

Dear SAMFC

First I would like to say thank you for considering this increase of crew on the spear fishing boats. I am an avid spear fisherman. This is a pure and clean method of taking fish with no by-catch. Diving of boats with only three divers puts us in some danger. At times we have had to dive solo which goes against the rules of diving. Increasing the number of divers to four will not give us an increase in catch but it will allow us to fish in a way that is much safer. It is always a great thing to have someone watching our back or to be there in the event we have an equipment failure.

If anyone on the council has any questions about what I've wrote feel free to give me a call.

Thanks for listening
Philip Brown.

Comments from Capt. Robert D Freeman, Sunrise Charters; Atlantic Beach, NC. 28512-7347.

Action 1. Extend the South Atlantic Council's area of jurisdiction for management of Nassau grouper to include Gulf of Mexico. **Alternative 2[Preferred]** Fish have tails and don't recognize boundaries set by NMFS!

Action 2. Modify the crew size for dual permitted snapper grouper vessels. **Alternative 3.** Preferred to increase the crew limit to 4 crew members for dual permitted vessels. This addresses safety issue for dive operations.

Action 3. Modify captain and crew retention restrictions on bag limit quantities of snapper grouper species. **Alternative 2.** Remove the snapper grouper species retention restrictions for captains and crew of vessels associated with a South Atlantic Charter/Headboat Permit for Snapper Grouper. This will allow crew opportunity to have some fish without incurring extra cost to vessel!

Action 4. Modify Section 1 of the Snapper Grouper FMP Framework procedure. **Alternative 2 [Preferred]** Modify Section 1 of the Snapper Grouper FMP framework Procedure for Specifications of Annual Catch Limits, Annual Catch Targets, Overfishing limits, Acceptable Biological Catch, and annual adjustments.

Action 5. Modify placement of blue runner in a fishery management unit and/or modify management measures for blue runner. **Alternative 2** Remove blue runner from the Snapper Grouper FMP!

Capt. Robert Freeman
Sunrise Charters
221 Smith Street
Atlantic Beach, NC 28512-7347
252 726 9814

From: brian harrington <extreme-measures@ec.rr.com>

Date: Fri, 8 Feb 2013 12:51:32 -0500

To: Myra Brouwer <myra.brouwer@safmc.net>

Subject: comments on for hire bag limit retention

Hi, my name is Brian Harrington, I am a full time charter/
commercial fisherman in North Carolina. I totally support for hire
bag limit retention. I feel bringing home dinner for my family on occasion would help offset
monthly grocery bills and expenses.

Dealing with current restrictions and regulations we already are very limited on what we can
catch for our charters and commercially.

Taking a fish or two home to eat would make a big difference for me personally. Thank you.
Capt. Brian.

Hello,

Please consider these comments as part of Amendment 27 Scoping.

With Nassau Grouper already in a No-Harvest status in both regions, it seems like more effort than gain in making such a procedural move. It also seems like it will needlessly occupy time and resources that are already spread far too thin as it is on much more pressing matters.

As to Crew member limits on 'Dual Permitted' boats. When diving operations are underway, it is understandable to dive safely, however, with already observable effects to the fishery after a commercial diving boats works an area, allowing a greater impact on the habitat and fishery seems counter to the idea of conservation. While diving may produce less by-catch mortality, it virtually wipes clean an area of keep able fish, and most any hook and line angler can attest to when fishing an area that divers, particularly commercial divers with unlimited reef permits, are working or have just worked. This may make it more cost efficient to them, but at what cost to the fishery and all other fishermen and user groups? This proposal if considered, should only be considered with the very limited scope of commercial diving operations, with no recreational bag-limit activities allowed.

Bag limit crew retention. First off, I feel that NO sale of Recreationally caught fish should be allowed. They were caught recreationally, whether on a charter or head boat, or private boat, and should not be allowed to be sold for commercial profit. Recreationally caught and retained fish are for private consumption, and should be for only that purpose. IF this were the case across the board with all managed stocks, then crew size would be no issue when 'Dual Permitted' boats operate. A Charter (for hire) trip would be just that, a Recreational trip, with no fish caught being allowed to be sold. The crew in this case if they retained fish, would do so for personal consumption only, and not be allowed to sale them. Even so, I have no problems with a Zero take for captain and crew of for hire trips, since as a Charter Captain, I am able to get fish for consumption easily enough, since many for hire trips have enough guest

that 'share' their catch with the crew. In the end, crew size is not as important as making sure that recreational caught fish or fish caught under recreational bag limits are not allowed to be sold.

As to 'Regulatory Delays'....it must be a 2 way street. So often, we have access taken away 'Quickly', but wait long periods to see any access given back, despite overwhelming evidence. Additionally, the current data being used to access fish and estimate recreational user numbers needs to be independently verified. The "science Based Data" though called the 'Best Available' is far from good. Overestimation of Recreational participants in Federal Waters, and a failure to fully access fish found on artificial structure has led to a gross injustice and needless restriction of access to our resources. As such allowing more regulatory authority which has a proven track record of 'Taking' but 'rarely 'Giving' has to be denied. While we all understand the data the council is allowed to consider is determined by the NMFS and its policies, the Council does have the authority to omit or amend data it determines to be unreliable. We Know that the council members cannot be oblivious to what we all see and know about the health of our stocks, but are shocked that we hear little complaint from the council about what the NMFS is offering. Again, we cannot allow increased regulatory power that has proven to only create greater hardships for fishermen and coastal communities.

Thank You
Captain Henry
ACME Ventures Fishing
Port Canaveral, Fl

Florida Keys Commercial Fishermen's Association

P.O. Box 501404, Marathon, FL 33050

Phone & Fax: 305-743-0294 Cell: 305-619-0039
E-mail: FKCFA1@hotmail.com Website: FKCFA.Org

October 28, 2012

Dr. Roy Crabtree, Regional Administrator
NOAA Fisheries/SERO
263 - 13th Avenue South
St. Petersburg, FL 33701

Mr. Douglas Boyd, Chairman
Gulf of Mexico Fishery Management Council
2203 N. Lois Avenue, Suite 1100
Tampa, FL 33607

Mr. David Cupka, Chairman
South Atlantic Fishery Management Council
4055 Faber Place Drive, Suite 201
N. Charleston, SC 29405

Re: Yellowtail Snapper

Dear Dr. Crabtree, Mr. Boyd & Mr. Cupka,

Commercial and recreational harvest of yellowtail snapper is one of the most economically important species in South Florida and especially the Florida Keys with approximately 90% of the entire harvest in the State of Florida taking place in Monroe County/Florida Keys. The positive economic impact reverberates throughout our island communities affecting fishermen, fish houses, restaurants, fish markets, grocery stores, charter fishing operations and tourism.

Collectively, the 5 letter writers below have over 125 years of experience in the commercial and recreational harvest of yellowtail snapper and can attest to the resilience and sustainability of the fishery, fully supported by SEDAR stock assessments conducted in 2003 and 2012. We care about the future of our fishery and pledge our full cooperation toward the successful management of it for generations to come. Therefore, we would like to offer these specific proposals for your consideration:

1. Conduct a thorough review of management options including:
 - a. Joint Gulf/South Atlantic Fishery Management Plan
 - b. Managing the fishery as one stock with one quota
2. Change the fishing year from January 1 – December 31, of each calendar year to August 1 - July 31, of each calendar year. Therefore, should a fishery closure become warranted, it would occur during the optimal spawning period.
3. Significantly increase the ACL to correspond to the recommended ABC set by the SSC this October and consider setting a SOFT-TAC on the commercial harvest of yellowtail snapper. Yellowtail snapper are not undergoing overfishing or overfished. Over-runs can easily be managed and adjusted in the following fishing season and the action would prevent disruptive, in-season closures.
4. Improve dealer reporting requirements to include electronic reporting at weekly intervals.

Office Physical Address: 6363 Overseas Highway, Suite #4, Marathon, FL

Gentlemen, we also extend our sincere appreciation to all of you, for your diligent efforts in re-examining 2012 harvest levels and keeping this valuable fishery open by emergency rule for the balance of 2012.

Sincerely,

s/Bill Kelly

Capt. Bill Kelly
Executive Director

s/Manny Herrera

Manny Herrera, Commercial Fisherman

s/Marco Herrera

Marco Herrera, Commercial Fisherman

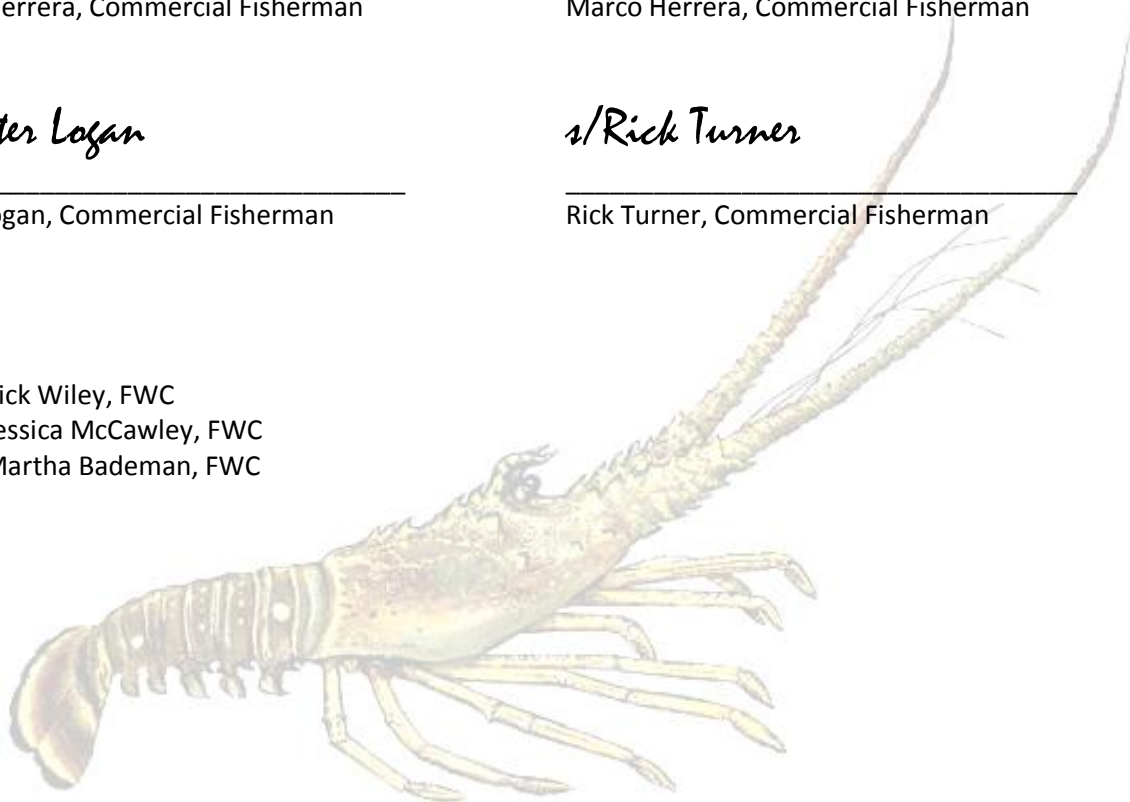
s/Carter Logan

Carter Logan, Commercial Fisherman

s/Rick Turner

Rick Turner, Commercial Fisherman

C: Mr. Nick Wiley, FWC
Ms. Jessica McCawley, FWC
Ms. Martha Bademan, FWC



Snapper Grouper Amendment 27 Comment

Action 1: extension of SAFMC jurisdiction for Nassau grouper

Alternative 2 is council preferred. It seems as though this is correction for something that was overlooked. I see no reason not to support the council preferred.

Action 2: eliminate the 3 crewmember limit for dual-permitted vessels

I support Alternative 2 which eliminates the 3 crewmember restriction. For safety reasons it is not a good idea to regulate crew size. Stick to regulating the resource.

Action 3: captain and crew retention restrictions

I support alternative 2 that removes the restriction and allows captain and crew to retain recreational bag limits.

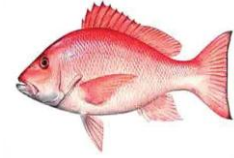
Action 4: Modify Snapper Grouper FMP framework

I support alternative2 as it was explained to me at the public hearing session in Cocoa Beach that this would allow the regional administrator to adjust ACL, ACT, OFL parameters in a more timely manner than a 1-2 year amendment. It was pointed out that emergency closures are allowed to happen quickly, however, openings or increases in these parameters do not. Anything that allows management to closer reflect what actually exists will aid in management credibility.

Action 5: Blue Runners

I was informed at the meeting that Alternative 3, which I support, may not be possible due to gillnet gear being incompatible with the FMP. Everyone is looking for the quickest way to correct an oversight. If that could be handled by exception until it can be handled "properly" it would mean fisherman could continue harvesting a species responsibly while bureaucratic corrections are made

SOUTHEASTERN FISHERIES ASSOCIATION (SFA)



EAST COAST FISHERIES SECTION (ECFS)

Robert Mahood, Executive Director
South Atlantic Fishery Management Council (SAFMC)
4055 Faber Place Drive, Suite 201
North Charleston, South Carolina 29405

SGAmend27Comments@safmc.net

Thursday January 31, 2013

Regard to: Snapper Grouper (SG) Fishery Management Plan (FMP) Amendment 27 Public Hearing Document

To: Bob Mahood,

Thank you for considering this Southeastern Fisheries Association (SFA) East Coast Fisheries Section (ECFS) written comment for this Public Hearing period with regard to the SG Amendment 27 for the five Actions with various Alternatives. Below are the choices we wish to support for rulemaking.

Action 1. Extend the South Atlantic Council's area of jurisdiction for management of Nassau grouper to include the Gulf of Mexico

SFA ECFS supports the Preferred Alternative 2 for Nassau grouper management.

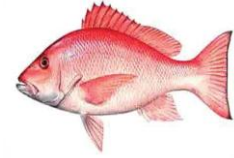
Alternative 2 (Preferred). The South Atlantic Council would extend its jurisdictional authority for management of Nassau grouper to include federal waters of the Gulf of Mexico. Harvest of Nassau grouper in the Gulf of Mexico EEZ would continue to be prohibited.

Action 2. Modify the crew size restriction for dual-permitted snapper grouper vessels

SFA ECFS supports Prefers Alternative 2 to eliminate the limit of 3 crewmembers for dual-permitted vessels.

Alternative 2. Eliminate the limit of 3 crewmembers for dual-permitted vessels

SOUTHEASTERN FISHERIES ASSOCIATION (SFA)



EAST COAST FISHERIES SECTION (ECFS)

Action 3. Modify captain and crew retention restrictions on bag limit quantities of snapper grouper species

NOTE: All of the alternatives below apply only to vessels with a South Atlantic Charter/Headboat Permit for Snapper Grouper

SFA ECFS prefers Alternative 2 to allow the captains and crew of vessels associated with a South Atlantic Charter/Headboat Permit for Snapper Grouper to retain a recreational bag limits of SG for personal consumption.

Alternative 2. Remove the snapper grouper species retention restrictions for captains and crew of vessels associated with a South Atlantic Charter/Headboat Permit for Snapper Grouper.

Action 4. Modify Section I of the Snapper Grouper FMP Framework procedure

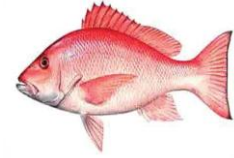
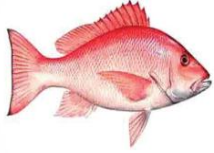
SFA ECFS along with the Snapper Grouper AP supports the Preferred Alternative 2 to modify Section I of the SG FMP Framework procedure. SFA ECFS encourages the NOAA General Counsel to determine the extent to which additional actions such as revising ACLs may be revised by the NMFS Regional Administrator (RA) through notice action.

Alternative 2 (Preferred). Modify Section I of the Snapper Grouper FMP Framework Procedure for Specification of Annual Catch Limits, Annual Catch Targets, Overfishing Limits, Acceptable Biological Catch, and annual adjustments. The modification would add the following language:

Acceptable Biological Catch (ABC), Annual Catch Limits (ACLs) and Annual Catch Targets (ACTs) Adjustment Procedure

1. Stock assessments will continue to be conducted for snapper grouper species in the management area through the SEDAR process.
2. Following the Scientific and Statistical Committee (SSC)'s review of the stock assessment and a public hearing, the Council will determine if changes are needed in the OFL, ABC, ACLs, and ACTs and so advise the Regional Administrator (RA).
3. Following a review for consistency with the FMP and applicable law, the RA may reject or may implement changes by notice in the *Federal Register* to be effective for the next fishing season.

SOUTHEASTERN FISHERIES ASSOCIATION (SFA)



EAST COAST FISHERIES SECTION (ECFS)

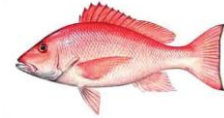
Action 5. Modify placement of blue runner in a fishery management unit and/or modify management measures for blue runner

SFA ECFS Prefers Alternative 3 to retain Blue runner in the SG FMP and allow commercial harvest and sale of Blue runner vessels associated with a Spanish Mackerel Permit, or a South Atlantic Unlimited or 225-pound Permit for SG. Gillnets would be an allowable gear for only Blue runner in the SG fishery.

Alternative 3. Retain blue runner in the Snapper Grouper FMP but allow commercial harvest and sale of blue runner for vessels associated with a Spanish Mackerel Permit or a South Atlantic Unlimited or 225-pound Permit for Snapper Grouper. Gillnets are an allowable gear for only blue runner in the snapper grouper fishery.

Jimmy Hull, Chairman
SFA ECFS
JGH/rhh

SOUTHEASTERN FISHERIES ASSOCIATION (SFA)



EAST COAST FISHERIES SECTION (ECFS)

Wednesday November 28, 2012

Re: Snapper Grouper (SG) Amendment 27 Phil.Steele@noaa.gov

To: South Atlantic Fishery Management Council (SAFMC)

Thank you for considering this Southeastern Fisheries Association (SFA) East Coast Fisheries Section (ECFS) written comment with regard to the SG Amendment 27 choices for the 3 remaining Actions and the various Alternatives being proposed currently by the SAFMC.

SFA ECFS supports Action 6, Alternative 2, Action 7, Alternative 2 and Action 8, Alternative 2 as the Preferred.

Summary of Effects

NOTE: Actions 1-5 would deal with the Gulf of Mexico Council relinquishing management of yellowtail and mutton snapper, which was discussed at their October 2012 Council meeting. At that meeting the Council chairman suggested that a joint steering committee be developed and tasked with developing recommendations for joint management of yellowtail and mutton snapper. The Gulf of Mexico Council did not vote on whether or not to hand over management of yellowtail and mutton snapper to the South Atlantic Council during their October 2012 meeting.

IPT Recommendation: Move Actions 1-5 to the Considered But Rejected Appendix

Action 6. Extend the South Atlantic Council's area of jurisdiction for management of Nassau grouper to include the Gulf of Mexico

Alternative 1 (No Action). Nassau grouper harvest is prohibited in the South Atlantic and Gulf of Mexico. The South Atlantic Council's area of jurisdiction for management of Nassau grouper is limited to federal waters of the South Atlantic.

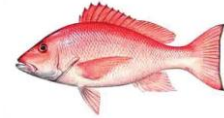
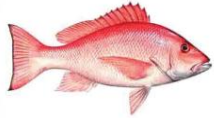
Alternative 2. The South Atlantic Council would extend its jurisdictional authority for management of Nassau grouper to include federal waters of the Gulf of Mexico. Harvest of Nassau grouper in the Gulf of Mexico EEZ would continue to be prohibited.

SFA ECFS supports Action 6, Alternative 2 to extend the SAFMC jurisdiction.

SNAPPER GROUPE AP RECOMMENDATION: The Council should request that NMFS thoroughly research the historical distribution of Nassau grouper and known spawning aggregations in the South Atlantic.

SFA ECFS supports the Snapper Grouper AP recommendation.

SOUTHEASTERN FISHERIES ASSOCIATION (SFA)



EAST COAST FISHERIES SECTION (ECFS)

Action 7. Modify Section I of the Snapper Grouper FMP Framework procedure

Alternative 1 (No Action). Section I of the snapper grouper framework procedure, as modified through Amendment 17B, is as follows:

I. Snapper Grouper FMP Framework Procedure for Specification of Annual Catch Limits, Annual Catch Targets, Overfishing Limits, Acceptable Biological Catch, and annual adjustments:

[See pages 21-24 of Amendment 27 Decision Document for Details of No Action]
<http://www.safmc.net/LinkClick.aspx?fileticket=tfupTnEu2wl%3d&tabid=756>

Alternative 2. Modify Section I of the Snapper Grouper FMP Framework Procedure for Specification of Annual Catch Limits, Annual Catch Targets, Overfishing Limits, Acceptable Biological Catch, and annual adjustments. The modification would add the following language:

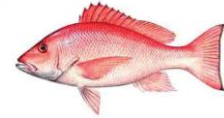
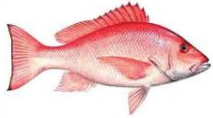
Acceptable Biological Catch (ABC), Annual Catch Limits (ACLs) and Annual Catch Targets (ACTs) Adjustment Procedure

1. Stock assessments will continue to be conducted for snapper grouper species in the management area through the SEDAR process.
2. Following the Scientific and Statistical Committee (SSC)'s review of the stock assessment and a public hearing, the Council will determine if changes are needed in the OFL, ABC, ACLs, and ACTs and so advise the Regional Director (RD).
3. Following a review for consistency with the FMP and applicable law, the RD may reject or may implement changes by notice in the *Federal Register* to be effective for the next fishing season.

MOTION: THE SNAPPER GROUPE AP SUPPORTS ALTERNATIVE 2 AS A PREFERRED

SFA ECFS Supports Action 7, Alternative 2 as a Preferred since the changes would allow the SAFMC to make more rapid changes to the ACLs when they need to be increased.

SOUTHEASTERN FISHERIES ASSOCIATION (SFA)



EAST COAST FISHERIES SECTION (ECFS)

Action 8. Modify placement of blue runner in a fishery management unit and/or modify management measures for blue runner

Alternative 1 (No Action). Blue runner is managed under the Snapper Grouper FMP. A federal South Atlantic Unlimited or 225 Snapper Grouper Permit is required to commercially harvest and sell blue runner. A federal Commercial Dealer Permit is required to purchase blue runner. The commercial ACL for blue runner is 188,329 pounds whole weight (ww) and the commercial allocation is 15% of the total ACL. If the commercial ACL is met or is projected to be met, all subsequent purchase and sale is prohibited. If the commercial ACL is exceeded, the Regional Administrator will publish a notice to reduce the ACL in the following season by the amount of the overage, but only if the species is overfished.

The recreational ACL for blue runner is 1,101,612 ww. There is a recreational annual catch target (ACT) for blue runner, which equals $ACL \times (1 - \text{percent standard error})$ or $ACL \times 0.5$, whichever is greater. If the annual recreational landings exceed the recreational ACL in a given year the following year's landings will be monitored in-season for persistence in increased landings. The Regional Administrator will publish a notice to reduce the length of the recreational fishing season as necessary.

Alternative 2. Remove blue runner from the Snapper Grouper Fishery Management Unit **and place in the Coastal Migratory Pelagics Fishery Management Unit.** (Highlighted text is recommended for removal.)

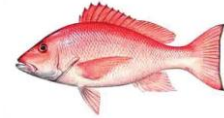
SFA ECFS supports Action 8, Alternative 2 with the highlighted text removed as the Preferred.

Alternative 3. Retain blue runner in the Snapper Grouper Fishery Management Plan but allow commercial harvest of blue runner with a gillnet for vessels that have been issued a Spanish mackerel Permit. Require a blue runner endorsement for Spanish mackerel permitted vessels for the commercial harvest and sale of blue runner.

Alternative 4. Retain blue runner in the Snapper Grouper Fishery Management Plan but exempt it from the Snapper Grouper permit requirement for purchase, harvest, and sale.

~~**Alternative 5.** Remove blue runner from the Snapper Grouper Fishery Management Unit in order for the state of Florida to assume management responsibilities for the species.~~

SOUTHEASTERN FISHERIES ASSOCIATION (SFA)



EAST COAST FISHERIES SECTION (ECFS)

IPT RECOMMENDATION: Remove highlighted text from Alternative 2 and delete Alternative 5 since Council cannot dictate whether Florida should manage the species and removing blue runner from the FMU is already addressed in Alternative 2.

Table S.8. Landings, nominal (not inflated) value, price per pound of blue runner and Spanish mackerel for those trips where at least 1 lb of blue runner and 1 lb of Spanish mackerel were landed, 2007-2011.

See Page 31 for Table S.8 details.

<http://www.safmc.net/LinkClick.aspx?fileticket=tfupTnEu2wl%3d&tabid=756>

Removing blue runner from the Snapper Grouper FMU to allow the species to be added to the Coastal Migratory Pelagics FMU (**Alternative 2**) would be beneficial to fishermen without Snapper Grouper permits who harvest blue runner with gillnet because it would not require an additional permit and would allow them to continue harvest of blue runners with gillnet gear. This would also be expected to have no negative impacts on fishermen with Snapper Grouper permits who harvest blue runner with hook and line as long as there were no permit requirements implemented should blue runner become part of the Coastal Migratory Pelagics FMU.

Alternative 3 may negatively impact fishermen who catch blue runner in the Spanish mackerel gillnet fishery because of the provision for a blue runner endorsement on the Spanish mackerel commercial permit, particularly if there is a limited number of endorsements and possible administrative fees.

Alternative 4 would not place the additional burden on gillnet fishermen of acquiring a Snapper Grouper permit but would also not remove the gillnet prohibition for harvest of species in the Snapper Grouper FMU, which could negatively impact small fishing businesses that depend on the blue runner gillnet landings during part of the year.

Jimmy Hull, Chairman
SFA ECFS
rhh

Comments on Snapper Grouper Amendment 27, Action 4

February 11, 2013

Mr. David Cupka, Chairman
South Atlantic Fishery Management Council
4055 Faber Place Drive, Suite 201
North Charleston, SC 29405

**RE: Snapper Grouper Amendment 27, Action 4 (Modify S-G FMP Framework procedure to add an ABC-ACL-
ACT Adjustment Procedure)**

Dear Mr. Cupka,

I offer these comments as an interested member of the public and longtime observer of the federal fishery management process both nationally and regionally. In Snapper Grouper Amendment 27, the South Atlantic Council has proposed to modify the S-G FMP's Framework Procedures with the aim of minimizing regulatory delay when making adjustments to snapper-grouper species' acceptable biological catches (ABCs), annual catch limits (ACLs), and annual catch targets (ACTs) as a result of new stock assessment information. Specifically, the Council's Preferred Alternative 2 under Action 4 would allow ABCs, ACLs, and ACTs to be modified by publishing a notice in the Federal Register without preparing a regulatory amendment.¹ Although the proposed modification appears simple and minor, it is fraught with implications for the Council's catch-setting process. For all the reasons outlined in this letter, I urge the Council to withdraw the proposed action until the Snapper Grouper Committee, with the support of Council and NMFS staff, has had time to review best practices in other regions and recommend changes to the S-G FMP's procedures for specifying and adjusting catch limits in a more orderly, timely and transparent way that complies with the Magnuson-Stevens Act (MSA) and other relevant laws.

Under the existing S-G Framework procedures, the NMFS Regional Director's authority to take action through abbreviated notice in the Federal Register is largely limited to closing a commercial fishery to prevent exceeding an ACL or ACT, closing a recreational fishery to prevent exceeding an ACL or ACT, or reopening a commercial or recreational fishing season in order to enable a fishing sector to achieve its ACL or ACT. Preferred Alternative 2 would add an *ABC-ACL-ACT Adjustment Procedure* to the FMP's existing Framework Procedure whereby the Regional Director may implement changes in OFL, ABC, ACLs, and ACTs by notice in the Federal Register to be effective for the next fishing season, following the Science and Statistical Committee (SSC)'s review and "a public hearing," presumably occurring during the course of at least one Council meeting, to "determine if changes are needed in the OFL, ABC, ACLs, and ACTs."²

The Council's intent, as with the Gulf Council's Generic Framework Procedure, is "to facilitate timely adjustments to harvest parameters and other management measures as new scientific information becomes available."³ A well-designed regulatory framework procedure can authorize expedited or abbreviated approval of certain actions involving ongoing and "routine" management measures that fall within the scope of the FMP, but NOAA's Operational Guidelines for the Fishery Management Plan Process (Operational Guidelines) emphasize that frameworking is only appropriate for actions that have already been thoroughly analyzed and, moreover, the type of "open" framework sometimes used to implement catch specifications may require additional analysis and public comment because prior analyses may not adequately address the changed circumstances and impacts of the proposed action.⁴ In some FMPs, frameworking procedures occasionally do authorize NMFS to make adjustments or modifications to ABCs and ACLs with minimal notice and comment in compliance with the Administrative

¹ Snapper Grouper Amendment 27 Public Hearing document, January 2013.

² Snapper Grouper Amendment 27 Public Hearing document, p. 14.

³ See 76 Fed. Reg. at p. 82044, Final Rule implementing the Generic ACL Amendment for the Gulf of Mexico FMPs, December 29, 2011.

⁴ See NOAA's Operational Guidelines for the Fishery Management Plan Process:

http://www.nmfs.noaa.gov/sfa/domes_fish/OperationalGuidelines/OGphase5.htm.

Comments on Snapper Grouper Amendment 27, Action 4

Procedures Act (APA).⁵ However, it appears that few FMPs in other regions authorize adjustments to OFLs, ABCs, ACLs or ACTs through abbreviated notice and comment, and those that do have a robust catch specification process in place to provide the prior analysis and review that justifies expedited adjustments during the effective period of the specifications, generally 1-3 years.

By contrast, the South Atlantic Council (like the Gulf Council) implements catch specifications through a regulatory framework amendment for each individual stock or stock complex as new information becomes available from SEDAR, thus all the analysis, documentation and Council review that would be done in the catch specification process in other regions must be done in the framework itself – and that can delay implementation of adjustments to catch specifications based on new information. Recent actions to allow limited red snapper fishing and adjust yellowtail snapper ABC, ACL and accountability measures (AMs) required emergency rules to make the initial changes on short notice as well as follow-up regulatory amendments to make these changes permanent, and a similar regulatory amendment is now underway to adjust the vermilion snapper ABC and ACL based on assessment update that was reviewed by the SSC last October. The reliance on the use of Secretarial emergency authority to make timely management adjustments contributes to the atmosphere of crisis management lamented by the Snapper Grouper Committee last year. In Councils with a more formally structured and predictable catch specification process, actions such as setting ABCs, ACLs, or ACTs and adjusting those values during the effective period of the specifications have become far more routine.

ACL-setting is a stepwise process with certain required steps⁶ to compile, review and transmit the best scientific information available for purposes of determining appropriate ABCs and ACLs that adequately account for scientific and management uncertainties associated with them as well as the biological, socioeconomic and ecological impacts of those fishing levels, and each FMP must establish clear administrative procedures for that process. In Councils with a longer history of catch-limit management, the catch specification process itself has become an overarching “routine” that occurs regularly every 1-3 years over the course of a pre-established number of Council meetings. An orderly and predictable administrative process enables the Council and NMFS to anticipate and frontload the required analyses under the MSA, NEPA and other laws, thereby providing some basis for expedited or abbreviated framework actions during the effective period between specification cycles, including (potentially) adjustments to ABCs, ACLs and ACTs based on new assessment information. However, it appears that the expedited or abbreviated regulatory adjustments of the kind that this Council is seeking in S-G Amendment 27 are generally only permitted under limited circumstances in other Councils – for example, only for overfished groundfish stocks (and/or co-occurring species) in the Pacific groundfish FMP.⁷ With the possible exception of the North Pacific,⁸ which has a very robust catch specification process and considerable stakeholder acceptance of the outcome, most framework procedures involving interim adjustments to catch specifications still require some review and analysis over the course of one or more Council meetings.

⁵ 5 U.S.C. § 553(b)-(c). In limited circumstances the APA does provide agencies the authority to waive notice and comment when prior notice and an opportunity for public comment are “impracticable, unnecessary, or contrary to the public interest” (5 U.S.C. § 553(b)(B)).

⁶The MSRA requires a *mechanism* for specifying ACLs and AMs (16 U.S.C. § 1853(a)(15)) and the design of that mechanism (the catch specification process) is crucial to the successful implementation of the resulting ABCs, ACLs, and AMs. Regulatory guidance on the required elements of that process is included in NS1 guidelines (50 CFR § 600.310) and NS2 guidelines (50 CFR § 600.315), as well as the NOAA Operational Guidelines. NMFS also recommends that Councils modify their Statement of Organization, Practices and Procedures (50 CFR § 600.115) to describe the roles and responsibilities of the Council, SSC, and any peer reviewers in this process.

⁷ The Council’s Groundfish FMP, Section 5.5, describes inseason procedures for adjusting OFLs, ABCs, and ACLs: <http://www.pcouncil.org/groundfish/fishery-management-plan/>. For stocks that are *not* overfished, catch specifications may only be modified in cases where the values are found to have resulted from incorrect data or computational errors. The FMP identifies specific frameworks for making inseason adjustments to ACLs, OYs, ACTs, and harvest guidelines or quotas based on conservation concerns (the “points of concern” framework described in Section 6.2.2).

⁸ North Pacific groundfish catch specifications are set biennially, but interim adjustments in the catch levels may be made via an inseason adjustment procedure (50 CFR § 679.25).

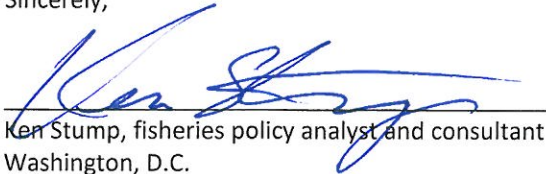
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A well-designed regulatory framework procedure can expedite approval of certain actions that are considered part of ongoing and routine management, but frameworking should never be a means to circumvent the FMP amendment process or other relevant laws.⁹ In cases where the impacts of actions have been previously analyzed and reviewed in the Council's specification process, frameworking procedures may authorize NMFS Regional Directors to make adjustments or modifications to routine management measures with minimal notice and comment. Even when actions have already been thoroughly analyzed at an earlier time, however, it bears repeating that frameworks may still require additional analysis and public comment if prior analyses have not adequately addressed the changed circumstances and impacts of the proposed action.¹⁰ The Council's proposed modification to the S-G Framework procedure does not indicate how such determinations will be made (presumably on a case-by-case basis), but it becomes especially important to address this point in a system where the only prior analysis may have occurred in a previous regulatory framework many years earlier and where there is no time certain in the future when the basis for the adjusted ABCs, ACLs or ACTs will be re-evaluated.

For these reasons I conclude that what the Council is seeking in this action – to modify ABCs, ACLs and ACTs through an abbreviated or expedited approval process by publishing notice in the Federal Register without a regulatory amendment – is premature without first establishing a more robust catch specification process that is fully capable of supporting such framework adjustments. Limited assessment data for S-G stocks, low levels of catch monitoring in S-G fisheries, and lack of timely, reliable catch/bycatch/discard reporting only compound the uncertainties and controversies associated with setting S-G catch limits in the South Atlantic, particularly when these changes are made on short notice with limited analysis or justification. Even in regions in which the specification process has become more routine it appears that there are limited circumstances in which such an abbreviated approval of adjustments to ABCs, ACLs or ACTs can occur, and the catch specification process often seems anything but routine in the Snapper Grouper fishery. In the absence of prior analyses during the catch specification process or a clearly defined effective period for ABCs, ACLs and associated AMs, it will be very difficult for the South Atlantic Council to justify expedited framework adjustments to ABCs, ACLs, ACTs that remain in effect for an indefinite period.

Instead of seeking to amend the S-G Framework procedures as proposed, the Council's Snapper Grouper Committee should be asked to consider and recommend modifications to the S-G catch specification process that incorporate best practices from FMPs in other regions, including well-defined framework procedures for addressing new information in the intervals between specification cycles – all in the interest of making the catch-setting process more predictable, more transparent, and therefore less crisis-driven, less dependent on management by emergency rule, and (ultimately) better suited to do some of the things the Council is now proposing to do via abbreviated rulemaking. The Snapper Grouper Committee's proposed strategic planning/visioning process would seem an ideal opportunity for considering improvements to, and restructuring of, the process by which the Council establishes its recommended ABCs, ACLs and ACTs for Secretarial review.

Sincerely,



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⁹ See NOAA's Operational Guidelines: http://www.nmfs.noaa.gov/sfa/domes_fish/OperationalGuidelines/OGphase5.htm.

¹⁰ See above, note 4.