

Amendment 47 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region

Options Paper



Amendment 47 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region would implement a moratorium on the issuance of South Atlantic Charter/Headboat for Snapper-Grouper permits to new applicants. The amendment would also revise regulations that prevent federally permitted Snapper Grouper for-hire operators from possessing Snapper Grouper species in state waters when harvest of these species closes in federal waters.

Revised
05/22/18
Attachment 10a

What Issues are being considered in Snapper Grouper Amendment 47?

For-hire permit moratorium

The South Atlantic Fishery Management Council (Council) is considering implementing a moratorium on issuing South Atlantic Charter/Headboat for Snapper-Grouper permits (Snapper Grouper for-hire permits). Your input is important for the Council to determine whether further development of a moratorium should be pursued, and if so, what you would recommend for the potential structure of a moratorium.

For instance, some questions that could be considered are:

- Should the Council cap the number of permits at the current number, a higher number, or should the Council decrease the number of permits compared to the number that are currently held?
- If there is to be a moratorium on Snapper Grouper for-hire permits, what should be the eligibility criteria to receive a permit?
- Should there be exceptions to eligibility and should there be a mechanism to allow new entrants into the Snapper Grouper for-hire fishery?
- Should there be an end date or time limit established for a moratorium?

To help answer these questions, the Council would like to get your input on the following topics and other decision points as they further discuss whether to proceed with a moratorium on South Atlantic Snapper Grouper for-hire permits including:

- The start date of a for-hire permit moratorium
- Exceptions for eligibility
- Transferability of permits
- Allowing new entrants and establishing a permit pool
- Implementing a time limit or sunset provision for a moratorium
- Other provisions for a moratorium

Each of these topics are addressed in further detail later in this document. The document has been put together in a somewhat “scoping” format and writing style, with input questions under each category. This format was chosen in response to the Committee’s guidance to staff at the December 2017 and March 2018 meetings. The following “discussion questions for the Committee” are intended to be easily retitled to gather public input, should the amendment be approved for scoping. Additionally, a full scoping document, largely based on this options paper has been included in the June 2018 briefing book for reference as some Council members

expressed concern over not being able to review the scoping document prior to the amendment being sent out for scoping.

Harvest prohibition on Snapper Grouper species in state waters when the species are closed to harvest in federal waters

Additionally, per guidance received at the March 2018 meeting, Amendment 47 may also revise or remove regulations that prevent federally permitted Snapper Grouper for-hire operators from possessing Snapper Grouper species in state waters when harvest of these species closes in federal waters. In some circumstances, these species may remain open to harvest in state waters but must be released by passengers onboard vessels with the federal for-hire permit due to regulations specified under the permit conditions. This is the first time that the Council is examining this regulation in relation to Amendment 47, therefore further guidance is needed in regards to how this topic should be developed.

Why is the Council Considering Action?

For-hire permit moratorium

The Council is considering a moratorium in order to evaluate whether a limited entry system or other modifications to how the for-hire Snapper Grouper fleet is managed or operates are desirable. The concept of limiting the number of Snapper Grouper for-hire permits that can be issued was raised in the past by the Snapper Grouper Advisory Panel (AP) and in the visioning process public comments that the Council received in 2014-2015. Currently, the Council is considering implementing a moratorium on the issuance of South Atlantic Snapper Grouper for-hire permits. Some members of the Council felt that a moratorium could help with:

- Logbook reporting compliance
- Recreational data quality
- Stabilizing participation in the for-hire fishery, during which time the Council can evaluate the need for establishing limited entry
- Situations of localized vessel overcapacity
- Business planning
- Professionalizing the for-hire fleet
- Reducing fishing pressure on some fish stocks

During previous deliberations in 2016, 2017, and 2018, the Council has considered whether limiting the number of for-hire permits is the best way to address these issues and concerns. It was discussed that there may be other ways to address some issues in the for-hire fishery, such as changing reporting requirements to promote logbook reporting compliance and enhance the resulting recreational data quality. Some Council members pointed out that the for-hire logbook requirement has not been implemented, therefore it is unknown whether there will be a problem with reporting compliance. Also, it has been noted that non-reporting is currently not an egregious enough offense to remove a federal fishing permit. Other Council members expressed concern that logbook reporting compliance will be low without a moratorium, as permit holders can easily obtain a new for-hire permit if their current permit were ever revoked or not renewed due to non-compliance with the logbook reporting requirement.

In regards to stabilizing participation in the for-hire fishery so the Council can evaluate the need for establishing a limited entry system, some Council members felt that while the number of permits has been variable from year to year, over the long-term, participation in the for-hire Snapper Grouper fishery has been relatively stable and implementing a moratorium would not be necessary. Others noted that while the overall number of permits has been somewhat steady in the long-term, the regional distribution of those permits has changed over time. This change in permit distribution may have led to overcapacity in some circumstances. The Council has received public comment from for-hire operators, particularly those located in South Florida, the Florida Keys, and the Savannah, Georgia area, that overcapacity of for-hire operations is occurring in certain communities.

Some Council members also felt that implementing a moratorium on for-hire Snapper Grouper permits would help with business planning and professionalizing the for-hire fleet. Providing a steadier level of participation in the for-hire sector may help better estimate annual revenue and better inform decisions as to when and whether or not to undergo business expenditures, such as equipment overhauls or upgrades. Also, it was noted that new for-hire operators may easily enter the sector with intentions other than full-time income (i.e. tax purposes, part-time income, or paying for personal fishing expenses) and may undercut the revenues of long-term “full-time” participants by charging lower than market rates or taking customers that would have otherwise booked with “full-time” participants. This viewpoint supported the notion that a moratorium may help reduce occurrences and would thus “professionalize” the for-hire fleet. Contrary to this viewpoint, other Council members felt that Snapper Grouper for-hire permit holders are already acting in a professional manner by default, as there are multiple regulations that must be followed to operate a legal for-hire fishing business, such as securing and renewing several permits in a timely manner and following U.S. Coast Guard protocols. Additionally, it has been noted that market conditions and competition for charter or headboat trips will allow well run for-hire operations to stay in business over less professional operations.

Finally, some Council members have expressed concern over the notion that a moratorium would notably reduce or stabilize fishing pressure on some stocks. For many stocks, removals by the for-hire sector are not a major contributor to total harvest. Differing from this assertion, it was noted that management issues resulting from catches of red snapper, particularly in certain years and states, had a large for-hire component.

In addition to the above stated points and counterpoints, some members of the Council have expressed concerns over issues that may arise as a result of moving forward with a moratorium on Snapper Grouper for-hire permits that include:

- Conflicts between those who do and do not get permits
- Issues with the current control date of June 15, 2016, such as what will happen to permits obtained after that date
- The potential to lead to the creation of sector separation and associated conflicts such as those between individual recreational fishermen and the for-hire fleet
- Monetizing of the Snapper Grouper for-hire permits and how to allow new entrants into the fishery

Harvest prohibition on Snapper Grouper species in state waters when the species are closed to harvest in federal waters

Several for-hire Snapper Grouper permit holders have expressed concern over the inequity that occurs between operators that do and do not have the federal for-hire permit when a Snapper Grouper species is closed to recreational harvest in federal waters but recreational harvest remains open in state waters. In such circumstances, particularly in the state of Florida where many Snapper Grouper species can be found in state waters, customers onboard for-hire vessels with the federal for-hire Snapper Grouper permit are not able to harvest these species even though they are fishing in state waters where the species can be legally retained. For-hire operators without the federal permit are still able to allow their customers to retain such species, as long as they remain in state waters, thus creating an inequity between for-hire operators based on whether or not they hold a federal for-hire Snapper Grouper permit. Some of these permit holders have expressed that this situation not only creates an inequity, but also rewards for-hire operators that purposely do not obtain a federal permit although they may illegally conduct some for-hire trips harvesting Snapper Grouper species in the South Atlantic exclusive economic zone (EEZ).

Background

For-hire permit moratorium

Number of permits

At their June 2017 meeting, the South Atlantic Council approved a motion to direct staff to start work on an amendment that would establish a moratorium on federal Snapper Grouper for-hire permits. The National Marine Fisheries Service (NMFS) issues the Snapper Grouper for-hire permits, which are required to fish for species in the Snapper Grouper Fishery Management Plan (FMP) on charter boats and headboats in the South Atlantic EEZ. These permits are open access and must be obtained annually. There is no limit to the total number of Snapper Grouper for-hire permits that can be issued by NMFS. There were 1,703 valid permits as of May 21, 2018 (**Table 1**).

Table 1. Federal South Atlantic Charter/Headboat for Snapper-Grouper permits issued for 2018. State or region is based on the registered homeport of the vessel with the for-hire permit.

State	Number of Permits
NC	312
SC	174
GA	59
FL East	411
FL Keys	388
FL West	232
AL/MS/LA/TX	50
Mid Atlantic	65
New England	9
Non-Coastal States	3
TOTAL	1,703

Data source: [NMFS SERO Permits Webpage](#), accessed 05/21/18.

The number of Snapper Grouper for-hire permits issued each year has varied over time. **Table 2** shows the number of permits issued from 2008-2018 each year by state and then for all states combined. The least number of for-hire permits issued occurred in 2014 at 1,427 permits. The greatest number of for-hire permits issued occurred in 2018 at 1,703 permits. The annual variability in the number of permits issued is between approximately -3% and +7%. Over the time series the number of these permits has increased by 12% (176 permits). When examining the lowest and highest values, which were observed in 2014 and 2018 respectively, permits increased by 19% (276 permits). Overall, permit numbers tended to decrease throughout the beginning of the time series, with a reversal of this trend as permit numbers grew in 2015, 2016, 2017, and 2018 which may have partially been in reaction to the Council discussing limiting entry in the for-hire fishery and setting a control date of June 15, 2016.

Table 2. The number of federal South Atlantic Charter/Headboat for Snapper-Grouper permits issued, 2008-2018. State is based on the registered homeport of the vessel with the for-hire permit.

Year*	North Carolina	South Carolina	Georgia	Florida	Other States	All States Combined	% Variation from the Previous Year***
2008	289	110	21	953	154	1,527	
2009	279	126	23	949	160	1,537	0.7%
2010	269	102	24	941	152	1,488	-3.2%
2011	272	105	22	927	164	1,490	0.1%
2012	253	110	22	937	157	1,479	-0.7%
2013	246	127	24	884	151	1,432	-3.2%
2014	241	134	28	878	146	1,427	-0.3%
2015	262	157	32	886	132	1,469	2.9%
2016**	286	169	49	899	140	1,543	5.0%
2017**	291	183	56	984	130	1,644	6.5%
2018**	281	160	57	974	122	1,703	3.6%

Source: NMFS SERO Permits Dataset.

*For 2008-2015, permit numbers are based on the number of permits as of December 31 of each year. For 2016, permit numbers are based on accessing the permit dataset on Nov 15, 2016. For 2017, permit numbers are based on accessing the permit dataset on Nov 2, 2017. For 2018, permit numbers are based on accessing the permit dataset on May 21, 2018.

**At their June 2016 meeting, the Council set a control date of June 15, 2016. These dates are highlighted to point out that they occurred after the control date was announced.

**Only considered variations in permits for "All States Combined".

Magnusson-Stevens Act and National Standard Guidelines considerations

There are several specified requirements within the Magnusson-Stevens Fishery Conservation and Management Act (Magnusson-Stevens Act; MSA) and National Standard Guidelines for limiting access to a fishery. Under MSA section 303(b)6 the following is stated in regards to topics that a Council should consider for implementing a limited access system:

Sec. 303. CONTENTS OF FISHERY MANAGEMENT PLANS

(b) DESCRETIONARY PROVISIONS

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

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

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

Moratoriums in other fisheries

Implementing a permit moratorium or limiting entry in a fishery has been a more common management tool practiced for the commercial sector than the for-hire sector. Most federal charter and headboat permitting systems are open access, provided that permit holders meet specified permit conditions. On the federal level, such open access permits include some or all for-hire permits issued by Highly Migratory Species, the Greater Atlantic Region, and of course the Southeast Region.

There are some circumstances of limiting entry on the federal level in the for-hire sector². In the Southeast Region, there are four limited access for-hire permits for the pelagic and reef fish fisheries of the Gulf of Mexico which were preceded by a permit moratorium being implemented by the Gulf of Mexico Fishery Management Council prior to a limited entry system being developed. Another example of a moratorium on federal for-hire permits occurred in the Alaskan halibut fishery when the North Pacific Fishery Management Council implemented a moratorium on entry into the charter sector of the halibut fishery for a large portion of Alaska^{3,4}.

¹ The full contents of Nation Standard 4 and National Standard 5 can be found in the Appendix and at:

<https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=6b0acea089174af8594db02314f26914&mc=true&n=sp50.12.600.d&r=SUBPART&ty=HTML>

² For a full list of limited and open access permits issued by the NMFS Southeast Regional office go to:

http://sero.nmfs.noaa.gov/operations_management_information_services/constituency_services_branch/freedom_of_information_act/common_foia/index.html

³ Charter Vessel Moratorium analysis can be found at:

https://alaskafisheries.noaa.gov/sites/default/files/analyses/earirfrfa_charter_vessel_moratorium110609.pdf

⁴ Further information on the moratorium/limited access program can be found at:

<https://alaskafisheries.noaa.gov/sites/default/files/chlap-secg.pdf>

https://alaskafisheries.noaa.gov/sites/default/files/chp_review1012.pdf

The moratorium and limited entry system was fully implemented in 2012, but the process to develop such as system began approximately 6 years before in 2006. Under this moratorium, there were multiple for-hire permit types established with varying levels of eligibility requirements and transferability provisions to allow new entrants into the fishery.

Harvest prohibition on Snapper Grouper species in state waters when the species are closed to harvest in federal waters

Regulations specifying the harvest prohibition for federal for-hire Snapper Grouper permit holders on Snapper Grouper species in state waters when the species close to harvest in federal waters are largely held in §622.190 *Quotas* and/or in §622.193 *Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs)*. The exact language varies slightly between regulations and between species but is largely written as “...these bag and possession limits apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e., in state or Federal waters.” Under such regulations, if a Snapper Grouper species is closed to harvest in federal waters, in-season or otherwise, a vessel with a federal for-hire Snapper Grouper permit may not retain that species even if the species is still legal to retain in state waters and is caught from state waters.

Objectives for This Meeting

- Review and provide guidance on options that the Council would like to see further developed.
- Review the timing of amendment development and decide if the Council would like to send the amendment out for scoping.

Potential Timing of Amendment

June 2017	The Council reviewed a white paper on limiting entry into the Snapper Grouper for-hire fishery. The Council approved a motion that directed staff to begin working on an amendment to establish a moratorium on the issuance of federal for-hire snapper grouper permits.
December 2017	The Council reviewed an options paper with initial draft Purpose and Need as well as draft actions and alternatives. The Council provided guidance to staff to prepare a simplified version of the options paper for discussion at the March 2018 meeting.
March 2018	The Council reviewed a revised options paper and provided guidance to staff to prepare a further amended options paper for discussion at the June 2018 meeting.

June 2018	The Council reviews an options paper and provides guidance to staff on which options should be developed and included for scoping. The Council approves the amendment for scoping to take place the summer months of 2018.
September 2018	The Council reviews scoping comments and reviews draft actions as well as Purpose and Need statements. The Council provides guidance to staff on timing for moving forward with the amendment.
December 2018	The Council reviews, makes final changes to, and approves Purpose and Need statements. Council reviews actions and alternatives.
March 2019	The Council reviews actions, makes final changes, selects preferred alternatives as appropriate, and approves for public hearings to be held in the spring months of 2019.
June 2019	The Council reviews public hearing comments, modifies the amendment as appropriate, and approves all actions.
September 2019	The Council reviews amendment and approves for formal review.

Under a moratorium, what should be the eligibility criteria to receive a Snapper Grouper for-hire permit?

Should a moratorium be pursued by the Council, requirements will need to be developed that determine the eligibility of who receives a Snapper Grouper for-hire permit. In this case, the Council may want to consider:

- The start date of the moratorium
- Exceptions for eligibility
- A target for the number of valid permits in the fishery

Start date of the moratorium

The start date of a moratorium is important for determining which permit holders receive a permit once a moratorium is imposed. **The Council approved a control date of June 15, 2016** for the for-hire sector of the Snapper Grouper fishery. This control date could be used to determine eligibility to receive a Snapper Grouper for-hire permit, or the Council could consider another date or set of dates that fall either after or before the current control date.

What is a Control date?

A control date is a publicized date specified by the Council to notify current and potential future fishery participants that the Council is considering restrictions limiting participation in a fishery. Participants who enter the specified fishery or sector will not be assured of future access should a management change that limits participation in the sector be prepared and implemented.

Some Council members have expressed some concern over potential “permit speculation” or “a run on permits” where some permit holders may have purchased or will purchase the for-hire permit in hopes of benefitting from the sale of these permits in the future. The Council is interested in getting feedback on this potential scenario and options that should be considered to address this concern.

Discussion Questions for the Committee

- 1) If a moratorium is imposed, what date(s) should the Council consider when determining who receives a permit?
- 2) Should the Council aim to set the number of permits at the current number, a higher number, or should the Council decrease the number of permits?
- 3) Should the Council be concerned over “permit speculation” and if so, what should the Council do to avoid a “run on permits”?

Exceptions for eligibility

The Council may want to consider exceptions under certain circumstances to allow fishery participants who do not meet the moratorium control or start date eligibility requirements to still obtain a Snapper Grouper for-hire permit. Some examples could include:

- 1) **Historic captains:** The Council could establish a way to identify individuals who have worked on vessels under the for-hire permit of another person or a corporation, such as:
 - Minimum proportion of personal income from working as a for-hire captain; or
 - Proof of working as a for-hire captain before a certain date (e.g. a control date); or
 - Others?
- 2) **Commercial License Holders:** In past discussions of the Advisory Panel, it was noted that some Snapper Grouper commercial permit holders intend to include for-hire fishing activity in their future business plans, either as a way to diversify their income or as an option for retirement from commercial fishing. In response, the Council could include an exemption that would allow commercial Snapper Grouper permit holders to obtain a Snapper Grouper for-hire permit.

Discussion Questions for the Committee

Should there be exceptions to the eligibility requirements or start date(s) set by the Council? If so do you have suggestions as to what they should be?

How will new entrants be allowed into the Snapper Grouper for-hire fishery?

The Council may want to consider ways to allow new entrants into the Snapper Grouper for-hire fishery, or to recoup the use of permits that are retired over time. There are several options that could involve:

- Specifying the transferability of existing permits to new entrants
- Establishing a permits pool for new entrants
- Establishing a “new entrants” permit (i.e. a “greenhorn” permit)

Transferability of permits

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

Discussion Questions for the Committee

- 1) Should for-hire Snapper Grouper permits be transferable? If so, should there be restrictions on how and to who the permits can be transferred?
- 2) Should leasing be allow for Snapper Grouper for-hire permits?

New entrants pool

The Council could establish a permits pool as a way to allow new entrants into the for-hire Snapper Grouper fishery and recoup the use of permits as they are retired over time. An option would be to set a minimum threshold for the number of valid permits in the fishery that would trigger additional permits becoming available to a permits pool for new entrants. This could be based on a minimum number of valid permits or a certain percentage of the original number of valid permits in the fishery as of the start date of the moratorium. Should retired permits be put into a pool for new entrants, one question that the Council may want to consider is:

- When would retired permits be made available again?
 - As soon as they are retired?
 - On specified date(s) each year?
 - When the number of valid permits reaches a minimum number due to permits not being renewed/transferred and therefore being retired?
 - Others?

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

Discussion Questions for the Committee

Under a moratorium, should a permits pool be established to allow new entrants into the Snapper Grouper for-hire fishery? If so, how should these permits be made available to new entrants?

New entrants permit

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

Other provisions that could be considered for the “new entrants” permit:

- Establish a probationary period
- Require an annual USCG safety inspection and placement of a safety decal for uninspected passenger vessels through the USCG voluntary inspection program.
- Pass a boating safety course
- Proof of Captains License
- Additional fee
- Only allow harvest of certain Snapper Grouper species for the “new entrants” permit
- Letters of reference
- Require logbook training
- Make permits renewable for a calendar year on the same data for ease of enforcement
- Others?

Discussion Question for the Committee

Should a “new entrants” (i.e. “greenhorn”) permit be established to allow new entrants into the for-hire fishery? If so, what provisions should accompany this permit? Also, how many “new entrants” permits should be available each year?

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

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

1) King mackerel commercial permit:

- Moratorium on new permits starting Oct 16, 1995, until Oct 15, 2000 (CMP Amendment 8)
- Moratorium was extended to Oct 15, 2005 (CMP Amendment 12)
- Established indefinite limited entry as of July 7, 2005 (CMP Amendment 15)

2) Gulf Reef Fish and Gulf CMP charter/headboat permits:

- Moratorium on new permits starting June 16, 2003, until June 16, 2006 (RF Amendment 20/ CMP Amendment 14)
- Established indefinite limited entry in June 2006 (RF Amendment 25/ CMP Amendment 17)

Discussion Question for the Committee

Should there be a specified end date or time limit established if a moratorium on Snapper Grouper for-hire permits is implemented? If so, what length of time should be considered?

Are there other requirements that should be considered for a moratorium or how for-hire permits are issued?

The options presented in this document are intended as a starting point for a discussion on how the Council could go about implementing a moratorium on Snapper Grouper for-hire permits or changing how the permits are issued. The Council could consider other options to be included in Snapper Grouper Amendment 47. For example, it has been suggested that a for-hire permit should be tied to an individual rather than a vessel. This could help with professionalizing the for-hire industry and would allow operators the flexibility to easily change vessels.

Discussion Question for the Committee

Should a for-hire permit remain tied to a vessel or should it be tied to an individual (person, business, etc.)?

Are there other options that the Council should consider in relation to a moratorium on Snapper Grouper for-hire permits?

Should the Council reconsider the prohibition on retention of Snapper Grouper species in state waters onboard federally permitted for-hire vessels when the species close to harvest in federal waters?

As previously mentioned, several Snapper Grouper for-hire permit holders have expressed concern over the inequity that occurs onboard vessels that do and do not have the federal for-hire permit when a Snapper Grouper species is closed to recreational harvest in federal waters but recreational harvest remains open in state waters. Under such circumstances customers onboard for-hire vessels with the federal Snapper Grouper permit may not harvest these species even though they may be fishing in state waters where the species can be legally retained. In response to this stated concern, the Council could amend or remove the federal regulations that prohibit retention of Snapper Grouper species in state waters for federal for-hire Snapper Grouper permit holders if the species is closed to harvest in federal waters.

Discussion Question for the Committee

Should the Council change or remove the harvest prohibition for federal for-hire Snapper Grouper permit holders on Snapper Grouper species in state waters when the species close to harvest in federal waters?

Moving the Amendment Forward

COMMITTEE ACTION:

OPTION 1. SEND SNAPPER GROUPE AMENDMENT 47 OUT FOR SCOPING BEFORE THE SEPTEMBER 2018 MEETING.

OPTION 2. DIRECT STAFF TO FURTHER DEVELOP THE OPTIONS FOR SNAPPER GROUPE AMENDMENT 47 BASED ON INPUT FROM THE JUNE 2018 MEETING FOR CONSIDERATION AT THE SEPTEMBER 2018 MEETING.

OPTION 3. DIRECT STAFF TO STOP WORK ON SNAPPER GROUPE AMENDMENT 47.

OPTION 4. OTHERS??

DRAFT MOTION: SEND SNAPPER GROUPE AMENDMENT 47 (FOR-HIRE PERMIT MORATORIUM AND HARVEST OF SNAPPER GROUPE SPECIES IN STATE WATERS BY SNAPPER GROUPE FOR-HIRE PERMIT HOLDERS), AS MODIFIED, OUT FOR SCOPING BEFORE THE SEPTEMBER 2018 MEETING.

APPENDIX 1. National Standard Guideline 4 and National Standard Guideline 5.

§600.325 National Standard 4—Allocations.

(a) *Standard 4.* Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be:

- (1) Fair and equitable to all such fishermen.
- (2) Reasonably calculated to promote conservation.

(3) Carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(b) *Discrimination among residents of different states.* An FMP may not differentiate among U.S. citizens, nationals, resident aliens, or corporations on the basis of their state of residence. An FMP may not incorporate or rely on a state statute or regulation that discriminates against residents of another state. Conservation and management measures that have different effects on persons in various geographic locations are permissible if they satisfy the other guidelines under Standard 4. Examples of these precepts are:

(1) An FMP that restricted fishing in the EEZ to those holding a permit from state X would violate Standard 4 if state X issued permits only to its own citizens.

(2) An FMP that closed a spawning ground might disadvantage fishermen living in the state closest to it, because they would have to travel farther to an open area, but the closure could be justified under Standard 4 as a conservation measure with no discriminatory intent.

(c) *Allocation of fishing privileges.* An FMP may contain management measures that allocate fishing privileges if such measures are necessary or helpful in furthering legitimate objectives or in achieving the OY, and if the measures conform with paragraphs (c)(3)(i) through (c)(3)(iii) of this section.

(1) *Definition.* An “allocation” or “assignment” of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of Standard 4. Adoption of an FMP that merely perpetuates existing fishing practices may result in an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen.

(2) *Analysis of allocations.* Each FMP should contain a description and analysis of the allocations existing in the fishery and of those made in the FMP. The effects of eliminating an existing allocation system should be examined. Allocation schemes considered, but rejected by the Council, should be included in the discussion. The analysis should relate the recommended allocations to the FMP's objectives and OY specification, and discuss the factors listed in paragraph (c)(3) of this section.

(3) *Factors in making allocations.* An allocation of fishing privileges must be fair and equitable, must be reasonably calculated to promote conservation, and must avoid excessive shares. These tests are explained in paragraphs (c)(3)(i) through (c)(3)(iii) of this section:

(i) *Fairness and equity.* (A) An allocation of fishing privileges should be rationally connected to the achievement of OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. For instance, an FMP objective to preserve the economic status quo cannot be achieved by excluding a group of long-time participants in the fishery. On the other hand, there is a rational connection between an objective of harvesting shrimp at their maximum size and closing a nursery area to trawling.

(B) An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as “fair and equitable,” if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo. Where relevant, judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable.

(ii) *Promotion of conservation.* Numerous methods of allocating fishing privileges are considered “conservation and management” measures under section 303 of the Magnuson-Stevens Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or, it may promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product. To the extent that rebuilding plans or other conservation and management measures that reduce the overall harvest in a fishery are necessary, any harvest restrictions or recovery benefits must be allocated fairly and equitably among the commercial, recreational, and charter fishing sectors of the fishery.

(iii) *Avoidance of excessive shares.* An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.

(iv) *Other factors.* In designing an allocation scheme, a Council should consider other factors relevant to the FMP’s objectives. Examples are economic and social consequences of the scheme, food production, consumer interest, dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to and impact on other fisheries, opportunity for new participants to enter the fishery, and enhancement of opportunities for recreational fishing.

§600.330 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) *Efficiency in the utilization of resources—(1) General.* The term “utilization” encompasses harvesting, processing, marketing, and non-consumptive uses of the resource, since management decisions affect all sectors of the industry. In considering efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation’s benefit with the least cost to society: Given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

(2) *Efficiency.* In theory, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel. Efficiency in terms of aggregate costs then becomes a

conservation objective, where “conservation” constitutes wise use of all resources involved in the fishery, not just fish stocks.

(i) In an FMP, management measures may be proposed that allocate fish among different groups of individuals or establish a system of property rights. Alternative measures examined in searching for an efficient outcome will result in different distributions of gains and burdens among identifiable user groups. An FMP should demonstrate that management measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency.

(ii) Management regimes that allow a fishery to operate at the lowest possible cost (e.g., fishing effort, administration, and enforcement) for a particular level of catch and initial stock size are considered efficient. Restrictive measures that unnecessarily raise any of those costs move the regime toward inefficiency. Unless the use of inefficient techniques or the creation of redundant fishing capacity contributes to the attainment of other social or biological objectives, an FMP may not contain management measures that impede the use of cost-effective techniques of harvesting, processing, or marketing, and should avoid creating strong incentives for excessive investment in private sector fishing capital and labor.

(c) *Limited access.* A “system for limiting access,” which is an optional measure under section 303(b) of the Magnuson-Stevens Act, is a type of allocation of fishing privileges that may be considered to contribute to economic efficiency or conservation. For example, limited access may be used to combat overfishing, overcrowding, or overcapitalization in a fishery to achieve OY. In an unutilized or underutilized fishery, it may be used to reduce the chance that these conditions will adversely affect the fishery in the future, or to provide adequate economic return to pioneers in a new fishery. In some cases, limited entry is a useful ingredient of a conservation scheme, because it facilitates application and enforcement of other management measures.

(1) *Definition.* Limited access (or limited entry) is a management technique that attempts to limit units of effort in a fishery, usually for the purpose of reducing economic waste, improving net economic return to the fishermen, or capturing economic rent for the benefit of the taxpayer or the consumer. Common forms of limited access are licensing of vessels, gear, or fishermen to reduce the number of units of effort, and dividing the total allowable catch into fishermen's quotas (a stock-certificate system). Two forms (i.e., Federal fees for licenses or permits in excess of administrative costs, and taxation) are not permitted under the Magnuson-Stevens Act, except for fees allowed under section 304(d)(2).

(2) *Factors to consider.* The Magnuson-Stevens Act ties the use of limited access to the achievement of OY. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Magnuson-Stevens Act and in §600.325(c)(3). In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Magnuson-Stevens Act's limitations on returning economic rent to the public under section 304(d). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

(d) *Analysis.* An FMP should discuss the extent to which overcapitalization, congestion, economic waste, and inefficient techniques in the fishery reduce the net benefits derived from the management unit and prevent the attainment and appropriate allocation of OY. It should also explain, in terms of the FMP's objectives, any restriction placed on the use of efficient techniques of harvesting, processing, or marketing. If, during FMP development, the Council considered imposing a limited-entry system, the FMP should analyze the Council's decision to recommend or reject limited access as a technique to achieve efficient utilization of the resources of the fishing industry.

(e) *Economic allocation.* This standard prohibits only those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose. Where conservation and management measures are recommended that would

change the economic structure of the industry or the economic conditions under which the industry operates, the need for such measures must be justified in light of the biological, ecological, and social objectives of the FMP, as well as the economic objectives.