

February 16, 2024

Via The South Atlantic Fishery Management Council Public Comment Form

John Carmichael,
Executive Director, South Atlantic Fishery Management Council
4055 Faber Place Drive, Suite 201
Charleston, SC 29405

**RE: Regulatory Amendment 36 to the Fishery Management Plan for the Snapper Grouper
Fishery in the South Atlantic Region**

Dear Mr. Carmichael:

Oceana is the largest international ocean conservation organization solely focused on protecting the world's oceans, with more than 1.2 million members and supporters in the United States, including over 340,000 members and supporters on the U.S. Atlantic seaboard. For more than twenty years, Oceana has campaigned to win strategic, directed campaigns that achieve measurable outcomes to help make our oceans more biodiverse and abundant.

Oceana has engaged as a stakeholder in the management of U.S. fisheries and interactions with endangered species, with a particular interest in effective bycatch minimization and reduction, if not elimination, of fishing gear entanglement-related death, injury, and harm to protected species, including the North Atlantic right whale (NARW). In addition, Oceana is interested in seeing the reduction, if not elimination, of vessel strike-related death, injury, and harm to NARWs. For these reasons, in 2019, Oceana launched a binational campaign in the United States and Canada to urge the respective governments to effectively enforce environmental laws to protect this critically endangered species and Oceana is currently campaigning to protect these whales from their two biggest threats— entanglement in fishing gear and vessel strikes.

Oceana thanks you for the opportunity to submit scoping comments on Snapper Grouper Regulatory Amendment 36 actions such as the addition of on-demand pots as an allowable gear for commercial harvest of black seas bass. The use of on-demand gear is a critical step forward in ensuring that North Atlantic right whales and other marine wildlife are protected from deadly entanglements. Oceana strongly supports this action and calls on the South Atlantic Fisheries

Management Council (SAFMC) and National Marine Fisheries Service to quickly approve and implement this action to expand the use of on-demand gear and reduce human-caused deaths of NARWs.

BACKGROUND

The National Environmental Policy Act (NEPA) and the role of scoping

Congress enacted the NEPA to ensure that federal agencies incorporate environmental concerns into their decision-making processes.¹ In furtherance of this goal, NEPA compels federal agencies and the councils to prospectively evaluate the environmental impacts of proposed actions that they carry out, fund, or authorize. Public involvement is essential to implementing NEPA; it “helps the agency understand the concerns of the public regarding the proposed action and its environmental impacts, identify controversies, and obtain the necessary information for conducting the environmental analysis.”²

Scoping is a critical early step in the NEPA process and provides an opportunity for all interested stakeholders with a variety of perspectives to help inform the process. It helps to “determine the scope of issues to be addressed in depth in the analysis,” “identify concerns . . . and invite participation from affected entities,” “define the alternatives that will be analyzed,” and “identify the environmental issues that are pertinent to the proposed action.”³ A comprehensive and equitable scoping process is essential for identifying the “reasonable range” of alternatives that must be evaluated in the NEPA process to address the purpose and need of proposed agency action.⁴ Those reasonable alternatives must be rigorously explored and objectively evaluated. Each alternative must be “considered in detail . . . so that reviewers may evaluate their comparative merits.”⁵ “What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.”⁶ As one court stated, the agency “must look at every reasonable alternative within the range dictated by the nature and scope of the proposal.”⁷

¹ 42 U.S.C. § 4331(a).

² NOAA Administrative Order Series 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act (May 20, 1999).

³ 40 C.F.R. § 1501.9; NOAA, *Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities*, at 16 (January 13, 2017), <https://www.nepa.noaa.gov/docs/NOAA-NAO-216-6A-Companion-Manual-01132017.pdf>; *Citizens’ Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1022 (10th Cir. 2002).

⁴ 40 C.F.R. § 1502.14.

⁵ 40 C.F.R. § 1502.14(b).

⁶ Council on Environmental Quality, 40 Most Asked Questions Concerning CEQ’s Nation Environmental Policy Act Regulations (Mar. 23, 1981), <https://energy.gov/sites/prod/files/G-CEQ-40Questions.pdf>

⁷ *Ilio’ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1095 (9th Cir. 2006).

Status of North Atlantic right whales

NARWs are one of the most endangered large whales on the planet, with only an estimated 356 individuals alive today.⁸ The NARW is a large baleen whale that is currently found between its calving grounds as far south as Florida and its feeding grounds in New England and Canada. In recent years, in pursuit of a shifting food source due to warming waters, these whales are expanding their range and being exposed to new areas, which increases their risk of being struck by a vessel or entangled in fishing gear.⁹

In 2017, the National Marine Fisheries Service (NMFS) declared an unusual mortality event for the species.¹⁰ As outlined by the Marine Mammal Protection Act (MMPA), an unusual mortality event is defined as a “stranding that is unexpected, involves a significant die-off of any marine mammal population, and demands immediate response.”¹¹ Since 2017, in the United States and Canada, there have been at least 37 deaths, 34 serious injuries, and 51 sublethal injuries and illnesses.⁵ The true number of North Atlantic right whales killed and injured by human causes is likely much higher, as researchers estimate that only about one-third of total North Atlantic right whale deaths are observed.¹² The ultimate goal of marine mammal conservation is to achieve a mortality and serious injury rate that approaches zero, the Zero Mortality Rate Goal. Achievement of Potential Biological Removal (PBR) acts as an intermediate step towards recovery.¹³ In the most recent stock assessment report for NARWs, PBR was calculated to be 0.7 mortalities or incidents of serious injury per year, a level that we are far above currently due to threats like entanglement and vessel strikes.¹⁴

Because of these stressors, NARWs are not reproducing quickly enough to counter the rate of deaths. As of 2018, there were only an estimated 70 breeding females in the population.¹⁵

⁸ New England Aquarium. (2023). Scientists release annual population estimate for critically endangered North Atlantic right whale amid ongoing threats. <https://www.neaq.org/about-us/press-room/press-releases/2022-population-estimate-north-atlantic-right-whale/>

⁹ Ganley, L. C., Brault, S., & Mayo, C. A. (2019). What we see is not what there is: Estimating North Atlantic right whale *Eubalaena glacialis* local abundance. *Endangered Species Research*, 38, 101–113. <https://doi.org/10.3354/esr00938>

¹⁰ NOAA Fisheries. (2024). 2017–2024 North Atlantic right whale unusual mortality event | NOAA fisheries. <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2024-north-atlantic-right-whale-unusual-mortality-event>

¹¹ *Id.*

¹² Pace, R. M., Williams, R., Kraus, S. D., Knowlton, A. R., & Pettis, H. M. (2021). Cryptic mortality of North Atlantic right whales. *Conservation Science and Practice*, 3(2), e346. <https://doi.org/10.1111/csp2.346>

¹³ 16 U.S.C. § 1387(b).

¹⁴ NOAA Fisheries. (2023). North Atlantic Right Whale (*Eubalaena glacialis*): Western Atlantic Stock. <https://www.fisheries.noaa.gov/s3/2023-08/North-Atlantic-Right-Whale-Western-Atlantic-2022.pdf>

¹⁵ Reed, J., New, L., Corkeron, P., & Harcourt, R. (2022). Multi-event modeling of true reproductive states of individual female right whales provides new insights into their decline. *Frontiers in Marine Science*, 9. <https://www.frontiersin.org/articles/10.3389/fmars.2022.994481>

NMFS estimates that 20 calves being born would be a relatively productive year.¹⁶ However, 50 or more calves are needed to stop the decline and allow the whales to recover. Only 12 calves were seen in the 2022-2023 calving season, and unfortunately, not all 12 survived the season. So far in the 2023-2024 calving season, which runs November through April, 17 calves have been born, but 1 has sustained a serious injury and 2 are presumed dead.¹⁷

Threats to North Atlantic right whales

a. Entanglements

Entanglement is the greatest threat to NARWs. Since 2017, entanglements have caused at least 9 mortalities, 30 serious injuries likely to result in death, and 39 sublethal injuries or illnesses.¹⁸ More than 86% of North Atlantic right whales have suffered at least one entanglement during their lifetime, with some individuals being entangled as many as eight times, with the severity of these events increasing over time.¹⁹ Fishing gear lines have been seen wrapped around NARWs' mouths, fins, tails and bodies, which slows them down, making it difficult to swim, reproduce and feed, and can kill them. The lines cut into the whales' flesh, leading to life-threatening infections, and are so strong that they can sever fins and tails and cut into bone.

b. The South Atlantic Black Sea Bass Pot Fishery

Traditional black sea bass pot fishing gear includes vertical end lines and buoys which stay in the water column for hours while the gear is deployed, presenting an entanglement risk to cetaceans and other protected species. To explore mitigating this risk, in 2020 black sea bass on-demand gear research was conducted under an Exempted Fishing Permit (EFP) from the SAFMC. The initial EFP issued in 2020 allowed on-demand gear testing outside the closures and included a limited number of fishermen off Georgia and North Carolina. In 2022, after a successful trial under the first EFP, a second EFP was issued that allowed on-demand gear testing within the closures and included fishermen and testing off all southeast states (North Carolina, South Carolina, Georgia, and Florida). This EFP is set to expire in April 2025, and without a renewed EFP, or SAMFC regulations that allow on-demand gear, further research and use of on-demand gear would not be allowed. That is why we support the addition of on-demand pots as an

¹⁶ NOAA Fisheries. (2024). North Atlantic right whale calving season 2024 | NOAA fisheries. <https://www.fisheries.noaa.gov/national/endangered-species-conservation/north-atlantic-right-whale-calving-season-2024>

¹⁷ New England Aquarium. (2024). 2023–2024 North Atlantic right whale mother and calf pairs. <https://www.neaq.org/2023-2024-right-whale-mother-and-calf-pairs/>

¹⁸ NOAA Fisheries. (2024). 2017–2024 North Atlantic right whale unusual mortality event | NOAA fisheries. <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2024-north-atlantic-right-whale-unusual-mortality-event>

¹⁹ New England Aquarium. (2022). North Atlantic right whale “Snow Cone” sighted entangled in new fishing gear and in extremely poor health. <https://www.neaq.org/about-us/press-room/press-releases/north-atlantic-right-whale-snow-cone-sighted-entangled-in-new-fishing-gear-and-in-extremely-poor-health/>

allowable gear for commercial harvest of black sea bass and see this addition as even more pressing and necessary.

DISCUSSION

The South Atlantic Fishery Management Council has an opportunity to permanently allow ropeless or on-demand fishing gear in the black sea bass fishery from North Carolina to Florida. This would benefit both the fishermen and North Atlantic right whales by allowing fishermen who use ropeless or on-demand gear to continue to fish during seasonal closures without an exemption and reduce the risk of whales entangling themselves in ropes coming off traditional fixed gear.

Making ropeless or on-demand gear an approved type of gear for the black sea bass fishery is both pressing and important to ensure this gear can stay in the water. Oceana strongly supports adding on-demand or ropeless gear to the approved gear list for the black sea bass fishery. This action would build upon years of at-sea trials and set the precedent that fishermen and whales can coexist. The South Atlantic Fishery Management Council would be an example of how to modernize fisheries by embracing whale-safe gear.

Benefits to North Atlantic right whales

As mentioned above, entanglement has already caused nine confirmed mortalities in North Atlantic right whales since 2017. Entanglement in fishing lines and ropes is an ever-present danger to whales and when entangled, there is a risk of infection, starvation, and drowning. Entanglement happens wherever there are fixed gear fisheries. With the emergence of ropeless and on-demand gear, fisheries now have technology to ensure that there are less unattended lines in the water posing a threat to whales and other species. Current closed areas in the black sea bass fishery exist to protect North Atlantic right whales from entanglement in calving grounds from December to March and November to April from approximately Cape Canaveral to Cape Hatteras, but climate change is placing additional stress on the population, as right whales' preferred food – tiny animals called copepods – are moving to avoid warming waters.²⁰ NARWs already face an incredible number of stressors, and severe entanglements only worsen their health; females with severe injuries, like entanglements, have the lowest birth rates.²¹ Increasing the use of ropeless gear in the South Atlantic helps reduce the risk of entanglement and stressors for NARWs.

²⁰ Meyer-Gutbrod, E. L., & Greene, C. H. (2018). Uncertain recovery of the North Atlantic right whale in a changing ocean. *Global change biology*, 24(1), 455-464.

²¹ Knowlton, A. R., Clark, J. S., Hamilton, P. K., Kraus, S. D., Pettis, H. M., Rolland, R. M., & Schick, R. S. (2022). Fishing gear entanglement threatens recovery of critically endangered North Atlantic right whales. *Conservation Science and Practice*, 4(8), e12736.

Benefits to the fishery

On-demand gear has many benefits for fishermen as well as whales. It allows access to areas currently closed in times in which target fish are more readily available closer to shore. This could result in more profit with fewer direct costs to the fishermen and access to new and expanded markets. As mentioned above, on-demand gear has already been used in this region under an EFP in all southeast states. EFPs issued in 2020 and 2022 led to successful trials that included strong retrieval rates. Trials have taken place both outside and inside of closures. In an August 2023 South Atlantic black sea bass on-demand gear workshop, stakeholders, including fishermen, did not voice any opposition to ropeless gear.²²

Monitoring and transparency needs

Accurate, precise and timely monitoring of interactions with protected species are fundamental elements of both the MMPA and Endangered Species Act (ESA). Effective monitoring allows the agency to monitor takes against the Potential Biological Removal and Incidental Take Levels to determine when further management action is necessary to ensure that affected fisheries are achieving their goals and meeting their obligations under the law.

Knowing where and when fishing is taking place is critical for understanding the risk of entanglement to large whales. While Vessel Monitoring Systems (VMS) have been the norm in the past, lower-cost technologies are available today that will provide necessary fine-scale information for informing fishery management. Automatic Identification System (AIS) is a tracking system that automatically transmits a vessel's identity, speed and GPS location. Initially developed to prevent collisions of vessels at sea, AIS is also used to exchange navigational data and to locate and identify vessels and track movements, a critical tool for understanding where fishing is occurring.

Currently, monitoring of the fisheries is poor, with low-quality fundamental information about catch, effort, bycatch and other characteristics of the fisheries.

Oceana understands that monitoring rare events like whale interactions is a difficult task. Because of the statutory obligations to monitor takes, however, fisheries must be effectively monitored to ensure interactions with protected species do not turn lethal. Amendment 36 must include alternatives to significantly improve monitoring of the South Atlantic black sea bass fishery, including requirements for spatial monitoring, effort monitoring and associated catch, bycatch and entanglement monitoring.

²² SAFMC, "South Atlantic Black Seabass Ropeless (On-Demand) Gear Workshop Report August 22-23, 2023." https://safmc.net/documents/sg_a5b_bsbgearworshopreport_draft_202309-pdf/

CONCLUSION

Oceana thanks the South Atlantic Fishery Management Council for the opportunity to submit scoping comments on Snapper Grouper Regulatory Amendment 36 and applauds the steps that the South Atlantic Fishery Management Council is taking towards wider utilization of on-demand fishing gear in areas where North Atlantic right whales are found. This first-of-its-kind action will set an example that the fishing industry and whales can coexist. Modernizing fisheries is vital to help protect critically endangered North Atlantic right whales, and Oceana offers its commitment to support this action and calls upon all fishery managers facing entanglement challenges to embrace on-demand gear.

Oceana appreciates being able to provide input and thanks you for your time and consideration of these comments and will continue to be engaged on Snapper Grouper Regulatory Amendment 36 as it moves forward.

Sincerely,



Alex Aines

Marine Scientist

Oceana