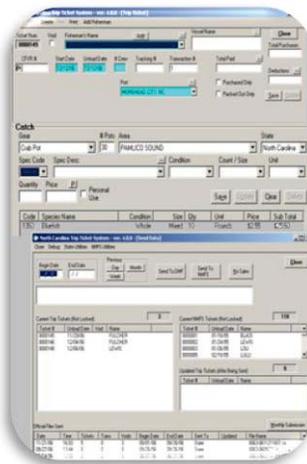


Modifications to Federally Permitted Seafood Dealer Reporting Requirements



Final Generic Amendment to the Fishery Management Plans in the Gulf of Mexico and South Atlantic Regions

Including Environmental Assessment,
Fishery Impact Statement,
Regulatory Impact Review, and Regulatory Flexibility Act Analysis

August 2013



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CHAPTER 1. INTRODUCTION

1.1 Background

The Gulf of Mexico Fishery Management Council (Gulf of Mexico Council) and South Atlantic Fishery Management Council (South Atlantic Council) are proposing changes to reporting requirements for federally-permitted dealers. The Councils develop fishery management plans (FMPs) and amendments for review and implementation by the National Marine Fisheries Service (NMFS) which ultimately approves, disapproves, or partially approves the actions in the plans or amendments on behalf of the Secretary of Commerce. NMFS is an agency in the National Oceanic and Atmospheric Administration.

Gulf of Mexico Fishery Management Council

- Responsible for conservation and management of fish stocks
- Consists of 17 voting members: 11 appointed by the Secretary of Commerce, 1 representative from each of the 5 Gulf states, the Southeast Regional Administrator of National Marine Fisheries Service (NMFS), and 4 non-voting members
- Responsible for developing fishery management plans and amendments, and recommends actions to NMFS for implementation

South Atlantic Fishery Management Council

- Responsible for conservation and management of fish stocks
- Consists of 13 voting members: 8 appointed by the Secretary of Commerce, 1 representative from each of the 4 South Atlantic states, the Southeast Regional Administrator of NMFS, and 4 non-voting members
- Responsible for developing fishery management plans and amendments, and recommends actions to NMFS for implementation

National Marine Fisheries Service

- Responsible for conservation and management of fish stocks
- Approves, disapproves, or partially approves Council recommendations
- Implements regulations

Areas Affected

This amendment affects dealer permits and reporting requirements for species in FMPs managed by the Gulf of Mexico and South Atlantic Councils. The jurisdictional boundaries of these plans encompass the Gulf of Mexico, South Atlantic, Mid-Atlantic, and New England regions (Figure 1.1). The Dolphin-Wahoo Fishery Management Plan encompasses all four regions. The FMP for Coastal Migratory Pelagic for the Atlantic and Gulf of Mexico encompasses the Mid-Atlantic, South Atlantic, and the Gulf of Mexico regions. The FMP for spiny lobster affects the Gulf of Mexico and South Atlantic. The remaining nine fishery management plans considered in this amendment affect a single region.

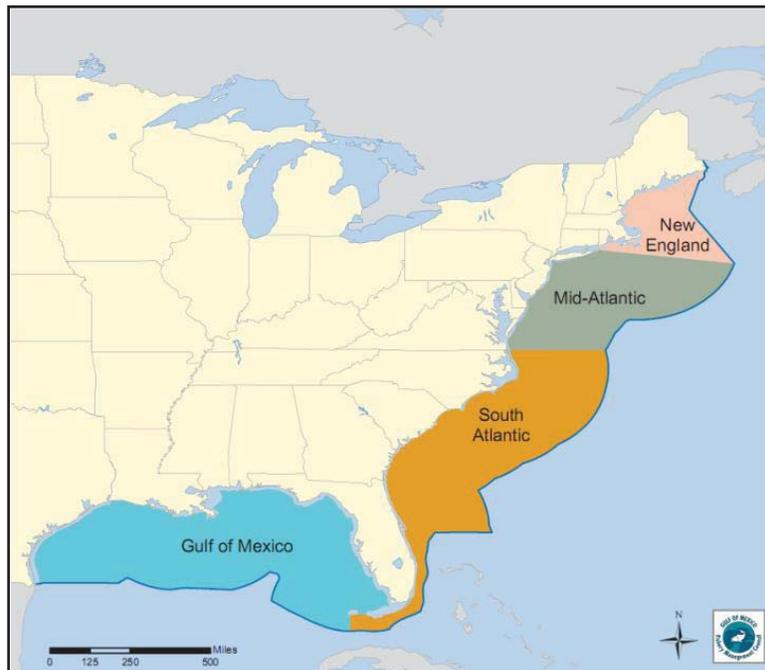


Figure 1.1. Jurisdictional boundaries of the Gulf of Mexico (blue), South Atlantic (orange), Mid-Atlantic (green), and New England (peach) Fishery Management Councils.

1.2 Purpose and Need

In some cases, existing annual catch limits (ACLs) established by the Gulf of Mexico and South Atlantic Councils have been exceeded due to shortcomings of existing reporting requirements for federally-permitted seafood dealers. Improvements are needed to the accuracy, completeness, consistency, and timeliness of data reported by federally-permitted seafood dealers to meet the requirements of the Magnuson-Steven Fishery Conservation and Management Act. This action would aid in achieving the optimum yield from each fishery while reducing (1) undue socioeconomic harm to dealers and fishermen and (2) administrative burdens to fishery agencies.

Purpose for Action

To change the current permit and reporting requirements for those individuals or organizations that purchase species managed by the Gulf of Mexico and South Atlantic Councils.

Need for Action

To ensure landings of managed fish stocks are recorded accurately and in a timely manner so annual catch limits are not exceeded.

1.3 Proposed Actions

Fishery managers are considering the modification of FMPs that affect species managed solely by the Gulf of Mexico or the South Atlantic Councils, as well as species in the Mid-Atlantic and New England areas (Figure 1.2).

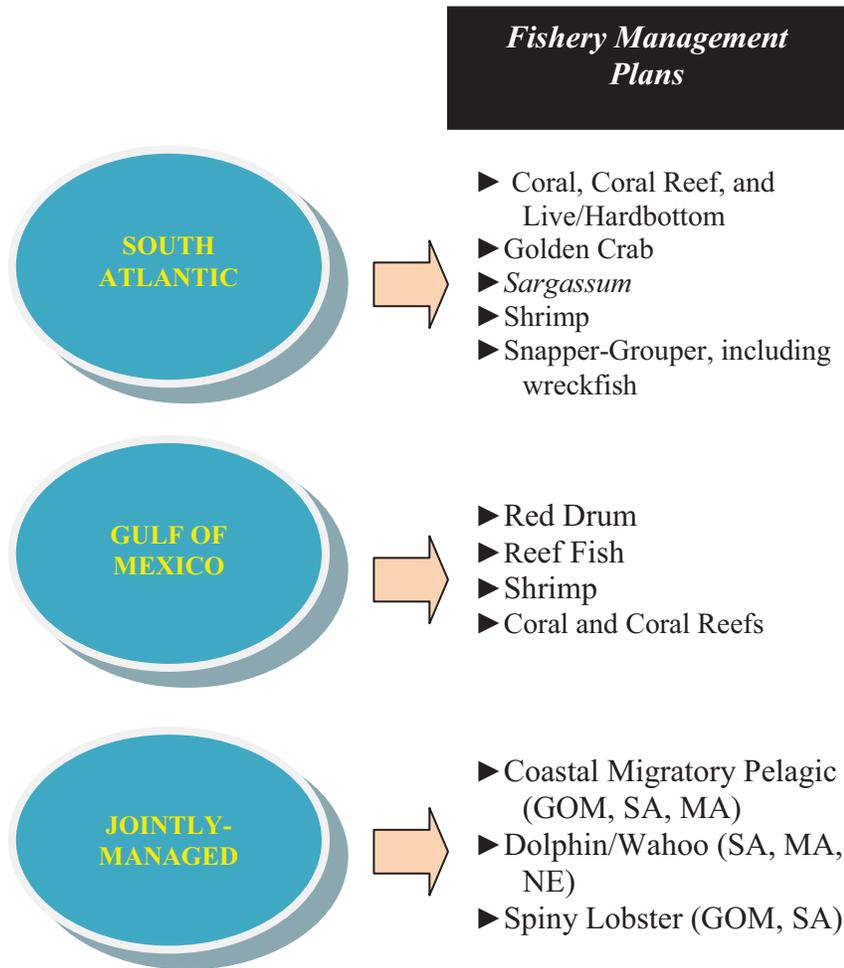


Figure 1.2. Four fishery management councils manage FMPs that that are being considered for modifications by this amendment. GOM=Gulf of Mexico, SA=South Atlantic, MA=Mid-Atlantic, and NE=New England.

What are Federal Seafood Dealer Permits and Why are They Required?

A seafood dealer is the entity that first receives fish by way of purchase, barter, or trade. Seafood dealers buy product from commercial fishermen and sell directly to restaurants, markets, other dealers, processors, or consumers without substantially altering the product. NMFS issues federal dealer permits on an annual basis to those individuals or organizations that wish to become a seafood dealer.

What are Some Examples of How the Lack of a Generic Dealer Permit and More Frequent Reporting Requirements Have Adversely Affected Management?

The Three Proposed Actions in the Amendment

Action 1. What dealer permits are required to purchase federally managed species ?

Action 2. Frequency and method by which dealers will be required to report?

Action 3. Requirements for maintaining a dealer permit?

Gulf of Mexico Region King Mackerel

In the Gulf of Mexico, quota monitoring of king mackerel has been hampered by the lack of a dealer permit. Dealers who possess a reef fish dealer permit are required to report all species, including king mackerel. However, not all dealers in the Gulf of Mexico have a reef fish dealer permit and a dealer permit is not required to receive king mackerel. Each year, the dealers that reported 95% of the landings in the previous year are selected to report to federal and state port agents, who pass the information to NMFS. This process is dependent on the ability of the port agents to contact dealers and receive landings in a timely manner. At times, communication between dealers and port agents can be disrupted and cause delays in reporting.

The delay of some reports, coupled with a recent increase in the rate of landings, has led to overages of the quotas in recent years (Table 1.1). For example, in five of the most recent six fishing seasons, the quota was exceeded by 23-90% in the Florida West Coast Northern Subzone and by 4-36% in the Florida West Coast Southern Subzone. In two of those years, the high rate of landings and some delayed reporting resulted in NMFS being unable to implement the trip limit reduction for the Northern Subzone that should happen when 75% of the quota is met. A similar situation occurred in the Florida West Coast Southern Subzone in 2011/2012, when no trip limit reduction could be implemented and the quota was exceeded by 30%.

Table 1.1. Quota overages for Gulf migratory group king mackerel in the Eastern Zone Florida West Coast Subzones. Years are indicated as fishing years rather than calendar years.

| Fishing Year | Northern | | | | Southern | | | |
|--------------|----------|----------|---------|--------|----------|----------|---------|--------|
| | Quota | Landings | Overage | % Over | Quota | Landings | Overage | % Over |
| 2006/2007 | 168,750 | 218,298 | 49,548 | 29.4 | 520,312 | 540,273 | 19,961 | 3.8 |
| 2007/2008 | 168,750 | 253,783 | 85,033 | 50.4 | 520,312 | 514,708 | | |
| 2008/2009 | 168,750 | 208,185 | 39,435 | 23.4 | 520,312 | 705,712 | 185,400 | 35.6 |
| 2009/2010 | 168,750 | 319,969 | 151,219 | 89.6 | 520,312 | 605,720 | 85,408 | 16.4 |
| 2010/2011 | 168,750 | 225,916 | 57,166 | 33.9 | 520,312 | 638,510 | 118,198 | 22.7 |
| 2011/2012 | 168,750 | 127,722 | | | 520,312 | 675,661 | 155,349 | 29.9 |

Source: Data from NMFS ACL Database 7/12/12.

Gulf of Mexico Region Greater Amberjack

In the Gulf of Mexico region, ACL overages have occurred in the greater amberjack component of the reef fish fishery. Overages and underages have occurred, in large part, due to the requirements that dealer reports are submitted bi-weekly and not more frequently. When the landings are not reported frequently, NMFS must project the closure date. Greater amberjack quotas have been exceeded four of the last five years since their implementation in 2008 (Table 1.2). In 2011, landings exceeded the quota by 49% or 166,273 pounds (lbs). The overage could have been reduced or prevented if reporting had been required on a daily or weekly basis.

Table 1.2. Summary of 2008-2012 Commercial Gulf of Mexico Greater Amberjack landings and overages (lbs whole weight).

| Year | Quota/ACL | Landings | Overage | % of ACL |
|------|-----------|----------|---------|----------|
| 2008 | 503,000 | 432,960 | -70,040 | 86 |
| 2009 | 503,000 | 601,446 | 98,446 | 120 |
| 2010 | 373,072 | 533,995 | 160,923 | 143 |
| 2011 | 342,091 | 508,364 | 166,273 | 149 |
| 2012 | 237,438 | 300,307 | 62,869 | 126 |

Source: NMFS SERO website 8/12/13.

South Atlantic Region Golden Tilefish

With the exception of 2012, the commercial golden tilefish quota has been exceeded every year from 2006 through 2012 (Table 1.3). Overages during 2006-2011 ranged from a low of 2% in 2007 to a high of 32% in 2006. In season closures have occurred each year.

Table 1.3. South Atlantic region golden tilefish quota overages (lbs gutted weight) (conversion factor for gutted weight for golden tilefish is 1.12).

| Year | Quota/ACL | Landings | Overage | % of ACL |
|-------------|------------------|-----------------|----------------|-----------------|
| 2006 | 295,000 | 390,569 | 95,569 | 132 |
| 2007 | 295,000 | 300,613 | 5,613 | 102 |
| 2008 | 295,000 | 312,623 | 17,623 | 106 |
| 2009 | 295,000 | 327,471 | 32,471 | 111 |
| 2010 | 295,000 | 365,292 | 70,292 | 124 |
| 2011 | 282,819 | 356,794 | 73,975 | 126 |
| 2012 | 541,295 | 516,800 | -24,495 | 95 |

Source: NMFS SERO website 8/12/13.

South Atlantic Region Black Sea Bass

The commercial black sea bass ACL was exceeded during the 2010-11 and 2011-12 fishing years (Table 1.4). Since the 2008-2009 fishing year, overages have ranged from 5% to 19%. In season closures have occurred in each of these fishing years.

Table 1.4. South Atlantic Region black sea bass commercial landings and ACL overages.

| Year | Quota/ACL | Landings | Overage | % of ACL |
|-------------|------------------|-----------------|----------------|-----------------|
| 2007-2008 | 423,000 | 298,916 | -124,084 | 71 |
| 2008-2009 | 309,000 | 395,387 | 86,387 | 128 |
| 2009-2010 | 309,000 | 337,397 | 28,397 | 109 |
| 2010-2011 | 309,000 | 409,326 | 100,326 | 132 |
| 2011-2012 | 309,000 | 385,540 | 76,540 | 125 |
| 2012-2013 | 309,000 | 324,086 | 15,086 | 105 |

Source: NMFS SERO website 8/12/13.

South Atlantic Region Gag

The commercial gag ACL was exceeded by 60% in 2011 (Table 1.5).

Table 1.5. South Atlantic Region gag quota overage in 2011.

| Year | Quota/ACL | Landings | Overage | % of ACL |
|-------------|------------------|-----------------|----------------|-----------------|
| 2009 | 352,940 | 442,760 | 89,820 | 125 |
| 2010 | 352,940 | 411,410 | 58,470 | 117 |
| 2011 | 352,940 | 564,950 | 212,010 | 160 |
| 2012 | 352,940 | 352,096 | -844 | 100 |

Source: NMFS SERO website 8/12/13.

South Atlantic Region Vermilion Snapper

The commercial vermilion snapper ACL has been exceeded every year from 2009 through 2012 (Table 1.6). Overages for each 6-month period have ranged 11% in January-June 2011 152% in July-December 2011.

Table 1.6. South Atlantic Region vermilion snapper quota overages.

| Year | Fishing Season | Quota/ACL | Landings | Overage | % of ACL |
|-------------|-----------------------|------------------|-----------------|----------------|-----------------|
| 2006 | Jan-Dec | 1,100,000 | 765,537 | -334,463 | 70 |
| 2007 | Jan-Dec | 1,100,000 | 972,528 | -127,472 | 82 |
| 2008 | Jan-Dec | 1,100,000 | 1,102,204 | 2,204 | 100 |
| 2009 | Jan-June | 315,523 | 421,831 | 106,308 | 134 |
| | July-Dec | 302,523 | 406,166 | 103,643 | 134 |
| 2010 | Jan-June | 315,523 | 356,822 | 41,299 | 113 |
| | July-Dec | 302,523 | 520,060 | 217,537 | 172 |
| 2011 | Jan-June | 315,523 | 351,551 | 36,028 | 111 |
| | July-Dec | 302,523 | 761,138 | 458,615 | 252 |
| 2012 | Jan-June | 315,523 | 386,798 | 71,275 | 123 |
| | July-Dec | 302,523 | 499,818 | 197,295 | 165 |

Source: NMFS SERO website 8/12/13.

What are the Current Dealer Reporting Requirements?

All federally-permitted dealers with Gulf of Mexico reef fish permits, South Atlantic snapper-grouper, golden crab, rock shrimp, and wreckfish permits, and Atlantic dolphin-wahoo permits, and those selected by the Science and Research Director (SRD) report trip level information for all species. Information must be submitted through the electronic trip ticket program authorized in each state or through the Standard Atlantic Fisheries Information System (SAFIS) web application.

The Gulf of Mexico shrimp and red drum fisheries, and the Gulf of Mexico and South Atlantic spiny lobster and coastal migratory pelagic (CMP) fisheries do not currently have federal dealer permits. However dealers who purchase CMP species are required to report at the frequency explained below. Dealers who purchase Gulf of Mexico shrimp and red drum, and Gulf of Mexico and South Atlantic spiny lobster are not required to report unless specified by the SRD. These landings are calculated from vessel landings determined by port agents and state trip ticket programs.

The required reporting frequency for Gulf of Mexico reef fish, South Atlantic snapper-grouper, and CMP species is twice per month. The reporting periods are the 1st-15th and the 16th-last day of the month, and reports are due five days after the end of each reporting period. The reporting requirements for dealers holding permits for South Atlantic rock shrimp, South Atlantic golden crab, and Atlantic dolphin/wahoo, are satisfied by monthly trip ticket reporting to the appropriate state fisheries management agency, or through the SAFIS web application.

In the Southeast, all states except South Carolina allow dealers to report either electronically (computer) or via paper methods (fax or mail). South Carolina requires dealers to submit purchase information via paper methods. If a South Carolina dealer submits a report electronically, they still must also submit a paper report.

The CMP species are managed jointly by the South Atlantic and Gulf of Mexico Fishery Management Councils, but landings occur in Mid-Atlantic States to the north of Southeast Region. Those Mid-Atlantic States outside of the Southeast region (Virginia/Maryland/Delaware/New Jersey/New York) have minimal landings of CMP species. Dealers in these five states that have a NMFS's Northeast region issued federal dealer permit are included in the SAFIS system and are required to report electronically once per week. Standard Atlantic Fisheries Information System is available to dealers without Northeast region permits in the Mid-Atlantic States from Maryland to New York and can be used to satisfy state reporting requirements electronically or dealers can submit paper forms if acceptable to the state. In Virginia and Delaware, state dealers are not required to report landings, but harvesters report catches on paper forms.

Atlantic dolphin and wahoo are managed by the South Atlantic Council, but landings also occur outside of the Southeast Region in the Mid-Atlantic states (Virginia/Maryland/Delaware/New Jersey/New York) and the Northeast states (Rhode Island/Connecticut/Massachusetts/New Hampshire/Maine). Dealers in these ten states that have a NMFS's Northeast Region issued federal dealer permit are included in the SAFIS system and are required to report electronically

once per week. Dealers from Virginia to Maine that have Atlantic dolphin-wahoo permits and have been selected to report must submit reports through SAFIS per the northeast reporting requirements. Standard Atlantic Fisheries Information System is available to dealers without northeast region permits from Virginia to Maine and can be used to satisfy state reporting requirements electronically or dealers can submit paper forms if acceptable to the state. In Virginia and Delaware, state dealers are not required to report landings, but harvesters report catches on paper forms.

Annual catch limits are being exceeded with the current reporting requirements especially for stocks with small ACLs. Twice per month reporting has proven to be inadequate, contributing to quota overages in multiple fisheries. Additionally, dealers are not required to submit the Southeast region federal dealer permit number with the report, leading to an inability to track compliance for late or non-reporting. This has also contributed to quota overages. These overages may result in a deduction of the overage from the following season's quota, which may result in lost revenue as well as a longer rebuilding period for some stocks if the quota is routinely exceeded.

Current dealer reporting requirements as specified in the Code of Federal Regulations are shown in Table 1.7. In practice, all dealers with a dealer permit are selected by the SRD for reporting.

Table 1.7. Reporting required by dealers for each FMP as stated in 50CFR par 622.5.

| FMP | Dealer permit required | Who must report | Type of reporting form | Required information | Frequency | Reporting deadline | Flexibility | Landings report required |
|---------------------------|------------------------|----------------------------|---------------------------------|--|-------------------------|--|---|--------------------------|
| Coastal Migratory Pelagic | No | Dealer selected by the SRD | Electronic trip ticket or SAFIS | Trip level reporting including date of landing, location of landing, dealer, vessel, gear used, area fished, species, size, condition, lbs landed and value. | Twice per month | 5 days after the end of the reporting period | SRD may modify form to be used, frequency of reporting and deadlines. | Yes |
| Gulf of Mexico Red Drum | No | Dealer selected by the SRD | As specified by SRD | Dealer name and address, state and county of landing, total lbs of each species received during period, type of gear used, and any other information deemed necessary by the SRD. | As specified by the SRD | As specified by the SRD | SRD may modify form, frequency, deadlines and information required. | As specified by the SRD |
| Gulf of Mexico Reef Fish | Yes | Dealer selected by the SRD | Electronic trip ticket or SAFIS | Trip level reporting including date of landing, location of landing, dealer, vessel, gear used, area fished, species, size, condition, lbs landed and value. | Twice per month | 5 days after the end of the reporting period | SRD may modify form to be used, frequency of reporting and deadlines. | Yes |
| Gulf of Mexico Shrimp | No | When requested by SRD | As specified by SRD | For each receipt, a dealer must provide: vessel name and official number or name of person if no vessel; amount of shrimp received by species and size category; and ex-vessel value by species and size category. | When requested by SRD | Not specified | None specified | No |

| FMP | Dealer permit required | Who must report | Type of reporting form | Required information | Frequency | Reporting deadline | Flexibility | Landings report required |
|--------------------------------|------------------------|----------------------------|---------------------------------|--|-----------------|--|---|--|
| South Atlantic Snapper-Grouper | Yes | Dealer selected by the SRD | Electronic trip ticket or SAFIS | Trip level reporting including date of landing, location of landing, dealer, vessel, gear used, area fished, species, size, condition, lbs landed and value. | Twice per month | 5 days after the end of the reporting period (reports may be faxed for species other than wreckfish) | SRD may modify form to be used, frequency of reporting and deadlines. | Yes (wreckfish negative reports are not required during the spawning-season closure) |
| South Atlantic Golden Crab | Yes | Dealer selected by the SRD | As specified by SRD | Receipts of, and prices paid, for South Atlantic golden crab. | Monthly | 5 days after the end of the reporting period | SRD may modify form to be used, frequency of reporting and deadlines. | No |
| South Atlantic Rock Shrimp | Yes | Dealer selected by the SRD | As specified by SRD | Receipts of, and prices paid, for South Atlantic rock shrimp. | Monthly | 5 days after the end of the reporting period | SRD may modify form to be used, frequency of reporting and deadlines. | No |
| Atlantic Dolphin/Wahoo | Yes | Dealer selected by the SRD | As specified by SRD | Receipts of, and prices paid, for Atlantic dolphin and wahoo. | Monthly | 5 days after the end of the reporting period | SRD may modify form to be used, frequency of reporting and deadlines. | No |

1.3.1 Gulf of Mexico Council's History of Management for Fishery Management Plans (FMP) Affected by this Amendment

NMFS has collected annual commercial landings data since the early 1950s; recreational harvest data since 1979; and in 1984 initiated a dockside interview program to collect additional data on commercial harvest.

Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish Resources FMP)

The Reef Fish Resources FMP was submitted by the Gulf of Mexico Council in August 1981 and implemented in November 1984 (GMFMC 1981a). The implementing regulations included data reporting requirements.

Amendment 7 (with Environmental Assessment [EA]/Regulatory Impact Review [RIR]/Initial Regulatory Flexibility Act Analysis [IRFAA]), submitted by the Gulf of Mexico Council in August 1993 and implemented in February 1994 (GMFMC 1994), established reef fish dealer permitting and record keeping requirements.

Amendment 11 (EA/RIR/IRFAA) was submitted by the Gulf of Mexico Council in June 1995, and partially approved by NMFS and implemented in January 1996 (GMFMC 1996). The provisions relevant to this amendment were to limit sale of Gulf of Mexico reef fish by permitted vessels to permitted reef fish dealers, and require that permitted reef fish dealers purchase reef fish caught in Gulf federal waters only from permitted vessels.

Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (Red Drum FMP)

The Red Drum FMP was implemented in December 1986 (GMFMC 1986). The FMP was implemented on December 19, 1986, and prohibited directed commercial harvest from the exclusive economic zone (EEZ) for 1987 onwards. The FMP provided for a recreational bag limit of one fish per person per trip and an incidental catch allowance for commercial net and shrimp fishermen. Total harvest was estimated at 625,000 lbs; 300,000 lbs by the commercial sector and 325,000 lbs by the recreational sector.

Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Shrimp FMP)

The Shrimp FMP was implemented as federal regulation May 20, 1981 (GMFMC 1981b). The principal objective of the plan was to enhance yield in volume and value by deferring harvest of small shrimp to provide for growth. The FMP also established reporting systems for vessels, dealers, and processors.

Amendment 11 (EA/RIR/IRFAA), implemented December 5, 2002, requires all vessels harvesting shrimp from the EEZ to obtain a commercial shrimp vessel permit from NMFS;

prohibits the use of traps to harvest of royal red shrimp from the EEZ; and prohibits the transfer of royal red shrimp at sea (GMFMC 2001).

Amendment 13 (EA/RIR/IRFAA), (1) established an endorsement to the existing federal shrimp vessel permit for vessels harvesting royal red shrimp; (2) defined maximum sustainable yield, optimum yield, the overfishing threshold, and the overfished condition for royal red and penaeid shrimp stocks in the Gulf for stocks that currently lack such definitions; (3) established bycatch reporting methodologies and improved collection of shrimp effort data in the EEZ; (4) required completion of a Gulf Shrimp Vessel and Gear Characterization Form; (5) established a moratorium on the issuance of commercial shrimp vessel permits; and (6) required reporting and certification of landings during a moratorium (GMFMC 2005). The Gulf of Mexico Council submitted the amendment in August 2005 and the actions were implemented September 5, 2005.

1.3.2 South Atlantic Council's History of Management for Fishery Management Plans (FMP) Affected by this Amendment

Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region (Snapper Grouper FMP)

The Snapper Grouper FMP (SAFMC 1983) was prepared by the South Atlantic Council and implemented by the Secretary of Commerce on August 31, 1983 [48 Federal Register 39463]. Management Measure #18: Statistical Reporting and Data Collection: "Data will be collected from a sample of commercial and recreational catch for YPR analysis. Those fishermen and dealers selected must make their fish available for inspection (measurement) by statistical reporting agents. Dealers will continue voluntary reporting of landings and value by species for those species reported in Fishery Statistics of the United States."

Amendment 4 (SAFMC 1991) was prepared by the South Atlantic Council and approved by the Secretary of Commerce on August 26, 1991 and all regulations were effective on January 1, 1992 except the bottom longline prohibition for wreckfish was implemented on October 25, 1991 [56 Federal Register 56016]. Data measures were included as follows:

To exceed bag limits in the snapper grouper fishery, an owner or operator of a vessel that fishes in South Atlantic federal waters is required to obtain an annual vessel permit. For individuals to qualify for a permit they must have at least 50 percent of their earned income, or \$20,000 in gross sales, derived from commercial, charter, or headboat fishing. For a corporation to be eligible for a permit, the corporation or shareholder or officer of the corporation or the vessel operator would be required to have at least \$20,000 in gross sales derived from commercial fishing. For partnerships, the general partner or operator of the vessel is required to meet the same qualifications as a corporation. A permit, gear, and vessel and trap identifications are required to fish with black sea bass traps.

Amendment 4 also included Action 4: Data Collection to track the Gulf of Mexico Council's reef fish regulations as closely as is feasible: Item #3. Established reporting requirements for dealers.

Amendment 6 (SAFMC 1993) was prepared by the South Atlantic Council and submitted to the Secretary of Commerce in December 1993. Commercial trip limits for snowy grouper and golden tilefish became effective June 6, 1994, and the remainder of the regulations became effective June 27, 1994 [59 Federal Register 27242]. Data will be collected to evaluate shifts in fishing effort (effort shifts) among fisheries and for future evaluation of an “Individual Transferable Quota” type of management approach. Action 12 proposed to track and monitor total quotas by species to ensure that total allowable catch is not exceeded and to document production by species by individual fishermen. Required 100% logbook coverage and some form of verification with information from dealers. This in effect requires the Science and Research Director to select and analyze mandatory logbooks for all snapper grouper permitted vessels. The catch by divers is to be separated by gear (powerheads, spearing, etc.). Amendment 6 was approved on May 5, 1994 with the exception of the 100% logbook coverage and the anchoring prohibition within the Oculina Bank. [Note: Rationale for rejection was “The National Marine Fisheries Service (NMFS) believes that the methods employed to obtain necessary management data and the appropriate sampling strategy for such data are determinations properly made by the Science Director of the Southeast Fisheries Science Center.” NMFS has continued the 100% logbook coverage.]

Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region (Golden Crab FMP)

The Golden Crab FMP (SAFMC 1995) was prepared by the South Atlantic Council and implemented by the Secretary of Commerce on August 27, 1996 [61 Federal Register 43952]. The Golden Crab FMP required vessel permits (Action 14), dealer permits (Action 15), vessel/fishermen reporting (Action 16), and dealer reporting (Action 17).

Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (Rock Shrimp FMP; Amendment 1)

Amendment 1 to the Shrimp FMP (SAFMC 1996) was prepared by the South Atlantic Council and implemented by the Secretary of Commerce on October 9, 1996 (closure) and November 1, 1996 (remaining measures). The FMP required dealer permits to receive rock shrimp (Action 3), vessel permits to harvest rock shrimp (Action 4), vessel operators permit to participate in the fishery (Action 5), and dealer reporting to monitor the rock shrimp fishery (Action 6).

Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic (Dolphin Wahoo FMP)

The Dolphin Wahoo FMP (SAFMC 2003) was prepared by the South Atlantic Council in cooperation with the New England and Mid-Atlantic Fishery Management Councils. The Dolphin Wahoo FMP was implemented by the Secretary of Commerce on May 27, 2004 [69 Federal Register 30235]. The Dolphin Wahoo FMP required dealer permits (Action 3), for-hire and commercial vessel permits (Action 4) (Note: NMFS disapproved the qualifying criteria proposed to obtain a commercial vessel permit.), and for-hire and commercial operator’s permits (Action 5). The Dolphin Wahoo FMP also required reporting of vessel permit holders

(commercial and for-hire) and included the reporting requirements as specified in the Atlantic Coastal Cooperative Statistics Program (ACCSP) through Action 6.

1.3.3 Joint Gulf of Mexico and South Atlantic Council's History of Management for Fishery Management Plans (FMP) Affected by this Amendment

Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic (Spiny Lobster FMP)

The Spiny Lobster FMP (GMFMC and SAFMC 1982a) was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and implemented by the Secretary of Commerce on August 31, 1983 [48 Federal Register 39463]. The Spiny Lobster FMP specified statistical reporting for commercial spiny lobster fishermen. **Amendment 1** (GMFMC and SAFMC 1987a) was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and implemented by the Secretary of Commerce on June 15, 1987 [52 Federal Register 22656] and May 16, 1988 [53 Federal Register 17194]. Portions dealing with delayed measures, including permits, were implemented June 28, 1990 and July 30, 1990 [55 Federal Register 26447]. Amendment 1 required commercial fishing permits and recreational fishing permits (held in reserve until Florida developed the system).

Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Coastal Migratory Pelagic FMP)

The Coastal Migratory Pelagics FMP (Mackerels) (GMFMC and SAFMC 1983) was prepared by the Gulf of Mexico and South Atlantic Councils and implemented by the Secretary of Commerce on February 4, 1983 [48 Federal Register 5270]. The FMP specified statistical reporting measures (Section 12.3.6).

Amendment 1 to the Coastal Migratory Pelagic FMP (GMFMC and SAFMC 1985) was prepared by the Gulf of Mexico and South Atlantic Councils and implemented by the Secretary of Commerce on August 28, 1985 [50 Federal Register 34840]. Amendment 1 required commercial king mackerel permits to fish under the commercial quota on the Gulf of Mexico king mackerel group; these vessels are exempt from the recreational bag limit. The amendment also specified statistical reporting measures (Section 12.6.10).

Amendment 2 to the Coastal Migratory Pelagic FMP (GMFMC and SAFMC 1987b) was prepared by the Gulf of Mexico and South Atlantic Councils and implemented by the Secretary of Commerce on June 30, 1987 and August 24, 1987 [52 Federal Register 23836]. Amendment 2 required commercial vessel permits to fish under the commercial quota on king or Spanish mackerel (Action 10, Section 12.6.4.1 A); these vessels are exempt from the recreational bag limit. The amendment also required charter boat permits for coastal migratory pelagic for-hire (Action 10, Section 12.6.4.1 B).

Amendment 8 to the Coastal Migratory Pelagic FMP (GMFMC and SAFMC 1996) was prepared by the Gulf of Mexico and South Atlantic Councils and implemented by the Secretary of Commerce on March 3, 1998 and April 3, 1998 [63 Federal Register 10561]. Amendment 8

established a moratorium on new commercial king mackerel permits and provided for transferability of permits during the moratorium

Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico for the Gulf of Mexico and South Atlantic Fishery Management Councils (Coral and Coral Reefs FMP)

The Coral and Coral Reefs FMP and associated Environmental Impact Statement, implemented in 1982, described the coral communities throughout the jurisdictions of the Gulf and South Atlantic Councils (GMFMC and SAFMC 1982b) and established a data reporting system.

Amendment 1 to the Coral and Coral Reefs FMP (EA/RIR/IRFAA), implemented in 1990, established permits and reporting requirements for persons landing gorgonians commercially. It also established a permitting requirement and landing limit for non-commercial harvesters (i.e., 6 colonies).

If this Amendment is Implemented, What Information Would Dealers be Required to Report and Where Would the Information Go?

Most of the proposed data elements to be collected are already collected in most state trip ticket programs (Table 1.8). The landings data would be entered through the state electronic trip ticket program or through the SAFIS web interface or other approved electronic reporting tool. All data for dealers from Maine to Florida would be loaded to the SAFIS database at the Atlantic Coastal Cooperative Statistical Program for storage. All data for dealers from Alabama to Texas would be loaded to the Gulf States Marine Fisheries Commission for storage in the Gulf Fisheries Information Network (GulFIN) database. The Southeast Fisheries Science Center would access the data in SAFIS and GulFIN and process the data for use in tracking quotas and ACLs and monitoring compliance.

Table 1.8. Data elements proposed to be collected on the electronic dealer reports.

| Proposed Data Elements |
|---|
| Trip ticket number |
| Dealer name and federal permit number and state dealer license number |
| Vessel name and USCG documentation number and state registration |
| VTR# from the vessel logbook form |
| Date sailed |
| Date of landing (date vessel returned to dock and unloaded) |
| Date of purchase |
| Species |
| Quantity landed |
| Type of quantity (lbs. bushels, etc.) |
| Price per unit (\$) landed weight |
| Port and state of landing |
| Gear used |
| Area fished |
| Size (small, large) |
| Condition (e.g., gutted, headed, core) |
| Disposition (food, bait, pet food or reduction) |

CHAPTER 2. MANAGEMENT ALTERNATIVES

2.1 Action 1 – Dealer Permits Required

Note: The term “purchase” will be used throughout the amendment, but the actions affect all activities as described under the definition of a dealer at 50 CFR § 600.10. “Dealer” means the person who first receives fish by way of purchase, barter, or trade.

Alternative 1: No Action – Do not modify the following current six federal dealer permits:

- Atlantic Dolphin-Wahoo
- Gulf of Mexico Reef Fish
- South Atlantic Golden Crab
- South Atlantic Rock Shrimp
- South Atlantic Snapper Grouper (excluding wreckfish)
- South Atlantic Wreckfish

Preferred Alternative 2: Establish one federal dealer permit for the Gulf of Mexico and South Atlantic regions.

Option 2a. Require a single dealer permit to purchase the following federally-managed species or species complexes, excluding South Atlantic coral, South Atlantic *Sargassum*, and Gulf of Mexico coral and coral reefs.

- Atlantic Dolphin-Wahoo
- South Atlantic Golden Crab
- South Atlantic Rock Shrimp
- South Atlantic Snapper Grouper (including wreckfish)
- Gulf of Mexico Reef Fish
- *Gulf of Mexico and South Atlantic Coastal Migratory Pelagics*
- *Gulf of Mexico and South Atlantic Spiny Lobster*
- *Gulf of Mexico Red Drum*
- *Gulf of Mexico Penaeid Shrimp*
- *South Atlantic Penaeid Shrimp*

(Note: Italics designate additional new species that currently do not require dealer permits.)

Preferred Option 2b. Require a single dealer permit to purchase the following federally-managed species or species complexes, except South Atlantic coral, South Atlantic *Sargassum*, Gulf of Mexico coral and coral reefs, and penaeid shrimp species.

- Atlantic Dolphin-Wahoo
- South Atlantic Golden Crab
- South Atlantic Rock Shrimp
- South Atlantic Snapper Grouper (including wreckfish)
- Gulf of Mexico Reef Fish
- *Gulf of Mexico and South Atlantic Coastal Migratory Pelagic*
- *Gulf of Mexico and South Atlantic Spiny Lobster*
- *Gulf of Mexico Red Drum*

(Note: Italics designate additional new species that currently do not require dealer permits.)

[Note: It is the Councils' intent that the generic dealer permit requirements apply to any dealer purchasing South Atlantic Council of Gulf Council managed species and to all federally permitted vessels that sell South Atlantic Council or Gulf Council managed species. This would require that permitted vessels can only sell to permitted dealers in those fisheries where a dealer permit exists. This will also apply to for-hire vessels with a for-hire Coastal Migratory Pelagic Permit and to vessels with a federal spiny lobster tailing or spiny lobster permit.]

Alternative 3: Establish separate Gulf of Mexico and South Atlantic federal dealer permits that combine multiple single region dealer permits.

Option 3a. Require dealer permits to purchase the following federally-managed species, except South Atlantic coral, South Atlantic *Sargassum*, and Gulf of Mexico coral and coral reefs.

Gulf of Mexico Region Permit

- Gulf of Mexico Reef Fish
- *Gulf of Mexico Coastal Migratory Pelagic*
- *Gulf of Mexico Spiny Lobster*
- *Gulf of Mexico Red Drum*
- *Gulf of Mexico Penaeid Shrimp*

South Atlantic Region Permit

- Atlantic Dolphin-Wahoo
- South Atlantic Golden Crab
- South Atlantic Rock Shrimp
- South Atlantic Snapper Grouper (including wreckfish)
- *South Atlantic Coastal Migratory Pelagic*
- *South Atlantic Spiny Lobster*
- *South Atlantic Penaeid Shrimp*

(Note: Italics designate additional new species that currently do not require dealer permits.)

Option 3b. Require dealer permits to purchase the following federally-managed species, except South Atlantic coral, South Atlantic *Sargassum*, Gulf of Mexico coral and coral reefs, and penaeid shrimp species.

Gulf of Mexico Region Permit

- Gulf of Mexico Reef Fish
- *Gulf of Mexico Coastal Migratory Pelagic*
- *Gulf of Mexico Spiny Lobster*
- *Gulf of Mexico Red Drum*

South Atlantic Region Permit

- Atlantic Dolphin-Wahoo
- South Atlantic Golden Crab
- South Atlantic Rock Shrimp
- South Atlantic Snapper Grouper (including wreckfish)
- *South Atlantic Coastal Migratory Pelagics*
- *South Atlantic Spiny Lobster*

(Note: Italics designate additional new from Option 3a.)

Discussion:

Reporting requirements currently exist in one form or another, for dealers that purchase federally-managed fish. Reporting is done through their state system, and the information is transferred to National Marine Fisheries Service (NMFS). In general, this reporting process will continue. **Action 1** is intended to better identify that universe of dealers.

Alternative 1 (No Action) would not address the lack of a federal dealer permit for some federal species, which results in difficulty identifying dealers that are handling federal species and selecting those dealers for more timely reporting. The difficulty with identifying non-permitted dealers that are handling federal species results in an increased likelihood of exceeding annual catch limits (ACLs) established by the Gulf of Mexico Fishery Management Council (Gulf of Mexico Council) and South Atlantic Fishery Management Council (South Atlantic Council).

Preferred Alternative 2 would establish a single federal dealer permit necessary to purchase federally-managed species (with the exception of Highly Migratory Species management by NMFS) and would eliminate the need for multiple permits to purchase federally-managed species in the Gulf of Mexico and South Atlantic. **Alternative 3** would require separate regional permits to purchase species managed by the Gulf of Mexico and South Atlantic Councils, respectively. In comparison to **Alternative 1 (No Action)**, both **Preferred Alternative 2** and **Alternative 3** would establish consistent reporting routines that would improve monitoring the purchase of species with established ACLs. **Preferred Alternative 2** would also reduce the burden on seafood dealers by simplifying the reporting process, as only a single permit would be required. However, **Alternative 3** would provide additional flexibility to each Council if they wanted different reporting requirements in the future.

Option 2a and **Option 3a** would require a permit to purchase penaeid shrimp species, while a permit would not be required to purchase these species for **Preferred Option 2b or Option 3b**. Penaeid shrimp and rock shrimp are annual species that do not generally have established ACLs. The one exception is royal red shrimp in the Gulf of Mexico, which has an ACL that has never been exceeded. Because of the large number of shrimp dealers, the Councils determined that requiring a dealer permit for penaeid shrimp species would place an additional burden on both the dealers and the administrators, without providing the corresponding benefits, in comparison to **Preferred Option 2b and Option 3b**. Only a few dealers receive royal red shrimp, and thus it is easier to effectively monitor these landings without requiring a federal dealer permit. It is the Councils' intent that the generic dealer permit requirements apply to any dealer purchasing South Atlantic and Gulf of Mexico managed species and to all federally permitted vessels that sell South Atlantic and Gulf of Mexico managed species. This would require that permitted vessels can only sell to permitted dealers in those fisheries where a dealer's permit exists. This will also apply to for-hire vessels with a for-hire Coastal Migratory Pelagic Permit and to vessels with a federal spiny lobster tailing or spiny lobster permit.

Action 1 makes dealer reporting requirements exemptions for South Atlantic coral, South Atlantic *Sargassum*, Gulf of Mexico coral and coral reefs, and penaeid shrimp species. The ACL for South Atlantic coral and Gulf of Mexico coral and coral reefs is currently zero, thus no dealer reporting is needed. However, for Gulf of Mexico red drum the decision was made to include this species in dealer reporting requirements for potential future harvest. The ACL for South Atlantic *Sargassum* is 5,000 pounds wet weight but observers are required so the landings can be tracked adequately; in addition, there is a November through June season. There has not been a fishery for *Sargassum* since 1998 (SAFMC 2011).

Currently, 22 vessels have valid or renewable Gulf king mackerel gillnet endorsements, although only 10-12 vessels fish in any one year. The gillnet sector opens the Tuesday after Martin Luther King Jr. Day each year, with a daily trip limit of 25,000 lbs. With this large trip limit, these vessels are capable of meeting the 551,448-pound ACL within three days. Except for the most recent fishing season, since the 2006/2007 fishing season, this sector has closed within two weeks and during the 2011/2012 fishing season, the sector landed king mackerel so rapidly the quota was projected to be met in four days. Dealers currently report daily landings after vessels have offloaded in the early morning. Industry representatives, Southeast Fisheries Science Center (SEFSC) staff, and Southeast Regional Office staff are working together to improve timeliness of reporting and accuracy of closures. Continued daily reporting is necessary to track the landings and prevent overage of the ACL.

Council Conclusions:

The South Atlantic Council was proposing separate dealer permits for each region, which could provide greater flexibility in implementing future changes to dealer reporting requirements. If there is a single dealer permit across both regions, it could be more difficult to propose changes for South Atlantic dealers. Similarly, if the Gulf of Mexico Council wanted to propose changes in the future, it could be easier to implement with separate dealer permits. The administrative requirements are expected to be minimal in that the dealer could select which permit they wanted on the application form, or could select both permits if they wanted to be permitted in both areas.

The South Atlantic Council concluded future administrative costs would be much less with separate permits. Neither Council would be required to review and approve the other Council's changes.

The Gulf of Mexico Council reviewed the South Atlantic Council's decision to select separate dealer permits for each region. However, the Gulf of Mexico Council determined that separate permits would be an additional burden to the seafood dealers, NMFS, and other agencies that collect reporting information for federally-managed species. Recently the Highly Migratory Species (HMS) Division of NMFS went through the regulatory approval process and public comment to implement a single dealer reporting permit for the Atlantic and Gulf of Mexico coasts.

The Gulf of Mexico Council determined that any change needed to regulations and permitting requirements in the future would require amending the fishery management plans and looks forward to coordinating with the South Atlantic Council to better the efforts to collect dealer reporting data. In addition, the Gulf of Mexico Council felt that separate permits would increase the workload of the Southeast Regional Office Permitting Division at a time when resources are limited.

The Gulf of Mexico and South Atlantic Councils' basis for exempting penaeid shrimp species from the dealer permit requirement is that there are no ACLs for rock shrimp and penaeids, thus the current reporting system is adequate for current needs. It is likely the administrative burden to issue such a large number of permits would far outweigh the benefits gained from more timely shrimp dealer reports. The Gulf of Mexico and South Atlantic Councils could consider permitting penaeid shrimp dealers at a later time.

At this time, the dealer reporting requirements being proposed are the same in the Gulf of Mexico and South Atlantic. The Gulf of Mexico and South Atlantic Councils conducted public hearings in their regions during August 2012. Additional public hearings were conducted the South Atlantic Council in the Mid-Atlantic and New England regions in August 2013; comments are summarized in Appendix C.

At their August meeting, the Gulf of Mexico Council reaffirmed their preferred alternative. The South Atlantic Council reviewed the Gulf of Mexico Council's rationale and public comments and determined that at this time it was more important to move forward with the improvements to dealer reporting and changed their preferred alternative to a single dealer permit.

The Councils concluded the dealer requirements should apply to dealers and federally-permitted vessels in the Mid-Atlantic and New England to ensure accurate tracking of landings so that Annual Catch Limits (ACLs) are not exceeded.

2.2 Action 2 – Frequency and Method of Reporting

Alternative 1: No Action – Do not modify reporting requirements for federally-permitted dealers.

Currently, reporting requirements for dealers with Gulf of Mexico reef fish permits, South Atlantic snapper-grouper permits, or dealers with records of king or Spanish mackerel landings the previous year, or those selected by the National Marine Fisheries Service, Southeast Fisheries Science Center's, Science and Research Director (SRD), include electronic submission of trip level information for all species (Table 1.7). Information must be submitted through the electronic trip ticket program authorized in each state or through the Standard Atlantic Fisheries Information System (SAFIS) web application, if a SAFIS web application exists for the state in which the dealer operates. The information currently required is the same information required by the state trip ticket programs. Reporting frequency is twice per month including the 1st-15th and the 16th-last day of the month. Reports are due 5 days after the end of each reporting period. The requirements for dealers holding permits for South Atlantic rock shrimp, South Atlantic golden crab, Atlantic dolphin/wahoo, Gulf shrimp, Gulf red drum and other coastal pelagic species are satisfied by monthly trip ticket reporting to the appropriate state fisheries management agency.

During complete months encompassed by the wreckfish spawning season closure (South Atlantic), a wreckfish dealer is not required to submit a dealer wreckfish report stating that no wreckfish were purchased.

Alternative 2: Require forms be submitted via *fax or electronically* (via computer or internet).

Option 2a. *Daily.* Forms must be submitted by 11:59 P.M. local time each day.

Option 2b. *Weekly.* Forms from trips landing between Sunday and Saturday must be Submitted to the SRD by 11:59 P.M. local time on the following Tuesday.

Option 2c. *Weekly or daily.* Forms must be submitted either weekly or daily as determined by the SRD. Reporting would be weekly, but the SRD could require daily reporting. If weekly reporting is required by the SRD, forms from trips landing between Sunday and Saturday must be submitted to the SRD by 11:59 P.M. local time on the following Tuesday. If daily reporting is required by the SRD, any trip landing that species must be submitted by 11:59 P.M. local time on the day of the landing.

Option 2d. *Once every two weeks.* Each week runs from Sunday to Saturday. Forms must be submitted by 11:59 P.M. local time on the Tuesday following the end of the two week period.

Option 2e. *Once every two weeks or weekly.* Forms must be submitted either once every two weeks or weekly as determined by the SRD. Reporting would be every two weeks, but the SRD could require weekly reporting. If weekly reporting is required by the SRD, forms from trips landing between Sunday and Saturday must be submitted to the SRD by 11:59 P.M. local time on the following Tuesday. If reporting is required by the SRD every two weeks, forms must be

submitted by 11:59 P.M. local time on the Tuesday following the end of the two week period.

Preferred Alternative 3: Require forms be submitted *electronically* (via computer or internet).

Option 3a. *Daily.* Forms must be submitted by 11:59 P.M. local time each day.

Preferred Option 3b. *Weekly.* Forms from trips landing between Sunday and Saturday must be submitted to the SRD by 11:59 P.M. local time on the following Tuesday.

Option 3c. *Weekly or daily.* Forms must be submitted either weekly or daily as determined by the SRD. Reporting would be weekly, but the SRD could require daily reporting. If weekly reporting is required by the SRD, forms from trips landing between Sunday and Saturday must be submitted to the SRD by 11:59 P.M. local time on the following Tuesday. If daily reporting is required by the SRD, any trip landing that species must be submitted by 11:59 P.M. local time on the day of the landing.

Option 3d. *Once every two weeks.* Each week runs from Sunday to Saturday. Forms must be submitted by 11:59 P.M. local time on the Tuesday following the end of the two week period.

Option 3e. *Once every two weeks or weekly.* Forms must be submitted either once every two weeks or weekly as determined by the SRD. Reporting would be every two weeks, but the SRD could require weekly reporting. If weekly reporting is required by the SRD, forms from trips landing between Sunday and Saturday must be submitted to the SRD by 11:59 P.M. local time on the following Tuesday. If reporting is required by the SRD every two weeks, forms must be submitted by 11:59 P.M. local time on the Tuesday following the end of the two week period.

[Note: The Councils clarified that allowing dealers to report ahead of time if they are closed meets the intent of the weekly reporting in the preferred alternative. The current program design will allow dealers to report up to 90 days ahead of time and this was satisfactory to the Councils. The Councils also wanted to allow flexibility for NMFS to modify this allowance and so did not specify a time limit.]

Alternative 4: The following alternative only applies to the Gulf of Mexico dealer permit if separate Gulf of Mexico and South Atlantic permits are created in Action 1. In the first year following implementation of the regulations, forms must be submitted *via fax or electronically* (via computer or internet). In year two and beyond, require forms be submitted *electronically* (via computer or internet).

Option 4a. *Daily.* Forms must be submitted by 11:59 P.M. local time each day.

Option 4b. *Weekly.* Forms from trips landing between Sunday and Saturday must be Submitted to the SRD by 11:59 P.M. local time on the following Tuesday.

Option 4c. *Weekly or daily.* Forms must be submitted either weekly or daily as determined by the SRD. Reporting would be weekly, but the SRD could require daily

reporting. If daily reporting is required by the SRD, any trip landing that quota species must be submitted by 11:59 P.M. on the day of the landing.

Option 4d. *Once every two weeks.* Each week runs from Sunday to Saturday. Forms must be submitted by 11:59 P.M. local time on the Tuesday following the end of the two week period.

Option 4e. *Once every two weeks or weekly.* Forms must be submitted either once every two weeks or weekly as determined by the SRD. Reporting would be every two weeks, but the SRD could require weekly reporting. If weekly reporting is required by the SRD, forms from trips landing between Sunday and Saturday must be submitted to the SRD by 11:59 P.M. local time on the following Tuesday. If reporting is required by the SRD every two weeks, forms must be submitted by 11:59 P.M. local time on the Tuesday following the end of the two week period.

Preferred Alternative 5: During catastrophic conditions only, the ACL monitoring program provides for use of paper-based components for basic required functions as a backup. The Regional Administrator (RA) will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the *Federal Register*, National Oceanic and Atmospheric Administration (NOAA) weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. The paper forms will be available from NMFS. The RA has the authority to waive or modify reporting time requirements.

[Note: Any selected Preferred Alternative will include “Dealers reporting purchases of king mackerel landed by the gillnet sector for the Gulf West Coast Florida Southern Sub Zone must submit forms daily by 6:00 A.M. local time”]

Discussion:

Action 2 addresses how frequently and by what method federally-permitted seafood dealers would be required to report. Currently, dealers must report on forms available from the SRD at monthly intervals, postmarked no later than five days after the end of the month. Reporting requirements have been modified by the Science and Research Director (SRD) for those dealers holding Gulf of Mexico reef fish and South Atlantic snapper grouper (excluding wreckfish) dealer permits. Those dealers must report prior to midnight five days following the end of any period (periods defined as: the 1st to the 15th; and the 16th to the end of the month). Currently, reports may be submitted via mail, fax, or electronically at the discretion of the permit holder. A “No purchase form,” indicating that a dealer has not purchased any federally-managed species, must be submitted for Gulf of Mexico reef fish and South Atlantic snappers and groupers (including wreckfish, postmarked no later than 5 days after the end of the month, if no purchase is made for the species in a calendar month. During complete months encompassed by the South Atlantic wreckfish spawning season closure, a wreckfish dealer is not required to submit a report stating that no wreckfish were received.

Alternative 1 (no action) would not modify reporting requirements for federally-permitted dealers. This alternative would not address problems with current reporting, including problems with timeliness, accuracy, and frequency of reporting that increase the likelihood of exceeding ACLs for federally-managed species. Intra-annual landings are monitored to ensure catches are maintained at allowable levels. If landings reports are received long after the purchase is made timely management action may be negatively affected to close harvest of a species or species complex when the ACL has been met. This result is detrimental to all aspects of the fishery as stocks may be depleted and management uncertainty is increased. Allowing harvest in excess of the ACL could lead to overfishing or, at a minimum, reduce stock biomass to a level that cannot achieve the optimum yield and associated biological, social, and economic benefits.

Alternative 2 would require forms be submitted via *fax or electronically* (via computer or internet). **Preferred Alternative 3** differs from **Alternative 2** in that it would require forms be submitted *electronically* (via computer or internet) and not via fax. Both **Alternative 2** and **Preferred Alternative 3** have five options addressing frequency of reporting. **Options 2a** and **3a** would require daily reporting. Forms would have to be submitted by 11:59 P.M. local time each day. Daily reporting would provide the most timely information of the options considered, yet may impose an undesirable burden on both the dealers and administrators. **Option 2b** and **Preferred Option 3b** would require weekly reporting. Forms would have to be submitted once per week and would balance the need for timely reporting while reducing burdens on dealers and administrators. **Options 2c** and **3c** would require weekly or daily reporting. Initially forms would be submitted weekly. However, in the future if the SRD determined daily reporting was necessary, this change could be implemented without the Gulf of Mexico and South Atlantic Councils having to prepare an amendment or take additional action. Forms would have to be submitted either weekly or daily as determined by the SRD. This option would initially be less burdensome on dealers and administrators than daily reporting as outlined in **Options 2a** and **3a**. **Options 2d** and **3d** would require reporting once every two weeks. **Options 2e** and **3e** would require reporting once every two weeks or weekly as determined by the SRD. **Options 2e** and **3e** would provide additional flexibility to the SRD to increase frequency of reporting requirements. **Preferred Alternative 3** would require electronic reporting and increase accuracy and timeliness of reports as compared to **Alternative 1** and **Alternative 2**.

Alternative 4 would apply only to the Gulf of Mexico dealer permit and only if separate Gulf of Mexico and South Atlantic permits were created in **Action 1**. In the first year following implementation of the regulations, forms must be submitted via *fax or electronically* (via computer or internet). In year two and beyond, forms must be submitted *electronically* (via computer or internet). **Alternative 4** would provide a one-year period for dealers to transition to electronic reporting. In comparison to **Alternative 2** and **Preferred Alternative 3**, **Alternative 4** would delay improvements to timeliness and accuracy of reporting until year two when all dealers are reporting electronically. **Alternative 4** would also add additional complexity to reporting requirements during the first year as reporting methods would be inconsistent between Gulf of Mexico and South Atlantic Councils placing additional burden on dealers and administrators in comparison to **Preferred Alternative 3**. Data submitted by fax would then have to be entered into the data system, increasing the administrative burden.

Preferred Alternative 5 would provide for paper-based reporting as a backup during catastrophic conditions. **Preferred Alternative 5** could be selected in addition to **Alternative 2**, **Preferred Alternative 3**, or **Alternative 4**, and would provide a mechanism for continued reporting during catastrophic conditions. The Regional Administrator (RA) would determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA would provide timely notice to affected participants via publication of notification in the *Federal Register*, NOAA weather radio, fishery bulletins, and other appropriate means and would authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. The paper forms would be available from NMFS. While **Preferred Alternative 5** would result in negative impacts to timeliness and accuracy as compared to **Preferred Alternative 3**, this measure is expected to occur infrequently, for relatively short time periods. Moreover, this would only occur during catastrophic conditions, periods when fishing effort is typically low as compared to normal conditions.

Council Conclusions:

The Gulf of Mexico and South Atlantic Councils are proposing weekly reporting via computer or the internet to improve the timeliness and accuracy of reporting. The requirement for ACLs began in 2010 for species undergoing overfishing. For the remaining species, ACLs were required in 2011. The lack of timely and accurate dealer reporting has resulted in many ACLs being exceeded. The overage of ACLs has resulted in adverse biological impacts as discussed in Chapter 4.

The Gulf of Mexico and South Atlantic Councils recognize that some dealers may be required to purchase a computer to meet this new requirement and understand that this may result in an increase in costs to the dealer. However, given the cost of computers and the need to prevent commercial ACLs from being exceeded, the Gulf of Mexico and South Atlantic Councils concluded the benefits greatly exceed the costs of this requirement.

The Gulf of Mexico and South Atlantic Councils are also concerned that the current process, including the use of fax and manual-input by the SEFSC staff, creates a delay in the data collection/entry process compared to the preferred alternative and may contribute to overages of the ACLs. The delay and overages may result in adverse impacts as described in Chapter 4. Shorter seasons or reduced commercial ACLs may be necessary unless reporting timeliness and accuracy are improved.

2.3 Action 3 – Requirements to Maintain a Dealer Permit

Alternative 1: No Action – Regardless of whether a purchase is made, purchase forms must be submitted for Gulf of Mexico reef fish and South Atlantic snapper grouper (excluding wreckfish). For the remaining species, a purchase form is required only if a purchase is made. During complete months encompassed by the South Atlantic wreckfish spawning season closure, a wreckfish dealer is not required to submit a report stating that no wreckfish were received.

The Secretary of Commerce has re-delegated the authority to assess civil monetary penalties and permit sanctions to the NOAA Office of General Counsel. The Magnuson-Stevens Fishery Conservation and Management Act requires notice and an opportunity for a hearing before an administrative law judge before a monetary penalty or permit sanction may become final. The procedures governing the administrative proceedings for assessments of civil penalties and permit sanctions are found at 15 C.F.R. Part 904. The NOAA Office of General Counsel – Enforcement Section Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Schedule) is found at:

http://www.gc.noaa.gov/documents/031611_penalty_policy.pdf

(See particularly pages 24, 25, 34-36)

Preferred Alternative 2: “No purchase forms” must be submitted at the same frequency, via the same process, and for the same species as specified for “purchased forms” in Actions 1 and 2. A dealer would only be authorized to receive commercially-harvested species if the dealer’s previous reports have been submitted by the dealer and received by NMFS in a timely manner. Any delinquent reports would need to be submitted and received by NMFS before a dealer could receive commercially harvested species from a federally-permitted U.S. vessel.

Discussion:

Action 3 addresses requirements to maintain a dealer permit. **Alternative 1** would not change requirements to maintain a dealer permit. Regardless of whether a purchase is made, purchase forms must be submitted for Gulf of Mexico reef fish and South Atlantic snapper grouper (excluding wreckfish), thus, for these two species complexes, “No purchase forms” are already required. For the remaining species, a purchase form is required only if a purchase is made. During complete months encompassed by the South Atlantic wreckfish spawning season closure, a wreckfish dealer is not required to submit a report stating that no wreckfish were received. Currently, however, dealers do not have to remain current on purchase reports to continue to purchase federally-managed species.

Alternative 1 would not address the shortcoming in accuracy or timeliness of reporting as dealers are not required to report to maintain a permit. If a dealer does not submit a purchase form, NMFS cannot know if no fish were purchased, or if the report is late. This leads to having to estimate, based on the dealer’s history, the quantity of fish that may have been landed. Without the purchase information accounted for, there is a greater likelihood of exceeding the ACLs of managed species. Because reporting is not required to be up to date to continue purchasing federally-managed species, the frequency of reporting varies, thus hindering NMFS from monitoring, in a timely fashion, the harvests of the species or species complexes identified in **Action 1**.

Preferred Alternative 2 would require that dealers remain current on purchase reports as a requirement to continue purchasing federally-managed species. **Preferred Alternative 2** would improve timeliness and accuracy of seafood dealer reporting decreasing the likelihood of exceeding ACLs for federally managed species. **Preferred Alternative 2** also establishes a consistent reporting routine between Gulf of Mexico and South Atlantic Councils to the benefit

of seafood dealers and administrators. The requirement to submit no-purchase forms in **Preferred Alternative 2** reduces the uncertainty of reported landings as compared to **Alternative 1**. NMFS would be better able to differentiate between periods when purchases were not made and periods with missing reports by seafood dealers.

Council Conclusions:

The Gulf of Mexico and South Atlantic Councils are proposing dealers remain current in their reporting to continue to purchase product from federally-permitted vessels. This is necessary to enforce the reporting requirement on the small number of dealers that do not currently report in a timely manner. The lack of timely reporting contributes to commercial ACL overages and may result in adverse impacts as discussed in Chapter 4.

This requirement tracks that established for HMS by NMFS on August 8, 2012 (77 Federal Register 47303). Originally, the intent was to implement the new HMS requirements early in 2012. The effective date of the electronic reporting requirements was delayed to January 1, 2013, to give sufficient time for dealers to adjust to implementation of the new system and the additional requirements.

In the proposed rule (76 Federal Register 37750, June 28, 2011) NMFS stated that:

1. “These efforts to follow up on late dealer reports negatively affect timely quota monitoring and drain scarce staff resources.”
2. ... “the current regulations and infrastructure of the Atlantic HMS quota-monitoring systems do not deliver data in a sufficiently timely and efficient manner to allow effective management and monitoring of small Atlantic HMS quotas and short seasons.”
3. “Timely submission of reports to NOAA Fisheries would allow dealers to be eligible to purchase commercially-harvested Atlantic swordfish; sharks; and BAYS without interruption. The electronic dealer reporting system would track the timing and submission of Federal Atlantic HMS dealer reports and automatically notify dealers (and individual employees of dealers reporting in the electronic reporting system) and NOAA Fisheries (the HMS Management Division and NOAA Fisheries Office of Law Enforcement) via e-mail if reports are delinquent. Federal Atlantic HMS dealers who fail to submit reports to NMFS in a timely manner would be in violation and subject to enforcement action, as would those who are offloading, receiving, and/or purchasing HMS product without having submitted all required reports to NMFS.”

The Gulf of Mexico and South Atlantic Councils recognize that some dealers who currently fax reports may be required to purchase a computer to meet this new requirement and understand that this may result in a cost increase to the dealer. However, given the range of electronic devices available, the Gulf of Mexico and South Atlantic Councils concluded the benefits of timely landings data and maintaining harvests at allowable levels, thus maintaining stock health, greatly exceed the costs of this requirement.