

# For-Hire Limited Access for the Snapper Grouper, Coastal Migratory Pelagics, and Dolphin Wahoo Fisheries in the Atlantic

## Discussion Document June 2024



This document provides information requested at the March 2024 South Atlantic Council meeting pertaining to consideration of limited access for the for-hire components of the Snapper Grouper, Coastal Migratory Pelagics, and Dolphin Wahoo fisheries.

## Why is the Council Considering Action?

The South Atlantic Fishery Management Council (Council) is considering whether a limited access program would improve management of the for-hire (charter/headboat) components of the Snapper Grouper, Coastal Migratory Pelagics (CMP), and Dolphin Wahoo fisheries. In the Fall 2023, both the Snapper Grouper and the Mackerel Cobia Advisory Panels (APs) reiterated their recommendation to limit the number of federal charter/headboat permits in those fisheries. The APs stated the following as justification:

### Snapper Grouper Advisory Panel feedback (Fall 2023):

- Most of the AP expressed support for re-consideration of limiting entry for the recreational for-hire component of the snapper grouper fishery.
- Representatives from the Florida Keys and South Carolina noted large population growth in recent years and increases in the number of recreational for-hire participants.
- The AP discussed whether headboats and “6-pack” charters should both be included in limited entry considerations.
  - Headboats should have some separation from other for-hire businesses.
  - 6-pack charters can fish for a wider variety of species using a wider variety of methods. Headboats have more limited methods and target species.
  - Headboats have a higher regulatory requirement to operate than charters.
  - Private boats can be insured to do similar things as charter, easing entry into this component of the fishery.
- The June 15, 2026, control date should be revisited. It was set during a previous amendment process and many changes have happened since then.
- Consider setting the control date to align with the beginning of electronic for-hire reporting.
- “Illegal charters” (charged trips by boat owners that do not have a for-hire license) are becoming more of a problem through social media advertising.
- In considering how entry would be limited and who would be allowed entry, the Council should consider regional variations in fishing effort, as well as differences between part-time and full-time participants. Possibly consider more clearly defining “professional” charter captains.
- Captain and mate are being limited from inclusion in the bag limit for some species.
- Many Snapper Grouper management unit species are becoming a very limited resource.
- Limited entry could be considered for South Atlantic fisheries outside snapper grouper, as well.
- Look at Gulf for-hire management & process for limited entry.
  - In the Gulf, there are different permits based on how many passengers can be carried.

### Mackerel Cobia Advisory Panel feedback (Fall 2023):

- Limited entry would control the expansion of recreational harvest and professionalize the for-hire fleet.
- The AP would be interested in discussing new and unique structures for a limited entry program (ex. limited leasing, a greenhorn pool, etc.)
- Recommendation to form a workgroup to discuss limited-entry for for-hire fleets. The workgroup should include fishermen who are for and against limited entry, staff with permit

experience, and fishermen with experience operating under a for-hire limited entry system (ex. Gulf CMP for-hire fishermen). The Council should not set or change the control date until this group has produced a report for review by the Council.

## Guidance from March 2024 Council Meeting

At the March 2024 meeting, the Council reviewed a [discussion document](#) and provided [guidance](#) on how to move forward with developing an amendment that would limit entry into for-hire fisheries that the Council manages. Specifically, the Council provided the following guidance:

- Consider moratorium options and start with actions that were scoped in Snapper Grouper Amendment 47.
- For a moratorium and limited access, provide additional information on what could be implemented geographically as well as temporary vs permanent.
- Include actions addressing new entrants, eligibility criteria.
- Identify the goals of an amendment taking into consideration the Magnusson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; MSA) discretionary provisions.
- Staff to prepare a discussion document for June 2024, including a list of details the Council will have to work out as they move forward, e.g., Equity and Environmental Justice (EEJ), impacts from climate change, governance shift considerations, etc.
- Look at the Purpose & Need of Snapper Grouper Amendment 47 and see if it is still relevant.
- Bring back comments submitted on the advanced notice for public rule making for the new December 5, 2023 and December 8, 2023 control dates to the Council in June 2024.
- Acknowledge that the Council has heard the Snapper Grouper and Mackerel Cobia APs' request to consider limited entry.
- Hold off scoping until post-2020 data are available later this year, once the SERO permits system issue is fixed (possibly by May 2024).
- Request that APs that are meeting this spring have more in-depth discussion and address pros and cons of limited entry. Consider Fishery Performance Reports for the for-hire sector of each fishery.

## Items that have been addressed, need additional input from the Council, or need additional information

- ✓ Summary of public comments on revised control dates: Information provided as Attachment 3a in the Council's Full Council Session 1 briefing materials.
- ✓ Acknowledgement of AP recommendations: The Council has acknowledged, on the meeting record, the Snapper Grouper and Mackerel Cobia APs' request to consider limited entry in the for-hire fisheries.
- ✓ Purpose and Need: Council staff reviewed Snapper Grouper Amendment 47 documents and noted that there was no Purpose and Need developed as the amendment only made it through scoping and then work on the amendment was stopped by the Council.
- Timing of scoping: The SERO permitting system is continuing to undergo updates. As such, the timeline for consideration of scoping is fluid and to be determined.

- Further discussion by APs: The Snapper Grouper AP did not have room on the Spring 2024 meeting agenda (per the list of topics approved by the Council in March 2024) and the Mackerel Cobia and Dolphin Wahoo APs did not meet in the spring. The tentative plan is to hold further discussion of for-hire limited entry at the next AP meetings which would be Fall 2024 for the Snapper Grouper and Mackerel Cobia APs and Spring 2025 for the Dolphin Wahoo AP. For-hire limited entry has also been a discussion topic during mackerel port meetings and summary feedback will be provided to the Council when the port meetings are completed.

## **Consideration of a Federal Charter/Headboat Permit Moratorium**

The Council may consider implementing a moratorium on South Atlantic Charter/Headboat permits in the Snapper Grouper, Coastal Migratory Pelagics, and Dolphin Wahoo fisheries. The presumed purpose of considering a moratorium would be to limit future expansion of the number of operators in the three recreational for-hire fisheries and improve compliance with existing reporting requirements while the Council monitors the impact of the moratorium and considers the need for a limited access program for the for-hire fisheries. Considerations for implementing a moratorium may include:

- Start date and duration of the moratorium.
- Permit speculation.
- Permit eligibility and transfer requirements under the moratorium.
- Appeals process under the moratorium.
- Target number of permits.

### **Start date and duration of the moratorium**

The start date of a moratorium is important for determining permit holders that would retain access once the moratorium becomes effective. The Council would select a qualifying cutoff date, after which no new permits would be issued unless certain eligibility criteria were met. The qualifying date could be an already established control date or another date of the Council's choosing.

The Council approved a control date of December 8, 2023, for charter/headboat permits in the Snapper Grouper, Coastal Migratory Pelagics, and Dolphin Wahoo fisheries. This control date could be used to determine eligibility to receive a federal charter/headboat permit in the future, or the Council could consider another date or set of dates that fall either after or before the current control date. Additionally, the Council stipulated that only federal permit holders that have reported catch from the Atlantic to the Southeast For-Hire Integrated Electronic Reporting program (SEFHIER) on or prior to December 5, 2023, would be considered for participation in a limited access program. Rulemaking for the December 2023 control date is pending.

The Council could establish a time limit for the moratorium that includes a sunset provision. A time-limited moratorium could allow the Council to evaluate the current for-hire sector conditions without a large fluctuation in the number of permits. At the end of the moratorium, a plan amendment could be implemented to establish a permanent limited access system.

The duration of the moratorium should provide enough time for the Council to properly evaluate the effects of the moratorium. The moratorium should last long enough to bring stabilization to the fisheries for the purpose of designing a limited access management program in the future. During the moratorium, it would be expected that baseline datasets would be developed such as: the number of valid permits as of, or applied for, by the effective date of the moratorium, the number of permits issued after the effective date of the moratorium that met the moratorium criteria for issuance, and the number of permits that did not meet the criteria (see section below).

### **Permit speculation**

The Council may need to consider “permit speculation” or “a run on permits” after the announcement of the control date where some permit holders may have purchased or will purchase a federal charter/headboat permit in hopes of benefitting from the sale of the permit in the future. Because detailed permits data are not yet available for 2021 onwards, the extent to which permit speculation has occurred will be unknown until permits data are again accessible.

### **Permit eligibility and transfer requirements under the moratorium**

The Council could consider a transferability provision such that federal charter/headboat permits would be fully transferrable to individuals or charter/headboat vessels who held valid permits as of the date of the moratorium, or held a valid permit during the preceding year, or had applied for a permit as of the effective date of the moratorium.

In addition, the Council may want to consider circumstances under which a permit would be issued after the effective date of the moratorium. Some examples include:

- Vessels that were under construction as of the effective date of the moratorium.
- Individuals who worked on vessels under the federal charter/headboat permit of another person or a corporation (historic captains). The Council could specify a required minimum proportion of personal income from working as a for-hire captain and proof of working as a for-hire captain before the effective date of the moratorium.
  - Example of historic captains in the Gulf (CMP Am 14).
  - Any U.S. Coast Guard licensed captain, who can demonstrate to NMFS, they were licensed by the USCG and operated, (as a Captain), a for-hire fishery permitted vessel prior to (date of moratorium), but did not have a fishery permit issued in their name, and who must qualify for the permit within 90 days of implementation of the final rule for this amendment and who must demonstrate at least 25% of their earned income came from recreational for hire fishing in 1 of the last 4 years ending with (date of moratorium). They will be issued a letter of eligibility to be replaced by permit/endorsements to be used only on a vessel that they operate as a captain.
- Commercial permit holders who intend to diversify their income or as an option for retirement from commercial fishing. The Council could include an exemption that would allow such persons to be eligible to obtain a federal charter/headboat permit during the moratorium.

### **Appeals Process**

The Council may wish to consider specifying a process to resolve disputes over the records used to establish eligibility for a permit to participate in the federal charter/headboat component of the

Snapper Grouper, Coastal Migratory Pelagics, and Dolphin Wahoo fisheries.

### **Target number of permits**

The Council may want to consider a general target for the number of permits that should be allowed in each fishery. In doing so, the Council could consider setting the permits at their current numbers, allowing the number of permits to increase from current numbers, or implementing eligibility requirements that decrease the number of federal charter/headboat permits available.

## **Possible Design Elements of a Limited Access Program**

If the Council pursues a limited access program for the for-hire components of the Snapper Grouper, Coastal Migratory Pelagics, and Dolphin Wahoo fisheries, it may want to consider ways to allow new entrants into the fisheries, or to recoup the use of permits that are retired over time. There are several options that could involve:

- Specifying transferability requirements,
- Establishing a permits pool for new entrants,
- Establishing a “new entrants” permit (i.e., a “greenhorn” permit),
- Different types of permits.

### **Transferability Requirements**

The Council may consider several options for transferability of federal charter/headboat permits, including allowing no transfers, limited transfers, or open transfers. The Council could allow transfers only between immediate family members or between vessels with the same owner. Transfers could be prohibited initially but allowed to occur after a specified period (ex: 1 year, 3 years or 5 years). The Council may also opt to prohibit any federal charter/headboat permits from being transferred after a moratorium. In this case, when a permit holder exited the fishery, the permit would be retired but could be entered into a permits pool to allow new entrants into the fishery (see next section).

The Council could also consider requiring different types of federal charter/headboat permits based on those who did or did not possess a permit on or before the control date or the effective date of a moratorium. These permits could have different transferability provisions. For example, a federal charter/headboat permit held before the control date or the effective date of a moratorium could be fully transferable, thus giving value to the permit and allowing those who want access to the fishery to enter. A federal charter/headboat permit obtained after the control date or the effective date of a moratorium may have limited or no transferability provisions. This would allow the permit holder to remain active in the for-hire fishery, but it would limit or remove the value of the permit since prospective new entrants could not purchase the permit.

The transferability of permits will influence whether permits are monetized or, in other words, become worth money. If open transfers are allowed, the permits may be sold to individuals that would like to enter a for-hire fishery. The monetizing of permits creates value for permit holders but represents a cost to those that would like to enter a fishery. Inhibiting or prohibiting permit transferability would reduce or prevent permits from becoming monetized but would also affect

how new entrants could gain access to a fishery. In addition to the transferability of permits, the potential monetary value of federal charter/headboat permits will depend on several factors including the number of permits issued for the fishery as well as market demand for those permits.

## **Permits pool**

The Council could establish a permits pool to allow new entrants into the federal charter/headboat fisheries and recoup the use of permits as they are retired over time. An option would be to set a minimum threshold for the number of valid permits in each fishery, that would trigger additional permits becoming available to a permits pool for new entrants. This could be based on a minimum number of valid permits or a certain percentage of the original number of valid permits in the fishery as of the start date of the moratorium. Should retired permits be put into a pool for new entrants, the Council may want to consider when retired permits become available again, such as:

- As soon as they are retired.
- On a specified date each year.
- When the number of valid permits reaches a minimum number due to permits not being renewed/transferred and therefore being retired.

If the Council decides to establish a permits pool that would allow new entrants into each fishery, it should be specified how the permits are distributed. Some options could include a lottery system or a waiting list where permits would be made available to new entrants in a specified manner.

## **New entrants permit**

Additionally, the Council could consider a “new entrants” (or “greenhorn”) permit that would allow previously unpermitted vessel owners to enter a for-hire fishery. The number of “new entrants” permits available each year would be limited. This permit could be renewed for a limited number of years, after which time the “new entrants” permit holder would be eligible to receive a federal charter/headboat permit if he or she could provide documentation of for-hire fishing activity. Documentation could include items such as proof of for-hire fishing activity submitted via SEFHIER, or a percentage of income derived from for-hire fishing activity.

Other provisions that could be considered for a future “new entrants” permit include:

- Establishing a probationary period.
- Requiring an annual USCG safety inspection and placement of a safety decal for uninspected passenger vessels through the USCG voluntary inspection program.
- Only allowing harvest of certain species for the “new entrants” permit.
- Requiring logbook training.

## **Temporary versus permanent and geographically specific measures**

The Council could establish a time limit or sunset provision, so a moratorium expires on a

specified date, or under specified conditions, such as a change in stock status for a given species or group of species. A time-limited moratorium could allow the Council to evaluate the current for-hire sector conditions and to design a more permanent limited entry system without a large fluctuation in the number of permits. At the end of the moratorium, a plan amendment could be implemented establishing an indefinite limited entry system that would remain in place until it was changed by the Council.

Some examples of how a time limited moratorium has used in the past include:

- 1) Gulf of Mexico and South Atlantic commercial king mackerel permit:
  - Moratorium implemented on new permits starting Oct 16, 1995 and lasting until Oct 15, 2000 (CMP Amendment 8)
  - Moratorium was extended to Oct 15, 2005 (CMP Amendment 12)
  - Established indefinite limited entry in July 2005 (CMP Amendment 15)
- 2) Gulf of Mexico Reef Fish and Coastal Migratory Pelagics charter/headboat permits:
  - Moratorium on new permits starting June 16, 2003 and lasting until June 16, 2006 (RF Amendment 20/ CMP Amendment 14)
  - Established indefinite limited entry in June 2006 (RF Amendment 25/CMP Amendment 17)

The Council may have the ability to examine options that would limit access in one region while allowing open access in other regions. This scenario may help address movements of fish stocks due to climate change as they become more available to new fishery participants and would be especially applicable to the Coastal Migratory Pelagics and Dolphin Wahoo fisheries since the FMPs for those fisheries cover regions to the north of the South Atlantic region. If the Council does want to limit access to for-hire permits that are applicable in the Mid-Atlantic or New England Regions, it would be beneficial to thoroughly engage the affected stakeholders, fishery management councils, and state agencies in those regions.

The ability of the Council to implement regional limited access would likely depend on the scenario that the Council is envisioning. The Council would need to state the rationale for limiting entry in one geographic region while leaving another region open access. Also, there may be the need to further differentiate the for-hire permit in the FMP(s) that the Council wants to consider, such as splitting the existing for-hire permit into two permits that are geographically specific or creating an endorsement. The ability of the Council to pursue a geographically specific limited access permit needs to be further investigated to provide a definitive statement on the extent of the Council's authority to do so, but it would be helpful for the Council to provide additional information on the rationale and what the Council envisions to make such a determination.

## **Magnuson-Stevens Act and National Standard Guidelines considerations**

There are several requirements within the MSA and National Standard Guidelines for limiting



access to a fishery. Under MSA section 303(b)(6) the following is stated regarding topics that a Council should consider for implementing a limited access system:

### **Sec. 303. CONTENTS OF FISHERY MANAGEMENT PLANS**

#### **(b) DESCRETIONARY PROVISIONS**

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

- (A) present participation in the fishery;
- (B) historical fishing practices in, and dependence on, the fishery;
- (C) the economics of the fishery;
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries;
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities;
- (F) the fair and equitable distribution of access privileges in the fishery; and
- (G) any other relevant considerations

Additional guidance on considerations that Council's should take when implementing a system for limiting access to a fishery can be found in §600.325 *National Standard 4-Allocations* and §600.330 *National Standard 5- Efficiency*<sup>1</sup>. As the name implies, Nation Standard 4 discusses allocations of fishery resources and fishing privileges as well as necessary considerations and analysis for determining allocations, including access to a fishery. National Standard 5 outlines the concept of efficiency within a fishery, establishes limited access as a management technique that may be used to address issues such “overfishing, overcrowding, or overcapitalization in a fishery to achieve OY”, and provides additional considerations when implementing a limited access program.

## **Equity and Environmental Justice considerations**

The following discussion is not meant to be comprehensive of all EEJ considerations, but it is intended to address some of the EEJ considerations that have been brought forth in public comment, by the APs, and in response to the Council's discussions of a limited access program.

- Limiting access to fishery resources could create EEJ concerns as it may disproportionately affect some communities. Once additional permit information becomes available on recently held for-hire permits, staff can provide the Council a more in-depth analysis identifying communities that may be affected disproportionately more than others by a limited access for-hire permit.
- Given the unpredictability of climate change-induced shifts in fishing activity, the permitting system that is developed should have flexibility to allow individuals to shift where they fish for certain species. A limited access permit may reduce that flexibility.
- As noted in recent public comment submitted to the Council, there are some EEJ considerations specific to headboats, as these vessels can offer a relatively low cost way for anglers to access fishery resources that they otherwise would not be able to experience. Thus, limiting new entrants into the headboat component of the for-hire fishery may also be accompanied by EEJ concerns.

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<sup>1</sup> The full contents of National Standards 4 and 5 can be found at: <https://www.fisheries.noaa.gov/national/laws-and-policies/national-standard-guidelines>

- As noted by the Snapper Grouper AP, there could be consideration of an exclusion for headboats from a limited access permit.

## Next Steps for the Council

To develop a for-hire limited access amendment, it would be helpful to have additional feedback on the topics that the Council would like to pursue. How does the Council want to proceed with the development of a for-hire limited access amendment? What direction can the Council offer to staff?

- 1) To help staff further develop the amendment, is it the intent of the Council to initially consider both a moratorium on for-hire permits followed by a limited access program or does the Council prefer to not initially implement a moratorium?
- 2) Does the Council want to consider geographically specific limited access for the Coastal Migratory Pelagic and Dolphin Wahoo FMPs?
  - If yes, what is the rationale?
  - What does the Council initially envision for this process (two for-hire permits within the FMP? An endorsement added to the existing permit? The South Atlantic region would be limited access while regions further north would be open access? Etc.)
- 3) Are there additional topics that the Council would like further information on at the next Council meeting where this amendment is discussed?