Framework Action to Define For-Hire Fishing in the Gulf of Mexico Exclusive Economic Zone

Generic Abbreviated Framework Action to the Fishery Management Plans for Reef Fish and Coastal Migratory Pelagics in the Gulf of Mexico

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GENERIC FRAMEWORK ACTION TO DEFINE FOR-HIRE FISHING IN THE GULF OF MEXICO

Including Regulatory Impact Review and Regulatory Flexibility Act Analysis

Type of Action

( ) Administrative ( ) Legislative
(X) Draft ( ) Final

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ABBREVIATIONS USED IN THIS DOCUMENT

CMP	Coastal Migratory Pelagics
COI	Certificate of Inspection
Council	Gulf of Mexico Fishery Management Council
EEZ	exclusive economic zone
GMFMC	Gulf of Mexico Fishery Management Council
Gulf	Gulf of Mexico
MRIP	Marine Recreational Information Program
NMFS	National Marine Fisheries Service
SRD	Science and Research Director
SRHS	Southeast Regional Headboat Survey
USCG	United States Coast Guard
OUPV	Operator of Uninspected Passenger Vessels

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CHAPTER 1. INTRODUCTION

1.1 Purpose and Need

The purpose of this proposed action is to consider if a new definition of for-hire fishing in the Gulf of Mexico exclusive economic zone (EEZ) is necessary to clearly delineate between for-hire fishing trips (charter or headboat trips) and private fishing trips. The need is to enhance enforcement efforts in distinguishing for-hire fishing from private angler fishing in federal waters of the Gulf of Mexico.

Gulf of Mexico Fishery Management Council

- Responsible for conservation and management of fish stocks
- Consists of 17 voting members, 11 of whom are appointed by the Secretary of Commerce, the National Marine Fisheries Service Regional Administrator, and 1 representative from each of the 5 Gulf states marine resource agencies
- Responsible for developing fishery management plans and amendments, and recommends actions to National Marine Fisheries Service for implementation

National Marine Fisheries Service

- Responsible for conservation and management of fish stocks
- Approves, disapproves, or partially approves Council recommendations
- Implements regulations

1.2 Background

A Gulf of Mexico federal charter vessel/headboat permit for reef fish or coastal migratory pelagics (CMP) is required for vessels to take passengers fishing that pay a fee. Charter vessel and headboats are defined in 50 CFR 622.2 (below). Vessels that possess both a charter vessel/headboat permit and a commercial permit are dual-permitted vessels.

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that is subject to the requirements of the USCG to carry six or fewer passengers for hire and that engages in charter fishing at any time during the calendar year. A charter vessel with a commercial permit, as required under this part, is considered to be operating as a charter vessel when it carries a passenger <u>who pays a fee</u> or when there are more than three persons aboard, including operator and crew, except for a charter vessel with a commercial vessel permit for Gulf reef

fish. A charter vessel that has a charter vessel permit for Gulf reef fish and a commercial vessel permit for Gulf reef fish is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than four persons aboard, including operator and crew. A charter vessel that has a charter vessel permit for Gulf reef fish, a Certificate of Inspection (COI) issued by the USCG to carry passengers for hire will not be considered to be operating as a charter vessel provided–

(1) It is not carrying a passenger who pays a fee; and
(2) When underway for more than 12 hours, that vessel meets, but does not exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12-hours (if any), and does not exceed the minimum manning requirements outlined in its COI for vessels that are underway for more than 12 hours.

Headboat means a vessel that holds a valid Certificate of Inspection (COI) issued by the USCG to carry more than six passengers for hire.
(1) A headboat with a commercial vessel permit, as required under this part, is considered to be operating as a headboat when it carries a passenger who pays a fee or--
(i) In the case of persons aboard fishing for or possessing South Atlantic snapper-grouper, when there are more persons aboard than the number of crew specified in the vessel's COI; or
(ii) In the case of persons aboard fishing for or possessing coastal migratory pelagic fish, when there are more than three persons aboard, including operator and crew.
(2) However a vessel that has a headboat permit for Gulf reef fish, a commercial vessel permit for Gulf reef fish, and a valid COI issued by the USCG to carry passengers for hire will not be considered to be operating as a headboat provided–-
(i) It is not carrying a passenger who pays a fee; and
(ii) When underway for more than 12 hours, that vessel meets, but does not exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12-hours (if any), and does not exceed the minimum manning requirements outlined in its COI for vessels that are underway for more than 12 hours.

Contractual service

A contractual service refers to vessels that engage in for-hire fishing activities in exchange for a fee, good, or service other than the fishing trip itself (a quid pro quo exchange). Vessels that engage in for-hire contractual services are functioning as for-hire fishing vessels without a federal charter vessel/headboat permit.

At the August 2011 Gulf of Mexico Fishery Management Council (Council) meeting, staff was directed to begin development of a discussion paper to address vessels that take passangers on

fishing trips in exchange for goods or services (as opposed to a fee) and do not hold a federal charter vessel/headboat permit for reef fish or coastal migratory pelagics. A contractual service refers to vessel owner/operators that engage in for-hire fishing activities in exchange for a fee, goods, or services other than the fishing trip itself (a quid pro quo exchange). In the Gulf of Mexico, reef fish and coastal migratory pelagics charter vessel/headboat permits are limited access and under a moratorium, initially implemented in 2004 for reef fish (Amendment 20, GMFMC 2003) and coastal migratory pelagics (Amendment 14, GMFMC 2003), and made permanent in 2006 (GMFMC 2005). Vessel owner/operators that engage in for-hire contractual services are engaged in for-hire fishing vessels without a federal charter vessel/headboat permit. This is problematic for several reasons. Federally permitted charter vessel and headboat operators are required to possess a valid U.S. Coast Guard Captain's License while captains operating under contractual services agreements are not under the same obligation. A Captain's License is required to legally carry passengers for-hire. This includes charter fishing, sightseeing, diving, transportation, teaching, or any use which is considered a "passenger for hire" situation. The Captain's license requirement improves human safety at sea (National Standard 10) by ensuring that captains have had:

- A physical taken within 12 months.
- An approved drug test taken within six months.
- An approved CPR and First Aid course taken within 12 months.

Operators of 6-pack vessels are required to possess an "Operator of Uninspected Passenger Vessels" (OUPV) license, commonly referred to as a "6-pack" or "Charterboat Captain's License". The OUPV license has additional requirements:

- 90 days service in the last three years on vessels of appropriate tonnage.
- Near coastal: 360 days deck service in the operation of vessels, including 90 days service on ocean or near coastal waters.
- Great Lakes/Inland: 360 days deck service in the operation of vessels, including 90 days service on Great Lakes.
- Inland: 360 days deck service in the operation of vessels.
- Towing Endorsement: Must request and pass towing endorsement examination.

Headboat operators must possess a Master License with the following additional requirements:

- 90 days service in the last three years on vessels of appropriate tonnage.
- Near coastal: 720 days of service steam, motor, or auxiliary sail vessels on ocean or near coastal waters (360 days inland is acceptable).
- Great Lakes and Inland: 360 days service steam, motor, sail/aux. sail vessels including 90 days on Great Lakes waters.
- Inland: 360 days service steam, motor, aux. sail vessels on any waters.
- Rivers: 360 days service steam, motor, aux. sail vessels on any waters.
- Sailing Endorsement: Must submit evidence of 360 days of service on sail or auxiliary sail vessels (service obtained before license OK).
- Towing Endorsement: Must request and pass towing endorsement examination or complete course.

Reef Fish Amendment 30B (GMFMC 2008) established regulations to improve compliance with federal management regulations by federally permitted commercial and recreational for-hire reef fish vessels. Although NMFS and state fishery management agencies attempt to work cooperatively to implement consistent regulations, both for enforceability and effectiveness of management, there are occasionally situations in which federal and some state regulations differ. For example, the red snapper recreational season is currently extended in state waters off Texas and Louisiana. When there are less restrictive regulations in state waters, the effectiveness of the federal regulations is diminished. In cases of differing state and federal regulations permitted vessels must follow federal regulations if they are more restrictive. This only affects federally permitted vessels fishing for reef fish and does not affect vessels operating under contractual services agreements. This creates unequal access to species such as red snapper that are available to private anglers, state permitted vessels, or vessels operating under a contractual services agreement in comparison to federally permitted for-hire vessels. Comparitively, this results in an economic loss to federally permitted for-hire vessels and creates conflicts between user groups.

The Council has discussed the situation where private vessels are taking passengers fishing in the Gulf of Mexico EEZ in exchange for passengers paying for some service other than the fishing trip itself (a quid pro quo exchange). For example, these services may be consulting packages or real estate transactions. By characterizing the fees paid as an exchange for something other than the fishing trips, these operators take trips without possessing the limited access charter vessel/headboat permits required for reef fish and coastal migratory pelagic fishing vessels operating in the EEZ. Thus far, there have been no reports of prosecutions for not possessing federal charter vessel/headboat permits. Law enforcement officers have stated at Council meetings that, under the existing regulations, it is difficult to determine if a trip taken in exchange for something like a consulting package is charter vessel or headboat trip that requires the appropriate vessel permit.

An additional problem that arises when vessels, operating under contractual services, are functioning as charter vessels or headboats without a federal charter vessel/headboat permit is related to data collection. Under the Marine Recreational Information Program (MRIP), catch and effort data for charter vessels are collected separately from private recreational vessels.

Catch and effort from headboats is calculated through the Southeast Headboat Survey is conducted by the Southeast Fisheries Science Center. Daily catch records are obtained for all trips and are filled out by the headboat operators or approved personnel. If selected by the SRD, the owner or operator of a vessel with a charter/headboat permit must participate in the National Marine Fisheries Service (NMFS) sponsored electronic logbook and/or video monitoring reporting program. Headboats that are selected to participate in the survey are required to report information about their fishing trips, including fishing effort and harvest information. Completed records for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked no later than seven days after the end of each month. As of January 1, 2013, the SRD has requested that forms be submitted via electronic reporting (i.e., computer or internet). However, the recently completed, but not yet implemented Framework Action (GMFMC 2013) will require that selected headboat vessels submit fishing records to the SRD weekly, or at intervals shorter than a week if notified by the SRD, via electronic reporting.

To accurately collect the best recreational fishing data, fishing trips need to be designated as private or for-hire fishing trips. In addition, federally permitted for-hire vessels are subject to costs, reporting requirements, safety requirements, and regulations that are not required of private vessels. Consequently, vessels functioning as for-hire vessels without the appropriate permit may be viewed as having an unfair advantage over permitted vessels. For example, vessels that do not possess a federal charter permit, but operate as a charter, could fish in state waters for reef fish that may be closed in federal waters; currently, federally-permitted charter vessels would be prohibited from fishing in state waters for a stock that is closed in federal waters. There is a need for vessels functioning as for-hire vessels to be subject to the same regulations in a fair and equitable manner. There could be safety at sea considerations for passengers on board a vessel if the operator does not have a valid U.S. Coast Guard Captain's License.

At its April 16-19, 2012 meeting, the Council reviewed the practice known as contractual services by some vessels without a charter vessel/headboat permit in the Gulf of Mexico. Under the current definition for "charter vessel" and "headboat", as specified in the regulations above (50 CFR 622.2), an appropriate permit is required for a vessel that is operating as a charter vessel or headboat with a valid U.S. Coast Guard Captain's License.

The problem is that there is no definition for the phrase "for-hire fishing" in 50 CFR 622.2, which makes it unclear whether a permit is required in some circumstances. Therefore, the Council requests a definition of "for-hire fishing" be modified and codified in the regulations. In addition, the Council may want to consider modifying the underlined areas to read: "who pays a fee or provides goods or services, see definition of for-hire fishing in 50 CFR 622.2." Existing regulations that the Council may also wish to consider are included in the Magnuson-Stevens Fishery Conservation and Management Act and Title 46 of the U.S. Code relative to shipping.

The Magnuson-Steven Act states the term "charter fishing" means "fishing from a vessel carrying a passenger for-hire (as defined in section 2101(21a) of title 46, United States Code) who is engaged in recreational fishing" (16 U.S.C. 1802).

Title 46 of the U.S. Code relative to shipping and other requirements implemented by the U.S. Coast Guard states: "passenger for hire means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel" (§ 2101(21a).

1.3 Proposed Action

Defining For-hire Fishing on Charter Vessels and Headboats in the Gulf of Mexico Exclusive Economic Zone

Option 1: No Action – do not modify the current definition of a charter vessel or headboat as specified in 50 CFR § 622.2. Do not add any additional definition of for-hire fishing in the Gulf of Mexico exclusive economic zone.

Preferred Option 2: Modify the current charter vessel and headboat definitions in 50 CFR 622.2 by adding the following words "or provides goods or services" after who pays a fee throughout the definition as outlined in the background material. In addition, add a definition of for-hire fishing in the Gulf of Mexico exclusive economic zone to clarify if vessels accept goods or services in exchange for fishing trips they must have a valid federal charter vessel/headboat permit and valid U.S. Coast Guard Captain's License on board the vessel.

Discussion

This document was requested by the Council to address contractual services in the for-hire sector by vessels that do not currently hold a federal charter vessel/headboat permit. A contractual service refers to vessels that engage in for-hire fishing activities in exchange for a fee, good, or service other than the fishing trip itself. In the Gulf of Mexico, reef fish and coastal migratory pelagic charter vessel/headboat permits are under a moratorium. Vessels that engage in for-hire fishing contractual services are functioning as for-hire vessels without a federal charter vessel/headboat permit.

Option 1, no action, would not add a definition of for-hire fishing in the Gulf of Mexico EEZ and would not address the Council's concern that vessels may be functioning as for-hire vessels without the appropriate permit. **Preferred Option 2** would add a definition of for-hire fishing to clarify that any vessel that accepts goods or services in exchange for the fishing trips is acting as a charter vessel or headboat and must have a valid federal charter vessel/headboat permit on board the vessel. A suggested definition to be added:

> A vessel engaged in fishing in the Gulf of Mexico exclusive economic zone will be considered to be operating as a charter vessel or headboat (50 CFR 622.2) when the vessel is carrying a passenger who provides any type of quid pro quo exchange as a condition or requirement of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel, in addition to the requirements specified in 50 CFR 622.2 under the definitions of "charter vessel" and "headboat". This does not include the free and voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies. The captain (and crew where applicable) of a vessel operating as a charter vessel or headboat (as defined above) shall possess a valid US Coast Guard Captain's License and all the requisite obligations of this license.

The language suggested in **Preferred Option 2** could be added to the current regulations for the Gulf of Mexico EEZ. Coastal migratory pelagics are co-managed with the South Atlantic Council, which could determine whether to add the same definition for charter vessels and headboats operating in federal waters of the South Atlantic. The South Atlantic Council could also determine whether to adopt the language for snapper-grouper charter vessels and headboats, comparable to the Gulf of Mexico's reef fish management unit. This language is adapted from Title 46 of the U.S. Code relative to shipping, and other requirements implemented by the U.S. Coast Guard. Similar language could be added to 50 CFR 622. It should be noted that the modified language would need to be added for both Gulf of Mexico reef fish and coastal migratory pelagics.

The impacts of the proposed action are summarized here, until the Council moves forward with this action. The proposed action is expected to directly impact the administrative environment and provide positive indirect effects to the physical, biological, economic, and social environments. It is expected that by modifying the definitions for charter vessels and headboats and adding an additional definition of for-hire fishing there could be improvements in accuracy of recreational data collection. Additional, impacts could be human safety at sea, consistent with National Standard 10 based on experienced captain's obtaining a valid U.S. Coast Guard Captain's License. Further, federally permitted reef fish and coastal migratory pelagic charter vessel/headboat permits in the Gulf of Mexico are under a moratorium. Clarifying when a fishing vessel is operating as a charter vessel or headboat is expected to assist enforcement efforts and increase fairness and equity.

CHAPTER 2. REFERENCES

GMFMC. 2003. Corrected for a charter/vessel headboat permit moratorium amendment the fishery management plans for: reef fish (Amendment 20) and coastal migratory pelagics (Amendment 14) including environmental assessment, regulatory impact review, and initial regulatory flexibility act. Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North Suite 1000 Tampa, Florida 33619. http://www.gulfcouncil.org/Beta/GMFMCWeb/downloads/CBAmendmentFINAL-corrected.pdf

GMFMC. 2005. Final Amendment to the fishery management plans for: reef fish (Amendment 25) and coastal migratory pelagics (Amendment 17) for extending the charter vessel/headboat permit moratorium (including supplementary environmental impact state, regulatory impact review, and initial regulatory flexibility act). Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, Florida 33607. http://www.gulfcouncil.org/Beta/GMFMCWeb/downloads/CHBAmend%2062305%20AS.pdf

GMFMC. 2008. Final Amendment 30B: gag – end overfishing and set management thresholds and targets. Red grouper – set optimum yield, TAC, and management measures, time/area closures, and federal regulatory compliance including environmental impact statement, regulatory impact review, and regulatory flexibility act analysis. Gulf of Mexico Fishery Management Council, Tampa, Florida. http://www.gulfcouncil.org/Beta/GMFMCWeb/downloads/Final%20Amendment%2030B%2010_10_08.pdf

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