

DRAFT
SCOPING DOCUMENT FOR
COASTAL MIGRATORY PELAGICS (MACKEREL)
AMENDMENT 19

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 (Gulf) 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 cobia; however, the commercial cobia possession limit is the same as the recreational possession limit.

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.

Action 1. Permits for Coastal Migratory Pelagic (CMP) species

- a. No Action. Retain a single commercial king mackerel permit and a single commercial Spanish mackerel permit. Retain Gulf and South Atlantic Coastal Migratory Pelagic (CMP) charter/headboat permits.**
- b. Create a single commercial cobia permit.**
- c. Modify the existing requirements by establishing separate commercial permits for the Atlantic and Gulf group species based on the Gulf and South Atlantic Council boundary.**
 - Option i. King Mackerel**
 - Option ii. Spanish Mackerel**
 - Option iii. Cobia**
 - Option iv. Grandfather in all existing permit holders who have historically landed in both areas through issuance of a dual permit; when transferred it becomes either a Gulf or Atlantic permit.**
 - Option iv. If separate Atlantic and Gulf permits are approved, establish some limited landings qualifications to obtain the different permits.**
- d. Modify the existing requirements by establishing a single CMP charter/headboat permit.**
- e. Modify the existing requirements for separate commercial permits for king mackerel (currently under a moratorium) and Spanish mackerel by establishing a single coastal migratory pelagic permit with endorsements for king mackerel, Spanish mackerel, and cobia while retaining the commercial gill net endorsement for Gulf group king mackerel.**

Discussion and Rationale

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 November 15, 2011, 1,412 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 November 15, 2011, 1,729 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.

Currently, separate Gulf and South Atlantic permits are required for charter/headboats. The Gulf permit is limited access and the South Atlantic permit is open access. Combining these permits into one permit would simplify the permitting process, although probably few for-hire vessels outside of the Florida Keys travel between areas. Granting all current permit holders a joint permit could also allow a potential increase in the restricted Gulf sector if South Atlantic vessels could move to the Gulf. As of November 15, 2011, 1,359 Gulf and 1,477 Atlantic CMP charter/headboat permits were valid.

Action 2. Potential No Sale Provisions

- a. Status quo - no federal permit requirement for selling CMP species. Proper state-issued permits are required to sell CMP species caught under the bag limit**
- b. Prohibit the sale of recreationally caught fish (any fish caught under a bag limit) that are managed under the Coastal Migratory Pelagics FMP**
- c. For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a commercial quota, and to sell king mackerel and Spanish mackerel in or from the EEZ of the Atlantic or Gulf of Mexico, a commercial vessel permit/endorsement for each species taken must have been issued to the vessel and must be on board**
- d. For a person aboard a vessel to be eligible to sell cobia in or from the EEZ of the Atlantic or Gulf of Mexico, a commercial vessel permit/endorsement must have been issued to the vessel and must be on board**
- e. Allow commercial sale of cobia with either a king mackerel or Spanish mackerel commercial permit/endorsement**
- f. Prohibit the sale of recreationally caught coastal migratory pelagics except for allowing for-hire vessels that possess the necessary state and federal commercial permits to sell coastal migratory pelagics harvested under the bag limit in or from the South Atlantic Council's jurisdiction**
- g. Require tournament organizers to obtain a federal permit to sell coastal migratory pelagic fish or prohibit sale of tournament-caught fish**

Discussion and Rationale

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. 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. 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 cobia, because those species could not be sold.

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. 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.

Sale of tournament-caught fish creates particular problems. Often these fish are donated to a dealer, who then sells them. The Food and Drug Administration (FDA) requires processors of fish and fishery products to develop and implement Hazard Analysis 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. Recreational fishers are unlikely to be able to produce this documentation. 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 should not eat 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.

The regulatory language above that prohibits bag-limit sales of South Atlantic snapper and grouper 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 or if the tournament organizers have a dealer permit. Additional regulatory language would be needed to allow sale of tournament-caught fish with a dealer permit.

Action 3. Future participation in the commercial king and Spanish mackerel fisheries

3.1 Elimination of latent permits

3.1.1 In the Gulf group king mackerel gillnet sector

a. No action

b. Renew permits for commercial king mackerel gillnet vessels if:

Option a. The vessel had average reported landings of at least 20,000 pounds over the years 2001-2009.

Option b. The vessel had average reported landings of at least 20,000 pounds in five of the six years 2001-2009.

Option c. The vessel had average reported landings of at least 20,000 pounds over the years 2004-2009.

Option d. The vessel had average reported landings of at least 20,000 pounds in five of the six years 2004-2009.

c. Renew permits for commercial king mackerel gillnet vessels if:

Option a. The vessel had reported landings of at least 20,000 pounds in at least one of the six years 2004-2009.

Option b. The vessel had reported landings of at least 20,000 pounds in at least two of the six years 2004-2009.

Option c. The vessel had reported landings of at least 20,000 pounds in at least three of the six years 2004-2009.

Option d. The vessel had reported landings of at least 20,000 pounds in at least one of the nine years 2001-2009.

Option e. The vessel had reported landings of at least 20,000 pounds in at least two of the nine years 2001-2009.

Option f. The vessel had reported landings of at least 20,000 pounds in at least three of the nine years 2001-2009.

d. Renew permits for commercial king mackerel gillnet vessels if the vessel had reported landings in the fishing year ending June 30, 2009.

Discussion and Rationale:

Both a commercial king mackerel permit and a king mackerel gillnet endorsement are required to use run-around gillnets in the southern Florida west coast subzone. Gillnet endorsements can only be transferred to another vessel owned by the same entity or to an immediate family member. Consequently, the number of gillnet endorsements has decreased over time and now stands at 23 valid or renewable permits. Some of these permitted vessels have not had landings in recent years, if ever.

The 520,312-pound quota for the gillnet sector has been landed in less than two weeks in recent years. Fishermen currently participating in the sector have expressed concern that permit holders who have not been participating may begin, causing the quota to be filled even sooner. Elimination of latent king mackerel gillnet endorsements would protect the interests of the current participants.

The table below shows the number of qualifying king mackerel gillnet endorsements under various minimum average annual pounds landed. Years are based on first fishing season under the endorsement (January 2001), and last fishing season before the control date (June 2009).

Minimum Annual Pounds	2001-2009		2001-2009 (drop lowest year)	
	Qualifying Endorsements	Non-qualifying Endorsements	Qualifying Endorsements	Non-qualifying Endorsements
1	18	5	18	5
1,000	17	6	17	6
5,000	16	7	16	7
10,000	14	9	14	9
15,000	13	10	13	10
20,000	9	14	10	13

Minimum Annual Pounds	2004-2009		2001-2009 (drop lowest year)	
	Qualifying Endorsements	Non-qualifying Endorsements	Qualifying Endorsements	Non-qualifying Endorsements
1	18	5	18	5
1,000	16	7	16	7
5,000	16	7	16	7
10,000	14	9	15	8
15,000	13	10	13	10
20,000	11	12	12	11

The next table shows the number of king mackerel gillnet endorsements with landings during qualifying years. Total number of valid or renewable endorsements equals 23.

Number of Years 2001-2009	Endorsements with Landings	Number of Years 2004-2009	Endorsements with Landings
1 out of 9	18	1 out of 6	18
2 out of 9	16	2 out of 6	15
3 out of 9	15	3 out of 6	13
4 out of 9	14	4 out of 6	12
5 out of 9	13	5 out of 6	10
6 out of 9	11	6 out of 6	6
7 out of 9	10		
8 out of 9	6		
9 out of 9	4		

3.1.2 In the king mackerel hook-and-line sector

Alternative 1. No action

Alternative 2. Do not renew permits for commercial king mackerel hook and line vessels if:

Option a. The vessel did not have reported landings of at least 5,000 pounds in at least one of the six years 2004-2009.

Option b. The vessel did not have reported landings of at least 5,000 pounds in at least two of the six years 2004-2009.

Option c. The vessel did not have reported landings of at least 5,000 pounds in at least three of the six years 2004-2009.

Alternative 3. Do not renew permits for commercial king mackerel hook and line vessels if:

Option a. The vessel did not have reported landings of at least 5,000 pounds in at least one of the nine years 2001-2009.

Option b. The vessel did not have reported landings of at least 5,000 pounds in at least two of the nine years 2001-2009.

Option c. The vessel did not have reported landings of at least 5,000 pounds in at least three of the nine years 2001-2009.

Alternative 4. Do not renew permits for commercial king mackerel hook and line vessels if the permittee did not have landings:

Option a. In the fishing year ending June 30, 2009.

Option b. In at least one of the five years preceding the June 30, 2009 Control date.

Option c. In at least two of the five years preceding the June 30, 2009 Control date.

Discussion and Rationale:

3.1.3 In the Spanish mackerel hook and line sector

Alternative 1. No action

Alternative 2. Do not renew permits for commercial Spanish mackerel hook and line vessels if:

Option a. The vessel did not have reported landings of at least 2,500 pounds in at least one of the six years 2004-2009.

Option b. The vessel did not have reported landings of at least 2,500 pounds in at least two of the six years 2004-2009.

Option c. The vessel did not have reported landings of at least 2,500 pounds in at least three of the six years 2004-2009.

Alternative 3. Do not renew permits for commercial Spanish mackerel hook and line vessels if:

Option a. The vessel did not have reported landings of at least 2,500 pounds in at least one of the nine years 2001-2009.

Option b. The vessel did not have reported landings of at least 2,500 pounds in at least two of the nine years 2001-2009.

Option c. The vessel did not have reported landings of at least 2,500 pounds in at least three of the nine years 2001-2009.

Alternative 4. Do not renew permits for commercial Spanish mackerel hook and line vessels if the permittee did not have landings:

Option a. In the fishing year ending March 31, 2010.

Option b. In at least one of the five years preceding the March 31, 2010 Control date.

Option c. In at least two of the five years preceding the March 31, 2010 Control date.

Discussion and Rationale:

Establishing participation criteria for future permit renewal is difficult because there is a single permit for vessels in the Gulf and Atlantic. Historically, vessels from the Atlantic have fished on Gulf group king mackerel quota, particularly in the Western Zone and the Northern Subzone off Florida. However, vessels in the Gulf seldom fish on Atlantic group king mackerel. Additionally, there are different seasons in the Gulf and Atlantic and different zones that have different trip limits. Consequently, setting qualification based on landings is biased by region because management has set up differing landings criteria in the form of trip limits and differing allocations by zone that may not always allow fishermen to participate fully due to the availability of fish and thus the ability to economically harvest them.

Another compounding factor is that the commercial king and Spanish mackerel permits are only permits to exceed the bag limit, and a moratorium on the issuance of new commercial king mackerel hook-and-line permits has been in effect since 1998. Thus, if these commercial vessel permits are not changed to be a requirement in order to sell, particularly in Florida, fishermen who qualify for a Saltwater Products License and a Restricted Species Endorsement can legally harvest king and Spanish 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. Consequently, although a fisherman may lose his federal permit, he may be able to continue to harvest in state waters.

3.2 Do not renew permits that were obtained after the 2009 and 2010 control dates

Option a. King mackerel – June 30, 2009

Option b. Spanish mackerel – March 31, 2010

Discussion and Rationale:

The aforementioned control dates were approved for king and Spanish mackerel. The purpose of the control dates was to alert fishermen that if they were not a participant in these fisheries via the possession of a commercial permit prior to said dates, they may not be eligible to continue to participate in the future. Consequently, this action could eliminate king mackerel moratorium permits that were bought or otherwise transferred after June 30, 2009, and eliminate open access

commercial Spanish mackerel permits that were issued after the March 31, 2010 control date. In effect, this action would create a moratorium on the issuance of new Spanish mackerel permits.

3.3 In order to renew a commercial king mackerel hook and line permit, the permittee must possess two valid permits at the time of transfer (renewal), and only one permit will be reissued, and the other will be retired.

Discussion and Rationale:

This action would over time reduce the number of active permits and the resultant effort in the king mackerel fishery. When fully implemented, the number of participants would be at least half the number when first implemented. Although the commercial sector has generally caught its allocation of TAC in recent years, the number of permits has declined since the inception of the moratorium in 1998. This phenomenon is generally true for other fisheries that have incorporated moratoria as part of the management strategy. At the same time in the Gulf, the recreational sector has consistently been under its allocation of TAC by approximately 2.0 MP over the past 10 years. Furthermore, the Gulf group king mackerel stock is not considered to be overfished or undergoing overfishing. This action would likely have very significant and negative social and economic impacts on this sector of the fishery.

Action 4. Federal Regulatory Compliance

Alternative 1. No action. All vessels with federal commercial king and/or Spanish mackerel permits, as well as CMP charter permits are subject to applicable federal CMP regulations when fishing in the EEZ, and are subject to applicable state CMP regulations when fishing in state waters.

Alternative 2. All vessels with federal commercial king and/or Spanish mackerel permit, as well as CMP charter permits must comply with the more restrictive of state or federal reef fish regulations when fishing in state waters.

Discussion and Rationale:

NOAA Fisheries Service has implemented several fishery regulations through either interim measures or amendments to FMPs during the past several years that were not adopted and implemented by some Gulf States. These measures included recreational red grouper interim regulations in 2005, a recreational grouper closure in 2007, and recreational red snapper regulations in 2007 and 2008. In developing regulations, analyses for Council amendments and FMPs assume that Gulf States will comply with proposed federal regulations. If states do not comply, then projected reductions in harvest and fishing mortality may not occur, compromising the Council's ability to end overfishing and rebuild overfished stocks. The net result is that landings may exceed target levels and future determinations of stock status may indicate overfishing is occurring. Although most king mackerel are predominantly caught outside of state territorial waters, catch in state waters can still be significant for some species, particularly Spanish mackerel and cobia. Additionally, more liberal regulations in state waters complicate law enforcement and may provide fishermen an incentive to harvest greater amounts of fish, regardless of where the fish are caught.

NOAA Fisheries Service has the authority to establish permit requirements and conditions for federal for-hire and commercial permit holders who choose to have a federal fishing permit and engage in the privilege of fishing. Consequently, federal fishing regulations apply to permitted CMP fishing regardless of where harvesting, landing, or operating occurs. By requiring federal permit holders to comply with the more restrictive of state or federal reef fish regulations when fishing in state waters, the probability of overages occurring would be reduced and there would be an increased likelihood that overfishing is prevented. This is especially important given the new mandates of the Magnuson-Act Reauthorization, which will require federal regulators to set annual catch limits and accountability measures for Council managed species.

Action 5. Modify or Eliminate Income Requirements for Gulf Commercial Coastal Migratory Pelagic Permits

- a. No Action – Maintain existing income requirements for Gulf 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.**
- b. Establish an income requirement for a commercial vessel permit for cobia, if a cobia permit is established, that is consistent with the requirements for king and Spanish mackerel permits.**
- c. Eliminate income requirements for commercial king and Spanish mackerel permits.**

Alternative 3: Replace the current income requirements with a Coastal Migratory Pelagic landings requirement, such that in one of the two years preceding the application, landings must be greater than:

- Option a: 500 lbs of king mackerel, Spanish mackerel, or cobia**
- Option b: 1,000 lbs of king mackerel, Spanish mackerel, or cobia**
- Option c: 5,000 lbs of king mackerel, Spanish mackerel, or cobia**
- Option d: 10,000 lbs of king mackerel, Spanish mackerel, or cobia**

Alternative 4: Modify the current income requirements to allow the Gulf or South Atlantic Council to suspend 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.

Discussion and Rationale:

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 for the reef fish fishery.

Both king and Spanish mackerel 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.

Elimination of the income requirement would afford more flexibility to fishermen and allow them to earn as much income as they can 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. The elimination of income requirements would also decrease the administrative burden.

Changing the earned income requirement to a landings requirement would allow landings to be measured via trip tickets and/or logbooks, and thus it would be more accurate than a simple declaration that the income qualification was met.

Recent events show the advantage of the Council having a protocol for a temporary suspension of income requirements. Under this provision, the Council would determine the events or condition that would trigger the suspension of income requirements, the length of the suspension, and, the permit holders eligible for a temporary suspension of income requirements for commercial king and/or Spanish mackerel permit renewal. Events and conditions that could warrant a temporary suspension of income requirements include oil spills and other man-made disasters, hurricanes and other natural disasters, and, economic hardship. While considering the length of a potential suspension of income requirements issues such as the magnitude and duration of the adverse economic impacts that have already or could result from the disaster or conditions warranting the suspension. Geographical areas and or categories of permit holders affected would constitute some of the considerations in the determination of eligibility criteria for a temporary suspension of income qualification requirements.

Action 6. Spanish mackerel gillnet endorsement: (This may fit better under #1 and could be added to 1(d) – with additional discussion)

Establish a Spanish mackerel gillnet endorsement with qualifying poundages for a commercial gillnet endorsement based on the new control dates and average landings during the most recent 5, 10, or 15 years prior to these control dates

(March 31, 2010 for Gulf group Spanish mackerel and September 17, 2010 for Atlantic group Spanish mackerel)

- 1) 30,000 pounds
- 2) 20,000 pounds
- 3) 10,000 pounds

Discussion and Rationale:

The fishing power of gillnets is substantially higher than cast net and hook and line gears. In the past there was an equitable balance among the gears. In recent years there have been additional vessels entering the gillnet fishery and this will negatively impact hook and line and cast net fishermen as the gillnet catches occur earlier in the season, than the other gears.

Action 7. Dealer Permits

- a. **No Action. Do not require a dealer permit to buy CMP species.**
- b. **Establish a single CMP dealer permit**
- c. **Establish separate Gulf and Atlantic CMP dealer permits based on the Gulf and South Atlantic Council boundary.**
- d. **Establish separate king mackerel, Spanish mackerel, and cobia dealer permits.**

Discussion and Rationale:

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.