



SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

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Jessica McCawley, Chair | Mel Bell, Vice Chair
Gregg T. Waugh, Executive Director

October 23, 2019
LN#201962

Senator Dan Sullivan
702 Hart Senate Office Building
Washington, DC 20510

Dear Senator Sullivan:

Pursuant to a request from your office (via email from Erik Elam) to provide comments on the staff working draft of an MSA reauthorization bill, I am responding on behalf of the South Atlantic Fishery Management Council (Council). Given that this is a staff draft document, we have provided very detailed comments and language to inform the Senate staff of the Council's views. Much of the detail is taken directly from the Council Coordination Committee (CCC) Working Paper.

If any of the Senate staff have questions, please have them contact me or Gregg Waugh.

Sincerely,

Jessica McCawley
Chair

cc: Council Members and Staff
John McGovern and Rick DeVictor
Monica Smit-Brunello and Shep Grimes
Clay Porch and Erik Williams

MSA Reauthorization

Senate Staff Working Draft (Executive Finance Committee, Attachment 2b, September 2019)

1. Section 4, Authorization of Appropriations, it adds the years 2019 through 2023 for authorization, but there is no funding level specified at this stage, and so, should this move forward, MSA would be authorized for 2019 through 2023.
SAFMC Response: The South Atlantic Council’s work would continue with authorization through 2023.
2. Section 101 on page 4, Item (3) talks about commercial fishing and recreational fishing, and it says “including charter fishing”. It doesn’t mention headboats.
SAFMC Response: The South Atlantic Council suggests adding headboats to be sure they are included. The term for-hire is used to include both charter vessels and headboats and may be a more accurate term to use.
3. Section 101, page 6, Number (13), while recreational fishing, charter fishing, and commercial fishing all provide significant cultural and economic benefits to the nation, each are different activities. Therefore, management approaches may be adapted to the characteristics of each sector, and clarifying that charter includes –
SAFMC Response: The South Atlantic Council suggests clarifying that charter includes headboats as mentioned above in #2. Our Council Coordination Committee (CCC) Working Paper provides the following:
4. Section 102, Page 8, Number (9), it defines “depleted”.
SAFMC Response: The South Atlantic Council offers the following CCC position:
The CCC developed the following consensus position on the MSA’s definition of “overfished”:
“The CCC believes that an alternative term could be useful for describing fisheries that are depleted as a result of non-fishing factors, unknown reasons, or a combination of fishing and other factors. The current MSY-based definition can be problematic when applied to data-limited fisheries or mixed-stock complexes. Furthermore, the term “overfished” can unfairly implicate fishermen for depleted conditions resulting from pollution, coastal development, offshore activities, natural ecosystem fluctuations, and other factors. Not all of the Councils agree that “depleted” is an appropriate term to replace “overfished” with. Some have noted that “depleted” has specific meanings in a number of other statutes, including the Endangered Species Act and the Marine Mammal Protection Act, and that care should be taken to avoid conflict or ambiguity if a change in terminology is implemented.”
5. Section 102, Page 9, Number (32), the term “mixed-use fishery”.
SAFMC Response: The South Atlantic Council recommends clarifying the terminology to include headboats.
6. Section 103, page 11, Section 302(a)(1) adds a seat to the New England Council for a Mid-Atlantic member, and it adds a seat to the Mid-Atlantic for a New England member, and some of this is a way of addressing the issue of how you deal with species as they move north.
SAFMC Response: The South Atlantic Council is actively working with the New England and Mid-Atlantic Council on how to effectively manage species as they move northwards. However, we have no comment on adding seats to these Councils.

7. Section 103, page 11, Section 302(a)(2) adds the South Atlantic Council to the process of nominating more individuals.

SAFMC Response: The South Atlantic Council approved the following motion at the December 2018 meeting: SAFMC IS NOT IN FAVOR OF SECTION 302(b)(2) BEING APPLIED TO THE SAFMC.

(Note: This refers to requiring Governors to nominate 1 commercial, 1 recreational, 1 charter/headboat, and 1 other person with fishery management expertise for each open Council seat.)

8. Section 105, page 12, dealing with recusals. It would add the following language: “A financial interest held by an entity described in Section 305(i)(1)(D) shall be attributed to an affected individual only to the extent of the proportional ownership of such entity.” NMFS is currently preparing responses to comments received on the proposed rule addressing recusals; they hope to have this completed by the November 2019 CCC meeting.

SAFMC Response: The South Atlantic Council believes that a financial interest held by an entity for purposes of voting recusal determinations should be attributed to an affected individual only to the extent of the proportional ownership of such entity.

9. Section 106, page 13, Cost Reduction Report, and this adds a requirement for a report by the Secretary of Commerce on monitoring and enforcement, looking at ways, perhaps, to save money.

SAFMC Response: The South Atlantic Council supports any and all efforts to improve enforcement and would welcome the opportunity to participate in developing such a report.

10. Section 107, page 14 -- Number (8) gets to more flexibility, and it says “have the authority to use fishery management measures such as extraction rates, fishing mortality targets, and harvest control rules, particularly in any recreational fisheries (or recreational components of mixed-use fisheries) in developing a fishery management plan, plan amendment, or proposed regulations in such a fishery or fishery component.”

SAFMC Response: The South Atlantic Council support increased flexibility. Management using annual catch limits (ACL) poses a special challenge for recreational fisheries in the southeast because the management paradigm and the data collection systems are mismatched. In general, when recreational fisheries are catching a lot of fish, it is due to a high abundance and/or availability of fish in the water. Unfortunately, with the resource challenges (funding and personnel) in the Southeast, many of our assessments cannot be updated in a timely enough fashion to allow for an increase in abundance to be translated into an increase in the ACL. As a result, when a big year class enters a fishery (a good thing) the current management paradigm forces the South Atlantic Council to react as if something bad happened, penalizing the fishery with an in-season closure or a reduction in the following year’s fishing season. This is an artifact of managing with ACLs that could be addressed by allowing flexibility in how ACLs are applied on an annual basis. There is a fundamental disconnect between the types of information we have available to manage our recreational fisheries and the way the Regional Fishery Management Councils (RFMCs) are required to apply accountability measures (AMs), such as in-season closures. The process would work

much better if the RFMCs had greater flexibility in applying ACLs and AMs, particularly in the recreational sector.

11. Section 107, page 14 – (1) Limitations to ACL requirement for special fisheries.

SAFMC Response: The South Atlantic Council offers the following CCC Consensus Statement and South Atlantic Regional Perspective:

The CCC developed the following consensus position:

“The CCC believes that further consideration of exemptions or alternatives to the existing ACL requirements for data-limited species could improve the Councils’ ability to provide stability in setting harvest limits. The ad hoc methods sometimes used to establish ACLs for data-limited species often result in quotas that are less predictable, resulting in a loss of stability and yield in some of our most important fisheries. While ACLs and AMs have been effective management tools for many fisheries, they may not be the best tools for managing incidental or small-scale, data-limited fisheries. In these situations, Councils should have discretion to determine alternative control mechanisms, such as ecosystem-based fishery management approaches, for data-limited stocks.”

South Atlantic:

Stocks in a complex will vary in abundance over time, and it is unlikely that all will be at high abundances at the same time. Therefore, mixed-species fisheries cannot be adequately managed by applying single-stock principles. Desirable fishery yield should be specified for overall complexes, while allowing individual stocks to experience normal variability.

The South Atlantic Council believes that spiny lobster should be exempt from requirement for an ACL and associated AMs because the spiny lobster stock is unique among all federally managed species in regards to its life cycle: (a) recruitment has been stable over many years but is not linked to production or local stock size; (b) recruits arrive over protracted periods from throughout the Caribbean; (c) 50% of larvae are lost to the north Atlantic, and more than 50% of the recruitment comes from external sources; (d) spiny lobster do not fit the standard pattern of how species behave and how population dynamics work; and (e) spiny lobster have the longest larval duration of any oceanic marine animal. The ACL and AM system has immense value in management and sustainable harvest of most fishing stocks under federal FMPs. Although spiny lobster does not meet the current requirements for exemption (international management or short life cycle), the species is unique in its life cycle and management system and would benefit from an exemption.

In addition, the South Atlantic Council believes that ABCs should not be required for unassessed stocks or for assessed species that have not been re-assessed in 5 years. This would allow the Council to use their informed judgment to set an interim ACL until an ABC was provided. Basing ABCs for unassessed stocks on a quantitative portion of historical landings in the context of the precautionary principle will result in ABCs with no scientific basis that may be open to challenge. Such ABCs could be artificially low, decreasing fishery yield, or too high, posing risk to the stock. The simple fact is that, without a legitimate assessment, neither scientists nor managers can make biomass-based recommendations for ABCs, because historical landings are uninformative for estimating stock abundance. This is particularly true for mixed-stock fisheries, such as the South Atlantic Snapper Grouper Complex, with a long history of missing and

inaccurate landings at the species level. The attempt to use a “one size fits all” approach will not work.

ACL management poses a special challenge for recreational fisheries in the southeast, due to the fact that the management paradigm and recreational fisheries are simply mismatched. Current ACL management shuts down or penalizes a recreational fishery when catches are high. However, in reality, high recreational catches are often reflective of high abundance of a species, which is a good thing. The current management paradigm forces the Council to react as if something bad happened, when in fact something really good happened in the fishery. The Council often sets ACLs for five years at a time, or longer, and they are not updated until new stock assessments become available. (Note: the limited availability of stock assessments is addressed in Topic 14). The static ACLs cannot and do not react to real-time changes in stock abundance. Flexibility in setting and revising ACLs would allow the Council to respond to natural variability in stock abundance and address the fundamental out-of-sync artifact of managing with ACLs that needs to be addressed.

The management regime has to be brought in line with the science that can be funded, and that’s fundamentally one of our problems now. It’s why the Council hears from fishermen, quite often, that your management doesn’t match what I’m seeing on the water, and that’s because, a lot of times, the Council reacts to really good things as if they were bad things. For example, red snapper is probably on the most rapid increase in stock size of anything we’ve seen in the South Atlantic; however, the fishery remains under very limited harvest levels. There is a fundamental disconnect between the types of information that we have to manage our recreational fisheries and how we are required to apply accountability measures to address ACLs. The process would work much better if the Council had greater flexibility in applying ACLs/AMs, particularly in the recreational sector.

12. Section 107, page 15 – (2) Authorization for multiyear ACLs.

SAFMC Response: The South Atlantic Council currently specifies ACLs that remain in place until modified. Limiting multi-year ACLs to 3 years implies updated assessments are available soon which they are not and this would negatively impact the Council’s ability to manage fisheries in the southeast.

13. Section 107, page 15 – (3) Ecosystem component species defined.

SAFMC Response: The South Atlantic Council would be better able to conduct ecosystem management if we were able to put in place appropriate regulatory actions (e.g., trip limits and overall harvest cap) that would serve as a pause to allow the Council sufficient time to determine whether conservation and management is necessary. Dolphin Wahoo Amendment 12 is currently considering such regulations for bullet and frigate mackerel, important prey species.

14. Section 107, page 15 – (4) Consideration of ecosystem and economic impacts.

SAFMC Response: The South Atlantic Council currently considers these factors to the maximum extent allowed by our very limited data. If the requirements become more specific than we have data to address, then this would negatively impact the Council’s management.

15. Section 108, page 17 – Transparency and public process.

SAFMC Response: The Council process operates in a very open and transparent process. Briefing materials are posted to the Council’s website 2 weeks prior to each meeting, all meetings (except closed personnel meetings or workshop-type sessions) are offered as webinars, and verbatim minutes are produced and posted to our website shortly after each meeting. Usually we can post the webcast immediately and minutes may at times take longer than 30 days given the workload of our transcriptionist. The South Atlantic Council approved the following motion at their December 2018 meeting: SAFMC IS NOT IN FAVOR OF SECTION 108(b)(5).

(Note: This refers to requiring each Council to hold a roll call vote on all non-procedural matters before the Council.). This would slow the proceedings of meetings, increase the cost of transcription, and generally be disruptive to the normal flow of business. Any Council member can request a roll call vote on any motion at any time so requiring a roll call vote for every nonprocedural matter appears unnecessary.

16. Section 109, page 18 – Contents of FMPs. (1) Depleted.

SAFMC Response: The South Atlantic Council offers the following CCC Consensus Statement and South Atlantic Regional Perspective:

The CCC developed the following consensus position on the MSA’s definition of “overfished”:

“The CCC believes that an alternative term could be useful for describing fisheries that are depleted as a result of non-fishing factors, unknown reasons, or a combination of fishing and other factors. The current MSY-based definition can be problematic when applied to data-limited fisheries or mixed-stock complexes. Furthermore, the term “overfished” can unfairly implicate fishermen for depleted conditions resulting from pollution, coastal development, offshore activities, natural ecosystem fluctuations, and other factors. Not all of the Councils agree that “depleted” is an appropriate term to replace “overfished” with. Some have noted that “depleted” has specific meanings in a number of other statutes, including the Endangered Species Act and the Marine Mammal Protection Act, and that care should be taken to avoid conflict or ambiguity if a change in terminology is implemented.”

South Atlantic:

The Council believes another term to separate stock declines from fishing (overfishing) and non-fishing reasons would be beneficial. However, the Council is concerned about using “depleted” as this has specific meaning under the MMPA and ESA.

17. Section 109, page 18 – Contents of FMPs. (2) Consideration of International Fishery efforts in developing Catch Limits.

SAFMC Response: The South Atlantic Council offers the following CCC Consensus Statement and South Atlantic Regional Perspective as it pertains to spiny lobster. Florida has the primary lead in U.S. management and there is an international connection:

The CCC developed the following consensus position:

“The CCC believes that further consideration of exemptions or alternatives to the existing ACL requirements for data-limited species could improve the Councils’ ability to provide stability in setting harvest limits. The ad hoc methods sometimes used to establish ACLs for data-limited species often result in quotas that are less predictable, resulting in a loss of stability and yield in

some of our most important fisheries. While ACLs and AMs have been effective management tools for many fisheries, they may not be the best tools for managing incidental or small-scale, data-limited fisheries. In these situations, Councils should have discretion to determine alternative control mechanisms, such as ecosystem-based fishery management approaches, for data-limited stocks.”

South Atlantic:

Stocks in a complex will vary in abundance over time, and it is unlikely that all will be at high abundances at the same time. Therefore, mixed-species fisheries cannot be adequately managed by applying single-stock principles. Desirable fishery yield should be specified for overall complexes, while allowing individual stocks to experience normal variability.

The South Atlantic Council believes that spiny lobster should be exempt from requirement for an ACL and associated AMs because the spiny lobster stock is unique among all federally managed species in regards to its life cycle: (a) recruitment has been stable over many years but is not linked to production or local stock size; (b) recruits arrive over protracted periods from throughout the Caribbean; (c) 50% of larvae are lost to the north Atlantic, and more than 50% of the recruitment comes from external sources; (d) spiny lobster do not fit the standard pattern of how species behave and how population dynamics work; and (e) spiny lobster have the longest larval duration of any oceanic marine animal. The ACL and AM system has immense value in management and sustainable harvest of most fishing stocks under federal FMPs. Although spiny lobster does not meet the current requirements for exemption (international management or short life cycle), the species is unique in its life cycle and management system and would benefit from an exemption.

In addition, the South Atlantic Council believes that ABCs should not be required for unassessed stocks or for assessed species that have not been re-assessed in 5 years. This would allow the Council to use their informed judgment to set an interim ACL until an ABC was provided. Basing ABCs for unassessed stocks on a quantitative portion of historical landings in the context of the precautionary principle will result in ABCs with no scientific basis that may be open to challenge. Such ABCs could be artificially low, decreasing fishery yield, or too high, posing risk to the stock. The simple fact is that, without a legitimate assessment, neither scientists nor managers can make biomass-based recommendations for ABCs, because historical landings are uninformative for estimating stock abundance. This is particularly true for mixed-stock fisheries, such as the South Atlantic Snapper Grouper Complex, with a long history of missing and inaccurate landings at the species level. The attempt to use a “one size fits all” approach will not work.

ACL management poses a special challenge for recreational fisheries in the southeast, due to the fact that the management paradigm and recreational fisheries are simply mismatched. Current ACL management shuts down or penalizes a recreational fishery when catches are high. However, in reality, high recreational catches are often reflective of high abundance of a species, which is a good thing. The current management paradigm forces the Council to react as if something bad happened, when in fact something really good happened in the fishery. The

Council often sets ACLs for five years at a time, or longer, and they are not updated until new stock assessments become available. (Note: the limited availability of stock assessments is addressed in Topic 14). The static ACLs cannot and do not react to real-time changes in stock abundance. Flexibility in setting and revising ACLs would allow the Council to respond to natural variability in stock abundance and address the fundamental out-of-sync artifact of managing with ACLs that needs to be addressed.

The management regime has to be brought in line with the science that can be funded, and that's fundamentally one of our problems now. It's why the Council hears from fishermen, quite often, that your management doesn't match what I'm seeing on the water, and that's because, a lot of times, the Council reacts to really good things as if they were bad things. For example, red snapper is probably on the most rapid increase in stock size of anything we've seen in the South Atlantic; however, the fishery remains under very limited harvest levels. There is a fundamental disconnect between the types of information that we have to manage our recreational fisheries and how we are required to apply accountability measures to address ACLs. The process would work much better if the Council had greater flexibility in applying ACLs/AMs, particularly in the recreational sector.

18. Section 110, page 20 – Fees.

SAFMC Response: The South Atlantic Council is concerned about collecting fees to cover the costs of management, data collection, and enforcement, especially from fisheries with little profit margin. The South Atlantic Council would encourage consideration of a modification to MSA that would allow direct funding to Councils that could be used to address some of the management, data collection, and enforcement costs (see **Attachment 1**).

19. Section 111, page 21 – Rebuilding overfished or otherwise depleted fisheries.

SAFMC Response: The South Atlantic Council

The South Atlantic Council offers the following CCC Consensus Statement and South Atlantic Regional Perspective as it pertains to rebuilding:

The CCC developed the following consensus position on rebuilding timeframes:

“In general, the CCC believes the addition of measures that would increase flexibility with respect to stock rebuilding for certain types of fisheries would improve the ability of Councils to achieve management objectives.

We acknowledge that rebuilding often comes with necessary and unavoidable social and economic consequences, but we believe that targeted changes to the law would enable the development of rebuilding plans that more effectively address the biological imperative to rebuild overfished stocks while mitigating the social and economic impacts.

Under the rebuilding requirements currently in the Act, Councils determine the rebuilding schedule based on scientific information supplied by NMFS. Rebuilding timeframes balance the biology of the fish and the economic needs of those involved in the fishery to rebuild the fishery within the time limits allowed in the Act. There is often considerable uncertainty involved in the calculation of the rebuilding timeframe and, with changing ocean conditions occurring in some

regions, rebuilding success can be even more uncertain. That is why the Act already requires that Councils assess rebuilding progress at regular intervals.

Requiring that a rebuilding plan meet an artificial goal (75 percent probability of success) if a rebuilding plan is not meeting the expected progress by the first assessment would almost certainly result in significant adverse impacts to fishermen and fishing communities. The experience of several Councils shows that this requirement could lead to closing fisheries, with severe impacts on communities. The suggested language would take away the flexibility that Councils currently have in balancing the need to rebuild overfished fisheries with the need to minimize the economic effects on fishing communities.

Often, changes to an assessment model can lead to an unexpected change in the understanding of stock status. Limiting a Council's ability to adapt to these changes because of a mandatory requirement would limit a Council's ability to modify the rebuilding program in light of the new information. As a result, fishermen and their communities would be penalized for improvements in science."

South Atlantic:

Under the requirements of Magnuson-Stevens, the regional management Councils develop rebuilding plans for overfished stocks. The law requires rebuilding plans to end overfishing within two years and attempt to rebuild stocks within 10 years, if biologically possible. These arbitrary deadlines can be unnecessarily disruptive to fishing communities and local economies. In some cases, if longer timeframes were allowed, fisheries could be rebuilt or overfishing could be eliminated without devastating the economic livelihood of fishermen and negatively affecting fishing communities.

The South Atlantic Council believes that the rebuilding time requirement should be simplified, by eliminating the arbitrary 10 year requirement and using the current biologically-based rebuilding period alternative of Fishing Mortality $(F)=0 + 1$ generation time for all situations. The 10-year limit does not treat all stocks with varying life histories fairly and adequately. Short-lived stocks can experience several generations in that time, while long-lived stocks may only experience a small portion of a generation.

In the experience of the South Atlantic Council, the major impacts occur with the requirement to end overfishing immediately. While the impacts from this requirement have been severe and long lasting, the impacts from rebuilding timeframes have not been a major issue because we adjust the annual ACLs based on the rebuilding projections.

In summary, the South Atlantic Council feels removing the arbitrary 10-year requirement would be beneficial and more attention should be given to the impacts of ending overfishing immediately, which is where the big reductions occur.

20. Section 112, page 24 – Streamlining review.

SAFMC Response: The South Atlantic Council offers the following CCC Consensus Statement and South Atlantic Regional Perspective as it pertains to the agency’s review of documents:

The CCC developed the following consensus position:

“The CCC believes that extensive delays in approving Council plans/amendments and implementing regulations can result in confusion and direct economic losses to our recreational and commercial constituents. The MSA is rightfully so a measured and participatory process whereby the public get to see and participate in the development of plans/amendments/regulations. After this thorough process, the review and implementation process should conform to the timelines specified in the MSA. The CCC recognizes that resources are limited and that this often results in delays during the NMFS/NOAA GC review process; however, such delays should be minimized for the public’s sake and to preserve the integrity of the process.”

South Atlantic:

The Regional Office staff draft the codified text for the regulations for review by the Committee and Council to ensure they track the Council’s intent. In general, the Council approves all actions at one Council meeting and then Council staff finalizes the document for pre-review by the Regional Office staff and NOAA GC. At the next Council meeting, the pre-reviewed document is presented to the Council for final review and approval for formal review by the Secretary. The Council also approves the codified text for the proposed rule and gives the Council chair authority to approve editorial changes to the final document and codified text. Council staff, Regional Office staff, and NOAA GC give the document and codified text one additional pre-review after the Council’s final approval. The Council’s goal is to send a document with the codified text to the Secretary of Commerce/NMFS prior to the following Council meeting. The goal of the extensive pre-review opportunities is that once a document is received for formal review, the process can begin immediately. Timely implementation is critical to meeting the need to take action and for the public to see the results of their input to the Council.

The MSA specifies a statutory deadline for reviewing plans/amendments: immediately commence review and immediately publish a Notice of Availability with a 60-day comment period from the day published. The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period. Total time equals 90 days. The MSA defines "immediately" - means on or before the 5th day after the day on which a Council transmits to the Secretary a FMP, Amendment, or proposed regulation.

For Regulations - immediately initiate an evaluation to determine if they are consistent with the FMP, amendment, MSA, and other applicable law within 15 days:

If yes publish for 15-60 day comment period.

If no, notify Council in writing of inconsistencies and provide recommendations to fix.

Final regulations published within 30 days after the end of the comment period.

There is no statutory deadline for review of Regulatory Amendments; however, the statutory deadline for regulations above applies.

Example 1)

- **Snowy Grouper:** *Snapper Grouper Regulatory Amendment 20 implemented fishing levels based on SEDAR 36 that showed snowy grouper was no longer undergoing overfishing and catches could be increased. The commercial annual catch limit (ACL) went from 82,900 lbs gutted weight (gw) to 115,451 pounds gutted weight (lbs gw) and the recreational ACL went from 523 fish to 4,152 fish. The commercial trip limit was increased from 100 lbs gw to 200 lbs gw. Additionally, a recreational fishing season was established for snowy grouper from May through August of each year. Snapper Grouper Regulatory Amendment 20 was sent to NMFS on December 2, 2014, and the proposed rule implementing the amendment was published on April 8, 2015 with public comments due by May 8, 2015. The final rule was published on July 21, 2015 and became effective on August 20, 2015. It took 261 days from the date the document was sent to NMFS for the regulations to be implemented.*

Commercial harvest of snowy grouper closed on June 30, 2015 and recreational harvest of snowy grouper closed on July 6, 2015 due to projections indicating that the sector ACLs would be met. Commercial harvest reopened on August 20, 2015 with the implementation of the amendment and the sector was able to fully utilize the increased ACL. Recreational harvest reopened on August 20, 2015 as well but closed on September 1, 2015, per the new annual recreational season established in the amendment. As a result, the recreational sector was not able to fully utilize its increased ACL. Had Amendment 20 been in place earlier in the year, the recreational sector would have potentially been able to remain open for a longer period of time and more fully utilized the remainder of its uncaught ACL in 2015 of 2,531 fish¹ which had an estimated economic value of approximately \$264,000² (2015 dollars). Based on recreational landings the following year, it is likely that this increase in catch and value would have been fully realized if the mid-summer closure could have been minimized or avoided.

Example 2)

- **Dolphin:** *Amendment 8 to the Dolphin Wahoo Fishery Management Plan adjusted sector allocations of the total ACL in the dolphin fishery to provide a larger portion of the ACL to the commercial sector. The commercial allocation changed from 7.54% to 10% of the total ACL which equated to an increase in the sector ACL from 1,157,001 pounds whole weight (lbs ww) to 1,534,485 lbs ww. Amendment 8 was sent to NMFS on February 25, 2015, the Notice of Availability published on July 15, 2015, the amendment was approved on October 14, 2015, and the proposed rule implementing the amendment was published on September 29, 2015 with*

¹ Difference between recreational landings and the recreational ACL as provided on the SERO ACL Monitoring Website accessed on July 28, 2016.

http://sero.nmfs.noaa.gov/sustainable_fisheries/acl_monitoring/recreational_historical/sa_recreational_historical/2015/index.html

² Based on a willingness to pay of \$102 (2013 dollars) per grouper as provided in the EIS for Snapper Grouper Regulatory Amendment 20 and adjusted for inflation.

public comments due by October 29, 2015. The final rule was published on January 22, 2016 and became effective on February 22, 2016. It took 362 days from the date the document was sent to NMFS for the regulations to be implemented.

In the meantime, the commercial dolphin fishery experienced above average landings in 2015 and commercial harvest was closed in all Atlantic waters when the commercial ACL was projected to be met on June 30th, 2015. This commercial harvest closure remained in effect through the end of the year. Traditionally, the longline gear sector lands the majority of their catch between late April and early July. The hook-and-line gear sector typically continues to land dolphin throughout the year. In 2015, the hook-and-line gear sector was not able to fish as they had historically. If the regulatory changes in Amendment 8 had been in place, the commercial sector, particularly the hook-and-line gear sector, would have been able to harvest dolphin over a longer period of time and likely would not have experienced a harvest closure. Also, the commercial sector could have harvested up to an additional 377,484 lbs ww of dolphin that year with an estimated dockside value of approximately \$1.1 million³ (2015 dollars), although the increase in observed harvest may not have fully reached this level based on historic commercial landings.

Example 3)

- **Black Sea Bass:** Snapper Grouper Regulatory Amendment 16 adjusted the seasonal prohibition on the use of black sea bass pots annually from November 1 through April 30. The amendment retained the November 1 through April 30 prohibition on the use of pots but reduced the size of the prohibited area and added enhanced gear marking requirements, with the goal being to minimize adverse socio-economic impacts to black sea bass pot endorsement holders while maintaining protection to whales listed under the Endangered Species Act in the South Atlantic Region.

Snapper Grouper Regulatory Amendment 16 was sent to NMFS on March 4, 2016, the NOA of the draft EIS was published on October 23, 2015, and the NOA of the final EIS was published on July 1, 2016. The proposed rule implementing the amendment was published on August 11, 2016 with public comments due by September 12, 2016. The final rule was published on December 29, 2016 and became effective on the same date. The 32 vessels in the South Atlantic region with black sea bass pot endorsements were not allowed to fish pots in November and December 2016 because Regulatory Amendment 16 was not yet implemented. Based on the economic analysis in the amendment, not allowing the fishing of black sea bass pots over these two months may have led to forgone economic benefits of approximately \$14,700 to \$15,700⁴ (2016 dollars) in dockside value due to decreased commercial landings. It took 300 days from the date the document was sent to NMFS for the regulations to be implemented.

³ Based on the average annual dockside price per pound (whole weight) for dolphin in 2015 of \$2.79 (2015 dollars) as provided by the Atlantic Coast Cooperative Statistics Program dataset.

⁴ Based on the range of economic benefits provided in the EIS for Snapper Grouper Regulatory Amendment 16 converted into a monthly rate over the time period (November through April) and adjusted for inflation (\$7,257 to \$7,759 per month in 2014 dollars).

21. Section 113, page 24 – Exempted fishing permits.

SAFMC Response: The South Atlantic Council offers the following CCC Consensus

Statement and South Atlantic Regional Perspective as it pertains to exempted fishing permits: The CCC developed the following consensus position:

“The CCC believes that exempted fishing permits (EFPs) are an extremely important and useful mechanism to conduct scientific research. For example, EFPs have been used in different regions of the U.S. to conduct surveys, test monitoring devices under field conditions, investigate invasive species, and develop fishing gear that reduces bycatch and reduces impacts on habitat and protected species. These studies are frequently done by the fishing community at no cost to the public and have provided enormous benefits to the conservation and management of marine resources and habitats.”

The CCC believes that the existing regulations already provide a good framework for developing regional processes for issuing and reviewing EFPs. The EFP applications undergo a regional scientific peer review and are evaluated through a public process by the respective regional Councils. The public and affected states have opportunities to comment to NMFS and the Councils during this process. Any new requirements for the EFP process, such as additional social and economic analysis or further consultation with the state governors, would greatly reduce the ability to get EFPs developed and approved in a timely manner.

In addition, the CCC believes that multi-year EFPs provide the necessary flexibility to scientifically test gear across different years and seasons. New regulations that limit EFPs to a 12-month period will restrict the type and quality of research that can be done, thus limiting the usefulness of the data collected.”

South Atlantic:

The South Atlantic Council believes that the existing EFP regulations provide a sufficient framework for the expedited, uniform, yet regionally-based process envisioned to test solutions and collect data to address specific management issues. EFPs have been used in the South Atlantic to collect data regarding proposed depth-based area closures, to test gear configurations for bycatch reduction, and to address invasive species issues. Because the Council has received an increased number of EFPs with varying degrees of detail in recent years, it recently directed staff to develop a review process for inclusion in the Handbook/SOPPs. The intent is to provide clarity to both the NMFS Southeast Regional Office, as well as to potential EFP applicants, the Council’s expectations regarding completion of necessary EFP materials prior to Council review. In addition to a determination from the NMFS that the EFP is complete as per the Council’s guidance, the process will include a presentation of the EFP to the appropriate Council Committee prior to the public comment session at the Council meeting where it is being reviewed.

Some of the proposed legislative changes to current EFP regulations may be overly prescriptive and have the unintended consequence of inhibiting the Councils’ ability to address specific management issues in an expedited fashion. EFPs that are limited to only 1 year will probably severely limit the usefulness of the data received as often the first year fishermen are just getting

adjusted to trying the new process. It often takes a second year to work out the bugs just like many of the fishery grants are extended year after year to get a baseline that has meaning. The higher the bar is set for reviews and such, the fewer the applicants you will have; often it is the small players that come up with good innovative ideas.

22. Section 201, page 25 – Modernizing fisheries data collection and storage.

SAFMC Response: The South Atlantic Council is not familiar with the United States Digital Service and has partnered with the Atlantic Coastal Cooperative Statistics Program (ACCSP) for data collection and storage. Consider noting that the requirement for confidentiality significantly increases the cost of data collection, access, and storage. The fishery resources managed by the Councils are a public resources, not private, and for those individuals choosing to harvest a public resource, providing their data could be considered a cost of operation. This would greatly simplify the system and provide significant cost savings, however, would not be favored by many fishermen.

23. Section 202, page 27 – Electronic technologies.

SAFMC Response: The South Atlantic Council offers the following from the regional perspective on cooperative research:

The South Atlantic Council believes partnering with stakeholders to use fishing vessels to deploy acoustic or other marine technology, expanding the use of electronic catch reporting programs and technology, and improving monitoring and observer coverage through the expanded use of electronic monitoring devices, excluding VMS, would be very helpful. The South Atlantic Council required federally-permitted snapper grouper commercial and for-hire vessels use video monitoring if selected since 2008 (Snapper Grouper Amendment 15B); however, to date, none have been selected. The South Atlantic Council has worked with partners to develop applications for charter vessel reporting and private recreational permitting/reporting application. The South Atlantic Council believes that working with stakeholders and using innovative technologies is essential to address current and anticipated data needs.

24. Section 203, page 31 – Recreational data collection.

SAFMC Response: The South Atlantic Council offers the following CCC Consensus Statement and South Atlantic Regional Perspective as it pertains to recreational data collection:

The CCC developed the following consensus position:

“The CCC believes MRIP was not designed to provide data for in-season ACL management. The current MRIP methodology cannot be modified nor can sufficient funding be provided such that in-season ACL management will work. The CCC believes alternative methods (e.g., state electronic logbook programs, federal for-hire electronic logbook programs, and electronic logbook programs for private recreational anglers) should be fully implemented where they are available and developed, then evaluated where they do not yet exist. Once evaluated, MRIP should work to quickly certify these alternative methods for use in monitoring recreational catches.

There does not appear to be a plan for the systematic collection of the necessary biological data from recreational fisheries for use in stock assessments (size, age, and reproductive data). Stock assessment data would be greatly improved, as would the assessment results, if NMFS would immediately prepare a written plan for each region and coordinate across regions to address species as they move from one region to another due to changes in the environment. The CCC believes additional funding is required for successful implementation of such a data collection program.

The CCC believes more timely and accurate catch estimates that will be accepted by the recreational community (since they are providing the data) will go a long way to improve stock assessments, improve voluntary compliance, and improve accountability within the recreational fishing community.”

South Atlantic:

Recreational fishing is incredibly important to the South Atlantic. Nearly 17 million recreational fishing trips are reported by MRIP for the South Atlantic in 2016, representing 30% of the trips measured by the program. Over 1.6 million of these trips were taken in the EEZ in 2016, representing nearly one-third of all EEZ trips reported by MRIP. These values for 2016 are by no means anomalous; the South Atlantic has accounted for 28% of all trips, and 34% of EEZ trips, reported by MRIP during 1981-2016. Nor do these values represent the full importance of recreational fishing in the South Atlantic, as trips taken on headboats are not included in these values because they are estimated through a separate program, and all trips taken in Monroe County, Florida, are attributed to the Gulf region in the default MRIP queries. Charter vessels and headboats are only two components of the larger issue of a multi-faceted recreational catch accounting system that is suitable for the ACL management required by the MSA; private recreational anglers catch the most fish and are the most difficult to sample.

Requirements to manage fisheries with specific Annual Catch Limits (ACLs) under the Reauthorized Magnuson-Stevens Act have significantly increased the importance of recreational catch estimates provided by the Marine Recreational Information Program (MRIP). This has led to closer scrutiny of MRIP methods, which has in turn led to a number of changes in those methods over the last few years. While many knowledgeable experts and scientific reviewers agree that these changes have reduced bias and improved the statistical properties of the estimates, there remains considerable skepticism among the fishing public, state managers, and Council members that the MRIP program accurately reflects recreational catch and effort. This skepticism is particularly acute among those who fish in the Exclusive Economic Zone (EEZ) in the South Atlantic and pursue species managed by the South Atlantic Fishery Management Council (SAFMC), as many of these species fall into the category of “rare events”, exhibiting catch estimates that are prone to outliers and high uncertainty. One success from increased efforts to promote awareness and understanding of MRIP is a more knowledgeable fishing public. The flip side of this success is that same public now becoming more aware of shortcomings and challenges, and more prone to let their dissatisfaction be heard, particularly when estimates that seem “wrong” to them lead to closures of favored fisheries.

Prior to requirements to manage by ACLs, large increases or “spikes” in MRIP estimates did not exert much effect on the management program, as the “MRFSS” program (as it was then called) was widely accepted as meeting its stated goal of providing accurate information on overall trends of recreational fishing, with less accuracy and precision expected of individual estimates. That is no longer the case, as management programs must now prevent landings from exceeding the ACL. Within the South Atlantic Region, a number of recent, high-profile, unexpected spikes have led to recreational fishery closures that, to many observers, are simply the result of outlier values within the MRIP estimation process, and not indicative of actual landings or fishery trends.

*In 2015, NOAA Fisheries closed the **recreational hogfish fishery** in the South Atlantic on August 24 due to landings exceeding the ACL. This was triggered by an estimate for Wave 2 (March and April) of 228,494 pounds, a value that was 3.8 times the entire annual ACL of 85,355 pounds. Given that average annual hogfish landings reported by MRIP from 1986 to 2014 were only 75,126 pounds, and landings exceeded 100,000 pounds in only 4 of those years, the 2015 Wave 2 seems an outlier – far out of line with the normal and expected values. Moreover, in most recent years landings are highest in Waves 3 and 4. Nonetheless, the fishery was closed. Hogfish are primarily harvested by spearing and the spearfishing sector is not sampled well by MRIP.*

*In 2015, NOAA Fisheries closed the **recreational blueline tilefish fishery** on April 7 due to landings exceeding the ACL. MRIP reported 162,483 pounds of blueline tilefish landed in 2016, with 155,293 pounds (96%) taken in Wave 4. Total annual landings exceeded this single wave estimate in only 3 of the prior 20 years of estimates, and the 2015 landings for Wave 3 was only 373 pounds. Blueline tilefish appears particularly resistant to MRIP sampling efforts. No values are reported for 1986-1992, 1994, 1998-1999, and estimates are only reported in 1 or 2 waves for the 10 years from 1993 through 2005 that provide any estimate.*

*The **red snapper fishery** has been closed from 2010 to 2017 except for mini-seasons in 2012, 2013, and 2014, which had a total of 17 open days in the recreational fishery and 101 open days in the commercial fishery. Uncertainty around private recreational catch and discard estimates (accounts for >70% of the total removals) prevented the NMFS from providing updated projections for use during 2017. The stock assessment and continued monitoring (using trap indices) shows continued rebuilding. Since the last stock assessment (data through 2014), which indicated the stock was overfished and overfishing was occurring, monitoring has indicated that the stock has doubled in population size and expanded in range. The current condition based on recent changes in population size is unknown. Fishermen are describing this increase in red snapper abundance as the best example of recovery in the snapper grouper fishery yet they still cannot have a fishery due to ABC/ACL management. With the current measures in place, the estimates of dead discards will prevent the fishery from reopening. In fact, 2016 red snapper removals due to dead discards in the private recreational fishery exceeded the total removals ABC in wave 6 alone (November to December). The Council is exploring alternative methods to set an ACL and allow some access by fishermen. During the open season, much needed fishery-dependent data would be collected to inform future stock assessments.*

Impacts and consequences of abnormal and outlier catch estimates extend beyond the immediate effects of annual fishery closures, because such estimates become part of the databases that provide Best Scientific Information. Management action evaluations required for Council FMPs rely upon these data, for example, to determine if an ACL has been exceeded and accountability measures (AMs) have been triggered. Despite the considerable uncertainty in many of these estimates in the form of high Percent Standard Errors (PSEs), only the point estimates are used by the agency in evaluating whether an AM is to be applied. This has potentially significant consequences under the MSA National Standard Guidelines, whereby exceeding an ACL and triggering AMs more than once in four years requires reevaluation of the system of ACLs and AMS. A separate, but related issue is that such outliers are an increasingly common source of frustration for the assessment scientists in our region. Nearly all Southeast Data, Assessment, and Review (SEDAR) workshops devote considerable effort to evaluating outlier MRIP values. Even more importantly, the lack of public confidence in such values undermines confidence in the entire assessment product and management outcomes.

The Council recognizes that fishing effort in the EEZ is not a large component of the overall effort surveyed by MRIP, only representing about 8% of the trips observed in recent years in the South Atlantic Region. Given that total EEZ trips includes effort directed at common South Atlantic targets such as dolphin, billfish, tuna, and mackerels, the number of observed trips interacting, much less directing on, the species in our snapper grouper complex will be even lower. As a result, most, if not all, of the species in our snapper grouper complex can likely be considered 'rare events' when it comes to the MRIP sampling effort. The Council further recognizes that no generalized survey, such as MRIP, is likely capable of providing accurate, robust estimates of rare events in a cost effective manner. Unfortunately, there is nothing in the Magnuson Act that relaxes the requirements for management by ACLs when the only accepted monitoring program is simply incapable of providing estimates that meet the accuracy standards demanded for management by ACLs.

As one means to address these important data issues, the Council began working in 2017 with the NMFS SERO, the Snook and Gamefish Foundation, state partners, and ACCSP on a project to pilot an electronic permit and logbook for the private recreational fishery. The Council will work closely with MRIP and the NMFS SEFSC during this project to ensure proper design, methods, and verification/validation. Validation would be greatly improved if the MRIP interviewers would ask if the person being interviewed has the electronic permit and record the electronic permit number. The Council is also working on another project with the NMFS SERO, SEFSC, state partners, and Harbor Light Software, Inc. to conduct outreach for electronic reporting in the charter and headboat fisheries. This should significantly increase the reliability of reporting in for-hire fisheries. However, these projects address only two components of the larger issue of a multi-faceted recreational catch accounting system that is suitable for the ACL management required by the MSA.

The South Atlantic Council has worked to improve catch reporting. For a system to be effective, there needs to be extensive coordination between management and law enforcement. This will require additional resources for improved law enforcement. The Council is working with the CCC to explore ways to require NOAA GC or some other body, as appropriate, to address and increase the severity of penalties for non-reporting by those entities required to report, both nationally and in the Southeast. The Council currently requires headboat reporting; charter vessel reporting is expected to be mandatory beginning January 1, 2018. The Council is exploring use of an electronic permit and electronic logbook reporting in the private recreational sector.

The Council would like to see a system developed whereby individuals are automatically notified via email if their reports are late. The primary method to improve reporting timing and compliance should be communication and outreach with the affected sectors/individuals. Penalties should be a back-up measure and would only be applied after communication and outreach were used.

The Council is also committed to improving stakeholder involvement and supplementing data collection efforts in the region through the new SAFMC Citizen Science Program. Initiated in early 2017, the program aims to improve fisheries management through collaborative science with fishermen, scientists, and managers. The Council is working with a broad cross-section of fishery stakeholders (including fishermen from all sectors, researchers, state/federal managers, data managers, outreach specialists, and NGOs) to develop policies, standards, and operations for the Program. The Program will ultimately support citizen science projects that will address critical data gaps for use in stock assessments and management decisions. Projects focused on collecting recreational data to supplement existing fishery-dependent data collection programs will be a high priority for the Program.

The Council is concerned that there does not appear to be a plan for the systematic collection of the necessary biological data from recreational fisheries for use in stock assessments (size, age, and reproductive data). Stock assessment data would be greatly improved, as would the assessment results, if NMFS would immediately prepare a written plan for each region and coordinate across regions to address species as they move from one region to another due to changes in the environment.

With respect to the NAS study, the South Atlantic Council does not believe another National Academy of Sciences study of MRIP is necessary because we have adequate scientific recommendations and it would be an unnecessary expenditure of limited National Marine Fisheries Service (NMFS) funding (estimated cost is about \$1M). Instead of such a study, the MRIP numbers would be much improved if there was independent validation of private recreational effort.

25. Section 204, page 34 – Improving science.

SAFMC Response: The South Atlantic Council offers the following CCC Consensus Statement and South Atlantic Regional Perspective as it pertains to improving science:

The CCC developed the following consensus position:

“Surveys and stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. As such, the CCC believes that it would be beneficial for the MSA to include a requirement for the Secretary to develop a comprehensive plan and schedule to address stock assessment needs on a national basis. Increasing stock assessment frequencies and improving stock assessment methods to reduce the uncertainty in setting harvest limits and achieving management objectives will also improve the ability of Councils to establish scientifically-based ACLs, including for those fisheries that are currently considered data limited. However, the CCC is concerned that requiring the Secretary to complete a peer-reviewed stock survey and stock assessments for all FMP species within two years is unrealistic. Comprehensive stock surveys have not been done for coral reef and other areas because they would have been prohibitively expensive and would provide little benefit at great expense. While new emerging drone technology may reduce costs of some surveys, the CCC remains concerned about potential redistribution of survey and assessment resources from stocks with high commercial and recreational interest to those of lower concern. Should Congress insist on completion of these surveys, substantial increases in funding may be needed for this work.

In addition, there has been some discussion of establishing guidelines to facilitate incorporation of data from non-governmental sources in fishery management decisions. There are existing legal requirements that govern data collection and quality (e.g., Data Quality Act) that dictate what NMFS is required to use for stock assessments. Data from fishermen, the states, and universities are already considered and evaluated for inclusion in stock assessment, as appropriate for the methodology and use of the data collected. These data sources are reviewed by the assessment analysts and through the peer review process that usually includes the Councils’ scientific and statistical committees. The CCC believes prescriptive requirements for use of any data source are not appropriate. The implementing guidelines for when such information should be utilized will be critical to its veracity and usefulness to assessment authors and managers.

A cost comparison report on monitoring programs (for example, human observers versus electronic monitoring) would be extremely beneficial to development of such monitoring programs.”

South Atlantic:

The South Atlantic Council is concerned that some of the proposed legislative provisions would be extremely time-consuming and burdensome for both the Scientific and Statistical Committee (SSC) and staff, and appear to duplicate existing avenues of review for information from non-governmental sources. For example, the existing Southeast Data, Assessment, and Review (SEDAR) process already allows for any entity – governmental or otherwise – to submit data via working papers for review during the data and assessment workshop components of the process. Likewise, scientific analyses and conclusions produced by non-governmental entities that have already undergone an external peer-review process (e.g., independent scientific journals) are routinely used during the SEDAR assessments. The Council’s SSC has also established a process

for conduct of third party (e.g., academics, private consultants) stock assessments, and regularly reviews scientific information for use in management that has been collected by academic scientists independently or in cooperation with fishermen. However, the Council believes that data used in management decisions should be collected in accordance with standards appropriate to the type of information collected and its intended use, and that are designed to minimize associated uncertainty.

Further information on use of electronic technology in the recreational sector is as follows:

- A. For-hire vessel electronic reporting will greatly improve the timeliness and accuracy of for-hire catch data.** The South Atlantic Council sent its for-hire amendment for formal review on March 3, 2017 and requested mandatory for-hire electronic reporting become effective January 1, 2018.
- B. Electronic reporting and federal permitting for private recreational anglers may improve recreational harvest and effort estimates.** The South Atlantic Council requested that NMFS work with the South Atlantic Council to explore the utility, feasibility, and value of federal permits and mandatory reporting for private recreational anglers. The South Atlantic Council is currently working with the Atlantic Coastal Cooperative Statistics Program (ACCSP), state, and private partners on a NMFS-funded project to develop and test an app-based permitting and reporting system for these anglers.

26. Section 205, page 39 – Cooperative research and management program.

SAFMC Response: The South Atlantic Council offers the following CCC Consensus Statement and South Atlantic Regional Perspective as it pertains to cooperative research and management:

The CCC developed the following consensus position:

“While some regions already have effective cooperative research programs, the CCC believes that an explicit national plan for conducting and implementing cooperative research could benefit both science and the management. Such a plan would promote buy-in for management actions. One example of a potential cooperative research application would be development of electronic reporting programs. However, because there are differences in regional needs, such plans should not be mandatory.”

South Atlantic:

Requiring a written plan for implementing and conducting research to meet the Councils’ management needs would greatly improve the South Atlantic Council’s ability to manage South Atlantic fisheries. Specifying an update every 5 years with a brief description of projects that were funded in the prior 5-year period and the research and management needs that were addressed by those projects would inject accountability and improve the chances needed research would be conducted. The South Atlantic Council believes partnering with stakeholders to use fishing vessels to deploy acoustic or other marine technology, expanding the use of electronic catch reporting programs and technology, and improving monitoring and observer coverage through the expanded use of electronic monitoring devices, excluding VMS, would be very helpful. The South Atlantic Council required federally-permitted snapper grouper

commercial and for-hire vessels use video monitoring if selected since 2008 (Snapper Grouper Amendment 15B); however, to date, none have been selected. The South Atlantic Council has worked with partners to develop applications for charter vessel reporting and private recreational permitting/reporting application. The South Atlantic Council believes that working with stakeholders and using innovative technologies is essential to address current and anticipated data needs.

27. Section 401, page 41 – Young fisherman development grants.

SAFMC Response: The South Atlantic Council is a strong supporter of Sea Grant and believes that the intent of this provision would improve the operations of Council-managed fisheries. The ongoing MREP process is a good example of how this type of work can be conducted.

28. Section 402, page 46 – North Pacific Fishery Management clarification.

SAFMC Response: No comment.

29. Section 403, page 46 – Refinancing of Pacific coast groundfish fishing capacity reduction loan.

SAFMC Response: No comment.

30. Section 404, page 46 – Arctic community development quota.

SAFMC Response: No comment.

31. Section 405, page 47 – Estimation of cost of recovery from fishery resource disaster.

SAFMC Response: The South Atlantic Council feels that the Secretary publishing the estimated cost of recovery no later than 30 days after the Secretary makes the determination would be informative and transparent.

32. Section 406, page 48 – Deadline for action on request by Governor for determination regarding fishery resource disaster.

SAFMC Response: The South Atlantic Council feels having the Secretary make a decision within 90 days would be responsive to the needs of our affected fishermen, dealers, processors, tackle shops, etc.

33. Section 407, page 49 – Capital construction.

SAFMC Response: The availability of offloading facilities and fish processing sites is becoming more limited in the South Atlantic Council's area, especially in South Florida. Working waterfronts are being replaced and this is having a negative impact on commercial fishermen and processors. Lack of adequate dockage space is also negatively impacting for-hire vessels.

34. Section 408, page 55 – Limited access privilege programs.

SAFMC Response: The South Atlantic Council offers the following CCC Consensus Statement and South Atlantic Regional Perspective as it pertains to limited access privilege programs:

The CCC developed the following consensus position:

“The CCC believes that Councils should maintain the maximum flexibility possible to develop effective management tools, including limited access privilege programs. Temporary moratorium is likely to increase the administrative burden for some Councils and may reduce the Councils’ ability to implement the appropriate management program for their fisheries that could include modification of existing LAPP measures or new LAPP measures.

Limited access privilege programs are a management tool that should be available to the Councils, but the design, timing, and development should be left to individual Councils if they choose to use this tool for a specific fishery.

South Atlantic:

The South Atlantic Council has one long-standing IFQ program in the region (wreckfish) that was established in 1992. [Note: LAPPs and IFQs are all types of catch share programs.] Since that time, the Council has considered the use of catch shares in the snapper grouper mixed-use fishery (2007-2008) and the golden crab fishery (100% commercial) (2012) but did not move forward with programs for either fishery. The topic of catch shares has lately been controversial in the South Atlantic and the Council is not currently considering additional catch share programs. The South Atlantic Council is concerned about the potential impact on existing data collection/research programs if NMFS funds have to be diverted to fund a National Academy of Sciences study of LAPP programs in mixed-use fisheries.

On the topic of cost recover, the South Atlantic Council is concerned about the ability of some programs (e.g., wreckfish) where the profit margins are so low that paying a fee would be a significant impact to ongoing operations. However, the Council is beginning an amendment that will include examining and evaluating cost recovery in the wreckfish fishery.

35. Section 501, page 58 – Enforcement.

SAFMC Response: The South Atlantic Council concluded that allowing the use of fines, penalties, and forfeitures for the costs of stock assessments, surveys, and data collection would be an effective way to improve enforcement, particularly giving priority to fisheries in the regions where they were imposed. Further, establishing a fund for these monies would be effective in improving enforcement on an ongoing basis.

36. Section 502, page 58 – Civil penalties and permit sanctions; criminal offenses.

SAFMC Response: The South Atlantic Council concluded that allowing the Secretary to adjust the maximum penalty amount and indexing it to adjust every 5 years would be an effective deterrent.

37. Section 503, page 60 – Definition.

SAFMC Response: No comment.

38. Section 504, page 61 – Certain commercial fishing permit transfers.

SAFMC Response: Does the Council want to comment?

39. Section 505, page 62 – Federal ocean acidification research and monitoring act.

SAFMC Response: The South Atlantic Council concluded that providing \$35 million/year from 2019 through 2023 would provide a significant improvement to our understanding of the problem.

40. Section 506, page 62 – Capacity reduction program authority. [wording to be supplied]

SAFMC Response: Does the Council want to provide any general comments, perhaps indicating how such a program would help reduce capacity in some of our fisheries?

41. Section 507, page 63 – Mandatory requirements.

SAFMC Response: No comment as this affects the NPFMC.

42. Section 508, page 63 – Reallocation of certain unused harvest allocation.

SAFMC Response: No comment as this affects the NPFMC.

43. Section 509, page 67 – Clarification.

SAFMC Response: No comment as this affects the NPFMC.

44. Section 510, page 69 – Fees.

SAFMC Response: No comment as this affects the NPFMC.

45. Section 511, page 70 – Rule of construction.

SAFMC Response: No comment.

ATTACHMENT 1. MSA WORDING ON FUNDING

DRAFT

MSA WORDING ABOUT DIRECT FUNDING TO COUNCILS

There is wording in MSA that created a Western Pacific Sustainable Fisheries Fund and allows the fund to collect and distribute fees from any Pacific Insular Area fishery agreement. Apparently, the fund is also allowed to use fines and penalties collected in some of the territories. The language is in Section 204(e)(6) through section 204(e)(8) - pages 35 and 36 of the blue MSA book.

There is also language creating an authority for Western Pacific Demonstration Projects which allows the Secretary to make direct grants, but only for demonstration projects "to foster and promote traditional indigenous fishing practices" - on page 111 of the blue MSA book.

The language below is from the latest version of the Magnuson-Stevens Act; yellow highlight has been added to call attention to specific wording:

16 U.S.C. 1824-1825

MSA §§ 204-205

109-479

(7) WESTERN PACIFIC SUSTAINABLE FISHERIES FUND.—There is established in the United States Treasury a Western Pacific Sustainable Fisheries Fund into which any payments received by the Secretary under a Pacific Insular Area fishery agreement and any funds or contributions received in support of conservation and management objectives under a marine conservation plan for any Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands shall be deposited. The Western Pacific Sustainable Fisheries Fund shall be made available, without appropriation or fiscal year limitation, to the Secretary, who shall provide such funds only to—

(A) the Western Pacific Council for the purpose of carrying out the provisions of this subsection, including implementation of a marine conservation plan approved under paragraph (4);

(B) the Secretary of State for mutually agreed upon travel expenses for no more than 2 Federal representatives incurred as a direct result of complying with paragraph (1)(B); and

(C) the Western Pacific Council to meet conservation and management objectives in the State of Hawaii if monies remain in the Western Pacific Sustainable Fisheries Fund after the funding requirements of subparagraphs (A) and (B) have been satisfied.

Amounts deposited in such fund shall not diminish funding received by the Western Pacific Council for the purpose of carrying out other responsibilities under this Act.

109-479

(8) USE OF FINES AND PENALTIES.—In the case of violations occurring within the exclusive economic zone off American Samoa, Guam, or the Northern Mariana Islands, amounts received by the Secretary which are attributable to fines or penalties imposed under this Act, including such sums collected from the forfeiture and disposition or sale of property seized subject to its authority, after payment of direct costs of the enforcement action to all entities involved in such action, shall be deposited into the Treasury of the Pacific Insular Area adjacent to the exclusive economic zone in which the violation occurred, to be used for fisheries enforcement and for implementation of a marine conservation plan under paragraph (4). In the case of violations by foreign vessels occurring within the exclusive economic

zones off Midway Atoll, Johnston Atoll, Kingman Reef, Palmyra Atoll, Jarvis, Howland, Baker, and Wake Islands, amounts received by the Secretary attributable to fines and penalties imposed under this Act, shall be deposited into the Western Pacific Sustainable Fisheries Fund established under paragraph (7) of this subsection.

16 U.S.C. 1855 note, 1856

MSA §§ 305 note, 306

P.L. 104-297, sec. 111(b); 106-555; 109-479, sec. 207; MSA § 305 note 16 U.S.C. 1855 note

WESTERN PACIFIC DEMONSTRATION PROJECTS.—

(1) The Secretary of Commerce is authorized to make direct grants to eligible western Pacific communities, as recommended by the Western Pacific Fishery Management Council, for the purpose of establishing fishery demonstration projects to foster and promote traditional indigenous fishing practices. There are authorized to be appropriated to carry out this section \$500,000 for each fiscal year.

(2) Demonstration projects funded pursuant to this subsection shall foster and promote the involvement of western Pacific communities in western Pacific fisheries and may—

(A) identify and apply traditional indigenous fishing practices;

(B) develop or enhance western Pacific community-based fishing opportunities; and

(C) involve research, community education, or the acquisition of materials and equipment necessary to carry out any such demonstration project.

(3)(A) The Western Pacific Fishery Management Council, in consultation with the Secretary of Commerce, shall establish an advisory panel under section 302(g) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(g)) to evaluate, determine the relative merits of, and annually rank applications for such grants. The panel shall consist of not more than 8 individuals who are knowledgeable or experienced in traditional indigenous fishery practices of western Pacific communities and who are not members or employees of the Western Pacific Fishery Management Council.

(B) If the Secretary of Commerce or the Secretary of the Interior awards a grant for a demonstration project not in accordance with the rank given to such project by the advisory panel, the Secretary shall provide a detailed written explanation of the reasons therefor.

(4) The Western Pacific Fishery Management Council shall, with the assistance of such advisory panel, submit an annual report to the Congress assessing the status and progress of demonstration projects carried out under this subsection.

(5) Appropriate Federal agencies may provide technical assistance to western Pacific community-based entities to assist in carrying out demonstration projects under this subsection.

(6) In this subsection the term ‘Western Pacific community’ means a community eligible to participate under section 305(i)(2)(B)(i) through (iv) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(i)(2)(B)(i) through (iv)).

What do we want? A mechanism to allow funds from different sources (organizations, individuals, NGOs, etc.) to be contributed to support outreach, research, monitoring, and Citizen Science in the South Atlantic Council’s area of authority. Making such a change would require an amendment to the Magnuson-Stevens Act.

Draft Suggested Wording:

There is established in the United States Treasury a Southeast Sustainable Fisheries Fund into which any contributions received in support of monitoring/data collection and research objectives under a fishery management plan or other related document (e.g., stock assessment data/research needs) involving the South Atlantic Fishery Management Council, outreach in support of the South Atlantic Council’s mission, or the South Atlantic Council’s Citizen Science Program shall be deposited. The Southeast Sustainable Fisheries Fund shall be made available, without appropriation or fiscal year limitation, to the Secretary, who shall provide such funds only to—

- (A) the South Atlantic Council for the purpose of carrying out the monitoring/data collection and research provisions of any fishery management plan/amendment;
- (B) the South Atlantic Council for the purpose of conducting outreach in support of the Council's mission; and
- (C) the South Atlantic Council for the purpose of operating the Council's Citizen Science Program.

Notes: (1) Individuals/organizations contributing funds are prohibited from directing where the funds will be used and (2) Funds may only be used for projects/needs included in the research priorities developed by the Council in the 5-year strategic plan or some other Council-generated priority list.

Comments:

This would allow members of the public, organizations, NGOs, etc. to contribute funds to be used for monitoring/data collection, research, outreach, and citizen science. The South Atlantic Council would establish a process for handling the monitoring/data collection, research, and outreach monies similar to the process established for the Citizen Science Program.