

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

June 5, 2014

RE: Regulatory Amendment 16 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region

Dear Chairman Hartig,

On behalf of the more than 100,000 supporters and constituents of Whale and Dolphin Conservation, I am writing to comment on the proposal to remove the prohibition of the seasonal black sea bass trap/pot fishery closure from November 1 through April 30. This prohibition was set in place under Amendment 19 in 2013. As the time period of this closure overlaps with the presence of vulnerable mothers and newborn calves in the only known calving grounds for the North Atlantic right whale, we strongly urge you to select Alternative 1- No Action, as the preferred alternative.

WDC is appointed to the National Marine Fisheries Service (NMFS) Atlantic Large Whale Take Reduction Team (TRT) whose charge under the Marine Mammal Protection Act (MMPA) is to “immediate[ly]” reduce risk of entanglement to Endangered Species Act (ESA) listed large whales to levels below Potential Biological Removal (PBR) in order to reduce, within 5 years, incidental mortality and serious injury “to insignificant levels approaching a zero mortality and serious injury rate.” 16 U.S.C. § 1387(f)(2). The rate of mortality continues to exceed the PBR level for right whales, despite current protective measures prescribed by the take reduction plan. NMFS has found that there is no level of mortality, however low, that can be considered “insignificant” to this imperiled population (Id.).

ESA-listed large whales, including the humpback and North Atlantic right whale, have a known seasonal migration from November 1 through April 30, when they are transiting the waters of the Southeastern US. Right whales spend considerable time between North Carolina and Florida in their calving grounds. In this area of especially high risk, the existing seasonal closure of the black sea bass trap/pot fishery protects these whales from the threat of entanglement which has affected at least 75% of the population. Additionally, where a cause of death can be determined, over half of all right whale deaths are a result of entanglement in commercial fishing gear (NMFS 2012).

Following the NMFS’ September 2013 decision to increase the annual catch limits for black sea bass in the Southeast, the agency prohibited the use of trap/pot gear from November 1- April 30 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 that “According to the NMFS List of Fisheries, black sea bass pots are considered to pose an entanglement risk to marine mammals.”

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While trap/pot and gillnet fishing occurs throughout the east coast, the most vulnerable demographic of the population of right whales utilizes waters of the Southeastern U.S., and their presence here directly overlaps temporally and spatially with the proposed reopening of the black sea bass trap/pot fishery. In the Southeast, NMFS itself has stated that recent changes in fishery management have 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, July 16, 2013] Although NMFS has relied on this prohibition to protect right whales, the Council is now considering removing this protection.

Of the seven alternatives listed, the only option that will protect right whales in all areas and times of their calving habitat use is Alternative 1. Of greatest concern are Alternatives 2 and 5, which fail to even provide protection to right whales in their current designated critical habitat. As we have pointed out in our petition to expand critical habitat, the current boundaries are not inclusive of all habitat used by right whales for calving in the region. Beginning as far back as 2007, NMFS’ own scientists have published research demonstrating the need for much broader areas of protection than the currently designated but outdated boundaries of critical habitat in the southeast (Garrison 2007; Keller *et al.* 2012). Rather than proposing to reduce areas of protection, the best available science would dictate that they be expanded.

In rulemaking of September 2013, the economic impact analysis for Amendment 19 found no adverse economic consequences to the black sea bass fishery as a result of the prohibition. Further, NMFS stated in the Federal Register that, since April 2010, there has been no trap/pot fishing for black sea bass during the months of November through April due to quota restrictions. Between the need to reduce risk of entanglement to endangered whales and the lack of adverse economic consequences that results from the seasonal closure, a modification of the current closure is not warranted. We strongly urge you to select Alternative 1- No Action, and continue the existing seasonal closure of the black sea bass trap/pot fishery.

Sincerely,



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References Cited

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