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June 6, 2014

RE: Review Regulatory Amendment 16 (Removal of Black Sea Bass Pot Closure)

Dear Chairman Hartig and Council Members,

On behalf of the millions of members and constituents of The Humane Society of the United States (the HSUS), I am submitting these comments for the record as part of the public comment period being held during the upcoming meeting of the South Atlantic Fishery Management Council (the Council). The agenda for June 10th indicates that the Snapper-Grouper Committee of the Council will be choosing preferred alternatives, and providing guidance to the Council with regard to proposed Regulatory Amendment 16.

As we have indicated in prior comments to the Council and in January 2014 in scoping comments to the National Marine Fisheries Service (NMFS), we oppose any change to the status quo—which is a seasonal prohibition on the use of commercial black sea bass trap/pots in the South Atlantic. We incorporate these comments by reference. Our prior comments to the Council pointed out that the suite of alternatives under consideration was inadequate and suggested inclusion of other alternatives. However; in no way did this, or does this, change our strong support for Alternative 1—the No Action alternative. Alternative 1 is the only alternative that is adequately protective of North Atlantic right whale mothers and their calves that depend on this area.

As the Council and its Committees are well aware, right whales are a critically endangered species. The current NMFS draft stock assessment estimates their population at 454 whales and documents births occurring in the nearshore waters from Florida through North Carolina (see: North Atlantic Right Whale, draft stock assessment at: http://www.nmfs.noaa.gov/pr/sars/pdf/ao2013_draft.pdf). It is this area that the Council is considering opening to risk-prone fishing with trap/pot gear during the time when North Atlantic right whales are expected to be present in these waters.

In September 2013, NMFS increased the annual catch limit for black sea bass in the Southeast. [78 FR 58249, September 23, 2013] When it did so, the agency prohibited the use of trap/pot gear from November 1- April 30th stating that “The seasonal sea bass pot prohibition is a precautionary measure to prevent interactions between black sea bass pot gear and whales during large whale migrations and during the right whale calving season off the U.S. southeastern coast.” Further, NMFS stated at that time that “[a]ccording to the NMFS List of Fisheries, black sea bass pots are considered to pose

an entanglement risk to marine mammals.”

NMFS recently released a Final Environmental Impact Statement (FEIS) on amendments to the Atlantic Large Whale Take Reduction Plan (ALWTRP) that proposes reductions in the number of risk-prone vertical lines. The agency stated in its proposed rulemaking that “[d]ue to the continuing risk of serious injury and mortality of large whales since the most recent revisions of the ALWTRP have gone into effect, NMFS believes additional modifications to the ALWTRP are needed to meet the goals of the MMPA and the ESA.” For this reason, the ALWTRP focused on reducing the amount of vertical line in the water where right whales and vertical lines co-occur. The NMFS assumed the status quo prohibition on trap/pot fishing as the baseline in its FEIS. The agency specifically stated that, with regard to black sea bass pots in the southeast; recent changes in fishery management had reduced risk to right whales, saying “[m]ost notably, the black sea bass fishing season has not co-occurred with the right whale season for the last four years.” [78 Fed. Reg. 42654] In the FEIS, NMFS stated that it was not necessary to adopt a seasonal closure to black sea bass trap/pot fishing in the Southeast as part of the ALWTRP because this action had already been undertaken by the council, commenting “a closure of the commercial black sea bass fishery in the South Atlantic [was adopted by the SAFMC] from approximately Cape Hatteras, North Carolina to Cape Canaveral, Florida from November 1 through April 30. That closure became effective when the final rule was published on September 23, 2013.” [FEIS at V.2, pg. 1-14] Lifting the current prohibition and allowing increased trap/pot fishing would be counter to NMFS’ stated goal in the FEIS and current rulemaking, which is to reduce the overall number of vertical lines. Allowing winter fishing in all or part of the area with commercial trap/pot gear would instead *increase* the number of vertical lines in areas where they are currently prohibited and where right whale calves are born and nurtured.

Further, although a NMFS Federal Register notice stated that the intent of removing the current prohibition on the black sea bass trap/pot fishery was “to minimize socio-economic impacts to black sea bass pot fishers while maintaining protection for whales in the South Atlantic region that are listed as endangered and threatened under the Endangered Species Act” [78 FR 72868], and the Council’s initial draft EIS for this proposed Amendment also stated that it sought to minimize socio-economic impacts; the Council has changed the nuance of this long-standing goal, now stating that the goal is to “increase socio-economic benefits” to black sea bass fishermen. However, we do not see the need to modify the prohibition on the basis of the economics of the fishery. When it promulgated Amendment 19 and instituted the broad area prohibition on trap/pot fishing annually between November and April, NMFS stated that quota restrictions had prevented the fishery from operating after November 1st but, in the event of a formal regulatory closure, other types of gear could be used. Further, the economic analysis section of the regulation concluded that “revenues foregone by vessels using black sea bass pots will likely be gained by vessels using other gear types. Thus the black sea bass pot prohibition will mainly have distributional effects within the commercial sector, *with the overall industry revenues and likely profits expected to increase.*” [78 FR at 58251, September 23, 2013; emphasis added] There is no reason to suspect that this economic analysis has changed just within the past nine months. With the prohibition, there already appears to be a potential for increase profits for the industry overall, and any possible increase in economic benefit to a small segment of the fishery is outweighed by the very real increase in risk of fatal entanglement of young, vulnerable right whales and their mothers.

The HSUS also wishes to comment that the “Environmental Impact Statement” for Regulatory Amendment 16, dated May 2014 and its associated appendices (e.g., Appendix M) posted to the Council’s website are inadequate. In its consideration of the mandates of the ALWTRP, the draft EIS outlines gear modifications required of extant fisheries under the ALWTRP, but it clearly fails to consider that mandate of the ALWTRP also requires *reductions* in vertical lines whereas the Council is considering an increase. Further, as noted above, the FEIS for the ALWTRP considered as the baseline that this black sea bass trap/pot fishery was already annually prohibited from November through April. In addition to this serious omission, the discussion of humpback whales in Chapter 3.2.3 fails to use information from

the most recent NMFS stock assessment and from Robbins stating that the methodology employed indicates that the annual entanglement-related mortality rate of Gulf of Maine humpback whales may be underestimated and may be as high as 18.8 to 29.3 whales per year, depending on the assumptions underlying estimates of population size. The likely entanglement-related mortality and serious injury to endangered whales is likely far higher than accounted in the stock assessments. The EIS draft also does not address potential entanglement risk to small cetaceans, such as MMPA-depleted bottlenose dolphins, that are present in the area and have a well-known history of fatal entanglements in trap/pot gear. The discussion of additional threats to right whales in Appendix M omits reasonable consideration of impacts from increasing ocean noise resulting from ship traffic, Defense Department activities and the increasing use of seismic technology in the area during surveys for oil and gas and for siting offshore wind energy. The discussion also omits consideration of impacts likely from the increased permitting of offshore alternative energy lease sites within the range of this proposed amendment (including a proposal to develop a large scale wind energy facility offshore of Tybee Island, GA).

Conclusion

The waters from Florida through North Carolina require extra precaution when consideration is given to permitting activities that can harm the remnant population of right whales. Given the well-known history of entanglement in lines associated with trap/pot fisheries, it is prudent to continue to prohibit use of black sea bass pots in these waters from November through April, when right whales and their newborns are most likely to be present. We strongly support this prohibition and urge you to select Alternative 1, the “No Action” alternative as the preferred alternative.

Sincerely,



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cc. SAFMC Council Members