**Finding of No Significant Impact (FONSI) for**
**Measures in Regulatory Amendment 11 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Regulatory Amendment 11)**

National Marine Fisheries Service

April 2012

## Introduction

This FONSI was prepared in accordance with National Oceanic and Atmospheric Administration Administrative Order 212-6 (NAO 216-6; May 20, 1999) and NMFS Instruction 30-124-1, July 22, 2005, Guidelines for Preparation of Finding of No Significant Impact, for determining the significance of impacts of a proposed management action. This introduction provides a brief description of the proposed management action and alternatives and summarizes why measures contained in Regulatory Amendment 11 will not have a significant effect on the human environment. Attached is the environmental assessment, entitled *Regulatory Amendment 11 to the Snapper-Grouper Fishery Management Plan of the South Atlantic Region, dated August 2011.*

The environmental assessment contains 11 alternatives in **Action 1** and three alternatives in **Action 2**. **Action 1, Alternative 1 (No Action)** would retain the existing regulations for deepwater species (snowy grouper, blueline tilefish, yellowedge grouper, warsaw grouper, speckled hind, misty grouper, queen snapper, and silk snapper), including the prohibition of fishing for, possession, and retention of other deepwater snapper-grouper species beyond a depth of 240 feet (referred to herein as the "240-foot (40-fathom) prohibition"). **Alternatives 2-11** would modify the 240-foot (40-fathom) prohibition established through Amendment 17B to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 17B). **Alternatives 2-5** would exempt blueline tilefish from the harvest prohibition deeper than 240 feet, whereas, **Alternatives 7-10** would exempt snowy grouper from these regulations. **Alternative 6** would open the closed area for deepwater snapper-grouper species in the South Atlantic seaward of 500 feet and maintain a closed area from 240 to 500 feet. Some fishermen from the Florida Keys have stated that they do not catch warsaw grouper and speckled hind in waters deeper than 500 feet when they fish for snowy grouper and blueline tilefish. **Alternative 11 (Preferred)** would remove the 240-foot (40-fathom) prohibition from the regulations.

**Alternative 1** is the no action alternative, whereby, the underlying purpose (as described in Section 1.4 in the attached environmental assessment for Regulatory Amendment 11) would not be addressed. The purpose is to modify regulations pertaining to the deepwater species to reduce the socio-economic effects expected from the regulations in Amendment 17B while maintaining the biological protection to speckled hind and warsaw grouper in the South Atlantic to the extent practicable. **Alternatives 2-11** would meet the purpose by reducing the number of species prohibited, reducing the boundaries of the harvest prohibition, or removing the prohibition. **Alternative 11 (Preferred)** seeks to prevent significant direct economic loss to snapper-grouper

fishermen, while maintaining the biological protection to speckled hind and warsaw grouper in the South Atlantic to the extent practicable.

In **Action 2, Alternative 1 (No Action) (Preferred)** would not allow transit through the 240-foot (40-fathom) prohibition with prohibited species onboard. **Alternative 2** would allow transit with prohibited species onboard if the vessel is undergoing a direct, non-stop progression on a constant heading, along a continuous straight line course. **Alternative 3** is identical to **Alternative 2**, except that the gear must be stowed on the vessel when in transit. The South Atlantic Fishery Management Council (Council) concluded that the specification of transit is not necessary as the preferred alternative in **Action 1** is to completely remove the 240-foot (40-fathom) prohibition.

**Finding of No Significant Impact**

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 (CEQ) regulations at 40 CFR 1508.27 state that 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 the following criteria:

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. The proposed action would not be expected to jeopardize the sustainability of any target species. If **Alternative 11 (Preferred)** is implemented, fishing would be allowed for six deepwater species in areas where harvest is currently prohibited. However, all harvest would be counted towards the annual catch limits (ACL) established by the Council. Accountability measures (AM) would be employed, if necessary, to reduce the likelihood that the ACL is exceeded.

Individual ACLs are in place for snowy grouper, speckled hind, and warsaw grouper based on acceptable biological catch (ABC) recommendations from the Council's Scientific and Statistical Committee (SSC), which will help to prevent overfishing of snowy grouper, and minimize fishing mortality of speckled hind and warsaw grouper. In addition, the Comprehensive ACL Amendment specifies ACLs, annual catch targets, and AMs for a Deepwater Grouper and Tilefish complex. This complex includes black snapper, blackfin snapper, blueline tilefish, misty grouper, queen snapper, sand tilefish, silk snapper, and yellowedge grouper. The final rule to implement the Comprehensive ACL Amendment published in the Federal Register on March 16, 2012, and is effective on April 16, 2012. Catch levels specified in the Comprehensive ACL Amendment should be sustainable for the deepwater species and ensure overfishing does not occur.

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

Response: No. Although fishery management actions can adversely impact non-target species by increasing bycatch, reducing habitat availability, or altering predator-prey relationships, the Council's proposed action is not anticipated to have such effects on non-target species.

The removal of the harvest prohibition as proposed by Regulatory Amendment 11 would not be expected to significantly increase bycatch of snapper-grouper species, including speckled hind, warsaw grouper, and snowy grouper. The purpose of the prohibition approved in Amendment 17B is to reduce discards of speckled hind and warsaw grouper. However, there is evidence, from new analysis of data, that the prohibition is not effective at its stated purpose. The new analysis of landings data following the implementation of the prohibition indicates that most discards of speckled hind and warsaw grouper are from fishing activities not affected by the prohibition and different management measures would be more effective in reducing discards of these species. Moreover, a substantial amount of individuals stated in their comments on the proposed rule that they do not encounter speckled hind and warsaw grouper as fishing pressure in deepwater is minimal.

The low association between harvest of blueline tilefish and speckled hind/warsaw grouper is supported by preliminary results from a study conducted with an exempted fishing permit (EFP) by the North Carolina Division of Marine Fisheries that began on August 2, 2011. The purpose of the EFP is to determine if speckled hind and warsaw grouper are bycatch in the commercial blueline tilefish component of the South Atlantic snapper-grouper fishery. Preliminary findings provided to the Council and NOAA Fisheries Service on March 2, 2012, indicate that no speckled hind or warsaw grouper were caught on 73 commercial trips targeting blueline tilefish (19 percent of those trips contained an observer).

A Bycatch Practicability Analysis (BPA) was completed for all actions in the amendment and concluded that the actions could increase bycatch of snowy grouper if fishermen continue to encounter snowy grouper after the 100 pound gutted weight (gw) trip limit is reached. However, the BPA also noted that fishermen have reported that they fish in specific areas to avoid snowy grouper once the 100 pound gw trip limit is reached. In addition, Amendment 17B reduced the recreational bag limit of snowy grouper to one per vessel per day. Such measures could be expected to decrease the incentive to fish in areas where snowy grouper are encountered. The above-mentioned EFP supports the conclusion that harvesting blueline tilefish in waters north of Cape Hatteras, North Carolina, does not result in significant bycatch of snowy grouper. Preliminary findings provided to the Council and NOAA Fisheries Service on March 2, 2012, indicate that 2 out of 73 trips caught snowy grouper. Those same trips harvested 94,211 pounds gw of blueline tilefish compared to less than 100 pounds gw of snowy grouper (the exact number cannot be displayed due to confidentiality requirements).

The Council is currently developing the Comprehensive Ecosystem-Based Amendment 3 that considers additional measures to reduce bycatch of speckled hind and warsaw grouper, including the expansion of existing, and establishment of new, mid-shelf marine protected areas. The

completion of the amendment is a high priority for the Council; the Council is planning to submit the amendment to the Secretary of Commerce at their December 2012 meeting.

3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and defined in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP)?

Response: No. Although fishery management actions can adversely affect habitat by increasing fishing gear interactions with the seafloor and/or redistributing fishing effort over more vulnerable habitat, the proposed action is not anticipated to have such an effect. The proposed action would not be expected to cause any damage to ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in the Council's FMPs. Additionally, the Council has implemented a number of gear restrictions designed to minimize adverse effects of the snapper-grouper fishery on particularly vulnerable or valuable habitat.

The area affected by the proposed actions in the snapper-grouper fishery has been identified as essential fish habitat for the Shrimp, Snapper-Grouper, Coral, Dolphin-Wahoo, *Sargassum*, and Golden Crab FMPs of the South Atlantic Council; the Coastal Migratory Pelagics and Spiny Lobster 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 essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs. Fishing effort is not expected to 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.

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

Response: No. Although fishery management actions can sometimes affect public safety by eliminating or minimizing fishermen's flexibility to decide when, where, and how to fish, the proposed action is not expected to have such an effect. The action is not expected to change fishing techniques or operations in a way that would impact the safety of commercial or recreational fishermen.

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. Fishery management actions can adversely affect species and/or habitat protected by the Endangered Species Act (ESA) and/or Marine Mammal Protection Act (MMPA) by increasing bycatch and/or fishing gear interactions with these species, and/or by redistributing fishing effort to areas where protected species and/or critical habitat occurs. However, the proposed action is unlikely to alter fishing in ways that would cause new adverse affects to species not previously considered.

According to the 2012 List of Fisheries (76 FR 73912, November 29, 2011), the Southeastern U.S. Atlantic snapper-grouper fishery is classified as a Category III fishery under the MMPA, 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. 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 11 due to their rare occurrence off the Atlantic coast.

NOAA Fisheries Service completed a biological opinion (opinion) on the South Atlantic snapper-grouper fishery entitled: "The Continued Authorization of Snapper-Grouper Fishing in the U.S. South Atlantic Exclusive Economic Zone (EEZ) as Managed Under the Snapper-Grouper Fishery Management Plan of the South Atlantic Region (SGFMP), including Amendment 13C to the SGFMP," on June 7, 2006. The opinion concluded the continued authorization of the fishery would not affect marine mammals and is not likely to jeopardize the continued existence of any other ESA-listed species.

Subsequent to the June 7, 2006, biological opinion, elkhorn and staghorn coral (*Acropora cervicornis* and *Acropora palmata*) were listed as threatened. In a consultation memorandum dated July 9, 2007, NOAA Fisheries Service concluded the continued authorization of the South Atlantic snapper-grouper fishery is not likely to adversely affect these *Acropora* species. On November 26, 2008, an *Acropora* critical habitat was designated. In a consultation memorandum dated December 2, 2008, NOAA Fisheries Service concluded the continued authorization of the snapper-grouper fishery is not likely to adversely affect *Acropora* critical habitat. Two distinct population segments (DPS) of Atlantic sturgeon occurring in the Southeast Region have been listed as endangered (the Carolina and South Atlantic DPS) (effective April 6, 2012). In a consultation memorandum dated February 15, 2012, NOAA Fisheries Service concluded the continued authorization of the South Atlantic snapper-grouper fishery, is not likely to adversely affect the Carolina or South Atlantic DPSs of Atlantic sturgeon.

As provided in 50 CFR 402.16, re-initiation of formal consultation is required if: 1) The amount or extent of the incidental take is exceeded; 2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not previously considered; 3) the agency action is subsequently modified in a manner causing an effect to the

listed species or critical habitat not previously considered; or 4) if a new species is listed or critical habitat designated that may be affected by the identified action.

Reinitiation of ESA section 7 consultation for Regulatory Amendment 11 is not required. The amount or extent of incidental take authorized by the 2006 biological opinion has not been exceeded, and no new information exists that indicates the agency action is causing effects to listed species that have not been previously considered. The proposed action is also not likely to modify the agency action in a manner that would cause new effects not previously considered. Fishing activities anticipated to occur once Regulatory Amendment 11 is effective would fall within the level of effort and scope of the action analyzed in the June 7, 2006, opinion. During the harvest prohibition of six deepwater snapper-grouper species, it is possible that fishing effort has been redistributed to areas inshore of 240 feet (40 fathoms). Regardless, elimination of the harvest prohibition under Regulatory Amendment 11 is not likely to attract any new effort into the fishery. Additionally, Regulatory Amendment 11 would not change how the gear types evaluated during previous section 7 consultations are used. Thus, no new effects from the fishery are anticipated. No new species or critical habitat has been designated that may be affected by the identified action.

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. Although fishery management actions can impact biodiversity and ecosystem function by altering predator-prey relationships and damaging habitat, the proposed action would not be expected to have such an effect. The proposed action would not be expected to cause any damage to ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in the Council's FMPs.

If **Alternative 11 (Preferred)** is implemented, fishing for six deepwater species would be allowed in areas where harvest is currently prohibited. However, all harvest would be counted towards the ACL established by the Council; AMs would be employed, if necessary, to reduce the likelihood that the ACL is exceeded. The increase in fishing mortality is not expected to affect the long-term sustainability of the stocks. Additionally, the Council has implemented a number of gear restrictions designed to minimize adverse effects of the snapper-grouper fishery on particularly vulnerable or valuable habitat.

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

Response: No. In the context of the entire fishery as a whole, the social and economic impacts of the preferred alternative are not expected to be significant as the net effects of the proposed action are expected to be positive and their magnitude comprises a relatively small portion of the entire economic and social activities associated with the snapper-grouper fishery in the South Atlantic. In terms of business activity, the total regained landings that would be expected to occur as a result of Amendment 11 was estimated to be 143,425 pounds at a value of $348,076 (2008 dollars). The original estimate contained in Amendment 11 does not take into account the

recent and substantial increase in annual commercial landings of blueline tilefish. The new analysis utilizes the ACL of 592,602 pounds to estimate the foregone revenue associated with an annual loss of blueline tilefish landings under a continued prohibition. Based on 47.39 percent of the ACL allocated to the commercial sector, it is estimated that a continued prohibition would resule in an annual loss of 280,834 pounds at a value of $438,101. Overall, the net operating revenues for all commercial vessels in the South Atlantic snapper-grouper fishery are estimated at $10 million annually, so the increase is relatively minor compared to total revenues in the fishery.

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

Response: No. The effects on the quality of the human environment are not likely to be highly controversial. A total of 94 comments were received on the proposed rule for Regulatory Amendment 11. Two commenters stated that the 240-foot (40-fathom) prohibition should remain. Three commenters in one submitted comment stated that the proposed action fails to: (1) End overfishing of speckled hind and warsaw grouper; (2) minimize bycatch and bycatch mortality of speckled hind and warsaw grouper; (3) implement an adequate standardized bycatch reporting methodology in the South Atlantic; (4) retain the only accountability measure in place (the 240-foot prohibition) for speckled hind and warsaw grouper, and, (5) rely on the best scientific information available by circumventing the established Council's Scientific and Statistical Committee's (SSC) peer-review process.

Most comments received on the proposed rule were from fishermen who supported the proposed action. The effects of the snapper-grouper area closure approved in Amendment 17B on the quality of the human environment were controversial as some fishermen felt the action would have unnecessary negative economic effects.

Several commenters stated that the deepwater snapper-grouper prohibition does not enhance protection for the species it intends to protect. Many fishermen reported that they never caught speckled hind and warsaw grouper when fishing in deep waters when targeting snowy grouper, blueline tilefish, and queen snapper. Others stated that deepwater species receive little fishing pressure as it requires specific skills and knowledge (such as knowledge of bottom structure and fish location), significant financial investment, and equipment such as specialized vessels to harvest these species. Rising fuel costs have also reduced effort for these deepwater snapper-grouper species. A university marine research biologist stated that spatial closures in shallow depths encompassing the shelf edge, with 160 ft (49 m) as the inshore depth limit, would have been more effective in protecting speckled hind and warsaw grouper from discard mortality than a prohibition of six deepwater snapper-grouper species starting at 240 feet (40 fathoms) depth, and NOAA Fisheries Service should focus management on places where these two species are being impacted to a greater degree. Commenters noted that, in deciding the location of the spatial closures, information should be utilized from technical divers, conservation-minded fishermen with direct knowledge of shelf-edge habitats, scientists who have done studies on the shelf-edge and further off-shore, and bottom habitat maps of the shelf edge and deeper waters.

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. Special areas, including historic and cultural areas, park land, prime farmlands, wetlands, wild and scenic rivers, ecologically critical areas, or marine sanctuary areas would not be impacted by the proposed action because none of these areas are in the directly affected environment of the South Atlantic snapper-grouper fishery, which is conducted in the federal waters off of North Carolina, South Carolina, Georgia, and Florida.

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

Response: No. The need for this action is based on the results of recent analyses contained in a report produced by NOAA Fisheries Service titled "Regulatory Amendment 11: Warsaw Grouper and Speckled Hind Catches in the U.S. South Atlantic." The 240-foot (40-fathom) prohibition was implemented through Amendment 17B to reduce discards of speckled hind and warsaw grouper. However, recent data analyses suggest speckled hind and warsaw grouper rarely co-occur with snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, or silk snapper. Based upon the results, it appears unlikely that the allowance of blueline tilefish and snowy grouper harvest beyond a 240-foot depth would result in significant increases in the mortality of speckled hind or warsaw grouper. In addition, although yellowedge grouper, misty grouper, queen snapper, and silk snapper primarily share the same hard bottom habitat preference as speckled hind and warsaw grouper, these four species are rarely encountered and are not targeted by commercial or recreational fishermen. The majority of snowy grouper landings in the South Atlantic are from waters deeper than 500 ft (152 m), where landings of speckled hind and warsaw grouper are extremely rare.

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

Response: No. The proposed action is not expected to compound the cumulative effects on the physical, social and economic environments, habitat, protected species or the fishery resource. Therefore, there are no foreseeable significant additive or interactive effects as a result of the proposed federal action.

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 action affected environment does not concern districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places. Consequently, it is unlikely that the proposed action would adversely affect the aforementioned, and this action is not likely to cause destruction of significant scientific, cultural, or historical resources.

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

Response: No. **Alternative 11 (Preferred)** would remove the 240-foot (40-fathom) harvest prohibition from the regulations. Removing the prohibition would not introduce or spread any non-indigenous species because it does not change existing fishing operations.

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

Response: No. The proposed action does not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. **Alternative 11 (Preferred)** would remove the 240-foot (40-fathom) closure from the regulations. The Council is developing a new amendment that would establish management measures that would be more effective in reducing discards of speckled hind and warsaw grouper than the 240-foot (40-fathom) closure implemented through Amendment 17B. The Council intends to approve the new amendment in December 2012.

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

Response: No. The proposed action is not likely to impose or cause a violation of federal, state, or local law or requirements imposed for the protection of the environment. The proposed action is consistent with applicable state and federal regulations. A thorough analysis of other applicable laws related to the implementation of Regulatory Amendment 11 was conducted, as well as an environmental assessment which fulfills the mandates set forth in the National Environmental Policy Act (NEPA). These analyses revealed all actions contained in the amendment and its associated NEPA documentation are in compliance with any and all federal, state, and local laws.

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

Response: No. The proposed action is 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 11 and revealed no cumulative adverse effects on the biological environment. ACLs are in place for snowy grouper, speckled hind, and warsaw grouper and a Deepwater Snapper-Grouper ACL, which includes blueline tilefish, misty grouper, queen snapper, silk snapper, and yellowedge grouper, will be effective on April 16, 2012.

**Determination**

In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment, I have determined that the Preferred Alternative will not significantly impact the quality of the human environment as described above and in the supporting Environmental Assessment. In addition, all beneficial and adverse impacts of the proposed action have been identified and analyzed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

APR 23 2012

Roy E. Crabtree, Ph.D. Date
Regional Administrator
National Marine Fisheries Service
Southeast Regional Office