Biscayne National Park are the national park units most likely to provide deep-water snapper-grouper fishing. The US Congress specified The Secretary of the Interior shall permit fishing in the founding legislation of the following park along with administering these areas in accordance with the laws of the National Park System: Cape Hatteras National Seashore Recreation Area (16 USC 459a), Cape Lookout National Seashore (16 USC 459g-3), Cumberland Island National Seashore (16 USC 459i-4), Canaveral National Seashore (16 USC 459j-3), and Timucuan Ecological and Historic Preserve (16 USC 698n). Fishing in Biscayne National Park is determined by the Secretary of the Interior in consultation with state officials and by Florida state law (16 USC410gg-2). The Secretary of the Interior shall administer Dry Tortugas National Park in accordance with the law generally applicable to units of the national park system and manage the park to protect populations of fish and wildlife (16 USC 410xx-1). However, commercial fishing is generally prohibited in in national park areas, except where specifically authorized by Federal statutory law (36 CFR 2.3(d)(4)) and will be allowed only when specifically authorized by federal law or treaty right.

We support the NMFS Southeast Region and the South Atlantic Fishery Management Council's consideration of alternatives to the prohibition on the use of black sea bass pots in the South Atlantic exclusive economic zone (EEZ) annually from November 1 through April 30 and to reduce interactions between fishing gear and marine mammals including northern right whales.

Alternative 4 in the scoping document is not clear as to the duration of the proposed closure; no start and end dates are listed for this alternative in the scoping document.

The National Park Service supports a combination of Alternatives 4 and 5 as presented in the scoping document combined with the addition of all National Park areas. The specific combination of areas remaining closed November 1 through April 30 being 1) designated right whale habitat, 2) waters 25m or shallower from 28°N to Cape Lookout, North Carolina 3) waters 35m or shallower north of Cape Lookout, and 4) all areas within national park boundaries. The 28°N boundary is from the northern right whale critical habitat figure in the scoping document.
We recommend that the Council and NOAA also consider an alternative that:
•includes individual NPS boundaries in the amendment or FMP;

•does not alter the November 1 through April 30 prohibition on the use of black sea bass pots within any national park area that allows commercial fishing for black sea bass with pots;
•does not alter the November 1 through April 30 prohibition on the use of black sea bass pots within any national park area that allows recreational fishing for black sea bass with pots;
•does not alter the November 1 through April 30 prohibition on the use of black sea bass pots within any national park area that allows subsistence and treaty fishing for black sea bass with pots.

Thank you for the opportunity to comment on the South Atlantic snapper-grouper FMP, black sea bass pot restriction Amendment 16. Please contact Karl Brookins, Natural Resource Stewardship and Science Directorate, Water Resources Division at karl_brookins@nps.gov, 970 267-7208 or Anita Barnett, Environmental Protection Specialist, Environmental Planning and Compliance Division, Southeast Region at 404-507-5706 for any additional information, clarification or consultation regarding these comments.

Comments on Regulatory Amendment 16

The prohibition on the use of Black Sea Bass pots (Nov-April) was a precautionary measure to prevent interactions with whales during large whale migration and calving off the Southeast US coast.

> These are two separate issues and should be dealt with separately. According to the *North Atlantic Right Whale Sightings Map* the first mother and calf were sighted this calving season off Georgia the 17th of December 2013. From what I read this is not an uncommon time or place for the first sighting of a mother and calf. When the November-April time frame is used to describe the calving season these dates should be used as goal posts meaning the earliest record of a calf born and the last and that the core calving time (80% of calves born) would be a 2 month time frame within the Nov-April calving season. And that means that up until that date (Dec 17th) this has been a migration issue and issues like this have been addressed by the *Atlantic Large Whale Take Reduction Team* and are now part of the *Atlantic Large Whale Take Reduction Plan*.

The late fall and winter are an important time to fish for BSB because this is when fish start moving into the southeast. Cooler weather and cold fronts move fish into our area on a regular basis with larger fish and larger catches more consistently. This trend will continue into the winter.

> The last two weeks of the 2013 BSB Trap Season the fish started to show up with larger fish and increased catches in my area of Onslow Bay, NC. This was well inshore of the revised points for Alternative 5. In December 2013 80% of all the BSB caught in my area of NC (Onslow bay) were caught inside of the revised points in Alternative 5. The BSB were not offshore of this line they were all inshore. It was common in years past to fish inshore of this line in late fall and early winter because this is where the water cools off first. The cooler water works its way from inshore to offshore as the winter progresses and we also work our way offshore.

I have also enclosed North Carolinas consistency and review letter that was sent on Regulatory Amendment 19.

Tom Burgess
Sneads Ferry, NC

North Carolina Department of Environment and Natural Resources
Division of Marine Fisheries

Pat McCrory
Governor

Dr. Louis B. Daniel III
Director

John E. Skvarla, III
Secretary

MEMORANDUM

TO: Stephen Rynas, AICP; Federal Consistency Coordinator

THROUGH: Anne Deaton, Habitat Protection Section Chief

FROM: Michelle Duval

RE: Regulatory Amendment 19 to the Snapper Grouper Fishery Management Plan (DCM #20130054)

While we agree that the actions proposed in Regulatory Amendment 19 to the Snapper Grouper Fishery Management Plan (FMP) may be consistent with the relevant policies of North Carolina's coastal zone management program, we question the information used to determine the necessity of the November 1 through April 30 prohibition on the use of black sea bass pots. We share the concerns of NOAA Fisheries regarding potential interactions of endangered north Atlantic right whales with pot gear, but do not believe the existing information warrants a seasonal closure.

The current biological opinion for the snapper grouper fishery was issued in June 2006 and initiated in conjunction with development of Amendment 13C to the Snapper Grouper FMP. It concluded "Thus, there have been no documented interactions between black sea bass pots and any marine mammals in the South Atlantic. The lack of evidence suggesting interactions between black sea bass pots and marine mammals, and the proposed provisions under the amendment to the Atlantic Large Whale Take Reduction Plan, lead us to conclude that any adverse affects resulting from the continued authorization of the South Atlantic snapper-grouper fishery are extremely unlikely to occur and are discountable." (NMFS 2006). Regulatory Amendment 19 specifically states that there are no known interactions of north Atlantic right whales with the black sea bass pot fishery (SAFMC 2013).

The stated purpose of the proposed prohibition on the use of pots is to prevent *potential* interactions with right whales due to the possibility of the fishery extending into the calving season (November 1 through April 30) because of the large increase in the ACL. However, since the 2006 biological opinion was issued, there has been a dramatic reduction in gear and effort in the black sea bass pot fishery. Between 2005 and 2010, the average number of vessels participating in the pot fishery was 247, with no limit on the number of pots used (SAFMC 2012). In July 2012, Amendment 18A to the Snapper Grouper FMP implemented a number of measures which significantly reduced effort:

- An endorsement program that allows only 32 vessels to legally use pots to harvest black sea bass
- A limit of 35 pots per vessel
- A requirement that all pots be brought in at the end of a trip
- A trip limit of 1,000 pounds gutted weight
- An increase in the commercial minimum size limit from 10" to 11" total length

As a result of these measures, the maximum number of black sea bass pots deployed at any one time in the entire south Atlantic region is currently 1,120. Furthermore, pots are required to adhere to the gear configurations of the Atlantic Large Whale Take Reduction Plan (ALWTR) to reduce the potential for interactions. By contrast, in the American lobster fishery (also subject to the gear requirements in the ALWTR) anywhere from 1,400 to 1,900 lobster pots are allowed *per vessel*, and there are approximately 2,800 permit holders (NMFS 2012a). We question the inconsistent treatment of these two fisheries, especially as lobster pots are much larger and heavier than black sea bass pots. Additionally, the western north Atlantic population of right whales has increased from an estimated 361 individuals in 2005 to at least 396 individuals in 2010 (NMFS 2012b). Finally, we note that although the commercial fishery has closed prior to the onset of the calving season since 2010, it was re-opened for two weeks in December 2010 to allow unharvested quota to be caught

(http://sero.nmfs.noaa.gov/fishery_bulletins/bulletin_archives/2010/documents/pdfs/fb10-100_black_sea_bass.pdf). This occurred during the calving season and when there was a much greater level of effort and gear in the water. Given these facts, we do not believe the existing information supports the proposed seasonal prohibition of black sea bass pots throughout the region.

We are also concerned that the increase in the ACL for black sea bass will be negatively impacted by the failure of Florida, Georgia and South Carolina to complement federal closures of the recreational black sea bass fishery within state waters. This appears to be a violation of Section 306(b)(1)(B) of the Magnuson Stevens Act. North Carolina is currently the only state to complement federal measures for the recreational black sea bass fishery within state waters. The inaction of other states impacts the black sea bass resource, and unfairly puts North Carolina's recreational fishermen and associated industry at a disadvantage.

Citations

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