

2012. Annie Sokol's email address is annie.sokol@nist.gov and her telephone number is 301-975-2006.

Public Participation: The ISPAB agenda will include a period of time, not to exceed thirty minutes, for oral comments from the public (Friday, June 1, 2012, between 8:45 a.m. and 9:15 a.m.). Speakers will be selected on a first-come, first served basis. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact Ms. Annie Sokol at the telephone number indicated above.

In addition, written statements are invited and may be submitted to the ISPAB at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899-8930.

Dated: April 24, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 120409406-2406-01]

RIN 0648-XA809

Endangered and Threatened Wildlife; 90-Day Finding on a Petition to List Speckled Hind as Threatened or Endangered Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of 90-day petition finding.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list speckled hind (*Epinephelus drummondhayi*) as threatened or endangered under the Endangered Species Act (ESA). We find that the petition does not present substantial scientific information indicating that the petitioned action may be warranted.

ADDRESSES: Copies of the petition and related materials are available upon request from the Assistant Regional Administrator, Protected Resources Division, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or online at:

<http://sero.nmfs.noaa.gov/pr/ListingPetitions.htm>

FOR FURTHER INFORMATION CONTACT:

Jason Rueter, NMFS Southeast Region, 727-824-5312, or Lisa Manning, NMFS Office of Protected Resources, 301-427-8466.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2010, we received a petition from the WildEarth Guardians to list goliath grouper (*Epinephelus itajara*), Nassau grouper (*Epinephelus striatus*), and speckled hind (*Epinephelus drummondhayi*) as threatened or endangered under the ESA. Copies of this petition are available from us (see **ADDRESSES**, above). Due to the scope of the WildEarth Guardians' petition, as well as the breadth and extent of the required evaluation and response, we are providing species-specific findings on this petition. This finding addresses WildEarth Guardians' petition to list speckled hind. A negative finding for goliath grouper was made on June 1, 2011 (76 FR 31592), while the Nassau grouper finding is currently under development.

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a "positive 90-day finding"), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we shall conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a "may be warranted" finding does not prejudice the outcome of the status review.

Under the ESA, a listing determination may address a "species," which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS and U.S. Fish and Wildlife Service (USFWS) policy clarifies the agencies' interpretation of the phrase "distinct population segment" for the purposes of listing, delisting, and reclassifying a species under the ESA ("DPS Policy"; 61 FR 4722; February 7, 1996). A species, subspecies, or DPS is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, and "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively; 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered because of any one or a combination of the following five section 4(a)(1) factors: (A) The present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; and (E) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and USFWS (50 CFR 424.14(b)) define "substantial information" in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from

authorities, and maps (50 CFR 424.14(b)(2)).

Court decisions clarify the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination whether a petitioned action "may be" warranted. As a general matter, these decisions hold that a petition need not establish a "strong likelihood" or a "high probability" that a species is either threatened or endangered to support a positive 90-day finding.

We evaluate the petitioner's request based upon the information in the petition including its references, and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioner's assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding, if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a "species" eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species at issue faces extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We

evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (e.g., population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by other organizations or agencies, such as the International Union on the Conservation of Nature (IUCN), the American Fisheries Society (AFS), or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other federal or state statutes may be informative, but the classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do "not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act" because NatureServe assessments "have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide" (<http://www.natureserve.org/prodServices/statusAssessment.jsp>). Thus, when a petition cites such classifications, we will evaluate the source information that the classification is based upon, in light of the standards on extinction risk and impacts or threats discussed above.

Speckled Hind Species Description

The speckled hind is a moderately large member of the sea bass or serranid family found in the Atlantic Ocean. Speckled hind inhabit deep-water reefs along the Atlantic coast of the southeast United States from North Carolina, to the Florida Keys, in the waters around Bermuda, and in the northern and eastern Gulf of Mexico (Chuen and Huntsman, 2006). Speckled hind are a deep-water grouper with adults inhabiting offshore rocky ledges and sea mounts in depths of 25–400 m, but most commonly found in waters between 60 and 120 m.

Speckled hind are slow growing, protogynous hermaphrodites (i.e., spawning as a female, then later changing sex and spawning as a male), that reach a maximum size of 43 inches (1,096 mm) total length (TL), and a maximum age of at least 25 years (Matheson and Huntsman 1984). Females mature at 4 to 5 years of age and 18–24 inches (457–610 mm) in length, and transition to males at 7 to 14 years of age (Chuen and Huntsman 2006). Speckled hind form large spawning aggregations from May to October in specific areas throughout their range.

Analysis of the Petition

We evaluated whether the petition presented the information indicated in 50 CFR 424.14(b)(2). The petition states the administrative measures recommended, and provides the scientific and common name of the species. The petition includes a detailed narrative justification for the recommended measure, including some information on numbers of the species, historical geographic occurrences of the species, and threats faced by the species. The petition provides some information relevant to the status of the species. The petition includes supporting references and documentation. Speckled hind is taxonomically a species and thus is an eligible entity for listing under the ESA. The petition states that speckled hind are imperiled and that the primary threat contributing to the speckled hind's endangerment is overfishing, whether intentionally or as bycatch. The petitioner also asserts that the species' biological constraints, such as its reproductive traits (spawning aggregations) and its preferred habitat depth, increase its risk of extinction. The petition states that at least four of the five causal factors in section 4(a)(1) of the ESA are, in combination, adversely affecting the continued existence of speckled hind: (A) Present

or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial and recreational purposes; (D) inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors, including life history characteristics. The petition also requests an inquiry into the validity of a distinct population segment (DPS) for speckled hind.

Information on Extinction Risk and Status

The petition cites classifications made by NMFS, the International Union for Conservation of Nature (IUCN), the American Fisheries Society (AFS), and NatureServe to support its assertion that the speckled hind is imperiled. In 1997, NMFS added speckled hind to its Candidate Species list. At that time, a Candidate Species was defined as any species being considered by the Secretary of Commerce (Secretary) for listing as an endangered or a threatened species, but not yet the subject of a proposed rule (49 FR 38900; October 1, 1984). In 2004, NMFS created the Species of Concern list (69 FR 19975; April 15, 2004) to encompass species for which we have some concerns regarding their status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA. Twenty-five Candidate Species, including speckled hind, were transferred to the Species of Concern list at that time because they were not being considered for ESA listing and were better suited for Species of Concern status due to some concerns and uncertainty regarding their biological status and threats. The Species of Concern status does not carry any procedural or substantive protections under the ESA. Our rationale for including speckled hind on the Species of Concern list included an unknown population size with information that suggested a decline in mean size, mean age, and percentage of males in the South Atlantic.

The IUCN listed speckled hind as critically endangered in 2006, a status assigned to species facing an extremely high risk of extinction in the wild, based on: "considerable concern about its present and future status given that management action may be too little and not effective," and "Declines in the recent past have been extreme, fishing effort is not known, and there is concern that much other fishing effort is moving offshore and will increasingly impact this species." The IUCN explained the critically endangered status for speckled hind instead of a lower status was justified in part because: (a) There was no good evidence of a change in

condition since the last assessment was conducted; (b) the species continues to be taken as bycatch and is not protected from this by current regulations; (c) a precautionary approach is being taken; and (d) the species has a suite of life history characteristics that are often associated with higher extinction risk.

The AFS developed its extinction risk criteria for marine fishes in part as a reaction to IUCN's criteria (Musick, 1999). The AFS (Musick *et al.*, 2000) classified speckled hind in the United States as "endangered," which they define as a species with a "high risk of extinction in the wild in the immediate future (years)," and states the species is in a "steady and drastic decline in abundance, [and] males [are] rare (G. R. Huntsman, pers. observ.)." Finally, the AFS states speckled hind is particularly vulnerable "to commercial and recreational overfishing (Huntsman *et al.* 1999)."

NatureServe's vulnerable classification is given to species that are "at moderate risk of extinction or elimination due to a restricted range, relatively few populations, recent and widespread declines, or other factors." NatureServe specifically describes the range and imperilment of speckled hind as: "range-wide population is not known; the number of occurrences is not known, but may be limited due to intense fishing throughout at least much of the U.S. western Atlantic; absent, disappearing, or becoming increasingly rare throughout range; considered extremely threatened by recreational and commercial fishing throughout most of range," as reasons for its vulnerable classification of speckled hind.

While the cited classifications, including our own Species of Concern listing include a discussion of extinction risk for speckled hind, these risks are largely based on data for the South Atlantic portion of the species' range. Identified risks to the species in the South Atlantic include a decline in mean size and mean age in the recent past, and a low percentage of males within the population. Additional information in our files shows that changes in life history (e.g., earlier maturity) of the species may be due to continued over-exploitation in the South Atlantic region and low reproductive resilience due to diminished reproductive capacity (Ziskin, 2008). All of this information applies to the South Atlantic only. Similar evidence of extinction risk for speckled hind in the Gulf of Mexico was not presented in the petition and does not exist in our files.

The petition describes demographic factors specific to speckled hind that could be indicative of its extinction risk. These include a declining population trend with declines in mean size, mean age, and percentage of males. The petition also asserts that the species' low resilience to fishing and its minimum population doubling time are contributing to the species' extinction risk, and information to support this contention is provided.

Population decline can result in extinction risk that is cause for concern in certain circumstances, for instance if the decline is rapid and/or below a critical minimum population threshold and the species has low resilience for recovery from a decline (Musick, 1999). The petition states that fishing has likely resulted in a population decline of speckled hind, and uses commercial landings and recreational catch data from the South Atlantic to document the decline. The petition does not present landings or length data from the Gulf of Mexico.

The lack of data from the Gulf of Mexico is problematic when determining the status of the speckled hind population in the Southeast United States. The speckled hind population in the Southeast United States is thought to be one continuous population extending from the Gulf of Mexico around the Straits of Florida and into the South Atlantic. While there are spawning aggregations and a reproductively active population in the South Atlantic, the South Atlantic also receives a considerable influx of recruits that originated in the Gulf of Mexico and were transported to the South Atlantic region via the Straits of Florida and the Gulf Stream.

In the Gulf of Mexico, data in our files show that landings have been fairly steady with a slight increase from 1991 through 2009 (Southeast Fisheries Science Center (SEFSC) Annual Catch Limit (ACL) dataset, 2011). During this period, landings averaged approximately 61,000 pounds with a low of 25,000 pounds in 1993 and a high of 103,000 pounds in 2004. Additionally, trip intercept program (TIP) data show a slightly increasing trend in mean length for the species in the Gulf of Mexico (SEFSC TIP dataset, 2011). From 1984 to 2011, average mean length of fish sampled from the Gulf of Mexico was 57 cm with a low of 48 cm in 1994 and a high of 65.2 cm in 1997. These data suggest the speckled hind population in the Gulf of Mexico is more stable than in the South Atlantic.

The fisheries data described in the petition include a decline in speckled hind landings in the southeastern

United States from 1986 to 1995 (Parker and Mays, 1998; reproduced in NMFS, 2010), reductions in average size and age in the South Atlantic, and conclusions from a study documenting that speckled hind were caught in North Carolina in the 1970s but not in 2005–2006 (Rudershausen *et al.*, 2008). Information in our files includes a number of reports, mostly associated with our fishery management actions under Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), noting a similar decline in catch of speckled hind in the South Atlantic from 1986 to 2009. The characterization of the IUCN assessment, as well as the landings data in the petition, however, includes a misunderstanding or misrepresentation of landings data. The 1986 to 1995 time series data in Parker and Mays (1998) and in the IUCN assessment refer only to the area between Cape Hatteras, North Carolina and Key West, Florida. For purposes of NMFS' fishery management, this area is within the "South Atlantic" region. Within the South Atlantic, there has been a one-fish-per-vessel trip restriction since 1994. While the petition references classifications and conclusions that are based on declines in landings, these references do not acknowledge the regulatory mechanisms that led to this perceived decline in the landings and do not acknowledge a major portion of the landings in the Southeast that come from the Gulf of Mexico. Landings in the South Atlantic in 1993 were approximately 20,270 pounds, but in 1994 (the first year of the one fish per vessel limit) declined to approximately 10,042 pounds, and from 1995–2009 averaged approximately 5,240 pounds (SEFSC ACL dataset, 2011¹), indicating the one fish per trip regulation was effective in decreasing harvest of speckled hind in the South Atlantic. Fish not retained are not considered when calculating landings, and discarded catch is often not reported or is under-reported. Thus, the decline in landings for speckled hind reflects the regulations affecting the retention of the species by fishermen and not an actual population trend.

The petition states that with "millions of licensed fisherpeople in the southeastern United States and Gulf, and the numerous trips these fishers are likely to make during a given season, the vessel limit does little to actually

protect this species." Although fishers may take numerous trips in a year, those actually targeting speckled hind are extremely rare. For example, from 2005–2010, only 0.0009 percent of recreational trips in the Gulf of Mexico and South Atlantic targeted speckled hind (Marine Recreational Fishing Statistical Survey (MRFSS)). Additionally, the South Atlantic Fishery Management Council (SAFMC) has prohibited the possession of speckled hind entirely since January 31, 2011, eliminating their retention as a target species. While rarely targeted, speckled hind are captured as bycatch when fishermen target other species. Thus, bycatch was a causative agent in the apparent decline of the population in the South Atlantic (Ziskin 2008). However, the SAFMC recognized the potential impacts of bycatch in the South Atlantic and in 2009 created 8 marine protected areas (MPAs) where fishing is prohibited. This was designed to protect vulnerable deep-water species, such as speckled hind. An additional management measure, the closure of fishing for species in the snapper-grouper complex in waters greater than 240 feet, was also initially implemented to curtail bycatch of speckled hind. After further analysis, it has become apparent that the closure provided no benefit to speckled hind because the species is not present in waters greater than 240 ft. Therefore, the SAFMC has proposed an action to rescind the closure of waters greater than 240 feet to fishing for species in the snapper-grouper complex. (The proposed rule for rescinding the closure may be found in the **Federal Register** at 76 FR 78879; December 20, 2011; the final rule is currently under review).

We conclude that the petition and information in our files on demographic factors of speckled hind do not present substantial information to indicate the species may be facing an extinction risk level that is cause for concern.

Distinct Population Segment

The petition requested an inquiry into the validity of a DPS for speckled hind. A DPS is a vertebrate population or group of populations that is discrete from other populations of the species and significant in relation to the entire species. The ESA provides for listing distinct population segments of vertebrate species, such as speckled hind. The petition, however, fails to present any information or rationale for considering DPSs of speckled hind. Additionally, no information exists in our files that would indicate speckled hind populations meet the criteria for identification as DPSs pursuant to the

DPS Policy. Available information suggests the population of speckled hind is a continuous population from the Gulf of Mexico, through the Straits of Florida, and into the South Atlantic. Thus, listing speckled hind as distinct populations is not warranted

Information on Threats to the Species

We next evaluated whether the information in the petition and information in our files concerning the extent and severity of one or more of the ESA section 4(a)(1) factors suggest these impacts and threats may be posing a risk of extinction for speckled hind that is cause for concern.

Present and Threatened Destruction, Modification, or Curtailment of Habitat or Range

The petition states "habitat loss and degradation is a very real threat to these species, ranging from declining coral reef ecosystems to the devastating impacts of the Deepwater Horizon oil spill." In support, the petition cites peer-reviewed scientific literature that assesses a number of coral stressors, including coral bleaching, disease, tropical storms, coastal development and pollution, overfishing, ship groundings, and offshore oil and gas exploration and development. While NMFS acknowledges these stressors are leading to the destruction of coral reefs, we do not believe this is having as great an impact on speckled hind as on other more reef-reliant serranids. While the species' distribution does include geographic areas where coral reefs occur, speckled hind inhabit offshore rocky ledges and sea mounts typically in waters 60–120 m deep and are not generally associated with shallower coral reefs. Therefore, these deep-water reefs where speckled hind occur are not susceptible to the myriad of habitat stressors and degraders as their near-shore counterparts.

The petition also cites the species' range overlap with the "rampant and escalating off-shore oil drilling" activities. The petition states the recent Deepwater Horizon oil spill highlights the dangers of these activities and the susceptibility of the species to effects from them. Impacts ranging from direct uptake through the gills to oil persistence after a spill are sighted as "imminent habitat destruction." However, no reference is made to how these generalized threats would specifically impact speckled hind, or how the Deepwater Horizon oil spill impacted the speckled hind population or habitat. Additionally, landings data in the Gulf of Mexico indicate no recent change over historic averages for

¹ The landings data for 1986–1995 presented here differ slightly from those on the NMFS Species of Concern fact sheet for speckled hind; an error in our fact sheet was detected by the SEFSC during review of this petition. Correct landings data are presented here.

speckled hind, despite oil and gas activity there.

In summary, the petition and information in our files do not comprise substantial information indicating that the present and threatened destruction, modification, or curtailment of habitat or range may have been, or may continue to be, causing extinction risk of concern for speckled hind.

Overutilization for Commercial and Recreational Purposes

The petition states the “primary threat to these grouper species is overfishing, both commercially and recreationally. Their slow rate of maturation and growth, large size, and aggregation at specific times and sites for spawning, combined with their high commercial value and value as trophy fish, make them particularly susceptible to depletion from fishers.” The petition also cites the NMFS (2010) classification of speckled hind as overfished. The most recent Report to Congress on the Status of U.S. Fisheries (NMFS, 2008, 2009) lists speckled hind under SAFMC jurisdiction as undergoing overfishing while the overfished status is unknown; the species’ status in the Gulf of Mexico is unknown. A species undergoing overfishing is one where the current fishing mortality exceeds an identified mortality threshold, while an overfished species is one where the current biomass falls short of an identified stock threshold; typically, overfishing leads to a stock becoming overfished. These MSFCMA classifications do not necessarily indicate that a species may warrant listing as a threatened or endangered species, because these classifications do not have any per se relationship to a species’ extinction risk. For example, our 2007 status review for the Atlantic white marlin (73 FR 843, January 4, 2008; http://sero.nmfs.noaa.gov/pr/endangered%20species/pdf/2007_Atlantic_white_marlin_status_%20review.pdf) explained in detail important distinctions between the terms “overfished” from the MSFCMA context, and “overutilization” as used in the ESA context. While a stock can be exploited to the point of diminishing returns where the objective is to sustain a harvest of the species, that over-exploitation in and of itself does not imply a continuing downward spiral for a population. A population may equilibrate at an abundance lower than that which would support a desired harvest level, but can still be stable at that level if fishing effort is stable. Additionally, the SAFMC and NMFS have attempted to reduce the fishing mortality with the

implementation in 2009 of 8 MPAs designed to protect deep-water species and the 2011 prohibition on harvest of speckled hind.

The petition also expresses concern over potential bycatch mortality. The MSFCMA defines bycatch to mean fish harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards; it does not include fish released alive under a recreational catch and release fishery management program. Release mortality rates for the commercial and recreational speckled hind fisheries are not available, but bycatch mortality, including post-release mortality, is a potential concern for deep-water species due to the likelihood of barotrauma (i.e., injury resulting from expansion of gasses in internal spaces as ambient pressure is reduced during ascent). The SAFMC has noted that under the existing discard logbook program, discards are self reported and involve a high degree of uncertainty. However, it is also suspected that the incidental bycatch of speckled hind may have been responsible for the overfishing of the species. As evidence of this, fishing mortality of speckled hind actually increased despite the 1994 SAFMC one-fish-per-vessel trip limit (Ziskin, 2008). However, management actions implemented in 2009 and 2011 were intended to: (1) Eliminate the overutilization of the species by implementing MPAs intended to protect deep-water species from bycatch mortality (thus reducing fishing mortality associated with bycatch and the one fish per vessel limit) and (2) prohibit all retention of speckled hind, respectively. These management actions make the information presented in the petition incorrect and irrelevant as susceptibility to bycatch has been addressed through these management actions.

In summary, the petition and information in our files comprises substantial information indicating that overutilization may have occurred in the past in the South Atlantic; however, regulations have been implemented in the South Atlantic to address overutilization concerns, and additional measures have been developed and can be quickly implemented through the MSFCMA and Council to provide further protection for speckled hind if it becomes apparent such measures are needed. The petition did not present information on the Gulf of Mexico fishery, and fishery information in our files suggests that the speckled hind population is stable and harvest levels are sustainable. Current, average

landings from the Gulf of Mexico are larger than the maximum reported landings from the South Atlantic.

Inadequacy of Existing Regulatory Mechanisms

The petition states that existing regulatory mechanisms are inadequate to prevent endangerment or extinction of speckled hind, focusing on federal fishing regulations. Specifically, the petition identifies the inadequacy of the one-fish-per-vessel limit for all fishers in the South Atlantic and fishers in the Gulf of Mexico recreational fishery, and the lack of an annual catch limit for the Gulf of Mexico commercial fishery. The petition also cites the management of the fishery itself as posing a threat to the species. Citing the IUCN (2010), the petition states:

the *management* of fishing is itself posing a threat to these species of grouper: An immediate threat to [these] species is related to management of the commercial bottom long-lined [sic] fishery of the southeastern [United States]. The management trend has been to restrict such indiscriminate gear to deeper waters. If this management trend continues, [these grouper] and other deep water species like [them] will experience an even greater impact than they do now because barotrauma (expansion of enclosed gasses in the swim bladder-embolism) results in hemorrhage and eventual death as these deepwater fish are brought to the surface (Coleman and Williams 2002; Coleman *et al.* 2004; *See also* Sadovy & Eklund 1999). There is also a trend for the recreational fishery to operate in deeper water as shallow stocks become depleted. Even though there is a daily bag limit for groupers, there are so many recreational fishermen (over 1 million in Florida alone) that the potential impact on [these already depleted populations] is serious.

In federal waters of the Gulf of Mexico, speckled hind is managed by the Gulf of Mexico Fishery Management Council (GMFMC) through their Reef Fish Fishery Management Plan (FMP). In 1990, Amendment 1 to the FMP established a 1.8 million pound (816 mt) commercial quota for deep-water groupers, which includes misty, snowy, yellowedge, speckled hind, and warsaw grouper, and also includes scamp after the shallow-water grouper quota is filled. Since 2004, the deep-water grouper commercial quota has been set at 1.02 million pounds (463 mt) with no size limit. Available species-specific commercial landings reveal the Gulf of Mexico fishery has only exceeded 0.1 million pounds (45 mt) of speckled hind once. Amendment 16B to the FMP, implemented on November 24, 1999, established a one-fish-per-vessel recreational bag limit for speckled hind, and a prohibition on sale of speckled

hind when caught recreationally. Additionally, the GMFMC's objective for a lack of a minimum size in the Gulf of Mexico is to minimize regulatory discards and curb bycatch mortality of this deep-water grouper species (GMFMC, 1999). Allowing fishermen to retain speckled hind that may otherwise become regulatory discards due to size prevents these fish from being thrown back dead due to barotrauma and also excluded from landings statistics. Hence, with respect to the Gulf of Mexico, the Petitioner is incorrect in its assertion that fishery management measures are posing a threat to the species.

In federal waters of the U.S. South Atlantic, speckled hind is managed by the SAFMC through their Snapper-Grouper FMP. Amendment 6 to the Snapper-Grouper FMP, effective on July 27, 1994, included a one-fish-per-vessel, per trip, commercial and recreational possession limit for speckled hind; a prohibition on the sale of speckled hind; and established the *Oculina* Experimental Closed Area, which prohibited fishing for all snapper-grouper species within this area (59 FR 27242; May 26, 1994). Since the implementation of Amendment 6 in 1994, sale of speckled hind has been prohibited; however, commercial vessels were allowed to retain one speckled hind per vessel. Landings of speckled hind on commercial vessels under this prohibition have annually averaged approximately 5,240 pounds (2.4 mt) through 2009. Prior to this action, commercial landings averaged approximately 21,605 pounds (9.8 mt) during the previous 9-year time frame, 1986 through 1994. In January 2011, the SAFMC prohibited all landings of speckled hind, thus no commercial or recreational landings are expected in the future.

The petition, its references, and numerous sources state that establishment of large marine protected areas is likely to be the most effective measure for protection and conservation of speckled hind. Studies have found larger and more abundant grouper in closed areas than in similar, unprotected areas (Sedberry *et al.*, 1999). The petition does not acknowledge that Federal fishery management of speckled hind has involved the use of protected areas since the early 1990s. As discussed above, the *Oculina* Banks, a unique deep-water coral reef ecosystem off the South Atlantic coast of the United States, was protected beginning in 1994, specifically to facilitate rebuilding of deep-water grouper stocks. Amendment 13A to the South Atlantic snapper-

grouper FMP, effective on April 26, 2004, extended the prohibition on fishing for or possessing snapper-grouper species within the *Oculina* Experimental Closed Area for an indefinite period (69 FR 15731). On February 12, 2009, Amendment 14 to the South Atlantic snapper-grouper FMP established eight marine protected areas in which fishing for or possession of South Atlantic snapper-grouper species is prohibited (74 FR 1621). Additionally, Amendment 17B to the South Atlantic snapper-grouper FMP prohibited harvest and possession of speckled hind. Similarly, the GMFMC established several large closed areas in the Gulf of Mexico, including the Steamboat Lump and Madison and Swanson marine reserves. Ziskin (2008) stated that the one fish bag limit (in the South Atlantic) seemed insufficient to halt the over-exploitation of the species and that a new management strategy may be necessary to improve the status of the population. Given the SAFMC measures implementing 8 MPAs protecting deep water species in 2009 and the recent (January 2011) ban on any harvest of speckled hind, it appears that the SAFMC has heeded this call. Further, through the MSFCMA and Council process management measures have been and can be implemented quickly to protect speckled hind if such measures are found to be necessary.

In summary, the petition and information in our files indicates that existing regulatory mechanisms are adequate to prevent endangerment for speckled hind. The first regulatory mechanisms to address problems with speckled hind focused on targeted catch of the species. When it was understood that targeted reductions (i.e., a 1-fish per vessel limit) were not enough because of bycatch, new regulatory mechanisms were developed to eliminate any harvest (i.e., zero bag limit) and protect the species from bycatch (i.e., MPA's). Additionally, regulatory mechanisms appear to be flexible in response to information about the population, and thus are not posing an extinction risk for speckled hind.

Other Natural or Manmade Factors

The petition and several referenced studies state that speckled hind are vulnerable to increased risk of extinction, particularly from fishing pressure, due to biological constraints, including its large size, slow growth and maturity rates, susceptibility to barotrauma, lack of population increase, slow population doubling rates, protogynous hermaphroditism, and formation of spawning aggregations that can be easily targeted by fishermen.

However, concerns about the inherent vulnerability of deep-water grouper species have been taken into account and have been a recurring justification for Federal fishery management actions implemented under the MSFCMA.

The petition also lists potential small population size of adult speckled hind and human population growth as other natural or manmade factors contributing to speckled hind's vulnerability, but does not provide any supporting information to indicate these generalized concerns are actually negatively affecting speckled hind.

In summary, the petition and information in our files do not present substantial information to suggest that other natural or manmade factors, alone or in combination with other factors such as fishing pressure, may be causing extinction risk of concern in speckled hind.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available in our files, we conclude the petition does not present substantial scientific or commercial information indicating the petitioned action may be warranted.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Southeast Regional Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 25, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA840

Marine Mammals; File No. 16479

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for permit amendment.