



Natural Resources Defense Council  
40 West 20<sup>th</sup> Street  
New York, NY 10011  
Tel: (212) 727-2700  
Fax: (212) 727-1773

**Via U.S. Mail & Electronic Submission (Ceba3PHcomments@safmc.net)**

Mr. David Cupka, Chairman  
South Atlantic Fishery Management Council  
4055 Faber Place, Suite 201  
North Charleston, SC 29405

August 17, 2012

**Re: SAFMC's Comprehensive Ecosystem-Based Amendment 3 (NOAA-NMFS-2012-0820)**

Dear Chairman Cupka,

Please accept the following comments by the Natural Resources Defense Council on Comprehensive Ecosystem-Based Amendment 3 (CEBA 3). We are disappointed and surprised that the action proposing new and expanded marine protected areas for speckled hind and warsaw grouper has been removed from CEBA 3 since the June Council meeting, particularly as we cannot recall the Council having directed staff to remove this action from the amendment. We urge the Council to instruct staff to reintroduce this action into CEBA 3 without further delay.

With regard to the actions that remain in the current draft of CEBA 3, we appreciate the Council's efforts to improve data collection, as some of the measures in CEBA 3 are designed to do. We support the Council's proposals to move toward electronic monitoring and faster reporting timelines. Accordingly, we support Alternative 3 of Action 1, requiring daily electronic reporting by charter and headboat vessels, and Alternatives 3 and 4 of Action 2, preventing non-reporting commercial vessels from selling fish and requiring vessel monitoring systems on commercial vessels. We urge the Council to modify Alternative 2 of Action 2 to require electronic reporting of commercial logbooks within one week or less, as we believe 21 days is too long to prevent overages in a timely manner.

We also urge the Council and NMFS to explicitly define a detailed methodology for the overarching data collection and analysis system, including all sources of fishing data, modes of collection, transmission, and analysis, and how the data will be used in management decision making and stock assessment. An overall review of the data architecture system, ideally by external, independent experts, could provide significant recommendations for improving a

system that is in need of systemic improvements to support the increased demands of fisheries managers and scientists.

With regard to Action 3, we are particularly concerned with the Council's failure to adopt and for NMFS to implement an effective standardized bycatch reporting methodology (SBRM) that meets legal requirements.<sup>1</sup> The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires that all fishery management plans (FMPs) shall establish an SBRM.<sup>2</sup> This requirement "makes perfectly clear" that an SBRM is a "required provision" of any FMP to assess the amount and type of bycatch in the fishery.<sup>3</sup> For the reasons stated below, we do not believe that CEBA 3, as currently crafted, fulfills this requirement.

### **The MSA's Requirement for an Adequate SBRM**

Recognizing the problem of bycatch in the nation's fisheries, Congress added to the MSA in 1996 the requirement that each FMP "establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided."<sup>4</sup> These new requirements for an SBRM and bycatch minimization measures were intended to both "mandate the assessment of bycatch levels in each fishery" and "require that steps be taken to reduce bycatch."<sup>5</sup> The ultimate goal was to "minimize waste and discards of unusable fish."<sup>6</sup>

In 1998, NMFS released its first national bycatch plan, which recognized that the first step toward reducing bycatch and bycatch mortality is developing a standardized system for "determining the magnitude and character of the bycatch in a given fishery."<sup>7</sup> The plan laid out a two-step process: (1) review and improve collection methods, data sources and analysis of data to determine the magnitude of bycatch; and (2) standardize the collection of bycatch data.<sup>8</sup> In 2003, NMFS released a national bycatch strategy, which included the goal of developing "a national approach to a standardized bycatch reporting methodology" to comply with the SBRM requirement of the MSA.<sup>9</sup> One component of that strategy was the establishment of a national working group on bycatch, which was tasked with evaluating the current methodologies for estimating bycatch and recommending a statistical design for observer programs to cover all U.S. fisheries and standards of precision to be achieved for

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<sup>1</sup> As a general matter, we refer throughout these comments to a single SBRM for the region, consistent with the example of the SBRM in the Northeast. It may be that the Council and NMFS, upon adequate analysis, determine that different SBRMs should be developed for different fisheries or groups of fisheries. We do not intend to presuppose that result and refer to a single SBRM in the region simply as a matter of convenience.

<sup>2</sup> 16 U.S.C. § 1853(a)(11).

<sup>3</sup> *Oceana, Inc. v. Evans*, No. Civ.A.04-0811 ESH, 2005 WL 555416, at \*40 (D.D.C. Mar. 9, 2005) ("Oceana I").

<sup>4</sup> 16 U.S.C. § 1853(a)(11); see also 16 U.S.C. § 1851(a)(9).

<sup>5</sup> S. REP. NO. 104-276, at 5.

<sup>6</sup> S. REP. NO. 104-276, at 1.

<sup>7</sup> NMFS, *Managing the Nation's Bycatch*, at 3 (1998).

<sup>8</sup> *Id.* at 31-32.

<sup>9</sup> NMFS, *NOAA Fisheries National Bycatch Strategy* (2003).

discard estimates.<sup>10</sup> The working group determined that many data collection methods may contribute to useful bycatch estimation programs, but “at-sea observation (observers or electronic monitoring) provides the best mechanism to obtain reliable and accurate bycatch estimates for many fisheries.”<sup>11</sup> For fishery resources, excluding protected species, caught as bycatch in a fishery, the working group recommended a precision goal of 20-30% coefficient of variation (CV) for estimates of total discards; or if total catch could not be divided into discards and retained catch, then the goal was 20-30% CV for estimates of total catch.<sup>12</sup>

In 2004, NMFS released *Evaluating Bycatch: A National Approach to Standardized Bycatch Monitoring Programs*, which described an SBRM as “the combination of data collection and analyses...used to estimate bycatch in a fishery...”<sup>13</sup> In the 2004 report, NMFS spelled out that SBRMs must include specific objectives, protocols, and precision performance criteria for bycatch reporting in each fishery, including clearly documented and defined responsibilities for each entity involved in collecting and using bycatch data, periodic reviews, and the development of more effective and efficient methods of collecting and analyzing bycatch data.<sup>14</sup>

### The Importance of an Adequate SBRM in the South Atlantic

In our view, the lack of an effective SBRM goes to the very heart of many of the fundamental problems inhibiting sustainable fisheries in the region. According to NMFS, bycatch accounts for a “substantial portion” of total fishing mortality in some fisheries, which affects sustainability by increasing uncertainties regarding stock status and fishing mortality.<sup>15</sup> In the Southeast region (South Atlantic and Gulf of Mexico), three-quarters of all commercial catch and half of all recreational catch is discarded, which is a significantly higher ratio than anywhere else in the country (see Tables 1 & 2). By comparison, only 14% of total commercial catch is bycatch in the Northeast and a mere 7% in Alaska and the Pacific Northwest.

### Regional Commercial Landings and Bycatch<sup>16</sup>

Region	Landings (lbs)	Bycatch (lbs)	Total Catch (lbs)	Bycatch Ratio
Northeast	1,006,370,000	165,888,000	1,172,258,000	14%
Southeast	219,086,000	682,691,000	901,777,000	76%
Alaska	4,487,167,000	338,573,000	4,825,740,000	7%
Northwest	332,396,000	25,564,000	357,960,000	7%
Southwest	N/A	N/A	N/A	N/A
Pacific Islands	23,000,000	8,556,000	31,556,000	27%
National Totals	6,068,019,000	1,221,272,000	7,289,291,000	17%

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> NMFS, *Evaluating Bycatch: A National Approach to Standardized Bycatch Monitoring Programs*, at 102 (2004).

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

<sup>15</sup> NMFS, *Managing the Nation’s Bycatch: Priorities, Programs, and Actions for the National Marine Fisheries Service*, at 11 (1998).

<sup>16</sup> NMFS, *U.S. National Bycatch Report*, at Table 1 (2011).

**Southeast Recreational Landings and Bycatch by State<sup>17</sup>**

State	Landings (# fish)	Bycatch (#)	Total Catch (#)	Bycatch Ratio
North Carolina	8,946,030	16,664,635	25,610,665	65%
South Carolina	3,718,584	7,347,713	11,066,297	66%
Georgia	1,469,184	3,773,365	5,242,549	72%
Florida	86,907,986	73,464,080	160,372,066	46%
Alabama	4,215,462	5,724,213	9,939,675	58%
Mississippi	3,004,587	3,287,067	6,291,654	52%
Louisiana	16,370,434	20,050,226	36,420,660	55%
Texas	N/A	N/A	N/A	N/A
<b>Total</b>	124,632,267	130,311,299	254,943,566	51%

To help address bycatch mortality, annual catch limits (ACLs) are required to account for all sources of fishing mortality. However, current ACLs for nearly all stocks in the South Atlantic are based on landings alone.<sup>18</sup> While bycatch is generally factored into the catch time series used in most stock assessments, the vast majority of federally-managed stocks in the region have not been assessed, meaning that the bycatch component of total fishing mortality for those stocks is completely ignored. And even for assessed stocks where status determination criteria, overfishing limits (OFLs), and acceptable biological catch (ABC) levels are based on total fishing mortality, ACLs are still mostly based on landings alone. As a result, the total fishing mortality, including from bycatch, for most stocks in the region is likely significantly higher than what is captured in the landings data on which most management decisions are made.

The failure to account for bycatch can lead to overfishing and stock depletion that is often unnoticed and unaddressed. In the case of assessed stocks, like red snapper, the result may often be such significant population declines that a complete shutdown of the directed fishery

<sup>17</sup> NOAA, *State of the Coast Website*, available at [http://stateofthecoast.noaa.gov/rec\\_fishing/welcome.html](http://stateofthecoast.noaa.gov/rec_fishing/welcome.html).

<sup>18</sup> The NS1 Guidelines, the legislative history of the MSA, judicial interpretation, and NMFS' own stated positions all concur that bycatch must be accounted for in the ACL. The National Standard 1 (NS1) Guidelines define an ACL as "the level of annual *catch* of a stock...that serves as the basis for invoking AMs." 50 C.F.R. § 600.310(f)(2)(iv) (emphasis added). *Catch* is defined as "the total quantity of fish..." and "includes fish that are retained for any purpose, as well as mortality of fish that are discarded." 50 C.F.R. §§ 600.310(f)(2)(i), (iv). On precisely the question of how ACLs should account for discards, the response to comments in the NS1 Guidelines stated that "all sources of fishing mortality, including dead discards and post-release mortality from recreational fisheries must be accounted for..." and "catch includes fish that are retained for any purposes, mortality of fish that have been discarded, allocations for scientific research, and mortality from any other fishing activity." NOAA, NS1 GUIDELINES, *Response to Comments*, 74 Fed. Reg. 3178, 3190 (Jan. 16, 2009). This interpretation follows Congress' clear intent. The Senate Report from the Committee on Commerce, Science, and Transportation on the "Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005" stated that "[c]atch of all species, whether targeted or taken as bycatch, whether retained or discarded, count toward the annual catch limits, and fisheries are closed when these limits are reached." S. REP. 109-229, 2006 WL 861833, \*22 (Apr. 4, 2006). A recent federal district court decision found that "bycatch must be accurately monitored and reported . . . to ensure accountability with annual catch limits." *Oceana Inc. v. Locke*, 831 F. Supp. 2d 95, 110 (D.D.C. 2011). The decision quoted directly from the NMFS' brief, which stated: "[b]ecause the Act now requires the Council and NMFS to set annual catch limits for these stocks, and because bycatch counts against those catch limits, the total amount of bycatch must be accurately assessed to ensure that catch limits are not exceeded." See *id.* (citing Def. Mot. at 12).

is the only option available until the stock begins to rebuild. The lack of robust and reliable bycatch data continues to be a problem when a directed fishery is closed because fisheries scientists and managers need such data for determining if and when to reopen the fishery and what ACLs are appropriate. In the case of stocks where the directed fishery has been closed but bycatch continues to contribute to overfishing, the lack of adequate bycatch data prevents fisheries managers from using bycatch caps on co-occurring stocks as a means of reducing fishing pressure sufficiently on the stocks for which bycatch is contributing to overfishing. Managers have few options to prevent overfishing in such situations other than large area closures. The availability of reliable bycatch data in other regions has enabled the use of bycatch caps that protect overfished stocks while still permitting fishing on healthier populations (*e.g.*, Pacific Groundfish or Atlantic Mackerel, Squid, and Butterfish FMPs).

The lack of reliable bycatch data is also one of the main reasons the South Atlantic has such a large number of data-limited stocks that are currently being managed with ACLs equivalent to either the third highest landings or median landings over the past 10 years. Current efforts to implement more robust data-limited methods for these stocks, such as the Only Reliable Catch Stock (ORCS), will remain hampered by lack of accurate bycatch data. The ORCS Technical Working Group emphasized the importance of including bycatch mortality in catch-setting methods for data-limited stocks:

“These two terms are not synonymous, since catch is considered the landed catch plus the total amount of dead discard (*i.e.*, bycatch). Too often an evaluation of historical catch becomes an examination of historical landings. Bycatch levels in other fisheries, as well as discard rates and discard mortality levels, should be discussed and factored into the evaluation of historical catch.”<sup>19</sup>

Other data-limited methods for setting ACLs that have been prescribed for use in the region, such as Depletion Based-Stock Reduction Analysis (DB-SRA) and Depletion Corrected Average Catch (DCAC), also rely on total catch, not just landings.

### **History of Bycatch Data Collection in the South Atlantic**

In 1991, NMFS enacted regulations providing the NMFS Science and Research Director (SRD) discretionary authority to require owners and operators of commercial and for-hire vessels to maintain fishing records, potentially including bycatch.<sup>20</sup> Eight years later, NMFS reorganized its recordkeeping regulations and expanded coverage of the SRD’s authority to include vessels fishing for snapper-grouper species in federal or state waters.<sup>21</sup> NMFS explained the action was “necessary to ensure that all sources of fishing effort and fishing mortality affecting the managed stock are properly accounted for in the Federal management regime.”<sup>22</sup>

<sup>19</sup> Jim Berkson *et al.*, “Calculating Acceptable Biological Catch for Stocks That Have Reliable Catch Data Only (Only Reliable Catch Stocks – ORCS),” NOAA Technical Memorandum NMFS-SEFSC-616, at 3 (May 2011).

<sup>20</sup> 56 Fed. Reg. 2,446 (Jan. 23, 1991); 56 Fed. Reg. 56,022 (Oct. 31, 1991).

<sup>21</sup> 61 Fed. Reg. at 34,930, 34,940.

<sup>22</sup> 61 Fed. Reg. at 34,932.

In 2009, more than 13 years after the enactment of the Sustainable Fisheries Act and its SBRM requirements, NMFS adopted Amendment 15B to the Snapper-Grouper FMP.<sup>23</sup> NMFS and the SAFMC determined that Amendment 15B was necessary because the “[d]evelopment of a standardized reporting methodology [would] ensure the collection and distribution of timely, reliable, and standardized bycatch data to the public and policy decision-makers,” but that “there [was] no such methodology fully implemented for the southeast snapper grouper fishery due to a lack of adequate funding.”<sup>24</sup> Consequently, NMFS and the SAMFC were “seeking to implement a long-term, standardized monitoring and assessment program as part of [the] snapper grouper amendment.”<sup>25</sup>

Amendment 15B selected the Atlantic Coastal Cooperative Statistics Program’s (ACCSP) Release, Discard and Protected Species Module as its preferred methodology, but did not implement it due to a lack of funding.<sup>26</sup> Instead, NMFS simply listed a number of data collection tools (e.g., logbooks, observers, MRFFS, vessel monitoring systems, etc.) that the SRD could adopt, but did not in any way provide a methodology that would require the use of these tools to produce statistically-reliable bycatch data. NMFS actually acknowledged that Amendment 15B did not implement any new requirements, stating that “the Final Rule [for Amendment 15B] does not explicitly impose any new reporting, record-keeping or other compliance requirements on small entities because this rule simply specifies the types of requirements that *could be* imposed to improve bycatch monitoring and assessment.”<sup>27</sup>

### **CEBA 3 Fails to Adopt a Legally-Compliant SBRM**

An SBRM under Section 303(a)(11) of the MSA must (1) mandate techniques to ensure statistically reliable estimates of bycatch, including observer coverage when necessary;<sup>28</sup> (2) must employ a mandatory, nondiscretionary methodology;<sup>29</sup> and (3) must improve upon the status quo when the existing methodology has been deemed deficient.<sup>30</sup> Alternatives 1 and 2 of CEBA 3’s Action 3 would fail to establish an SBRM because under both alternatives (1) the specified data collection tools are not required and are not shown to provide statistically reliable bycatch estimates; (2) the selection of data collection tools and the methodology for data collection and analysis is left to the SRD’s discretion and not based on any clearly defined and publicly available methodology; and (3) the inadequate existing methodology remains in

<sup>23</sup> Amendment 15B Final Rule, 74 Fed. Reg. at 58,902.

<sup>24</sup> SAFMC and NMFS, Amendment 15B to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region Including a Final Environmental Impact Statement, Initial Regulatory Flexibility Analysis, Regulatory Impact Review and Social Impact Assessment/Fishery Impact Statement, at 1-7 (2008).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 2-5.

<sup>27</sup> Final Rule for Amendment 15B, 74 Fed. Reg. at 58,907 (emphasis added).

<sup>28</sup> *Oceana I*, 2005 WL 555416, at \*40; *Oceana, Inc. v. Evans*, 384 F. Supp. 2d, 203, 232-34, 236 (D.D.C. 2005) (“*Oceana II*”); *Oceana, Inc. v. Locke*, 670 F.3d 1238, 1239, 1241-43 (D.C. Cir. 2011) (“*Oceana IV*”).

<sup>29</sup> *Oceana II*, 384 F. Supp. 2d at 209; *Oceana IV*, 670 F.3d at 1243.

<sup>30</sup> *Conservation Law Found. v. Evans*, 209 F. Supp. 2d 1, 12-13 (D.C. Cir. 2001) (citing 50 C.F.R. § 600.350(d)(1)); *Oceana II*, 384 F. Supp. 2d at 209.

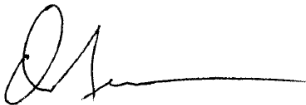
place. As explained above, the discretionary bycatch data collection tools included in Amendment 15B do not by themselves and without any governing methodology comprise an SBRM. Both Alternative 1 (status quo) and 2 would merely adopt the ACCSP bycatch module as the preferred methodology, but take no further action to actually implement it.

Alternative 3, simply stating that “bycatch data will be collected to meet or exceed the ACCSP standards,” also fails to implement an SBRM. This single conclusory statement does not in any way describe the methodology that would be used to accomplish this. The ACCSP is a set of standards, not an already-assembled program designed specifically for any particular fishery. To implement an SBRM that meets or exceeds ACCSP standards, a detailed program must be created that defines how the data collection tools will produce a statistically-reliable estimate of bycatch and how the data collection and analysis activities will be conducted by various stakeholders and government officials.

### **Conclusion**

We appreciate the opportunity to comment on these important issues. We urge the Council to instruct staff to reincorporate the action to adopt new and modified MPAs for speckled hind and warsaw grouper into CEBA 3. We also urge the Council and NMFS to review the requirements for SBRMs, as laid out by Congress, NMFS, and the courts, and to develop a plan for designing and implementing such an adequate SBRM in the South Atlantic.

Respectfully Submitted,



David Newman  
Oceans Program Attorney  
Natural Resources Defense Council  
40 West 20th Street  
New York, NY 10011  
212.727.4557  
dnewman@nrdc.org

Cc: SAFMC Members  
Dr. Bonnie Pontwith  
Roy Crabtree  
Monica Smit-Brunello  
Luiz Barbieri

-----Original Message-----

From: [slshcrkwtrwks@aol.com](mailto:slshcrkwtrwks@aol.com) [<mailto:slshcrkwtrwks@aol.com>]

Sent: Friday, August 17, 2012 5:39 PM

To: Duval, Michelle; [fvtarbaby@embarqmail.com](mailto:fvtarbaby@embarqmail.com)

Subject: RE: South Atlantic/workshops/informal input

Michelle, yes if you would please forward this as my public comment since i don't feel like wasting the time to rewrite it to a council that will ignore it anyway. And please make sure to note that the low turnout that i assume occurred at the informal hearing was mainly due to both logistics and weather (too beautiful to waste a day on a 4 hour drive). Believe me, this is reason for alot of concern up here. This council has shown it's colors enough with the reallocation of everything from our paltry mahi quota to the present snowy trip limit that prevents historical participation and allow;s the recreational community to essentially hijack it. (How do you reckon the snowy rec quota allowing 523 fish has remained open when the golden tilefish recreational quota is almost three times as much and was shut down months ago when fishermen have to drive over snowies to get to goldens.

I am tired of losing and as stated won't without a fight again.

Anyway, thanks.....jeff

[slshcrkwtrwks@aol.com](mailto:slshcrkwtrwks@aol.com)

-----Original Message-----

From: Duval, Michelle <[michelle.duval@ncdenr.gov](mailto:michelle.duval@ncdenr.gov)>

To: Jeff Oden <[slshcrkwtrwks@aol.com](mailto:slshcrkwtrwks@aol.com)>

Sent: Wed, Aug 15, 2012 2:13 pm

Subject: RE: South Atlantic/workshops/informal input

Jeff, If you would like me to forward these comments to SAFMC staff as part of the public comment period or for distribution to the rest of the council members, please let me know, I am happy to do so. michelle

\*\*\*\*\*

From: Dewey Hemilright [<mailto:fvtarbaby@embarqmail.com>]

Sent: Friday, August 10, 2012 10:15 PM

To: Daniel, Louis

Cc: Duval, Michelle; Jeff Oden

Subject: Fwd: South Atlantic/workshops/informal input

Michelle

Can you forward to Tom burgess for Jeff ,I don't have his e-mail in my iPad.

I all so share 100% Jeff comments for me too.



Thanks  
Dewey  
Sent from my iPad

Begin forwarded message:  
From: [slsherkwtrwks@aol.com](mailto:slsherkwtrwks@aol.com)  
Date: August 10, 2012 10:06:36 PM EDT  
To: [fvtarbaby@embarqmail.com](mailto:fvtarbaby@embarqmail.com)  
Subject: Fwd: South Atlantic/workshops/informal input

-----Original Message-----

From: slsherkwtrwks &lt;slsherkwtrwks@aol.com>;  
To: sean &lt;sean@ncfish.org>; fvtarbaby &lt;fvtarbaby@embarqmail.com>; louis.daniel  
&lt;louis.daniel@ncdehnr.gov>; michelle.duval &lt;michelle.duval@ncdehnr.gov>;  
Sent: Fri, Aug 10, 2012 6:59 pm  
Subject: South Atlantic/workshops/informal input

Dewey, this for some reason did not get throught to Louis or Michelle.  
Anyway, if you would send it on to them as well as Tom ... Thanks and good  
fishin.....jeff

[slsherkwtrwks@aol.com](mailto:slsherkwtrwks@aol.com)

-----Original Message-----

From: slsherkwtrwks &lt;slsherkwtrwks@aol.com>;  
To: sean &lt;sean@ncfish.org>; fvtarbaby &lt;fvtarbaby@embarqmail.com>; louis.daniel  
&lt;louis.daniel@ncdehnr.gov>; michelle.duval &lt;michelle.duval@ncdehnr.gov>;  
Sent: Fri, Aug 10, 2012 6:59 pm  
Subject: South Atlantic/workshops/informal input

As a fisherman that has in the last 36 years watched a steady and increasing erosion of my  
industries ability to survive, the latest SA public hearing in New Bern on Aug 16th just about  
tops the cake.

First you have a council that on one hand ask for input on the sale of bag limit caught king  
mackerel as well as the ability to sell tournament caught king mackerel, and then you on the  
other hand have a council that sees nothing wrong with having a discussion about taking latent  
commercial effort out of the fishery.

My question is, what is wrong with latent effort? It is not impacting the stock, and every  
individual that has a permit either earned it or bought it.

Also there is already a income qualifier involved in the fishery with either a \$10,000.00 or  
25% rule involved in the fishery. So where is the problem. Is someone not fishing a problem. If  
so then we could say that no one that had never recreationally fished for said species could never  
ever do it.....if we were going to be fair about it.

The truth is i haven't commercially fished for any mackeral species for a few years for various reasons but i am still a commercial fisherman that values that permit AND WILL FIGHT FOR IT. My landings prior to the mid 2000,s compare with anybodies and just because i haven,t fished in a few years doesn,t mean that that permit is not near and dear to me and many more like myself up in northeastern N.C..

Interestingly enough, in this months "Commercial Fishing News" out of New England there is a case made by none other than NMFS that croaker may become the next cod in New England. Yes, they admit that climate change may be altering fisheries which is partially why i haven,t participated in the last few years in the mackeral fisheries.

For unknown reasons the spring and fall fisheries have been less than stellar in the last few years in N.C. and for those reasons i chose a different path. And now you have a council willing to listen to a few self serving individuals that seem to think just as they have done in the endorsement process for golden tilefish and sea bass,.....that we need to take permits that are unused out for "their" benifit even though latent effort hurts nothing..... That's right NOTHING.

Just say i am a mechanic. The golden tilefishery was my 9/16 th wrench. The sea bass pot fishery was my 3/4 wrench. If you take my mackeral fisheries you have taken my adjustable wrench and my ability to survive.

Bottom line, if you have and individual that hasn,t fished at all commercially in the last 10 years, his permit should not be allowed to be sold. You can't take it, but he shouldn,t be able to sell it.

As for any individual that has met the income qualifier already required, then leave them the hell alone.....enough said.

As for sale of recreationally caught bag limits and mackeral tournaments, as long as they come off the recreational quota.....i got no problem with it....provided they also have to jump through the same hoops that i do with safety, logbooks etc.....! Yes, folks, money definitely changes the equation.

As for .Comprehensive Ecosystem-based amendment 3.....i am amazed that this amendment mentions commercial and for hire reporting requirements consistent with maintaining compliance with (ACL,S) yet only mentions the use of VMS,s commercially.

Question is, does the council really want to know what is going or just commercially. The simple fact is, if this council is going to mention MPA,s as this hearing does, then it had better'd start the discussion because there isn't enough of us left commercially to save the day. Either everybody is on board or NONE should be. (I have had a VMS by the way for over 10 years and i would be glad to take it off and get rid of the monthly fee)

Thanks Michelle for listening to my rant.....

jeff

449 Central Avenue  
Suite 200  
St. Petersburg FL 33701



727.895.2188 Telephone  
727.895.8652 Facsimilie  
www.oceanconservancy.org

August 17, 2012

Chairman David Cupka  
South Atlantic Fishery Management Council  
4055 Faber Place Drive, Suite 201  
North Charleston, SC 29405

**RE: Public Hearing Draft Comprehensive Ecosystem-Based Amendment 3**

Dear Chairman Cupka:

On behalf of the Ocean Conservancy,<sup>1</sup> we submit the following comments regarding the public hearing draft of the South Atlantic Fishery Management Council's (SAFMC) Comprehensive Ecosystem-Based Amendment 3 (CE-BA 3) with particular focus on the removal of what was previously Action 3 (establish marine protected areas across the mid-shelf region and designate Habitat Areas of Particular Concern for speckled hind and warsaw grouper) from the actions section of the amendment, and instead moving it to the "Considered but Eliminated Alternatives" appendix. We are concerned that this means the development of protections for these two imperiled species will be moved to CE-BA 4, which is now slated to encompass a large volume of complex issues and presumably will not be scoped until January 2013. We feel it is important to ensure the new speckled hind and warsaw grouper protections are able to move as quickly through the amendment process as possible given they are both subject to overfishing and have an unknown overfished status.

**We recommend that the speckled hind and warsaw grouper protective actions continue to be handled in CE-BA 3, or handled as a framework action separate from CE-BA 4, and initiated immediately.**

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<sup>1</sup> Ocean Conservancy is a non-profit organization committed to protecting ocean environments and conserving the global abundance and diversity of marine life. Through science-based advocacy, research and public education, Ocean Conservancy informs, inspires and empowers people to speak and act for wild, healthy oceans.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA)<sup>2</sup> directs the SAFMC and National Marine Fisheries Service (NMFS) to end and prevent overfishing in order to conserve and rebuild the nation's fisheries.<sup>3</sup> To end overfishing, the statute requires the SAFMC and NMFS to establish annual catch limits (ACL) and accountability measures (AM) to ensure that catch limits are not exceeded. The MSA also requires SAFMC and NMFS to minimize bycatch (fish that are caught while targeting other species and then discarded) and bycatch mortality. The law requires NMFS to rebuild overfished species and end overfishing immediately. Because of the decision to remove the deepwater closure through SAFMC's Snapper-Grouper Regulatory Amendment 11, there are currently no AMs to account for discards to end and prevent overfishing of speckled hind and warsaw grouper.<sup>4</sup>

The comments below are in response to potential removal of the protections from CE-BA 3 to CE-BA 4.

**Lack of clarity on the record regarding the Council's intentions to remove the protections from CE-BA 3.**

Many issues initially to be addressed in CE-BA 3 have been delayed and moved into CE-BA 4 to ensure that development and implementation of speckled hind and warsaw grouper protections would take place as quickly as possible. However, SAFMC moved the speckled hind and warsaw grouper protective actions to the "Considered but Eliminated Alternatives" appendix following the June 2012 SAFMC meeting. Furthermore, there was no specific direction from the June SAFMC meeting directing Council staff to do so in the form of a motion. It is unclear from the June meeting minutes and motions from Snapper Grouper Committee, Ecosystem Based Management Committee, and Full Council that SAFMC's intent was to remove this important action from CE-BA 3. In fact, during the June meeting, SAFMC removed the action for Coral HAPCs from CE-BA 3 for further development in CE-BA 4 to ensure there was no unnecessary delay in the development and implementation of speckled hind and warsaw grouper protections. The record does not support the removal of speckled hind and warsaw grouper protections from CE-BA 3. On the contrary, multiple Council members have stated on the record the urgency of implementing these protections, and other issues have been moved from CE-BA 3 to CE-BA 4 with this specific intent.

For example, according to the minutes from the SAFMC Ecosystem Based Management Committee Meeting in March, Dr. Duval, North Carolina Division of Marine Fisheries Council Member, stated that in order to ensure that the Council accomplishes the speckled hind and

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<sup>2</sup> 16 U.S.C. §§ 1801-1891.

<sup>3</sup> See e.g., 16 U.S.C. §§ 1851, 1853.

<sup>4</sup> 77 Fed. Reg. 27374 (May 10, 2012).

warsaw grouper work, she was supportive of moving other issues to next year.<sup>5</sup> She also stated in the Snapper Grouper committee in June that it was the “intention of the council to pursue additional protections for speckled hind and Warsaw grouper, as soon as possible...”<sup>6</sup> Similarly, NOAA General Counsel, Monica Smit-Brunello is on the record stating, “I would urge that we try to move ahead, particularly with Items 3, potential MPAs and potential HAPCs for speckled hind and Warsaw, as soon as possible.”<sup>7</sup> Snapper Grouper Committee Vice Chair Mac Currin clearly stated that “the top priority is the speckled hind and Warsaw grouper issue.”<sup>8</sup>

Further, at the June Council meeting, you expressed the way in which you foresaw this process moving forward:

“I don’t think we’d be able to [have a joint AP meeting of Deepwater Shrimp AP, Coral AP, Habitat AP, and Law Enforcement AP] before the next round of public hearings, but what we would do would be to break these [coral habitat areas of particular concern] actions out of this amendment and put it in another amendment and leave the data collection and the Warsaw and speckled hind in the current CEBA 3; just move these to CE-BA 4 and then we would hit that on the next go round of public hearings, which would be in the spring. That would be the way I would see this proceeding.”<sup>9</sup>

The minutes show that the intent of the Council was to ensure that new protections for speckled hind and warsaw grouper would be able to move as quickly through the amendment process as possible. Conversely, the minutes do not show an intention to further delay development of these protections. The timely development of these needed protections is not possible if the issue is moved to CE-BA 4, as CE-BA 4 is now slated to contain a large volume of complex issues and still needs to go to scoping. The speckled hind and warsaw grouper protective actions were presented for scoping to the public in January 2012. To this end, we recommend that the speckled hind and warsaw grouper protective actions continue to be handled in CE-BA 3, or handled as a framework action separate from CE-BA 4 initiated immediately. This will rapidly allow implementation of more effective protections for these

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<sup>5</sup> Dr. Michelle Duval, SAFMC Ecosystem Based Management Committee Meeting Minutes, at 15-18 (March 2012) (attached as Exhibit A, Pages 15 – 18 excerpted).

<sup>6</sup> Dr. Michelle Duval, SAFMC Snapper Grouper Committee Meeting Minutes, at 10 (March 2012) (attached as Exhibit B, Pages 10 -14 excerpted).

<sup>7</sup> Ms. Smit-Brunello, SAFMC Ecosystem Based Management Committee Meeting Minutes, at 15-16 (March 2012) (attached as Exhibit A, Pages 15 – 18 excerpted).

<sup>8</sup> Mac Currin, SAFMC Snapper Grouper Committee Chair, Ecosystem Based Management Committee Minutes, March 2012 pages at 18 (attached as Exhibit A, Pages 15 – 18 excerpted) .

<sup>9</sup> David Cupka, SAFMC Chairman, SAFMC Ecosystem Based Management Committee Meeting Minutes, at 24 (Jun. 2012) (Attached as Exhibit C, pages 24-25 excerpted).

vulnerable species while allowing for better fishing opportunities through more refined area protections and closures.

### **Conclusion**

The NMFS and SAFMC are legally obligated by the MSA to implement accountability measures to ensure the ABC of zero is achieved. Timely development of refined protective closures will allow for better fishing opportunities while protecting this vulnerable resource. To ensure that more effective protections for these vulnerable species can be achieved rapidly, we recommend these critical protections should be handled as an independent framework action or move forward as part of CEBA-3. We appreciate the opportunity to comment on this important fishery management action and look forward to continued work with the SAFMC and NMFS on our shared goal of ensuring the long-term health of South Atlantic fisheries.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samantha', with a long, sweeping horizontal line extending to the right.

Samantha Port-Minner  
Policy Analyst, Fish Conservation Program  
Ocean Conservancy  
449 Central Avenue, Suite 200  
St. Petersburg, FL 33701  
727.369.6613

**From:** [Chris McCaffity](#)  
**To:** [ceba3ph comments](#); [Bob Mahood](#); [Kim Iverson](#); [joshua.bowlen@mail.house.gov](#); [matthew\\_dockham@burr.senate.gov](#); [aaron\\_suntag@hagan.senate.gov](#)  
**Subject:** Public Comments Regarding Comprehensive Ecosystem-Based Amendment 3  
**Date:** Thursday, August 16, 2012 6:48:07 AM

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## Public Comments Regarding Comprehensive Ecosystem-Based Amendment 3

My name is Chris McCaffity. I am a commercial fisherman who supports common sense regulations that allow for a responsible harvest of healthy fisheries with very little waste and also protect our Constitutional Rights. This is what I support and oppose for the commercial fishery in CE-BA 3.

I support most of: **Sub-Alternative 2a.** Require NMFS develop a system for commercial permit holders to submit their logbook entries electronically via an electronic version of the logbook made available online. Fishermen are encouraged to submit their logbook reports electronically but would be allowed to submit paper logbooks. Commercial landings and catch/effort data are to be submitted in accordance with ACCSP standards. Require that the three logbooks (landings, economic, and bycatch) be submitted within 21 days after the end of each trip.

I do not think it is necessary or relevant to require economic logbooks. I disagree with using the term bycatch. Bycatch is the capture of non-target species and was a bonus catch until size limits and closures started turning most bycatch into Regulatory Discards. We should be looking at ways to achieve full retention of everything landed rather than calculating the premeditated waste and abuse of seafood. Near full retention could be achieved by removing size limits and managing quotas with split seasons and possession limits that allow us to target fish with high limits while still keeping fish with lower limits.

I STRONGLY OPPOSE this action: **Alternative 4.** Require all commercial snapper grouper fishing vessels to be equipped with VMS. The purchase, installation, and maintenance of VMS equipment must conform to the protocol established by NMFS in the *Federal Register*. The purchase of VMS equipment will be reimbursed by the National Office of Law Enforcement VMS reimbursement account if funding is available. Installation, maintenance, and communication costs will be paid for or arranged by the shareholder.

The snapper/grouper AP advised that all recreational and commercial vessels be required to have VMS. I believe there are better ways to collect data and prevent fishing in MPAs than with expensive and intrusive Orwellian Vessel Monitoring Systems (OVMS). If one group of fishermen is required to have OVMS on our boats and pay to be spied on, all fishermen in federal waters should have their privacy and Constitutional Rights violated equally. The South Atlantic Fishery Management Council (SAFMC) is attacking a small minority group because they know public outrage would stop the attack if it impacted too many people. Please consider how you would like it if you had to buy an OVMS and pay some corporate or government bureaucracy to spy on your vehicle to make sure you

obeyed traffic laws.

The SAFMC has met all of the arbitrary hard deadlines to end overfishing in the Magnuson-Stevens Act. Commercial fishermen have suffered terribly from the severe negative economic impacts of rushed regulations based on “fatally flawed data”. The OVMS and monthly fee may not seem like much to government employees that get paid regardless of closures, weather, and other factors that restrict our income for extended periods, but it WILL be another severe economic hardship for struggling fishermen.

The SAFMC should not write any new laws until our unnecessarily low quotas are properly managed and accurate data has been collected to use in credible stock assessments. Future regulations should focus on enhancing our resources rather than restricting our access to them. I have included the Sustainable Seafood and Regulatory Discard Reduction Plan as a guide for properly managing commercial quotas.

Please send any questions or comments to Chris at. [freefish7@hotmail.com](mailto:freefish7@hotmail.com) Thank you.

## Sustainable Seafood and Regulatory Discard Reduction Plan

My name is Chris McCaffity. I am a commercial fisherman who has been offering positive solutions that would greatly reduce the amount of Regulatory Discards in our snapper/grouper fishery. Tons of fish are being discarded every year that die and go to waste rather than feeding hungry people. Most of this waste is avoidable. It is very troubling that many fishery managers, environmentalists, and fellow fishermen will not support simple solutions to solve this problem. Some of them have different agendas the Regulatory Discards help to advance. Some people do not support any solutions I offer because they disagree with my view that most size limits do more harm than good. Some people do not like that I discuss fishery issues with PEW and other eco-charities. Some fishermen do not think it matters what we say because the fishery managers are going to do what they want anyway. Their silence and apathy passively supports the gross mismanagement that wastes our resources, destroys our businesses, and denies us access to American seafood. We don't have to agree on every issue to work together on others. I respectfully ask everyone reading this plan to publicly support it or offer a better solution. A wise Marine once told me this. “If you are going to complain, you need to offer a solution.”

The main source of Regulatory Discards in our commercial snapper/grouper fishery comes from quotas that were drastically reduced based on “fatally flawed data” and are not being properly managed to avoid early closures. The long closures force us to discard thousands of fish and compromise our safety at sea as we must stay longer and in worse weather to catch enough legal fish to pay the bills. Since December of 2009 I have been promoting the idea that quotas should be managed with possession limits that are adjusted after a predetermined amount of a quota has been landed to a level that fills it without a long closure. This common sense plan incorporates suggestions from individuals involved in managing, catching, and selling seafood.

1. Split the Annual Catch Limit (ACL) for commercially important snapper/grouper species into two seasonal quotas beginning in April and October.
2. Manage each seasonal quota with Trip Poundage Limits (TPLs) that are adjusted



after half of a quota has been landed to a level that fills it without a long closure.

3. Require fishermen and dealers to file electronic logbooks within 72 hours of unloading.

Here are a few examples of how the TPLs should be set up and adjusted to avoid early closures. Any overages should be deducted from the next season and any remaining quota should carry over. The seasons should start when conditions are best so the TPLs are high during that period. The TPLs should be raised when quotas are increased as stocks rebuild and new assessments are done. Reducing Regulatory Discards should allow us to start keeping more of the Total Allowable Catch immediately. This would help to keep TPLs higher longer and feed more people without killing any more fish than we do now.

Gag Grouper and Red Grouper: The first season would begin on April 1<sup>st</sup> with a 100 pound TPL on each species due to the spawning season. The TPLs would be raised to 1,000 pounds on May 1<sup>st</sup>. Each TPL would then be adjusted to a level that fills the seasonal quota without a long closure after half of the quota has been landed. This is how the adjustments should be made.

1. The TPL would be reduced to 300 pounds if there are four months left in the season.
2. The TPL would be reduced to 500 pounds if there are three months left in the season.
3. The TPL would remain at 1,000 pounds if there are two months left in the season.
4. The TPL would increase to 1,500 pounds if there is only one month left in the season.

The second season would begin on October 1<sup>st</sup> with a 1,000 pound TPL. The spawning season would require a 100 pound TPL from January through March to keep fishermen from targeting shallow water grouper. The 100 pound TPLs for three months should keep the quotas from being filled early and negate the need for further adjustments.

Vermilion Snapper, Black Sea Bass, and Trigger Fish: The first season would begin on April 1<sup>st</sup> and the second on October 1<sup>st</sup> with a 1,000 TPL for each species. This is how the adjustments should be made after half of each seasonal quota has been landed.

1. The TPL would be reduced to 100 pounds if there are five months left in the season.
2. The TPL would be reduced to 300 pounds if there are four months left in the season.
3. The TPL would be reduced to 500 pounds if there are three months left in the season.
4. The TPL would remain 1,000 pounds if there are two months left in the season.
5. The TPL would increase to 1,500 pounds if there is only one month left in the season.

Snowy Grouper: The first season would start on April 1<sup>st</sup> and the second on October 1<sup>st</sup> with a 500 pound TPL. This is how the adjustments should be made after half of each seasonal quota has been landed.

1. The TPL would be reduced to 100 pounds if there are five months left in the season.

2. The TPL would be reduced to 200 pounds if there are four months left in the season.
3. The TPL would be reduced to 300 Pounds if there are three months left in the season.
4. The TPL would remain 500 pounds if there are two months left in the season.
5. The TPL would increase to 1,000 pounds if there is only one month left in the season.

Wreck Fish: The 2,000,000 pound quota was not being caught due to a catch share scheme that consolidated that fishery into the hands of two permit holders. The council arbitrarily reduced that quota to 225,000 pounds rather than allowing other permit holders to catch those fish. I propose this compromise. Allocate 775,000 pounds of the Wreck Fish quota to the rest of the snapper/grouper permit holders. This would boost the market for Wreck Fish and take some of the pressure off of inshore species while still cutting the previous quota in half. The first seasonal quota would begin on April 1<sup>st</sup> and the second on October 1<sup>st</sup> with a 2,000 pound TPL. This is how the adjustments should be made after half of each seasonal quota has been landed.

1. The TPL should be reduced to 500 pounds if there are five months left in the season.
2. The TPL should be reduced to 1,000 Pounds if there are four months left in the season.
3. The TPL should be reduced to 1,500 pounds if there are three months left in the season.
4. The TPL should remain 2,000 pounds if there are two months left in the season.
5. The TPL should increase to 3,000 pounds if there is only one month left in the season.

This plan would allow fishermen to target species with high TPLs while still keeping the ones we accidentally catch with lower TPLs. It would greatly reduce the number of Regulatory Discards while providing consumers with fresh local seafood all year. This common sense approach to managing quotas would achieve any honorable goals of catch shares without destroying independent artisanal fishermen in favor of large corporate industrial fishing operations.

The hard deadlines to end overfishing in the Magnuson-Stevens Act have been met. The South Atlantic Fishery Management Council should not take any further action until they have properly managed the quotas they set using "fatally flawed data" and collected accurate data to use in credible stock assessments. Any future management measures should focus on enhancing our fisheries rather than restricting our freedom to access a dependable supply of safe American seafood. One way to enhance our fisheries is with Artificial Reefs that are the perfect union of aquaculture and commercially or recreationally harvested wild fish.

We should all have a common goal of healthy fisheries that can be responsibly harvested forever with very little waste. We can achieve that goal if we work together using accurate data, sound science, common sense, and remember the Golden Rule.

Thank you for taking the time to read this. Please send any questions or comments to Chris at [freefish7@hotmail.com](mailto:freefish7@hotmail.com) I welcome a debate or discussion about TPLs, MPAs, catch shares, size limits, or any other fishery issues with anyone. We need to have open and

honest discussions about how our seafood should be managed with as few negative impacts and as many positive benefits as possible. We need to make wise use of our renewable resources and show other fishery managers by example how they can reduce Regulatory Discards, feed more people, and produce more revenue while insuring stocks of sustainable seafood for future generations.