Appendix G. Other Applicable Laws

1 Other Applicable Laws

1.1 Administrative Procedure Act

All federal rulemaking is governed under the provisions of the Administrative Procedures Act (APA) (5 U.S.C. Subchapter II), which establishes a "notice and comment" procedure to enable public participation in the rulemaking process. Under the APA, NOAA Fisheries Service is required to publish notification of proposed rules in the Federal Register and to solicit, consider and respond to public comment on those rules before they are finalized. The APA also establishes a 30-day wait period from the time a final rule is published until it takes effect, with some exceptions. This amendment complies with the provisions of the APA through the Council's extensive use of public meetings, requests for comments and consideration of comments. The proposed rule associated with this amendment will have request for public comments which complies with the APA, and upon publication of the final rule there will be a 30-day wait period before the regulations are effective.

1.2 Information Quality Act

The Information Quality Act (Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-443)) which took effect October 1, 2002, directed the Office of Management and Budget (OMB) to issue government-wide guidelines that "provide policy and procedural guidelines to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by federal agencies." OMB directed each federal agency to issue its own guidelines, establish administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with OMB guidelines, and report periodically to OMB on the number and nature of complaints.

The NOAA Section 515 Information Quality Guidelines require a series of actions for each new information product subject to the Information Quality Act. This document has used the best available information and made a broad presentation thereof. The process of public review of this document provides an opportunity for comment and challenge to this information, as well as for the provision of additional information.

The information contained in this document was developed using best available scientific information. Therefore, this Amendment and EIS are in compliance with the IQA.

1.3 Coastal Zone Management Act

Section 307(c)(1) of the federal Coastal Zone Management Act (CZMA) of 1972 requires that all federal activities that directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. While it is the goal of the South Atlantic Fishery Management Council (Council) to have management measures that complement those of the states, federal and state administrative procedures vary and regulatory changes are unlikely to be fully instituted at the same time. The Council believes this amendment is

consistent to the maximum extent practicable with the Coastal Zone Management Plans of Florida, Georgia, South Carolina, and North Carolina. This determination will be submitted to the responsible state agencies under Section 307 of the CZMA administering approved Coastal Zone Management Programs in the States of Florida, South Carolina, Georgia, and North Carolina.

1.4 Endangered Species Act

The Endangered Species Act (ESA) of 1973 (16 U.S.C. Section 1531 et seq.) requires that federal agencies must ensure actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of threatened or endangered species or the habitat designated as critical to their survival and recovery. The ESA requires NOAA Fisheries Service to consult with the appropriate administrative agency (itself for most marine species, and the U.S. Fish and Wildlife Service for all remaining species) when proposing an action that may affect threatened or endangered species or adversely modify critical habitat. Consultations are necessary to determine the potential impacts of the proposed action. They are concluded informally when proposed actions may affect but are "not likely to adversely affect" threatened or endangered species or designated critical habitat. Formal consultations, resulting in a biological opinion, are required when proposed actions may affect and are "likely to adversely affect" threatened or endangered species or adversely modify designated critical habitat.

NOAA Fisheries Service completed a biological opinion in 2006 evaluating the impacts of the continued authorization of the South Atlantic snapper grouper fishery under the snapper grouper FMP and Amendment 13C (NMFS 2006) on ESA-listed species (see **Section 3.2.3**). The opinion stated the fishery was not likely to adversely affect northern right whale critical habitat, seabirds, or marine mammals (see NMFS 2006 for discussion on these species). However, the opinion did state that the snapper grouper fishery would adversely affect sea turtles and smalltooth sawfish, but would not jeopardize their continued existence. An incidental take statement was issued for green, hawksbill, Kemp's ridley, leatherback, and loggerhead sea turtles, as well as smalltooth sawfish. Reasonable and prudent measures to minimize the impact of these incidental takes were specified, along with terms and conditions to implement them. Since we anticipate only sea turtles may have interactions with the wreckfish fishery, only the discussion of potential effects from the snapper-grouper fishery on those species is discussed below. See NMFS (2006) for a full discussion of impacts to smalltooth sawfish.

Sea turtles are vulnerable to capture by bottom longline and vertical hook-and-line gear. The magnitude of the interactions between sea turtles and the South Atlantic snapper-grouper fishery was evaluated in NMFS (2006) using data from the Supplementary Discard Data Program (SDDP). Three loggerheads and three unidentified sea turtles were caught on vertical lines; one leatherback and one loggerhead were caught on bottom longlines, all were released alive. The effort reported program represented between approximately 5% and 14% of all South Atlantic snapper-grouper fishing effort. These data were extrapolated in NMFS (2006) to better estimate the number of interactions between the entire snapper-grouper fishery and ESA-listed sea turtles. The extrapolated estimate was used to project future interactions (**Table 1-3**).

The SDDP does not provide data on recreational fishing interactions with ESA-listed sea turtle species. However, anecdotal information indicates that recreational fishermen occasionally take sea turtles with hook-and-line gear. The biological opinion also used the extrapolated data from the SDDP to estimate the magnitude of recreational fishing on sea turtles (**Table 1-3**).

Regulations implemented through snapper-grouper Amendment 15B (74 FR 31225; June 30, 2009) required all commercial or charter/headboat vessels with a South Atlantic snapper grouper permit, carrying hook-and-line gear on board, to possess required literature and release gear to aid in the safe release of incidentally caught sea turtles and smalltooth sawfish. These regulations are thought to decrease the mortality associated with accidental interactions with sea turtles and smalltooth sawfish.

Subsequent to the completion of the opinion, two species of *Acropora* corals (*Acropora palmata* and *A. cervicornis*) were listed as threatened and critical habitat for these species has been designated. NOAA Fisheries analyzed the likely affects of the South Atlantic snapper-grouper fishery on the newly listed *Acropora* corals and their designated critical habitat in two memos dated July 9, 2007, and December 2, 2008. Each memo determined the fishery was not likely to interact with either species or critical habitat.

Table 1-3. Three-year South Atlantic anticipated takes sea turtles by the snapper grouper fishery.

Species	Amount of Take	Total
Green	Total Take	39
	Lethal Take	14
Hawksbill	Total Take	4
	Lethal Take	3
Kemp's ridley	Total Take	19
	Lethal Take	8
Leatherback	Total Take	25
	Lethal Take	15
Loggerhead	Total Take	202
	Lethal Take	67

Source: NMFS 2006

1.5 Executive Order 12612: Federalism

E.O. 12612 requires agencies to be guided by the fundamental federalism principles when formulating and implementing policies that have federalism implications. The purpose of the Order is to guarantee the division of governmental responsibilities between the federal government and the states, as intended by the framers of the Constitution. No federalism issues have been identified relative to the actions proposed in this amendment and associated regulations. Therefore, preparation of a Federalism assessment under E.O. 13132 is not necessary.

1.6 Executive Order 12866: Regulatory Planning and Review

E.O. 12866, signed in 1993, requires federal agencies to assess the costs and benefits of their proposed regulations, including distributional impacts, and to select alternatives that maximize net benefits to society. To comply with E.O. 12866, NOAA Fisheries Service prepares a Regulatory Impact Review (RIR) for all fishery regulatory actions that implement a new FMP or that significantly amend an existing plan. RIRs provide a comprehensive analysis of the costs and benefits to society associated with proposed regulatory actions, the problems and policy objectives prompting the regulatory proposals, and the major alternatives that could be used to solve the problems. The reviews also serve as the basis for the agency's determinations as to whether proposed regulations are a "significant regulatory action" under the criteria provided in E.O. 12866 and whether proposed regulations will have a significant economic impact on a substantial number of small entities in compliance with the Regulatory Flexibility Act. A regulation is significant if it is likely to result in an annual effect on the economy of at least $100,000,000 or if it has other major economic effects.

In accordance with E.O. 12866, the following is set forth by the Council: (1) this rule is not likely to have an annual effect on the economy of more than $100 million or to adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) this rule is not likely to create any serious inconsistencies or otherwise interfere with any action take or planned by another agency; (3) this rule is not likely to materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; (4) this rule is not likely to raise novel or policy issues arising out of legal mandates, or the principles set forth in the Executive Order; (5) this rule is not controversial.

1.7 Executive Order 12898: Environmental Justice

E.O. 12898 requires that "to the greatest extent practicable and permitted by law…each federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations in the United States and its territories and possessions…"

The alternatives being considered in this amendment are not expected to result in any disproportionate adverse human health or environmental effects to minority populations or low-income populations of Florida, North Carolina, South Carolina or Georgia, rather the impacts would be spread across all participants in the black sea bass and golden tilefish fisheries regardless of race or income. A detailed description of the communities impacted by the actions contained in this amendment and potential socioeconomic impacts of those actions are contained in **Sections 3.7** and **4.0** of this amendment.

1.8 Executive Order 12962: Recreational Fisheries

E.O. 12962 requires Federal agencies, in cooperation with States and Tribes, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities through a variety of methods. Additionally, the order establishes a seven-member National Recreational Fisheries Coordination Council responsible for, among other things, ensuring that social and economic values of healthy aquatic systems that

support recreational fisheries are considered by federal agencies in the course of their actions, sharing the latest resource information and management technologies, and reducing duplicative and cost-inefficient programs among federal agencies involved in conserving or managing recreational fisheries. The Council also is responsible for developing, in cooperation with federal agencies, states and tribes, a Recreational Fishery Resource Conservation Plan - to include a five-year agenda. Finally, the Order requires NOAA Fisheries Service and the U.S. Fish and Wildlife Service to develop a joint agency policy for administering the ESA.

The alternatives considered in this amendment are consistent with the directives of E.O. 12962.

1.9 Executive Order 13089: Coral Reef Protection

E.O. 13089, signed by President William Clinton on June 11, 1998, recognizes the ecological, social, and economic values provided by the Nation's coral reefs and ensures that Federal agencies are protecting these ecosystems. More specifically, the Order requires federal agencies to identify actions that may harm U.S. coral reef ecosystems, to utilize their program and authorities to protect and enhance the conditions of such ecosystems, and to ensure that their actions do not degrade the condition of the coral reef ecosystem.

The alternatives considered in this amendment are consistent with the directives of E.O. 13089.

1.10 Executive Order 13158: Marine Protected Areas

E. O. 13158 was signed on May 26, 2000 to strengthen the protection of U.S. ocean and coastal resources through the use of Marine Protected Areas (MPAs). The E.O. defined MPAs as "any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein." It directs federal agencies to work closely with state, local and non-governmental partners to create a comprehensive network of MPAs "representing diverse U.S. marine ecosystems, and the Nation's natural and cultural resources".

The alternatives considered in this amendment are consistent with the directives of E.O. 13158.

1.11 Marine Mammal Protection Act (MMPA)

The MMPA established a moratorium, with certain exceptions, on the taking of marine mammals in U.S. waters and by U.S. citizens on the high seas. It also prohibits the importing of marine mammals and marine mammal products into the United States. Under the MMPA, the Secretary of Commerce (authority delegated to NOAA Fisheries Service) is responsible for the conservation and management of cetaceans and pinnipeds (other than walruses). The Secretary of the Interior is responsible for walruses, sea otters, polar bears, manatees, and dugongs.

Part of the responsibility that NOAA Fisheries Service has under the MMPA involves monitoring populations of marine mammals to make sure that they stay at optimum levels. If a population falls below its optimum level, it is designated as "depleted." A conservation plan is then developed to guide research and management actions to restore the population to healthy levels.

In 1994, Congress amended the MMPA, to govern the taking of marine mammals incidental to commercial fishing operations. This amendment required the preparation of stock assessments for all marine mammal stocks in waters under U.S. jurisdiction; development and implementation of take-reduction plans for stocks that may be reduced or are being maintained below their optimum sustainable population levels due to interactions with commercial fisheries; and studies of pinniped-fishery interactions. The MMPA requires a commercial fishery to be placed in one of three categories, based on the relative frequency of incidental serious injuries and mortalities of marine mammals. Category I designates fisheries with frequent serious injuries and mortalities incidental to commercial fishing; Category II designates fisheries with occasional serious injuries and mortalities; Category III designates fisheries with a remote likelihood or no known serious injuries or mortalities.

Under the MMPA, to legally fish in a Category I and/or II fishery, a fisherman must take certain steps. For example, owners of vessels or gear engaging in a Category I or II fishery, are required to obtain a marine mammal authorization by registering with the Marine Mammal Authorization Program (50 CFR 229.4). They are also required to accommodate an observer if requested (50 CFR 229.7(c)) and they must comply with any applicable take reduction plans.

The commercial hook-and-line components of the South Atlantic snapper grouper fishery (i.e., bottom longline, bandit gear, and handline) are listed as part of a Category III fishery (76 FR 37716, June 28, 2011) because there have been no documented interactions between these gears and marine mammals. The black sea bass pot component of the South Atlantic snapper grouper fishery is part of the Atlantic mixed species trap/pot fishery, a Category II fishery, in the 2012 proposed LOF (76 FR 37716, June 28, 2011). The Atlantic mixed species trap/pot fishery designation was created in 2003 (68 FR 41725, July 15, 2003), by combining several separately listed trap/pot fisheries into a single group. This group was designated Category II as a precaution because of known interactions between marine mammals and gears similar to those included in this group. Prior to this consolidation, the black sea bass pot fishery in the South Atlantic was a part of the "U.S. Mid-Atlantic and Southeast U.S. Atlantic Black Sea Bass Trap/Pot" fishery (Category III). There has never been a documented interaction between marine mammals and black sea bass trap/pot gear in the South Atlantic. The actions in Amendment 18A are not expected to negatively impact the provisions of the MMPA

1.12 National Environmental Policy Act

This amendment to the Councils Snapper Grouper FMP has been written and organized in a manner that meets NEPA requirements, and thus is a consolidated NEPA document, including a draft Environmental Impact Statement, as described in NOAA Administrative Order (NAO) 216-6, Section 6.03.a.2.

<u>Purpose and Need for Action</u>
The purpose and need for this action are described in **Section 1.1.**

<u>Alternatives</u>
The alternatives for this action are described in **Section 2.0.**

<u>Affected Environment</u>

The affected environment is described in **Section 3.0**.

Impacts of the Alternatives
The impacts of the alternatives on the environment are described in **Section 4.0.**

1.13 National Marine Sanctuaries Act

Under the National Marine Sanctuaries Act (NMSA) (also known as Title III of the Marine Protection, Research and Sanctuaries Act of 1972), as amended, the U.S. Secretary of Commerce is authorized to designate National Marine Sanctuaries to protect distinctive natural and cultural resources whose protection and beneficial use requires comprehensive planning and management. The National Marine Sanctuary Program is administered by the Sanctuaries and Reserves Division of NOAA. The Act provides authority for comprehensive and coordinated conservation and management of these marine areas. The National Marine Sanctuary Program currently comprises 13 sanctuaries around the country, including sites in American Samoa and Hawaii. These sites include significant coral reef and kelp forest habitats, and breeding and feeding grounds of whales, sea lions, sharks, and sea turtles. The two main sanctuaries in the South Atlantic EEZ are Gray's Reef and Florida Keys National Marine Sanctuaries.

The alternatives considered by this document are not expected to have any adverse impacts on the resources managed by the Gray's Reef and Florida Keys National Marine Sanctuaries.

1.14 Paperwork Reduction Act

The purpose of the Paperwork Reduction Act (PRA) is to minimize the burden on the public. The Act is intended to ensure that the information collected under the proposed action is needed and is collected in an efficient manner (44 U.S.C. 3501 (1)). The authority to manage information collection and record keeping requirements is vested with the Director of the Office of Management and Budget (OMB). This authority encompasses establishment of guidelines and policies, approval of information collection requests, and reduction of paperwork burdens and duplications. The PRA requires NMFS to obtain approval from the OMB before requesting most types of fishery information from the public.

Action 12 contains alternatives requiring the establishment of an electronic logbook program. If this alternative is chosen as the preferred, they would be subject to PRA review and approval prior to implementation. Action 13 requires selected vessels with federal for-hire permits to report electronically; and therefore, this action has PRA implications. However, an action implemented through Amendment 15B to the FMP included the same requirement; thus, Action 13 has been covered under the previous PRA clearance process for Amendment 15B.

1.15 Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 et seq.) requires federal agencies to assess the impacts of regulatory actions implemented through notice and comment rulemaking procedures on small businesses, small organizations, and small governmental entities, with the goal of minimizing adverse impacts of burdensome regulations and record-keeping requirements on those entities. Under the RFA, NOAA Fisheries Service must determine whether a proposed fishery regulation would have a significant economic impact on a substantial number of small entities. If not, a certification to this effect must be prepared and submitted to the Chief Counsel

for Advocacy of the Small Business Administration. Alternatively, if a regulation is determined to significantly impact a substantial number of small entities, the Act requires the agency to prepare an initial and final Regulatory Flexibility Analysis to accompany the proposed and final rule, respectively. These analyses, which describe the type and number of small businesses, affected, the nature and size of the impacts, and alternatives that minimize these impacts while accomplishing stated objectives, must be published in the Federal Register in full or in summary for public comment and submitted to the chief counsel for advocacy of the Small Business Administration. Changes to the RFA in June 1996 enable small entities to seek court review of an agency's compliance with the Act's provisions.

This amendment includes an Initial Regulatory Flexibility Analysis (IRFA) in **Appendix H**.

1.16 Small Business Act

Enacted in 1953, the Small Business Act requires that agencies assist and protect small-business interests to the extent possible to preserve free competitive enterprise. The objectives of the act are to foster business ownership by individuals who are both socially and economically disadvantaged; and to promote the competitive viability of such firms by providing business development assistance including, but not limited to, management and technical assistance, access to capital and other forms of financial assistance, business training, and counseling, and access to sole source and limited competition federal contract opportunities, to help firms achieve competitive viability. Because most businesses associated with fishing are considered small businesses, NOAA Fisheries Service, in implementing regulations, must make an assessment of how those regulations will affect small businesses.

1.17 Public Law 99-659: Vessel Safety

Public Law 99-659 amended the MSFCMA to require that a FMP or FMP amendment must consider, and may provide for, temporary adjustments (after consultation with the U.S. Coast Guard and persons utilizing the fishery) regarding access to a fishery for vessels that would be otherwise prevented from participating in the fishery because of safety concerns related to weather or to other ocean conditions. No vessel would be forced to participate in South Atlantic fisheries under adverse weather or ocean conditions as a result of the imposition of management regulations proposed in this amendment.

No concerns have been raised by South Atlantic fishermen or by the U.S. Coast Guard that the proposed management measures directly or indirectly pose a hazard to crew or vessel safety under adverse weather or ocean conditions. The action to require that all black sea bass pots be brought to shore at the end of each trip would not apply during period of foul weather where safety at sea issues may arise.