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February 6, 2025

*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 56 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 one 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 the Council for the opportunity to submit scoping comments on Snapper Grouper Regulatory Amendment 56 (Amendment 56) and encourages the Council to include a range of alternatives in Amendment 56 that will provide access to seasonal nearshore closures to vessels using on-demand black sea bass pots without persistent vertical lines, while remaining consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, Endangered Species Act, and Marine Mammal Protection Act (MMPA).

The continued and widespread use of on-demand gear is a critical step forward in ensuring that NARWs and other marine wildlife are protected from deadly entanglements and Amendment 56 will support this expansion while also expanding opportunities to fish for black sea bass in the Southeast region with the benefits associated with increased seasonal access.

Oceana strongly supports this action and calls on the South Atlantic Fishery Management Council (SAFMC) and National Marine Fisheries Service (NMFS) to develop and approve Amendment 56 in a timely manner with on-the-water implementation as soon as possible.

## BACKGROUND

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

Congress enacted NEPA to ensure that federal agencies incorporate environmental concerns into their decision-making processes.<sup>1</sup> 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.<sup>2</sup> 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.”<sup>3</sup>

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.”<sup>4</sup> 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.<sup>5</sup> Those reasonable alternatives must be rigorously explored and objectively evaluated.<sup>6</sup> Each alternative must be “considered in detail . . . so that reviewers may evaluate their comparative merits.”<sup>7</sup> “What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.”<sup>8</sup> As one court stated, the agency “must look at every reasonable alternative within the range dictated by the nature and scope of the proposal.”<sup>9</sup>

### Status of North Atlantic right whales

NARWs are one of the most endangered large whales on the planet, with only an estimated 372 individuals alive today.<sup>10</sup> 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

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<sup>1</sup> 42 U.S.C. § 4331(a).

<sup>2</sup> 42 U.S.C. § 4332(C).

<sup>3</sup> NOAA Administrative Order Series 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act (May 20, 1999).

<sup>4</sup> 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).

<sup>5</sup> See 40 C.F.R. § 1502.14. See also 42 U.S.C. § 4331(C)(iii) (defining “reasonable range of alternatives to the proposed agency action”).

<sup>6</sup> See 42 U.S.C. §§ 4332(F), (H) (describing agencies’ duties to study, develop, and describe alternatives).

<sup>7</sup> 40 C.F.R. § 1502.14(b).

<sup>8</sup> 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>

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

<sup>10</sup> New England Aquarium. (2024). Annual population estimate for critically endangered North Atlantic right whale shows slow increase in numbers <https://www.neaq.org/about-us/press-room/press-releases/annual-population-estimate-for-critically-endangered-north-atlantic-right-whale-shows-slow-increase-in-numbers/>

vessel or entangled in fishing gear.<sup>11</sup> Along the NARW's migratory route from Florida to eastern Canada, scientists estimate there are more than one million vertical fishing lines threatening whales with entanglement.<sup>12</sup>

In 2017, NMFS declared an unusual mortality event for the species.<sup>13</sup> As outlined by the 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."<sup>14</sup> Since 2017, in the United States and Canada, there have been at least 41 deaths, 39 serious injuries, and 71 sublethal injuries and illnesses of NARWs.<sup>15</sup> The true number of NARWs killed and injured by human causes is likely much higher, as researchers estimate that only about one-third of total NARW deaths are observed.<sup>16</sup> 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.<sup>17</sup> In the most recent stock assessment report for NARWs, PBR was calculated to be 0.73 mortalities or incidents of serious injury per year, a level that we are far above currently due to threats like entanglement and vessel strikes.<sup>18</sup>

Because of these stressors, NARWs are not reproducing quickly enough to counter the rate of deaths. Currently, there are only an estimated 70 breeding females in the population.<sup>19</sup>

NMFS estimates that 20 calves being born would be a relatively productive year.<sup>20</sup> However, 50 or more calves are needed to stop the decline and allow the whales to recover. Only 20 calves were seen in the 2023-2024 calving season, and unfortunately, one calf died, and four others are not expected to survive.<sup>21</sup> So far in the 2024-2025 calving season, which runs November through April, eight calves have been born.<sup>22</sup>

### Threats to North Atlantic right whales

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<sup>11</sup> 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>

<sup>12</sup> Hayes, SA, et. al. 2018. "North Atlantic Right Whales - Evaluating Their Recovery Challenges in 2018." *US Dept Commer Northeast Fish Sci Cent Tech Memo* 247.

<sup>13</sup> NOAA Fisheries. (2025). 2017–2025 North Atlantic right whale unusual mortality event | NOAA fisheries. <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2025-north-atlantic-right-whale-unusual-mortality-event>

<sup>14</sup> *Id.*

<sup>15</sup> NOAA Fisheries. (2025). 2017–2025 North Atlantic right whale unusual mortality event | NOAA fisheries. <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2025-north-atlantic-right-whale-unusual-mortality-event>

<sup>16</sup> 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>

<sup>17</sup> 16 U.S.C. § 1387(b).

<sup>18</sup> NOAA Fisheries. (2024). North Atlantic Right Whale (*Eubalaena glacialis*): Western Atlantic Stock. <https://www.fisheries.noaa.gov/s3/2024-12/2023-sar-narw.pdf>

<sup>19</sup> NOAA Fisheries. (2025). North Atlantic Right Whale. <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale>

<sup>20</sup> NOAA Fisheries. (2025). North Atlantic right whale calving season 2025 | NOAA fisheries. <https://www.fisheries.noaa.gov/national/endangered-species-conservation/north-atlantic-right-whale-calving-season-2025>

<sup>21</sup> New England Aquarium (2024). 2023-2024 right whale mother and calf pairs. <https://www.neaq.org/2023-2024-right-whale-mother-and-calf-pairs/>

<sup>22</sup> NOAA Fisheries. (2025). North Atlantic Right Whale Calving Season 2025. <https://www.fisheries.noaa.gov/national/endangered-species-conservation/north-atlantic-right-whale-calving-season-2025>

### a. Entanglement

Entanglement is the greatest threat to NARWs. Since 2017, entanglements have caused at least 10 mortalities, 35 serious injuries likely to result in death, and 54 sublethal injuries or illnesses where a whale has been harmed but not killed.<sup>23</sup> More than 86% of NARWs 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.<sup>24</sup> 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 seasonal 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). From 2022-2024 fishermen had a 99.1% retrieval success rate during 2,968 hauls of the on-demand gear.<sup>25</sup>

In September 2024, the Council voted in favor of Amendment 36, which adds on-demand pots as an allowable commercial gear for black sea bass outside the closure and is in the process of being approved by NMFS. Building upon this momentum and expanding the use of on-demand gear is paramount at this time.

This current EFP is set to expire in April 2025, and without a renewed EFP, or SAMFC regulations that allow on-demand gear use in closed areas, progress in expanding the use of on-demand gear will be halted.

## DISCUSSION

The SAFMC has an opportunity to allow on-demand fishing gear in areas that are seasonally closed to black sea bass fishing due to the presence of NARWs from November to April. This would benefit both the fishermen and NARWs by allowing black sea bass fishermen who use on-demand gear to continue to fish during seasonal closures without an exemption and reduce the risk of whales entangling themselves in ropes from traditional fixed gear.

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<sup>23</sup> NOAA Fisheries. (2025). 2017–2025 North Atlantic right whale unusual mortality event | NOAA fisheries.

<https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2025-north-atlantic-right-whale-unusual-mortality-event>

<sup>24</sup> 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/>

<sup>25</sup> South Atlantic Fishery Management Council. 2024. South Atlantic Snapper Grouper Regulatory Amendment 36: Appendix G. On-Demand Gear Report. Regulatory Flexibility Act Analysis and Regulatory Impact Review. September 2024

Allowing on-demand gear to be utilized in areas and during times of the year where it normally is prohibited will create an extra incentive for fishermen to use this gear. This action would build upon years of cooperative at-sea trials and hard work to develop on-demand gear and set the precedent that fishermen and whales can coexist, and that we don't have to choose one over the other. The SAFMC would be an example of how to modernize fisheries by embracing whale-safe gear in seasonal closures and allow fishermen and policy makers to continue to learn more about the additional benefits of on-demand gear through its expanded use.

### **Benefits to North Atlantic right whales**

As mentioned above, entanglement has already caused ten confirmed mortalities in NARWs since 2017 and when entangled, there is a risk of infection, starvation, and death including drowning. Although no recent entanglements can be attributed to the black sea bass pot fishery, entanglement risk is present wherever there are fixed gear fisheries with persistent vertical lines. With the emergence of on-demand gear, fisheries now have technology to reduce the threat to whales and other species from entanglement through testing in this fishery.

Current closed areas in the black sea bass fishery exist to protect NARWs from entanglement in calving grounds from November to April (with some closure area changes from December to March) from approximately Cape Canaveral to Cape Hatteras. Increasing the use of on-demand gear in the South Atlantic helps reduce the risk of entanglement and entanglement stress for NARWs, a proven factor that is reducing birth rates in the species.<sup>26</sup> The SAFMC has already worked hard to protect whales from North Carolina to Florida by creating seasonal closures and supported years of on-the-water testing of on-demand gear that has proven to be effective. The SAFMC should continue this support in Amendment 56 and allow this safer gear to be used in areas otherwise closed to pot fishing with conventional buoyed gear.

### **Benefits to the fishery**

On-demand gear has many benefits for fishermen as well as whales. Through this action, on-demand gear would allow fishermen 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 outside of the current seasonally limited fishery. 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 on-demand gear.<sup>27</sup> The opportunity to utilize on-demand gear within the seasonal closures would promote the use of the gear type, allow many fishermen who used on-demand gear as part of an EFP to see it used as intended and on a broader spectrum, and would allow all black sea bass fishermen using on-demand gear access to fishing areas that were previously restricted during large parts of the year.

### **Overarching Comments**

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<sup>26</sup> 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.

<sup>27</sup> SAFMC. "South Atlantic Black Seabass Ropeless (On-Demand) Gear Workshop Report August 22-23, 2023."

[https://safmc.net/documents/sg\\_a5b\\_bsbgearworkshopreport\\_draft\\_202309-pdf/](https://safmc.net/documents/sg_a5b_bsbgearworkshopreport_draft_202309-pdf/)

### **Amendment 56 must continue to comply with the requirements of the Magnuson-Stevens Act**

While Oceana is very enthusiastic about the possibility of opening seasonal closures to black sea bass fishing with on-demand gear, it is important to note that regardless of action on this issue, the Council must continue to satisfy all the requirements of the Magnuson-Stevens Act with regards to required parts of the Fishery Management Plan (FMP) including requirements to prevent overfishing, rebuild overfished stocks, and protect long-term fishery health. The Council cannot and should not use the potential opening of a seasonal closure to on-demand gear in the black sea bass fishery as a rationale to exceed or expand quotas already in place or create additional quotas for this area or extend rebuilding timelines

### **Regulatory treatment of on-demand gears**

On-demand fishing gears come in many configurations from a wide variety of gear developers operating on a variety of platforms and operational mechanisms. As the Council considers on-demand access to black sea bass seasonally closed areas, Oceana encourages the Council to avoid consideration and possible selection of particular technologies, strategies and approaches used by these varying gears. Instead, Oceana encourages the Council to focus on the common feature of these gears: the lack of persistent vertical lines that create entanglement risk. Oceana suggests that the Council consider a rope-based strategy in Amendment 56 that will modify the current seasonally closed areas to become gear restrictions on all gears with persistent vertical lines, allowing fishing to occur with gears that lack persistent vertical lines.

The Council should look at the modifications to closed areas in the recent (2021) Atlantic Large Whale Take Reduction Team rulemaking as an example to follow, as this rulemaking modified seasonal closures to prohibit fishing with setting, or possessing trap/pot gear in the area unless it is fished without buoy lines or with buoy lines that are stored on the bottom until it can be remotely released for hauling.<sup>28</sup>

This non-specific approach reduces entanglement risk while supporting a wide range of compliant on-demand gears and strategies.

### **CONCLUSION**

Oceana thanks the SAFMC for the opportunity to submit scoping comments on Snapper Grouper Regulatory Amendment 56 and applauds the steps that the SAFMC is taking towards wider utilization of on-demand fishing gear in times and areas where NARWs are found. Modernizing fisheries is vital to help protect critically endangered NARWs, and Oceana offers its commitment to support this action to allow on-demand fishing gear in areas that are seasonally closed to black sea bass fishing. Upon successful completion of Amendment 56, Oceana suggests that the SAFMC share this example with fishery managers facing entanglement challenges to encourage the use of on-demand gear to produce similar incentives to encourage the use of this gear.

On-demand gear has gained considerable momentum in the South Atlantic, and Amendment 56 will build on that momentum from the EFP work and Amendment 36. Years of testing has gone into this gear and on-demand gear has

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<sup>28</sup> 86 FR 51970 (September 17, 2021)

proven successful. Therefore, it should be used for exactly its intended purpose: to protect NARWs and other vulnerable species from deadly entanglements.

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 56 as it moves forward.

Sincerely,

A handwritten signature in black ink that reads "Alex Aines". The signature is written in a cursive, flowing style.

Alex Aines  
Marine Scientist  
Oceana