

ADVISORY PANEL DOCUMENT

for

AMENDMENT 19

to the joint Fishery Management Plan for
Coastal Migratory Pelagic Resources

of the

Gulf of Mexico and South Atlantic



**South Atlantic Mackerel Advisory Panel
North Charleston, SC
April 2013**

Actions in Amendment 19

1. Sale of King and Spanish Mackerel
2. Elimination of Inactive King Mackerel Commercial Permits
3. Modify or Eliminate Income Requirements for Gulf and South Atlantic Commercial Coastal Migratory Pelagic Permits

Expected Schedule

March 2013- Joint meeting with Gulf and South Atlantic Committees

April/ 2013- Review by South Atlantic Advisory Panel

June 2013- Gulf Council and South Atlantic Council approve for public hearings

July/August 2013- Public hearings

August 2013- Gulf Council final approval

September 2013- South Atlantic Council final approval

Spring 2014- Implementation

The current management objectives in the joint mackerel FMP as amended are:

1. The primary objective of this FMP is to stabilize yield at MSY, allow recovery of overfished populations, and maintain population levels sufficient to ensure adequate recruitment.
2. to provide a flexible management system for the resource which minimizes regulatory delay while retaining substantial Council and public input in management decisions and which can rapidly adapt to changes in resource abundance, new scientific information, and changes in fishing patterns among user groups or by areas.
3. to provide necessary information for effective management and establish a mandatory reporting system for monitoring catch.
4. to minimize gear and user group conflicts.
5. to distribute the TAC of Atlantic migratory group Spanish mackerel between recreational and commercial user groups based on the catches that occurred during the early to mid-1970s, which is prior to the development of the deep water run-around gillnet fishery and when the resource was not overfished.
6. to minimize waste and bycatch in the fishery.
7. to provide appropriate management to address specific migratory groups of king mackerel.

Action 1. Sale of King and Spanish Mackerel

Alternative 1: No Action - No federal permit requirement to sell king and Spanish mackerel. Sale of king and Spanish mackerel harvested under the bag limit is allowed for persons that possess the necessary state permits. However, if a commercial closure has been implemented, the sale or purchase of king or Spanish mackerel of the closed species, migratory group, subzone, or gear type, is prohibited, including any king or Spanish mackerel taken under the bag limits.

Alternative 2: Prohibit sale of king mackerel caught under the bag limit, with the exception of for-hire trips in which the vessel also holds a federal king mackerel commercial permit. Prohibit sale of Spanish mackerel caught under the bag limit, with the exception of for-hire trips in which the vessel also holds a federal Spanish mackerel commercial permit. All sales of king and Spanish mackerel during a commercial closure are prohibited.

Option a. The South Atlantic Council's jurisdiction

Option b. The Gulf Council's jurisdiction

Gulf Preferred Alternative 3: Prohibit sale of king and Spanish mackerel caught under the bag limit. For a person to sell king or Spanish mackerel in or from the EEZ of the Gulf of Mexico or Atlantic, those fish must have been harvested on a commercial trip aboard a vessel with a commercial vessel permit/endorsement. A king mackerel permit is required to sell king mackerel and a Spanish mackerel permit is required to sell Spanish mackerel.

Option a. The South Atlantic Council's jurisdiction

Option b. The Gulf Council's jurisdiction

South Atlantic Preferred Alternative 4: Prohibit sale of king and Spanish mackerel caught under the bag limit with the exception of state-permitted tournaments. For a person to sell king or Spanish mackerel in or from the EEZ of the Gulf of Mexico or Atlantic, those fish must have been harvested on a commercial trip aboard a vessel with a commercial vessel permit/endorsement. A king mackerel permit is required to sell king mackerel and a Spanish mackerel permit is required to sell Spanish mackerel. King or Spanish mackerel caught during a tournament may be donated to a dealer in exchange for a charitable donation if the tournament organizers have a permit from a state to conduct that tournament, and transfer and reporting requirements are followed.

Option a. The South Atlantic Council's jurisdiction

Option b. The Gulf Council's jurisdiction

Transfer and reporting requirements: A licensed wholesale dealer that is not part of the tournament must be present to accept the donated fish directly from the anglers. If any value is exchanged for a fish, both parties must be properly licensed. The wholesale dealer sells the fish and donates the money to charity. Tournaments should arrange for the donation of funds from the sale of fish directly to the charity. If any money comes back to the tournament, the exchange would constitute a sale. The wholesale dealer instructs the tournament what records participating anglers must provide (according to their trip ticket or other reporting requirements) and how fish must be handled and iced. The fish are reported through normal reporting procedures by the wholesale dealer and must be identified as tournament catch.

What's the difference?
Alternative 2- KM and SM caught on a for-hire or private recreational trip can be sold if the vessel has the KM and/or SM commercial permit.
Alternative 3- KM and SM can only be sold if they were caught on a commercial trip (with KM/SM commercial permits).
Alternative 4- Same as alternative 3 but allows sales from tournaments in states with permitting systems.

Discussion

Currently, fishermen who do not possess a valid federal commercial permit may sell CMP species (king mackerel, Spanish mackerel, and cobia) that were harvested in the exclusive economic zone (EEZ) in compliance with the applicable recreational bag limits and other state laws. The Councils are considering whether to require a valid federal commercial permit to sell king mackerel and Spanish mackerel harvested from the Gulf and Atlantic EEZ.

All fish harvested in the EEZ that are sold are considered commercial harvest and count towards a species' commercial quota, whether or not the fisherman has a federal commercial permit. This includes fish caught during tournaments that are donated through a dealer. The Councils are concerned that harvest from trips by recreational fishermen may contribute significantly to the commercial quota and lead to early closures in the commercial sector of the fishery. The Councils also concluded prohibiting sale of fish caught under the bag limit should improve the accuracy of data by eliminating "double counting" – harvest from a single trip counting towards both the commercial quota and recreational allocation. This practice occurs when catches are reported through recreational surveys and through commercial trip tickets and logbooks.

In regard to tournament sales, it is a common practice for tournament organizers to donate fish to a dealer, who in turn donates money to a charity. This practice allows for disposal of the fish without waste and supports charitable organizations. However, it could be considered trade or barter of fish caught under the bag limit, and therefore would be prohibited, unless an exception is provided. The transfer and reporting requirements above are modified from requirements in use by Florida¹.

An exception for all tournaments would be difficult to enforce; without a definition of what constitutes a "tournament," nothing would prevent a group of vessel owners at a marina, a social organization, church group, or simply a group of friends and neighbors from organizing and establishing a "tournament." Thus a permitting system is needed to prevent misuse of the exception. The Councils considered an action to create a federal tournament permit early in the development of this amendment, but determined the details of a federal permit, such as tournament definition, requirements to receive the permit, reporting methods, and others, would be better addressed in a separate amendment. Some states have already addressed these details through a state tournament permitting system, so the exception included in this alternative would allow those state-permitted tournaments to continue donating fish. Tournaments in states that do not have a permitting system would be prohibited from selling or donating mackerel.

Sale of tournament-caught mackerel raises health issues because the Food and Drug Administration (FDA) requires processors of fish and fishery products to develop and implement Hazard Analysis

¹ Memorandum from FWC General Counsel to the Director of Marine Fisheries Management, January 13, 2012.

Critical Control Point (HACCP) systems for their operations. When a food safety hazard can be introduced or made worse by a harvester or carrier, the processor should include controls in his HACCP plan that require, as a condition of receipt, demonstration that the hazard has been controlled by the harvester or carrier. Therefore, tournament organizers and the dealer who will take the fish must assure that the fish are properly handled and iced or refrigerated if they are to enter commerce, which may be difficult. Further, king mackerel are listed as one of the four fish containing the highest level of mercury. The FDA cautions women who are pregnant or might become pregnant, nursing mothers, and young children about eating king mackerel. Because tournaments target large fish, and large fish have a higher accumulation of mercury, tournament-caught fish are expected to have high mercury levels thus providing a potential food safety hazard.

Sale of fish, particularly king mackerel, by private anglers and for-hire vessels is not usual but is a common practice among crews of for-hire vessels, particularly in the Florida Keys. Often passengers give their catch to the captain or crew who then sell those fish. Thus, crew from head boats with high numbers of passengers may sell substantial amounts of fish

Summary of King Mackerel Harvest/Sales with a Federal KM Commercial Permit- Preliminary Analysis

Table 1. West Coast FL and Keys- King Mackerel

	2007	2008	2009	2010	2011	Average
% Total Lbs	76%	77%	87%	78%	64%	77%
% Total Value	71%	71%	91%	82%	66%	76%
% Total Trips	67%	70%	82%	86%	73%	76%
%Total Vessels	71%	77%	78%	83%	77%	77%

* West Coast FL and Keys includes tournament sales.

Table 2. East Coast FL and GA- King Mackerel

	2007	2008	2009	2010	2011	Average
% Total Lbs	90%	91%	90%	100%	85%	91%
% Total Value	89%	90%	93%	100%	85%	91%
% Total Trips	83%	86%	91%	99%	83%	88%
%Total Vessels	67%	72%	73%	83%	75%	74%

Table 3. South Carolina- King Mackerel

	2007	2008	2009	2010	2011	Average
% Total Lbs	89%	84%	75%	63%	867%	76%
% Total Value	86%	82%	75%	58%	64%	73%
% Total Trips	64%	55%	59%	64%	64%	61%
%Total Vessels	58%	60%	55%	71%	48%	58%

Table 4. North Carolina- King Mackerel

	2007	2008	2009	2010	2011	Average
% Total Lbs	85%	88%	89%	87%	94%	89%
% Total Value	86%	88%	89%	87%	94%	89%
% Total Trips	69%	76%	76%	73%	83%	75%
%Total Vessels	44%	52%	52%	55%	65%	54%

- From 2007-2011, all the vessels combined that did not have a federal king mackerel permit would have lost an average of \$507,005 dollars annually in East Florida and Georgia.

- In North Carolina, if a king mackerel permit been required to sell any king mackerel, including bag limits, the all the vessels combined that did not have a federal king mackerel permit would have lost an average of \$150,177 dollars annually.

- In South Carolina, if a king mackerel permit been required to sell any king mackerel, including bag limits, the all the vessels combined that did not have a federal king mackerel permit would have lost an average of \$7,270 dollars annually in South Carolina.

Summary of Spanish Mackerel Harvest/Sales with a Federal SM Commercial Permit- Preliminary Analysis

Table 5. West Coast FL and Keys- Spanish Mackerel

	2007	2008	2009	2010	2011	Average
% Total Lbs	75%	--	--	87%	68%	77%
% Total Value	67%	--	--	83%	74%	75%
% Total Trips	27%	35%	42%	42%	50%	39%
%Total Vessels	30%	32%	38%	41%	50%	38%

* West Coast FL and Keys includes tournament sales.

Table 6. East Coast FL and GA- Spanish Mackerel

	2007	2008	2009	2010	2011	Average
% Total Lbs	69%	67%	71%	71%	61%	68%
% Total Value	69%	70%	74%	72%	64%	70%
% Total Trips	60%	60%	63%	66%	58%	62%
%Total Vessels	50%	53%	57%	61%	57%	55%

*South Carolina reported less than 100 lbs total from 2007-2011.

Table 7. North Carolina- Spanish Mackerel

	2007	2008	2009	2010	2011	Average
% Total Lbs	57%	51%	39%	36%	42%	45%
% Total Value	38%	53%	43%	38%	43%	43%
% Total Trips	34%	30%	23%	25%	28%	28%
%Total Vessels	19%	18%	15%	16%	16%	17%

If a Spanish mackerel permit been required to sell any Spanish mackerel, including bag limits, the all the vessels combined that did not have a federal Spanish mackerel permit would have lost an average of \$693,304 dollars annually in East Florida and Georgia. Therefore, if all the vessels did purchase a Spanish mackerel permit in future years, \$687,854 (99%) of the \$693,304 landed by previously unpermitted East Florida and Georgia vessels could be recovered.

If a Spanish mackerel permit been required to sell any Spanish mackerel, including bag limits, the all the vessels combined that did not have a federal Spanish mackerel permit would have lost an average of \$511,159 dollars annually in North Carolina. Therefore, if all the vessels did purchase a Spanish mackerel permit in future years, \$501,209 (98%) of the \$511,159 landed by previously unpermitted North Carolina vessels could be recovered.

Action 2. Elimination of Inactive King Mackerel Permits

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 between 2002-2011.

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

Option d. The permit has at least 1,000 lbs of king mackerel in at least one year between 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.

NOTE: The options under Alternatives 2 and 3 have been reorganized and will be reviewed and approved by the Council in June.

Background

In recent years, increased restrictions on other species may have resulted in more individuals fishing for king mackerel. Although the king mackerel commercial permit is limited access, a large number of permits were issued, and some fishermen have continued to renew their permits even if they were not actively fishing for king mackerel. Those individuals may now be re-entering the king mackerel component of the CMP fishery, increasing effort and possibly increasing the likelihood of quota closures. Reducing the number of king mackerel commercial permits based on historical landings will be considered in this amendment.

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.

Additionally, many fishermen in the South Atlantic and Gulf hold a ‘portfolio’ of permits, including king mackerel commercial permits, and harvest different species throughout the year or in different years. Although a fisherman may not actively harvest under a permit on a regular basis, it is common to maintain a valid status in order to keep the opportunity to fish under the permit if needed. Several commercial permits in the region are under a limited entry program, which caps the number of permits when the program is implemented, requires new entrants to purchase permits from exiting fishermen, and imposes an annual fee to keep the permit valid. Even with limited entry permits, the fishermen will meet all requirements to keep the permit available in his/her portfolio regardless of if he/she is not participating in the fishery for a year or more. This illustrates the importance to South Atlantic commercial fishermen in maintaining the opportunity to actively fish in the future, even if participation is not incorporated into his or her current annual business plan. Also, the diversity of fishing options allowed by a permit portfolio can help fishing businesses to lower risk and uncertainty, maintain supply to dealers, and improve resiliency to changing environmental and regulatory factors.

Table 8. Number of permits qualifying and not qualifying under Options a-d from Alternatives 2 and 3. Permits are those that are valid or renewable as of June 19, 2012. 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	937	558	37%
Option B	733	762	51%
Option C	1,216	279	19%
Option D	1,107	388	26%

Source: SEFSC logbooks and SERO Permits database.

State-level estimates:

Table 9. Estimated number of permits qualifying in each state or region under Options a-d from Alternatives 2 and 3.

State ¹	# of Current Permits	# of Permits w/ landings 2011	Number of Permits Expected to Qualify as Active:			
			Option a Avg ≥500 lb	Option b Avg ≥1,000 lb	Option c At least 1 yr ≥500 lb	Option d At least 1 yr ≥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.

Analysis (preliminary estimates) at the county level is available in Appendix A.

Action 3. Modify or Eliminate Income Requirements for Gulf and South Atlantic Commercial Coastal Migratory Pelagic Permits

Alternative 1: No Action – Maintain existing income requirements for Gulf and South Atlantic commercial king and Spanish mackerel permits. To obtain or renew a commercial vessel permit for king or Spanish mackerel, at least 25% of the applicant’s earned income, or at least \$10,000, must have been derived from commercial fishing or from charter fishing during one of the three calendar years preceding the application.

~~**Alternative 2:** If established in Action 2, establish an income requirement for the cobia permit consistent with the requirements for Gulf and South Atlantic commercial king and Spanish mackerel permits. Maintain existing income requirements for Gulf and South Atlantic commercial king and Spanish mackerel permits.~~

This alternative will be removed at the June Council meeting.

Gulf Preferred Alternative 3: Eliminate income requirements for commercial king and Spanish mackerel permits.

Alternative 4: Modify the current income requirements to allow the Gulf or South Atlantic Council to recommend suspension of the renewal requirements by passage of a motion specifying: (a) the event or condition triggering the suspension; (b) the duration of the suspension; and (c) the criteria establishing who is eligible for the suspension. The affected Council would then request that the Regional Administrator suspend income requirements according to the terms outlined in the motion.

Alternative 5: To obtain or renew a commercial permit for king or Spanish mackerel, at least a percentage (defined below) of the applicant’s earned income must have been derived from commercial fishing or from for-hire fishing during one of the three calendar years preceding the application.

Option a: 75 percent

Option b: 50 percent

Background:

Some permits issued by NMFS have requirements for obtaining and keeping those permits. Changes to two requirements will be considered in this amendment. First, to obtain or renew a king or Spanish mackerel commercial permit, a minimum amount of the applicant’s earned income must be derived from commercial fishing. This requirement is difficult to enforce and has recently been removed as a requirement to obtain or renew a Gulf reef fish permit. No other federal permit in the Southeast Region has an income requirement except the spiny lobster permit, which mimics requirements by Florida. Second, there is currently no requirement that vessels with commercial king or Spanish mackerel permits, or coastal migratory pelagic for-hire permits, comply with more restrictive federal regulations, if any, regardless of whether the fish are harvested in state waters. Adding this requirement would bring the CMP fishery in line with the Gulf reef fish fishery.

Currently, the renewal of both king and Spanish mackerel commercial permits requires 25% of the applicant’s income to have come from fishing or \$10,000 from commercial or charter/headboat fishing activity in one of the three calendar years previous to the application. The renewal of commercial spiny lobster permit is the only other commercial permits issued by NMFS with an income requirement. The South Atlantic Charter/Headboat permit for Coastal Migratory Pelagics does not have an income

requirement and is open access, so that a permit is purchased each year with no limit on the number of permits issued. The Gulf Charter/Headboat permit for Coastal Migratory Pelagics does not have an income requirement but is under a limited access program, so that new entrants must purchase a permit from another permit holder.

When commercial permits for Spanish mackerel and king mackerel were established in Amendment 1 (1985), the Councils included a requirement that at least 10% of the applicant's income must be from commercial fishing. The rationale was to limit recreational fishermen from entering the fishery, and requiring new entrants to establish at least a small amount of income from participation in another commercial fishery.

The income requirement was revised in Amendment 6 (1992) to be 10% of earned income from commercial fishing in one of three years prior to applying for the permit, in order to allow some flexibility in case of hardships. In Amendment 8 (1996) the requirement was increased to 25 percent of earned income in one of three years preceding the application and also allowed income from charter and headboat fishing. The Councils concluded that the requirement acted as a screening mechanism to limit entry into the fishery, while maintaining flexibility in the requirements.

Elimination of the income requirement (**Gulf Preferred Alternative 3**) would afford more flexibility to fishermen and allow them to earn more income in other occupations. This added flexibility would allow some fishermen to renew their permits even if they did not have the opportunity to earn enough income from fishing. The ability to earn income from fishing could be restricted by several factors, including illness, environmental, natural or man-made disasters, and unforeseen personal circumstances.

Although there are some fishermen that support elimination of the income requirements, there are also groups that prefer some type of mechanism to limit entry into the fishery by non-commercial fishermen. It is likely that an increase in the required portion of income under **Alternative 5** could eliminate a proportion of existing king mackerel permits, and prohibit entry into the Spanish mackerel fishery.

Appendix A. Action 2, Community-level analysis

1) Community-level analysis- South Atlantic

A) North Carolina

Alternatives 2 and 3

County ¹	# of Current Permits	# of Permits w/ landings 2011	Number of Permits Expected to Qualify as Active:			
			Option a Avg ≥500 lb	Option b Avg ≥1,000 lb	Option c At least 1 yr ≥500 lb	Option d At least 1 yr ≥1,000 lb
Brunswick	60	35	35	23	55	47
Carteret	33	15	12	5	27	22
Dare	84	45	65	58	70	68
New Hanover	37	24	29	19	32	30
Beaufort/Hyde/ Onslow/Pender/ Wake ²	27	11	12	9	23	19
TOTAL	241	130	153	114	207	186

¹Based on homeport of vessel associated with the permit.

² Counties combined to maintain confidentiality.

Primary communities that could be affected:

Brunswick County- Southport

Carteret County- Atlantic Beach and Morehead City

Dare County- Hatteras and Wanchese

New Hanover County- Carolina Beach and Wilmington

Pender County- Hampstead

B) South Carolina and Georgia

To maintain confidentiality, data can not be displayed at the community level for South Carolina and Georgia.

The primary communities that could be affected are Little River (Horry County SC), Georgetown (Georgetown County SC), and Townsend (McIntosh GA).

C) Florida- East Coast

Alternatives 2 and 3

County ¹	# of Current Permits	# of Permits w/ landings 2011	Number of Permits Expected to Qualify as Active:			
			Option a Avg ≥500 lb	Option b Avg ≥1,000 lb	Option c At least 1 yr ≥500 lb	Option d At least 1 yr ≥1,000 lb
Brevard	79	65	70	62	76	74
Broward	44	27	25	16	37	32
Duval/ Nassau ²	30	15	17	13	23	22
Indian River	57	51	53	47	56	56
Martin	63	29	54	45	58	57
Miami-Dade	73	42	46	34	62	54
Palm Beach	167	131	136	119	157	150
St. Johns	8	6	4	3	7	5
St Lucie	63	56	56	48	62	58
Volusia	17	8	10	7	15	12
TOTAL	601	430	471	394	553	520

¹Based on homeport of vessel associated with the permit.

² Counties combined to maintain confidentiality.

Primary communities that could be affected:

Brevard County- Port Canaveral
 Broward County- Ft Lauderdale and Pompano Beach
 Duval County- Jacksonville
 Indian River County- Sebastian
 Martin County- Port Salerno and Stuart
 Miami-Dade County- Miami
 Palm Beach County- Jupiter, Palm Beach and West Palm Beach
 St Lucie County- Fort Pierce

D) Florida Keys

Alternatives 2 and 3

	# of Current Permits	# of Permits w/ landings 2011	Number of Permits Expected to Qualify as Active:			
			Option a Avg ≥500 lb	Option b Avg ≥1,000 lb	Option c At least 1 yr ≥500 lb	Option d At least 1 yr ≥1,000 lb
Monroe County	200	112	129	96	157	145

Primary communities that could be affected:

Mostly Key West
 To a much lesser degree, Marathon, Big Pine Key and Islamorada