

Section 2.2 from CMP Amendment 20A

Full amendment available here:

<http://gulfcouncil.org/docs/amendments/CMP%20Amendment%2020A.pdf>

2.2 Action 2 – Elimination of Inactive Commercial King Mackerel Permits

Preferred Alternative 1: No Action – Do not eliminate any commercial king mackerel permits.

Alternative 2: Renew commercial king mackerel permits if average landings meet the qualifications of an active permit (defined below). Permits that do not qualify will be invalid, non-renewable, and non-transferable:

Option a. The permit has an annual average of at least 500 lbs of king mackerel from 2002-2011.

Option b. The permit has an annual average of at least 1,000 lbs of king mackerel from 2002-2011.

Option c. The permit has at least 500 lbs of king mackerel in at least one year from 2002-2011.

Option d. The permit has at least 1,000 lbs of king mackerel in at least one year from 2002-2011.

Alternative 3: Allow transfer of inactive commercial king mackerel permits only to immediate family members and allow transfer to another vessel owned by the same entity. Permits will be considered inactive if average landings did not meet the qualifications (defined below):

Option a. The permit has an annual average of at least 500 lbs of king mackerel from 2002-2011.

Option b. The permit has an annual average of at least 1,000 lbs of king mackerel from 2002-2011.

Option c. The permit has at least 500 lbs of king mackerel in at least one year from 2002-2011.

Option d. The permit has at least 1,000 lbs of king mackerel in at least one year from 2002-2011.

Alternative 4: Allow two-for-one permit reduction in the king mackerel commercial fishery similar to the system for Snapper Grouper Unlimited Permits.

Discussion: Establishing participation criteria for future permit renewal is difficult because there is a single commercial king mackerel permit for vessels in the Gulf and Atlantic. Historically, some vessels from the Atlantic have fished on the Gulf group king mackerel quota, particularly in the western zone and the northern subzone off Florida. Additionally, there are different seasons in the Gulf and Atlantic and different zones that have different trip limits. Consequently, setting qualifications based on landings is biased by region because management may not allow fishermen to participate at the same level in different places.

Because king mackerel are migratory, most king mackerel permit holders do not fish exclusively for king mackerel, although king mackerel may make up a substantial portion of their income in a year. Revoking a permit based on a particular level of landings may penalize fishermen that diversify when king mackerel are not present in their area, rather than fishing in other zones.

Another compounding factor is that currently the commercial king mackerel permit is only a permit to exceed the bag limit, and a moratorium on the issuance of new commercial king mackerel permits has been in effect since 1998. Thus, if the regulations are not changed to require these commercial vessel permits to sell king mackerel (Action 1), particularly in Florida, fishermen who qualify for a saltwater products license and a restricted species endorsement can legally harvest bag-limit caught king mackerel from state waters and sell them. These fish would be counted against the commercial quotas in the same manner as harvests from federal waters.

Preferred Alternative 1 would not eliminate any king mackerel permits. Opinions on the necessity of eliminating permits differ among fishermen. Some historical king mackerel fishermen are concerned that permit holders who have not been fishing regularly or fishing at low levels may begin participating more fully. More vessels fishing under the same quota could mean lower catches for each vessel. On the other hand, many king mackerel fishermen diversify and harvest species from multiple fisheries. Although they may be considered “part-time” king mackerel fishermen, king mackerel may contribute a large portion of their income. The migratory nature of the fish promotes this part-time participation for those who do not want to travel long distances. Thus, elimination of permits with low levels of landings could eliminate full-time fishermen that are only part-time king mackerel fishermen because of their diversification.

Alternatives 2 and 3 would eliminate or restrict permits with below some level of king mackerel landings. Table 2.2.1 has estimates of the number of permits that would or would not meet the proposed landings thresholds, and Table 2.2.2 shows the number of permits that would be classified as ‘active’ at the state level.

As stated earlier, the nature of this component of the fishery is such that most participants only fish king mackerel part time, yet that participation may be a significant part of their annual income. In general the higher the necessary pounds to qualify, the more permits that would be designated as inactive. Table 2.2.1 shows that requiring one year of landings at 500 lbs (**Option c**) or 1,000 lbs (**Option d**) would result in fewer permits designated as inactive than under **Options a** and **b**, which consider the annual average from 2002 to 2011. Ninety-four permits (6%) do not have any landings recorded during 2002-2011.

Table 2.2.1. Estimated number of permits qualifying and not qualifying under Options a-d from Alternatives 2 and 3. Permits are those valid or renewable as of April 4, 2013 (total number of permits = 1,488). The actual number and percentage of permits that would be affected would depend on the number of valid and renewable permits on the effective date of the rule.

	Qualifying	Not Qualifying	% Permits Eliminated/Restricted
Option a Avg \geq 500 lb	934	554	37%
Option b	732	756	51%

Avg \geq 1,000 lb			
Option c At least 1 yr \geq 500 lb	1,210	278	19%
Option d At least 1 yr \geq 1,000 lb	1,102	386	26%

Source: SEFSC logbooks and SERO Permits database.

Table 2.2.2. Estimated number of permits qualifying in each state or region under Options a-d from Alternatives 2 and 3. Permits are those valid or renewable as of February 5, 2013 (note some permits have been terminated between the dates of Table 2.2.1 and Table. 2.2.2).

State ¹	# of Current Permits	# of Permits w/ landings 2011	Number of Permits Expected to Qualify as Active:			
			Option a Avg \geq 500 lb	Option b Avg \geq 1,000 lb	Option c At least 1 yr \geq 500 lb	Option d At least 1 yr \geq 1,000 lb
NC	241	130	153	114	207	186
SC/GA	35	14	8	4	23	16
FL- East	601	430	471	394	553	520
FL- Keys	200	112	129	96	157	145
FL- West	257	91	103	65	173	146
AL	28	13	12	11	21	17
MS	11	3	3	3	6	4
LA	52	20	33	27	39	39
TX	37	10	15	10	24	21
Other	33	8	10	9	13	13
TOTAL	1,495	831	937	733	1,216	1,107

¹ Based on homeport of vessel associated with the permit.

Source: SEFSC logbooks and SERO Permits database.

Alternatives 2 and 3 include identical options to designate permits as active or inactive, but **Alternative 2** would eliminate inactive permits while **Alternative 3** would make inactive permits non-transferable, except to an immediate family member (husband, wife, son, daughter, brother, sister, mother, or father). **Alternative 3** was suggested by the South Atlantic Mackerel Advisory Panel (AP). Members of the AP felt that some people might fish for other species but retain their king mackerel permit in case they have a bad year otherwise. Members of the AP were reluctant to take away permits from people who had made the effort to renew those permits each year, especially for a species that is not overfished. At the same time, they did not want those permits sold to someone who might start fishing for king mackerel full-time. Allowing transfer of permits only to immediate family members is consistent with the transferability requirements for king mackerel gillnet permits and snapper grouper limited access permits, which were established for the same reason. This alternative would allow permit holders to retain their permits while reducing the chance of a sudden increase in effort. Some additional transferability requirements would be included to be consistent with current requirements in the regulations: 1) allow transfer to another vessel owned by the same entity and 2) allow transfer from an individual to a corporation whose shares are all held by the individual or by the

individual and one or more of the following: husband, wife, son, daughter, brother, sister, mother, or father.

Alternative 4 would implement a two-for-one requirement for king mackerel permit transfers, whereby a new entrant would need to surrender two valid king mackerel permits acquired from fishermen exiting the king mackerel portion of the CMP fishery to be issued a king mackerel permit. This would be an identical requirement as the system used for South Atlantic Unlimited Snapper Grouper commercial permits. Like **Alternative 3**, **Alternative 4** would be another passive method to reduce the number of king mackerel permits over time, and could be used as in place of or in combination with eliminating or restricting inactive permits as designated under **Alternatives 2 or 3**.

Appeals

If an alternative is chosen that eliminates or restricts permits, an appeals process would be established consistent with a process previously approved by the Councils. The appeals process provides a procedure for resolving disputes regarding eligibility to retain king mackerel permits. In the past, the Councils have implemented regulatory actions in a number of fisheries that have included an appeals process for eligibility determinations, e.g., Amendment 29 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico and Amendment 18A to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region. In each of these instances, the Councils have utilized a virtually identical process. Because the process has been consistent and has worked well in different circumstances, the Gulf Council determined, without excessive consideration of other options for appeals, that the same process should be used when it established Gulf reef fish longline endorsements. Similarly, the process described in this section mirrors previously approved appeals processes.

Items subject to appeal are the accuracy of the amount of king mackerel landings and the correct assignment of landings to the permit owner. Appeals must contain documentation supporting the basis for the appeal and must be submitted to the Southeast Regional Administrator (RA) postmarked no later than 90 days after the effective date of the final rule that would implement Amendment 20A. Appeals based on hardship factors will not be considered. The RA will review, evaluate, and render final decision on appeals. The RA will determine the outcome of appeals based on NMFS logbooks. Appellants must submit logbooks to support their appeal. Landings data for appeals would be based on logbooks submitted to and received by the Southeast Fisheries Science Center by a date to be determined, for the years chosen in the preferred alternative. If logbooks are not available, the RA may use state landings records. In addition, NMFS records of king mackerel permits constitute the sole basis for determining ownership of such permits.

Council Conclusions:

The Councils chose **Preferred Alternative 1** as their preferred alternative because they were reluctant to take permits away from fishermen. King mackerel fishing is often a part-time occupation because the fish are migratory and not always in a specific area. Although some fishermen follow the mackerel as they migrate and as areas close to commercial fishing, others only fish for king mackerel when they are in the area and rely on other species throughout the year. The South Atlantic Council was interested in a passive reduction of permits through a two-

for-one provision; however, both Councils would need to agree because one permit is used in both jurisdictional areas. The South Atlantic Council voted to explore the idea of creating separate permits for each area, and if separate permits are created, implementing a permit reduction system. Until then, they agreed with the Gulf Council to take no action to remove latent permits.