



*Supporting responsible decisions to sustain the quality of life in coastal Georgia.*

221 Mallory Street, Suite B Saint Simons Island, Georgia 31522 912.506.5088

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June 6, 2014

Ben C. Hartig, Chairman  
South Atlantic Fishery Management Council  
4055 Faber Place Drive, Suite 201  
North Charleston, SC 29405

*Sent via email to [Mike.collins@safmc.net](mailto:Mike.collins@safmc.net)*

Dear Chairman Hartig and Council Members:

The Center for a Sustainable Coast is submitting the following comments to oppose the proposed Regulatory Amendment 16 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region and the changes it would make to the seasonal closure of the South Atlantic black sea bass pot sector. The “no action” alternative, which would maintain seasonal closure of the fishery established under Regulatory Amendment 19, is the only option that’s responsibly protective of the critically endangered North Atlantic right whale. The Council should select the no action alternative to prevent harm to the species, ensuring compliance with both the Endangered Species Act (“ESA”) and Marine Mammal Protection Act (“MMPA”).

The North Atlantic right whale is highly endangered, and has been for many years. Contrary to the representation in the Environmental Impact Statement (“EIS”) for Amendment 16, the most recent stock assessment reports a population of only 444 animals. [*See Right Whale Stock Assessment Report, available at <http://www.nmfs.noaa.gov/pr/sars/species.htm#largewhales>.*]

The National Marine Fisheries Service (“NMFS”) has repeatedly found that the loss of even one or two of these animals could threaten the species’ very existence. Based on this extremely low population level, “no mortality or serious injury for this stock can be considered insignificant,” Stock Assessment at 15, and NMFS may not lawfully authorize the take of right whales incidental to the operation of the black sea bass or any other fishery.

Not only is the species as a whole highly endangered, but the right whale mothers and calves that will be affected by this action are both the most valuable members to the future of the species and the most at risk from fishing gear entanglement. The EIS states that right whale calves and juveniles are entangled more frequently and less able to break free from entanglements.



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The existing November-through-April closure implemented through Amendment 19 was devised explicitly to protect this vulnerable segment of the population in the area from North Carolina to Florida – the species’ only known calving grounds. As stated in the preamble to that rule, “[t]he 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.” 78 Fed. Reg. 58249 (Sept. 23, 2013).

Trap/pot fisheries like the black sea bass are a particular concern to the right whale population. Fishing-gear entanglement is a leading cause of death and injury for the species, and over 75% of the population has been entangled at least once, while 14-51% of the population is involved in an entanglement each year. Moreover, rates of both entanglement and serious injury have increased in recent years, and these rates are still considered to be underestimated because of detection errors. Though it is not always possible to determine the origin of line-entangling whales, when the gear can be identified, trap/pot gear accounts for 71% of entanglements. NMFS designates black sea bass pots, in particular, as a Category II Fishery under the MMPA, meaning that they have caused incidental mortality and serious injury of marine mammals. *See* 78 Fed. Reg. at 58250.

Entanglements of right whales and other large whales in black sea bass pot gear constitute “take” under the ESA, and the ESA prohibits the “take” of an endangered species unless it is specifically permitted. The ESA defines take as conduct that will “harass, harm . . . wound, kill, [or] trap” an individual of a listed species. Likewise, the MMPA establishes a “moratorium on the taking” of marine mammals and specifically prohibits “any person . . . or any vessel [from] tak[ing] any marine mammal.”

Although both the ESA and the MMPA contain provisions to authorize take incidental to an otherwise lawful activity, including commercial fishing, NMFS has not invoked these limited exceptions to permit incidental take of MMPA-protected whales by commercial fisheries in the Atlantic. As previously stated, the low population of the North Atlantic right whales would make such authorization impossible because the agency could not possibly demonstrate that any take would be insignificant, as required by the MMPA and ESA.



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Because taking any North Atlantic right whale cannot be authorized under these statutes, the Council should maintain the seasonal closure of the fishery in order “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.” *See* 78 Fed. Reg. at 58249.

Compared with critically important conservation justifications for protecting right whales, there is negligible economic justification for lifting the seasonal closure of the black sea bass fishery. Although Amendment 19 was put in place in 2013, limitations on the operation of the fishery caused by annual catch limits (“ACLs”) closed the fishery by this date consistently dating back to 2010. Therefore the seasonal closure encompassed by the “no action” alternative is well established. As stated in the preamble to Amendment 19, the seasonal closure would not result in economic harm. It would “mainly constrain the **revenue increases** associated with an increased ACL for 32 commercial vessels which possess black sea bass pot endorsements.” 78 Fed. Reg. at 58251 (emphasis added).

Based on the above rationale, the Council should reject the proposed Amendment 16 and maintain the status quo embodied in the “no action” alternative.

Thank you for your consideration of these comments.

Respectfully,

*David C. Kyler*

David C. Kyler  
Executive Director