



# PRESS RELEASE

## Recreational Fishing Alliance

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For Immediate Release  
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### **JUDGE LEAVES FISHERMEN FLOUNDERING ON SEA BASS NOAA Avoids Scrutiny Of RFA Legal Challenge Through Slow Judicial Process**

On October 5, 2009, the National Marine Fisheries Service (NMFS) dealt a debilitating blow to the recreational fishing community when it abruptly closed the recreational black sea bass fishery for seven consecutive months. The Recreational Fishing Alliance (RFA), United Boatmen and several allies within the party and charter boat industry responded by filing a lawsuit in federal court challenging the closure on several grounds including numerous violations of the Magnuson Stevens Act, the Regulatory Flexibility Act and the Administrative Procedure Act. Despite requesting "expedited consideration" in the case, recreational fishermen never got their day in court.

In an opinion dated February 25, 2011, U.S. District Court Judge Joel A. Pisano granted NMFS' motion for judgment on the pleadings filed back on June 16, 2010 and dismissed the RFA's claims as "moot" since the recreational sea bass season re-opened back on May 22, 2010.

"NMFS got off lucky here, they were the beneficiary of a slow federal judicial process," said RFA Executive Director Jim Donofrio. "We still maintain that using MRFSS to close down a healthy sea bass fishery in the middle of the season was unjustified and illegal."

"Essentially, the Court agreed with NMFS that because the sea bass fishery was reopened in May, our case was moot because the Court could no longer provide us with meaningful relief, that is, the re-opening of the fishery," said Herb Moore, Jr., one of the lead attorneys for the plaintiffs. "We anticipated this problem from the very beginning which is why we requested 'expedited consideration' back in November 2009 and argued right from the start that our claims would not be moot even if the season was re-opened because emergency closures like this are capable of repetition yet evading review," Moore added.

"We obviously did not get expedited consideration and the Court disagreed with us that this closure meets the 'capable of repetition yet evading review' exception to mootness."

Moore said it is unfortunate that it was good enough for the Court that NMFS is "in the process" of replacing MRFSS with a new data collection program, even while recognizing that NMFS will continue to use MRFSS for some time until the new survey "becomes more robust." The RFA said that the 2009 black sea bass closure illustrates a systemic problem with the way NMFS manages recreational fisheries. Provisions included in the most recent reauthorization of the Magnuson Stevens Act demand a level of timeliness and accuracy which is simply not possible with the current programs.

"The name, be it MRFSS, MRIP, LPS, is irrelevant since all these systems are based on a methodology designed to capture trends over several years and over large geographic area," explained John DePersenaire, RFA Fisheries Policy & Science Researcher. "They are not designed to estimate a pound-for-pound landings estimate like that which is done in the commercial sector, nor are they designed for real-time monitoring. These statistical surveys really should not be used to responsibly enforce annual catch limits or impose mid-season closures through emergency authority as seen in the black sea bass fishery in 2009."

From a legal perspective, the next step to take would be a Motion for Reconsideration, but according to the RFA, the outside chance of success and the legal costs involved make further action unwise. "Individual anglers, fishing clubs, party and charter boat captains, tackle shops and other grassroots activists in the Mid-Atlantic region helped raise over \$50,000 to get this fight as far as it's gone, and the entire industry owes these individuals a debt of gratitude for pushing back," said RFA managing director, Jim Hutchinson.

“Any time you challenge a federal regulation in court it is an uphill battle, but we firmly believe that the shadow of this ongoing lawsuit coupled with heavy lobbying by our guys on the ground helped get our black sea bass season opened up more quickly,” Hutchinson said, adding “with the way NMFS is running things today, our fishermen should make sure to keep a few dollars off to the side for the next rainy day.”

“The bottom line is that the Court did not validate NMFS’ use of their emergency rulemaking authority here, and our legal arguments challenging the closure itself were not rejected,” Donofrio said. “I’ve said it all along, our fisheries should not be managed in a court of law, but if and when NMFS pulls this type of stunt again we are prepared to challenge them again.”

RFA said that public hearings are now underway to discuss a new draft addendum (XXI) which proposes to establish a program whereby the coastwide allocations of black sea bass could be subdivided into regional or state-by-state management for 2011. Since 1996, a uniform coastwide size, season, and bag limit has been set by the Council and Commission to constrain the recreational fishery to the annual harvest target, a target which MRFSS indicates has been exceeded five times over the last 15 years, most recently in 2009 and 2010 when targets were exceeded by 1.18 and 1.15 million pounds respectively.

“It’s hard to believe that a federal judge found in favor of the Government’s argument, yet here we are as a community forced to respond to more federal intervention based on the past 15 years of bad MRFSS data,” Donofrio said. “Personally, I think it’s time someone in government hit the reset button, either that or the flush lever, makes no difference to us.”

RFA said while the black sea bass legal challenge may be over, there’s still an active lawsuit in the Southeast filed by RFA-FL attorney Dave Heil based on the red snapper closure there. RFA is still collecting monies towards paying both of these legal efforts through the RFA Legal Defense Fund at PO Box 3080, New Gretna, NJ 08224.

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*The Recreational Fishing Alliance is a national, grassroots political action organization representing recreational fishermen and the recreational fishing industry on marine fisheries issues. RFA’s Mission is to safeguard the rights of saltwater anglers, protect marine, boat and tackle industry jobs, and ensure the long-term sustainability of our Nation’s saltwater fisheries. For more information, call 888-JOIN-RFA or visit [www.joinrfa.org](http://www.joinrfa.org).*