

Kelley Drye Represents North Carolina Fishermen in Win to Protect Overfished Snowy Grouper and Black Sea Bass

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In a ruling issued Friday, the U.S. District Court for the District of Columbia granted partial summary judgment to a group of North Carolina commercial fishermen that had challenged the legality of Amendment 13C of the South Atlantic Snapper-Grouper Fishery Management Plan ("FMP"). The ruling supported the group's argument that the amendment failed to adequately address the potentially devastating impact of the regulations on businesses and communities in small local fishing villages of the Outer Banks.

David E. Frulla, lawyer at Kelley Drye having substantial experience with fisheries, represented the group, consisting of the North Carolina Fisheries Association, two local fishermen, and a local seafood company. The State of North Carolina participated as a "friend of the court" on the fishermen's behalf.

The group based its challenge, in part, on the argument that the Fishery Management Plan illegally failed to include an integrated plan for rebuilding the overfished snowy grouper and black sea bass populations, as required by the Magnuson-Stevens Fishery Conservation and Management Act ("MSA"). The Court agreed with the plaintiffs, ruled that Amendment 13C was illegal on these grounds, and ordered that the two sides confer and submit within 30 days either a joint proposal or separate proposals on how the agency could remedy its illegal actions.

"Amendment 13C clearly violated what the Judge described as the 'unambiguous language of the MSA' requiring the Secretary of Commerce to pair fishing restrictions on overfished species with a complementary plan to rebuild the species that takes both the fish and the fishermen into account".

Amendment 13C, adopted in September 2006, imposed a "hard quota" on snowy grouper, golden tilefish, vermilion snapper, and black sea bass – four species determined to be subject to overfishing. A hard quota prohibits the harvest and sale of those species once the quota is reached. Two of the four species identified, the snowy grouper and black sea bass, were also classified as "overfished," thereby triggering the MSA's requirement that regulations provide for a rebuilding program that includes not only conservation restrictions but measures to limit, if possible, these cutbacks' impacts on fishermen and their fishing communities.

"We are looking forward to the opportunity to work with the Secretary of Commerce to propose a plan that ensures snowy grouper and black sea bass rebuilding while allowing historic, small Outer Banks fishing villages to retain their economic viability," said Mr. Frulla. "After all, no one has a greater interest in preserving healthy fisheries than the fishermen whose livelihoods depend upon these species."