

AMENDMENT 19 DISCUSSION PAPER

INTRODUCTION

Currently, some commercial or recreational fishermen who do not possess a valid federal commercial permit may sell coastal migratory pelagic (CMP) species harvested in the exclusive economic zone (EEZ), in an amount not exceeding applicable recreational bag limits. The South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) are considering a requirement for fishermen harvesting CMP species in the Gulf and Atlantic EEZ to possess a valid federal commercial permit to sell fish harvested under the bag limits. A person aboard a vessel with both a for-hire vessel permit and a federal commercial snapper grouper permit is considered to be fishing as a charter when that vessel is less than 100 gross tons, and carries six or fewer passengers for hire. CMP species caught on such a trip also would not be allowed to be sold or purchased.

Federal regulations prohibit sale of the following species without a federal commercial permit: South Atlantic snapper-grouper, golden crab, or rock shrimp; Atlantic dolphin-wahoo (unless authorized for a 200-pound trip limit); Gulf of Mexico (Gulf) reef fish; and South Atlantic and Gulf live rock. With the exception of live rock, federal dealer permits are also required to purchase these species.

NOAA Fisheries Service issues a king mackerel limited access permit and a Spanish mackerel open access permit. These permits are required for commercial fishermen in the Gulf, South Atlantic, or Mid-Atlantic to retain fish in excess of the bag limit for the respective species. No permits are issued for any other CMP species (except dolphin under the South Atlantic Dolphin/Wahoo Permit); however, the commercial cobia possession limit is the same as the recreational possession limit, and the other species have no limits.

The king and Spanish mackerel commercial permits are joint permits valid for fishing in the Gulf, South Atlantic, and Mid-Atlantic regions. However, both species have separate regulations for two migratory groups, Gulf and Atlantic, which are developed by the Councils. Currently, sale of fish caught under the bag limit is allowed for both groups.

PURPOSE OF THE PROPOSED ACTION

The purpose of the proposed action is to consider modification of the sales provisions for socio-economic, data quality, and enforcement reasons. Permits changes may be necessary to enforce a prohibition on sale of CMP species harvested under the bag limit.

NEED FOR THE PROPOSED ACTION

The need for this action is to ensure regulations are fair and equitable, fish harvested by the recreational sector are not counted toward commercial quotas, and total landings data are accurate.

MANAGEMENT OPTIONS

A. Bag Limit Sales of CMP Species

Currently, sale of CMP species without a federal commercial permit is allowed consistent with state regulations. Most states require a commercial permit, saltwater products license, restricted species endorsement, or some other specific license to sell regulated finfish. Some states have regulations requiring a federal commercial permit to sell king mackerel, Spanish mackerel, or cobia harvested from state waters, but overall these regulations are neither consistent nor specific. For example in Florida, where highest landings of these species occur, a federal commercial permit is required to exceed the bag limit, but not to sell any of these three species.

Sale of fish by private anglers is not usual but is a common practice among crews of for-hire vessels. 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.

All fish from 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 the Marine Recreational Fisheries Statistics Survey (MRFSS) and through commercial trip tickets and logbooks.

At its October 2005 meeting, the South Atlantic Council's Law Enforcement Advisory Panel (LEAP) made a motion to require the appropriate federal commercial permit to sell any species under the Council's jurisdiction. The LEAP reported that such a measure would aid law enforcement because it would reduce the universe of people that officials have to enforce concerning sale of fish. In addition, a commercial permit is required for bag limit sales of snapper grouper species in the South Atlantic and reef fish species in the Gulf of Mexico. Therefore, implementation of compatible regulations for CMP species would likely help improve the enforceability of sale of seafood products in the region.

In support of the status quo, for-hire vessel owners argue that fish sales are required to cover the cost of their trips. Competition demands are such that they must keep charter fees sufficiently low while maintaining adequate crew and equipment. As of January 12, 2011, 1,290 Gulf and 1,451 Atlantic CMP charter/headboat permits were valid.

Regulations would be developed consistent with those already in existence. Bag limit sales of South Atlantic snapper-grouper were enacted in 2008 and are prohibited by Section 622.45 of the Code of Federal Regulations as follows:

(d) South Atlantic snapper-grouper. (1) A South Atlantic snapper-grouper harvested or possessed in the EEZ on board a vessel that does not have a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.4(a)(2)(vi), or a South Atlantic

snapper-grouper harvested in the EEZ and possessed under the bag limits specified in § 622.39(d), may not be sold or purchased. In addition, a South Atlantic snapper-grouper harvested or possessed by a vessel that is operating as a charter vessel or headboat with a Federal charter vessel/headboat permit for South Atlantic snapper-grouper may not be sold or purchased regardless of where harvested, i.e., in state or Federal waters.

(2) A person may sell South Atlantic snapper-grouper harvested in the EEZ only to a dealer who has a valid permit for South Atlantic snapper-grouper, as required under § 622.4(a)(4).

(3) A person may purchase South Atlantic snapper-grouper harvested in the EEZ only from a vessel that has a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.4(a)(2)(vi).

This regulation refers to all sales of bag limit caught fish whether on recreational vessels or commercial vessels. It also prohibits sale of tournament-caught fish; those fish are harvested under the bag limit and, therefore, cannot be sold at any point even if initially donated. Sale of Gulf reef fish caught under the bag limit have been prohibited since 1996 and the regulatory wording is similar.

The Councils would need to decide which permits would be required to sell which species. One option would be to require a species-specific commercial permit to sell a species; i.e., a king mackerel permit required to sell king mackerel, etc. However, only two species, king and Spanish mackerel, currently have commercial permits. This option could effectively eliminate commercial fishing for any of the other species, because those species could not be sold. Another option would be to allow sale of species that do not have an associated permit by holders of any commercial CMP permit. Thus, holders of a king mackerel commercial permit could sell all species except Spanish mackerel, under the current permit situation. The Councils could eliminate this issue by deciding to apply the sales prohibition only to species for which permits exist, or the Councils could develop new permits to cover all species.

B. Dealer Permits

NOAA Fisheries Service does not issue a CMP dealer permit, and therefore, has no requirement that permitted fishermen only sell to permitted dealers and that permitted dealers only purchase from permitted fishermen. Enforcement of a prohibition on bag limit sales would be improved by establishment of a dealer permit. Current regulations state that to obtain a dealer permit or endorsement, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s). Dealer permits are open access and cost \$50 for the first permit and \$12.50 for any additional permits.

Establishing a requirement for dealers to have a federal permit to purchase CMP species harvested in the EEZ would improve data collection needed for monitoring commercial landings. Federal CMP permit holders could be required to report to the quota monitoring system, much like other species. This requirement would allow for more accurate and timely summation of in-season landings, and allow for quotas to be managed more precisely. The requirement may

increase the reporting burden for dealers, but most dealers in the Gulf and South Atlantic likely already have another type of dealer permit and are required to report under that permit.

The most efficient and straightforward type of dealer permit would be a single permit covering all CMP species managed by both Councils. Note that CMP species from the Mid-Atlantic region are managed by the South Atlantic Council, so dealers in states from Virginia through New York would also be required to have a permit. Other options are to have separate permits by species, or separate permits for the South Atlantic/Mid-Atlantic and Gulf. Conversely, a generic dealer permit for all species managed by the Councils could be created. A single dealer permit would ease the burden on dealers because many of them handle multiple species, and would also ease the burden on the administration in terms of processing and mailing multiple permits. Current holders of dealer permits could be grandfathered in, reducing the number of individuals who would need to apply for a permit to purchase and sell CMP species. However, establishing such a permit would involve all Gulf and South Atlantic FMPs and may be better addressed in a separate amendment.

C. Cobia Permits

A permit is not required to harvest or sell cobia. If the Councils wish to prohibit sale of cobia harvested under the bag limit, a commercial permit must be established or cobia must be added to another permit. Cobia would also need to be included under a dealer permit. If the Councils chooses to retain little tunny in the CMP FMP, the same considerations would apply to this species.

A new federal commercial cobia permit would likely be open access, because a limited access permit would be difficult to distribute and data do not support the need for limited access. Because no permit is required for either type of fisherman to harvest or sell cobia, fish reported on state trip tickets cannot be distinguished as either commercial or recreational landings. An open access permit could easily be developed, but the Councils would need to decide on establishing a single permit, or separate permits for fishing in waters under each Council's jurisdiction.

Another option would be to allow harvest and sale of cobia under both or just one of the existing permits. Under the first scenario, both king mackerel and Spanish mackerel commercial permit holders could harvest and sell cobia; no change to the permit structure would occur. Under the second scenario, a joint Spanish mackerel/cobia permit could be developed. Because the Spanish mackerel permit is open access, anyone who catches cobia could purchase the permit and current owners of a Spanish mackerel permit could be grandfathered in. A joint king mackerel/cobia permit would be less practical because only those fishers who own the limited access permit for king mackerel could harvest cobia. Although current king mackerel permit holders could be grandfathered in, this type of permit could eliminate some individuals who have harvested and sold cobia in the past, but do not have a king mackerel permit.

Both current commercial mackerel permits have an income requirement. This requirement would apply to cobia fishermen if cobia are added to a current permit. If a separate cobia permit is developed, the Councils would need to consider inclusion of the income requirement. The Gulf Council is considering modifying or eliminating this requirement (see below).

D. King and Spanish Mackerel Permits

A commercial king mackerel permit is required to retain king mackerel in excess of the bag limit in the Gulf, South Atlantic, or Mid-Atlantic. These commercial permits are under limited access; no applications for additional commercial permits for king mackerel will be accepted by NOAA Fisheries Service, but permits can be renewed or transferred. In addition, a limited-access gillnet endorsement is required to use gillnets in the southern Florida west coast subzone. As of February 23, 2011, 1,456 federal king mackerel permits were valid.

A commercial Spanish mackerel permit is required for vessels fishing in the Gulf or South Atlantic. This permit is open access. As of February 23, 2011, 1,718 federal Spanish mackerel permits were valid.

Each permit covers Gulf, South Atlantic, and Mid-Atlantic waters. If one Council chooses to require a commercial permit to sell fish caught under the bag limit and the other Council does not, enforcement may be more difficult under a joint permit, particularly in the Florida Keys. For example, fish caught in Atlantic waters could not be sold without the proper permit, even if the dealer was located along the Gulf.

Separate permits for Gulf and Atlantic mackerel might alleviate this problem, but create others. From November 1 to April 1 of each year, king mackerel caught along most of the east coast of Florida are considered Gulf group fish. Thus, fishermen fishing on the east coast would need a Gulf permit part of the year and an Atlantic permit the rest of the year. Additionally, many fishermen move between the two areas and would then be required to have two permits. Most importantly, king mackerel commercial permits have been under some form of limited access since 1998, so determining who should receive which permit would be extremely difficult and contentious. Each migratory group, and zones and subzones within those migratory groups, have different trip limits, making comparison of landings among different fishermen inequitable.

Both commercial permits have an income requirement of 25% of earned income or \$10,000 from commercial or charter/headboat fishing activity in one of the previous three calendar years. A minimum income is also required for a Gulf reef fish permit, but not any other permits issued by NOAA Fisheries Service. At the October 2010 Gulf Council meeting, staff was directed to begin an amendment to consider modification or elimination of the income requirements for reef fish and CMP permits. The current requirements can be bypassed through the use of specialty corporations, rendering the requirement ineffective.

Issues for the Councils to consider:

- Prohibit CMP species harvested under the bag limit
 - Species to include in the prohibition
 - Which permits are needed to sell which species
- Establish a CMP dealer permit
 - Joint or separate permits for Gulf and Atlantic
- Establish a cobia (and possible little tunny) permit
 - Separate permit or incorporated into an existing permit
 - Income and other requirements
- Modify king and Spanish mackerel permits
 - Separate Gulf and Atlantic permits
 - Modify or eliminate the income requirements

South Atlantic Council's March 2011 Input:

- Cobia
 - Tie permit to existing permits
 - Don't want new entrants
 - Need to get input from SERO about permits
 - Consider including cobia with the Spanish mackerel permit
 - Consider a separate cobia permit
 - Focus on requirements for cobia
- Vessel Permits
 - Separate Atlantic king mackerel permit
 - Separate Atlantic Spanish mackerel permit
 - Separate Atlantic cobia permit
- Dealer Permits
 - One dealer permit for Atlantic Coastal Migratory Pelagic species