

**Finding of No Significant Impact (FONSI) for:
Regulatory Amendment 9 to the Fishery Management Plan for the Snapper-Grouper
Fishery of the South Atlantic Region (Regulatory Amendment 9)**

National Marine Fisheries Service

NOAA Fisheries Service intends to partially approve Regulatory Amendment 9 to the Snapper-Grouper Fishery Management Plan (FMP) for the South Atlantic Region (Regulatory Amendment 9). Actions in Regulatory Amendment 9 include measures to: 1) Reduce the bag limit for black sea bass from 15 fish per person to 5 fish per person; 2) split the black sea bass commercial quota into two seasons (June-November and December-May); 3) establish a trip limit of 1,000 pounds gutted weight (gw) for gag; 4) establish a trip limit of 1,500 pounds gw for vermilion snapper; and 5) increase the trip limit for greater amberjack from 1,000 pounds gw to 1,200 pounds gw. NOAA Fisheries Service intends to disapprove the split season quota provision for the commercial sector of the black sea bass component of the snapper-grouper fishery because it is not sufficiently supported by the administrative record for this amendment, as required by the Administrative Procedure Act. Additional rationale for the partial approval of Regulatory Amendment 9 may be found in the attached memorandum to file dated May 27, 2011. NOAA Fisheries Service intends to approve all other actions contained in Regulatory Amendment 9 for implementation.

National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 CFR 1508.27 state the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant in making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?

Response: No. None of the actions contained within Regulatory Amendment 9 are expected to jeopardize the sustainability of any target species. Actions in Regulatory Amendment 9 are intended to prevent the progressive shortening of fishing seasons for black sea bass, gag, and vermilion snapper, and to maximize the probability of achieving optimum yield (OY) for greater amberjack. Regulatory Amendment 9 establishes trip limits for vermilion snapper and gag, reduces the recreational bag limit for black sea bass, and increases the trip limit for greater amberjack.

Actions in Regulatory Amendment 9 for black sea bass, gag, and vermilion snapper could slow the rate of fishing and potentially extend the fishing seasons. Regulatory Amendment 9 would increase the trip limit for greater amberjack; however, if the trip limit or quota was met, mortality of released greater amberjack would be expected to be low. Therefore, increasing the trip limit for greater amberjack is not likely to jeopardize the sustainability of the species. Because none

of the actions under consideration in Regulatory Amendment 9 would allow harvest to exceed established quotas, annual catch limits (ACL), or overfishing thresholds defined for each of the subject species, it is unlikely their sustainability would be compromised. These fishing thresholds and limits were implemented through previous amendments and are set at levels that prevent overfishing and rebuild stocks if a species is overfished.

By eliminating the race to fish for, gag, vermilion snapper, and recreationally harvested black sea bass, and increasing the trip limit for greater amberjack, net benefits to society in the form of prolonged fishing seasons and increased harvest opportunities, in the case of greater amberjack, would be realized. Additionally, trip limits could reduce the risk of injury and human loss associated with fishing in poor weather conditions due to fishermen harvesting as much of a species as possible before the applicable quota is met.

2) Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?

Response: No. Actions in the approved portions of the subject regulatory amendment are not likely to jeopardize the sustainability of any non-target species. Recent management measures including: Quotas for vermilion snapper, black sea bass, and gag; a commercial and recreational spawning season closure for gag; and a closed season for the recreational catch of vermilion snapper have likely reduced catch of many non-target species. However, reduced quotas for vermilion snapper and black sea bass have created derby-like conditions for these species, and there is anecdotal information indicating effort shift to other targeted species such as gray triggerfish. It is also likely there is decreased fishing effort after quotas for vermilion snapper and black sea bass are met due to reduced profitability of trips.

Establishing trip limits for gag and vermilion snapper, and reducing the black sea bass bag limit would not be expected to increase harvest of non-target species to levels observed before recent management measures were established. Therefore, sustainability of non-target species is not likely to be affected by the proposed actions. For those fishery participants who do not continue to fish for other species after the limits for black sea bass, gag and vermilion snapper have been reached, bycatch of non-target species would decrease. Therefore, non-target species could indirectly benefit from the management measures in Regulatory Amendment 9.

The quota for greater amberjack has never been met under the current commercial trip limit of 1,000 pounds (lbs) gutted weight (gw). In order to maximize the probability of achieving (OY) for the species the trip limit would be increased by 200 lbs gw. Impacts of the increased greater amberjack trip limit and associated bycatch of non-target species would depend on the level of effort shift into the greater amberjack fishery as a result of restrictive management measures placed on other snapper-grouper species in Amendments 17A and 17B to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 17A and Amendment 17B). The greater the effort directed at harvesting greater amberjack, the more likely the greater amberjack component of the snapper-grouper fishery would close early due to the quota being met, which could counter an increase in non-target species bycatch resulting from the higher trip limit. If the higher trip limit does not result in an early closure for

the greater amberjack component of the snapper-grouper fishery, some increases in catch of non-target species including species listed under the Endangered Species Act (ESA) could occur but is likely to be negligible due to the relatively small increase in the greater amberjack trip limit, and reduced catch of non-target species associated with other recently implemented management measures.

In addition to lowering the bag limit for black sea bass, the South Atlantic Fishery Management Council (South Atlantic Council) approved an action to split the commercial quota into two six-month seasons, June-November and December-May. During the public comment period on the proposed rule, several comments were received opposing the split season for the black sea bass commercial quota. One comment cited recent information from an April 2011 Atlantic Large Whale Take Reduction Team (ALWTRT) meeting indicating right whales may be at particular risk to entanglement with vertical lines in the Southeast during the winter calving season. During the last several years, the commercial quota for black sea bass has been met prior to the arrival of pregnant female right whales off the South Atlantic states. As a result, the early closures of the commercial sector for black sea bass may have provided some protection to right whales. However, saving the largest portion of the commercial black sea bass quota for the December-May season would result in the presence of numerous vertical black sea bass pot buoy lines within the endangered northern right whale migration route during the time of year when the whales are transiting off the Southeast coast. Though no marine mammal interactions with black sea bass pot gear have been documented, allowing an increased risk of right whale entanglement is inconsistent with the goals of the ALWTRT and recent scientific information suggests they are more vulnerable to entanglement in Mid-Atlantic and South Atlantic fisheries than previously thought.

In light of the public comments opposing the split season quota for black sea bass, along with new information from the April 2011 ALWTRT meeting, NOAA Fisheries Service intends to disapprove the split season quota provision for the commercial sector of the black sea bass component of the snapper-grouper fishery because it is not sufficiently supported by the administrative record for this amendment. Additional rationale for the partial approval of Regulatory Amendment 9 may be found in the attached memorandum to file dated May 27, 2011.

3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and identified in fishery management plans (FMP)?

Response: No. The area affected by the proposed actions in the snapper-grouper fishery has been identified as essential fish habitat (EFH) for the Shrimp, Snapper-Grouper, Coral, Dolphin-Wahoo, Sargassum, and Golden Crab Fishery Management Plans (FMPs) of the South Atlantic Council; the Coastal Migratory Pelagics and SpinyLobster joint FMPs of the Gulf and South Atlantic Councils; the Bluefish and Squid/Mackerel/Butterfish FMPs of the Mid-Atlantic Council, and the Tuna/Swordfish/Shark and Billfish FMPs of NOAA Fisheries Service's Highly Migratory Species Division. The proposed actions are not expected to cause any damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act and

identified in the FMPs. Fishing effort is not expected to significantly increase as a result of these actions, nor are changes in fishing technique or behavior expected. Therefore, impacts to coastal habitats and/or essential fish habitat would not be significantly different from the status quo. This determination may be found in a memorandum from the Habitat Conservation Division to the file dated April 11, 2011.

4) Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?

Response: No. The proposed actions are not expected to have an adverse impact on public health or safety. Establishing trip limits for gag and vermilion snapper, may decrease the risk to human safety by removing the incentive to fish in poor weather conditions in order to harvest as much of the species as possible before the quota is met. Scoping meetings and public hearings were held in various locations throughout the impact area of this amendment and no public health or safety concerns were raised with regard to the actions contained in Regulatory Amendment 9. However, during the proposed rule comment period one commenter raised concerns regarding safety-at-sea issues that may result from fishermen needing to increase the number of trips to compensate for a trip limit that constrains catch. The trip limits are expected to extend the fishing seasons for vermilion snapper and gag, and, therefore, provide more days to fish throughout the season minimizing pressure to fish in foul weather conditions to catch as much of the quota as possible before the season closes. Additionally, increasing the number of days to fish within a fishing season is likely to help stabilize market prices through more consistent catch levels over a longer period of time and reduce bycatch of vermilion snapper and gag when fishermen target co-occurring species.

5) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

Response: No. The approved proposed actions are not expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species. The Southeastern U.S. Atlantic snapper-grouper fishery is classified as a Category III fishery, meaning the annual mortality and serious injury of a marine mammal resulting from the fishery is less than or equal to one percent of the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. Regulations are in place to protect the species of concern, *Oculina varicosa*, within the Oculina Habitat Area of Particular Concern from shrimp trawl-related damage. Additionally, the snapper-grouper fishery is not expected to adversely modify northern right whale critical habitat. Listed sea bird species such as the Bermuda petrel would not be adversely affected by actions contained within Regulatory Amendment 9 due to their rare occurrence off the Atlantic coast.

The impacts of the South Atlantic snapper-grouper fishery on ESA-listed species have been evaluated in a biological opinion on the continued authorization of snapper-grouper fishing under the South Atlantic Snapper-Grouper FMP and Amendment 13C (NMFS 2006), and during subsequent informal ESA section 7 consultations. The biological opinion states the fishery was not likely to adversely affect any critical habitat or marine mammals (see NMFS 2006 for

discussion on these species). However, the opinion did state that the snapper-grouper fishery would adversely affect sea turtles and smalltooth sawfish. There are no actions in Regulatory Amendment 9 that would substantially increase fishing effort or modify the gear types used in the snapper-grouper fishery over the status quo; therefore, potential impacts on sea turtles and smalltooth sawfish that may result from the implementation of Regulatory Amendment 9 are not considered significant. This determination is documented in an ESA section 7 determination memorandum dated April 13, 2011.

NOAA Fisheries Service conducted an informal section 7 consultation on July 9, 2007, evaluating the impacts of the South Atlantic snapper-grouper fishery on ESA-listed *Acropora* species. The consultation concluded that the continued operation of the snapper-grouper fishery was not likely to adversely affect newly listed *Acropora* species. On November 26, 2008, a final rule designating *Acropora* critical habitat was published in the *Federal Register*. A memo dated December 2, 2008, evaluated the effects of the continued authorization of the South Atlantic snapper-grouper fishery on *Acropora* critical habitat pursuant to section 7 of the ESA. The evaluation concluded the proposed actions are not likely to adversely affect *Acropora* critical habitat.

None of the actions in Regulatory Amendment 9 allow for harvest above previously implemented quotas for each species, which are set at levels to prevent overfishing. However, saving the largest portion of the commercial black sea bass quota for the December-May season as would occur under the measure that would split the black sea bass quota into two seasons, would result in the presence of numerous vertical black sea bass pot buoy lines within the endangered northern right whale migration route during the time of year when the whales are transiting off the Southeast coast. Though no marine mammal interactions with black sea bass pot gear have been documented, allowing an increased risk of right whale entanglement is inconsistent with the goals of the ALWTRT and recent scientific information suggests they are more vulnerable to entanglement in Mid-Atlantic and South Atlantic fisheries than previously thought.

In light of the public comments opposing the split season quota for black sea bass, along with new information from the April 2011 ALWTRT meeting, NOAA Fisheries Service intends to disapprove the split season quota provision for the commercial sector of the black sea bass component of the snapper-grouper fishery because it is not sufficiently supported by the administrative record for this amendment. Additional rationale for the partial approval of Regulatory Amendment 9 may be found in the attached memorandum to file dated May 27, 2011.

6) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: No. The proposed actions are not expected to substantially impact the biodiversity and/or ecosystem function within the affected area. The affected area includes the federal 200-mile limit of the Atlantic off the coasts of North Carolina, South Carolina, Georgia, and east

Florida to Key West. The biological ranges of affected species are described in Section 3.0 of Regulatory Amendment 9.

Regulatory Amendment 9 directly affects four snapper-grouper species and may indirectly benefit many co-occurring fish species, as well as some non-fish species such as sea birds and marine mammals through effort reductions when the trip limits for gag and vermilion snapper are met, and when the bag limit for black sea bass is met. None of the actions contained in Regulatory Amendment 9 would allow increased harvest above the previously implemented quotas for each species. Therefore, even though the fishing seasons may be extended somewhat for black sea bass, gag, and vermilion snapper and the probability for reaching OY for greater amberjack would be improved, no substantial impact on biodiversity or ecosystem function over the status quo is expected. Considering that increases in directed fishing effort as a result of Regulatory Amendment 9 are unlikely, and overall harvest would not dramatically deviate from the status quo, NOAA Fisheries Service has concluded there will be no substantial impact on biodiversity or ecosystem function.

7) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: No. There are no significant social or economic impacts that are interrelated with natural or physical environmental effects. The purpose of Regulatory Amendment 9 is to extend the time fishermen have to harvest black sea bass, gag, and vermilion snapper, and increase the probability that OY for greater amberjack would be achieved. Preventing early closures due to quotas being reached early in the fishing season may benefit the economic and social environments by delaying a fishery closure. Increasing the opportunity to maximize yield of greater amberjack on a per trip basis is also expected to benefit the economic and social environments by allowing some fishermen to supplement highly restricted commercial harvest of other species with slightly increased harvest of greater amberjack. Because the actions in Regulatory Amendment 9 would not allow harvest of any species to increase above previously implemented quota limits, or beyond the overfished and overfishing thresholds for the subject species, the economic and social benefits are not interrelated with significant natural or physical environmental effects.

8) Are the effects on the quality of the human environment likely to be highly controversial?

Response: No. There are no foreseen effects on the quality of the human environment that may be highly controversial as a result of any of the actions contained in Regulatory Amendment 9. This amendment is intended to slow the pace of fishing for black sea bass, gag, and vermilion snapper, and maximize the opportunity for fishery participants to achieve OY for greater amberjack. Through the implementation of these actions, it is expected that the human environment may benefit from longer fishing seasons for black sea bass, gag, and vermilion snapper, and expanded opportunity to fish for greater amberjack.

In general a bag limit reduction for black sea bass, implemented to extend the season, would be expected to result in lower economic benefits per day or per trip because of the potential reduced

quality of the fishing trip. Depending on the bag limit, the resulting reduction in benefits associated with the lower quality trips could be less than, equal to, or more than the increase in benefits associated with the increased number of trips (or the trips that were cancelled as a result of the original closure). A 5-fish bag limit would be expected to reduce headboat harvest by 14 percent, charter harvest by 20 percent, and private mode harvest by 5 percent, and would result in the ACL being met by the middle of March rather than the middle of January. It is expected that any longer open season that may result from a lower bag limit for black sea bass will result in greater social (and economic) benefits than a shorter open season resulting from a higher bag limit.

For the vermilion snapper trip limit of 1,500 lbs gw, the overall loss of revenue is expected to be \$306,000 based on 2007-2009 economic data. However, trip limits can result in a longer season which could increase ex-vessel prices and ultimately result in higher profits for some fishermen, and perhaps the fishery overall. Long term economic effects on the vermilion snapper component of the snapper-grouper fishery would be positive or negative depending on overall profitability of the fleet over time. For gag, a 1,000 lbs gw trip limit would be expected to reduce the pace of gag harvest and the length of any potential quota closures, thereby reducing the derby effects and associated reductions in social benefits. With this trip limit, it is expected that the gag component of the snapper-grouper fishery would stay open until December.

Effort could increase on greater amberjack due to recently implemented restrictions in Amendments 17A and 17B. This effort shift could result in the quota being met before the fishing year is completed. A trip limit of 1,200 lbs gw for greater amberjack would be expected to yield in short-term economic benefits unless the season is shortened. None of the expected impacts listed above are considered significant for these snapper-grouper fishery component species, and none of these actions, or the alternatives considered by the South Atlantic Council are considered to be highly controversial.

9) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

Response: No. The proposed actions are not expected to result in substantial impacts to unique or ecologically critical areas. In the South Atlantic, areas of unique habitat exist such as the Oculina Bank and large expanses of deepwater coral; however, regulations are currently in place to protect such known areas. Additionally, there are several notable shipwrecks along the southeast coast in state and federal waters including Lofthus (eastern Florida), SS Copenhagen (southeast Florida), Half Moon (southeast Florida), Hebe (Myrtle Beach), Georgiana (Charleston), Monitor (Cape Hatteras), Huron (Nags Head), and Metropolis (Carolla). The southeastern coastline is also home to numerous marshes and wetland ecosystems; however, these sensitive ecological environments do not extend into federal waters of the South Atlantic. Actions within this amendment would not affect any of the above listed habitats or historic resources, nor would they alter any regulations intended to protect them.

10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: No. The effects on the human environment are not likely to be highly uncertain or involve unique or unknown risks. A thorough biological, economic, and social analysis of the potential impacts of the actions contained within Regulatory Amendment 9 has been completed and revealed predictable short-term and long-term impacts based on projections using landings data and economic information from previous years.

None of the actions contained in Regulatory Amendment 9 are likely to result in any biological impacts that could be considered unique or unknown. Because the level of fishing for each of the subject species would not increase beyond previously implemented harvest limits as a result of the amendment actions, no significant biological impacts are anticipated. Reducing the recreational bag limit for black sea bass is likely to extend recreational fishing opportunities for black sea bass longer into the fishing year. Implementing trip limits for gag and vermilion snapper would also result in extending the fishing seasons for both species. Increasing the trip limit for greater amberjack is likely to improve the quality of directed fishing trips for greater amberjack and maximize the probability of achieving OY for the species, while still maintaining a harvest control mechanism to deal with any effort shifting into the fishery.

11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: No. The proposed actions are not related to other actions with individually insignificant, but cumulatively significant impacts. The implementation/modification of trip/bag limits for the four species addressed in Regulatory Amendment 9 are included in the list of harvest parameters that may be adjusted through the Snapper-Grouper Framework Procedure. The Snapper-Grouper Framework Procedure was recently updated through Amendment 17B and was subject to public comment throughout various stages of the amendment process. Because Regulatory Amendment 9 would be implemented under the Snapper-Grouper Framework Procedure contained in Amendment 17B, the two amendments may be considered related actions. However, neither action, the implementation of the Snapper-Grouper Framework Procedure or Regulatory Amendment 9, is considered individually nor cumulatively significant based on an assessment of both amendments impacts.

12) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: No. The proposed actions are not likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places nor will it cause loss or destruction of significant scientific, cultural, or historical resources. The snapper-grouper fishery is prosecuted in the vicinity of the Oculina Bank, and several *Lophelia pertusa* deepwater coral locations which have been closed to all bottom-tending gear. These areas containing *Oculina* sp. and *Lophelia* sp. deep-sea coral have been designated Coral Habitat Areas of Particular Concern (CHAPC). Because all use of fishing gear that may harm or destroy

fragile coral species in these areas is prohibited, actions in this amendment are not likely to adversely affect the continued preservation of the designated CHAPCs or the species therein.

13) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: No. The proposed action is not expected to result in the introduction or spread of any non-indigenous species including lionfish.

14) Is the proposed action likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

Response: No. None of the proposed actions are likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. The use of trip limits and bag limits are fishery management tools that have been employed several times throughout the history of management for the snapper-grouper fishery. These management tools are not considered precedent setting, and do not represent a novel approach to managing fisheries in the South Atlantic, nor do these actions represent a decision in principle about a future consideration.

15) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: No. The approved proposed actions are not expected to threaten a violation of federal, state, or local law or requirements for the protection of the environment. As previously discussed, NOAA Fisheries Service intends to disapprove the split season quota provision for the commercial sector of the black sea bass component of the snapper-grouper fishery because it is not sufficiently supported by the administrative record for this amendment (see attached memorandum to file dated May 27, 2011). The agency will work with the South Atlantic Council and the Southeast Fisheries Science Center to further examine the issue of right whale entanglement with vertical lines in the Southeast. The South Atlantic Council may then choose to submit a revised action to address a split season quota for black sea bass in another amendment to the FMP.

16) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: No. The proposed actions are not expected to result in any cumulative adverse effects that could have a substantial effect on the target species or non-target species. A cumulative effects analysis was conducted for Regulatory Amendment 9 and revealed no cumulative adverse effects on the biological environment, which includes all target and non-target species. Regulatory Amendment 9 takes steps to lengthen the fishing season for black sea bass, gag, and vermilion snapper, and optimize harvest of greater amberjack; however, it would not allow harvest to exceed previously implemented catch limits, which were set at levels to prevent overfishing and rebuild stocks that are overfished. Therefore, no adverse cumulative impacts on target or non-target species are expected.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting EA prepared for Regulatory Amendment 9, it is hereby determined that the proposed actions to reduce the recreational bag limit for black sea bass, establish trip limits for gag and vermilion snapper, and to increase the trip limit for greater amberjack, would not significantly affect the quality of the human environment as described above and in the supporting EA. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS is not necessary for this action.

Phil Steele

5/27/11

for

Roy E. Crabtree, Ph.D.
Southeast Regional Administrator

Date



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F/SER25: KM

MAY 27 2011

MEMORANDUM FOR: File

FROM:

Roy E. Crabtree, Ph.D.
Regional Administrator

SUBJECT:

Partial Approval of Regulatory Amendment 9 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region

NOAA Fisheries Service intends to partially approve Regulatory Amendment 9 to the Snapper-Grouper Fishery Management Plan (FMP) for the South Atlantic Region (Regulatory Amendment 9). Actions in Regulatory Amendment 9 include measures to: 1) Reduce the bag limit for black sea bass from 15 fish per person to 5 fish per person; 2) split the black sea bass commercial quota into two seasons (June-November and December-May); 3) establish a trip limit of 1,000 pounds gutted weight (gw) for gag; 4) establish a trip limit of 1,500 pounds gw for vermilion snapper; and 5) increase the trip limit for greater amberjack from 1,000 pounds gw to 1,200 pounds gw. NOAA Fisheries Service intends to disapprove the action to split the black sea bass commercial quota for the following reasons.

The Council's intent for the split season alternative was to reduce the adverse social and economic effects of a protracted closure of the commercial black sea bass component of the snapper-grouper fishery. Splitting the harvest season into two components may allow commercial black sea bass fishermen to capitalize on the resources over a longer period of time, and ensure two distinct opportunities for harvest. Without a split season, the commercial quota could be expected to be taken as early as December during the June-May fishing year. In general, a split season could have commercial economic benefits in that it would allow for two fishing opportunities that could extend the season, break up derby fishing, and perhaps result in higher ex-vessel prices paid to fishermen for their fish. However, based simply on the total number of days or months commercial black sea bass harvest would be allowed, a split season quota would not be expected to result in greater social benefits than no action because each seasonal ACL would result in a total closure equal to or possibly exceeding the expected closure under no action. There are few biological effects to the black sea bass stock through the proposed action since harvest is already managed through a quota and survival of released black sea bass is high.

During the public comment period on the proposed rule, several comments were received opposing the split season for the black sea bass commercial quota. One comment suggested the action would have negative economic effects on commercial fishermen by perpetuating the derby fishery.



More specifically, the commenter indicated that opening the fishery in the winter when few other fisheries are open would likely increase the number of fishers targeting black sea bass, exacerbating the current derby fishing situation.

Another opposing comment raised multiple concerns about entanglements with marine mammals and black sea bass pot gear. The commenter stated “[t]he risk of entanglement may be further exacerbated during the winter months as a survey of black sea bass fishermen indicated that the ‘distance between pots in the winter months were less than in the summer months, which actually could increase the threat to right whales’(Lavesque, 200[9]).” The commenter also stated black sea bass pot lines pose a risk to whales if they are in areas where whales concentrate, as they do in the Southeast during the winter. The same commenter also stated that reducing risk to whales from vertical lines in the Southeast was a significant focus of the April 2011 Atlantic Large Whale Take Reduction Team (ALWTRT) meeting.

The information in these comments led NOAA Fisheries Service to reconsider information regarding marine mammal entanglements in black sea bass pot gear. The ALWTRT is committed to developing specific management and regulatory measures to reduce entanglement risks. The ALWTRT develops conservation measures to reduce injuries and deaths of large whales due to incidental entanglement in fishing gear, implementing them via the Atlantic Large Whale Take Reduction Plan (ALWTRP). As the second commenter indicated, during the April ALWTRT, entanglement of North Atlantic right whales in vertical lines, particularly in the Southeast during the winter calving season (November 15-April 15), was identified as a conservation priority. The majority of the meeting focused on the development of a vertical line strategy to reduce entanglements. The strategy placed emphasis on where, when, and how to manage vertical lines in the Southeast and Mid-Atlantic.

North Atlantic right whales are the most highly endangered of all the large whale species and a conservation priority of the ALWTRP. Recent scientific information suggests they are potentially more vulnerable to entanglements in Mid-Atlantic and South Atlantic fisheries than previously thought. New sighting data from 2008 and 2009 suggest the coastal waters of South Carolina, North Carolina, and possibly even Virginia may be new areas used for birthing and calving by right whales. Data also suggest that some North Atlantic right whales make multiple intra-season trips between the Northeast and Southeast regions, instead of a single migration south in the winter and a return trip north in the spring and summer. In addition, a new model presented at the April 2011 ALWTRT meeting indicated that humpback whales may also be vulnerable to entanglement from vertical line in this area at this time of year.

Saving the largest portion of the black sea bass commercial quota specifically for the December-May time period would reintroduce vertical black sea bass pot buoy lines off the South Atlantic during a time of year when the whales are transiting and residing off the Southeast coast, and would also undermine the ongoing efforts of the ALWTRT to reduce the large whale entanglement risk, particularly managing vertical line interactions. Additionally, as indicated by another commenter, this action may exacerbate the existing derby fishery, while the Council is considering black sea bass effort restrictions in Amendment 18A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region.

While the administrative record for Regulatory Amendment 9 now contains the information discussed above, it is clear that the Council did not have the opportunity to consider this information prior to making their decision to approve the split season, thus overlooking an important aspect of the problem. Because this information was not considered, an examination of the record strongly suggests there is not a rational connection between the facts and the choice made by the Council, and approval of this action may be arbitrary and capricious under the Administrative Procedure Act. Therefore, in light of the public comments opposing the black sea bass split season quota for socio-economic reasons, along with concerns about undermining the ongoing efforts of the ALWTRT to reduce entanglement risk of large whales and the new information presented at the April 2011 ALWTRT meeting, NOAA Fisheries Service intends to disapprove the split season quota action for the commercial sector of the black sea bass component of the snapper-grouper fishery. NOAA Fisheries Service will work with the South Atlantic Fishery Management Council (Council) and the Southeast Fisheries Science Center to further examine the issue of right whale entanglement with vertical lines in the Mid-Atlantic and Southeast. The Council may then choose to submit a revised action to address a split season quota for black sea bass in another amendment to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region.

Reference: Lavesque, J. 2009. Characterization of the southeastern U.S. black sea bass (*Centropristis striata*) pot commercial fishery and implications for western North Atlantic right whale (*Eubalaena glacialis*) management and policy. *Marine Policy*, 33:40-48.