



June 28, 2022

Kelly Denit  
Director, Office of Sustainable Fisheries  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Frank Helies  
Southeast Regional Office  
National Marine Fisheries Service  
263 13th Avenue South  
St. Petersburg, FL 33701

**RE: NRDC Comments on SAFMC Coral Amendment 10, Docket No. NOAA-NMFS-2021-0126**

Dear Ms. Denit and Mr. Helies:

The Natural Resources Defense Council (NRDC) respectfully submits this comment regarding the South Atlantic Fishery Management Council's (Council) proposed Amendment 10 to its Fishery Management Plan for the Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region (Coral FMP).<sup>1</sup> The Council's preferred alternative 2 would establish a shrimp fishery access area (SFAA) within the northernmost known limit of the unique and highly sensitive *Oculina varicosa* ecosystem and within the designated Oculina Bank Habitat Area of Particular Concern (OHAPC).<sup>2</sup>

NRDC strongly recommends that the National Marine Fisheries Service (NMFS) disapprove the Council's preferred alternative in Amendment 10 based on nonconformance with the requirements of the Magnuson-Stevens Act and the Council's Coral FMP. As discussed further below, this includes insufficient consideration of the adverse impacts of bottom trawling on essential fish habitat (EFH) in and around the proposed access area, and lack of analysis regarding the practicability of keeping the area protected from bottom trawling. Despite recent scientific research and additional supporting information from expert advisors regarding the likely direct and indirect impacts of re-opening the proposed SFAA to bottom trawling, and likely minimal economic benefits to the limited access rock shrimp fishery, the Council concluded that these impacts were unknown. This analysis fails to use the best scientific information available and is insufficient to support the proposed reversal of EFH-HAPC protections. The proposed SFAA is also inconsistent with the objectives of the Council's own Coral FMP, which emphasizes the need

---

<sup>1</sup> National Oceanic and Atmospheric Administration, Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region; Coral Amendment 10, 87 Fed. Reg. 25,438 (April 29, 2022).

<sup>2</sup> South Atlantic Fishery Management Council, Amendment 10 to its Fishery Management Plan for the Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region ("Coral Amendment 10") (November 2021), <https://safmc.net/documents/2022/04/coral-amendment-10.pdf/>.

for enhanced protection in designated HAPCs, such as the OHAPC. Therefore, NMFS should instead approve preferred alternative 1 (no action) to maintain existing OHAPC protections.

\* \* \*

### **I. The Proposed Action is Bound by the MSA’s Requirement to Minimize Adverse Fishing Impacts on EFH to the Extent Practicable.**

Under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), each of the Council’s FMPs must “describe and identify essential fish habitat for the fishery,” and must “*minimize to the extent practicable adverse effects on such habitat caused by fishing*, and identify other actions to encourage the conservation and enhancement of such habitat.”<sup>3</sup> Congress added this requirement in 1996 to recognize the fundamental importance of marine habitats to healthy fisheries and to call on fishery managers to preserve the ecological role of habitats as part of the fishery management process. The MSA’s supporting findings for the EFH authority hold more true today than ever:

“One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States.”<sup>4</sup>

Notably, the South Atlantic Council was an early adopter of EFH and HAPC protections. Its designated Coral HAPCs, including the original 92-nm<sup>2</sup> Oculina HAPC, predate the 1996 codification of the EFH authority into law. Most recently, the Council expanded the OHAPC boundaries and protections in 2015 through Amendment 8 to its Coral FMP, thus encompassing the SFAA area currently at issue as EFH-HAPC and implicating the EFH requirements described here. The Council has also identified the Oculina HAPC as EFH-HAPC for the snapper-groupers species complex.<sup>5</sup>

EFH is defined as “those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.”<sup>6</sup> The MSA defines EFH broadly, including not simply popularly known habitats—like those containing corals, sponges, and other benthic organisms—but also those with other necessary components of a managed species’ environment, including forage fish.<sup>7</sup> Councils are also encouraged to identify and protect particularly important habitat areas within EFH as Habitat Areas of Particular Concern (HAPC). HAPC may be identified based on one or more of the following considerations: (i) the importance of the ecological function provided by the habitat; (ii) the extent to which the habitat is sensitive to human-induced

---

<sup>3</sup> Magnuson–Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1853(a)(7) (emphasis added).

<sup>4</sup> 16 U.S.C. § 1801.

<sup>5</sup> South Atlantic Fishery Management Council, Comprehensive Ecosystem-Based Amendment 2 for the South Atlantic Region at 53 (July 2011), [https://safmc.net/wp-content/uploads/2022/05/CE-BA-2\\_July-15-2011\\_Final.pdf](https://safmc.net/wp-content/uploads/2022/05/CE-BA-2_July-15-2011_Final.pdf).

<sup>6</sup> 16 U.S.C. § 1802(10).

<sup>7</sup> 50 C.F.R. § 600.910(a).

environmental degradation; (iii) whether, and to what extent, development activities are, or will be, stressing the habitat type; and/or (iv) the rarity of the habitat type.<sup>8</sup>

Pursuant to MSA’s implementing regulations, “Councils *must act* to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature . . . . In such cases, FMPs should identify a range of potential new actions that could be taken to address adverse effects on EFH, include an analysis of the practicability of potential new actions, and adopt any new measures that are necessary and practicable.”<sup>9</sup> Further, “[a]mendments to the FMP or to its implementing regulations *must ensure* that the FMP *continues to minimize* to the extent practicable adverse effects on EFH caused by fishing.”<sup>10</sup> FMPs must explain the reasons for the Council’s conclusions regarding the past and/or new actions that minimize to the extent practicable the adverse effects of fishing on EFH.”<sup>11</sup> Although the MSA does not have detailed guidelines for what Councils should include in practicability analyses, at minimum the analysis should include “the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation, consistent with National Standard 7.”<sup>12</sup>

## **II. Amendment 10 Contains Insufficient Consideration of the Adverse Impacts of Bottom Trawling in the OHAPC.**

Understanding the likely adverse impacts on bottom trawling in the proposed SFAA requires close consideration of the area’s history and the Council and NMFS’s rationale for existing protections in place. Since its original designation by the Council as OHAPC in the 1980s, research has continued to build upon our understanding of Oculina Bank as the only known location globally of deep-sea *Oculina varicosa* reef structures. Scientists have observed stunning biodiversity supported by the corals, and their research has underscored the dire threats posed to the corals by bottom-tending fisheries gears.<sup>13</sup> By the time the Council expanded the protected area and designated it as EFH-HAPC in 1998, most of the Oculina coral ecosystem had already experienced severe or complete loss of coral habitat due primarily to bottom trawling in the unprotected areas. The few, remaining intact reefs of significant size only survived within the boundaries of the originally protected HAPC.<sup>14</sup>

---

<sup>8</sup> 50 C.F.R. § 600.815(a)(8).

<sup>9</sup> 50 C.F.R. § 600.815(a)(2)(ii) (emphasis added).

<sup>10</sup> *Id.* (emphasis added).

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

<sup>12</sup> *Id.* at § 600.815(a)(2)(ii-iii).

<sup>13</sup> George, R. Y., T. A. Okey, J. K. Reed, and R. P. Stone, Ecosystem-based fisheries management of seamount and deep-sea coral reefs in U. S. waters: conceptual models for proactive decisions. Pages 9–30 in R. Y. George and S. D. Cairns, eds. Conservation and adaptive management of seamounts and deep-sea coral ecosystems. Rosenstiel School of Marine and Atmospheric Science, University of Miami. Miami. p. 324. (2007).

<sup>14</sup> NOAA Fisheries, Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Essential Fish Habitat for Species in the South Atlantic; Amendment 4 to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region (Coral FMP), Federal Register, vol. 65, no. 115 (June 14, 2000): 37292, <https://www.govinfo.gov/content/pkg/FR-2000-06-14/pdf/FR-2000-06-14.pdf>. 50 C.F.R. § 622.35(c). See

In 2015, the Council implemented the northern extension of the OHAPC (including the area at issue here) and corresponding fishing gear restrictions through Amendment 8 to its Coral FMP.<sup>15</sup> This action was based upon scientific findings of previously undiscovered high-relief *Oculina* coral mounds to the north and west of the previous OHAPC boundaries, first presented by Dr. John Reed and confirmed by NOAA’s 2011 Deep Sea Coral Research Expedition.<sup>16</sup> The extension of the OHAPC protections was intended to incorporate most of the deepwater coral habitat that was presumed to occur in the region based on these recent research observations. This was not limited to high-relief mounds. According to the Council, “[c]ategories of deepwater *Oculina* habitats include pinnacles or bioherms, isolated coral thickets on hard bottom, and rubble with isolated live colonies. In addition, extensive areas of dead *Oculina* can form rubble habitat with isolated colonies of live coral.”<sup>17</sup> In its rationale for the expansion, the Council highlighted the benefit the expansion would have for the corals, rock shrimp populations, species that use the bottom substrate as habitat, and other important species that would use the coral as a refuge, such as the snapper-grouper complex.<sup>18</sup> Subsequent surveys have indicated regrowth of the *Oculina* coral in the Northern OHAPC, supporting the important role of the OHAPC protections in aiding their continued recovery.<sup>19</sup>

In implementing fishing restrictions to prohibit bottom-tending mobile gears in the expanded OHAPC, the Council detailed the destructive impacts from gear that comes in contact with the seafloor, which it stated “inevitably disturbs the seabed and poses the most immediate direct threat to deepwater coral ecosystems.”<sup>20</sup> Of these methods, the Council identified bottom trawls used to target shrimp species as the most ecologically destructive fishing method, explaining that “[b]ottom trawls can weigh several tons and the footrope is further weighted to keep the net in close contact with the bottom. The footrope is usually a chain or cable and sometimes includes large, heavy rollers (rockhopper gear) that ride over obstructions and keep the net from snagging and tearing.”<sup>21</sup> The Council stated that this gear can “break fragile corals, dislodge reef framework, and scar corals, opening lesions for infection. Impacts of gear damage are not limited to direct crushing of live coral but also include effects of the attached chains, which can abrade and

---

also Reed, J.K., Koenig, C.C., and Shepard, A.N. 2007. Impacts of bottom trawling on a deep-water *Oculina* coral ecosystem off Florida. *Bulletin of Marine Science*, 81: 481–496.

<sup>15</sup> Pursuant to current regulations: “No person may use a bottom longline, bottom trawl, dredge, pot, or trap in the OHAPC. If aboard a fishing vessel, no person may anchor, use an anchor and chain, or use a grapple and chain. There is not a shrimp fishery access area along the northern extension of the OHAPC.” 50 C.F.R. § 622.224

<sup>16</sup> South Atlantic Fishery Management Council, Amendment 8 to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region and Environmental Assessment (“Coral Amendment 8”) (Nov. 2013) at 24, <https://safmc.net/documents/2022/04/coral-amendment-8.pdf/>.

24.

<sup>17</sup> Coral Amendment 8 at 17.

<sup>18</sup> *Id.* at 5.

<sup>19</sup> Stacey Harter, John Reed, Stephanie Farrington, and Andy David, South Atlantic MPAs and *Oculina* HAPC: Characterization of fish communities, benthic habitat, and benthic macrobiota, Final Report for 2015-2017 NOAA Cruises. NOAA CIOERT Cruise Report, at 29-30 (2018), <https://fau.digital.flvc.org/islandora/object/fau:40491/datastream/PDF/view>.

<sup>20</sup> Coral Amendment 8 at 86.

<sup>21</sup> *Id.* at 86-87.

denude coral structures. Stress caused by abrasion may result in a decline in health or stability of the reef or live bottom system.”<sup>22</sup>

In sum, the Council expanded the OHAPC protections in 2015 with close consideration of evidence regarding the extent of the Oculina ecosystem and likely impacts of trawling on the Oculina corals ecosystem. This included consideration of information obtained through scoping meetings, public hearings, and recommendations from the Scientific and Statistical Committee and relevant Advisory Panels. In finalizing Amendment 8, the Council also sought to minimize impacts to the rock shrimp fishing communities by adjusting the boundaries of the northward OHAPC expansion.<sup>23</sup> It also allowed rock shrimp vessels to transit through the OHAPC, specifically allowing vessels with rock shrimp onboard to travel to and from additional rock shrimp fishing grounds.

The Council’s current proposal for Coral Amendment 10 is a significant change in course, which would permit bottom trawling on a buffer strip inside the OHAPC, directly adjacent to the fragile coral ecosystem. Yet, the Council neglects to demonstrate how the Coral FMP, as amended by these exemptions for bottom trawling, will continue to minimize adverse effects on EFH, and it fails to engage in any practicability analysis regarding “the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH.”<sup>24</sup>

Given the significance of Oculina Bank as EFH-HAPC for multiple species, this analysis should have been made explicit in Amendment 10. To the extent that practicability can be inferred from other considerations within the Council’s Environmental Assessment, the Council does, in fact, identify *several* direct and indirect adverse impacts on the OHAPC that are likely to stem from increased bottom trawling, including the following:<sup>25</sup>

- **Direct impacts:**
  - “Although shrimp fishermen affirm that they avoid hard bottom habitat when trawling to avoid snags and gear loss, and rock shrimp prefer sand bottom, numerous instances of gear impacts to corals have been documented in the OHAPC.”
  - “Fishermen are most likely to fish in areas where shrimp were previously caught; areas already impacted by past trawling activity on the low relief bottom. These areas could also be exhibiting signs of recovery as trawled low relief hard bottom or standing dead coral

---

<sup>22</sup> Id.

<sup>23</sup> NMFS summarized the Council decision in approving Amendment 8: “Recognizing that rock shrimpers do not trawl on coral or hard-bottom habitat, the Council, at its June 2013 meeting, adopted the Deepwater Shrimp Advisory Panel’s recommendation for the modified northern Oculina Bank HAPC extension alternative, and chose that alternative as its preferred alternative.” NOAA Fisheries, Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region; Amendment 8, 80 Fed. Reg. 42,423 (July 17, 2015).

<sup>24</sup> 50 C.F.R. § 600.815(a)(2)(ii-iii); 16 U.S.C. § 1853(a)(7).

<sup>25</sup> For a full list of expected biological effects see Coral Amendment 10 at 52-56.

rubble provides habitat for coral recruitment and coral growth subsequent to trawling events.”

- “While no high relief mounds are present, low-relief hard bottoms and coral rubble could be providing substrate available for coral recruitment and recovery from previous trawling events.”
- “Although rock shrimp occurrence in the proposed areas is variable, and fishing is expected to occur in areas impacted from previous trawling, any recovery of ecosystem services that has occurred since the last trawling event would be lost.”
- Additionally, the Council developed two scenarios demonstrating how fishing along the OHAPC boundary could result in direct physical damage within the OHAPC boundaries.<sup>26</sup>

- **Indirect impacts:**

- “Increased sedimentation can cause smothering and burial of coral polyps, shading, tissue necrosis, population explosions of bacteria in coral mucus, and generally reduces recruitment, survival, and settlement of coral larvae (Erftemeijer et al. 2012). Coral recruits are particularly susceptible to sedimentation and an increase in fine sediment can significantly reduce coral recruit survival (Fourney and Figueiredo 2017).”
- Noting the observed extensive range of sediment plumes from dredging activity, with water quality impacts detected up to 20 km away in severe cases, the Council predicted that, “[d]epending on direction and magnitude of water currents in the affected area, shrimp trawls could create similar sediment plumes during fishing operations and the plumes could be transported to coral habitats.”
- The Council also noted that sediment plumes can create enabling conditions for coral diseases to thrive.<sup>27</sup>

Despite this, the Council puzzlingly concludes that the degree and likelihood of impacts of bottom trawling in the SFAA are “unknown” due to the paucity of habitat mapping and habitat characterization available for this area. Given well-documented impacts of bottom trawling on *Oculina* corals and the goal of the OHAPC to protect the *Oculina* ecosystem—not merely high-relief mounds—this cursory analysis is not in conformance with National Standard 2 requirement for Councils to base conservation and management decisions on the best scientific information available.<sup>28</sup>

Although the MSA and guiding regulations do not require any formal cost/benefit analysis as part of a practicability analysis, Councils often tend to place emphasis on economic feasibility of EFH protections because this may be easier to quantify than conservation benefits. Here, instead, the Council approved its preferred alternative despite being unable to demonstrate any economic benefit at all for the proposal:

---

<sup>26</sup> Id. at 55.

<sup>27</sup> Id. at 56.

<sup>28</sup> 16 U.S.C. § 1851(a)(2). In addition, the National Environmental Policy Act requires the Council and NMFS to take a “hard look” at alternatives for managing EFH. See *American Oceans Campaign v. Daley*, 183 F. Supp. 2d 1, 20-21 (D.D.C. 2000); 42 U.S.C. § 4321 et seq. The Council does not achieve this standard with Amendment 10.

“Given the likely variability in usage of the area, as well as the exhibited variability in overall participation in the regional rock shrimp portion of the shrimp fishery (Table 3.3.1.2), *these economic effects cannot be quantified*. Additionally, if landings of rock shrimp increase, these landings are a relatively small component of the overall market for shrimp given the magnitude of shrimp imports (Section 3.3.4). Thus, higher landings of rock shrimp would not be expected to change ex-vessel or consumer prices and therefore there is no anticipated change in consumer surplus.”<sup>29</sup>

This analysis falls well short of supporting any reversal of EFH protections. Further, it runs counter to the central contention that Coral Amendment 10 would help the fishery achieve optimum yield. From what socioeconomic data are included, affected vessels are highly dependent on revenue from other species, with rock shrimp accounting for only 20% of vessels’ revenues on average.<sup>30</sup>

Lastly, the proposed SFAA also overlaps with EFH-HAPC for the commercially and recreationally important snapper-grouper complex. *Oculina* Bank is a known spawning site for several species, including three that are designated as overfished and subject to overfishing: snowy grouper, gag grouper, and red porgy.<sup>31</sup> Although the Council briefly notes the close association of these species with both live *Oculina* coral habitat and low-relief hardbottom communities, it neglects to assess the potential impacts of the SFAA on vulnerable snapper-grouper species and designated EFH-HAPC, again in non-conformance with the MSA’s EFH requirements. As a management body that prides itself on implementing ecosystem-based fishery management measures, the South Atlantic Council should be looking at habitat recovery and fishery health in a more integrated manner in order to ensure that it develops conservation and management measures “necessary and appropriate for the conservation and management of the fishery, to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery.”<sup>32</sup>

### **III. Amendment 10 Fails to Provide a Sufficient Buffer to Minimize Adverse Impacts to the *Oculina* Coral.**

The proposed boundaries of the SFAA would re-open an important protective buffer, included in the Council’s 2015 northern expansion of the OHAPC, between the shrimp trawl gear and *Oculina* coral habitat. This increases the risk of both direct trawling impacts and indirect impacts, via sediment plumes and disease, to the corals.

First, the footprint of bottom trawling is large and unpredictable given the size of the gear and water depths of 200-300 feet with strong currents. A wide berth is therefore required to prevent direct damage to sensitive

---

<sup>29</sup> Coral Amendment 10 at 57 (emphasis added).

<sup>30</sup> Id. at 28.

<sup>31</sup> Koenig, C.C., A.N. Shepard, J.K. Reed, F. Coleman, S. Brooke, J. Brusher, and K. Scanlon. 2005. Habitat and fish populations in the deep-sea *Oculina* coral ecosystem of the western Atlantic; NOAA Fisheries, Status of Stocks as of December 31, 2021. Accessed at <https://media.fisheries.noaa.gov/2022-01/q4-2021-stock-status-map.png> and personal communication with Dr. Gilmore 3/11/22.

<sup>32</sup> 16 U.S.C. 1853(a)(1)(A).

corals outside of the access area. As the Council’s Coral Advisory Panel (AP) reported to the Council, NMFS data estimates on the conservative end that the horizontal distance between a boat and its rig can be anywhere from about 230 m to 510 m.<sup>33</sup>

The Council estimated that its preferred alternative would provide a buffer between 310 and 750 m from the known high relief habitat occurring west of the SFAA.<sup>34</sup> However, the Council fails to specifically assess the sufficiency of its proposed buffer, nor does it address the fact that, at its narrower portions, the SFAA would be a mere 183 m wide, thus making it likely that trawl gear will veer from the intended trawl zone into protected areas.<sup>35</sup> The Council further neglects to recognize that the EFH-HAPC-protected *Oculina* ecosystem is broader than the high-relief mounds alone. Other areas of the OHAPC include standing dead coral, rock pavement, and rubble, which are also essential parts of the ecosystem.<sup>36</sup> Per the Council’s analysis in Amendment 8, “[d]amage inflicted by bottom tending gear . . . is not limited to living coral and hard bottom resources but extends to disruption of the balanced and highly productive nature of the coral and live/hard bottom ecosystems.”<sup>37</sup>

Second, a wide buffer is critical to protecting the *Oculina* ecosystem from sediment plumes and potential disease spread, regardless of whether a specific area contains detectable corals. Some areas in the OHAPC further away from corals also contain other sediment types such as silt, clay and mud, which can be suspended by disturbance to create sediment plumes. As summarized in Amendment 10, “increased sedimentation can cause smothering and burial of coral polyps, shading, tissue necrosis, population explosions of bacteria in coral mucus, and generally reduces recruitment, survival, and settlement of coral larvae.”<sup>38</sup> In considering appropriate buffer widths, the Council notes that recent research on bottom gear showed that suspended particles can travel and impact coral over 700 m from active dredging operations, and, in severe cases, water quality impacts have been detected up to 20 km away from the dredging activity when oceanographic features included unidirectional flow during the project.<sup>39</sup> The Council further reflected that sediment plumes can create enabling conditions for coral diseases to thrive, and that since 2014, Florida’s shallow water coral reefs have been experiencing the most widespread and lethal coral disease outbreak in the world.

The proposed SFAA is in conflict with the Coral AP’s suggestion that a 1,000 m buffer between known coral habitat (not merely high-relief mounds) and fishing grounds would be prudent to prevent adverse impacts to coral colonies.<sup>40</sup> The AP indicated the present boundary provided a buffer and, in voting unanimously against the proposed SFAA, approved a motion supporting the no action alternative.<sup>41</sup> In

---

<sup>33</sup> Coral Amendment 10 at 62.

<sup>34</sup> *Id.* at 66.

<sup>35</sup> Coral Amendment 8 at S-5.

<sup>36</sup> *Id.* 17.

<sup>37</sup> *Id.* at 113.

<sup>38</sup> *Id.* at 55.

<sup>39</sup> *Id.* at 56. Miller, M. W., J. Karazsia, C. E. Groves, S. Griffin, T. Moore, P. Wilber, and K. Gregg. 2016. Detecting sedimentation impacts to coral reefs resulting from dredging the Port of Miami, Florida USA. *PeerJ* 4:e2711, <https://doi.org/10.7717/peerj.2711>.

<sup>40</sup> Coral Amendment 10 at 66.

<sup>41</sup> Coral and Deepwater Shrimp Advisory Panels Meeting Minutes, November 10, 2020, p. 32.



addition to direct damage from trawls and indirect damage from sediment plumes, the Coral AP also noted that when corals do recover, they often come back at the base of the coral pinnacles which tend to be the very marginal areas that are likely to be in the existing buffer strip and risk being trawled again under Amendment 10.<sup>42</sup>

#### **IV. Amendment 10 is Inconsistent with the Council’s Own Coral FMP.**

As described by the Council, the general intent of its Coral FMP is to “optimize the benefits generated from the coral resource while conserving the coral and coral reefs.”<sup>43</sup> Specific management objectives of the FMP include: “(1) develop scientific information necessary to determine feasibility and advisability of harvest of coral; (2) minimize, as appropriate, adverse human impacts on coral and coral reefs; (3) provide, where appropriate, special management for Coral Habitat Areas of Particular Concern (HAPC); (4) increase public awareness of the importance and sensitivity of coral and coral reefs; and (5) provide a coordinated management regime for the conservation of coral and coral reefs.”<sup>44</sup> Regarding item number 3, the South Atlantic Council has itself stated that it utilizes EFH-HAPCs as a tool to “emphasize subsets of EFH that warrant special protection.”<sup>45</sup>

The Council’s history of actions protecting the *Oculina varicosa* ecosystem as EFH-HAPC has been, to date, an example of the Coral FMP and EFH-HAPC designations meeting their stated goals. Amendment 10 proposes a significant change of course in those protections yet contains notably little consideration of how designated EFH-HAPC in Oculina Bank will continue to be conserved and adverse fishing impacts minimized. Regarding these impacts as “unknown” does not suffice to meet the goals of the Coral FMP.

#### **IV. Oculina Bank is an Opportunity to Demonstrate Durable Marine Habitat Protections Under the MSA.**

NMFS should also look at Amendment 10 through the lens of the President’s Executive Order on Tackling the Climate Crisis at Home and Abroad, E.O. 14008, which directs NMFS to work toward conserving at least 30% of U.S. lands and waters by the year 2030.<sup>46</sup> Scientists have stressed the importance of achieving this target with strong protections that can help mitigate the impacts of the current biodiversity crisis. It bears re-emphasis that the *Oculina varicosa* ecosystem currently protected by the OHAPC is the only of its kind in the world, supports a robust array of biodiversity, is particularly vulnerable to both direct and indirect impacts of bottom-tending fishing gears (bottom trawls in particular), and is at risk from the impacts of climate change. Safeguarding this habitat from—at least—the most imminently harmful form of fishing can demonstrate that the MSA offers durable, science-based protections for vulnerable marine habitat. Any

---

<sup>42</sup> Coral Amendment 10 at 55.

<sup>43</sup> Coral Amendment 10 at 5. See also Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council, Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and South Atlantic Environmental Impact Statement, April 1982, <https://safmc.net/documents/2022/04/coral-fishery-management-plan.pdf/>.

<sup>44</sup> Id.

<sup>45</sup> Coral Amendment 8 at 26.

<sup>46</sup> Executive Order on Tackling the Climate Crisis at Home and Abroad, Exec. Order No. 14008, 86 Fed. Reg. 7619 (Jan. 27, 2021).

other course of action will strongly call into question recent comments made by the Councils and NMFS regarding the role of fishery management measures in the context of the America the Beautiful conservation initiative.

Lastly, we note with concern that NMFS references E.O. 13921, the Executive Order on Seafood Competitiveness and Economic Growth, as a rationale for the proposed action. We respectfully suggest that there is no mandate for NMFS to approve the Councils' recommended actions under E.O. 13921 and that furthering the deregulatory agenda of a prior Administration cannot take precedence over conserving marine habitat as ecologically significant and vulnerable as Oculina Bank.

\* \* \*

Thank you for considering these comments urging NMFS to disapprove the Council's preferred alternative in Amendment 10 to the Coral FMP, and to approve instead the no action alternative. We are happy to answer any questions or provide further information upon request.

Sincerely,

Molly Masterton

A handwritten signature in cursive script that reads "Molly a Masterton".

Director, U.S. Fisheries  
Staff Attorney, Oceans Division  
Natural Resources Defense Council  
40 West 20th Street  
New York, NY 10011  
mmasterton@nrdc.org