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## Via Email

March 5, 2012

David M. Cupka, Chairman  
South Atlantic Fishery Management Council  
P.O. Box 12753  
Charleston, SC 29422

## Re: MPAs and HAPCs for Speckled Hind and Warsaw Grouper

Dear Chairman Cupka and SAFMC Members:

Please accept the following recommendations by the Natural Resources Defense Council (NRDC) regarding the establishment of new marine protected areas (MPAs) and habitat areas of particular concern (HAPCs) for speckled hind and warsaw grouper. As we have made clear in our recent comments on Regulatory Amendment 11 (RA 11), the Council is legally obligated to prevent overfishing. Both NMFS and the Council have acknowledged that area closures are necessary for speckled hind and warsaw grouper because a prohibition on landings alone “...*would not be sufficient* to end overfishing of speckled hind and warsaw grouper due to discard mortality...”<sup>1</sup> The adoption of permanent MPAs would provide important protections for these two vulnerable and depleted species. While properly designed and adequately protective MPAs along the shelf-edge and in deeper waters might eventually serve as an adequate replacement for the current deepwater (240 foot) closure, a *plan* to adopt new MPAs will not, on its own, suffice to meet the Council’s legal obligations to end overfishing and justify the removal of the deepwater closure.

We respectfully provide the following recommendations and advice pertaining to the SAFMC staff recommendations dated February 22, 2012 contained in the March 2012 briefing book.

### Decision 1: Type of Closures to be Evaluated

We support Decision 1, Alternative 3 to establish permanent area closures, but believe it should be modified to prohibit all fishing, not just bottom fishing, due to concerns about enforcement of a closure affecting only certain gear types and fishing activities in a single area. If designed thoughtfully, based on the best scientific information available and with input from scientists

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<sup>1</sup> AMENDMENT 17B FINAL RULE, 75 Fed. Reg. 82280, 82291 (emphasis added).

and stakeholders, the resulting closed areas would achieve the conservation goals with broad public support.

### **Decision 2: Approaches for Developing Potential Permanent Area Closures**

The two alternatives presented under Decision 2 provide a starting point for delineating the new closures, but remain inadequate. We caution against relying on data from the SERO Catch Analysis to determine the precise occurrences of speckled hind and warsaw grouper in the South Atlantic region. The Analysis found that “all conclusions that might be drawn about the distribution of the stock from post-1994 data suffer from biases,”<sup>2</sup> and the author reported that “[t]here is a lack of depth-specific spatially resolved data in general.”<sup>3</sup> Furthermore, only three of the ten data sources used in the SERO Catch Analysis contain any depth information – the Commercial Logbook and Discard Logbook Program, Reef Fish Observer Program (RFOP), and MARMAP – and all of these data “were heavily biased towards fishing inshore of 240 ft depth.”<sup>4</sup> Only two of the data sources are fishery independent – MARMAP and RFOP – the latter of which is a voluntary program that, in and of itself, “suffers from spatial and sampling biases.”<sup>5</sup> As stated in the SERO Catch Analysis, both of these programs have “potentially biased results because they had limited sampling beyond 240 feet.”<sup>6</sup> We recommend that these biases and data limitations are fully considered and that only RFOP and MARMAP data are used in the process of defining MPAs to protect speckled hind and warsaw grouper.

We agree with the use of known habitat distributions for these species, similar to what was done for deepwater corals, but recommend clearly defining the specific data sources to be included and ensuring that this information is fully available to the SSC, AP, and all working groups, including the expert advisory body we recommend to be convened for this process (see below). All information on habitat and distribution of speckled hind and warsaw grouper must be available to those charged with developing the closures, including from sidescan and multibeam maps, historical catches (as discussed above), and life history as defined in the scientific literature, and from the testimony of expert scientists and conservation-minded fishers and divers.<sup>7</sup>

### **Decision 3: Guidance on What Percentage of Habitat is Appropriate to be Closed**

We recommend the SAFMC follow the expert advice of independent scientists with experience designing and monitoring the effects of area closures on similar species in similar ecosystems. We note that Dr. Christopher Koenig, in his letter to the SAFMC dated January 31, 2012 and drawing off his experience with the Madison Swanson Reserve in the Gulf of Mexico,

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<sup>2</sup> NMFS SERO Catch Analysis, at 16.

<sup>3</sup> Nick Farmer, NMFS SERO, *SAFMC Snapper-Grouper Committee Minutes*, at 37 (June 2011)

<sup>4</sup> NMFS SERO Catch Analysis, at 16.

<sup>5</sup> *Id.*, at 2.

<sup>6</sup> *Id.*, at 16.

<sup>7</sup> Please see comments submitted jointly by NRDC, OC, and Pew on RA 11 dated January 19, 2012 for a detailed overview of the most relevant scientific literature on speckled hind and warsaw grouper. We hereby incorporate those comments by reference.

recommends closing about 50% of the shelf edge with significant amounts of high relief habitat suitable to speckled hind and warsaw grouper. Koenig prescribes MPAs that should be at least 100 square miles each to account for the short-range movements along the shelf edge. It is also essential that a robust monitoring system be established to assess the efficacy of the closure over time and to begin gathering important data required for updating the stock status of speckled hind and warsaw grouper.

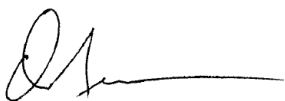
#### **Decisions 4 & 5: The Process for Developing the MPAs and NMFS' Role**

We agree with the proposal to involve the SSC, AP, and the public to develop alternative sites, but feel the process must also include an expert working group of scientists (biologists, geologists, and geographers), fishers, divers, environmentalists, and representatives from the SSC, AP, SEFSC, and Council. This working group should be directed by the SSC and Snapper-Grouper AP to develop criteria for the closures and, based upon those criteria and the data and information provided to the working group by NMFS and the Council, delineate proposed closure alternatives on a map. At its April meeting, the SSC should be tasked with developing a list of invitees and specific terms of reference (ToR) for the expert working group, along with a list of data and information that NMFS and the Council must ensure is provided before the expert working group meeting. The Snapper-Grouper Advisory Panel should then review the ToR and list of invitees at its late-April meeting. NMFS and the Council should organize the expert working group and arrange for an independent facilitator to lead the meeting. NMFS would then take the working group's recommendations and plot proposed closures on a map and begin to analyze the conservation and economic impacts of the proposed alternatives in the form of an environmental impact statement (EIS).

We urge the Council to separate this process of designing MPAs and identifying HAPCs for speckled hind and warsaw grouper from the Comprehensive Ecosystem Based Amendment 3 (CEBA 3) and to ensure that the new MPAs are adopted in a timely fashion. Given the other important issues currently contained in CEBA 3, we expect the Council and NMFS will likely need more time to complete that process.

We appreciate the opportunity to participate in this important process and for your consideration of our recommendations.

Very Truly Yours,



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