Amendment 21 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region: Options Paper

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Purpose and Need for Action

Some recent amendments to the Fishery Management Plan for the South Atlantic Snapper Grouper Fishery (FMP) have established regulations that result in a decrease in the commercial quota that can be by the commercial sector in an effort to end/prevent overfishing of several species. As a result, the length of time it takes for some species' (e.g., golden tilefish and black sea bass) commercial quota to be caught has decreased significantly. Furthermore, closures implemented by Amendments 16 and 17A, will likely increase participation in other fisheries. It appears that under current management, incentives for derby behavior will continue for several snapper grouper fisheries. For these reasons, the South Atlantic Fishery Management Council (Council) has decided to consider possible alternatives for management of the snapper grouper fishery including: implementation of trip limits, effort and participation reductions, endorsements, catch shares, and regional quotas as possible ways to address some of these problems.

Background

The Draft NOAA Catch Share Policy (2010) states – "Catch share" is a general term for several management strategies that allocate a specific portion of the total allowable fishery catch to individuals, cooperatives, communities, or other entities. Each recipient of a catch share is directly accountable to stop fishing when its specific quota is reached, The term includes specific programs defined in law such as "limited Access privilege" (LAP) and "individual fishing quota" (IFQ) programs and other exclusive allocative measures such as Territorial Use Rights Fisheries (TURFs) that grant exclusive privilege to fish in a geographically designated fishing ground.

A catch share program differs from traditional fishery management by dividing the total allowable catch in a fishery into shares. These shares are typically allocated based on historical participation in the fishery. They may be assigned to individuals, cooperatives, communities or other entities, who would be allowed to fish up to their assigned limit. Catch share participants also agree to stop fishing when they've caught as much as they are allowed. While Limited Access Privilege programs (which include IFQs or ITQs, community quota and regional fishing associations, as defined in the Magnuson-Stevens Act) and cooperatives have been discussed by the Council and fishermen exploratory workgroups, TURFs have not. As stated above, TURFs grant an exclusive privilege to fish in a geographically designated fishing ground. This type of management has been considered mostly for sedentary species but can be applied to mobile species (especially migratory species) if boundaries can be established and individuals can be excluded from another's area identified by those boundaries.

If a catch share program is designed and implemented for one or more snapper grouper fish stocks, it would need to develop specific criteria for eligibility to participate in the catch share program, initial allocation of catch shares, a cap on catch share ownership by an individual or corporation, an appeals process related to the initial application to participate in the fishery and other requirements described in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). If properly designed, a catch share program could result in increased flexibility regarding when fishing is allowed, increased financial stability, economic profitability, improved vessel safety and an increased likelihood that overfishing is prevented and rebuilding of overfished stocks occurs. However, the Council would need to consider any possible drawbacks of catch share programs as well, especially the possibility of decreased fishing opportunities for some fishermen, who only occasionally harvest snapper and grouper, and the need to consider opportunities for new entrants in the fishery.

The snapper grouper fishery currently has nine stocks subject to overfishing including: red snapper, vermilion snapper, red grouper, gag, black sea bass, snowy grouper, golden tilefish, speckled hind, and warsaw grouper. Snapper grouper stocks that are overfished include: red grouper, snowy grouper, black sea bass, red porgy, and red snapper. If annual catch limits (ACLs) and accountability measures (AMs) and other management measures for snapper grouper stocks are able to rebuild overfished stocks and prevent overfishing, there is the potential for much larger average annual catches for most species (See Table 1)

Table 1. Most recent quotas (or annual overall commercial ACLs) and estimated maximum sustainable yield if stock is rebuilt for assessed snapper grouper stocks

Species	MSY	Current Quota
Vermilion Snapper	1,665,000 lbs ww	315,523 lb gw (Jan-June) 302,523 lbs gw (July-Dec)
Golden Tilefish	336,425 lbs ww	282,819 lbs gw*
Red Grouper	1,110,000 lbs ww	Comm Aggregate ACL (black, red, gag) = 662,403 lbs gw
Black Grouper	520,000 lbs ww	Comm Aggregate ACL (black, red, gag) = 662,403 lbs gw
Red Snapper	2,431,000 lbs ww	0
Black Sea Bass	2,777,825 lbs ww	309,000 lbs gw
Gag	1,238,000 lbs gw	353,940 lbs gw
Greater Amberjack	2,005,000 lbs ww	1,169,931 lbs gw
Snowy Grouper	313,056 lbs ww	82,900 lbs gw
Red Porgy	625,699 lbs ww	190,050 lbs gw

At its March 2010 meeting, the Council approved a motion to develop an options paper for catch share programs for some species in its Snapper Grouper FMP. The motion read: "Amendment 21 is to include trip limit actions; effort and participation reduction and endorsement actions; catch share actions for quota species (except snowy grouper): vermilion snapper, golden tilefish, black sea bass, gag, greater amberjack, red grouper, and black grouper; ITQ, cooperative, RFA and CDQ components, and regional and state by state quota analysis." Meanwhile, wreckfish has been managed by an individual transferable quota (ITQ) system under the FMP since 1992.

The Limited Access Privilege Program Exploratory Workgroup (LAP Workgroup) for snapper grouper was tasked by the Council to develop a possible limited access program (LAP) or catch share program for consideration and met eight times between April 2007 and February 2008 (see Appendix A) .

The Council also solicited public comments on options for possible limited access privileges in the commercial snapper grouper fishery during a series of five scoping meetings in February 2008. Scoping meetings were held in Coconut Grove, FL (February 4, 2008), Cape Canaveral, FL (February 5, 2008), Brunswick, GA (February 6, 2008), New Bern, NC (February 7, 2008) and North Charleston, SC (February 20, 2008).

The LAP Workgroup released a Report in April 2008. The LAP Workgroup had 12 voting members and five non-voting members. The LAP Workgroup was split about whether LAPs were an appropriate management method for the snapper grouper fishery. However, the Report provides an "outline" of what the LAP Workgroup "would like to see a limited access program look like if applied to the South Atlantic (SA) snapper grouper fishery." This is included in their final report (see Appendix A). The Workgroup recommended that "the [SA] Council should pick up where the Workgroup left off" and "develop a range of alternatives that include details on monitoring, enforcement and fisherman costs." The LAP program (i.e., catch share program) is being considered in Amendment 21 for the FMP. The Report listed "Possible benefits and possible drawbacks of a limited access program (LAP) for the Snapper Grouper fishery (see Appendix A)."

The Golden Tilefish LAP Exploratory Workgroup met in North Charleston, SC on October 28-29, 2008. They recommended that the Council develop two management programs they would like implemented under different circumstances. First, under status quo management they recommended that a gear specific endorsement program be implemented that would exclude fishermen that do not have historical landings in the fishery. This recommendation is being considered in draft Amendment 18 to the Snapper-Grouper FMP. The second program recommended by the Golden Tilefish Workgroup is development of an IFQ program for golden

tilefish. The IFQ program (i.e., catch share program) for SA golden tilefish is being considered in Amendment 21 for the FMP. (See attached Golden Tilefish Report in Appendix B).

The SA Council announced in the Federal Register on October 14, 2005, that it is considering management measures to further limit participation in the snapper grouper fishery, and October 14, 2005, is a possible control date. If that control date is formally established later, it would provide that anyone entering the commercial fishery for snapper grouper (excluding wreckfish) after that date may not be assured of future participation in the fishery, if a management regime is developed that limits the number of participants.

The Council also announced in the Federal Register on February 20, 2009 (74 FR 7849), that it is considering management measures to further limit participation in the SA golden tilefish fishery, and recommended December 4, 2008, as a new control date for the golden tilefish and the black sea bass portion of the snapper grouper fishery. If that control date is formally established later, it would likely provide that anyone entering the SA golden tilefish commercial fishery after that date may not be assured of future participation in the fishery, if a management regime is developed that limits the number of participants.

The Magnuson-Stevens Act contains new requirements for limited access privilege programs in section 303A. This section of the Magnuson-Stevens Act states that a Council may submit, and the Secretary of Commerce may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of section 303A. NOAA Fisheries Service considers "catch share programs" to be equivalent to 'limited access privilege programs." This section of the Magnuson-Stevens Act covers requirements that need be followed when managing a fishery under a limited access privilege program. Topics include: (1) No creation of right, (2) title or interest; (3) requirements for limited access privilege; (4) auction and other programs; (5) cost recovery; (6) characteristics of renewal or revoking a permit; (7) limited access privilege assisted purchase program; (8) effect[s] on certain existing shares and programs; and (9) transition rules.

The Gulf of Mexico Fishery Management Council (GOM Council) currently manages several of its reef fish species under individual fishing quotas (IFQ) including three individual species (red snapper, gag, and red grouper); and separate "group" categories including: "Other shallow water grouper (six species); "deep water grouper" (five species); and tilefish (five species) (see final rule published in the Federal Register on August 31, 2009 at 74 FR 44732). The SA Council will examine the Gulf of Mexico (GOM) reef fish IFQs program closely to determine lessons learned from that fishery. The SA Council will consider the GOM fishermen's reactions and opinions in terms of strengths and weaknesses and success and failure of the IFQ program so far. This should prove useful because the GOM reef fish and SA snapper grouper FMPs have

many of the same species. The Gulf IFQ programs could be useful to the South Atlantic Council's consideration of catch share programs.

NOAA Fisheries Service is encouraging regional fishery management councils to consider various fisheries they manage for possible catch share programs, but there are no requirements that all fisheries in the exclusive economic zone be managed under catch share programs. A Council may decide that some fisheries are not suited for a catch share program. Nevertheless, there are misconceptions about catch share programs so it's incumbent upon Councils and NOAA Fisheries Service to inform fishermen, dealers/processors and the public about any strengths or weaknesses of a catch share program. The design of a catch share program is based on the objectives the council and fishermen are trying to achieve.

Amendment 21 could have catch share programs for vermilion snapper, golden tilefish, black sea bass, gag, greater amberjack, red grouper and black grouper. Possibly, catch shares might be needed for shallow-water and deep-water categories, and an aggregate catch share for gag, red grouper and black grouper. Red snapper is being reassessed under SEDAR 24, so its rebuilding acceptable biological catch (ABC) and ACL will be evaluated soon and that stock might be considered for catch shares in Amendment 22, rather than in Amendment 21. Red grouper needs a rebuilding plan by 2012, because it was recently determined to be overfished. Therefore, this stock might be considered for a separate catch share program later, if included in Amendment 21 it seems likely that it would be included as part of an aggregate group with gag and black grouper.

Recent history of management of the snapper grouper fishery

Recent management measures implemented by NOAA Fisheries Service on behalf of the SA Council for the snapper grouper fishery have focused in large part on preventing overfishing and rebuilding overfished stocks. Amendments 13C, 15B and 16 paved the way for ACLs and AMs to improve the likelihood of ending/preventing overfishing through updated reference points (including overfishing and overfished definitions) and quota management for some stocks along with inseason and postseason management measures that improve management control of the snapper grouper fishery.

Amendment 13C established restrictive quotas to help end overfishing of snowy grouper, golden tilefish, vermilion snapper and black sea bass and allowed moderate increases in recreational and commercial harvest of red porgy consistent with that stock's rebuilding plan (see final rule published in Federal Register on September 21, 2006 at 71 FR 55096). Amendment 15B revised the stock status determination criteria for golden tilefish and specified

commercial and recreational allocations for snowy grouper and red porgy (see final rule published in the Federal Register on November 16, 2009 (74 FR 58902). Amendment 16, for both gag and vermilion snapper, revises the definitions of MSY and optimum yield (OY), specified total allowable catch (TAC), and established interim allocations of TACs for recreational and commercial sectors. Amendment 16 also established a seasonal closure of the recreational and commercial fisheries for gag and associated shallow-water grouper species and a seasonal closure for the recreational fishery for vermilion snapper (see final rule published in the Federal Register on June 29, 2009 at 74 FR 50964). .

The Council has prepared two FMP amendments to establish ACLs and AMs for overfishing stocks, those being Amendment 17A for red snapper, and Amendment 17B (under review) for vermilion snapper, red grouper, gag, black sea bass, snowy grouper, golden tilefish, speckled hind, and warsaw grouper. A recent stock assessment for black grouper, which is included in Amendment 17B, has determined that the stock is not experiencing overfishing. The goal of these amendments in part is to end overfishing and prevent future overfishing.

The SA Council's Comprehensive ACL Amendment, under development, will establish ACLs and AMs for stocks/species from several fishery management plans, including snapper-grouper species not covered in Amendments 17A and 17B. Some of the ACLs could be for a species groups instead of a single species. Some species are also being considered for removal from the FMP, or re-designating as ecosystem component species that would not have ACLs. The amendment also contains allocation actions and other management measures.

ACLs or, annual catch targets (ACTs), if used for a species or a species sector (e.g. commercial sector or gear group) would serve as the basis for a stock's sector quota or species group quota for a catch share category. In turn, those overall quotas would be the basis for calculating a fisherman's annual allocation (e.g. individual quota in pounds).

Refer to Table 2 for baseline information about the snapper-grouper fishery including: Number of vessels with transferable and non-transferable permits; number of dealer permits; and fishing effort information such as number of trips, days away from port, and number of vessels in each of several landings range categories.

Table 2. Fishing effort and distribution of landings for trips with at least one pound of species in the snapper grouper fishery management unit in the South Atlantic, 2003-2007. (From Amendment 18)

Item	2003	2004	2005	2006	2007	2008	2009	Average
	Trips with at least one pound of snapper grouper							
Number of trips	16,545	15,045	13,756	13,224	14,753			
Days away from port	27,556	24,820	22,794	23,160	24,216			
Number of vessels landing snapper grouper	931	905	857	868	889			
Number of vessels landing 101-1,000 lbs of snapper grouper	245	225	242	258	261			
Number of vessels landing 1001-5000 lbs of snapper grouper	270	263	239	228	225			
Number of vessels landing 5,001-10,000 lbs of snapper grouper	104	96	86	64	86			
Number of vessels landing 10,001-50,000 lbs of snapper grouper	152	133	123	127	134			
Number of vessels landing more than 50,000 lbs of snapper grouper	20	32	29	27	28			
Number of permitted vessels	1059	1001	909	874	877			
Number of vessels with transferable permits*	828	782	721	697	718			
Number of vessels with non-transferable permits	231	219	188	177	159			
Number of dealer permits	271	269	268	251				

Source: NOAA Fisheries Service, Southeast Fisheries Science Center logbook database as of September 22, 2008 and NOAA Fisheries Service, Southeast Regional Office permits database. *Because of possible problems in estimation for 2006, the number of vessels with transferable permits seems low (697).

Amendment 18, under development, considers extension of the Council's jurisdiction to management of snapper grouper species in the Mid-Atlantic and New England Councils' jurisdictions, implement a gear endorsement program for golden tilefish, limit participation and the number of traps used in the commercial black sea bass pot fishery, implement rules on when pots need to be brought back to shore to minimize bycatch in the commercial black sea bass pot fishery, implementation of a spawning season closure for black sea bass and change the fishing year, and several data improvements for commercial and for-hire vessels.

Amendment 20, under development, considers revisions to the Wreckfish ITQ program. This includes consideration of ending the wreckfish ITQ program, redistribution of wreckfish shares, reallocation of shares belonging to deceased and inactive shareholders, among other actions.

Examples of Types of Catch Share Programs

Catch shares is a generic term used to describe management programs that allocate a percentage of the aggregate quota to individuals, entities, or communities. Catch share programs include ITQs, community development programs, LAP programs (allocation of harvest privileges to individuals, communities and "regional fishing associations"), sector allocation programs, cooperatives, and TURFs. The catch share programs for U.S. Federal fisheries are generally designed to enable fishermen to have more choices about when to fish, especially under what weather conditions and when market conditions and operating costs are more optimal. In many cases, the season is extended as a result of implementation of catch shares. Improved safety at sea and increased quality of fish product and development of niche markets generally occur with catch share programs. Some common concerns are that consolidation of those fisheries can reduce the number of fishermen and reduce the opportunities of new entrants into the fishery and make it difficult for fishermen with small annual quotas to increase their quotas to become more profitable. Therefore, if catch share programs are developed, the characteristics of the program are critical in striking a good balance to achieve various goals to make the program work well.

IFQ and ITQ Programs – ITQ programs are a type of IFQ program where the privileges are transferable. In many cases, these terms IFQ and ITQ are used interchangeably to describe a program where harvest privileges have been allocated to individuals in the form of a percentage of the aggregate quota, called a quota share. ITQ programs exist for Atlantic surf clams and ocean quahogs, North Pacific sablefish and halibut, Bering Sea groundfish, many Alaskan crab fisheries, Pacific groundfish trawl gear, SA wreckfish, GOM red snapper, and GOM Reef fish and tilefish.

Community Development Quotas (CDQs) Programs – CDQ programs describe a specific type of program developed in Alaska in 1992. The first CDQ Program began in December of 1992 with the goal of promoting fisheries related economic development in western Alaska. The program is a federal fisheries program that involves eligible communities who have formed six regional organizations, referred to as CDQ groups. There are 65 communities within a fifty-mile radius of the Bering Sea coastline who participate in the program.

The Western Alaska CDQ Program allocates a percentage of all Bering Sea and Aleutian Islands quotas for groundfish, prohibited species, halibut, and crab to eligible communities. The purpose of the CDQ Program is to (i) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the Bering Sea and Aleutian Islands Management Area; (ii) to support economic development in western Alaska; (iii) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and (iv) to achieve sustainable and diversified local economies in western Alaska.

The formation of the Western Alaska Community Development Association (WACDA) was authorized in amendments to the Magnuson-Stevens Fishery Conservation and Management Act in 2006. Federal statute (16 U.S.C. 1855(i)(1)(G) Administrative Panel) states that:

(i) There is established a community development quota program panel.

(ii) The panel shall consist of 6 members. Each entity participating in the program shall select one member of the panel.

(iii) The panel shall—
  (I) administer those aspects of the program not otherwise addressed in this paragraph, either through private contractual arrangement or through recommendations to the North Pacific Council, the Secretary, or the State of Alaska, as the case may be; and
  (II) coordinate and facilitate activities of the entities under the program.

(iv) UNANIMITY REQUIRED- The panel may act only by unanimous vote of all 6 members of the panel and may not act if there is a vacancy in the membership of the panel.

The Panel was established in 2006 as an independent nonprofit trade association to represent the six Community Development Quota entities that implement the Western Alaska CDQ Program. WACDA is governed by a six-member board of directors.

The existing CDQ programs have an administrative budget of about $60 million annually.

Sector Allocation Programs and Harvest Cooperatives - Sector allocation programs and cooperatives are very similar. Both are management strategies external to those included under Limited Access Privileges as defined in the reauthorized Magnuson-Stevens Act. Sector

allocation programs have been used in the Northeastern U.S. and have been defined as a group of persons who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time and which has been granted a TAC(s) in order to achieve objectives consistent with applicable FMP goals and objectives. Generally, quota is allocated to a sector or sectors based on aggregate catch histories of harvested stocks for vessels participating in the sector. Sector allocations are regulated through the regional Councils. Typically, the Council will require the sector to submit a management plan each year specifying how the sector's portion of the total TAC will be fished. While sectors sometimes consist of people using the same gear, this does not have to be the case. Sectors are often allowed to act as harvest cooperatives by coordinating their harvest activities.

Harvest cooperatives consist of a group of people voluntarily working together to harvest a portion of the TAC under the Fishermen's Collective Marketing Act. Harvest cooperatives enable cooperative members to coordinate harvest and other activities and thereby cut costs. Harvest cooperatives are typically also sectors with an allocation of the TAC they are allowed to manage with oversight. In this sense, sectors and harvest cooperatives are very similar. They are just regulated through different legislation.

Limited access privilege (LAP) programs – LAP programs include allocation of harvest privileges (percentage shares) of the aggregate quota to individuals, entities, communities and "regional fishing associations" (RFAs) (as defined by the Magnuson-Stevens Act and described below). Allocation of aggregate quota to individuals is essentially an IFQ or ITQ program (described above). Allocation of harvest privileges to fishing communities and RFAs are described below. Neither has been used yet, and there are, as yet, no guidelines, beyond that described in section 303A of the Magnuson-Stevens Act.

Fishing communities – Section 303A of the Magnuson-Stevens Act describes general eligibility requirements for communities to participate in a LAP program (see Appendix C). Fishing communities must (1) be located within the Council's jurisdiction; (2) meet criteria developed by the Council; (3) consist of residents who conduct fishing, processing, or fishery dependent support business within the Council's jurisdiction; and (4) develop and submit a community sustainability plan to the Council that shows how the plan will address the social and economic development needs of coastal communities for approval by the Council. The requirements state that anyone not complying with the sustainability plan will have their privileges denied or revoked and that those privileges may be reallocated to other eligible members of the fishing community. There are also requirements that the Council must consider certain factors when developing participation criteria. These include (1) traditional fishing or processing practices in and dependence on the fishery; (2) the cultural and social framework relevant to the fishery; (3) economic barriers to access to the fishery; (4) the existence and severity of projected economic

and social impacts of a LAP on harvesters, captains, crew, processors, and other substantially dependent businesses; (5) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and (6) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting and processing activities in the fishery.

Regional Fishing Associations (RFAs) – Regional Fishing Associations are defined in the reauthorized Magnuson-Stevens Act (Section 303A(c)(4)) as two or more individuals who participates in a limited access privilege program and combines their quota share allocation under a special program.

To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

a) be located within the management area of the relevant Council;

b) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

c) be a voluntary association with established by-laws and operating procedures;

d) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;

e) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is members contribute; and

f) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

In developing participation criteria for eligible regional fishery associations a Council shall consider:

a) traditional fishing or processing practices in, and dependence on, the fishery;

b) the cultural and social framework relevant to the fishery;

c) economic barriers to access to fishery;

d) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;

e) the administrative and fiduciary soundness of the association; and

f) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

Regional Fishery Associations (as defined by section 303A of the Magnuson-Stevens Act), like sectors, have both a group allocation (through the combined share allocations of its individual members) and, like cooperatives, have the ability to manage their harvest collectively. In comparing sector allocation and cooperatives to RFAs, RFAs are seen as having stronger harvest rights than membership in a sector or cooperative. In addition, LAPs provide Regional Fishery Association members with a divisible and transferable asset. That is, members of a RFA will likely be able to sell their LAPs. Members of a sector or cooperative cannot sell their membership.

Permit stacking

Permit stacking is a management tool wherby an individual or corporation is allowed to "stack" permits in order to double (in the case of two permits), triple (in the case of three permits), etc., his trip limit allowances. Trip limits have been used in the Pacific sablefish fishery.

Actions and Alternatives

Definitions

Shares – Shares are a **percentage of the commercial quota** owned by an individual or corporation.

Annual pounds—the **amount of pounds** (gutted weight) a catch share owner is ensured the opportunity to possess, land, or sell in a fishing year. The annual pounds for a catch share program is determined each year by multiplying the share percentage a catch share owner holds by the overall quota (e.g., ACL) for a stock, species group or a sector-quota (e.g., a sector-ACL) for a stock or species group.

Control date – A Council sometimes announces a control date in the Federal Register that notifies fishermen and the public that it cannot ensure that fishermen who enter a fishery after the control date will be included in the fishery if a limited access program is established.

Unlimited permit—a permit that allows a snapper grouper fisherman to harvest South Atlantic snapper and grouper species during a fishing trip, subject to regulations for the snapper grouper fishery. This permit is transferable.

Limited permit (225 pound)—permit that allows a snapper grouper fisherman to harvest a maximum of 225 pounds of South Atlantic snapper and grouper species (combined) during a fishing trip, subject to regulations for the snapper grouper fishery. This permit is not transferable.

Section A: Snapper Grouper Management Approaches

Action A1: Amend management of some snapper grouper species

Alternative 1: No action. Do not change management of some South Atlantic snapper grouper species.

Alternative 2: Establish new trip limits for one or more snapper grouper stocks.

Alternative 3: Allow permit stacking of unlimited snapper grouper permits.

Alternative 4: Establish endorsement programs for some snapper grouper species.

Alternative 5: Establish state-by-state quotas for some snapper grouper species.

Alternative 6: Implement rules for establishing cooperatives for some snapper grouper species.

Alternative 7: Establish a limited access privilege program for individual fishermen or corporations, or communities or regional fishing associations for some snapper grouper species.

Alternative 8: Establish TURFs for some snapper grouper species.

Discussion and rationale: Under Alternatives 1 and 2, fishermen, especially those with small recent catches would feel more assured of continuing eligibility to remain in the fishery. Some fishermen prefer Alternative 1 because by not being restricted by an individual quota, they might be able to harvest a larger amount of a species (total pounds and percentage of an annual quota) than the catch shares they would receive under an allocation catch share program based on landings history. Under Alternative 2, new trip limit measures or other effort reduction programs for snapper grouper stocks might improve the likelihood of preventing overfishing, but discard mortality could be problematic.

Under Alternatives 3 through 8, eligible fishermen would receive a known number of catch shares for a species or species group or gear category, and a known annual allocation (in

pounds) that would enable them to plan when and how often to fish. Under these alternatives the availability of fresh fish product for a species would likely be spread out more over the fishing year compared to a derby fishery where much of the fish product would need to be frozen and made available to fit consumer demand. This reduces seasonal product gluts for a species. Under state-by-state catch shares, the catch shares would first be divided by the states of North Carolina, South Carolina and Florida for different catch share programs (e.g., stocks or stock groups).

If Alternative 2 were chosen for some species or species groups, regulatory discards due to seasonal closure would decrease; however, incentives to high grade (discard smaller fish of lesser commercial value) would exist.

Under both Alternatives 1 and 2, some fisheries would continue to experience short-term fishing seasons because of low overall ACLs until the fish stock increases in abundance. Under all the alternatives, when a stock or stock sector's ACL is reached, a seasonal or annual closure would be necessary if fishery data indicates an ACL is reached or projected to be reached.

Section B: Limited Access Privilege Programs

Action B1: Species to include in LAP Program Definitions

Alternative 1. No action—Do not establish LAP programs for any species.

Alternative 2. Establish a LAP program for one or more of the following species:

a. Vermilion snapper
b. Golden tilefish
c. Black sea bass
d. gag
e. gag, black grouper and red grouper
f. Greater amberjack
g. Snowy grouper
h. Tilefishes
i. Deep-water groupers and queen snapper (snowy grouper, yellowedge grouper, misty grouper, blueline tilefish, and queen snapper)
j. Shallow water groupers (gag, red grouper, black grouper, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, coney, and scamp).

Action B2: Eligibility for Initial Allocation of Shares

Alternative 1: No action. Do not specify eligibility requirements.

Alternative 2. Restrict eligibility to valid commercial snapper grouper permit holders.

Alternative 3. Restrict eligibility to valid commercial snapper grouper permit holders and snapper grouper captains and crew.

Alternative 4. Restrict eligibility to valid commercial snapper grouper permit holders and federally permitted snapper grouper dealers.

Alternative 5. Restrict eligibility to valid commercial snapper grouper permit holders, permitted snapper grouper dealers and snapper grouper captains and crew members.

Discussion and rationale: This action establishes qualifications necessary to receive initial shares in various possible snapper grouper catch share programs. Eligibility requirements for the apportionment of initial catch shares are indispensable design features for a catch share program. The Magnuson-Stevens Act section 303A(c)(5)(E) requires that limited access privilege programs include persons who substantially participate in a fishery, but allows the Council to define substantial participation.

Under Alternative 1 anyone could be eligible for a catch share program for snapper grouper stocks. This would benefit those who would not qualify if Alternative 2, 3, 4 or 5 is chosen. However, this alternative would not reduce the number of participants in these fisheries.

Alternative 2 would restrict eligibility for initial catch share distribution to snapper grouper limited access permit holders.

Alternative 3 would make snapper-grouper captains and crew eligible for initial allocation in addition to limited access permit holders.

Alternative 4 would initially allocate shares to commercial limited access snapper grouper permits and federally permitted snapper-grouper dealers

Alternative 5 would consider valid commercial snapper grouper permit holders, permitted snapper grouper dealers and snapper grouper captains and crew members for initial eligibility for snapper grouper catch shares.

Action B3: Initial Allocation of LAPs

Alternative 1. No action. Do not specify a method for the initial allocation of LAPs.

Alternative 2. Distribute shares proportionately among eligible participants of a catch share program based on average annual landings from logbooks associated with current snapper grouper permits during a particular time period.

Alternative 3. Distribute catch shares proportionately among eligible participants based on average annual landings from logbooks associated with current snapper grouper limited access permit holders during the time period, A to B, with an allowance of dropping one year.

Alternative 4. Distribute X% of catch shares equally among eligible participants and distribute the remaining X% of catch shares based on average annual landings from logbooks associated with current snapper grouper limited access permit holders during the time period A to B, with an allowance of dropping one year.

Alternative 5. Distribute catch shares through an auction system. All eligible entities under Action B2 would be allowed to place bids.

Alternative 6. Initial allocation using tiers

Under an initial allocation methodology using tiers, two or more tiers would be established each with their own tier specific quota. The tier quotas would add up to the total aggregate quota or TAC for a particular species. Each tier would have different eligibility requirements and possibly different initial allocation methodologies. In this way, fishermen at different levels of participation in the fishery would qualify under different tiers. For example, fishermen with the largest amount of landings in the fishery (highliners) share a tier. Perhaps part-time fishermen would share another tier and fishermen who occasionally participate in the fishery would share a third tier. **Tiers offer a way for highliners, part-timers, and occasional fishermen to be preserved in a catch share program**. The quota for the tiers would be assigned prior to initial allocation and would reflect the portion of the fishery the council deems appropriate for that fishing tier. If part-time fishermen are highly valued, they would receive a tier quota to reflect that value.

Tier System Eligibility Requirements **Example**:

Tier 1 (highliners):	Minimum xx,xxx pounds landed between some span of years to qualify for initial allocation in Tier 1
Tier 2 (part–timers):	Between x,xxx and xx,xxx pounds landed between some span of years to qualify for initial allocation in Tier 2
Tier 3 (intermittent participation):	Between 0 and x,xxx pounds landed between some span of years to qualify for initial allocation in Tier 3

The initial allocation methodology used could vary between tiers or be the same across tiers.

Discussion and rationale: Under Alternative 1, a LAP program could not be developed. Under Alternatives 2 through 6, a LAP program could be developed. Section 303A(c)(5)(A) requires that when developing a LAP program to harvest fish, a Council or the Secretary shall establish procedures to ensure fair and equitable initial allocations including consideration of: current and historical harvests; employment in the harvesting and processing sectors; investments in

and dependence upon the fishery; and the current and historical participation of fishing communities.

It should be noted that landings by permit exists only from late 1998 through the present; logbooks are available prior to 1999, but cannot be linked back to snapper grouper permits.

Action B4. Substantial participants

Alternative 1: No action. Do not establish a definition for substantial participants.

Alternative 2: Define substantial participants as those who can participate in the program by buying shares or annual pounds after the program is established, but would not be considered for initial allocation of catch shares (Phil Steele's recommendation).

Action B5. VMS Requirement

Alternative 1: No action. Do not require commercial snapper grouper vessels to be equipped with vessel monitoring systems (VMS).

Alternative 2: Require all commercial snapper grouper vessels (those with transferable (limited access) permits and those with trip-limited permits) to be equipped with VMS. The purchase, installation and maintenance of VMS equipment must conform to the protocol established by NOAA Fisheries Service in the Federal Register.

Option 2a) the purchase, installation, and maintenance of the VMS equipment and communication costs will be paid for or arranged by the owner of the catch shares.

Option 2b) the purchase, installation, and maintenance of the VMS equipment and communication costs will be paid for or arranged by NOAA Fisheries Service.

Option 2c) the purchase, installation, and maintenance of the VMS equipment and communication costs will be paid for jointly by the owner of the catch shares and NOAA Fisheries Service.

Option 2d) the purchase, installation, and maintenance of the VMS equipment and communication costs will be paid for by NOAA Fisheries Service. Communication costs will be paid for or arranged by the owner of the catch shares.

Discussion and rationale: Effective monitoring and strict enforcement are essential for catch share programs to succeed. In the absence of effective monitoring and enforcement, catch share programs could increase a fishermen's incentive to under-report their catches.

Action B6: Multiuse Annual Pounds and Trip Allowance

Alternative 1: Do not establish multiuse annual pounds or trip allowances.

Alternative 2: Establish multiuse annual pounds or trip allowances.

Discussion and rationale: Multiuse annual allocation and trip allowances allow fishermen to use a small portion of their allocation for one species to harvest another stock that would otherwise be discarded because the fishermen does not possess allocation for that stock . Species, if any to be determined by the Council.

Action B7: Transferability of Shares

Alternative 1: No action. Don't allow transferability of shares.

Alternative 2: Allow shares to be transferred between owners of snapper grouper permits.

Alternative 3: Allow shares to be transferred between persons who are U.S. citizens or permanent resident aliens.

Discussion and rationale: Under Alternative 1, not allowing transfer of shares could cause serious efficiency issues, as individuals with small initial allocations might not be able to economically fish or sell those quota shares to those who can. Allowing transfer of catch shares would give fishermen more flexibility (Alternatives 2 and 3). For example, if a fishermen's health was not good, he/she could sell some or all his remaining shares for the fishing year. Allowing transfer of catch shares during the last portion of a fishing year (e.g., the last quarter) might increase the likelihood of an ACL being exceeded. Alternative 2 would allow transfer of catch shares to any fisherman who is a U.S. citizen or permanent resident alien while Alternatives 3 and 4 would allow transfer of catch shares to U.S. citizens or permanent resident aliens who are also shareholders in the snapper grouper fishery.

Action B8: Transferability of Annual Pounds

Alternative 1: No action. Don't allow transferability of annual pounds.

Alternative 2: Allow annual pounds to be transferred between owners of snapper grouper permits.

Alternative 3: Allow pounds to be transferred between persons who are U.S. citizens or permanent resident aliens.

Action B9: Caps on Share Ownership for Each Species or Species Grouping

Alternative 1: No action. Shares would not have ownership caps.

Alternative 2: Adopt a cap on share ownership. Anyone receiving shares that were less than the share cap could purchase additional shares up to that amount of the share cap within a fishing year. Share holdings of persons receiving more than the specified ownership cap will be grandfathered in (i.e., allowed a higher total catch share for a share category) at the time of initial assignment of catch shares to each shareholder.

Option 2a: W percent would be maximum share percentage of catch shares of a quota for a catch share category.

Option 2b: X percent would be maximum share percentage of catch shares of a quota for a catch share category.

Option 2c: Y percent would be maximum share percentage of catch shares of a quota for a catch share category.

Alternative 3: No person shall own more catch shares than the maximum percentage issued to the recipient of the largest amount of shares at the time of initial assignment of shares for a share category.

Discussion and rationale: LAP programs are required to ensure that share holders do not acquire an excessive share of the total limited access privileges in a program (see section 303A(c)(5)(D)). Possible benefits to using a cap on shares include: (1) prevention of a monopoly or oligopoly ownership to the point shareholders control ex-vessel process, (2) higher levels of production and employment if the fishery transitions to more participants, prevention of some changes in the structure of fishing communities, and greater feelings of equity among participants. Caps could limit the level of economic efficiency if the caps are set too low, especially for owners of larger vessels. If the cap is set below the historical maximum share then those participants above the cap are typically grandfathered in at their historical share. Sale of the grandfathered sales may have restrictions. Caps apply to shares owned individually and by corporations.

Action B10: Caps on Annual Pounds Ownership

Alternative 1: No action. Do not set a cap on catch share annual pounds ownership.

Alternative 2: For a catch share category, set a cap on the annual pounds ownership corresponding to the share cap as defined in Action B8, times the annual quota. For any single fishing year, no person shall possess annual pounds in an amount that exceeds the annual pounds cap. However, persons grandfathered in at the time of share cap reapportionment or under the no action alternative under Action B3 would also be grandfathered in for more than the annual pounds cap.

Discussion and rationale: Alternative 1 would not constrain the amount of annual pounds that can be owned by a participant in a snapper grouper catch share program each year. This would allow people to have as much annual pounds as they could obtain which could concentrate the annual pounds to just a few people within a given year. This would have a negative impact on others who meet the qualifications to own shares but could not buy any annual pounds from others. Alternative 2 would set the total pounds cap to correspond to the "catch share ownership cap" established in Action B8.

Action B11: Cap on Overall Quota Share Owned

Alternative 1. No action. Do not set a cap on the aggregate amount of quota share owned.

Alternative 2. Set a cap on the aggregate amount of quota share owned as the sum of the maximum allocation held in each species or species grouping.

Action B11: Allocation of Annual Pounds when there is a Change in the Commercial Quota

Alternative 1: No action. Do not allocate annual pounds for share holders.

Alternative 2: Distribute annual pounds proportionally among shareholders, made available due to an increase or decrease in commercial quota based on share holding at the time of distribution.

Alternative 3: Distribute annual pounds equally among shareholders, made available due to and increase or decrease in commercial quota.

Discussion and rationale:

Alternative 1 would not enable the overall fishery to reach a catch amount at or near the annual catch target or annual catch limit, whichever measure is chosen as the overall catch target for a catch share category for a fishing year. Alternatives 2 and 3 would likely enable individual fishermen to reach their individual annual pounds and the overall fishery to reach its catch quota and achieve optimum yield.

Action B12: Incidental Catch Provisions

Alternative 1: No action. Do not allow incidental catch amounts for snapper grouper species for fishermen who do not hold catch shares for a catch share category in the snapper grouper fishery, other than those fishermen who hold a snapper grouper "trip-limited permit."

Alternative 2: Allow small incidental catch amounts for a snapper grouper species for fishermen who do not hold catch shares for a catch share category in the snapper grouper fishery even if they do not hold a snapper grouper trip-limited permit.

Note: this could vary with each catch share category, or could be a combined amount less than 225 lb, since not all snapper grouper species would be under a catch share category

Discussion and rationale:

Alternative 1 would not allow for incidental catch of snapper grouper species for fishermen who do not hold a snapper grouper transferable permit or non-transferable permit.

Action B13: Banking Unused Amounts of Annual Pounds

Alternative 1: No action. Do not allow catch share holders to bank unused amounts of annual pounds or a percentage of unused allocations in the subsequent fishing year.

Alternative 2: Allow banking of unused amounts of annual pounds for use in the subsequent fishing year.

Alternative 3: Allow banking of a percentage of unused annual pounds for use in the subsequent fishing year.

Discussion and rationale:

Alternatives 2 and 3 would give catch share holders more flexibility by allowing them to bank unused annual pounds or a set percentage of their unused pounds in the subsequent fishing year. However, because the number of fishermen who would elect to bank unused annual pounds and the amount of unused annual pounds that are banked could vary greatly from one year to the next, the overall stock's ACL or sector ACL might be exceeded. Under Alternative 1, the Magnuson-Stevens Act's objective of preventing overfishing with ACLs and AMs would be easier to achieve in the current fishing year. A possible benefit of Alternatives 2 and 3 is that uncaught fish might have another year to spawn; hence stock abundance might be improved.

Action B14: Borrowing a Portion of Future Annual Pounds

Alternative 1: No action. Do not allow borrowing of any future year's annual pounds.

Alternative 2: Allow limited borrowing of a subsequent year's annual pounds. After exhausting annual pounds, the catch share holder is allowed to borrow annual pounds from the following year in limited amounts as specified below:

Option 2a) up to X percent of total annual pounds.

Option 2a) up to Y percent of total annual pounds.

Option 2a) up to Z percent of total annual pounds.

Discussion and rationale:

Alternative 2 would give catch share owners more flexibility by allowing them to borrow a set maximum percentage of their annual pounds from the subsequent fishing year. Under Alternative 1, the Magnuson-Stevens Act's objective of preventing overfishing with ACLs and AMs would be easier to achieve in the current fishing year.

Action B15: Establishment and Structure of an Appeals Process

Alternative 1: No action. No appeals process will be established if catch share programs are established for various snapper grouper stocks or stock complexes and a fishermen believes he/she has been omitted from the catch share program or not been allocated the correct amount of shares based on eligibility criteria described for a catch share category.

Alternative 2: The Regional Administrator (RA) will review, evaluate, and render final decision on appeals. Filing of an appeal based on landings data must be completed [and submitted] within 90 days of the effective date of the final regulations implementing any catch program for any catch share category. Hardship arguments will not be considered. The RA will determine the outcome of appeals based on NOAA Fisheries [snapper grouper] logbooks. If NOAA Fisheries [snapper grouper] logbooks are not available, the RA may use state landings records. Applicants must submit NOAA Fisheries [snapper grouper] logbooks to support their appeal.

Alternative 3. Other?

Discussion and rationale: Alternative 1 would not comply with section 303A(c)(1)(l). Under Alternative 2, fishermen would be allowed to appeal their initial catch shares based on evidence that there are errors in their logbook data. Initial eligibility and distribution of catch shares and allocation can be one of the most controversial aspects of a catch share program. Section 303A(c)(1)(I) of the Magnuson-Stevens Act requires limited access privilege programs to include an appeals process regarding initial allocation. An appeals process would provide a formal process for hearing and resolving disputes regarding the initial distribution of catch shares and allocation. The Council and NOAA Fisheries Service would require those with disputes to state the nature of the dispute in a letter, and include information to support their claim. None of the alternative appeals processes considered by the Council would allow for consideration of hardship arguments. Landings data for appeals would be based on NOAA Fisheries Service's logbooks. If NOAA Fisheries Service logbooks are not available, the persons reviewing the appeal may use state landings records.

Action B16: Set Aside for Appeals

Alternative 1: No action. Do not set aside shares for appeals.

Alternative 2: A total of X percent of the current commercial quota for a share category would be set aside to resolve appeals. Any amount remaining in the X-percent set aside after the appeals process has been terminated will be proportionally distributed back to catch share holders for a catch share category. Also need to add provision if set aside is exceeded that shares would be adjusted in subsequent fishing year.

Alternative 3: A total of Y percent of the current commercial quota for a share category would be set aside to resolve appeals. Any amount remaining in the X-percent set aside after the appeals process has been terminated will be proportionally distributed back to catch share holders for a catch share category. Also need to add provision if set aside is exceeded that shares would be adjusted in subsequent fishing year.

Discussion and rationale:

Under Alternative 1, if the RA decided in favor of an appeal by a fisherman for additional catch share (i.e., higher proportion of landings from the overall quota), it's uncertain where the allocation would come from within a catch share's overall quota. Alternatives 2 and 3 would provide a means to give a fisherman a higher catch share amount of the overall quota if a fisherman won an appeal submitted to the RA.

Action B17: Set aside for research or experimental fishery

Alternative 1: No action. Do not set aside annual pounds for research or an experimental fishery

Alternative 2: A total of X percent of the current commercial quota for a share category would be set aside to for research or an experimental fishery. Any amount remaining in the X-percent set aside after the time for application and approval/disapproval for research or an experimental fishery has ended (e.g., by end of May or June) will be proportionally distributed back to catch share holders for a catch share category.

Discussion and rationale: Alternative 1 would not establish a procedure for a set aside of a portion of the annual catch share allocations for a catch share category for research or an experimental fishery. Under Alternative 2, the possibility would exist that in a new fishing year, the Council could solicit proposals for research related to the snapper grouper fishery that give vessel owners conducting the experimental fishery some allocation of a catch share category that he/she could retain for sale.

Action B18: Use it or Lose it Policy for Catch Shares

Alternative 1: No action. Do not specify a minimum landings requirement for retaining catch shares for various catch share categories.

Alternative 2: Catch shares for a catch share category that remain inactive for X years will be revoked and redistributed proportionately among remaining shareholders for that catch share category. "Inactive" is defined as less than A percent of the aggregate annual average utilization of allotted catch shares for a catch share category over a three-year moving average period, except in the case of death or disability.

Alternative 3: Catch shares for a catch share category that remain inactive for Y years will be revoked and redistributed proportionately among remaining shareholders for that catch share category. "Inactive" is defined as less than A percent of the aggregate annual average utilization of allotted catch shares for a catch share category over a three-year moving average period, except in the case of death or disability.

Alternative 4: Catch shares for a catch share category that remain inactive for X years will be revoked and redistributed proportionately among remaining shareholders for that catch share category. "Inactive" is defined as less than B percent of the aggregate annual average utilization of allotted catch shares for a catch share category over a three-year moving average period.

Alternative 5: Catch shares for a catch share category that remain inactive for X years will be revoked and redistributed proportionately among remaining shareholders for that catch share category. "Inactive" is defined as less than B percent of the aggregate annual average utilization of allotted catch shares for a catch share category over a three-year moving average period.

Note: Also the three-year moving average could be revised to be some other number of years in one or more alternatives.

Discussion and rationale:

The use-it-or-lose-it concept is intended to prevent catch share owners from holding shares and not fishing them. Commercial fishermen are expected to use catch shares they hold to generate revenue, rather than forgo potential income by not using catch shares they own. This action would establish a limit on how long a person may hold onto catch shares and not fish them. The action would also establish a fishing activity threshold for maintaining catch shares. The alternatives are intended to balance the valid health and equipment issues that could prevent a fisherman from using all or some shares for a period of time against the need for continued domestic supply of SA snappers and groupers. Leasing annual allocation would be considered as a use of one's catch shares. Alternative 1 is not as likely as the other alternatives to guarantee a continued high amount of domestic supply of SA snapper and grouper stocks managed by catch shares (i.e., OY would not likely be achieved). Alternatives 2 through 5

would establish various amounts for constitutes an “inactive” catch share and time period (number of years) used as the basis for an inactive catch share.

Action B19: Cost Recovery Plan

Alternative 1: No action. Do not establish a cost recovery plan for snapper grouper catch share categories.

Alternative 2: Implement catch share cost recovery plans for catch share categories. All catch share cost recovery fees shall be the responsibility of the recognized catch share holder. The cost recovery plan will have the following conditions:

Option 2a: Catch share cost recovery fees will be calculated at the time of sale of fish to the registered catch share dealer based on the (i) actual ex-vessel value of the snapper grouper catch share category landings or (ii) the standard ex-vessel price of landings as calculated by NOAA Fisheries Service. Actual ex-vessel value is total monetary sale amount fishermen receive for catch share landings from registered catch share dealer/processors operating as shore-side processors. Standard ex-vessel price is the ex-vessel price for the previous fishing year and any expected price changes for the current fishing year.

Option 2b: The fee collection and submission shall be the responsibility of the (i) catch share holders or the (ii) catch share dealer.

Option 2c: The collected fees would be submitted to NOAA Fisheries (i) quarterly or (ii) monthly.

Discussion and rationale: Alternative 1 would be in violation of the Magnuson-Stevens Act requirements. Section 304A(d)(2)(B) of the Magnuson-Stevens Act, requires that the Secretary of Commerce collect a fees to recover the actual costs directly related to management, data collection, and enforcement of any limited access privilege program. These fees shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at the time of landing, filing of a landing report or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish are harvested. Alternative 2 probably would comply with the M-S Act requirements.

Action B20: Guaranteed Loan Program

Alternative 1: No action. Do not establish a catch share loan program.

Alternative 2: Set aside X% of cost recovery fees to establish a guaranteed loan program.

Alternative 3: Set aside Y% of cost recovery fees to establish a guaranteed loan program.

Discussion and rationale: Following the allocation of catch shares, individuals who want to participate in the LAP program or add to their quota holdings have to buy shares if they are deemed eligible. It may be difficult, especially for small operations, to gather the funds necessary for the share purchase. This action considers management alternatives that could facilitate the acquisition of catch shares by establishing a guaranteed loan program financed with a portion of cost recovery funds. Alternative 1 would not establish a catch share loan program. Under this alternative, individuals would have to use private means to pay for catch shares that they want to obtain. Alternatives 2 and 3 use varying proportions of cost recovery fees collected.

Action B21. New Entrants Program

Alternative 1: No action. Do not create provisions that assist new fishermen in entering a catch share program for a given catch share category.

Alternative 2: Set aside X % of the annual overall pounds for a LAP category each year to give some "trip limited" snapper grouper permit holders the opportunity to become shareholders. Note: the percent set aside could vary with catch share categories.

Alternative 3: Set aside X % of the annual overall pounds for a LAP category each year to give fishermen not in the snapper grouper fishery an opportunity to become limited access snapper grouper permit holders and catch share owners. Under Alternative 3, new entry into a catch share program might occur at a cheaper cost to a fisherman if some catch shares are available through a set aside program for new fishermen.

Discussion and rationale: Under Alternative 1, a fisherman could become a shareowner only if he/she purchases shares from a current shareowner for a catch share category. Under Alternatives 2 and 3, new entry into a catch share program might occur at a cheaper cost to a fisherman if some annual pounds are available through a set aside program for new fishermen.

Action B22: Approved Landing Sites

Alternative 1: No action. Do not establish approved landing sites for the various snapper grouper LAP programs.

Alternative 2: Establish approved landings for some or all of the different LAP programs. All catch share owners must land at one of these sites to participate in the LAP program.

Option a: Approved landing sites will be requested by fishermen but must be approved by NOAA Fisheries Service Office of Law Enforcement prior to use.

Option b: Approved landing sites will be selected by the Council and NMFS, based on industry recommendations and resource availability.

Discussion and rationale: Effective monitoring and strict enforcement are essential for catch share programs to succeed. Catch share programs could increase a fishermen's incentive to under-report their catches. Enforcement difficulties may be further increased by the number and dispersion of authorized landing sites and dealers.

Action B23: Collection of Royalties from Resource Use

Alternative 1: No action. Do not collect royalties from shareholders for use in the snapper grouper fishery.

Alternative 2: Hold an annual auction of portions of the shares in the snapper grouper fishery. Place funds collected through the auction into an account where the funds help pay for snapper grouper fishery management, research, and enforcement. This implies an annual expiration provision for a portion of the shares.

Alternative 3: Collect "super profits from shareholders annually through an annual fee.

Discussion and rationale: Under section 303A(c) of the Magnuson-Stevens Act, "a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial or any subsequent distribution of allocations in a limited access privilege program if: (1) the system is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of section 303A, and revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations."

Action B24: Expiration provision

Alternative 1: No action. Do not define an expiration provision for the LAP program.

Alternative 2: Define shares so they expire every 5 years with a start date upon implementation of this Amendment.

Alternative 3: Define shares so they expire every 10 years with a start date upon implementation of this Amendment.

Alternative 4: Define shares so they expire every X number of years with a start date upon implementation of this Amendment.

Action B25. Establish criteria for allocation of LAPs to communities

Alternative 1: No action. Do not establish criteria for community allocation of LAPs to communities.

Alternative 2: Establish criteria for allocation of LAPs to communities.

Discussion and rationale: See section 303A(c)(3).

Action B26. Establish criteria for allocation of LAPs to regional fishery associations (RFAs)

Alternative 1: No action. Do not establish criteria for allocation of LAPs to regional fishery associations.

Alternative 2: Establish criteria for allocation of LAPs to regional fishery associations.

Discussion and rationale: See section 303A(c)(4).

Action B27. Referendum

Alternative 1: No action. Do not conduct a referendum to assess support for the LAP program developed.

Alternative 2: Conduct a referendum to assess support for the LAP program developed.

Section C: Endorsement Programs Actions/Issues

One of the effort management alternatives in this Options Paper would be an endorsement program to address overcapacity problems and rationalizing the snapper grouper fishery.

Action C1. Minimum Harvest Threshold for Endorsements

Alternative 1: No action. Do not specify minimum harvest thresholds for snapper grouper endorsements

Alternative 2: The minimum harvest threshold for a snapper-grouper endorsement to the snapper grouper limited access fishery will be based on average annual landings during the qualifying years for all snapper grouper stocks of:

Option 2a: one pound (by gear)

Option 2b: X pounds (by gear)

Option 2c: Y pounds (by gear)

Alternative 3: The minimum harvest threshold for a snapper-grouper endorsement to the snapper grouper limited access fishery **by fishing gear** will be based on average annual landings during the qualifying years for all snapper grouper stocks of:

Option 2a: one pound

Option 2b: X pounds

Option 2c: Y pounds

Discussion and rationale: An endorsement program under either Alternative 2 or 3 might reduce the number of transferable permit holders in the snapper grouper fishery. Alternative 1 would have no effect on the number of transferable permit holders.

Action C2. Qualifying Years.

Alternative 1: No action. Do not specify qualifying years for endorsement eligibility.

Alternative 2: The qualifying years for obtaining one or more endorsements to the snapper grouper fishery would be from year A through B.

Alternative 3: The qualifying years for obtaining one or more endorsements to the snapper grouper fishery would be from year A through B, with an allowance to drop one year.

Discussion and rationale: Under Alternative 1, there would be no basis for selecting landings to apply to Action C1. Under Alternatives 2 and 3, the years chosen would be the same except Alternative 3 would allow the year with lowest landings to be dropped. It should be noted that logbook data can be associated to permits back to 1998 but no earlier.

Section D: State-by state quotas

Action F1: Establish criteria for state-by-state quota programs

Alternative 1: No action. Do not establish criteria for state-by-state quota programs.

Alternative 2: Establish criteria for state-by-state quota programs.

Section E: Cooperatives

Action F1: Establish criteria for cooperatives

Alternative 1: No action. Do not establish criteria for cooperatives.

Alternative 2: Establish criteria for cooperatives.

Section F: TURFs

Action F1: Establish criteria for TURF programs

Alternative 1: No action. Do not establish criteria for TURFs.

Alternative 2: Establish criteria for TURFs.

Section G: Trip Limits

Action G1: Establish New Trip Limits

Alternative 1: No action. Do not establish new trip limits.

Alternative 2: Establish new trip limits.

Appendix A. Snapper Grouper LAP Exploratory Workgroup Report

Report of the Limited Access Privilege Program Exploratory Workgroup

April 1, 2008

Workgroup participants:

Ben Hartig, Chair, voting member
Chops Cowdrey, Co-Chair, voting member
Scott Baker, non-voting member
Robert Cardin, voting member
Phil Conklin, voting member
Jack Cox, voting member
Doug Gregory, non-voting member
Bruce Irwin, voting member
Mark Marhefka, voting member
Sean McKeon, voting member
Charlie Phillips, voting member
Paul Raymond, non-voting member
John Reed, non-voting member
Steve Shelley, voting member
Amber Von Haarten, non-voting member
Dan Whittle, voting member
Scott Zimmerman, voting member

I. Introduction

Meeting Schedule and LAP Program Exploratory Workgroup Task

The Limited Access Privilege Program Exploratory Workgroup (hereafter referred to as the "LAP Workgroup") met eight times between April 2007 and February 2008. The meetings were held as follows with the final meeting in March 2008 consisting of a presentation of this report to the LAP Committee:

Meeting Dates and Times in 2007	Meeting Locations
April 24th at 1pm – April 26th at 3pm	Charleston, SC
June 12th at 1pm – June 13th at 3pm	Key West, FL
August 1st at 1pm – August 2nd at 3pm	North Charleston, SC
September 18th at 1pm – September 19th at 3pm	North Myrtle Beach, SC
October 16th at 1pm – October 17th at 3pm	North Charleston, SC
December 5th at 8:30am – December 6th at 3pm	Atlantic Beach, NC
January 15th at 1pm – January 16th at 3pm	North Charleston, SC
February 12th at 1pm – February 13th at 3pm	North Charleston, SC
March 6th at 2:30pm – 4:30pm	Jekyll Island, GA

This document summarizes the results of the LAP Workgroup meetings. The document is an outline, if an LAP program is implemented for the commercial snapper grouper fishery, of what the LAP Workgroup would like to see a limited access privilege program look like if applied to the South Atlantic commercial snapper grouper fishery. This document is intended to assist the Council in deciding: 1) if a limited access privilege program is appropriate for the snapper grouper fishery; and 2) how a limited access privilege program might be structured. In this document, the LAP Workgroup has provided options for the design of a LAP program. The LAP Workgroup has also made motions regarding their preferences for various options presented and the reasoning behind these preferences.

The Limited Access Privilege Program Committee (formerly known as the Controlled Access Committee) has requested consensus opinion by the LAP Workgroup on choosing preferences for various limited access privilege program characteristics when possible. However, when consensus is not possible, the LAP Program Committee has requested that a vote be taken and both a majority and minority opinion report submitted.

Appropriateness of LAPs for the Snapper Grouper Commercial Fishery

As a first step toward discussion of the use of LAPs in management of the South Atlantic commercial snapper grouper fishery, the LAP Workgroup discussed the appropriateness of LAPs for the fishery. To begin this conversation, the group discussed various possible benefits and drawbacks of LAP implementation. While, as a group, the LAP Workgroup was undecided on the overall positive or negative effect a LAP might have, the LAP Workgroup documented the following initial perceptions of possible conservation, economic, and social benefits and drawbacks for the South Atlantic snapper grouper fishery under a LAP:

Possible Benefits

- Conservation Benefits
    - Reduction of bycatch mortality if "full retention" implemented and/or size limits are decreased or eliminated as part of a LAP
    - Decrease in the likelihood of commercial quota overages
    - Improvement in data quality
    - Incentive to fish more selectively
    - Increased incentive to improve stock status

- Economic Benefits
    - Elimination of trip limits would enable more harvest timing flexibility
    - Elimination or reduction of size limits might benefit harvesters by decreasing time spent fishing
    - Increased flexibility due to divisibility of harvest privileges compared to permits. This would enable leasing of privileges due to hardship, etc.
    - Possible long-term increase in access to capital (through banking facilities) due to increased profitability and financial and management stability
    - Possible improved operational efficiency of vessels
    - Improved profitability of the fleet as a whole due to consolidation of the fleet
    - Simplification of management complexity in the long-term
    - Increased economic stability which creates an incentive for fishermen to become vested in the fishery perhaps more heavily than other options
    - No closure of total fishery
    - Possible increase in efficiency resulting in financial gains
    - Higher TACs could raise ex-vessel revenue
    - Owners receive a sellable, divisible asset
    - Many departing fishermen may receive a higher compensation that under the current system

- Social Benefits
    - Increase in "professionalization" of the fleet
    - Possible consolidation of harvest and processing activities in certain communities
    - LAPP most likely the smoothest and most economically efficient method of consolidation

Possible Drawbacks

- Conservation Drawbacks
    - Elimination or reduction of size limits may decrease reproductive capacity of the stocks
    - Possible redirection of effort and profits into non-LAP fisheries

- Economic Drawbacks
    - Elimination or reduction of size limits might result in landings that cannot be sold
    - Possible decrease in reward for hard work due to elimination of trip limits which allows fishermen to make as many trips as they want until the commercial quota is met
    - Possible increase in short-term and possibly long-term management complexity
    - Increased costs of monitoring
    - Increase in enforcement costs for states without a Joint Enforcement Agreement
    - Possible increase in federal and state enforcement costs due to increased FTE requirements
    - Possible increase in costs associated with decrease in the ability to do back to back trips due to hailing in requirements and landings timing allowances
    - Possible business impacts (dealers, etc.) due to change in seasonality of landings. A certain amount of landings are required throughout the year to keep fish houses operational. There might also be a loss of flexibility for the dealer/fish house due to permanence of initial allocation.
    - Possible impacts to fishermen of initial allocation if historical landings were hindered by adverse circumstances
    - Inability to increase landings when needed without purchasing more share or pounds
    - Full retention may have economic downside and may not be needed since several of the species have good survival rates
    - Possible change in crew share
    - Cost of buying quota from existing fishermen may consume much if not the majority of the gains from a LAPP
    - Two major risks of an LAPP: a) insufficient monitoring and enforcement and b) insufficient management of the recreational fishery
    - Possible negative impacts on specific communities as a result of movement of effort from one community to another
    - Possible negative impacts to specific communities as a result of initial allocation

- Social Drawbacks
    - Possible decrease in crew employment
    - Possible consolidation of harvest and processing activities in certain communities
    - Possible community impacts (dealers, etc.) due to change in seasonality of landings

- Possible increase in "armchair fishermen" who sell annual allocation and do not fish their quota share
- Possible increase in quota share owned by processors and dealers looking to vertically integrate
- Inability for many to access enough money to purchase the quota share or annual allocation necessary to participate in the fishery
- Possible negative impact on some community's cultural heritage that has developed as a result of commercial fishing in those communities

In general, at first, the LAP Workgroup was undecided as to whether they thought LAPs were an appropriate management tool to apply to all regions of the South Atlantic coast. However, being tasked by the Council to develop a possible LAP for consideration, they continued to explore the various options that go into designing a LAP with particular focus on the options that would address many of their concerns. That is, they developed a set of LAP program characteristics they preferred to see ***if*** a LAP program was implemented for the South Atlantic commercial snapper grouper fishery.

The Workgroup has made a good faith effort to provide options for designing a LAP program for the snapper grouper commercial fishery that could achieve a number of management goals and objectives. Some workgroup members see strong potential in adopting a LAP program for the commercial snapper grouper fishery, provided it is enforced, there is money to pay for it, and that there are tangible economic and conservation benefits resulting from it. Others do not see potential. Some were undecided. The workgroup is not ready to reach consensus on whether a LAP is appropriate for this fishery because it has not yet had sufficient information to fully analyze a range of alternatives. Some Workgroup members think an amendment might lay out these details to the desired extent. An anonymous survey was distributed to Workgroup voting members (12 people) at the last meeting of the LAP Workgroup. Eleven people handed in the survey. Fifty-five percent (6 people) agreed with the statement that they saw "a strong potential in adopting a LAP program for the snapper grouper fishery, provided it is enforced, there is money to pay for it, and that there are tangible economic and conservation benefits resulting from it". Two people (18%) disagreed with this statement and 3 people (27%) were undecided. Five people agreed with the statement that "the Council should move forward with development of alternatives for a LAP program under an amendment to the Snapper Grouper FMP". Four people were undecided and two people disagreed with regard to this statement. Three people who agreed with the statement that they saw strong potential for a LAP under the above conditions were undecided or disagreed with the statement that the Council should move forward with developing alternatives.

The Workgroup feels that the Council should pick up where the LAP Workgroup left off and develop a range of alternatives that include details on monitoring, enforcement, and fishermen costs. Fishermen can then consider a LAP with these details before taking a position in a fishery wide referendum.

<u>Specific Concerns of the LAP Workgroup - Summary</u>

- **In order for a LAP to be successful, there must be better science to produce TACs that track real changes in stock abundance.** Some LAP Workgroup members feel that the TAC must increase over time for species with or needing rebuilding plans in order for fishermen historically invested in the fishery to survive. Therefore, some LAP Workgroup members support additional data gathering and management tools (such as real time landings data recording and video monitoring) that are expected to improve the data that the Council has access to in making decisions. The LAP Workgroup would like to have some guarantee that if LAPs are used, when stocks increase, commercial quota will be increased.

- **When initial allocation occurs, allocation of quota share will have to be sufficiently high in order for fishermen historically invested in the fishery to survive. This may necessitate eligibility requirements that specify that in order to receive quota in the initial allocation, the permit holder must have landed some minimum number of pounds for certain species. Alternatively, some LAP Workgroup members felt that income requirements to remain in the fishery or a similar method for decreasing capacity may be appropriate and necessary prior to implementation of a LAP.** Some LAP members have significant historical landings that would likely result in relatively large quota share allocations for species they fish for. But, when converted into pounds, the amount would be inadequate to support their fishing business due to recent or expected decreases in the TAC. They predict that they would have to leave the fishery or buy pounds each year to continue fishing. This could be less profitable than their profitability under the status quo (even if the status quo involved a derby fishery). However, depending on the species they have historical landings in, it is possible they could sell their allocation each year given that it could be quite valuable as a result of a low TAC compared to historical levels.

  If TAC levels for particular species are relatively low compared to historical levels, some fishermen prefer status quo management, even if this results in a derby fishery because current management (or even a derby fishery) allows them the flexibility to increase effort when TACs decline. A LAP does not allow for this. For fishermen that have specialized in catching species that have experienced recent TAC declines (ex: vermilion, gag, snowy grouper, golden tilefish), they expect to fair better under status quo management. However, it is unknown how a derby fishery for some species would affect the market. Under a derby fishery, fishermen could see ex-vessel prices decline resulting in higher landings for that individual but equal or lower profits compared to other possible management schemes (LAPs, days at sea, etc.). These same fishermen prefer a LAP if the TAC is high enough to allow them a quota share that translates into a pounds allocation they can survive on. The uncertain status of the vermilion population makes support of a LAP for vermilion tenuous. Therefore, while the LAP Workgroup is attempting to design a program that protects fishermen historically invested in the fishery, they realize that a LAP may not benefit some fisherman for some species, largely due to the recent (or expected) decrease in the TAC.

Fishermen or dealers on the LAP Workgroup that have historically caught (or hold landings history for) a large number of different species in the snapper grouper complex feel that they will likely benefit from an LAP. Fishermen or dealers on the LAP Workgroup that have specialized in stocks that have seen large decreases in the TAC or expect to see large decreases soon, feel that an LAP will not benefit them as much as a derby fishery.

- **No program including LAPs will be successful unless and until serious recreational accountability measures are put in place by the SAFMC.**

- **Some LAP members were concerned with how transferability of quota share and annual allocation (pounds) would affect distribution of landings geographically and what affect this would have on the economies of local communities and the culture that has been cultivated around the fishing industry's presence in that community**.

- **Some LAP members felt that sector allocation, cooperatives, or regional fishery associations (RFA) under a LAP might improve the economic viability of the fishery.**

- **LAP members felt that they may need more time to meet after the March meeting to clarify their thoughts on various LAP design elements and to address questions posed by the LAP Committee.**

Response to Outreach by LAP Workgroup Members

In June 2007, LAP Workgroup members were asked to relate some of what they had heard on the docks regarding consideration of a possible LAP for the commercial snapper grouper fishery. Some members expressed that several fishermen they have heard from do not have an understanding as to why a LAP is needed or why it is being considered at this point in time given that there are several other management measures being considered by the Council. Other members state that some fishermen are apprehensive, have expressed guarded optimism, or are in a "wait and see" mode where they are waiting to see options presented to them before deciding if a LAP might work for the region. Others are worried about initial allocation and the eligibility and landings methodology that will be used to decide how much participants are allocated. While some members have heard positive comments regarding LAPs from those with small landings, others have heard positive comments from those with large landings and large catch history. Others expressed that people that participate in the South Atlantic commercial snapper grouper fishery all year and do not participate in other fisheries want LAPs, while those that participate in several fisheries each year, do not want LAPs because their catch history would not provide them with enough landings to participate in the LAP fishery when they need to. Several members expressed that cost recovery and other fees anticipated under a LAP are

unaffordable for most fishermen.

II. LAP Goal and Proposed Objectives

The following goal was proposed by the Limited Access Privilege Program Committee and adopted by the LAP Workgroup.

To refine a system whereby profitability, efficiency, fairness, and capacity of the commercial snapper grouper fishery are aligned with available yields from the South Atlantic ecosystem and which contribute to conserving healthy stocks and/or rebuilding overfished stocks consistent with the Snapper Grouper FMP and Magnuson-Steven Act.

The following objectives were adopted by the LAP Workgroup. The italicized objectives were first proposed by the LAP Program Committee. The objectives have not been prioritized.

Proposed LAP Objectives

1. Protect fisherman historically invested in the fishery and provide them with opportunities to continue harvesting in the fishery;
2. Enhance the viability of fishing for fishermen historical invested in the fishery;
3. Protect current crew employment in the fishery to the extent possible;
4. Ensure public access to the South Atlantic fishery supply;
5. Design a LAP that vests fishermen in the snapper grouper fishery and thereby increase conservation of the resource;
6. Ensure that all permit holders have an opportunity for participation in harvesting of LAP species;
7. *Allow for data collection sufficient to evaluate the LAP program periodically;*
8. Increase the use of fishery dependent data in stock assessments including the use of real time data;
9. Enhance cooperation among fishermen and managers;
10. Allow for regional differences in program design when necessary;
11. *Allow for transferability of LAP shares and pounds* between snapper grouper permit holders only;
12. *Create mechanisms for new entry into the commercial fishery;*
13. Protect participation of small scale fishermen and prevent monopolies;
14. Enhance financial stability for long-term business planning;
15. Encourage regulatory compliance;
16. Reduce regulatory complexity;
17. *Eliminate discards through methods such as:*
    a. *100% retention;*
    b. *Gear modification or development; and/or*
    c. *Other methods*
18. *Provide the opportunity for a flexible and sustainable year round fishery for all participants;*
19. *Maintain commercial catch at or below the commercial quota;*
20. *Promote safe fishing operations;*

21. Create mechanisms that *foster improved relations between sectors, including environmentalists, commercial fishermen, and recreational fishermen;*
22. Develop a *multispecies LAP for the whole commercial snapper grouper fishery with the exclusion of wreckfish;* and
23. Develop a mechanism that allows the marketplace to drive harvest strategies and product forms in order to maintain product continuity and increase total producer and consumer benefits from the fishery.

III. Prerequisites for a LAP Workgroup Supported LAP Program

The LAP Workgroup has proposed the following prerequisites for implementation of an LAP for the commercial snapper grouper fishery.

Referendum or Industry-Wide Vote

Members of the LAPP Workgroup asserted that a referendum be required if the Council decides to go forward with a LAP for the commercial snapper grouper fishery. There was consensus on this issue.

Option 1: Votes weighted equally so that each fisherman has one vote. Permit holders and the crew that work for them vote.

Option 2: Votes weighted according to landings history so that fishermen with large catches have a greater number of votes. Only permit holders vote. Only species involved in the LAP would be used for the landings history.

Option 3: Votes weighted according to ex-vessel revenue from landings history so that fishermen with a high value of landings have a greater number of votes. Only permit holders vote. Only species involved in the LAP would be used for the ex-vessel revenue from landings history.

The LAP Workgroup agreed unanimously[1] that votes should be weighted. While the majority of members preferred weighting be based on landings history, a minority of members (1 individual) preferred that weighting be based on ex-vessel revenue from landings history.

Limited snapper grouper permits

The LAP Workgroup requested the Council to address whether limited snapper grouper permits are to be included in the LAP program or not. Some members of the Workgroup were in favor of including limited permit holders, while others were not. In September 2007, the Council

[1] The use of the word "unanimous" refers to agreement by all LAP Workgroup members or their proxies present at a particular meeting. In subsequent meetings, LAP Workgroup members or their proxies are able to challenge the unanimous decision. If there is a disagreement about a particular option at that point in time, the language is changed to reflect that discussion.

addressed this issue by stating that limited permit holders should be considered for inclusion in an initial allocation. The following options were then developed by the Workgroup.

Option 1: Make limited permit holders eligible to participate in the LAP but continue to disallow transferability of limited permits. Also, disallow transferability of quota share (and pounds) associated with a limited permit. Quota share would be considered "retired" when the permit owner passed away. Any retired quota share would be reallocated for new entrants. The Workgroup recognizes that limited permits that do not receive any quota share, should be retired.

Preferred Option 2 (8 in favor, 0 opposed, 2 abstain): Make limited permit holders eligible to participate in the LAP but continue to disallow transferability of limited permits. Also, disallow transferability of quota share (and pounds) associated with a limited permit. Quota share would be considered "retired" when the permit owner passed away. When a limited permit is retired, any quota share associated with the permit would be reallocated to remaining unlimited quota share holders. The Workgroup recognizes that limited permits that do not receive any quota share would hold an obsolete permit.

Option 3: Make limited permit holders eligible to participate in the LAP but continue to disallow transferability of limited permits. Also, disallow transferability of quota share (and pounds) associated with a limited permit. Quota share would be considered "retired" when the permit owner passed away. Any retired quota share would be reallocated to remaining unlimited quota share holders and new entrants. The Workgroup recognizes that limited permits that do not receive any quota share, should be retired.

The Workgroup requests that the methodology and landings history used in initial allocation of quota share for unlimited permits be used for limited permits as well. In addition, the Workgroup requests that limited permit holders be subjected to the same monitoring requirements as unlimited permit holders.

<u>Sale of recreational caught fish</u>

The LAP Workgroup would like to see a change in the regulations that allow for recreational caught fish to be sold.

Preferred Option 1 (6 in favor, 0 opposed, 1 abstained): Sale of recreational caught fish under a bag limit disallowed[2].

Some members believe this would be easier to enforce than Option 2. These members support the Council's preferred option in Amendment 15B to eliminate sale of fish caught under a recreational bag limit. The Workgroup also mentioned there may be food quality/safety issues with Option 2.

Option 2: Sale of recreational fish be subtracted from the recreational allocation instead of the commercial quota.

Some members believe there are ways to monitor this. These members are not objecting to recreational sale as long as it does not harm commercial fishermen and provided hard TACs are implemented.

"2 for 1 Rule"

Option 1: The 2 for 1 rule remains in place with or without a LAP. (3 in favor, I abstain)

Option 2: Eliminate the 2 for 1 permit rule only if a LAP is implemented. (3 in favor, 1 abstain)

Allocation of TAC Between Commercial and Recreational

The LAP Workgroup requests that the Council ensure that the allocations in place at the time of the referendum and at the start of the LAP program be "hard" allocations. That is, the Workgroup requests some assurance that the percentage allocations between commercial and recreational sectors for the species included in a LAP do not change. In this way, the commercial sector has the opportunity to become vested in the resource through an LAP. Without hard quotas, this would not be possible.

[2] The Workgroup suggested that special consideration may be given to the case of a traditional state sanctioned king mackerel tournament.

IV. LAP Program Design Characteristics and Management Options

A. Program Duration

Satisfies the following objectives:

Design a LAP that vests fishermen in the snapper grouper fishery and thereby increases conservation of the resource; and

"Program duration" refers to the lifetime of the limited access privilege and not to ownership of that privilege by an individual or entity.

Preferred Option 1: Program duration preferences adhere to the requirements set out in the Magnuson-Stevens Reauthorized Act of 2006 which states:

> A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—
>
> > (1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;
> >
> > (2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

B. Program Review

Satisfies the following objectives:

Allow for data collection sufficient to evaluate the LAP program periodically.

Program review refers to Council review of the LAP Program to determine if the goals and objectives of the program are being met.

Section 303A (c) (1) (G) of the MSRA of 2006 states

> Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—
>
> > (G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years)

Option 1:	Program review 5 years after implementation and at least once every 7 years thereafter according to the MSA Reauthorized Act of 2006.
Preferred Option 2:	Program review 2 years and 5 years after implementation and every 5 years thereafter as part of each 5-year FEP review.

The LAPP Workgroup felt it was important to build maximum management flexibility into the LAPP program. The NMFS and Council staff should have the option to make changes to implementation issues without a formal program review as required by the MSRA of 2006. This would enable staff to make changes that occur unexpectedly. The Council should have the ability to implement an emergency rule when needed.

C. Species to be Included

Satisfies the following objectives:

Develop a multispecies LAP for the whole commercial snapper grouper fishery with the exclusion of wreckfish; and

Reduce regulatory complexity.

Note: See table at the back of this document prior to appendices for an overview of OYs and other information on species with established allocations.

The LAP Workgroup felt it was important to try to include as many snapper grouper species as possible under an LAP program in order to simplify regulatory complexity and avoid a situation where fishermen target species not included under an LAP because they are not subject to an individual limit. The Workgroup realized it may require additional work for NMFS and the Council to identify a TAC for some species. However, the Workgroup felt this would be possible through the use of state and federal trip ticket data and logbooks if the species under consideration did not have a stock assessment.

Preferred Option 1: All snapper grouper species currently managed in the Snapper Grouper FMP excluding wreckfish.

Option 2: All snapper grouper species with identified OYs including red porgy, vermilion snapper, snowy grouper, black sea bass, golden tilefish, gag, greater amberjack, white grunt, red grouper, black grouper, mutton snapper, and yellowtail snapper.

Option 3: Snowy grouper, golden tilefish, greater amberjack, yellowtail snapper, mutton snapper, gray snapper, white grunt, red porgy, black seabass, gag grouper, vermilion snapper, red snapper, gray triggerfish, queen triggerfish, scamp grouper, red grouper, blueline tilefish, black grouper, almaco jack, banded rudderfish, blue runners, jack crevalles, joltheads, all hinds

Option 4: Mackerels (Spanish and king) and snapper grouper species currently managed in the Snapper Grouper FMP excluding wreckfish.

Option 5: Mackerels (Spanish and king), all snapper grouper species with identified OYs (including red porgy, vermilion snapper, snowy grouper, black sea bass, golden tilefish, gag, greater amberjack, white grunt, and yellowtail snapper), grunts, triggerfish, jacks.

Some members of the LAP Workgroup felt strongly that mackerels should also be included for consideration under an LAP with snapper grouper species. The LAP Workgroup asked the LAP Program Committee that the Workgroup be allowed to include king and Spanish mackerel under LAP consideration in their discussions or the LAP Program Committee consider establishing a Mackerel LAP Program Exploratory Workgroup to discuss the possibility of a LAP for the king and Spanish mackerel fisheries given the likelihood of increased fishing pressure on the mackerel fisheries if a snapper grouper LAP is implemented. There were views expressed by some on the LAP Workgroup regarding whether this should be a recommendation or not. Some

Workgroup members expressed that several fishermen in the Florida Keys, in particular, did not want an LAP for the mackerel fishery. The LAP Committee responded by opting to defer work on a mackerel LAP to a second LAP effort to be pursued at a later date. As a result, Options 3 and 4 were included above but will not be explored further in detail at this point in time.

D. Multispecies Share Definitions

Definitions -	**Quota share (QS) = individual initial allocation percentage of the commercial quota** "Quota share" (percentage) – percentage of the commercial quota is distributed to participating fishermen during initial allocation. **Annual harvest privilege (AHP)= Quota share * annual** **commercial quota (pounds)** "Annual harvest privilege" (pounds) – an individual's quota share is multiplied by the annual commercial quota in pounds each year and distributed prior to fishing.

This section was created for LAP Workgroup members to express what kind of quota shares they wanted within a LAP. Workgroup members were given background information on individual quota, quota to communities, and aggregate quota (as it has been proposed for use in the Gulf of Mexico reef fish fishery). They developed the following options.

Option 1: Individual quota share allocated for all snapper grouper species included in the Snapper Grouper FMP excluding wreckfish.

Option 2: Individual quota share - all species in the Snapper Grouper FMP excluding wreckfish

Aggregate quota share A – all species in the Snapper Grouper FMP excluding wreckfish

Aggregate quota share B – warsaw, speckled hind

Aggregate quota share C – king and Spanish mackerel

Option 3: Individual quota share - all species with OYs in the Snapper Grouper FMP (excluding wreckfish).

Note: See discussion of aggregate quota under Section IV – "Flexibility Mechanisms".

E. Eligibility for Initial Allocation of LAPs

Satisfies the following objectives:

Protect fisherman historically invested in the fishery and provide them with opportunities to continue harvesting in the fishery; and

Enhance the viability of fishing for fishermen historical invested in the fishery;

The LAP Workgroup felt it was important and perhaps necessary to require some minimum level of historical landings in order to be allocated quota share for each species. The Workgroup felt that to create a "professional fishery", those people with commercial limited or unlimited snapper grouper permits that did not rely on the fishery as an important source of their annual income should not be included in initial allocation of quota share. However, they would still hold a snapper grouper permit and could purchase quota share and/or pounds. Given the recent and/or expected decreases in TACs for several species, the LAP Workgroup felt that most full-time snapper grouper fishermen would not be able to continue fishing without a high enough initial allocation due to their inability to finance additional quota share or pounds purchases at this time.

Option 1: Minimum quota share allocation

Option 1a: Minimum 0.0001% quota share

Option 1b: Minimum 0.001% quota share

Option 1c: Minimum 0.01% quota share

Option 1d: Minimum 0.1% quota share

Option 2: At least 100 pounds over 3 years for a particular species

Option 3: At least 1 pound for a particular species

Option 4: An average 500, 750, 1000, 5000, 7500, or 10,000 pounds over 1999-2006 for all LAP species combined

F. Data Used for Initial Allocation

Preferred Option 1: Logbook data with the option for fishermen to use trip ticket data to correct logbook data for particular years when needed.

Option 2: Trip ticket data

G. Initial Allocation Methods

Satisfies the following objectives:

Protect fisherman historically invested in the fishery and provide them with opportunities to continue harvesting in the fishery;

Ensure that all permit holders have an opportunity for participation in harvesting of LAP species;

Option 1: The average landings of the best 5 years within 1995-2006.

Option 2: The average landings of the best 8 years within 1995-2006.

Option 3: The average landings of the best 5 years within 1998-2007.

Preferred Option 4: The average landings of the best 3 years 1995 through the most recent year of data available.

Option 5: Average landings 1999-2005 (based on the October 2005 control date).

The LAP Workgroup preferred that any initial allocation option require fishermen who participated in the 2 for 1 program to choose <u>one</u> of the two permit catch histories for each species to use in the initial allocation calculation instead of combining catch histories before calculating the initial allocation.

Analyses were conducted by Council staff and NMFS staff on historical landings data so that the Workgroup could access information on the approximate number of people that would receive shares and the dispersion of shares of each species under the preferred option. All individual historical landings information was kept confidential.

As the Workgroup understands it, the October 15, 2005 and December 31, 2006 control dates provided a "heads up" to the fishery that any landings made beyond that date may not be considered in any future LAP program. Clarification from NMFS General Counsel is requested.

Note: Amendment 8 which established a limited entry program and "two for one" permit rule for the commercial snapper grouper fishery contains language regarding the transfer of catch histories when a purchase/sale is made under the "two for one" rule. The amendment states that a vessel's catch history must also be transferred when a permit is purchased/sold and that this catch history may be used to qualify for a future ITQ program. The amendment contains the following language:

"1. **Transferable permits** may be transferred as follows:

a. To immediate family members, or to a replacement vessel (including a new vessel), or to an individual who has a written contract entered into and dated as of 8/20/96 which includes provision for a permit transfer with purchase of a vessel. Those individuals intending to qualify under the written contract provision must notify the NMFS Regional Administrator (Dr. Andrew Kemmerer) of the existence of this contract and provide a copy of the contract for evaluation purposes within the 150 day implementation period. The vessel's catch history must also be transferred (Such catch history may be used in the future to qualify for ITQ's should the Council determine such a management regime is appropriate and should Congress allow use of such management.); and

b. To new entrants in the snapper grouper fishery but two existing snapper grouper transferable permits must be purchased and exchanged for one new permit. The vessel's catch histories must also be transferred. (Such catch history may be used in the future to qualify for ITQ's should the Council determine such a management regime is appropriate and should Congress allow use of such management.) An additional vessel, other than a replacement vessel, is considered a new entrant" (pgs. 35-36).

Note: Fishermen that are newer entrants (since 1999) were required to buy two permits and retire one. Some fishermen have reported that they were unable to access historical landings information about the permits they were purchasing due to rules that said that only current owners were privileged to see this information. Therefore, they made investment decisions that would impact them in a future LAP program without full information. Some fishermen also noted that they did not have access to landings records that occurred prior to their ownership of the permit even though this is a component of landings history that would possibly go into a calculation of initial allocation. The Workgroup would like to see this problem resolved immediately.

H. Initial Allocation Appeals Process

Preferred Option 1: After distributing initial allocations to eligible participants, allow appeals to be heard and then finalize allocations prior to fishery starting. Allow for 90 days for the entire process. Appeals process held without consideration of hardship.

I. Transferability

Could satisfy the following objectives:

Protect fisherman historically invested in the fishery and provide them with opportunities to continue harvesting in the fishery;

Enhance the viability of fishing for fishermen historical invested in the fishery;

Allow for transferability of LAP shares and pounds between snapper grouper permit holders only;

Enhance financial stability for long-term business planning;

Encourage regulatory compliance;

Eliminate discards through methods such as:

a. **100% retention;**
b. **Gear modification or development; and/or**
c. **Other methods**

Provide the opportunity for a flexible and sustainable year round fishery for all participants;

Maintain commercial catch at or below the commercial quota; and

Promote safe fishing operations.

Transferability can apply to quota share and/or annual harvest privileges (pounds). In general, there are four possible options that exist:

Option 1:	QS – transferable	AHP – transferable
Option 2:	QS – transferable	AHP – non-transferable
Option 3:	QS – non-transferable	AHP – transferable
Option 4:	QS – non-transferable	AHP – non-transferable

Note: QS = Quota Share; AHP = Annual Harvest Privilege

In general, there are several possible benefits and drawbacks to making quota shares and/or annual harvest privileges transferable in a LAP program. Some possible benefits include:

- Transferability creates a mechanism for fishermen to sell poundage not being used in a given year, which maximizes the fishermen's flexibility and profitability and ensures a steady supply of fish to the marketplace. That is, it helps to ensure that poundage will not go unharvested.
- Transferability enables fishermen to sell their harvest privileges when retiring. In general, quota share is considered a valuable asset because of its ability to be sold in portions or in its entirety.
- Transferability can decrease the incentive to discard that exists under a trip limit system when a species is caught that a fisherman has already caught the trip limit for. Transferability can decrease overall discard levels by giving fishermen the option to purchase AHP to cover their unexpected catch. A decrease in discards increases stock abundance in the long run.

Some possible drawbacks include:

- Transferability, if not limited by caps on ownership and/or control of quota shares can result in consolidation into "too few hands".
- Transferability, by definition, results in redistribution of quota share. This can result in a change in where fish are landed for processing, which can impact dealers, fish houses and their employees as well as suppliers of gear, boat repair services, etc.
- It may be difficult for fishermen to find other fishermen to sell to or buy from if there is no mechanism for doing this (newspaper for advertising, quota broker, fish association, website, etc).

- Transferability allows some individuals (those initially allocated quota shares) to permanently gain from the sale of quota shares or annual harvest privileges rather than to use them to harvest fish.

Section 303A (c) (7) of the MSRA of 2006 states

> In establishing a limited access privilege program, a Council shall—
>
> (A) Establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and (B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

Literature Summary

The article "The Effect of Initial Lease Periods on Price Discovery in Laboratory Tradable Fishing Allowance Markets" by Christopher Anderson and Jon Sutinen explains the results of an experiment they conducted to try to determine what might happen to quota prices and trading behavior in the first years of an IFQ program that allows transferability. Typically, in the first few years of an ITQ, prices of quota fluctuate greatly since the quota is a new asset and no one knows what the actual value is. For people who buy and sell during this period of time, selling below the eventual appropriate price or buying above it "can lead to regret and anger and dissatisfaction with the tradable allowance system" (Anderson and Sutinen, 2005). In addition, due to quota price variability in the first few years of an ITQ, fishermen are unable to predict future prices and profitability, which complicates long-term business decisions.

Anderson and Sutinen conducted experiments to try to determine if a moratorium on permanent sales of quota for the initial years (but allow short-term leasing of quota) of an ITQ program might help alleviate the price variability and the negative social consequences that can result.

The results showed that a moratorium on permanent sales of quota share in favor of an initial leasing only (making AHP transferable only) period resulted in more stable prices. These results support the idea of only allowing short-term leasing (as opposed to permanent sales) to take place in the first couple years of an ITQ/LAP program. After the initial years, permanent sales and/or leasing could be allowed with negative social consequences.

Preferred Option 1: Allow for transferability of quota share and AHP (pounds).

The LAP Workgroup considered the Anderson and Sutinen article that suggested a lease only period may help prevent some negative social consequences that could occur in the first few years after initial allocation. However, the LAP Workgroup felt that there is sufficient information available for fishermen to make informed decisions regarding LAP quota value and that such restrictions are not needed.

J. Eligibility for Harvesting Participation

Preferred Option 1: An entity must hold an unlimited or limited commercial snapper grouper permit in order to hold quota share or AHP (pounds).

If an entity holding an unlimited permit does not receive quota share in the initial allocation, they can still buy pounds or quota share. However, the same is not true for holders of limited permits. Limited permit owners cannot purchase additional quota share or pounds for that permit. This was an unanimous agreement.

K. Caps and Other Restrictions on LAP Share Ownership and Control

Could satisfy the following objectives:

Protect fisherman historically invested in the fishery and provide them with opportunities to continue harvesting in the fishery;

Enhance the viability of fishing for fishermen historical invested in the fishery;

Ensure that all permit holders have an opportunity for participation in harvesting of LAP species;

Protect participation of small scale fishermen and prevent monopolies; and

Provide the opportunity for a flexible and sustainable year round fishery for all participants.

In general, there are several possible benefits and drawbacks to the use of caps (or upper limits) on LAP share ownership and control.

Some possible benefits include:

- Upper limits placed on ownership and control of LAP shares can prevent a monopoly or oligopoly[3] ownership of LAP shares that could result in LAP owners controlling the ex-vessel price paid for fish;
- Upper limits placed on ownership and control of LAP shares can help prevent a "sharecropper" system from resulting whereby fishermen lease from owners at high prices;
- Prevention of some changes in the structure of fishing communities; and
- Greater feelings of equity among fishery participants.

Some possible drawbacks include:

- Upper limits could possibly limit the level of economic efficiency the fishery can obtain (however, not in the case of a monopolist or oligopoly). For example, if upper limits are set too low, this might restrict some fishermen from making enough revenue to cover the fixed and operational costs of doing business. This may be particularly true for owners of larger and/or newer vessels.

Magnuson-Stevens Reauthorization Act of 2006 Requirements for Councils

Caps on LAP share ownership and control is sometimes discussed under the term "excessive shares". Excessive shares are mentioned in National Standard 4 (Section 301 (a) (4)):

> (4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privilees among various United States fishermen, such allocation shall be (a) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (c) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

Section 303A (c) (5) (D) of the MSRA of 2006 also refers to excessive shares:

> (D) Ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by –
>
> (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and

[3] Definition: A market dominated by a small number of participants who are able to collectively exert control over supply and prices.

(ii) establishing any other limitations or measures necessary to prevent an equitable concentration of limited access privileges.

When developing LAP programs, the MSRA of 2006 states that a Council should:

(B) Consider the basic cultural and social framework of the fishery, especially through –

(i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and

(ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) Include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

Literature Summary

To assist in deliberations on IFQ programs, in their publication "Better information Could Improve Program Management", the U.S. General Accounting Office, among other things, determined the extent of consolidation of quota holdings in three IFQ programs (Alaskan halibut and sablefish, wreckfish, and surfclam/ocean quahog). They found that:

All three IFQ programs have experienced some consolidation of quota holdings. From 1995-2001, the number of halibut and sablefish quota holders decreased by about 27 and 15 percent, respectively. From 1992-2002, the number of wreckfish quota holders decreased by about 49 percent. From 1990-2002, the number of surfclam and ocean quahog quota holders decreased by about 17 to 34 percent, respectively. However, they assert that consolidation of surfclam and ocean quahog quota is greater than NMFS data indicate, because different quota holders of record are often part of a single corporation or family, which in effect, controls many holdings. The GAO determined that in 2002, the consolidation of quota in the fishery was about twice that indicated by NMFS data and that one entity controlled at least 27 percent of the quota.

Program rules may affect the extent of consolidation in each IFQ program. While the Alaskan halibut and sablefish program set specific and measurable quota limits, the surfclam/ocean quahog and wreckfish programs did not, relying instead on federal antitrust laws to determine whether any quota holdings are excessive. Without defined limits on the amount of quota an individual or entity can hold, it is difficult to determine whether any holdings would be viewed as excessive (GAO, 2002).

In the NMFS publication "The Design and Use of Limited Access Privilege Programs" (Forthcoming, 2007), guidance regarding how to identify what constitutes excessive shares is provided. According to this guidance, an excessive share will exist if a "**market power share limit**" or "**management objective share limit**" is exceeded. A **market power share limit** is theoretically possible to solve for. The Guidance states, "This is defined as the maximum percentage of quota that can be controlled by a single entity such that there will be no problems with market power output restrictions, either through actual output decisions or through restrictions on the sale or rental of the transferable AHPs that are associated with the permanent QS".

They go on to explain that, "The discussion of the **management objective share limit** is different because, other than broadly defined benefit cost analysis, there is no body of theory, economic or otherwise, upon which to base the determination of the management objective share limit. Two points should be made at the outset, however. First, to be relevant, the maximum management objective share limit is chosen, it will likely preclude the necessity of rigorously determining s^* (**market power share limit**), because it will be a non-binding constraint. On the other hand, setting a management objective share limit may not be enough, in and of itself, to achieve most management objectives (Forthcoming, 2007).

The LAP Workgroup recommends a cap on: species specific quota share, quota share for all species, AHP (pounds) for each LAP species, and AHP for all species combined.

Quota Share

Preferred Option 1a: Set the *species specific* quota share cap at the highest quota share percentage initially allocated to an individual for each species.

Option 1b: Set the *aggregate species* quota share cap at the percentage calculated from the highest poundage initially allocated for all species included in the LAP divided by all pounds allocated to all individuals in the first year.

Option 1c: No *species specific* cap.

Option 1d: *Species specific* cap set at no more than 10% more than person with highest quota share.

Option 2a: Set the *species specific* quota share cap at the percentage calculated from the annual pounds currently fished by the individual with the greatest poundage for a species divided by the total catch of that species in the fishery.

Option 2b: Set the *aggregate species* quota share cap for all snapper grouper species combined at the percentage calculated from the maximum total pounds currently fished by an individual for all snapper grouper species divided by the total catch of all snapper grouper species.

Option 2c: No *aggregate species* cap.

Option 2d: *Aggregate species* cap set at no more than 10% more than person with highest quota share.

Quota Pounds

Option 1: Set the amount of quota pounds that can be fished in any one year for a species equivalent to the quota share cap for that species multiplied by the commercial quota.

Option 2: Set the amount of quota pounds that can be fished in any one year for all species aggregated equivalent to the aggregation of the quota share caps multiplied by the commercial quotas.

Option 3: No cap on species specific pounds.

Option 4: No cap on aggregate pounds.

If applicable, the LAP Workgroup recommends that fishermen with an initial allocation higher than the caps be grandfathered into the fishery. Some LAP Workgroup members questioned if perhaps the caps should be higher to allow for fishermen to obtain a profitable landings. The LAP Workgroup considered whether caps should be higher than the initial allocation analyses and options indicate. Some Workgroup members expressed concern regarding identification of control caps.

L. Flexibility Mechanisms:

Could satisfy the following objectives:

Protect fisherman historically invested in the fishery and provide them with opportunities to continue harvesting in the fishery;

Enhance the viability of fishing for fishermen historical invested in the fishery;

Design a LAP that vests fishermen in the snapper grouper fishery and thereby increase conservation of the resource;

Enhance financial stability for long-term business planning;

Encourage regulatory compliance;

Eliminate discards through methods such as:

a. **100% retention;**
b. **Gear modification or development; and/or**
c. **Other methods**

Provide the opportunity for a flexible and sustainable year round fishery for all participants;

Maintain commercial catch at or below the commercial quota; and

Promote safe fishing operations.

1) **Overage and Underage (Rollover) Provisions**

Overage and underage provisions are typically implemented and monitored by the fishery management agency. In the case of the South Atlantic snapper grouper fishery, this would likely be the responsibility of the NMFS. ***The term "overage" is typically used to describe a situation where fishermen are allowed to deduct some portion of an individual's annual harvest privilege (pounds of each species allocated to an individual each year based on quota share holdings) for a particular species from next year's allocation.*** This is sometimes also called "borrowing". When a species has a particularly low TAC, sometimes there is no overage allowance allowed or a very small one.

There are usually hefty penalties associated with exceeding these overage allowances. Sometimes there are even penalties associated with using the overage allowance. The penalties are used to help ensure the provision is not abused. Review of these types of provisions in LAP fisheries has shown that these provisions have not been abused and have actually helped the LAP holders keep catch below the TAC and decrease discards.

The term "underage" is typically used to describe a situation where fishermen are allowed to carry forward unused annual harvest privileges for use in the following year. This is sometimes called "banking". There are typically no penalties applied to those people who create an underage because this is seen as benefiting the stock size.

In general, there are several possible benefits and drawbacks to the use of overage and underage provisions in LAP programs.

Some possible benefits include:

- Increased flexibility for fishermen that can help them better match catch to quota share holdings on an individual species basis;
- Decrease in discards; and
- Decrease in the amount of transfer transactions that need to occur for fishermen to equate catch to quota holdings.

Some possible drawbacks include:

- May be administratively burdensome to monitor depending on the number of years the overage and underage are allowed to roll over; and
- Overage provision may not be useable for several species due to low TAC or overfished status.

Literature Summary

There are no guidelines regarding overage and underage allowances in the MSRA of 2006. However, a review of these types of program characteristics has been analyzed in "Catch-Quota Balancing in Multispecies Individual Fishing Quotas" (Sanchirico et al., 2005). The paper refers to overage and underage provisions (also called rollover provisions or banking and borrowing provisions) as one of several catch-quota balancing mechanisms. These mechanisms have been implemented in multispecies fisheries, in particular, to provide fishermen an extra degree of flexibility in fisheries where it is sometimes difficult to control the amount of various species caught due to the multispecies nature of the fishery. The authors reviewed five multispecies LAP fisheries in New Zealand, Australia, Iceland, British Columbia, and Nova Scotia.

Sanchirico et al. report that

> Iceland and Australia both allow persons to carry forward 20 percent of their annual quota. New Zealand allows 10 percent to carry-forward. Generally, British Columbia allows up to 30 percent of a person's quota to be carried forward, but British Columbia managers can reduce the percentage of, or even eliminate, the carry forward for conservation reasons on an annual basis. Since 2001, New Zealand operators have borne the risk that all quota carried forward will be forfeited if the TAC is reduced the following year. British Columbia also is reducing its carry-forward allowance to reduce the possibility of TAC overruns.

They also report that the British Columbia and Australia have symmetrical underage and overage percentages, while Iceland limits its underage to five percent of the annual quota pounds. In 2001, New Zealand eliminated its 10 percent overage rule that was in place since 1986, instead requiring overages to be covered through purchases or fee payments for overages called "deemed value[4]".

Sanchirico et al. write

> A common pattern across the systems is that volume and use of carry-forward (underage) provisions is greater than carry-back (overage) provisions…We find that about 60 percent of the vessels carry-forward quota (have an underage) in the median fishery, corresponding to about 10 percent of the median TAC. While the percentage of vessels carrying back to cover overages is around 10 percent, the tonnage carried back is a very small percentage of the TAC.

They go on to explain that

> One potential reason for lower usage rates of the overage provisions both in terms of the number of vessels and the volume is that quota owners face penalties if they exceed their overage amounts. For example, in the SETF (South East Trawl Fishery in Australia), managers can deduct from next year's quota at a penalty of 2:1 the weight of fish caught in excess of the overage provisions. Similarly, over-compliance is also found in pollution control settings where firms face pollution control standards and stiff penalties (Oates et al. 1989).

Preferred Option 1:	Overage allowances – 10% for each species for one year for LAP species. Penalties on overages should not be imposed until 60 days following the end of the fishing season so that fishermen have time to cover deficits. Underage allowances – Suboption 1: 10% for each species for one year Suboption 2: 10% for each species each year for two years

[4] A program by which fishermen are able to make monetary payments to the management agency for species caught that they don't have quota for.

Some Workgroup members believed there should be a significant penalty if the 10% overage allowance is exceeded. Others felt that current penalties are sufficient to deter fishermen from exceeding landings allowances.

2) Aggregate Quota

The LAP Workgroup borrowed the idea of "aggregate quotas" from the Gulf Grouper IFQ Advisory Panel. Aggregate quotas are something they would like more information about as it could potentially be applied to this fishery. With regard to the above options, individual quota share would be allocated for each species separately. That is, fishermen would be given quota shares for each species included in the LAP. In addition, an aggregate quota share would be allocated for a group of species (specific species included are indicated above) and would be allocated based on some percent of a fisherman's quota shares for each species type (i.e., 5 percent of their total allocation for each species would be set up as aggregate quota). A fisherman would then apply this aggregate to catch of any of the species the aggregate quota is covered by when the individual species allocations have been used. The aggregate quota could only be used after the fisherman exhausted his individual quota share for one of the species included under the aggregate quota. The amount of aggregate quota available for use for each species would be based on historical landings in a ratio that reflects the ratios that the species were historically caught. This ratio of catch is what makes the aggregate system effective. Historically, fishermen have landed the species they catch at some ratio based on species abundance and fishing behavior. Therefore, those ratios should continue as they had historically with minor fluctuations due to natural phenomenon (e.g., recruitment variability and hurricanes moving fish around). These ratios may be changed over time if some shift in effort or landings were to render the initial historic ratio obsolete (i.e., during a review of the LAP program, landings information may indicate a shift in abundance and therefore, a different catch ratio). It was understood that the use of aggregate quotas has not yet been approved by NMFS or the Gulf Council and that this mechanism is yet untested in reality.

The LAP Workgroup felt that this mechanism (the use of aggregate quotas) would allow for a degree of flexibility not available under the current management system or under a traditional IFQ type system. Aggregate quotas, in addition to other flexibility measures (like overages and underages, transferability, and others), would allow fishermen to fish for longer than they would otherwise and therefore, as a group, take a greater portion of the commercial quota than they would otherwise. This could increase profitability for snapper grouper fishery participants without compromising conservation goals. In addition, this mechanism would enhance financial stability by enabling fishermen to better predict how much of each species' annual harvest privilege they will be able to take each year since it will enable them to come closer to taking their full annual harvest privilege than otherwise. Regulatory compliance would improve as well

since fishermen would not have as great an incentive to discard a particular species of fish they do not have individual quota for. This would help to decrease discards overall.

However, some members of the LAP Workgroup had some concerns regarding the risk of fishing more than the commercial quota using aggregate quotas. Other members suggested that rules could be set up to avoid exceeding the commercial quota such as a mechanism whereby no overdraw would be allowed on overfished species. Or, perhaps these species would not be included in an aggregate quota.

Note: See aggregate quota options stated above under Section IV D - "Multispecies Share Definitions".

M. Use it or Lose it Requirements

Preferred Option 1: No use or lose requirement.

Option 2: Require that individual quota holders fish some percentage of their annual pounds or make them available for sale within a particular year.

Option 3: Require that permit holders derive $20,000 or 50% of their income from commercial fishing.

Option 4: The total quota owned by an individual needs to be 80% fished or available to be leased 60 days before the end of the fishing season or the Council would make changes to the regulations so that a higher catch is taken.

N. Cost Recovery

With regard to cost recovery, the Magnuson-Stevens Reauthorization Act of 2006 states

> In establishing a limited access privilege program, a Council shall—
>
> > (1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and
> >
> > (2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

Cost recovery in other LAP fisheries has varied depending on needs and the total ex-vessel value of the LAP species. In the Gulf of Mexico Red Snapper IFQ, a 3% cost recovery fee has been assessed. No definitive cost recovery fee has been decided upon for the Gulf of Mexico Reef Fish IFQ under consideration. However, details on who would pay the cost recovery fee and when is included in the table at the end of this document. When the South Atlantic wreckfish fishery was developed, the South Atlantic Fishery Management Council believed all management and administrative cost should be recovered through a cost recovery fee. However, no fee has yet been established to do this.

The LAP Workgroup would like the possibility of a phase in of cost recovery fees considered.

Preferred Option 1: Minimum cost recovery fees necessary to satisfy the requirements of the MSA Reauthorization Act of 2006.

This was an unanimous agreement.

O. Monitoring

Section 303A(c)(1)(H) of the MSRA of 2006 specifies that

> Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall -
>
> > (H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems.

With regard to electronic monitoring, the MSRA of 2006 does not specify exactly what is meant by "electronic monitoring systems", however, this has been used in the literature to refer to the use of cameras on board vessels. Neither does the MSRA of 2006 provide a complete list of enforcement and monitoring techniques. Some methods of monitoring used are: biological sampling, paper logbooks, electronic logbooks (sometimes implemented to increase the rate of data transfer and gather additional information through the logbook connection to the GPS unit), video monitoring, at-sea observers, and dockside monitoring. In most fisheries, a combination of these management methods are used.

The two main reasons for monitoring in LAP programs have been:

- To increase the accuracy of biological information collected from fishing vessels in order to better track adherence to the TAC; and

- To increase the level of individual tracking of catch taken and adherence to rules regarding discarding[5].

The second reason can be important in distributing information to fishermen and managers on usage of annul harvest privileges. This information can be used to determine how many pounds remain to be fished or are available to be sold from one fisherman to another. This can also be used in tracking usage of the TAC over the season.

The South Atlantic snapper grouper fishery has a biological sampling program, a paper logbook program, an electronic logbook pilot program, and an at-sea observer pilot program. Each of these types of monitoring are described below in general and specifically how the method has been used in the South Atlantic region. In addition, when available, a literature summary of each method has been included.

Onboard Observers

Onboard observers are used in several fisheries nationally to collect biological data. Usually a portion of the trips conducted by the fleet are required to have observers on them. Some international fisheries have required 100% observer coverage and in some cases, the observers have been responsible for reporting any violations of regulations. Onboard observers are typically the most expensive means of collecting biological data. At-sea observers have typically been paid for through NMFS or fishermen or through a cost sharing arrangement.

South Atlantic Snapper Grouper Pilot Program (4/06-5/07 and ongoing)

In 2006, the Gulf and South Atlantic Fisheries Foundation was funded to conduct a pilot study to characterize the catch and fate of discards within the Snapper Grouper vertical hook and line fishery of the South Atlantic. The project has been highly successful with cooperation of the snapper grouper fleet throughout the South Atlantic. The major goals of this program were to gather catch, effort, and disposition data. Beginning in late 2006, two fishery observers were trained and began onboard observation. So far, this research has placed observers on board over 19 different commercial fishing vessels and accumulated over 130 observed sea days. Although formal data analysis has not begun, preliminary analysis shows an average of 7 days per trip and 55 sets per trip. However, there was considerable variance depending upon the size of the vessel with a range of trip length from 2 to 11 days and number of sets from 14 to 113. Analysis of catch and discard fate will most likely begin in Fall of 2007 at the end of onboard observation. The project is currently slated to end in May 2008 and results will be presented to the South

[5] This can be very useful and sometimes absolutely necessary when a "full retention" rule is applied to the fishery. However, in general, there is no agreed upon definition of "full retention". In some cases, this implies that fishermen must not discard any LAP managed species. In other cases, it may mean that species can be discarded but only after being recorded by video monitoring equipment or observers.

Atlantic Council. The intent of this project was not to form a stand alone dataset, but to augment currently available datasets (Jepson, 2007).

Dockside Monitoring

Dockside monitoring in LAP fisheries typically consists of state agency staff, federal agency staff, or a contracted entity checking to see if landings match logbooks, trip tickets, or other means of tracking catch. They may also check to see if landings exceed ACP (annual pounds). In non-LAP fisheries, there is no need to see if landings exceed annual poundage since individual pounds are not allocated. However, biological sampling is typically conducted to collect biological data. While the South Atlantic snapper grouper fishery does not have a dockside monitoring program in place exclusively for the purpose of checking trip ticket or logbook data, the SE Science Center does conduct biological sampling of landings for collection of data needed in stock assessments and for other purposes.

Biological sampling (SE Center – Trip Interview Program)

The Trip Interview Program (TIP) was developed by the Southeast Fisheries Science Center (SEFSC) as a shore-based sampling program. The primary focus of the TIP is the collection of random size-frequency data and biological samples from commercial marine fisheries. Biological samples include age, reproductive, prey, and genetic data. In addition to collecting biological data, the TIP serves as a quality assurance on catch and effort data. It validates species composition of catch and type and quantity of gear through first hand, trained observation. Other important information, obtained through personal interviews with the fishermen and dealers, also serves the quality assurance purpose. The TIP is a major component of the Atlantic Coastal Cooperative Statistics Program (ACCSP) in the southeastern U.S. Atlantic coastal region and the Commercial Fisheries Information Network (COMFIN) in the U.S. Gulf of Mexico coastal region. It also collects data from Puerto Rico and the U.S. Virgin Islands.

The goal of TIP is to obtain representative samples from targeted fisheries. A representative sample is a sample that meets sound statistical criteria for (at minimum) describing a population. The populations are defined by fishery-time-area strata. For practical reasons area is defined here by area of landing, not the fishing area. Agents are assigned target numbers of measurements needed for stock assessment. Sampling targets are assigned according to the historical landings within the fisheries**.**

An initial step in the data collection procedures is to identify fisheries which regularly land species that are the subject of current stock assessments or for which stock assessments are planned. Of course, it is desirable to obtain data on all fisheries, but fisheries for stock assessment species must be prioritized until sampling targets are met. Partners in the ACCSP and COMFIN will have their own lists of ‘priority fisheries’. Ultimately, prioritization for sampling of all fisheries will be coordinated by these two organizations.

The location where sampling takes place will vary trip by trip. In the TIP, there are typically two locations involved; the landing dock and the dealer site. Vessels will not always land at the same dock or sell to the same dealer. Dealers may handle landings differently from day to day. The preferred method is to sample the catch at the initial point of off-loading. This is really the only way the samplers can be sure at the time of sampling that they are seeing the entire catch. Sometimes the dealer is this initial point. In other cases, dealer sites can be used as back-up locations only if the sampler has access to the entire catch of a particular species/market category from the trip. Trip level sampling data by state is incorporated into the TIP program about twice a year.

Electronic Monitoring (EM)

Electronic monitoring (video monitoring) has been used in the British Columbia LAP fisheries, some Alaskan fisheries (crab), the Pacific Whiting fishery, and other places. Pilot programs to determine the feasibility of using EM in general and the feasibility of using EM as a replacement for at-sea observers have been conducted in various places and reports on these pilot programs are summarized below in the literature summary section. In general, electronic monitoring has been used or tested in trawl, longline, and hook and line fisheries. Electronic monitoring is sometimes used in place of at-sea observers, to supplement at-sea observers, and/or as a means to audit electronic logbook data. Use varies depending on the objectives of the fishery with regards to discarding and individual catch tracking. Pilot programs have shown electronic monitoring systems (this includes data review) to be less expensive than at-sea observers and to be capable of identifying discard occurrences and species-specific identification.

Literature Summary of Pilot Programs

1) In “Discussion Paper on Issues Associated with Large Scale Implementation of Video Monitoring”, Kinsolving (2006) assesses what current electronic monitoring (EM) technology can and cannot do well for the Alaska rockfish trawl fishery. He writes,

> Video, either alone or in conjunction with other data gathering equipment (electronic monitoring, or EM), is becoming an increasingly viable technology for monitoring some types of fishing activity or enhancing the ability of observers to gather fisheries data. The technologies associated with EM are in a state of rapid development. The combination of increasingly effective data compression algorithms, increased computer processing power, and the rapidly decreasing cost of data storage have reached a point where, on a technology level, electronic monitoring is ready for large scale implementation for some fisheries monitoring applications. However, while many of the technical issues associated with the collection of EM data have been addressed, neither NMFS nor the fishing industry have fully addressed many of the infrastructural and cost related issues associated with larger scale EM program implementation.

Based on studies conducted to date, it appears that EM technology is able to:

• Function sufficiently reliably in the marine environment.

• Identify fishing events (e.g. net deployment, line retrieval) and the location where those events took place.

• Determine when and if discard events take place on trawl catcher vessels.

• Verify compliance with seabird avoidance measures on longliners.

• Assist an observer in monitoring activities in otherwise unobservable areas of catcher/processors.

On the other hand, EM systems are only moderately able to:

• Quantify the amount of discards on trawl vessels.

• Detect and identify seabird bycatch to species on longliners.

• Estimate the species composition and number of fish in longline catch.

The at-sea portion of the technology, while the focus of most research to date, is only one component of an effective EM system. For an EM system to function properly, the data collected at-sea must undergo some degree of methodical review. In the studies conducted to date, this review has been fairly meticulous, with the assumption being that most missed events have been due to technology and data collection issues rather than data review issues. While such an approach is necessary when testing the applicability of a given technology, it does serve to possibly over-inflate the total cost of an effective EM program.

The document by Kinsolving includes an overview of the 2005 Kodiak electronic monitoring project where two video monitoring systems are compared. Cost projections were based on the assumption of 18 boats, where each boat fishes an average of 7 trips, and trip length will average 3 days, of which there is 24 hours of activity to review. Total minimum and maximum costs are laid out in the document. Total equipment costs (including installation and maintenance) per vessel ranged from $5,875 to $13,325 per year. The cost of maintenance and storage was estimated at $100 per trip. Although data review costs could vary enormously depending on how much data is reviewed, the document assumes that a full review would cost approximately $50,000 per year for all vessels together (see table below).

2) McElderry et al. (2003) conducted a large scale deployment of electronic monitoring systems on the 2002 BC halibut longline fishery to evaluate the feasibility of EM as an alternative to observer based at-sea monitoring. Two cameras per vessel were used for this project. In some cases, at-sea observers were deployed on the same vessels as the EM system. In these cases, comparisons could be made between observer and reviewed EM video to determine accuracy of recorded information. The authors note that overall, EM and observer catch estimates agreed within 2% and individual identifications by hook agreed in over 90% of the catch records. The also note that there was close agreement between EM and observers regarding whether a fish was kept or discarded and the time, location, and depth at the set start and finish. The authors concluded that EM is a promising tool for at-sea monitoring applications depending on specific fishery management objectives regarding monitoring. They also note it would have a substantially lower cost than at-sea observers. They suggest two ways to use EM for the BC longline fishery: 1) an integrated EM-observer program using both methods in a complimentary fashion to achieve fleet sampling objectives; and 2) using EM and an electronic fishing log as an at-sea monitoring audit tool. While at-sea observers cost CA$320 per vessel per day for fishermen and CA$130 per day for the federal government, EM cost about CA$210 per vessel per day (see table below).

3) McElderry et al. (2004) assessed the feasibility of electronic monitoring for the Cape Cod longline haddock fishery where bycatch rates of cod must be closely monitored. The primary objectives of the project were to evaluate the effectiveness of electronic monitoring in estimating the at-sea catch of haddock and cod, assess the suitability of EM systems for various components of the fleet, obtain skipper and crew feedback on EM suitability, and foster fleet education on EM monitoring as well as verify EM derived catch information by comparison with like data from observers. Two cameras per vessel were used for this pilot program. Costs were estimated at $1,200 per vessel per day for the pilot project (see table below). A full EM program cost per vessel is suspected to be much less. In general, McElderry (2003) estimated that EM programs run between 20-60% of the cost of an at-sea observer program.

McElderry et al. (2004) provide information on an EM program for the British Columbia groundfish longline fishery that involves less than full data review requirements. They write,

> One possible fleet monitoring design might involve large-scale deployment of EM systems on the fleet with image data selectively analyzed according to a specific sample design. In this way, the analysis effort changes from full interpretation of all imagery from a fishing trip to sampling the fleet, monitoring imagery for sets or portions of sets. British Columbia's groundfish longline fishery is adopting this approach to provide full catch accountability in their 17,000-seaday fishery. Fishing vessels will carry EM systems on a fishing trip and fishers will keep a careful record of catch in an electronic fishing log (included as part of the EM system). The logbook data will be audited with catch data from EM imagery and the level of agreement will prescribe the amount of image viewing required. This unique monitoring approach provides cost effective monitoring, more actively engages industry in data collection, and, when analysis cost is

applied individually, provides a positive stimulus for accurate catch accounting by industry.

Table Summarizing Pilot Program Evaluation of the Use of Electronic Monitoring (EM) for Various Fisheries.

Type of fishery	Discard concerns?	Equipment costs	Data review costs
Alaska Rockfish Trawl	Yes	$5,900-$13,300 per vessel annually	$50,000 for all vessels per year
Cape Cod Longline for Haddock	Yes, cod	(two cameras) $1,200 per vessel per day for pilot project, developed EM program would be less costly	Not specified, paid for by federal government
BC Halibut Longline Fishery (LAP fishery)	Yes, various rockfish species	(two cameras) CA$210 per vessel per day	Not specified, paid for by federal government

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Paper Logbooks

Approximately 100% of permit holders in the commercial snapper grouper fishery each year are required to participate in a paper logbook program for a 12 month period. Another 20% are required to participate each year in a paper logbook program that specifically requires information on costs and earnings for a 12 month period. Yet another 20% are required to participate each year in a paper logbook program that specifically requires information on discarded fish for a 12 month period.

Electronic Logbooks

South Atlantic Electronic Logbook Pilot Project

Electronic logbooks have been used in several fisheries in the U.S. including fisheries in New England. As required by Amendment 4 to the South Atlantic Fishery Management Council's (SAFMC) Snapper Grouper Fishery Management Plan, commercial fishermen fishing for South Atlantic snapper grouper have been required to fill out a paper logbook since 1992. In 2002, the SAFMC and Technology Planning and Management Corporation (TPMC) (now Perot Systems Government Services [PSGS]) tested the use of electronic logbook reporting using the Thistle Marine™ electronic logbook. This device is "ruggedized" for small boat fisheries and is designed specifically for fisheries logbook recording and biological sampling during fishing operations. The project examined the proposition that an electronic logbook can collect all of the data elements presently required by the paper logbook program and can collect more accurate and comprehensive bycatch and catch location information. The 2002 project was implemented on two commercial snapper/grouper vessels in South Carolina and North Carolina from May, 2002 through November, 2002. The electronic logbook pilot program recorded

- Number of fish caught (although pounds can be recorded instead, number of fish was more expeditious in this case)
- Number of fish discarded
- Number of crew
- Number of lines
- Number of hooks per line
- Date (when interfaced with vessel's GPS)
- Time (when interfaced with vessel's GPS)
- Location (when interfaced with vessel's GPS)

The second major goal of this project was to examine the feasibility of using an electronic logbook to record biological information on the catch that is retained and on the component that is discard. A final presentation was given to the Council and Snapper Grouper Advisory Panel at

their December 2002 meeting and the results were well received by the fishermen involved, members of the Snapper Grouper Advisory Panel, and by Council members[6].

The objectives of the electronic logbook project undertaken in 2005 was to expand the initial electronic logbook pilot program in the South Atlantic Snapper Grouper fishery to determine whether electronic reporting is an effective method of data collection for all vessels and gear types in the fishery. Vessels were selected to participate in the project based on gear and size of the vessel. Vessels were also selected throughout the entire geographic range of the fishery to examine the demographics regarding electronic reporting at the effort level and the trip level, and if the system is best suited for mandatory census or strategic "study fleet" sampling in a full implementation. The goal of the project is to improve fishery dependent data collection in the South Atlantic Snapper Grouper fishery by collecting data that will be more accurate, timely and useful to scientists and managers in the decision making process; to ease the burden of reporting on fishermen; and to provide the information collected back to fishermen for their own use in making better business decisions.

By using the electronic logbook unit tied into a vessel's global positioning system (GPS), managers will have access to more detailed spatial resolution that will assist in identifying and addressing the impacts of management measures such as MPAs. Electronic logbooks will also improve the accuracy of data collection at the species level by allowing fishermen to report catch data at sea throughout a fishing day rather than reporting pounds of fish as determined by the dealer. The electronic logbook will also enable the collection of more accurate bycatch information by allowing the reporting of bycatch while at sea at the time of the actual discard. The electronic logbook also offers practical business benefits for the user (fishermen) in that all data that are recorded are available for the fishermen to analyze and see their data overlaid on nautical charts by species, by area, and by time period. They will also have the ability to see their own catch per unit effort statistics for different time periods.

This pilot program was funded again in 2004 and 2005 and applied to a larger number of vessels. Details regarding the best software and hardware to use for the snapper grouper fleet are still being determined. Thus far, several options have been tested[7].

[6] The pilot project collected over four thousand data points representing nineteen commercial snapper grouper trips aboard two bandit vessels. Thirteen hundred catch observations were recorded representing just over five hundred anchor sets. Both landed catch and discards were recorded in numbers of fish for twenty-nine different species. In addition, the electronic logbook recorded nearly twice as many species landed per trip than the paper logs. The reason for this is most likely a result of recall error when filling out paper logs and the seafood dealer's practice of combining smaller quantities of fish of different species and reporting them as one.

[7] Boatracs and Skymate VMS units were used for electronic submission. Shoreside testing revealed that the Skymate unit had a transmission success rate of only 50% while the Boatracs unit had a 100% success rate. The cost for a Skymate unit is $1599 plus installation and activation costs compared to $3195 plus installation costs for

It should be noted that all participants have found the charting capabilities of the P-Sea WindPlot software to be an excellent addition to their standard electronic navigation equipment. However, the use of these computer systems has not been without a few minor issues, considering the corrosive environment in which they have been deployed. There have been a number of hardware/software developments such as:

- 1 failed hard drive with a GoBook computer. The boot sector of the drive was faulty which was corrected by replacement of the drive by the manufacturer and re-installation of the operating system and software.
- 2 system crashes; one Comark system was short circuited and repaired by Comark, and one GoBook system failed due to faulty wiring. The GoBook was brought back online after a reinstallation of the operating system and software.
- 3 vehicle mount USB failures. Problem corrected by manually removing the back left bracket of the vehicle mount, which covered the GoBook USB port. This allowed access to the USB port on the laptop itself for the P-Sea WindPlot USB security key. The vehicle mounts continued to provide stability, security and power for the GoBook systems.
- 3 USB flash drive failures resulting in corrupted XML data files. New USB drives were issued to participants and data was re-submitted to PSGS staff.
- 2 P-Sea WindPlot USB security key failures. The USB keys were returned to P-Sea WindPlot and replaced with working keys.
- Many of these issues were minor and corrected quickly (within days). Troubleshooting of these issues was handled by PSGS staff, in conjunction with as needed support from system and software manufacturers. The most extensive technical issue caused by a

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the Boatracs unit.

Several laptop and tablet PCs were tested, but the best option for the money seemed to be Dell laptops (Dell Inspiron 2600, Latitude D505 and C640). Although susceptible to glare problems, there were no failures of these units during two year deployments in open and closed wheelhouses.

Of the e-logbook software considered (Thistle, Windplot, UNH) the UNH was used on a greater proportion of vessels as the Windplot software could not track simultaneous effort in fixed gear fisheries. The UNH software could capture simultaneous effort, but could not dissociate effort from trips (setting a trap on one trip and retrieving on another trip). This was dealt with by allowing manual entry of set times and haul durations. The Thistle software could not handle multiple species records for a haul, as it was developed for lobster fishing and only accommodated one species record.

Data were transmitted off the vessel and to an email address by VMS, and loaded to Oracle tables using a PLSQL script.

> power surge to the Comark system which was repaired within 2 weeks (Perot Systems, 2005).

Although not yet developed for the electronic logbook pilot programs in the South Atlantic, it has been suggested that electronic logbook data could be submitted via a VMS satellite transmission. This would enable real-time data collection.

Vessel Monitoring Systems (VMS)

VMS is required in the South Atlantic rock shrimp fishery. Also, VMS has been considered an alternative under Amendment 14 (MPAs), Amendment 15, the FEP Comprehensive Amendment. The Literature Summary on VMS (below) contains reasons for considering VMS in an LAP fishery as well as conditions necessary to minimally support a LAP-VMS.

Literature Summary on VMS

In the Enforcement section of the NMFS draft document "Design and Use of Limited Access Privilege Programs", the authors state the following regarding usage of VMS in LAP fisheries:

> Another tool that can be used in tandem with a real time data reporting system is to require a vessel monitoring system. VMS is an essential requirement to show the vessel was at sea, how long it was out, where it docked when it came to port, and the present vessel location. VMS is capable of understanding and recording small details of the ship's evolutions. It can document, for instance, specific course changes and engine speed changes by a vessel. Collectively, this pattern is termed a signature. At present there is not enough data to make a signature admissible in court as an indicator of fishing. Regardless, VMS technicians are trained to look at positioning data and other factors indicating potential fishing activity. An investigator can be dispatched to the landing site intercepting the vessel as it comes into port or even anchors in a remote area. If the captain and crew are believed to have illegally harvested a LAP species, the agent or officer can intercept the vessel. If, during the course of an initial investigation, a violation surfaces the agent or officer will bring the vessel to port, seize the catch and cite the errant fisherman.
>
> …Tracking locations of vessels via VMS is not unique to LAP-managed fisheries. Many other management strategies also have to deal with fishermen attempting to evade detection of illegal acts. Whether LAPS with VMS is superior in discouraging or mitigating the occurrence of evading detection of a landing without complementary AHP for the event is the correct question to be evaluated.

The authors summarize the conditions necessary to minimally support a LAP-VMS program:

1. All participant vessels are equipped with NMFS authorized VMS units;
2. The system must be operated 24/7 for 365 days a year;
3. Fishermen must present documented proof VMS is fully operational prior to receiving annual allocation;
4. Participants agree to return to port if VMS is dysfunctional as a condition of participation; and
5. Tampering with the VMS or power source supporting VMS must be prohibited.

Literature Summary for Monitoring

In the NMFS draft document "Design and Use of Limited Access Privilege Programs", the authors state that the effective management of LAP programs requires development and implementation of a highly accurate, timely, and well-documented catch accounting system.

The authors envision that the data would show a permanent record of an individual's landings and that these records would be entered, maintained, and fully accessible to authorized users. The landings data would show the "balance" available to land on the LAP permit, and the permit holder will therefore have a permanent record of his/her landings. They state that, at the same time, landing rates can be monitored and the system can be set to notify OLE if an overage is detected. In addition, they assert that the simpler the program design, the less complex its implementation will be. For example, restrictive eligibility and transferability rules can make it more complex to issue and keep track of LAP ownership.

LAP fisheries typically use some method to check that landings are being recorded accurately onto trip tickets or other landings recording method. Current NMFS methodology uses either shore side monitoring efforts which oversees landings and offloads by percentages (some percentage of vessel landings is observed) or as designed in the Gulf by electronic profile. In Alaska and New England, for instance, the goal is to check 15-20% of all offloads for accuracy. This is labor intensive, industry-wide, and performed by uniformed officers. In the Gulf, they have taken a different approach. The electronic IFQ system has a series of checks and balances incorporated into the process. Collectively, the information develops a profile. While any officer is free to check any vessel landing, its catch, and monitor the offload, there are no mandatory percentages. Rather the profiles themselves notify enforcement if something is potentially amiss. That way, a very limited number of law enforcement personnel can operate in what is essentially a "target rich environment" but the industry as a whole is not subjected to countless boardings which only confirm compliance. Sometimes, checking offloads for accuracy is conducted by a third party contracted by the management agency or fishermen, as is the case in the British Columbia LAPs.

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Discussion

However, it is recorded, this type of monitoring helps to ensure that landings do not exceed AHP holdings and that this information is recorded accurately. Currently, there is no monitoring type effort that does this for the South Atlantic commercial snapper grouper fishery. However, this may be a desirable design aspect to have built into a LAP. The background on current biological sampling, paper logbook, electronic logbook, and video monitoring (see above) can provide the Workgroup with some sense of capability and possible cost.

Monitoring

Option 1: Electronic logbook with VMS

Option 2: Video monitoring

Preferred Option 3: 100% video monitoring with "catch accountability" or full retention. The assumption is made that, in addition to its other functions, vessels could be tracked through recording of GPS coordinates with video monitoring.

Option 4: 100% video monitoring and VMS and "catch accountability" or full retention

Dockside verification would be needed for all options.

The LAP Workgroup requests that federal and other funding options be explored.

The LAP Workgroup recommends that a pilot program be conducted to test video monitoring as a data gathering and monitoring/enforcement tool. The LAP Workgroup would like the preferred option for monitoring to achieve three major objectives: 1) tracking discards; 2) individual catch accountability; and 3) enforceability. The LAP Workgroup requests that a pilot program be done prior to an LAP. If a pilot program shows that video monitoring is feasible and would likely be beneficial to the snapper grouper fishery, the LAP Workgroup would be open to video monitoring of the entire snapper grouper fleet or a portion of the fleet. Another option is to consider fazing in of video monitoring as necessary.

The LAP Workgroup feels that monitoring of discards is intrinsic to achieving better science for the fishery. This is the reason for supporting a video monitoring program with full retention or catch accountability. However, some LAP members predict that without funding assistance, only dealers will be able to afford video monitoring units on their vessels. There is concern that this could result in fishermen that currently own and operate their own vessels, having to fish for dealers and using the dealers' vessels.

P. Regional Considerations

Option 1: No regional divisions

Option 2: Area quotas similar to that done in BC

Option 3: State by state quota (similar to the way flounder is managed for NC) whereby the commercial quota is divided among states and the states manage as preferred

Option 4: Satisfy regionalization concerns through "sector allocations" or cooperatives currently allowed under law

Option 5: Limit transferability among different regions to prevent consolidation of quota to one region from another

Q. Regional Fishery Associations (RFAs) and Communities

Overview of Regional Fishery Associations

Regional Fishery Associations (RFAs) can use harvest privileges if the RFA is a voluntary association with established bylaws and operating procedures and consists of participants in the fishery who hold LAP shares. RFAs can include commercial or recreational fishing businesses, processing businesses, fishery-dependent support businesses, or fishing communities. In order to harvest privileges a RFA must meet eligibility and participation criteria laid out in the

reauthorized Magnuson-Stevens Act. RFAs cannot receive an initial allocation of LAPs. However, they may acquire such privileges after initial allocation.

Currently, the MSA is the primary source for information on RFAs as this concept is new to the reauthorized act. More information on RFAs may become available as further guidance is provided on the LAPs provisions in the reauthorized MSA.

The term "regional fishery association" means, "an association formed for the mutual benefit of members (A) to meet social and economic needs in a region or subregion; and (B) comprised of persons engaging in the harvest or processing of fishery resources in that specific region or subregion or who otherwise own or operate businesses substantially dependent upon a fishery."

The reauthorized Magnuson-Stevens Act sets the eligibility requirements for RFAs. These criteria need to be met in order for a RFA to be eligible to harvest under a LAPP. The criteria include:

- Be located within the management area of the relevant Council;
- Meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- Be a voluntary association with established by-laws and operating procedures;
- Consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the RFA, including commercial or recreational fishing, processing, fishery-dependent support businesses, and fishing communities;
- Not be eligible to receive an initial allocation of a LAP but may acquire such privileges of any LAP it holds or the annual fishing privileges that its members contribute; and
- Develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

The MSRA act clearly outlines what Councils shall consider when determining participation criteria for eligible RFAs. They shall consider:

- Traditional fishing or processing practices in, and dependence on, the fishery;
- The cultural and social framework relevant to the fishery;
- Economic barriers to access to fishery;
- The existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- The administrative and fiduciary soundness of the association;
- The expected effectiveness, operational transparency, and equitability of the community sustainability plan

According to the reauthorized MSA, "the Secretary shall deny or revoke limited access privileges granted…to any person participating in a RFA who fails to comply with the requirements of the regional fishery association plan."

Because RFAs are a new concept introduced as a part of the reauthorized MSA, there aren't any currently in operation. However, several fisheries that have harvesting cooperatives participating in them could potentially give some insight into how RFAs might work. A RFA may operate in a similar way to a harvest cooperative in that participants in the cooperative or RFA may pool their fishing assets in an effort to decrease costs associated with harvesting. That is, it appears that a RFA might be developed to decrease the number of vessels used and trips made to harvest a given number of pounds of fish. In this way, the fishermen or other entities participating in the RFA would save the cost associated with the additional vessels typically used and number of trips typically taken.

Overview of Allocation of Quota to a Community

Fishing communities can receive harvest privileges if the communities are located within the Council management area, consist of residents that are dependent on fisheries for their livelihood, and meet certain eligibility and participation criteria specified in the reauthorized Magnuson-Stevens Act.

The term "fishing community" means, "a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such communities."

The reauthorized Magnuson-Stevens Act (MSA) sets the eligibility requirements for fishing communities. These criteria need to be met in order for a fishing community to be eligible to harvest under a LAP program. The reauthorized MSA states that the fishing community shall:

- Be located within the management area of the relevant Council;
- Meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- Consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses with in the Council's management area; and
- Develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

Unlike Regional Fishery Associations (RFAs), the MSA does not prohibit fishing communities from being eligible for initial allocation nor does it specify that members of the "fishing community" hold quota share.

Participation is determined by the regional Council. The reauthorized MSA outlines what Councils shall consider when determining participation criteria for eligible fishing communities. They shall consider:

- Traditional fishing or processing practices in, and dependence on, the fishery;
- The cultural and social framework relevant to the fishery;
- Economic barriers to access to fishery;
- The existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- The expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
- The potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

According to the MSA, "the Secretary shall deny or revoke limited access privileges granted…for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked…may be reallocated to other eligible members of the fishing community."

While there are not yet examples of "Fishing Communities" as defined in the reauthorized MSA a similar concept has been in use since June 1, 2004 for the Alaska halibut/sablefish fishery. The Alaska Community Quota program was created to preserve small fishing communities by allowing them to hold quota (through the formation of a non-profit corporation) and annually lease it to residents.

The Workgroup members request that qualification and allocation criteria for community quota and regional fishery associations are developed in Amendment 18, if such an amendment is developed for LAPs.

R. Comparisons Between Sector Allocation Programs, Regional Fishery Associations, and Harvest Cooperatives

Definitions

Sector Allocation programs and cooperatives are management strategies external to those included under Limited Access Privileges as defined in the reauthorized Magnuson-Stevens Act. Sector Allocation programs have been used in the Northeastern U.S. and have been defined as a

group of persons who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time and which has been granted a TAC(s) in order to achieve objectives consistent with applicable FMP goals and objectives. Generally, quota is allocated to a sector or sectors based on aggregate catch histories of harvested stocks for vessels participating in the sector. Sector allocations are regulated through the regional Councils. Typically, the Council will require the sector to submit a management plan each year specifying how the sector's portion of the total TAC will be fished. While sectors sometimes consist of people using the same gear, this does not have to be the case. Sectors are often allowed to act as harvest cooperatives by coordinating their harvest activities.

Harvest cooperatives consist of a group of people voluntarily working together to harvest a portion of the TAC under the Fishermen's Collective Marketing Act. Harvest cooperatives enable cooperative members to coordinate harvest and other activities and thereby cut costs. Harvest cooperatives are typically also sectors with an allocation of the TAC they are allowed to manage with oversite. In this sense, sectors and harvest cooperatives are very similar. They are just regulated through different legislation.

Comparison

Regional Fishery Associations (as defined by the reauthorized MSA), like sectors, have both a group allocation (through the combined share allocations of its individual members) and, like cooperatives, have the ability to manage their harvest collectively. Sectors and harvest cooperatives require less time to develop than a regional fishery association and can be developed outside of a LAP. That is, sectors and cooperatives can be more quickly implemented than a LAP typically takes. However, a LAP is sometimes seen as a stronger harvest right than membership in a sector or cooperative. In addition, LAPs provide Regional Fishery Association members with a divisible and transferable asset. That is, members of a RFA will likely be able to sell their LAPs. Members of a sector or cooperative cannot sell their membership.

	Brief Description	**Part of an MSA LAP program?**	**Potential Benefits**	**Potential Drawbacks**
Sector Allocation Program	A group of persons who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time and which has been granted a TAC(s) in order to achieve	No. Sectors, in this sense, are regulated through the regional Councils.	- Often seen as simpler and more responsive than traditional management - Allows for flexibility in when, where, and by whom	- Administrative time spent on setting up sectors, monitoring, and reporting requirements - Potential for added

	objectives consistent with applicable FMP goals and objectives		quota is harvested - Some sectors have seen economic gain as a result of the sector - Fishermen have more security as a part of a sector than under traditional management - Sectors can also potentially help with marketing - Sectors can help end the "race to fish" if they are coupled with the formation of cooperatives - Monitoring and implementation costs can increase for fishermen	management burden (monitoring, enforcement, operation plan review) - Sectors have to organize and govern themselves - Sectors can be punished for actions of one fisherman - Monitoring and implementation costs can increase for fishermen - Alone, Sectors often do not result in large economic benefits to fishermen because of lack of transferability compared to individual LAPs
Harvest Cooperative	Groups of people voluntarily working together to harvest a portion of the TAC. This enables cooperative members to coordinate harvest and other activities and thereby cut costs.	No. Cooperatives are regulated through the Fishermen's Collective Marketing Act.	- Reduction in the cost associated with overcapitalized fleets For example, Pacific Whiting Conservation Cooperative shifted excess capacity out	- Requires fishermen to spend time organizing themselves -May require fishermen to finance stricter

			of the fishery and allowed more efficient operators to lease harvest shares from less efficient operators - Potentially allows for a reduction in the need for seasonal closures	monitoring methods - Cooperative can be punished for the actions of one fisherman - Lack of transferability compared to individual LAPs
Regional Fishery Association (RFAs)	Regional Fishery Associations (RFAs) can use harvest privileges if the RFA is a voluntary association with established bylaws and operating procedures and consists of participants in the fishery who hold LAP shares. RFAs can include commercial or recreational fishing businesses, processing businesses, fishery-dependent support businesses, or fishing communities. In order to harvest privileges a RFA must meet eligibility and participation criteria laid out in the reauthorized Magnuson-Stevens	Yes. RFAs are formed after initial allocation.	**- Divisible, sellable asset** **- Beneficial to small scale fishermen that don't have enough allocation to fish themselves but still want to gain profit from their quota share** **- Have benefits associated with cooperatives, sector allocation, and individual privileges**	**- Likely to take a longer period of time to implement than sector allocation or a cooperative due to the need for initial allocation to individuals prior to RFA formation** - Requires fishermen to organize and manage themselves - Administrative time spent on setting up RFAs, monitoring, and

	Act. RFAs cannot receive an initial allocation of LAPs. However, they may acquire such privileges after initial allocation. The term "regional fishery association" means, "an association formed for the mutual benefit of members (A) to meet social and economic needs in a region or subregion; and (B) comprised of persons engaging in the harvest or processing of fishery resources in that specific region or subregion or who otherwise own or operate businesses substantially dependent upon a fishery."			reporting requirements - Potential for added management burden (monitoring, enforcement, operation plan review)

S. Real-time Data Collection

See above discussion of electronic logbooks.

Literature Summary

In the NMFS draft "Design and Use of Limited Access Privilege Programs" (forthcoming), the authors have included a section on enforcement in LAP fisheries. Part of this section discusses necessary rules to minimally support real-time data reporting:

1. Prior Notice of Landing (usually made 3-6 hours in advance);
2. Offload windows (usually 0600 to 1800);
3. Vessel clearance (when vessel leaves management area); and

4. Prohibitions on transshipment before landing (although there may be special circumstances where it could be allowed).

Preferred Option 1: Develop a system that will allow for real-time data collection.

T. Enforcement

Section 303A(c)(1)(H) of the MSRA of 2006 specifies that

> Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall -
>
> (H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems.

Literature Summary

In the NMFS draft "Design and Use of Limited Access Privilege Programs" (forthcoming), the authors have included a section on enforcement in LAP fisheries. A portion of that section is included below. However, the entire section is included in Appendix C of this document. Dave McKinney, the author of the section on enforcement provides an overview of the importance of adequate enforcement and monitoring components in an LAP fishery. He writes,

> The success of a LAP program rests entirely upon the ability to track the owners of Quota Shares (QS), allocate the appropriate amount of Annual Harvest Privileges (AHP) that flow from the QS, reconcile landings against those AHP, and ultimately balance the collective figures against the total allowable catch (TAC).
>
> If this cannot be accomplished, both illegal landings and unlawful sales will be possible which, more than likely, will eventually destroy the program. These violations not only undermine management goals and objectives, they also erode the security of the privileges holder's interests in a LAP which is the core concept of the program. The LAP program will fail if the participants lose confidence in the government's ability to manage the program.

The remainder of the section on Enforcement in the NMFS draft "Design and Use of Limited Access Privilege Programs" (forthcoming) contains a detailed description of the need for a double-entry accounting system and the institutional structures that need to be in place to support such a system. The document summarizes the necessary parts of a LAP monitoring program:

1. All landings are recorded immediately upon offload;
2. Participants and dealers have separate PINS;
3. Participants and dealers have separate accounts tracked by NMFS;
4. Participants can transfer annual allocations electronically;
5. No transaction is complete without a NMFS approval code;
6. The approval is required on all transportation and sales documentation;
7. While not always necessary, consideration should be given to the possibility of requiring observers and/or full retention policies; and
8. Consider flexibility of overage/payback policies for one-time/end-of-year AHP overages.

Enforcement
Option 1:

LAP Workgroup member, Paul Raymond, and NMFS Office of Law Enforcement have been asked to create a listing of enforcement regulations that would be appropriate for an LAP as outlined in this document.

U. Outreach Efforts

Informational Meetings

The LAPP Workgroup Outreach Sub-Committee held a brainstorming session in August 2007 regarding possible outreach efforts to help educate people about LAPs and the ongoing LAPP discussions taking place in the Council. Another discussion was held in September 2007 by the entire LAP Workgroup. Since then, the LAP Outreach Sub-Committee has updated the Workgroup on progress made.

As part of a LAP outreach effort, suggestions were made to hold informational meetings up and down the South Atlantic coast. These informational sessions would occur prior to any Council sponsored public hearings and would be held and organized by Sea Grant.

- Informational Forums - One round of informational forums that: 1) provides factsheets; 2) WG update; 3) overview of the final draft of the LAP Workgroup Working Document; and 4) real example of how an LAP might work with use of an Excel model using information from anonymous fishermen
    - Timeline: Yet undecided. Possibly in March/April

- Locations: Florida (2 Jacksonville, Marathon), North Carolina (2 Hatteras, Washington, Newburn, Morehead City), South Carolina (Murrell's Inlet)

Publications

- One page factsheets for distribution summarizing options in the Draft Working Document that includes a discussion of initial allocation issues
- Factsheets that can be distributed to fishermen, customers, general public, etc.

Distribution

- Websites
- Paper copies distributed by LAPP Workgroup
- Paper copies distributed to all federal snapper grouper permit holders

Resources

- Sea Grant secures forums, contributes staff support, produce/distribute publications
- SAFMC staff support

Forum Organization

- Local industry representatives (Workgroup members) help organize meetings
  - Notice of the meetings come from Sea Grant and LAPP Workgroup members
  - 3-4 days notice

Outreach Sub-Committee Members

- Amber Van Haarten
- Scott Baker
- Ben Hartig
- Sean McKean
- Charlie Phillips

V. Other Options Suggested as Possible Alternatives to LAPs for Consideration

- Status quo
- Status quo with real time landings with the option for LAPs for certain species
- Distribution of transferable days at sea
- In an effort to reduce bycatch, require snapper grouper commercial fisherman to identify two months of each year during which they will not fish in order to reduce total discards.
- State by state quotas via "sector allocation"
- State by state quotas via a Council led amendment
- "Sector Allocation" as used in the Northeast U.S.
- Regional management for Onslow Bay, NC - trip limits, increased size limit on select species with good survivability, 2 month closure for select species during spawning cycle with no possession, self selection of three months to refrain from fishing entirely (originally proposed by Kenny Fex)
- Fishery Participation Requirement (5 in favor, 1 opposed, 3 abstaining)

Option 1: In one of the years (2005-2007) a permit holder must have landed 5000lb snapper grouper species.

Option 2: Three years with at least 5000lb landings of snapper grouper species 1995-2007.

Option 3: In one of the years (2005-2007) a permit holder must have landed 1000lb snapper grouper species.

Option 4: Three years with at least 1000lb landings of snapper grouper species 1999-2007.

The LAP Workgroup prefers the landings requirement eliminate permits without the associated landings specified above. The LAP Workgroup requests analysis on regional impacts of these options. The LAP Workgroup suggests a referendum or vote for a fishery participation requirement using a weighted vote.

Appendix B. Golden Tilefish LAP Exploratory Workgroup Report

Draft Golden Tilefish Limited Access Privilege (LAP) Program Exploratory Workgroup Report

October 31, 2008

Workgroup Members:
Chris Connell
Willy Gonzales
Joe Klosterman
Chad Lee
Robert Preston
Matt Ruby
Steve Shelley

Overview

Six of the seven commercial golden tilefish fishermen that comprise the Golden Tilefish Limited Access Privilege (LAP) Workgroup met on October 28th and 29th in North Charleston to discuss management of the commercial sector of the fishery. The fishermen developed two fairly detailed draft management programs they would like to see implemented under various circumstances. Under status quo management, the Workgroup members would like to see a gear specific golden tilefish endorsement program implemented that would exclude fishermen that do not have historical and substantial landings in the fishery. The longline gear sector representatives would like to include fishermen that have harvested at least 2000 pounds of golden tilefish between 2005 and 2007. The hook and line sector created two eligibility options for the purposes of analysis. The hook and line representative suggested including fishermen with at least 500 or 1000 pounds of golden tilefish landings on average between 2001 and 2005 using the three best of each individual's five years. The endorsement program would also specify a change in the fishery start date from January 1st to August 1st. The change in the start date would allow South Carolina fishermen to start fishing at the same time as the Florida fishermen and for hook and line fishermen to participate in the fishery. In recent years, the commercial quota has been met before hook and line fishermen were able to focus effort on golden tilefish (usually in September) due to their participation in other fisheries.

The second program developed was an LAP program. According to some Workgroup members, the second program the Golden Tile LAP Workgroup developed was only considered to have potential for success if the golden tilefish commercial quota was about 480,000 pounds or greater. Others felt LAPs would be successful at a lower commercial quota. However, they did not feel that a LAP was a viable option at the currently projected commercial ACT levels specified in the Amendment 17 materials (between 196,455 and 276,265 pounds whole weight). The current commercial quota is 331,000 pounds whole weight. The LAP program developed included separate gear sector quotas for longline and hook and line. The program had different eligibility requirements for initial allocation for longline and hook and line quota. All other details developed for the LAP program were applicable to both gear users.

How this Report is Organized

This report begins with a brief description of the program type that was developed by the Workgroup and then provides detail about each program type. When available, analysis for each program is provided.

Program Types

Preferred Option 1: Species and gear specific endorsement on snapper grouper permit and change in start date to August 1st.

Eligibility Requirements

Hook and Line Endorsement

Sub-Option 1. Best 3 of 5 years from 2001-2005 averaging 1000 pounds or more.

Sub-Option 2. Best 3 of 5 years from 2001-2005 averaging 500 pounds or more.

Longline Endorsement (implies longline and bandit gear possibly onboard and being used to fish)

Sub-Option 1. Total greater than or equal to 2,000 pounds golden tilefish caught between January 2005 and November 2007.

Note: Use logbooks to check catch history and trip tickets to verify.

Commercial Quota Split

Preferred Sub-Option 1: 10% H & L, 90% LL hard allocation

Option 2: LAP Program

Eligibility Requirements

Hook and Line

Sub-Option 1: Best 3 of 5 years from 2001-2005 averaging 1000 pounds or more.

Longline

Sub-Option 1. Total greater than or equal to 2,000 pounds golden tilefish caught between January 2005 and November 2007.

Initial Allocation Methodology

Hook and Line

Sub-Option 1: Methodology that averages 4000 lbs per person.

Longline

Sub-Option 1: Allocate based on the following equation where an individual's allocation is equal to

50% * (average landings 2004-06) + 50% * (average landings 2007-08)

Sub-Option 2: Average of an individual's landings from the best 3 of 5 years 2004-2008

Commercial Quota Split

Preferred Sub-Option 1: 10% H & L, 90% LL hard allocation

Transferability on quota and pounds

Preferred Sub-Option 1: Transferability for both quota and pounds whereby there is one type of quota and one type of pounds for both longline and hook and line.

Ownership cap on quota

Sub-Option 1: No cap

Sub-Option 2: 49% cap

Ownership cap on pounds

Preferred Sub-Option 1: No cap

Rollover allowances

Preferred Sub-Option 1: Underage allowance

Preferred Sub-Option 2: Overage allowance

Recreational/Commercial Allocation

Under an LAP or endorsement type program, the Workgroup would like a hard and unchanging allocation between recreational and commercial sectors.

Enforcement and Monitoring

Sub-Option 1. Hail in for dockside monitoring (cell phone until 8 miles, weather, arrive early morning)

The LAP Workgroup opposes VMS due to the added cost ~$1200/yr and maintenance and repair time (10+ days sometimes). The Workgroup felt that the fines are a major deterrent to illegal activity such as harvesting over quota. The group of also felt that the number of participants was small enough so that they could police another. The group felt that the paper trail could be a sufficient monitoring mechanism. The Workgroup is open to monitoring options that do not cost money.

Cost Recovery

An assessment needs to be done to gauge incremental increases in administrative costs so that cost recovery needs can be estimated.

Referendum

The Workgroup would like a referendum before final action is taken on a golden tilefish LAP amendment by the Council.

Eligibility requirements

Sub-Option 1: To qualify to participate in the referendum, the permit holder must be currently active in the fishery harvesting 500 pounds or more per year between 2005 and 2008.

Voting Rules

1 vote per pound harvested between

Sub-Option 1: 2004 and 2008

Sub-Option 2: 2005 and 2008

The LAP Workgroup does not endorse Option 2 (LAP Program) at this time due to low quotas. They prefer Option 1 (Endorsement and August 1st start date). A low stock assessment does not leave an individual in an economically viable position. Some Workgroup members felt that, in the future, if the commercial quota is equal to or greater than 480,000 pounds, the LAP Workgroup is in favor of LAPs. Others were in favor of an LAP if the commercial quota were equal to current levels or a little higher.

October 2008 Recommendations

Recommendation 1. The LAP WG recommends that the Council choose the average of 1986-2007 to use as the commercial golden tilefish allocation in Amendment 17. This recommendation is unanimous.

Recommendation 2. The LAP WG recommends an emergency rule be implemented in the golden tilefish fishery that develops a gear endorsement as specified above that would include a change in the opening date from January 1st to August 1st.

Recommendation 3. The LAP Workgroup recommends a control date on golden tilefish of December 31st, 2007.

Recommendation 4. The LAP Workgroup requests that the Council request the Science Center to make 2008 logbook data available to NMFS analysts and Council staff for LAP analytical purposes.

Recommendation 5. The LAP Workgroup requests that the Workgroup be allowed to meet to discuss any LAP program details the Council devises after the Workgroup hands in their recommendations.

Recommendation 6. The LAP Workgroup recommends that Amendment 17 incorporate an alternative with a golden tilefish LL endorsement and a golden tilefish H&L endorsement with a start date of August 1st.

Note: If an endorsement system is not pursued in Amendment 17, then the LAP Workgroup would like to consider other options to secure economic viability for current participants.

Note: Amendment 17 would not be implemented until January 2010 at the earliest.

Appendix C. Reauthorized MSA Section 303A

SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS. 16 U.S.C. 1853a

(a) IN GENERAL.—After the date of enactment of the Magnuson-Stevens Fishery

Conservation and Management Reauthorization Act of 2006, a Council may submit, and the

Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) NO CREATION OF RIGHT, TITLE, OR INTEREST.—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a

Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the

Secretary determines that—

(A) the fishery has historically processed the fish outside of the United States; and

(B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

(I) be located within the management area of the relevant Council;

(II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and

(IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

(B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—

(i) traditional fishing or processing practices in, and dependence on, the fishery;

(ii) the cultural and social framework relevant to the fishery;

(iii) economic barriers to access to fishery;

(iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;

(v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and

(vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

(i) be located within the management area of the relevant Council;

(ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(iii) be a voluntary association with established by-laws and operating procedures;

(iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;

(v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is members contribute; and

(vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

(i) traditional fishing or processing practices in, and dependence on, the fishery;

(ii) the cultural and social framework relevant to the fishery;

(iii) economic barriers to access to fishery;

(iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on

harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;

(v) the administrative and fiduciary soundness of the association; and

(vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

(i) current and historical harvests;

(ii) employment in the harvesting and processing sectors;

(iii) investments in, and dependence upon, the fishery; and

(iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

(i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and

(ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

(i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and

(ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2⁄3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially

fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term 'individual fishing quota' does not include a sector allocation.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term 'antitrust laws' has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council

shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism

established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this

Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management

Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens

Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUNDFISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.