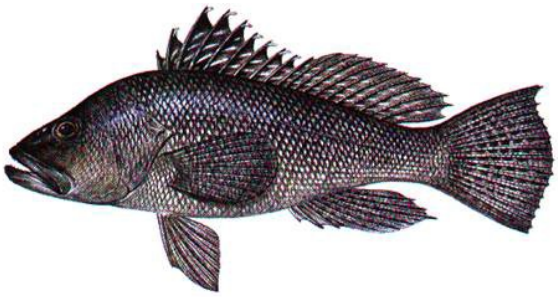


Regulatory Amendment 16 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region

DECISION DOCUMENT

MARCH 2014

BACKGROUND

At their December 2013 meeting, the Council approved draft Regulatory Amendment 16 to be taken out to scoping. Scoping hearings were held in January 2014 and comments were received until February 3, 2014.

The proposed timing for this amendment is as follows:

- Review scoping comments, review/modify actions/alternatives, and provide guidance – March 2014
- Review/modify amendment, choose preferred alternatives, and approve for public hearings – June 2014
- Public hearings – August 2014
- Review public hearing comments, review/modify amendment, and approve all actions – September 2014
- Review final amendment and approve for formal review – December 2014

PURPOSE & NEED FOR ACTION

The IPT suggests the following edits to the Purpose and Need:

The purpose of Regulatory Amendment 16 is to ~~address the balance between ESA-listed whales protection and the socioeconomic impacts imposed on black sea bass pot fishermen initiated by the~~ reconsider the annual November 1 to April 30 prohibition on the use of black sea bass pot gear.

The need for the amendment is to minimize potential negative socio-economic impacts to black sea bass pot endorsement holders while maintaining protection for ESA-listed whales in the South Atlantic region.

COMMITTEE ACTION: APRROVE THE IPT'S SUGGESTED EDITS TO THE PURPOSE AND NEED OF REGULATORY AMENDMENT 16

PROPOSED ACTION

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

(Multiple preferred alternatives may be chosen.)

Alternative 1 (No Action). Retention, possession, and fishing for black sea bass is prohibited using black sea bass pot gear, annually, from November 1 through April 30.

Alternative 2. Remove the annual November 1 to April 30 prohibition on the retention, possession, and fishing for black sea bass using black sea bass pot gear.

Alternative 3. Prohibit retention, possession, and fishing for black sea bass using black sea bass pot gear, annually, from November 15 through April 15.

(alternatives continue on next pages)

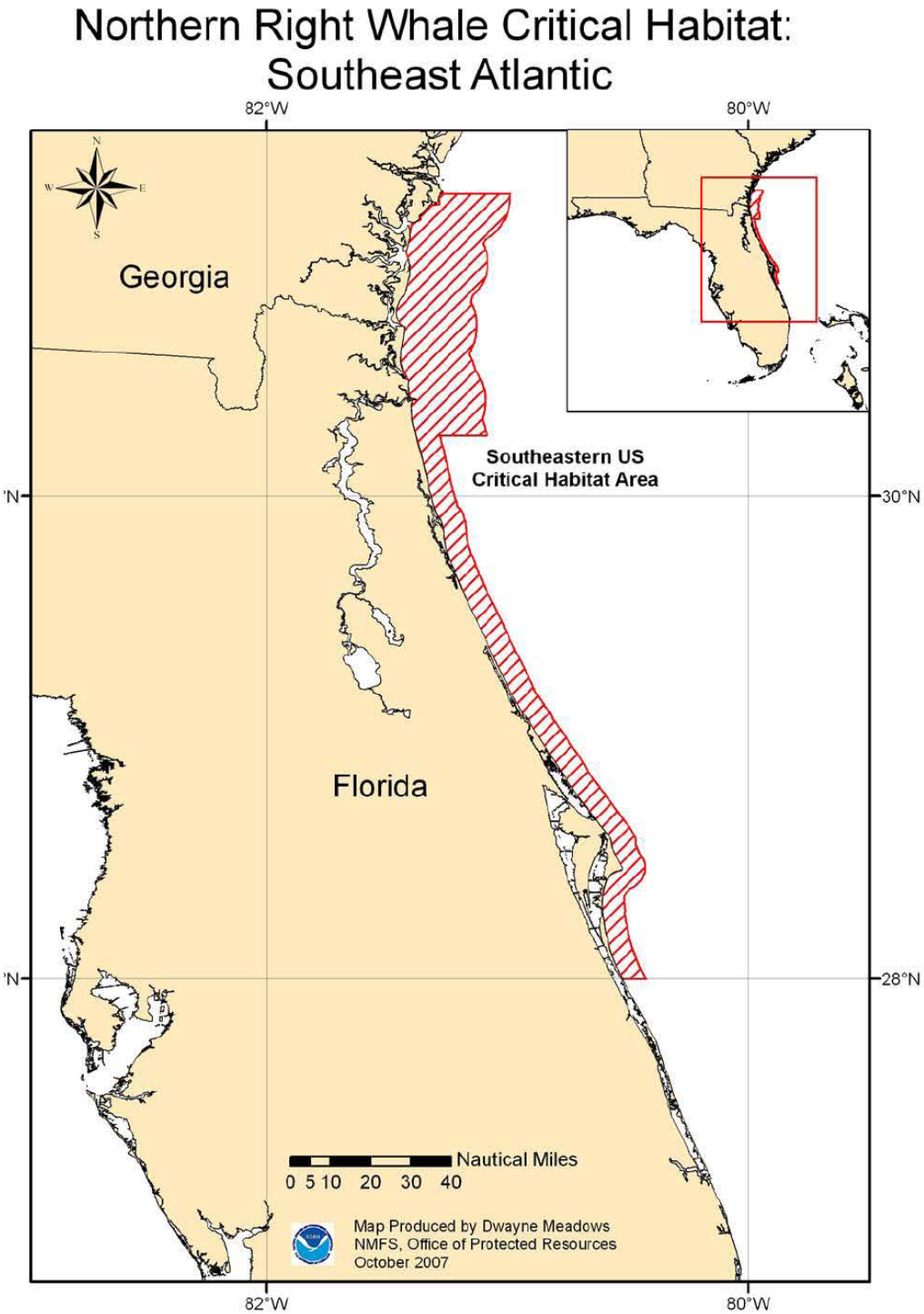
An IPT member felt that it would be helpful to expand Alternative 1 (No Action) to include existing protection to whales (ALWTRP & 18A measures).

PR staff reported that Alternative 3 (November 15-April 15) would likely not offer biological protection to large whales off the coast of North Carolina outside of the proposed closure period (November 15 - April 15). Whales migrate southward from the North Atlantic in the winter months and arrive in the northern portions of the South Atlantic Region (i.e., North Carolina) first. Therefore, animals arriving prior to November 15 or remaining after April 15 may be at risk of interaction. The IPT discussed whether this would justify considering time-area closure alternatives, such as a November 1- April 30 for North Carolina and November 15-April 15 for the rest of the South Atlantic. Defining the period of time when large whales are migrating off the SE US as November 1-April 30 is consistent with recent NMFS published rules regarding ship speed regulations to protect ESA-listed large whales. An IPT member asked if these two different time periods (November 15- April 15 and November 1-April 30) would justify creating differing time-area closures for different areas. The IPT discussed whether to ask the Council in March to consider such time-area closure alternatives for inclusion in the analysis. Some members of the IPT, however, pointed out that having a closure that applies to NC first would not offer any economic benefits to the black sea bass fishermen and there is no point in the Council even discussing it.

COMMITTEE ACTION: CONSIDER EXPANDING ALTERNATIVE 1 AS SUGGESTED BY AN IPT MEMBER OR INCLUDE EXISTING PROTECTION TO WHALES ELSEWHERE IN THE DOCUMENT. CONSIDER WHETHER TIME-AREA CLOSURE ALTERNATIVES, SUCH AS A NOVEMBER 1- APRIL

30 FOR NORTH CAROLINA AND NOVEMBER 15-APRIL 15 FOR THE REST OF THE SOUTH ATLANTIC, IS A REASONABLE ALTERNATIVE.

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



The IPT recommends specifying the timeframe of the closure from November 15 to April 15 in Alternative 4 since the closure would apply off the coasts of Georgia and Florida only.

COMMITTEE ACTION: CONSIDER WHETHER TO INCLUDE A TIMEFRAME IN THE LANGUAGE OF ALTERNATIVE 4 AS SUGGESTED BY THE IPT

A re-evaluation of existing North Atlantic Right Whale Critical Habitat (NARW CH) is ongoing. NOAA GC will look into what the status if the evaluation is.

PR staff did not think there has been a published revision to the designation of critical habitat. (PR staff has since reported that there has been no official change in the designation of the existing NARW CH.)

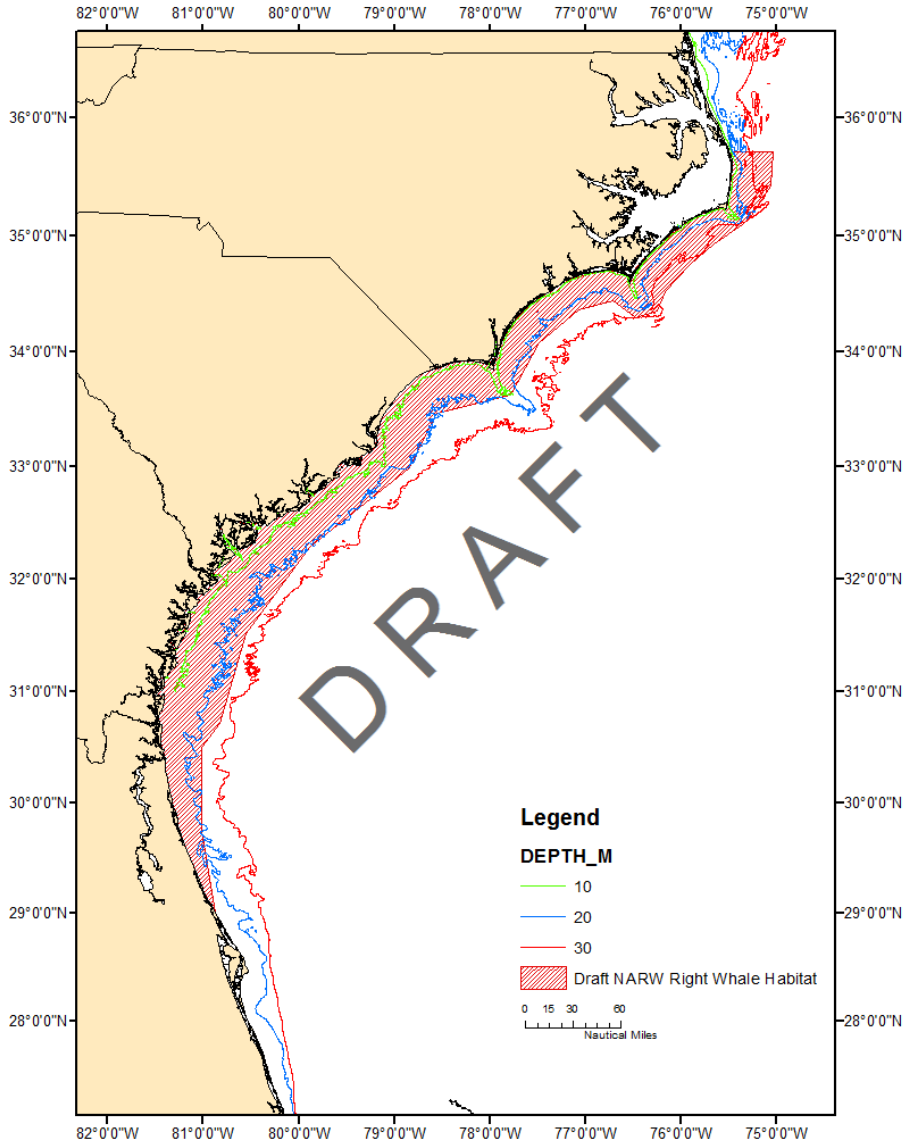
The Council should consider that Alternative 4 may change as a result of re-evaluation of NARW CH. If the Council chooses Alternative 4, is it their intent for the area to change if NOAA Fisheries re-evaluates the designation and determines changes to existing NARW CH boundaries are prudent, or do they want the area specified in the map for Alternative 4 to remain as the affected area regardless of any changes to the NARW CH boundaries?

If the latter, then the Council would then need to re-address the closure area if the NARW CH gets updated.

COMMITTEE ACTION: CONSIDER THE ISSUE ABOVE AND PROVIDE GUIDANCE TO THE IPT ON THE COUNCIL'S INTENT.

******NOTE: This alternative was approved by the South Atlantic Council in December 2013 to be included in the Scoping Document for this amendment. However, clarifications to the language and the spatial representation were subsequently made by the NMFS Protected Resources Division team to improve its presentation. The revised Alternative 5 is presented in the following page.******

Alternative 5. The black sea bass pot closure applies to waters 25 m or shallower from 29°N (approximately Ponce Inlet, Florida) to Cape Lookout, North Carolina. From Cape Lookout, North Carolina, north the closure applies to waters under SAFMC management that are shallower than 35 m (see map below). The closure applies to all areas annually from November 1-April 30.



REVISED Alternative 5. The black sea bass pot closure applies to waters inshore of points A-P listed below; approximately Ponce Inlet, Florida, to Cape Hatteras, North Carolina. The closure applies ~~to all areas~~ annually from November 1-April 30.

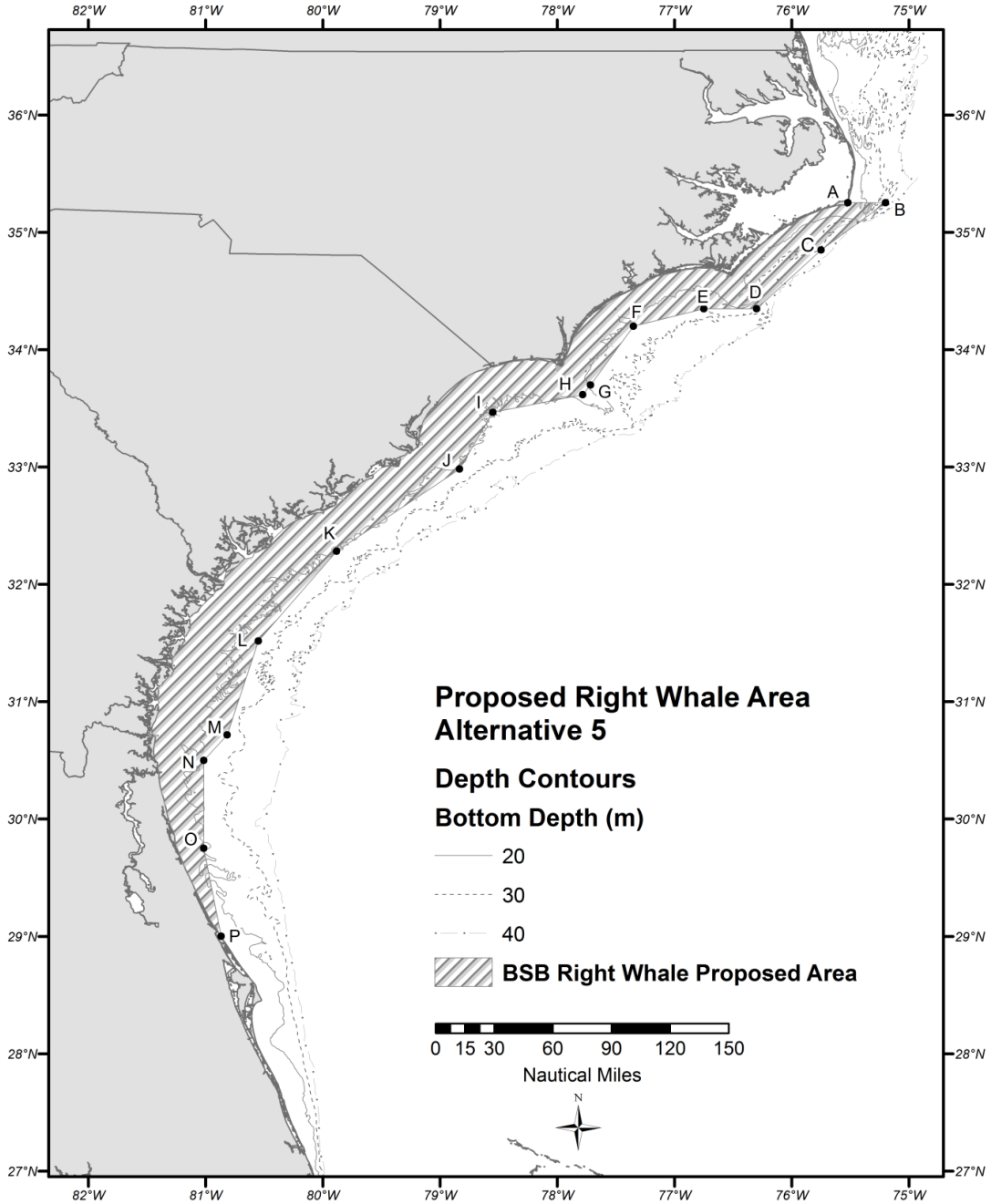
Western Boundary Coordinates for the Proposed Black Sea Bass Pot Closure

Point	N Latitude	W Longitude
A	35°15.19′ N	at shoreline
B	35°15.19'	75°12'
C	34°51'	75°45'
D	34°21'	76°18'
E	34°21' N	76°45'
F	34°12'	77°21'
G	33°42'	77°43'
H	33°37'	77°47
I	33°28'	78°33
J	32°59'	78°50'
K	32°17'	79°53'
L	31°31'	80°33'
M	30°43'	80°49'
N	30°30'	81°01'
O	29°45'	81°01'
P	29°00'	at shoreline

Protected Resources staff would like the Council to replace Alternative 5 (reviewed by the Council at the December 2013 Council meeting) with the revised Alternative 5 (above, as provided by PR staff to Council staff in January). The original Alternative 5 was meant to be a placeholder and was presented to Council to provide some insight into the type of alternative(s) PR might develop.

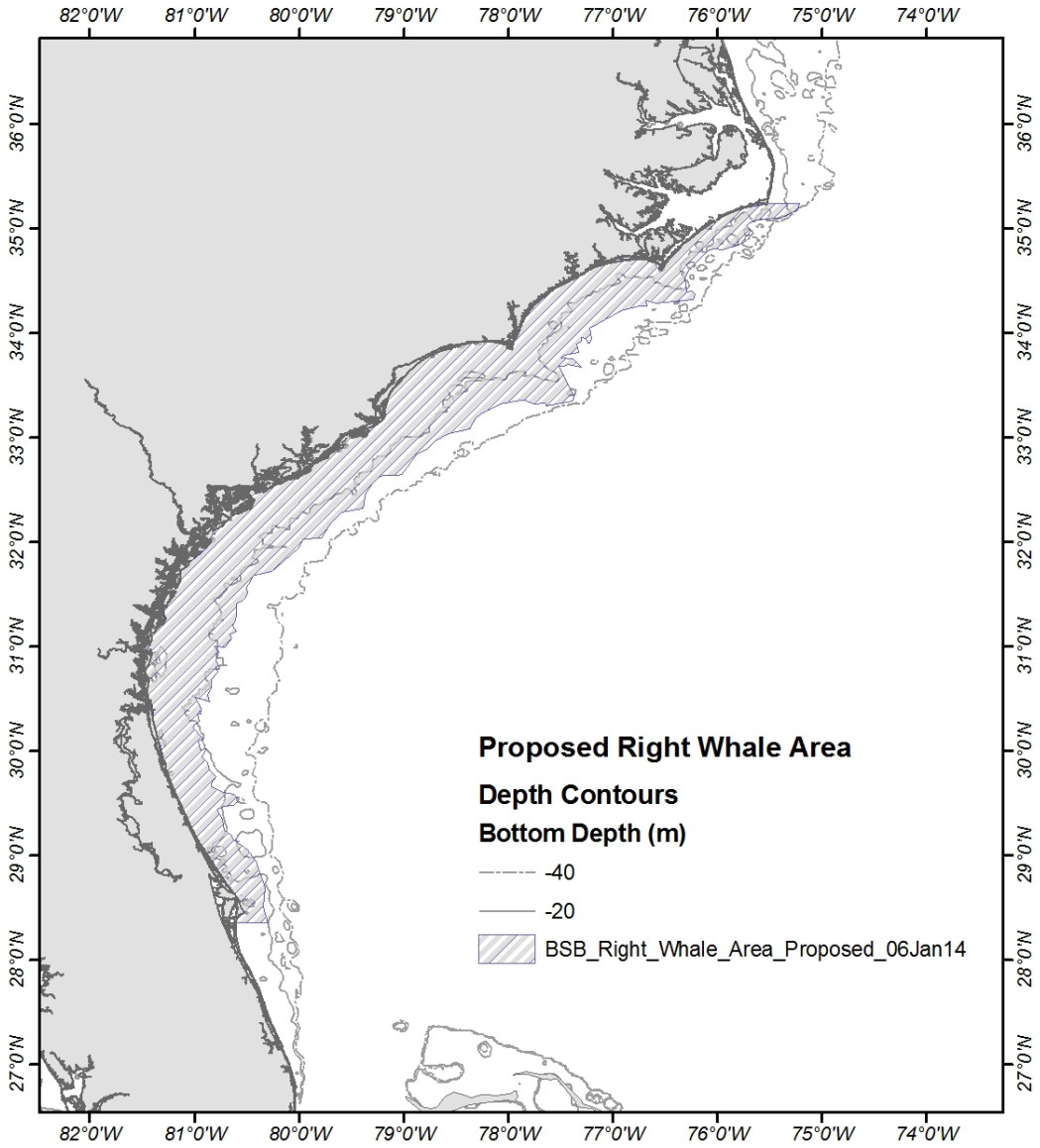
COMMITTEE ACTION: REPLACE ALTERNATIVE 5 WITH REVISED ALTERNATIVE 5 AS REQUESTED BY NMFS PROTECTED RESOURCES.

COMMITTEE ACTION: APPROVE SUGGESTED EDITS TO REVISED ALTERNATIVE 5.


Proposed Right Whale Area
Alternative 5
Depth Contours
Bottom Depth (m)
20
30
40
BSB Right Whale Proposed Area
0 15 30 60 90 120 150
Nautical Miles
N
A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
82°W
81°W
80°W
79°W
78°W
77°W
76°W
75°W
36°N
35°N
34°N
33°N
32°N
31°N
30°N
29°N
28°N
27°N

******NOTE: The alternative below was proposed by the NMFS Protected Resources team after the South Atlantic Council had already approved the document for scoping. Hence the South Atlantic Council has not discussed this alternative but it is included in this scoping document for purposes of soliciting public input. The South Atlantic Council will consider inclusion of this alternative in the amendment at their March 2014 meeting.******

NEW Alternative 6. The black sea bass pot closure applies to waters 25 m or shallower from 28° 21.5" N (approximately Cape Canaveral, Florida) to Savannah, Georgia. From the Georgia/South Carolina border to Cape Hatteras, North Carolina, the closure applies to waters under SAFMC management that are shallower than 30 m. The closure applies ~~to all areas~~ annually from November 1-April 30. The map below provides approximate location of proposed boundary.



COMMITTEE ACTION: APPROVE SUGGESTED EDITS TO ALTERNATIVE 6.

Biological Opinion:

- As a general point, every amendment to every FMP in the Southeast Region undergoes some level of ESA analysis. PR staff explained that their role on the IPT is to identify early on potential issues that might trigger a biological opinion for any given fishery management action. They stated that in most cases the proposed actions do not trigger a biological opinion, and as a result, all of the ESA analyses go on at the Regional Office "behind the scenes" between SF and PR. It is only in the case of a biological opinion that the SAFMC would likely be aware of this ESA process.

- The decision on whether a biological opinion would be triggered will be based on the Council's choice of a preferred alternative.

- Not all the alternatives would automatically require a Biological Opinion. For example, the selection of either Alternatives 1, 5 or 6 as preferred alternatives would possibly decrease (in the case of Alternatives 5 and 6) or eliminate (in the case of Alternative 1) the possibility that a Biological Opinion would be required. However, PR staff strongly cautioned the IPT that even with the selection of either of Alternative 5 or 6 a determination on whether a biological opinion would be needed could not be made until a comprehensive analysis is completed.

- Protected Resources has 135 days to produce a Biological Opinion from the date all the data are received that are needed for the analysis.

SNAPPER GROUPER AP RECOMMENDATION:

The AP discussed the feasibility of the pot closure only applying to within designated Right Whale Critical Habitat. Some of the AP members from North Carolina indicated that migratory whales are frequently encountered in water 30-60 feet deep off the NC coast. Migrating whales are distributed from the Gulf of Maine south in spring and fall and congregate al calving grounds. The number of black sea bass pots the whales encounter in the South Atlantic is minuscule relative to the number of pots in the Gulf of Maine. The AP made the following motions:

MOTION: RECOMMEND ALTERNATIVE 4 AS PREFERRED
Alternative 4. Prohibit retention, possession, and fishing for black sea bass using black sea bass pot gear, annually, from November 1 to April 30, in designated right whale critical habitat in the South Atlantic region.
APPROVED

PROPOSED ADDITIONAL ALTERANTIVES FROM SCOPING:

1. **Closure in Petitioned Critical Habitat**

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.

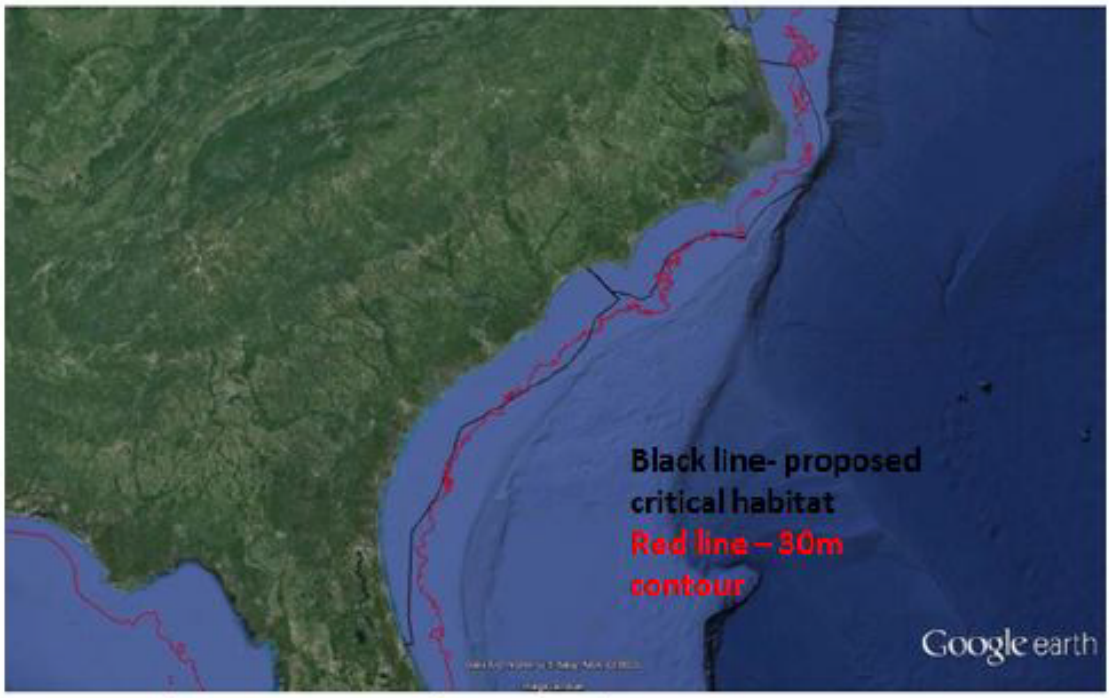


Figure 1. Closure in Petitioned Critical Habitat

2. **Southeast Seasonal Gillnet Restricted Area**

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 FR 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

The IPT discussed the two recommendations received from the Humane Society (HS).

PR staff stated that the HS recommendations would provide protection to whales. Some IPT members noted that the two recommended alternatives would extend the prohibition

30 nautical miles from shore and beyond areas where there are most likely to fish with black sea bass pots. These members questioned whether these alternatives would meet the purpose and need to relieve adverse socioeconomic impacts.

An IPT member pointed out that although there was some discussion that these alternatives might not necessarily relieve adverse potential socio-economic impacts, other alternatives currently being proposed might not meet the need of providing protection to large whales. PR staff reported that the SE Seasonal gillnet restricted area proposed for a closed area by HS is also currently being proposed as a trap/pot restricted area under the Atlantic Large Whale Take Reduction Plan.

In addition, other alternatives were received from scoping.

1. Some fishermen recommended the regulations should be a distance from shore. The IPT noted that this would be difficult for enforcement and waypoints would be needed in the regulations.

2. The National Park Service suggested a combination of Alternatives 4 and 5 as presented in the scoping document combined with the addition of all National Park areas.

3. The Council should consider establishing an area where the use of black sea bass pots is allowed (15 to 20 miles offshore). For-hire fleet has a 13-inch minimum size limit and they claim that pots are catching most of the 13-inch fish before the for-hire fleet has access to them.

4. The Council should address threats to migrating whales separately from threats to calving.

COMMITTEE ACTION: CONSIDER THE PROPOSED ALTERNATIVES FOR INCLUSION IN REGULATORY AMENDMENT 16 AND PROVIDE GUIDANCE TO STAFF.